

from the 11-mile radius to 9.2 miles south of the EXCAL LOM, and within 4 miles east and 8 miles west of the Presque Isle VORTAC 340° radial extending from the 11-mile radius to 16 miles northwest of the Presque Isle VORTAC, and within an 8.5-mile radius of Caribou Municipal Airport, ME; excluding that airspace outside of the United States.

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Issued in Burlington, MA, on August 4, 1995.

John J. Boyce,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 95-19906 Filed 8-11-95; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Docket No. 95-ANE-23]

Establishment of Class E Airspace; Portland, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will establish Class E airspace in the vicinity of the Portland International Jetport, Portland, ME, that coincides with the hours that the associated radar approach control facility is not in operation. This action does not change the designated boundaries or altitudes of the Portland Class C airspace, but only establishes the necessary Class E airspace to provide sufficient controlled airspace for those aircraft operating under instrument flight rules (IFR) in the vicinity of the Portland International Jetport when the Portland Air Traffic Control Tower (ATCT) and Terminal Radar Control Approach Facility (TRACON) are not in operation.

EFFECTIVE DATE: 0901 UTC, September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph A. Bellabona, System Management Branch, ANE-530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803-5299; telephone: (617) 238-7536; fax: (617) 238-7596.

SUPPLEMENTARY INFORMATION:

History

On May 17, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace in the vicinity of the Portland International Jetport, Portland, ME. That action was prompted by the need to establish the necessary Class E airspace to provide sufficient controlled airspace for those aircraft operating under instrument flight rules (IFR) in the vicinity of the

Portland International Jetport when the Portland Air Traffic Control Tower (ATCT) and Terminal Radar Control Approach Facility (TRACON) are not in operation. Since the Portland Class C airspace is predicated on an operational ATCT and serviced by a TRACON, Class E airspace must be defined for the hours when that facility is not in operation. This action does not change the designated boundaries or altitudes of the Portland Class C airspace. The hours of operation for the Portland ATCT are published by a Notice to Airman (NOTAM) and thereafter in the Airport/Facility Directory.

Interested parties were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace areas designated as a surface area for an airport are published in Paragraph 6002 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation in this document would be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at the Portland International Jetport, Portland, ME.

The FAA has determined that this rule involves only an established body of technical regulations for which frequent and routine amendments are necessary to keep these regulations operationally current. It therefore: (1) Is not a "significant regulatory action" under Executive Order 12866 (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated economic cost will be so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a) 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963, Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area for an Airport
* * * * *

ANE ME E2 Portland International Jetport, ME [New]

Portland International Jetport, ME
(Lat. 43°38'46" N, long. 70°18'31" W)

Within a 5-mile radius of the Portland International Jetport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airman. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in Burlington, MA, On August 4, 1995.

John J. Boyce,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 95-19907 Filed 8-11-95; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1117

Reporting Choking Incidents to the Consumer Product Safety Commission Pursuant to the Child Safety Protection Act; Revision to Interpretative Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Revision to final interpretative rule.

SUMMARY: The Child Safety Protection Act ("CSPA") requires manufacturers, distributors, retailers, and importers of marbles, small balls, latex balloons, and toys or games that contain such items or other small parts, to report to the Commission when they learn of choking incidents involving such products. On February 27, 1995, the Commission issued a rule interpreting the reporting requirements of the CSPA, but left open the question of whether the reporting requirement applies to toys or games that are exempt from the Commission's

small parts banning rule (16 CFR Part 1501). This revision states that the reporting requirements apply to toys and games that would otherwise be exempt from the Commission's small parts regulation. The revision also clarifies that firms must report any time a child chokes on a small part from a toy or game regardless of whether the part was a small part at the time the product was distributed or sold.

DATES: This regulation becomes effective on September 13, 1995.

FOR FURTHER INFORMATION CONTACT: Eric L. Stone, Office of Compliance and Enforcement, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814 (Mailing address: Washington, D.C. 20207), telephone (301) 504-0626 extension 1350.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102 of the Child Safety Protection Act of 1994 (Public Law 103-267, 108 Stat. 722, June 16, 1994) requires, *inter alia*, that each manufacturer, distributor, retailer and importer of a toy or game that contains a small part report to the Commission information that reasonably supports the conclusion that an incident occurred in which a child choked on the small part and died, suffered serious injury, ceased breathing for any length of time, or was treated by a medical professional. On February 27, 1995, the Commission published a final interpretative rule defining several terms and resolving ambiguities and uncertainties in the statutory reporting scheme. 60 FR 10490. The Commission left unresolved one issue raised by commenters. Those commenters had questioned whether the reporting requirement applied to toys and games that are exempt from the Commission's small parts banning rule. 16 CFR Part 1501.

A subsequent industry inquiry also indicated some confusion over the definition of the term "small part" in the regulation. The Commission has decided to clarify that definition.¹

1. Products Exempt From the Small Parts Regulation

Several industry commenters originally suggested that the Commission exempt from the choking hazard reporting requirement any products that are exempt from the small parts banning regulation (see 16 CFR

1501.3). The banning regulation, which applies to toys and other articles intended for children under 3 years of age, exempted items such as balloons, books, writing materials, and certain children's grooming, hygiene, and feeding items because the Commission believed that the functional benefits of these products outweighed the risk of injury they presented.

The Commission believes that Congress enacted the reporting requirements of the CSPA to assure that the Commission receives as much information as possible about serious choking incidents. Only then, can the Commission know whether some remedial action is necessary to protect children. Absent compelling reasons to do so, the Commission believes it should not carve out exceptions to the reporting obligations imposed by Congress.

Congress required firms to report choking incidents involving small parts from toys and games. Congress did not limit this reporting obligation to products subject to the Commission's small parts banning regulation (16 CFR 1501). The Commission believes that no persuasive policy arguments support limiting the requirement imposed by Congress. Unlike a ban, the reporting requirement does not interfere with the sale of the exempt product or place an extraordinary burden on the reporting firm. The scope of the reporting obligation is limited, the report is protected from public disclosure, and the information may not be used as an admission against the firm. Therefore, the Commission sees no reason to limit reporting to products that would be subject to 16 CFR Part 1501.

2. Definition of "Small Part"

The CSPA requires reporting when a child chokes on a small part contained in a toy or game. The final regulation defines a small part as any object which, when tested in accordance with the procedures of 16 CFR 1501.4(a) and 1501.4(b)(1) fits entirely within the cylinder shown in Figure 1 appended to 16 CFR Part 1501. When the Commission issued rules interpreting the CSPA reporting requirements, the Commission intended that firms report to the Commission if the part involved in the choking incident fit within the small parts test cylinder. The Commission expected firms to report choking incidents involving parts that broke off a toy or game as well as those involving parts that were small parts at the time the toy or game was distributed or sold.

Although firms who are reporting under this provision seem to understand

the Commission's rule, one firm has suggested it is not clear. That firm thought the reporting provision should only apply to parts that are independent small parts at the time the toy or game is sold. It suggests that the phrase "contained in such toy or game" in section 102 limited the obligation to distinct small parts contained in the toy or game at the time of distribution or sale of the toy or game.

The focus of the choking hazard reporting provision is upon the choking incident. If a small part causes a choking incident a manufacturer, importer, distributor, or retailer is obligated to report if that part was contained in its toy or game. The phrase "contained in" is an indicator of the origin of the part. The part was contained in the toy or game whether it was a separate small part at the time of distribution, or a component or piece of a toy that broke off during play. Limiting the reporting obligation to items that were small parts at the time of distribution would shift the focus away from reporting of choking incidents. Further, it would only capture a fraction of the choking incidents that occur each year involving parts of toys and games.

In administering the small parts banning regulation, the Commission has seen that the great majority of violations arise because small parts detach from toys as a result of use or abuse. Excluding such parts from the reporting requirements could result in significant violations of the small parts regulation being undetected and uncorrected, even though those violations resulted in death or serious injury—the precise consequences that the reporting requirements were enacted to address.

Accordingly, to resolve the confusion over the scope of the term "small part," the Commission is revising the interpretative rule to clarify that the inquiry as to whether an object involved in a choking incident is a small part should focus only on whether that object fits entirely within the small parts testing cylinder. How the object came to be a small part is irrelevant for the purposes of reporting, although such information may certainly be relevant in determining whether any remedial measures are appropriate.

C. Notice

Because this is an interpretative rule, the Commission is not required to issue a notice of proposed rulemaking. 5 U.S.C. 553(b)(A). Nevertheless, the Commission did publish a notice of proposed rulemaking ("NPR") concerning the reporting requirements under the CSPA on July 1, 1994. 59 FR

¹ On both of these issues, Commissioner Mary Gall dissented from the Commission's decision. A copy of her statement and those of the other Commissioners may be found in the Commission's Office of the Secretary.

33927. The scope of the NPR covered the issues of reporting for exempt products and for small parts that detach from a toy or game after purchase. Thus, no additional notice is necessary.

D. Impact on Small Businesses

In accordance with section 3(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this regulation will not have a significant economic impact upon a substantial number of small entities if issued on a final basis. Any obligations imposed upon such entities arise under the express provisions of section 102 of the Child Protection Safety Act, Pub. L. No. 103-267, June 17, 1994. This regulation simply revises a narrow aspect of the Commission's interpretation of the obligations imposed by that law. The regulation itself will not have a significant economic impact on small businesses, either beneficial or negative, beyond that which results from the statutory provisions.

E. Environmental Considerations

This revision falls within the provisions of 16 CFR 1021.5(c), which designates categories of actions conducted by the Consumer Product Safety Commission that normally have little or no potential for affecting the human environment. The Commission does not believe that the rule contains any unusual aspects which may produce effects on the human environment, nor can the Commission foresee any circumstance in which the rule issued below may produce such effects. For this reason, neither an environmental assessment nor an environmental impact statement is required.

F. Effective Date

This regulation will become effective 30 days after publication of the final regulation in the **Federal Register**.

List of Subjects in 16 CFR Part 1117

Administrative practice and procedure, Business and industry, Consumer protection, Toy safety, Reporting and recordkeeping requirements, and Small parts.

Conclusion

Therefore, pursuant to the authority of the Child Safety Protection Act [Pub. L. No. 103-267], section 16(b) of the CPSA (15 U.S.C. 2065(b)) and 5 U.S.C. 553, the CPSC amends Part 1117, Chapter II, Subchapter B of Title 16 of the Code of Federal Regulations as follows:

PART 1117—REPORTING OF CHOKING INCIDENTS INVOLVING MARBLES, SMALL BALLS, LATEX BALLOONS AND OTHER SMALL PARTS

1. The authority for Part 1117 continues to read as follows:

Authority: Section 102 of the Child Safety Protection Act (Pub. L. No. 103-267) section 16(b), 15 U.S.C. 2065(b) and 5 U.S.C. 553.

2. Section 1117.2(a) is revised to read as follows:

§ 1117.2 Definitions.

(a) *Small part* means any part, component, or piece of a toy or game, which, when tested in accordance with the procedures in 16 CFR 1501.4(a) and 1501.4(b)(1), fits entirely within the cylinder shown in Figure 1 appended to 16 CFR 1501.

§ 1117.2 [Amended]

3. Section 1117.2 is amended by adding a new paragraph (h) to read as follows:

* * * * *

(h) *Toy or game* includes any toy or game, including those exempt under 16 CFR 1501.3 from the small parts banning provisions of 16 CFR 1500.18(a)(9).

Dated: August 3, 1995.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 95-19628 Filed 8-11-95; 8:45 am]

BILLING CODE 6355-01-P

16 CFR Part 1500

Labeling Certain Toys and Games Pursuant to the Child Safety Protection Act; Revision to final rule

AGENCY: Consumer Product Safety Commission.

ACTION: Revision to final rule.

SUMMARY: The Child Safety Protection Act of 1994 ("CSPA") requires, in part, toys or games that are intended for children between three and six years of age and contain small parts to bear specific precautionary labels. On February 27, 1995, the Commission issued a final rule interpreting certain provisions of the CSPA. As the preamble to the final rule noted, the Commission did not then resolve the issue of labeling for products exempt from the Commission's existing small parts rule. This revision clarifies that the labeling requirements do not apply to toys and games intended for children three to six years of age that would otherwise be exempt from the banning

provisions of the Commission's small parts regulation if they were intended for children under three.

DATES: This regulation becomes effective on August 14, 1995.

FOR FURTHER INFORMATION CONTACT: Frank Krivda, Office of Compliance and Enforcement, Consumer Product Safety Commission, 4440 East West Highway, Bethesda, MD 20814 (Mailing address: Washington, D.C. 20207), telephone (301) 504-0400, ext. 1372.

SUPPLEMENTARY INFORMATION:

A. Background

In 1979, the Commission promulgated regulations to identify and ban products which contain small parts that present choking or aspiration hazards to children under three years of age ("the small parts regulation"). The regulation, in part, prescribes a test method to determine whether small parts are present in a product as marketed or after the product is subjected to reasonably foreseeable use or abuse. The regulation also exempts a number of products such as finger paints, modeling clay, writing materials, and children's grooming, feeding, and hygiene products from the testing requirements because they cannot be manufactured in a manner that passes the testing requirements and still remain functional.

In 1994, the Child Safety Protection Act ("CSPA") established, *inter alia*, labeling requirements for toys and games that contain small parts and are intended for children between the ages of three and six. 15 U.S.C. 1278. The primary purpose of these requirements is to alert prospective purchasers that such products are not appropriate for children under three years of age because of the potential choking hazard. On February 27, 1995, the Commission published a regulation to implement the requirements of the CSPA. 60 FR 10742. The Commission considered the issue raised by commenters of whether toys or games exempt from the small parts regulation ("otherwise exempt products") require labeling when they are intended for children between three and six years of age. The Commission discussed the issue in the preamble to the final rule, 60 FR 10749, but left it unresolved, pending appointment of a third Commissioner.

Neither the CSPA nor its legislative history expressly address whether otherwise exempt products require labeling when they are intended for children three to six years of age. However, requiring labeling for such products would create an apparent inconsistency with requirements of the small parts regulation. Specifically, if