

By direction of the Commission.

Donald S. Clark,  
Secretary.

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## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1120

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

**AGENCY:** U.S. Consumer Product Safety Commission.

**ACTION:** Final rule.

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

**DATES:** The rule takes effect August 18, 2011. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of August 18, 2011.

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

#### SUPPLEMENTARY INFORMATION:

##### A. Background and Statutory Authority

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

Section 223 of the CPSIA expands section 15 of the Consumer Product Safety Act ("CPSA") to add a new subsection (j). That subsection delegates authority to the Commission to specify by rule, for a consumer product or class

of consumer products, characteristics whose presence or absence the Commission considers a substantial product hazard. To issue such a rule, the Commission must determine that those characteristics are readily observable and have been addressed by an applicable voluntary standard. The Commission also must find that the standard has been effective in reducing the risk of injury and that there has been substantial compliance with it. 15 U.S.C. 2064(j).

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

In 1994, at the urging of the CPSC, a number of manufacturers and retailers agreed to modify or eliminate drawstrings from hoods and necks of children's clothing. In 1997, the American Society for Testing and Materials (now ASTM International) addressed the hazards presented by drawstrings on upper outerwear by creating a voluntary consensus standard, ASTM F 1816-97, *Standard Safety Specification for Drawstrings on Children's Upper Outerwear*, to prohibit drawstrings around the hood and neck area of children's upper outerwear in sizes 2T to 12, and also to limit the length of drawstrings around the waist and bottom of children's upper outerwear in sizes 2T to 16 to 3 inches outside the drawstring channel when the garment is expanded to its fullest width. For waist and bottom drawstrings in upper outerwear sizes 2T to 16, the Standard prohibited toggles, knots, and other attachments at the free ends of drawstrings. The Standard further required that waist and bottom drawstrings in upper outerwear sizes 2T to 16 that are one continuous string be bartacked (*i.e.*, stitched through to prevent the drawstring from being pulled through its channel).

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

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

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

On May 12, 2006, the CPSC's Office of Compliance posted a letter on CPSC's website to the manufacturers, importers, and retailers of children's upper outerwear, citing the fatalities that had occurred and urging compliance with the industry standard, ASTM F 1816-97. The letter explained that we consider children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury under section 15(c) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1274(c).

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

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

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

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

simple measurements of portions of the garments, and unimpeded visual observation. Thus, the product characteristics defined by the voluntary standard are readily observable.

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

#### a. Hood and Neck Drawstring Incidents

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

The Standard for drawstrings on children's upper outerwear, ASTM F 1816–97, was approved in June 1997, and published in August 1998. We are aware of 12 fatalities and 33 nonfatal incidents involving children ages 18 months to 10 years of age, who were entangled by a neck/hood drawstring of upper outerwear during the 12 years (1985–1996) prior to the Standard. On average, this results in one reported fatality and about three nonfatal incidents a year. In the eight years (1999–2006) for which reporting is complete after ASTM F 1816–97 was published, we received reports of two fatal and two nonfatal neck/hood drawstring incidents. On average, this is approximately one fatality every four years and about one nonfatal entanglement every four years. For the years for which reporting is complete,

the data show a reduction in the annual average number of reported fatalities after the ASTM standard of approximately 75 percent. The corresponding reduction in the annual average number of reported nonfatal entrapments is 91 percent. It should be noted that we are continuing to receive incident reports for the years 2007–2010. We are aware of three fatalities between 2007–2010. No fatalities have been reported to date for 2011. When reporting 2010 is considered complete, the percent reduction in the annual average number of reported fatalities associated with neck/hood drawstrings, at most, will be 58 percent, if no additional fatal incidents are reported.

#### b. Reported Incidents Associated With Waist/Bottom Drawstring Entanglements

Between January 1985 and April 2011, we received 28 reports of entanglement incidents associated with a waist/bottom drawstring on children's upper outerwear. Of these 28 incidents, 8 (29%) were fatal; 11 (39%) resulted in injuries; and 9 (32%) constituted snags or entanglements that did not result in injuries. No waist/bottom drawstring incidents were reported to us before 1991. All eight fatalities (7 involving a bus, 1 involving a slide) associated with waist/bottom drawstrings occurred between 1991 and 1996. During 1991 to 1996, there were a total of 19 waist/bottom drawstring incidents, of which 13 involved buses (7 bus fatalities and 6 nonfatal bus incidents). We are not aware of any bus-related drawstring incidents after the year 1996. There were nine waist/bottom drawstring incidents from 1997 to the present (all nonfatal), of which three involved children whose waist/bottom drawstring caught on car doors.

All of the reported fatalities associated with waist/bottom drawstrings on children's upper outerwear occurred prior to the approval and publication of ASTM F 1816–97. For years in which reporting is considered complete, the number of reported fatalities associated with waist and bottom drawstrings have fallen from the eight reported fatalities between 1985 and 1996 to zero since adoption of the ASTM voluntary standard in 1997. For corresponding periods for which reporting is complete (1985 through 1996 and 1999 through 2006), reported nonfatal injuries fell from 11 in 12 years to 6 in 8 years. These data suggest that

after the ASTM standard was adopted, for waist and bottom drawstrings the annual average of reported fatalities fell by 100 percent and the annual average of reported nonfatal incidents fell by about 18 percent. Reporting is ongoing for 2007–2011. CPSC staff is not aware of any reported fatalities for this time. Staff has two reports of non-fatal incidents occurring between 2007–2011. These numbers may change in the future.

### D. Substantial Compliance

There is no statutory definition of “substantial compliance” in either the CPSIA or the CPSA. Legislative history of the CPSA provision that is related to issuance of consumer product safety standards indicates that substantial compliance should be measured by reference to the number of complying products, rather than the number of manufacturers of products complying with the standard. H.R. Rep. No. 208, 97th Cong., 1st Sess. 871 (1981). Legislative history of this CPSA rulemaking provision also indicates that there is substantial compliance when the unreasonable risk of injury associated with a product will be eliminated or adequately reduced “in a timely fashion.” *Id.* *The Random House Dictionary of the English Language* defines “substantial” as “of ample or considerable amount, quantity, size, etc.” Thus “substantial” refers to an amount less than “all” or “total.” The Commission has not taken the position that there is any particular percentage that constitutes substantial compliance. Rather than any bright line, the Commission has indicated in the rulemaking context that the determination needs to be made on a case-by-case basis.

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

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

TABLE 1—CPSC OFFICE OF COMPLIANCE RECALLS DRAWSTRINGS ON CHILDREN'S UPPER OUTERWEAR  
[2006–2010]

Year	Number of recall cases	Number of units of upper outerwear recalled
2006 .....	17	676,597
2007 .....	14	626,172
2008 .....	24	227,868
2009 .....	23	526,193
2010 .....	37	431,145
Total .....	115	2,487,975

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

In response to a comment to the proposed rule regarding whether ties are included in the definition of drawstring (discussed in more detail in section E of this preamble), staff reviewed the recall data to determine how many recall cases involved ties. For the 2006–2010 time period, there were six recalls (occurring in 2009 and 2010) of children's upper outerwear that involved ties, accounting for 135,406 units.

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

As explained in the preamble to the proposed rule (75 FR at 27498) and in section A of this preamble, the voluntary standard applies to sizes 2T to 12 for neck and hood drawstrings and sizes 2T to 16 for drawstrings at the waist and bottom of upper outerwear. Information available to us indicates that a child's age generally matches the child's clothing size or is a year or two below the clothing size. For example, a child 12 years old might wear a size 12 or a size 14 garment. Similarly, for smaller sizes, children who are as young as 18 months might wear size 2T clothing. Thus, the ages of children wearing size 2T to 12 (the sizes covered by the voluntary standard for upper outerwear with hood or neck drawstrings) would be 18 months to 10 years. The age range of children who typically wear sizes 2T to 16 (the sizes covered by the voluntary standard for upper outerwear with waist or bottom drawstrings) would be 18 months to 14 years.

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

(those wearing sizes 2T to 16, as noted above) was about 55 million.<sup>1</sup>

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

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

<sup>1</sup> For the years 2006 through 2009, this number is based on Bureau of the Census, U.S. Department of Commerce data, which can be found in "Table 1. Annual Estimates of the Resident Population by Sex and Five-Year Age Groups for the United States: April 1, 2000 to July 1, 2009" at <http://www.census.gov/popest/national/asrh/NC-EST2009/NC-EST2009-01.xls>. For 2010, the number is based on Bureau of the Census, U.S. Department of Commerce data found in "Table 1. Population by Age and Sex: 2010" at [http://www.census.gov/population/www/socdemo/age/age\\_sex\\_2010.html](http://www.census.gov/population/www/socdemo/age/age_sex_2010.html).

not entirely accurate, the Commission concludes that compliance with ASTM F 1816–97 is very high and constitutes substantial compliance, as that term is used in section 15(j) of the CPSA. This determination extends to ties.

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

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

##### 1. Request for a Mandatory Ban

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

(Response 1)—The commenter's characterization of the rule as an effort to urge "voluntary compliance" from the garment industry is misplaced. Section 15(j) of the CPSA, 15 U.S.C.

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

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

## 2. Range of Sizes Covered by the Standard

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

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

## 3. Age of Children at Risk

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

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

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

## 4. Adult Apparel and Marketing Concerns

(Comment 4)—Two commenters also requested “that CPSC clearly state that

adult apparel, marketed to adults, or merchandised in adult departments will not be subject to this rule.” These commenters stated that “adult apparel sized small or extra small could easily pass for a larger sized child's garment. \* \* \* [a] generic adult's sized extra small hooded sweatshirt could easily be mistaken as a children's garment.”

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

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

In addition, relying on where or how a given retailer may display a garment would present practical problems. One retailer may offer the garment in the women's section; another retailer may offer the same garment in the children's section; and yet another retailer may offer the garment in a grouping by garment type, without reference to age

or gender (*e.g.*, all sweatshirts). Some retailers may not differentiate at all between departments within their store based on age or gender. It would be impractical and unwise to rely on presumptions about the retail treatment.

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

#### 5. Definition of Drawstring

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

(Response 5)—The Commission has long understood that nonretractable cords, ribbons, or tapes of any material that pull together parts of upper outerwear to provide for closure constitute drawstrings, regardless of whether they pass through a channel. Drawstrings that fail to comply with or that result in an article of children's upper outerwear failing to comply with the Standard's performance requirements constitute defects that create a substantial risk of injury to children, regardless of whether they pass through a channel. Both where the drawstring is through a channel and where the drawstring is in the form of a tie, if the drawstring becomes caught, the garment's neck, collar, or other such part becomes taut around the neck, leading to possible strangulation. In the Commission's recall and other enforcement efforts, CPSC has interpreted and applied the Standard in a manner consistent with these beliefs.

The Standard defines a "drawstring" as "a non-retractable cord, ribbon, or tape of any material to pull together parts of upper outerwear to provide for closure." The Standard's "drawstring" definition is not limited to cords,

ribbons, or tapes that pass through a channel. Further, the definition does not exclude ties. The Commission believes the definition in the Standard is without ambiguity, and there is sufficient information to determine that there has been substantial compliance with the Standard with respect to ties. Thus, ties continue to be included within the definition of "drawstrings" in this final rule.

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

#### 6. Manufacturers' Sizing Systems

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

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

#### 7. Definition of "Upper Outerwear"

(Comment 7)—A commenter recommended that "Lightweight garments worn on the upper body, but

intended as an inner layer, or intended for warmer weather climates that do not use outerwear should be excluded."

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

#### F. Description of the Final Rule

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

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

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

### G. Effect of Section 15(j) Rule

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

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

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

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

### H. Regulatory Flexibility Certification

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

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

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

### I. Environmental Considerations

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

### J. Paperwork Reduction Act

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

### K. Effective Date

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

We received no comments regarding the effective date. Accordingly, the effective date for this rule is August 18, 2011.

### L. Preemption

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

Accordingly, the preemptive effect of section 26(a) of the CPSA does not apply to a rule under section 15(j) of the CPSA.

### List of Subjects in 16 CFR Part 1120

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

### Conclusion

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

### PART 1120—SUBSTANTIAL PRODUCT HAZARD LIST

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

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

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

#### § 1120.2 Definitions.

\* \* \* \* \*

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

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

#### § 1120.3 Substantial product hazard list.

\* \* \* \* \*

(b) (1) Children's upper outerwear in sizes 2T to 16 or the equivalent, and having one or more drawstrings, that is subject to, but not in conformance with, the requirements of ASTM F 1816–97, *Standard Safety Specification for Drawstrings on Children's Upper Outerwear*, approved June 10, 1997, published August 1998. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 16 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/>

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(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 a size Large (L) does not necessarily mean that the item is not equivalent to a size in the range of 2T to 12.

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

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

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

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

Dated: July 12, 2011.

**Todd A. Stevenson,**

*Secretary, U.S. Consumer Product Safety Commission.*

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**BILLING CODE 6355-01-P**

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Chapter 1

#### Effective Date for Swap Regulation

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final Order.

**SUMMARY:** On June 17, 2011, the Commodity Futures Trading Commission ("CFTC" or the "Commission") published for public comment in the **Federal Register** a proposed order that would grant, pursuant to the Commission's exemptive authority pursuant to the Commodity Exchange Act ("CEA"), certain temporary relief from the provisions of the CEA added or amended by title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") that reference one or more terms regarding entities or instruments that title VII requires be "further defined," such as the terms "swap," "swap dealer," "major swap participant," or "eligible contract participant," to the extent that requirements or portions of such provisions specifically relate to such referenced terms and do not require a rulemaking. The CFTC also proposed to grant temporary relief from certain provisions of the CEA that will or may apply to certain agreements, contracts, and transactions in exempt or excluded commodities as a result of the repeal of various CEA exemptions and exclusions as of the general effective date set forth in section 754 of the Dodd-Frank Act, July 16, 2011. Upon consideration of the full record, the Commission has determined to issue this final exemptive order ("Final Order") essentially as proposed, with appropriate or necessary modification or clarification.

**DATES:** Effective July 14, 2011.

**FOR FURTHER INFORMATION CONTACT:** Terry Arbit, Deputy General Counsel, 202-418-5120, [tarbit@cftc.gov](mailto:tarbit@cftc.gov), or Harold Hardman, Deputy General Counsel, 202-418-5120, [hhardman@cftc.gov](mailto:hhardman@cftc.gov), Office of the General Counsel, or Steven Kane, Consultant, 202-418-5911, [skane@cftc.gov](mailto:skane@cftc.gov), Office of the Chief Economist, CFTC, Three Lafayette

Centre, 1151 21st Street, NW., Washington, DC 20581.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Act.<sup>1</sup> Title VII of the Dodd-Frank Act amends the CEA<sup>2</sup> to establish a comprehensive new regulatory framework for swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the rulemaking and enforcement authorities of the Commission with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight. Title VII also includes amendments to the federal securities laws to establish a similar regulatory framework for security-based swaps under the authority of the Securities and Exchange Commission ("SEC").

Section 754 of the Dodd-Frank Act states that, unless otherwise provided, the provisions of subtitle A of title VII of the Dodd-Frank Act ("Title VII")<sup>3</sup> "shall take effect on the later of 360 days after the date of the enactment of this subtitle or, to the extent a provision of this subtitle requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of this subtitle." The date 360 days after the date of enactment is July 16, 2011.

To implement the Dodd-Frank Act, as of July 8, 2011, the Commission has issued 52 advance notices of proposed rulemaking or notices of proposed rulemaking, two interim final rules, six final rules, and one proposed interpretive order. The regulatory requirements that have been proposed by the Commission present a substantially complete mosaic of the Commission's proposed regulatory framework under Title VII. In light of

<sup>1</sup> See Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law. 111-203, 124 Stat. 1376 (2010).

<sup>2</sup> 7 U.S.C. 1 *et seq.*

<sup>3</sup> Subtitle A of Title VII contains two parts. Part I, entitled "Regulatory Authority," consists of sections 711-720; part II, entitled "Regulation of Swap Markets," consists of sections 721-754. Subtitle B of Title VII is entitled "Regulation of Security-Based Swap Markets," and consists of sections 761-774. References to "Title VII" in this Release shall include only subtitle A of Title VII.