

Children's Products: Safety Regulations Governing Rattles and Magnet Sets

Insight

03.23.2016

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Through the Consumer Product Safety Improvement Act (CPSIA) and other federal statutes, the Consumer Product Safety Commission (CPSC) has promulgated regulations governing the manufacture and sale of children's products in the United States.¹ One of the primary risks related to children's products emphasized in the regulations is the choking hazard posed by children's products containing small parts.² Although multiple types of children's products are subject to the CPSC's [Small Parts Regulation](#), this article focuses on the safety standards for rattles and magnet sets, given the unique risks these products present to young children. The following is an overview and discussion of the information relevant to manufacturers, distributors, importers and retailers of children's products as it relates to rattles and magnet sets.

Requirements for Rattles

The CPSC has deemed a rattle to be a "mechanical hazard" if it that does not comply with the CPSC's safety regulations for rattles. Such mechanical hazards are considered a banned hazardous substance under the Federal Hazardous Substances Act (FHSA).³ A rattle is an infant's toy that 1) is intended to be handheld, 2) usually contains pellets or other small objects, and 3) produces sounds when shaken. See, [16 CFR 1510.2](#). The fact that a toy has noisemaking functions similar to that of a rattle does not automatically qualify the toy as a rattle. Indeed, crib mobiles, plastic keys on chains, and musical instruments such as tambourines and maracas are excluded from the definition of "rattle," even though these products make noises similar to those made by rattles. However, federal courts have held that the addition of other ornaments to a rattle, including a whistle or squeaker, does not exempt the rattle from the CPSC's regulations.⁴

The purpose of the specific regulations governing rattles is to prevent infants from choking or suffocating on rattles or the small parts associated with rattles. To comply with the CPSC's safety regulations, the rattle must be tested according to the parameters of [16 CFR § 1510.4](#), and no

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portion of a rattle shall be capable of entering and penetrating to the full depth of the cavity of the test fixture described in that regulation. Rattles are also subject to the “use and abuse” testing described in 16 CFR §§ 1500.51 and 1500.52, which is intended to simulate the forces a rattle experiences during the normal use by infants. Specifically, rattles should be tested pursuant to § 1510.4 both before and after they are subjected to the “use and abuse” testing of § § 1500.51 and 1500.52.⁵

Furthermore, although not specific to choking hazards, the CPSC also mandates that rattles cannot contain rigid wires, sharp points or edges, or loose small objects that can cause lacerations or other injuries to a child. See, 16 CFR § 1500.18(a)(1) However, an exception to this rule exists if and when the rigid wires, sharp protrusions, or loose small parts of the rattle are internal, and the rattle is constructed in such a way that it will not break or deform to expose the contents in normal use or when subjected to reasonably foreseeable damage or use. See, 16 CFR § 1500.86.

Safety Standards for Magnet Sets

Magnet sets are defined by the CPSC as “[a]ny aggregation of separable magnetic objects that is a consumer product intended, marketed or commonly used as a manipulative or construction item for entertainment, such as puzzle working, sculpture building, mental stimulation, or stress relief.” See 16 CFR § 1240.2 These products pose not only a choking risk to children, but also an ingestion risk that can be very dangerous.

Based on data gathered by the CPSC, 109 reported incidents of ingestion of magnets by children between the ages of one and 15 occurred between Jan. 1, 2009 and June 24, 2014. Of those 109 incidents, 83 of them involved the ingestion of high-powered, ball-shaped magnets that were contained in products that fell within the definition of “magnet sets” stated above and as set forth in § 1240.2. Another 17 of the 109 incidents involved a possible ingestion of this type of magnet. Of the 100 incidents involving an ingestion or possible ingestion of magnets by children between the ages of one and 15 over this 5.5 year time period, hospitalizations were required to treat 61 of them.⁶ Given the specific hazards associated with the ingestion of magnets, the CPSC has established specific regulations governing magnet sets.

In order to comply with the CPSC safety standards, each magnet in a magnet set that fits within the test cylinder mandated by the CPSC in its Small Parts Regulation⁷ must have a flux index of 50 kG² mm² or less. See 16 CFR § 1240.3. In other words, if the magnet is small enough for ingestion, its magnetic force must be lower than the prescribed threshold so as to prevent injury from possible ingestion. The test procedure mandated by the CPSC to determine the flux index of a magnet is described in 16 CFR § 1240.4, and follows the procedures set forth in sections 8.24.1 through 8.24.3 of ASTM F963-11, the Standard Consumer Safety Specification for Toy Safety, approved on December 1, 2011.

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Impressions

Given the risks of injury to children when using rattles and magnet sets, namely risks associated with choking (both rattles and magnets) and risks of internal injuries from ingestion (magnet sets), it is highly important that manufacturers, distributors, importers and retailers of these products comply with the CPSC's regulations applicable to rattles and magnet sets. These regulations indicate the seriousness with which the CPSC views the risks these products may pose to children if not manufactured, marketed and sold correctly. Strict adherence to these regulations will help keep children safe, and may help companies avoid harsh penalties from the CPSC or liability for defective products.

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

¹ *An analysis of the types of products that fall within the category of "children's products" can be found in "What is a Children's Product," Kimberly Steuterman, Stinson Leonard Street (Jan. 19, 2016)*

² *For a more in-depth article regarding the CPSC's regulations regarding choking hazards and children's products, see "[Children's Products: An Analysis of Small Parts Regulation and Choking Hazards](#)", Michelle Corrigan, Stinson Leonard Street (Jan. 25, 2016)*

³ [16 CFR § 1500.18\(a\)\(15\)](#).

⁴ See *U.S. v. Toys "R" Us, Inc.*, 754 F.Supp. 1050, 1058 (D.N.J. 1991).

⁵ See [16 CFR § 1510.3](#).

⁶ *For more information on these statistics regarding magnets sets, see [16 CFR § 1240.5](#).*

⁷ *The specially designed test cylinder approved by the CPSC is 2.25 inches long by 1.25 inches wide, which is approximately the size of the throat of a child under three years old. See, [16 CFR § 1501.4](#) for a more detailed description of the test cylinder.*

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