

Children's Products: An Analysis of Small Parts Regulation and Choking Hazards

Insight

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The Consumer Product Safety Commission (CPSC), through the Consumer Product Safety Improvement Act (CPSIA) and other federal regulations, has established specific requirements for the manufacture and sale of all children's products in the United States. "Children's products" are those designed or intended for use by children twelve (12) years of age and younger. [15 USCS § 2052](#). One of the primary hazards related to children's products emphasized in the regulations is the choking hazard posed by children's products containing small parts that can be swallowed. The following provides an overview of important information for manufacturers, distributors, retailers and importers regarding the identification and prevention of potential choking hazards in children's products for all age groups.

Small Parts Regulation

The CPSC has established specific regulations for all children's products containing small parts. A "small part" is any object that fits completely into a specially designed test cylinder approved by the CPSC that is 2.25 inches long by 1.25 inches wide, which is approximately the size of the throat of a child under three years old¹[16 CFR 1501.4](#) A small part can be 1) a whole product, such as a small toy or ball; 2) a separate piece of a product, such as a small game piece; or 3) a piece of a product that breaks off during mandatory testing that simulates use or abuse by children.²

The purpose of the small parts regulation is to prevent injuries and death related to choking on, inhaling or ingesting small parts that comprise or are included in toys and other children's products. If the small part fits completely into the test cylinder described above, then that product is considered a banned hazardous substance for children under the age of three. See, [16 CFR 1500.18](#) and [16 CFR 1501](#). As such, it cannot be marketed for use by children under the age of three.

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Exemptions

There are certain notable exemptions to the types of products governed by the small parts regulation. Balloons, books and other articles made of paper, writing materials such as crayons, chalk, pencils and pens, as well as modeling clay, finger paints, water colors and other paint sets are exempt because they cannot be manufactured in a way that would prevent them from breaking into small parts when subjected to the mandatory use and abuse testing. Children's clothing and accessories such as buttons, as well as grooming, feeding and hygiene products such as diaper pins, barrettes, toothbrushes, dishes and eating utensils, are also exempt because they must be small in order to perform their intended functions. Finally, rattles and pacifiers are subject to their own small parts requirements, and are likewise exempt.³ See, [16 CFR 1510](#) and [16 CFR 1511](#).

Labeling Requirements for Children Ages 3-6

Although the small parts regulation discussed in the preceding section is specifically applicable to products intended for use by children under the age of three, there are still other regulations promulgated by the CPSC governing children's products containing small parts that are designed for older children. Section 24(a) of the Federal Hazardous Substances Act (FHSA) requires cautionary labeling on packaging and instructions for toys and games that contain small parts and are intended for use by children between 3 and 6 years of age. See, [15 USCS § 1278](#). Specifically, any toy or game manufactured or sold in the U.S. that contains a small part and is intended for use by children in this age group must contain the following cautionary statement ⁴:



WARNING:

**CHOKING HAZARD—Small parts.
Not for children under 3 yrs.**

Similarly, all balloons, any ball with the diameter of 1.75 inches or less, and any marble intended for use by children three years of age and older, including any toy or game that contains such a balloon, ball or marble, shall contain specific cautionary statements set forth by the FHSA. For balloons, as well as toys or games containing balloons, the following statement is required:

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WARNING:

CHOKING HAZARD—Children under 8 yrs. can choke or suffocate on uninflated or broken balloons. Adult supervision required.

**Keep uninflated balloons from children.
Discard broken balloons at once.**

For balls and marbles, or toys or games containing balls or marbles, one or more of the following statements are required, depending upon the nature of the product:



WARNING:

**CHOKING HAZARD—Toy contains a marble.
Not for children under 3 yrs.**

These statements must be included on the packaging of the toy or game, as well as on any descriptive materials accompanying the toy or game. If the product is sold in bulk without packaging, then the bin for retail display in which the product is placed, or vending machine from which the product is dispensed, shall contain this statement.

Section 105 of the CPSIA amended the FHSA to require that the advertising of any children's product containing small parts, balloons, balls or marbles must also contain these cautionary statements. The cautionary statement must be conspicuous and legible, and presented in the primary language used in the advertisement.

Reporting Requirements

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If any company involved in the sale or manufacture of a toy or game containing a small part⁵ learns of an incident involving the toy or game in which a child (regardless of age) choked on the small part that resulted in 1) the cessation of breathing for any length of time, 2) treatment by a medical professional, 3) serious injury, or 4) death, then the company must report all such information to the CPSC.¹⁶ [CFR 1117](#). It matters not whether the company received the information orally or in writing. Furthermore, the company cannot wait until it concludes its own investigation into the incident before they must report it to the CPSC. The report to the CPSC must be made within 24 hours of the receipt by the company of the information that reasonably supports the conclusion that a choking incident involving the toy or game by a child occurred. A report by the company to the CPSC will not be interpreted as an admission of liability, or an admission as to the truth of the information reported.

CPSC Safety Standards

Section 106 of the CPSIA adopts ASTM F963-11 for mandatory toy safety standards that manufacturers, distributors and importers must follow. ASTM F963-11 is a very comprehensive standard that addresses numerous potential hazards related to toys, including choking hazards. It applies to toys that are intended or designed for children under 14 years of age. It covers a wide range of safety requirements related to toys that are small parts or that contain small parts, and provides a number of test methods to determine the conformance of products to the safety requirements. It also provides specific labeling requirements for small parts, balls, marbles and balloons (similar to those set forth in 15 USCS § 1278 discussed above), including size requirements for the labels depending on the size of the principal display panel of the packaging of the toy. The requirements of [ASTM F963-11](#) are very detailed, but adherence to them is crucial.

Impressions

Choking hazards in children's products are taken very seriously by the CPSC. It is important for any manufacturer, distributor, retailer or importer of children's products in the U.S. to be aware of all of the regulations covering small parts in children's products. Specifically, these regulations will help ensure that the product is designed and manufactured pursuant to the appropriate test standards, is marketed for use by the appropriate age range of children, and is labeled properly to inform consumers of potential hazards inherent in the product. If information regarding any choking incident involving a children's product is learned by a manufacturer, distributor, retailer or importer, it is also very important that the information be reported to the CPSC in a timely manner.

For further questions, please contact [Michelle Corrigan](#), or the usual Stinson Leonard Street contact with whom you regularly work.

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¹16 CFR 1501.4 sets forth testing procedures to determine whether an object fits into the small part test cylinder.

²16 CFR 1500.51 and 16 CFR 1500.52 set forth test methods for simulating use and abuse of toys and other articles intended for use by children up to 3 years of age.

³ Under 16 CFR 1510, no portion of a rattle shall be capable of entering and penetrating the full depth of the cavity in the test fixture described in § 1510.4 discussed above, subject to the use and abuse tests of §§ 1500.51 and 1500.52. 16 CFR 1511 sets forth various requirements for pacifiers, including structural integrity tests and labeling requirements.

⁴ Please note, none of the diagrams in this article are formatted to scale, and are not representative of the font or dimensions necessary or recommended for warnings placed on specific products.

⁵ This includes any product that is or contains a marble, small ball, latex balloon or other small part.

CONTACT

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Children's Products

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