Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Dive Sticks; Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing a rule to ban certain dive sticks under the authority of the Federal Hazardous Substances Act. Dive sticks are used for underwater activities, such as retrieval games and swimming instruction. They are typically made of rigid plastic and stand upright at the bottom of a swimming pool. Due to these characteristics, if a child jumps onto a dive stick in shallow water he or she may suffer severe injuries.

DATES: Written comments in response to this notice must be received by October 2, 2000.

ADDRESSES: Comments should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland; telephone (301) 504–0800. Comments also may be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov. Comments should be captioned ''NPR for DiveSticks.''

FOR FURTHER INFORMATION CONTACT: Scott R. Heh, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0494, ext. 1308.

SUPPLEMENTARY INFORMATION:

A. Background

As of October 1999, the Commission is aware of eight confirmed impalement incidents involving dive sticks that were submerged and standing vertically. These incidents resulted in injuries to the perineal region of young children. The products were cylindrical batons, approximately 7⅞ to 8⅝ inches long and ⅞ to one inch in diameter. They were all constructed of rigid plastic.

In early 1999, when the Commission staff first learned of incidents involving dive sticks, the staff worked with product manufacturers to recall hazardous dive sticks. On June 24, 1999, the Commission announced that it had reached agreements with 15 manufacturers and importers to voluntarily recall their dive sticks. The recalls have removed most dive sticks from the market.[1][1] However, because the hazard posed by dive sticks appeared to be inherent to the product and not related to any specific model or manufacturer, the Commission began a proceeding to ban all dive sticks with hazardous characteristics.

On July 16, 1999, the Commission issued an advance notice of proposed rulemaking (''ANPR'') announcing the Commission's intent to issue a rule addressing the risk of injury presented by dive sticks. 64 FR 38387 (1999). One alternative discussed in the ANPR was a rule declaring certain dive sticks to be banned hazardous substances. The Commission received one comment on the ANPR from the Department of Fair Trading, New South Wales (''NSW''), Australia. Although the NSW Department of Fair Trading states that it is unaware of any similar incidents in Australia, NSW is taking certain steps to protect against such injuries occurring, including issuing a design guide requiring that underwater toys be designed to reduce the hazard of impalement.[3]

B. Statutory Authority

This proceeding is conducted pursuant to the Federal Hazardous Substances Act (''FHSA''), 15 U.S.C. 1261 *et seq.* Section 2(f)(1)(D) of the FHSA defines ''hazardous substance'' to include any toy or other article intended for use by children that the Commission determines, by regulation, presents an electrical, mechanical, or thermal hazard. 15 U.S.C. 1261(f)(1)(D). An article may present a mechanical hazard if its design or manufacture presents an unreasonable risk of personal injury or illness during normal use or when subjected to reasonably foreseeable damage or abuse. Among other things, a mechanical hazard could include a risk of injury or illness ''(3) from points or other protrusions, surfaces, edges, openings, or closures, * * * or (9) because of any other aspect of the article's design or manufacture.'' 15 U.S.C. 1261(s).

Under section 2(q)(1)(A) of the FHSA, a toy, or other article intended for use by children, which is or contains a hazardous substance accessible by a child is a ''banned hazardous substance.'' 15 U.S.C. 1261(q)(1)(A).

Section 3(f) through 3(i) of the FHSA, 15 U.S.C. 1262(f)–(i), governs a proceeding to promulgate a regulation determining that a toy or other children's article presents an electrical, mechanical, or thermal hazard. As provided in section 3(f), this proceeding began with an ANPR. 64 FR 38387 (1999). After considering the comment submitted in response to the ANPR, the Commission is now issuing a proposed rule and a preliminary regulatory analysis in accordance with section 3(h) of the FHSA. The Commission will then consider the comments received in response to the proposed rule and decide whether to issue a final rule and a final regulatory analysis. 15 U.S.C. 1262(i)(1). Before the Commission can issue a final rule it must find (1) if an applicable voluntary standard has been adopted and implemented, that compliance with the voluntary standard is not likely to adequately reduce the risk of injury, or compliance with the voluntary standard is not likely to be substantial; (2) that benefits expected from the regulation bear a reasonable relationship to its costs; and (3) that the regulation imposes the least burdensome alternative that would adequately reduce the risk of injury. *Id.* 1261(i)(2).

C. The Product

Dive sticks are used in swimming pools for underwater retrieval activities, such as retrieval games and swimming instruction. They are made of rigid plastic. They are often cylindrical in shape, typically ten inches or less in length with a diameter one inch or less, but some have novelty shapes such as shark silhouettes. They are or can be weighted so that when dropped into water they sink and stand upright on the bottom. Dive sticks are sold under a variety of names such as dive sticks,

[1] Numbers in brackets refer to documents listed at the end of this notice.

diving sticks, fish sticks, sticks, and batons. The Commission believes that the characteristics most important to creating the risk of impalement injury are that dive sticks (1) are rigid, (2) submerge and come to rest at the bottom of a pool of water, and (3) stand upright once submerged. [5]

Before the June 1999 recalls, dive sticks were usually sold in sets of 3 to 6 sticks. They were often sold as part of a package that contained other toys, such as dive disks, eggs, and rings (*e.g.,* a package may include 3 dive sticks, 3 dive rings, and 3 dive disks). Retail prices usually ranged from $4 to $7 per set or about $1 per individual stick. Retail prices were almost always less than $10, even when sold with other products such as disks, rings, and snorkels. [8]

An estimated 4 to 5 million dive sticks were sold in both 1997 and 1998. Altogether, about 20 million dive sticks have been sold since 1990. Sales of dive sticks increased substantially during the 1990's. About 1 million households may have owned dive sticks during any given year. [8]

In 1997, retail sales of water/pool/sand toys exceeded $450 million. Since dive sticks retail for approximately $1 per stick, dive sticks likely made up less than 1.0 percent of retail sales in this category. Before the June 1999 recalls, the CPSC staff identified at least 15 firms that manufactured or imported dive sticks into the United States. Most of the importers obtained their products from China, Hong Kong, or Taiwan. Since the product is inexpensive and simple to manufacture, it is relatively easy for firms to enter or leave the dive stick market. Therefore, firms that have not supplied dive sticks in the past, and were not part of the June 1999 recalls, could begin or renew producing or supplying dive sticks. [8]

D. The Risk of Injury

1. *Description of Injury.* Impalement injuries have occurred when a child accidently fell or jumped buttocks-first into shallow water and landed on a dive stick. Serious rectal or vaginal injuries can result. Less serious injuries such as facial and eye injuries are also possible when a child attempts to retrieve a dive stick under the water. [2]

Falls on vertical objects may result in traumatic injuries to the perineum. The severity of injuries depends on the degree of penetration by the object. This in turn is dependent on the force of impact and the physical properties of the dive stick (size and surface characteristics). The injuries could range from laceration of the rectum and sphincter, to puncture wounds and tears of the colon. High impact forces may also cause injuries to the vulva, vaginal canal, and blood vessels beneath the perineal skin in females. In males, such impacts may cause perforation injuries to the genitalia, urethra, ureter and bladder. All these types of perforation and impalement injuries in males and females require hospitalization and surgery.

Because of the nature of the area, the main complication after perineum injuries is lesion infection, which may lead to abscess and possible sepsis in extreme cases. To avoid subsequent septic complications, surgery may be necessary. Perineal injuries (with or without rectal injury) often require fecal diversion (proximal colostomy), wound drainage, and the use of a broad-spectrum antibiotic in pre- and post-operative stages. The damage caused by deep penetration into the rectal or vaginal area may have devastating effects on a child's health. In addition to long-term physiological effects, these types of injuries have the potential to cause long-lasting emotional trauma.

2. *Impalement Injury data.* As of October 1999, the Commission is aware of eight confirmed impalement injuries involving submerged vertically-standing dive sticks, including three since the Commission issued its ANPR. All the victims were children ranging in age from five to nine years old. [2]

Four females (ages 7 to 9) sustained injuries when the dive stick penetrated the vagina. One male (age 7) and two females (ages 5 and 6) suffered injuries when the dive stick penetrated the rectum. In the remaining incident, a seven year-old female received external lacerations around the rectum after landing on a dive stick. Medical attention was sought after each incident, and five of the injuries required surgery to address multiple internal and external injuries. [2]

These eight incidents involved vertical-standing dive sticks. The products were cylindrical batons, approximately 7⅞ to 8⅝ inches long and ⅞ to one inch in diameter.[2] One of the dive sticks was white in color, another was blue; the colors of the remaining dive sticks are unknown. In one incident, it was reported that the victim could not see the dive stick because of the white color and the faded blue numbers. [2]

The victims in seven of these eight confirmed incidents were injured while playing in shallow depths of water. Of these, four occurred in small wading pools with water levels between 12 and 24 inches. Of the remaining three incidents, one occurred in a spa with unknown water depth, one occurred in a pool measuring three feet in height with approximately 27 inches of water, and the final incident occurred in a bathtub with approximately 6 inches of water. The eighth incident reportedly took place in a pool; however, neither the type of pool nor the water depth is known.[3] [2]

The July ANPR provided summaries of impalement incidents reported at that time. Below are summaries of the impalement injuries reported since the ANPR was published.

a. June 9, 1999—The five year-old female victim was playing in an inflatable wading pool. The victim was jumping up and down in the pool when she slipped and fell directly on top of one of four vertically standing dive sticks in the pool. The victim was impaled rectally by the dive stick. She was hospitalized overnight for observation. She was treated for an anal tear and an internal laceration to her rectum.

b. April 1999—The seven year-old female was taking a bath under the supervision of her mother. The dive stick was in the bathtub, standing vertically in the water. The child stood up to lather her legs, sat back down to rinse off and sat on a dive stick which went into her vagina. The victim was hospitalized overnight and underwent surgery for vaginal lacerations. Long term prognosis was unavailable. [2]

3. *Non-impalement injury data.* In addition to genital and rectal injuries, the Commission received reports of four injuries to other body parts that occurred when the victim submerged onto the vertical-standing dive stick. The injuries occurred when the children attempted to retrieve the dive sticks from the bottom of the pool. A female victim, age 6, received a facial laceration when she stuck her face in the water and contacted the product. One boy, age 8, dived head first into the pool and hit his forehead on the product. The third victim, a 7 year-old male, jumped into the pool feet first and punctured his foot on the sharp edge of the dive stick after it broke from the initial contact. The fourth victim, a 9 year-old male, lacerated his back on the sharp edge of a dive stick when he dived into the pool to retrieve the product. [2]

The Commission has also received reports of six incidents of victims struck by a thrown dive stick. Three of the

[2] Two incident reports approximated the length between 6 and 8 inches; however, the products were not available for measurement.

[3] A ninth unconfirmed incident was reported to CPSC, but many details of the incident remain unclear.

injuries were facial lacerations, two resulted in an eye injury and one child broke a tooth. Two other children were reportedly injured when they fell while carrying dive sticks. [2]

E. The Proposed Ban

The Commission is proposing to ban dive sticks with certain hazardous characteristics. Although voluntary recalls have removed most, if not all, of these products from the market for the present time, the Commission is concerned that, without a rule banning them, they could reappear on the market.

The proposed rule would ban dive sticks that (1) are rigid, (2) submerge to the bottom of a pool of water, and (3) stand upright in water. After considering the reported impalement injuries, the Commission believes that these are the essential characteristics that create the impalement hazard. Dive sticks and similar articles that do not have these characteristics, as well as dive rings and dive discs, would still be allowed.

All dive stick impalement incidents and other rectal or vaginal impalement cases reported in the medical literature involved objects that were rigid. The staff is not aware of any impalement injuries to the perineum that involved a flexible object. In order to prevent serious injuries, the dive stick should be of sufficient flexibility that it would bend to a degree that prevents penetration when impact occurs with the perineal area. The staff developed a test to distinguish dive sticks that are sufficiently flexible so as to effectively limit the potential for serious impalement injury.

The Commission believes that it is appropriate to base a rigidity test on a fraction of the weight of a child who is first beginning to walk. Although the youngest child involved in a reported impalement incident was five years old, if a child can walk independently it is possible that he or she might be playing in a shallow body of water and fall onto a dive stick in the same manner that occurred in the impalement incidents. Children begin to walk on their own at about 11½ months. Therefore, the test uses the weight of a 10 to 12 month-old child. The weight of a 5th percentile 10 to 12 month-old child is 16.5 pounds (7.5 kg). The Commission believes that a failure criterion of 5-lbf (approximately ⅓ of the weight of a 10 to 12 month-old child) will provide a margin of safety to effectively limit the potential for a serious impalement injury.

The proposed performance test applies a gradual compression load to the top of the dive stick for a period of 40 seconds. If the force reaches 5 lbf the dive stick is too rigid and fails the test. The Commission is aware that some manufacturers are developing dive sticks that are constructed of flexible material that would pass this test. The Commission believes that such flexible articles would not pose an impalement hazard. [5, 7]

All confirmed impalement injuries occurred with dive sticks that had submerged to the bottom of a pool of water. It is unlikely that a child falling onto a dive stick floating on the water would suffer impalement. A floating dive stick is likely to move away before the child's body strikes the bottom of the pool. [3, 6]

The vertical orientation of a submerged dive stick is a key factor in these impalement incidents. The Commission's Human Factors staff examined the reported incidents and concluded that when force is applied in line with the long axis of the dive sticks (as it is when a child lands on it in a vertical position), the sticks do not move. ''Because the stick is braced against the floor, the impact causes a relatively rapid deceleration of the body part which is struck, with the force of the impact concentrated on the small area at the end of the stick.'' The Human Factors staff believes that the potential for impalement injury declines as the angle of impact moves away from the vertical. However, the orientation of a child landing on a stick is variable, and impact at precisely the wrong angle may reorient the stick perpendicular to the bottom surface. Thus, slight deviations of the stick's position from vertical may not be adequate to avoid impalement. If the angle of the stick is sufficiently away from vertical, both impact in line with the axis and impact at an angle to the axis would tend to move the stick and limit the possibility of impalement. The Commission believes that a position at least 45 degrees from vertical would provide a sufficient safety margin to effectively limit the potential for impalement injuries. [3, 6]

F. Alternatives

The Commission has considered other alternatives to reduce the risk of impalement injury related to dive sticks. However, as discussed below, the Commission does not believe at this point that any of these would adequately reduce the risk of injury.

Voluntary Recalls. Before beginning this proceeding the Commission negotiated voluntary recalls with many companies that manufactured or imported dive sticks, and many other firms voluntarily removed their dive sticks from the market. One alternative to the banning rule is for the Commission to continue pursuing recalls on a case-by-case basis. However, it appears that the impalement hazard is present in all dive sticks that have the hazardous characteristics the staff has identified. The hazard is not limited to one particular model or brand. Therefore, a rule banning all dive sticks with the identified characteristics is more efficient. While the recalls have removed hazardous dive sticks from the market for now, proceeding with future recalls in the absence of a banning rule would allow hazardous dive sticks to return to the market until the Commission had a chance to act on the new dive sticks. [8]

Voluntary Standard. Currently, there is no applicable voluntary standard, nor was one submitted in response to the ANPR. Moreover, because dive sticks are relatively inexpensive and easy to manufacture, compliance with a voluntary standard may be low.[8]

Labeling. One alternative to a banning rule would be to require cautionary labeling for dive sticks. Most dive sticks carry some warnings regarding small parts (in reference to the end caps); use only under the supervision of a competent swimmer, and/or against diving in shallow water. In order for a label warning of the impalement hazard to be fully effective, consumers must notice, read, and understand it, then comply with it 100% of the time. People are less likely to comply with a warning if the connection between the product and the injury potential is not clear, if they cannot imagine what the injury is, or if they do not fully understand how to avoid the hazard. As the impalement hazard presented by dive sticks is not apparent, the label would have to convey clearly that severe rectal or genital injuries can result if children jump into the water and land on the sticks. Further, a ''safe'' water depth would have to be identified to give consumers adequate information on which to base their purchasing decision. A label that meets these criteria could have a significant impact at the point of purchase, but would need to be reinforced with an on-product warning. It would be difficult, however, to develop a label that is highly noticeable and easy to read because of the small and typically curved surface area of the dive stick. Moreover, a label may not last the life of the product because it is used in water. In contrast, the effectiveness of banning hazardous dive sticks is not in question, because the impalement hazard would be minimized or eliminated.[3,8]

Change in Scope. A final alternative considered was to modify the scope of the rule so that it would apply only to pre-weighted dive sticks. However, it is easy to add weight to certain unweighted dive sticks with water, sand or similar materials so that they too can stand vertically at the bottom of a pool. Because such unweighted dive sticks can pose the same risk as pre-weighted ones, the Commission is including them in the rule.

G. Preliminary Regulatory Analysis

Introduction

The Commission has preliminarily determined to ban dive sticks with certain hazardous characteristics. Section 3(h) of the FHSA requires the Commission to prepare a preliminary regulatory analysis containing a preliminary description of the potential benefits and costs of the proposed rule, including any benefits or costs that cannot be quantified in monetary terms; an identification of those likely to be affected; discussion of existing or developing standards submitted in response to the ANPR; and a description of reasonable alternatives. 15 U.S.C. 1261(h). The following discussion addresses these requirements.[8]

Potential Benefits of a Rule Banning Certain Dive Sticks

The purpose of the proposed rule is to prevent serious impalement injuries that can result when children jump or fall on dive sticks that are being used in shallow water. The benefits of the proposed rule would therefore be the resulting reduction in injuries.

The CPSC is aware of eight confirmed impalement injuries (to the perineum) since 1990 involving dive sticks that were standing upright on the bottom of a pool.[4] All of the victims received medical attention after the injury and at least five required surgery. In one case a temporary colostomy was performed. No fatalities are known to CPSC.

The societal costs of these eight impalement injuries, based on estimates from the CPSC Injury Cost Model, range from about $8,000 for injuries that do not require hospitalization to about $90,000 for injuries that do require hospitalization. These estimates are based on the costs of injuries involving punctures or lacerations to the victims' lower trunk or pubic region for children 5 to 11 years-of-age. These cost estimates include the cost of medical treatment, pain and suffering, and legal and liability costs.

If we assume that the only cases that required hospitalization were the five incidents that required surgery, the total societal costs of the known incidents is about $474,000 (5 cases $\times$ $90,000 and 3 cases $\times$ $8,000) or an average of $47,400 a year since 1990. This is a low estimate of the total societal cost of dive stick impalement injuries because it is based only on the cases known to CPSC. There may have been other injuries of which CPSC is not aware.

The potential benefit of a standard that would prevent dive stick impalement injuries is the expected societal costs of the injuries prevented. To compare the benefits of a proposed rule to the costs (which will be discussed in the next section) it is useful to estimate the expected societal costs of dive stick injuries (and hence, the potential benefits) on a per dive stick in use basis.

The average number of dive sticks in use since 1990 probably ranged from about 3 million units (assuming a one-year product life) to about 5.5 million units (assuming a 4-year product life). Therefore, the annual societal costs of dive stick injuries may range from about one cent per dive stick in use ($47,400 $\div$ 5.5 million sticks) to about 2 cents per dive stick in use ($47,400 $\div$ 3 million sticks).

Since dive sticks may last for one to four years, the potential benefits of the rule per dive stick (if it eliminates all impalements) may range from about 2 cents per dive stick ($0.02 $\times$ 1 year) to about 4 cents per dive stick ($0.01 $\times$ 4 years). The potential benefits would be higher if there have been dive stick injuries of which the Commission is not aware. Therefore, the 2 to 4 cents per dive stick probably represents a minimum estimate of the potential benefits, if all injuries can be prevented.

The benefits would accrue primarily to households with children, since all victims have been 11 years old or younger. However, since medical costs are generally pooled through insurance, the monetary benefits of the proposed rule would be diffused through society as a whole.

Potential Costs of the Proposed Rule

If the rule under consideration is adopted, manufacturers that continue to produce and sell dive sticks will have to modify their product to conform to the requirements of the proposed rule. Some manufacturers may be able to continue using the molds and production processes they use now, but with a softer or more flexible plastic. Other manufacturers may be able to adjust the weight or center of gravity of the dive sticks so that they do not stand upright when submerged.

The costs of these alternatives are not known, but the CPSC staff believes that these changes can be made with minimal impact on tooling and other production processes. Consequently, it seems reasonably likely that when the incremental costs of the proposed rule are spread over large production runs, the cost will be no more than the benefits of the rule—2 to 4 cents per dive stick manufactured.

Moreover, the production of dive sticks does not require much in the way of specialized facilities or dedicated equipment, other than certain product molds. Therefore, even if a manufacturer opted not to redesign the dive sticks, the cost to the manufacturer would be limited to the premature disposal of certain dedicated equipment, such as molds. However, for the most part, the manufacturers' facilities and equipment could be used for manufacturing other products.

The proposed rule could reduce consumer utility if consumers prefer the banned dive sticks to the substitute products (*i.e.,* dive sticks and eggs that do not stand upright, dive rings, dive disks, and so on). However, because these substitute products serve essentially the same purposes and would cost about the same, negative impact on consumer utility, if any, is unlikely to be significant.

Existing or Developing Standards Submitted in Response to the ANPR

No existing voluntary standards were submitted in response to the ANPR. Nor were any proposals to develop such a standard submitted to the Commission. As stated above, the Commission is not aware of any voluntary standards applicable to dive sticks.

Alternatives Considered

As discussed above, the Commission considered the other alternatives of pursuing voluntary recalls, following a voluntary standard, requiring labeling, or changing the scope. Because the hazard affects all dive sticks with the hazardous characteristics the Commission has identified, a banning rule would be more effective than case-by-case recalls. No applicable voluntary standard exists and compliance may be low if one did. As discussed above, labeling could help reduce the risk of injuries from dive sticks, but would be less effective than a banning rule. Finally, the Commission is including non-weighted dive sticks that can be weighted because they pose the same risk of injury as weighted ones.

[4] An additional incident was reported to CPSC, but there are some questions surrounding the nature of the incident and whether or not it is the result of the hazard that the rule under consideration would address.

H. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (''RFA''), when an agency issues a proposed rule it generally must prepare an initial regulatory flexibility analysis describing the impact the proposed rule is expected to have on small entities. 5 U.S.C. 603. The RFA does not require a regulatory flexibility analysis if the head of the agency certifies that the rule will not have a significant effect on a substantial number of small entities. 5 U.S.C. 605(b).

Most of the firms that manufactured or imported dive sticks are small businesses according to the Small Business Administration guidelines since they have fewer than 100 employees for importers or 500 employees for manufacturers. However, staff analysis suggests that the rule is unlikely to have a significant effect on any businesses, large or small.[8]

The Commission has previously worked with companies to recall hazardous dive sticks. Most manufacturers removed their dive sticks from the market in response to the recalls. Some manufacturers have already taken steps to redesign their products. If the redesigned products conform to the proposed rule, the manufacturers would not incur any additional costs.[8]

In addition, as discussed above, the costs of the rule are likely to be small. To the extent that the costs of the product increase, they are likely to be passed on to consumers in the form of higher retail prices.[8]

Finally, dive sticks probably account for only a small percentage of any individual firm's sales. Several dive stick manufacturers market various types of pool or other toys. Others have additional product lines such as pool supplies and equipment. Additionally, most of the firms that manufactured or imported dive sticks also distribute similar toys (such as dive rings and disks and certain dive eggs that do not rest vertically on the bottom) that would not be covered by the ban. If firms stopped producing and selling dive sticks, sales of these substitute products may increase, offsetting any loss due to a ban on dive sticks.[8]

For the reasons stated above, the Commission certifies that the proposed rule banning dive sticks would not have a significant effect on a substantial number of small entities.

I. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with the proposed rule banning certain dive sticks.

The Commission's regulations state that rules providing design or performance requirements for products normally have little or no potential for affecting the human environment. 16 CFR 1021.5(c)(1). Nothing in this proposed rule alters that expectation. Therefore, because the rule would have no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.[8]

J. Executive Orders

According to Executive Order 12988 (February 5, 1996), agencies must state the preemptive effect, if any, of new regulations.

The FHSA provides that, generally, if the Commission issues a banning rule under section 2(q) of the FHSA to protect against a risk of illness or injury associated with a hazardous substance, ''no State or political subdivision of a State may establish or continue in effect a requirement applicable to such substance and designed to protect against the same risk of illness or injury unless such requirement is identical to the requirement established under such regulations.'' 15 U.S.C. 1261n(b)(1)(B). Upon application to the Commission, a State or local standard may be excepted from this preemptive effect if the State or local standard (1) provides a higher degree of protection from the risk of injury or illness than the FHSA standard and (2) does not unduly burden interstate commerce. In addition, the Federal government, or a State or local government, may establish and continue in effect a non-identical requirement that provides a higher degree of protection than the FHSA requirement for the hazardous substance for the Federal, State or local government's own use. 15 U.S.C. 1261n(b)(2).

Thus, with the exceptions noted above, the proposed rule banning certain dive sticks would preempt non-identical state or local requirements applicable to dive sticks designed to protect against the same risk of injury.

The Commission has also evaluated this proposed rule in light of the principles stated in Executive Order 13132 concerning federalism, even though that Order does not apply to independent regulatory agencies such as CPSC. The Commission does not expect that the proposed rule will have any substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among various levels of government.

K. Effective Date

The rule would become effective 30 days from publication of a final rule in the **Federal Register** and would apply to dive sticks entering the chain of distribution on or after that date. The Commission believes a 30-day effective date is appropriate because (1) due to the 1999 recalls, few, if any, dive sticks should be currently on the market; (2) redesigning products to comply with the rule should be fairly simple; and (3) substitute products are readily available.[1,8]

L. Proposed Findings

For the Commission to issue a rule under section 2(q)(1) of the FHSA classifying a substance or article as a banned hazardous substance, the Commission must make certain findings and include these findings in the regulation. 15 U.S.C. 1262(i)(2). The Commission proposes the following findings.

Voluntary standard. The FHSA requires the Commission to make certain findings concerning compliance with and adequacy of a voluntary standard if a relevant voluntary standard has been adopted and implemented. *Id.* The Commission is not aware of any voluntary standards addressing the risk of injury posed by dive sticks. Therefore, no findings concerning voluntary standards are necessary.

Relationship of benefits to costs. The FHSA requires the Commission to find that the benefits expected from a regulation bear a reasonable relationship to its costs. The Commission estimates the potential benefits of removing hazardous dive sticks from the market to be 2 to 4 cents per dive stick. With the availability of substitutes and the expected low cost of modifying dive sticks to conform to the proposed rule, the Commission anticipates that necessary changes will be minimal. The Commission estimates that the costs of the rule will be no more than 2 to 4 cents per dive stick. Thus, the Commission proposes to find that there is a reasonable relationship between the expected benefits of the rule and its costs.

Least burdensome requirement. The FHSA requires the Commission to find that a regulation imposes the least burdensome alternative that would adequately reduce the risk of injury. *Id. T*he Commission considered pursuing voluntary recalls, following a voluntary standard, or requiring labeling. A

banning rule would be more effective than case-by-case recalls because the impalement hazard affects all dive sticks, not a specific brand or model. Awaiting recalls would allow these hazardous items on the market until the Commission obtained recalls. As explained above, no applicable voluntary standard exists, and compliance may be low if one did. Although labeling could help reduce the risk of injuries from dive sticks, it would be less effective than a banning rule. It may be difficult for a label to convey the necessary information at the time of use. Thus, the Commission proposes that a ban of dive sticks with the hazardous characteristics it has identified is the least burdensome alternative that would adequately reduce the risk of injury.

Conclusion

For the reasons stated above, the Commission preliminarily concludes that the dive sticks described in the proposed rule are hazardous substances under section 2(f)(1)(D) of the FHSA. They are intended for children and present a mechanical hazard because their design or manufacture presents an unreasonable risk of injury. 15 U.S.C. 1261(s).

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, and Toys.

Therefore, the Commission proposes to amend title 16 of the Code of Federal Regulations as follows:

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

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

Authority: 15 U.S.C. 1261–1278.

2. Section 1500.18 is amended by adding a new paragraph (a)(19) to read as follows:

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

(a) * * *

(19) Dive sticks, and other similar articles, that are used in swimming pools or other water environments for such activities as underwater retrieval games or swimming instruction, and which, when placed in the water, submerge and rest at the bottom of the pool. This includes products that are pre-weighted to sink to the bottom and products that are designed to allow the user to adjust the weight. Dive sticks and similar articles that come to rest underwater at an angle greater than 45 degrees from vertical when measured under the test at § 1500.86(a)(7) and dive sticks and similar articles that maintain a compressive force of less than 5-lbf under the test at § 1500.86(a)(8) are exempt from this banning rule. Articles that have a continuous circular shape, such as dive rings and dive disks are also exempt.

3. Section 1500.86 is amended by adding new paragraphs (a)(7) and (a)(8) to read as follows:

§ 1500.86 Exemptions from classification as a banned toy or other banned article for use by children.

(a) * * *

(7) Dive sticks and similar articles described in § 1500.18(a)(19) that come to rest at the bottom of a container of water in a position in which the long axis of the article is greater than 45 degrees from vertical when measured in accordance with the following test method:

(i) *Test equipment.* (A) A container that is filled with tap water to a depth at least 3 inches [76 mm] greater than the longest dimension of the dive stick. The container shall: be sufficiently wide to allow the dive stick to lie along the bottom with its long axis in a horizontal position; have clear side walls to permit observation of the dive stick under water; and be placed on a level surface and have a flat bottom.

(B) A protractor or other suitable angle measurement device that has an indicator for 45 degrees from vertical.

(ii) *Testing procedure.* (A) If the dive stick is sold such that the consumer is required to attach an additional component(s) to the dive stick, then the product shall be tested both with and without the attachment(s).

(B) From just above the water surface, drop the dive stick into the container.

(C) Let the dive stick sink and come to rest at the bottom of the container. If the dive stick is designed so that the weight can be adjusted by adding water or other substance, adjust the weight so that the dive stick sinks and comes to rest with its long axis positioned as close to vertical as possible.

(D) Align the angle measurement device alongside the dive stick underwater and wait for the dive stick to come to rest if there is any water disturbance. Determine whether the long axis of the dive stick is greater than or less than 45 degrees from vertical.

(8) Dive sticks and similar articles described in § 1500.18(a)(19) in which the maximum force measured in the following test method is less than 5-lbf [22N]. The test shall be conducted in the ambient environment of the laboratory and not under water.

(i) *Test equipment.* (A) A compression rig that has a force gauge or equivalent device that is calibrated for force measurements within a minimum range of 0 to 5 lbf [0–22 N] and with an accuracy of ±0.1 lbf [±0.44 N] or better. The test rig shall have a system to guide this force application in the vertical direction and shall have a means to adjust the rate of load application.

(B) Compression disk—the loading device that is attached to the force gauge shall be a rigid metal disk with a minimum diameter of 1.125 inches[29 mm].

(C) Vise or other clamping device.

(ii) *Testing procedure.* (A) Position the bottom of the dive stick in the clamping device so that the longest axis of the dive stick is vertical. The bottom end of the dive stick is the end that sinks to the bottom of a pool of water. Secure the bottom of the dive stick in the clamp such that the clamping mechanism covers no more than the bottom ½ inch [13 mm] of the dive stick.

(B) Apply a downward force at a rate of 0.05 in/sec (±0.01 in/sec) [1.3 mm.sec ±0.3 mm/sec] at the top of the dive stick with the compression disk positioned so that the plane of the disk contact surface is perpendicular to the long axis of the dive stick.

(C) Apply the load for a period of 40 seconds or until the maximum recorded force exceeds 5-lbf [22 N].

(D) Record the maximum force that was measured during the test.

Dated: July 11, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

1. Briefing memorandum from Ronald Medford, AED, Office of Hazard Identification and Reduction and Scott Heh, Project Manager, Directorate for Engineering Sciences, to the Commission, ''Dive Sticks,'' June 8, 2000.

2. Memorandum from Debra Sweet, Directorate for Epidemiology, to Scott Heh, Project Manager, ''Injury Data Related to Dive Sticks,'' March 21, 2000.

3. Memorandum from Catherine A. Sedney, Division of Human Factors, to Scott Heh, Project Manager, ''Human Factors Assessment of Dive Sticks,'' April 10, 2000.

4. Comment Received in Response to the ANPR, Steve Hutchison, Department of Fair Trading, NSW Consumer Protection Agency, Australia, dated August 30, 1999.

5. Memorandum from Scott Heh, Project Manager, to File, ''Banning Definition and Test Methods for Dive Sticks,'' May 3, 2000.

6. Memorandum from Catherine A. Sedney, Division of Human Factors, to Scott Heh, Project Manager, ''Prevention of

Impalement Injuries: Specification of the Position of Dive Sticks in Water,'' January 27, 2000.

7. Memorandum from Suad Nakamura, Ph.D., Physiologist, Division of Health Sciences, and Scott Heh, Mechanical Engineer, Directorate for Engineering Sciences, to File, ''Development of an Exemption for Non-rigid Dive Sticks,'' May 3, 2000.

8. Memorandum from Robert Franklin, Economist, Directorate for Economic Analysis, to Scott Heh, Project Manager, ''Preliminary Regulatory Analysis: Dive Sticks,'' May 18, 2000.

[FR Doc. 00–18058 Filed 7–18–00; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–107644–98]

RIN 1545–AX20

Dollar-Value LIFO Regulations; Inventory Price Index Computation Method; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking which was published in the **Federal Register** on May 19, 2000 (65 FR 31841) relating to the dollar-value LIFO regulations.

FOR FURTHER INFORMATION CONTACT: Jeffery G. Mitchell at (202) 622–4970 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of these corrections are under section 472 of the Internal Revenue Code.

Need for Correction

As published, this notice of proposed rulemaking contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–107644–98), which was subject to FR. Doc. 00–12174, is corrected as follows:

1. On page 31844, column 1, in the preamble under the paragraph heading ''*New Base Year for IPIC Method Changes*'', line 1, the language ''Section 1.472–8(e)(vi) requires a'' is corrected to read ''Section 1.472–8(e)(3)(vi) requires a''.

2. On page 31849, column 1, § 1.472–8(e)(3)(iii)(F), paragraph (xii) of *Example 1.*, line 2, in the paragraph heading, the language ''*the 1997 taxable year*. R computes the'' is corrected to read ''*the 1998 taxable year*. R computes the''.

3. On page 31849, column 2, § 1.472–8(e)(3)(iii)(F), paragraph (xiii) of *Example 1.*, fourth line from the bottom of paragraph, the language ''inventory at the end of the 1997 taxable year'' is corrected to read ''inventory at the end of the 1998 taxable year''.

4. On page 31850, column 1, § 1.472–8(e)(3)(iii)(F), paragraph (vi) of *Example 2.*, line 2, in the paragraph heading, the language ''*the 1997 taxable year*. R computes the'' is corrected to read ''*the 1998 taxable year*. R computes the''.

5. On page 31850, column 2, § 1.472–8(e)(3)(iv)(A), second line from the bottom of column, the language ''election of an appropriate representative'' is corrected to read ''election of a representative appropriate''.

6. On page 31852, column 1, § 1.472–8(e)(3)(iv)(C)(*2*)(*ii*), paragraph (ii) of *Example.*, sixth line from the bottom of the paragraph, the language ''($241,980.60 * 1.438793). Finally, the'' is corrected to read ''($124,180.60 * 1.438793). Finally, the''.

7. On page 31852, column 1, § 1.472–8(e)(3)(iv)(C)(*2*)(*ii*), paragraph (ii) of *Example.*, fourth line from the bottom of the paragraph, the language ''sold and increases Y's gross income for the'' is corrected to read ''sold and increase Y's gross income for the''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Office of Special Counsel(Modernization and Strategic Planning).

[FR Doc. 00–18139 Filed 7–18–00; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA099–5048b; FRL–6837–6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Approval of Revision to Opacity Limit for Drier Stacks at Georgia-Pacific Corporation Softboard Plant in Jarratt, VA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia for the purpose of establishing a higher opacity limit for drier zone stacks #1 and #2 located at the Georgia-Pacific Softboard plant in Jarratt, Virginia. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by August 18, 2000.

ADDRESSES: Written comments should be addressed to Ms. Makeba A. Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and; Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Ruth E. Knapp, (215) 814–2191, at the EPA Region III address above, or by e-mail at knap.ruth@epa.gov.

SUPPLEMENTARY INFORMATION: For further information on this source specific revision related to the drier stacks at the Georgia-Pacific softboard facility in Jarratt, VA. please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.