



UNITED STATES
 CONSUMER PRODUCT SAFETY COMMISSION
 4330 EAST WEST HIGHWAY
 BETHESDA, MD 20814

BALLOT VOTE SHEET

Date: **SEP 23 2008**

TO : The Commission
 Todd A. Stevenson, Secretary

THROUGH: Patricia Semple, Executive Director *PS*
 Cheryl F. Falvey, General Counsel *CAF*

FROM : Barbara E. Parisi, Attorney *BEP*

SUBJECT : Notice of Proposed Rulemaking: Labeling Requirement for Toy and Game Advertisements

Ballot Vote Due: September 29, 2008

Attached is a briefing package for a Notice of Proposed Rulemaking regarding advertising requirements for certain toys and games. The Commission is required to issue such requirements for catalogues and other written materials pursuant to Section 105 of the Consumer Product Safety Improvement Act of 2008, P.L. 110-314. The General Counsel memorandum and a draft Federal Register notice (both official use only) are provided under separate cover.

Please indicate your vote on the following options.

1. Publish the draft Federal Register notice as drafted.

 Signature Date

2. Publish the draft Federal Register notice with changes (please specify).

 Signature Date

NOTE: This document has not been reviewed or accepted by the Commission.
 Initials: *sh* Date: 9/23/08

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 EXCEPT BY PERSON
 RULES/REGULATIONS/PROC
 INFORMATIONAL PURPOSES

3. Do not publish the draft Federal Register notice.

Signature

Date

Attachment: Staff Briefing Package, *Notice of Proposed Rulemaking: Labeling Requirement for Toy and Game Advertisements*, September 2008.

BRIEFING PACKAGE

**NOTICE OF PROPOSED RULEMAKING:
LABELING REQUIREMENT FOR TOY AND GAME ADVERTISEMENTS**



September 2008

For additional information contact:

Barbara E. Parisi, Project Manager
Regulatory Affairs Attorney
Office of the General Counsel
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
301-504-7879, bparisi@cpsc.gov

NOTE: This document has not been
reviewed or accepted by the Commission.
Initial: *sh* Date: *9/23/08*

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Tab B: Memorandum from Timothy P. Smith, Engineering Psychologist, Division of Human Factors, Directorate for Engineering Sciences, "Size and Placement of Cautionary Statements Specified in Section 105, Labeling Requirement for Advertising Toys and Games, of the Consumer Product Safety Improvement Act of 2008," September 22, 2008



UNITED STATES
 CONSUMER PRODUCT SAFETY COMMISSION
 BETHESDA, MD 20814

MEMORANDUM

DATE: SEP 23 2008

TO: The Commission
 Todd Stevenson, Secretary

THROUGH: Patricia M. Semple, Executive Director *PS*
 Cheryl A. Falvey, General Counsel *CAF*

FROM: Barbara E. Parisi, Project Manager, Attorney *BEP*
 Office of the General Counsel

SUBJECT: Notice of Proposed Rulemaking for Toy and Game Advertising Requirements

I. INTRODUCTION

Section 105 of the Consumer Product Safety Improvement Act of 2008, Public Law 110-314, 122 Stat. 3016 (August 14, 2008), (“CPSIA”), directs the Commission to promulgate a final rule for advertisements of certain toys and games “with respect to catalogues and other printed materials” not later than 90 days after enactment, or November 12, 2008. Section 105 contains only one mandatory rulemaking obligation, to “clarify the applicability” of the section’s requirements for “catalogues and other printed materials distributed solely between businesses.” In addition, Section 105 also indicates that the Commission may promulgate regulations concerning (i) the size and placement of cautionary statements and (ii) the grace period, if any, to be permitted for catalogues and other printed material printed prior to the effective date for catalogues and other printed materials.

This briefing package presents a draft proposed rule addressing economic issues arising from (i) determining whether a grace period is necessary for catalogues and other printed materials and (ii) determining the applicability of the requirements to catalogues distributed solely between businesses. The briefing package also addresses the appropriate size and placement of the warning to be included in the advertising, as determined by a Human Factors staff analysis. The staff proposes a rule with a 14-day comment period specific to these recommendations with respect to catalogues and other printed materials. This will enable the Commission to meet the November 12, 2008 deadline as mandated by Congress.

The CPSIA does not mandate that the Commission promulgate a final rule with regard to requirements for Internet advertising in this time frame. Nonetheless, the proposed text of the rule includes requirements for Internet advertising. The staff recommends that the Commission provide an extended comment period of 45 days for comments concerning cautionary statements for Internet website advertising. The Commission may issue another

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 Date: *9/23/08*

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final rule, if necessary, regarding Internet advertisement requirements at a later date. It is important to note that regardless of whether and when the Commission issues a final rule dealing with Internet advertising requirements, the effective date of compliance for Internet advertising requirements as implemented by Section 105 of the CPSIA remains December 12, 2008.

II. BACKGROUND

Section 24(a) of the Federal Hazardous Substances Act (FHSA) prescribes cautionary labeling requirements for toys or games that contain small parts and are intended for use by children from 3 to 6 years old. The cautionary statement warns potential purchasers that these products are not for children under 3 years old due to choking hazards. Section 24(b) of the FHSA prescribes similar requirements for balloons, small balls, and marbles intended for children 3 years and older, or any toy or game which contains such a balloon, small ball, or marble. The regulations on these provisions can be found at 16 C.F.R. 1500.19.

Section 105 of the CPSIA amends section 24 of the FHSA to require that, when a product's packaging requires a cautionary statement, advertising for the product that provides a direct means for purchase or order of the product must bear the same cautionary statement. The amendment also provides that the advertising requirements are to be treated as a consumer product safety standard promulgated under section 9 of the Consumer Product Safety Act (CPSA), and the publication or distribution of any advertisement not in compliance with the requirements is to be treated as a prohibited act under section 19(a)(1) of the CPSA.

III. ECONOMIC ISSUES

The CPSIA stipulates the Commission may provide a grace period of no more than 180 days for catalogues and other printed material printed prior to the effective date of February 10, 2009. The CPSIA also directs the Commission to determine the applicability of the advertising requirements to catalogues distributed solely between businesses. The CPSIA exempts the Commission from conducting a Regulatory Flexibility Act analysis and Paperwork Reduction Act analysis in this rulemaking.

1. Grace Period.

Section 105(c)(2) of the CPSIA provides that, with respect to advertisements on Internet websites, the requirements shall take effect 120 days after the date of enactment of the Consumer Product Safety Improvement Act of 2008, or December 12, 2008. The advertising requirements with respect to catalogues and other printed materials will take effect 180 days after enactment of the CPSIA, or February 10, 2009. The CPSIA provides that the Commission may provide a grace period of no more than 180 days for catalogues and other printed material printed prior to the effective date of February 10, 2009, during which time distribution of such catalogues and other printed material would not be considered a violation of section 19(a)(1) of the CPSA.

The memorandum prepared by the Directorate for Economic Analysis (see TAB A) discusses the long lead time involved in publishing catalogues and the fact that some

publishers expect to distribute catalogues for as long as two years after printing. A grace period would provide catalogue publishers additional time to deplete their stocks of catalogues that do not contain the cautionary statements required by Section 105 of the CPSIA. The Economics memorandum details that the costs of providing a grace period are not easily quantifiable,¹ but appear to be low. Given this, the staff recommends that the Commission provide the 180 day grace period for catalogues and other printed materials.

2. Business to Business Catalogues.

The CPSIA directs the Commission to determine the applicability of the advertising requirements to catalogues and other printed materials distributed solely between businesses. While there appears to be a reasonable case for not requiring cautionary statements to be included in catalogues and other printed materials distributed solely between businesses (see TAB A), staff does not believe it has sufficient information at this time with which to make a recommendation. Therefore, the staff recommends that the NPRM ask for public input regarding the applicability of the requirements to business to business catalogues.

3. Environmental Impact.

As a labeling rule, the proposed rule 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. It is true that, if no grace period were provided, the requirements in Section 105 of the CPSIA would apply to all catalogues or other printed materials distributed after February 10, 2009, so that materials printed prior to this date that did not have the cautionary statements could not be distributed and would have to be discarded. However, the provision of a grace period during which materials printed prior to February 10, 2009 may be distributed lessens this impact, and the impact is likely to be relatively small. Based on this, staff believes that neither an environmental assessment nor an environmental impact statement is required.

IV. ADVERTISING SIZE AND PLACEMENT

The CPSIA directs that the cautionary statements required by section 105 of the CPSIA be prominently displayed in a manner consistent with 16 CFR part 1500. The CPSIA also provides the Commission with the authority to promulgate a regulation concerning the size and placement of the required cautionary statements. The staff believes that the requirements in 16 CFR 1500.121 are consistent with commonly accepted hazard-labeling guidelines and are appropriate as guidelines for the cautionary statements in the advertising, with a few modifications.

¹ The costs are not easily quantifiable because there is no basis for estimating the number of consumers who might purchase products from catalogues during a grace period that would not have purchased the products if they had sent the cautionary statements. Nor is there any basis for estimating the number of injuries that will be prevented if the Commission does not provide a grace period. However, the Economics memorandum notes that the number is likely to be small since the same cautionary statements are already required on the product packaging.

1. Catalogues and other printed materials. Staff recommends that the cautionary statements in catalogues and other printed materials be the larger of (1) a certain minimum type size based on the size of the advertisement (but no smaller than 0.08 inches) or (2) the size of the largest text in the advertisement that describes the function, use, or characteristics of the toy or game being advertised, other than the product name. In addition, staff recommends that abbreviated versions of required warnings be permitted in individual product advertisements in catalogues or other printed materials, provided that they are defined with the full warning at the bottom or top of each page of the catalogues or other printed materials containing these abbreviated warnings.

2. Internet advertisements. The staff sees no need to permit warnings in Internet advertisements to be abbreviated. Staff recommends type-size requirements that are similar to the additional requirements for cautionary statements in advertisements in catalogues and other printed materials; i.e., the cautionary statements must be at least equal to the size of the largest text in the advertisement that describes the function, uses or characteristics of the toy or game advertised, but no smaller than 0.08 inches.

Research with regard to Internet advertisements shows that risk information that is placed below the page scroll of a website is unlikely to be seen. To reduce the likelihood of this occurring, staff recommends that the required cautionary statements for Internet advertising be located immediately before any other statements in the advertisement that describe the function, use, or characteristics of the toy or game being advertised. (See TAB B for the more detailed Human Factors analysis.)

V. CONCLUSION/ RECOMMENDATIONS

Staff recommends that a grace period of 180 days be provided for catalogues and other printed materials printed before February 10, 2009, but that more information is necessary with which to determine the applicability of the advertising requirements to business to business catalogues. Staff believes the requirements in 16 CFR 1500.121 are appropriate as guidelines for the cautionary statements in the advertising, but recommends some modifications to these guidelines, as detailed above. Staff recommends that the Commission provide an extended comment period of 45 days for cautionary statements for Internet website advertising.

TAB A

EC Staff Memorandum



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Memorandum

Date: 22 September 2008

TO : Barbara Parisi
Attorney
Office of the General Counsel

THROUGH: Gregory B. Rodgers, Ph.D. *GBR*
Associate Executive Director
Directorate for Economic Analysis

Deborah V. Aiken, Ph.D. *DVA*
Senior Staff Coordinator
Directorate for Economic Analysis

FROM : Robert Franklin *RF*
Economist
Directorate for Economic Analysis

SUBJECT : Economic Issues Associated with Section 105 of the Consumer Product Safety Improvement Act of 2008 (Concerning the Inclusion of Cautionary Labeling for Toys and Games in Catalogues and Other Printed Materials)

Section 105 of the Consumer Product Safety Improvement Act (CPSIA) of 2008 requires that advertisements for certain toys and games on Internet websites and catalogues or other printed materials that provide a direct means for the purchase must include the applicable cautionary statements required under Section 24 of the Federal Hazardous Substances Act (FHSA). The cautionary statements under Section 24 of the FHSA pertain to small parts, latex balloons, small balls, or marbles. These requirements become effective on 12 December 2008 in the case of advertising on Internet WebPages, and on 10 February 2009 in the case of catalogues and other printed materials. The Commission may, by regulation, provide a grace period of up to 180 days (or until 9 August 2009) for catalogues and other printed materials during which materials that were printed prior to 10 February 2009 can be distributed. The Commission must also determine how these requirements apply to catalogues that are distributed solely between businesses.

This memorandum discusses economic and environmental issues that the Commission might consider in deciding whether to provide a grace period for catalogues and other printed materials and whether the requirements should apply to materials that are distributed solely among businesses. A regulatory analysis is not required for these provisions since they would not be regulations declaring a substance to be a banned hazardous substance under section 2(q)(1) of the FHSA. A regulatory flexibility analysis (concerning the impact on small entities) and an

analysis under the Paperwork Reduction Act of 1980 are not required because the CPSIA specifically exempted regulations pertaining to this section of the CPSIA from these analyses.

Issues Concerning the Provision of a Grace Period

If the Commission does not provide a grace period, all catalogues and other printed materials distributed on or after 10 February 2009 must contain cautionary statements concerning small balls, parts, marbles, and latex balloons on advertisements for products intended for young children containing these items. If the Commission provides for a grace period, retailers, manufacturers, and other suppliers can continue to distribute catalogues and printed materials that do not contain these statements provided that they were printed prior to 10 February 2009. The longest grace period that the Commission can provide is 180 days, or until 9 August 2009.

The benefit (i.e., the advantage) of providing a grace period is that it will provide catalogue publishers additional time to deplete their stocks of catalogues that do not contain the cautionary statements required by Section 105 of the CPSIA. Based on some conversations with catalogue publishers, it can frequently take 90 days or more to prepare a catalogue for printing. Once printed, the catalogues can be distributed over periods of time that vary according to the purpose of the catalogue. Some are intended to be distributed over the course of a few weeks. However, other catalogues may be distributed over a period of several months to as long as two years. Moreover, in order to reduce printing costs, catalogue publishers will frequently print all of the catalogues that they intend to distribute during a year at one time, even though some of the catalogues might not be distributed until later in the year.¹

Given the relatively long lead times for developing and printing catalogues and the fact that some publishers expect to distribute some catalogues for as long as two years after printing, it is likely that there are catalogues in circulation now or that will be printed over the next several weeks that do not contain the cautionary statements, but that are intended for distribution after 10 February 2009. Unless the Commission provides for a grace period, the publishers of these catalogues (i.e., the retailers, manufacturers, importers, etc.) will have to stop distributing these catalogues on 10 February 2009. The catalogues still in stock will have to be discarded and replacement catalogues will have to be printed. Even if a 180 day grace period is provided, it is likely that the distribution of some catalogues will have to be prematurely discontinued since some catalogues are intended to be in distribution for up to two years after being printed.

Catalogue publishers that have undistributed stocks of catalogues that do not contain the required cautionary labeling at the time the requirements go into effect will have to dispose of the undistributed catalogues and print replacement catalogues. The cost per copy to print and bind a catalogue depends upon the quality of paper stock, the number of pages in the catalogue, and the number of copies printed. For very large print runs of more than 100,000 copies, the printing cost per copy can be less than one dollar. However, the per unit costs of printing can be

¹ Telephone conversation with Rick Woldenberg and Lisa Guili of Learning Resources, Inc. and Sandy Schusteff of ETA/Cuisenaire (8 September 2008).

as high as five dollars for smaller print runs or catalogues containing several hundred pages.² Businesses that experience delays in obtaining reprinted catalogues may also suffer decreases in sales.

The number of businesses that publish catalogues containing toys and games is not known but the number could be several thousand. According to the 2002 Economic Census, there were 6,091 retail firms and 2,721 merchant wholesalers whose primary product line included hobby supplies, toys, and games (North American Industry Classification System codes 451120 and 423920). Many of these could be expected to have one or more printed catalogues. Additionally there are probably many other firms that sell toys and games, but whose primary line of business is something other than hobby supplies, toys, or games.³

The cost (i.e., the disadvantage) of providing a grace period is that some consumers may purchase games or toys from catalogues that they would not have purchased had they seen the cautionary labeling. These costs include the costs of returning the product to the retailer, disposing of the product in some other manner, or holding the product out of reach until the children for whom the toys were purchased are older. If young children are given access to the product, the cost of providing a grace period would also include the societal cost of any injuries that would have been prevented.

The costs described above cannot be quantified with the available information. There is no basis for estimating the number of consumers who might purchase products from catalogues during a grace period that would not have purchased the products if they had seen the cautionary statements. Nor is there any basis for estimating the number of injuries that will be prevented if the Commission does not provide a grace period. The number is likely to be small since the same cautionary statements are already required on the product packaging. However, the average societal cost of a medically-treated choking injury to a child less than 3 years of age that involves a toy or a piece of a toy or game is relatively high: about \$58,000.⁴ Additionally, each year, there are a small number of choking injuries involving toy or game parts that are fatal.⁵

It should also be noted that even if the Commission provides for the maximum grace period allowed by the CPSIA, all catalogues distributed after 9 August 2009, which includes all of the catalogues distributed in anticipation of the 2009 holiday shopping season, must contain the required cautionary statements. More than 40% of one major toy retailer's sales occur during

² Telephone conversation with Rick Woldenberg and Lisa Guili of Learning Resources, Inc. and Sandy Schusteff of ETA/Cuisenaire (8 September 2008) and Jim Tierney, "Print, Production, & Paper," Multichannel Merchant (1 November 2007), available at http://multichannelmerchant.com/printchannel/printchannel/print_production_paper/ (last accessed on 10 September 2008).

³ U.S. Census Bureau, Establishment and Firm Size: 2002 (reports for Retail Trade and Wholesale Trade), U.S. Department of Commerce (available on the U.S. Census Bureau Internet site at <http://www.census.gov/>).

⁴ Based on estimates from the CPSC Injury Cost Model. The estimates were produced using product codes 1300 – 1399 and 5001 – 5009, diagnosis code 42 (aspirated foreign object), and the National Electronic Injury Surveillance System cases for children under the age of 3 (age code "201 – 2") from 1 January 2004 – 31 December 2007.

⁵ CPSC Staff Report, Toy-Related Deaths and Injuries, Calendar Year 2006, Risana T. Chowdhury, Directorate for Epidemiology, U.S. Consumer Product Safety Commission, Washington, DC 20207 (December 2007).

the fourth quarter.⁶ Assuming that this sales pattern holds generally for all toy retailers, and given the fact that August 9 is several weeks before the beginning of the fourth quarter, even if the Commission provides the maximum allowable grace period, more than 50% of all catalogue toy and game sales in 2009 will likely be from catalogues that contain the appropriate cautionary statements. Moreover, given that all catalogues printed on or after 10 February 2009 must contain the cautionary statements, it is possible that substantially more than 50% of all catalogue toy and game sales for calendar year 2009 will be from catalogues that contain the cautionary statements, even if a 180 day grace period is provided.

Issues Concerning the Application of the Requirements to Catalogues Distributed Solely Between Businesses

According to the CPSIA, the Commission is to determine the applicability of the requirements in Section 105 of the CPSIA to catalogues and other printed materials that are distributed solely between businesses. The benefits (i.e., the advantages) of applying the Section 105 requirements to catalogues distributed solely between businesses are likely to be small. Some retailers that specialize in products for young children might be wary of carrying products that contain small parts or balloons. These retailers might value being provided cautionary statements before they order the product from their suppliers. However, Section 105 already requires that manufacturers and other businesses inform retailers of the cautionary statement requirements applicable to their products. Therefore, the retailers would be provided with the information, even if the cautionary statements are not included in the catalogues from the manufacturers and other suppliers. Moreover, because retailers typically do not provide young children with direct access to the products, it is likely that applying these requirements to catalogues distributed solely among businesses would prevent very few injuries, if any. This would reduce the value of applying the requirements to catalogues distributed solely to retailers and similar businesses relative to the value of including them in catalogues distributed to consumers. However, if the catalogues are distributed to organizations or establishments such as schools, day care centers, churches, and recreational facilities the benefits of requiring the cautionary statements in the catalogues may be somewhat higher. This is because such organizations often purchase the toys and games for the use of children and not for resale.

There would be some costs associated with changing the page layouts to include the cautionary statements. Virtually all catalogues today are designed using software packages that make modifications to page layouts a relatively simple task. However, there will still be some costs involved in making any change more extensive than a price change. Adding cautionary statements to an item's description would require some combination of extra space, the elimination of other information about the product, or reducing the size of the text. Each of these methods involves some cost. It will require some time and effort by the publishers to determine how the cautionary statements can best be added to their catalogues and then to proof the copy once the changes are made.

As noted above, Section 105 of the CPSIA requires manufacturers and other suppliers to inform retailers of the cautionary labeling requirements that apply to their products, but does not

⁶ Toys R Us, 2004 Annual Report.

specify how this information is to be provided. If the Section 105 requirements for including the cautionary statements in advertisements in catalogues and other printed materials were applied to catalogues distributed solely to retailers, the flexibility of manufacturers and other suppliers in determining how best to supply the required information would be reduced. If the requirements were not applied to catalogues distributed solely to retailers and similar businesses, the manufacturers and other suppliers would have the flexibility to develop less costly means of providing the information to their retailers.

Conclusion

There are benefits and costs associated with granting a grace period for catalogue publishers to deplete their stock of catalogues that do not contain the cautionary statements and with applying the requirements to catalogues and other printed materials that are distributed solely among businesses. This memorandum has qualitatively described the costs and benefits because sufficient information is not available for a quantitative comparison. However, there appears to be a reasonable case for providing a 180 day grace period because of the long lead times involved in publishing catalogues, the likelihood that the costs associated with the grace period would be low, and the fact that even with a grace period, all catalogues distributed after 9 August 2009 (before the holiday shopping season) must contain the cautionary statements. There may also be a reasonable basis for not requiring the cautionary statements to be included in catalogues and other printed materials that are distributed solely to retailers and similar businesses. However, more information or comment would be desirable on this matter, especially with regards to the applicability to organizations or institutions where children are given access to the products, such as schools and daycare centers.

Environmental Review

Usually labeling requirements, such as the requirement that advertisements contain cautionary statements, have little potential for adversely affecting the environment. However, because the requirements in Section 105 of the CPSIA would apply to all catalogues or other printed materials distributed after 10 February 2009, materials printed prior to this date that do not have the cautionary statements could not be distributed and would have to be disposed of. If replacement catalogues are printed there would be a small increase in the volume of materials entering the waste stream. Although the increase in the volume of materials entering the waste stream would be small relative to the total volume of materials that enter the waste stream each year, providing for a grace period during which time materials printed prior to 10 February 2009 could be distributed would reduce this impact.

TAB B

ESHF Staff Memorandum





UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
BETHESDA, MD 20814


MEMORANDUM

DATE: September 22, 2008

TO: Barbara Parisi, Regulatory Affairs Attorney,
Office of the General Counsel

THROUGH: Hugh M. McLaurin, Associate Executive Director, 
Directorate for Engineering Sciences

Robert B. Ochsman, Ph.D., CPE, Director, 
Division of Human Factors, Directorate for Engineering Sciences

FROM: Timothy P. Smith, Engineering Psychologist, 
Division of Human Factors, Directorate for Engineering Sciences

SUBJECT: Size and Placement of Cautionary Statements Specified in Section 105, Labeling Requirement for Advertising Toys and Games, of the Consumer Product Safety Improvement Act of 2008

BACKGROUND

Section 105 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) amends Section 24 of the Federal Hazardous Substances Act (FHSA; 15 U.S.C. 1278) to include labeling requirements for the advertising of toys and games. In brief, any toy or game that requires a cautionary statement about the choking hazard associated with small parts, balloons, small balls, or marbles must bear that cautionary statement in the product's advertising if the advertising provides a direct means for consumers to purchase or order the product. This advertising may include advertisements in catalogues or other printed materials or on Internet websites.

The "display" requirements of Section 105 of the CPSIA (subsection (c)(1)(C)) specify, in part, that the required cautionary statements

shall be prominently displayed...in conspicuous and legible type in contrast by typography, layout, or color with other material printed or displayed in such advertisement; and...in a manner consistent with part 1500 of title 16, Code of Federal Regulations.

The staff of the U.S. Consumer Product Safety Commission (CPSC) Division of Human Factors has been asked to determine whether these size and placement requirements are appropriate for the cautionary labeling of advertisements in catalogues or other printed materials.

DISCUSSION

Section 1500.121 of title 16, Code of Federal Regulations (16 CFR 1500.121), is the section relevant to the size and placement requirements referenced in Section 105 of the CPSIA. This section contains the Commission's policies and interpretations for implementing section 2(p)(2) of the FHSA, which requires that cautionary material on the labels of hazardous substances be prominent and conspicuous. Most of these requirements are consistent with commonly accepted hazard-labeling guidelines, so the Human Factors staff believes that they are reasonable requirements to reference in the draft proposed rule for the cautionary labeling of advertisements in catalogues or other printed materials. The staff does believe, however, that additional requirements should be included in the draft proposed rule. These additional requirements are discussed in detail below.

MINIMUM TYPE SIZE

The minimum type-size requirements specified in 16 CFR 1500.121 are based on the area of the principal display panel of a hazardous substance. The Human Factors staff presumes that, for the purposes of labeling advertisements in catalogues or other printed materials, these type-size requirements would be determined based on the size of the advertisement for the specific toy or game to which it applies. For small advertisements—ones no more than 2 square inches—16 CFR 1500.121 would permit signal words and hazard statements with letter heights as small as $\frac{3}{64}$ inch, or less than 5 points; the letter heights of other cautionary material in the label would be permitted to be as small as $\frac{1}{32}$ inch, or about 3 points.¹

Small or fine-print risk disclosures in product advertising have been found to be ineffective because people often fail to read them (Cohen, Cohen, Mendat, & Wogalter, 2006). Furthermore, ANSI Z535.6 (2006), the primary U.S. voluntary consensus standard on product safety information in product manuals, instructions, and other collateral materials,² requires that signal words and safety message text be of a size that enables a person with normal vision, including corrected vision, to read it at a normal reading distance under expected reading conditions.

Schoff and Robinson (1991) note that the smallest size that can be read without a magnifying glass is 6-point type and recommends that operator manuals include type that is no smaller than 8 points. These type-size recommendations are similar to the recommendations put forth in Annex B of ANSI Z535.4 (2002), the primary U.S. voluntary consensus standard on product safety signs and labels, which specifies 0.06 inches as the minimum allowable letter height for safety signs and labels on "small products" whose labels would be read at a distance of one foot or less and 0.08 inches as the minimum allowable letter height on other products at similar reading distances. Among the military, the recommended size for critical data is about three to five times the resolution threshold of the eye (Frascara, 2006). Assuming a typical book-reading distance of roughly 14 inches (Cushman & Rosenberg, 1991; Sanders & McCormick, 1993), this would

¹ One point of type is approximately 0.01 inches.

² Although advertising and promotional materials are not included within the scope of ANSI Z535.6, this voluntary standard appears to be the most relevant to these materials. For example, this standard applies to book-like, bound, and other similarly formatted collateral materials.

correspond to minimum letter heights of 0.06 to 0.10 inches, or about 6- to 10-point type.³ Moreover, research has found that numerals generally require larger visual angles for legibility than do letters because numerals do not form units such as words, which can be recognized and read even if certain individual letters cannot be discerned (Frascara, 2006). For this reason, written messages that contain numerals should use larger letter heights than those messages that contain text only. Research suggests that about 9-point type is preferred for reading numerals.⁴ These findings, taken together, suggest that a warning message containing numerals probably should be printed in type that is about 9 points or larger, and almost certainly should not be printed in type that is smaller than 8 points. The Human Factors staff, therefore, suggests that the draft proposed rule refer to the minimum type sizes specified in 16 CFR 1500.121, but include the requirement that the sizes employed cannot be smaller than 0.08 inches, or about $\frac{5}{64}$ inch.

ANSI Z535.6 (2006) also specifies that signal words and safety messages be no smaller than the majority of text in the document or the non-safety text, other than headings, immediately surrounding it, whichever is greater. The Human Factors staff agrees with this recommendation and believes one could apply this general principle to the cautionary labeling of advertisements in catalogues or other printed materials by requiring cautionary statements to be the larger of (1) a certain minimum type size based on the size of the advertisement (but no smaller than 0.08 inches, as mentioned above) or (2) the size of the largest product-specific descriptive text in the advertisement other than the product name. By “product-specific descriptive text,” the staff is referring to any text in the advertisement that describes the function, use, or characteristics of the toy or game being advertised.

ABBREVIATED WARNINGS

Most catalogues or similar printed materials that sell toys and games are likely to include multiple products on each page. This raises the possibility that consumers would be presented with multiple copies of the exact same cautionary statements on each page, a situation that could create the potential for habituation, in which a warning becomes less attention-grabbing due to repeated prior exposures (Wogalter & Vigilante, 2006). Nevertheless, the Human Factors staff believes that it might be possible to present the warnings in a way that would enable consumers to rely upon the warnings as a mechanism for quickly eliminating toys and games that are not appropriate for the intended child.

ANSI Z535.6 (2006) allows for the use of section safety messages in product manuals, instructions, and other collateral materials. Section safety messages are those that apply to entire sections, subsections, or multiple paragraphs or procedures within a document, and typically appear at the beginning of the section to which they apply. One of the intended functions of section safety messages is to avoid the unnecessary repetition of safety information while allowing users to access the other information more easily and efficiently. This concept could be applied directly to advertisements in catalogues or other printed materials. For example, when an

³ Letter height = distance \times $\tan(\text{arcmin}/60)$. Assuming three times the threshold value of 5 minutes of arc, letter height = $14'' \times \tan(0.25^\circ) = 0.061''$. Assuming five times the same threshold value, letter height = $14'' \times \tan(0.417^\circ) = 0.102''$.

⁴ Based on the preferred numeral size of 23 minutes of arc (Duncan & Konz, 1976 as cited in Frascara, 2006), letter height = $14'' \times \tan(0.383^\circ) = 0.093''$.

entire page or section of advertised products includes toys and games that would require the same cautionary statements, a single version of that cautionary statement could be placed at the beginning with explanatory text stating that the cautionary statement applies to all toys and games on that page or section.

One of the Human Factors staff's concerns about this approach, however, is that it might be difficult to implement in those cases in which a toy or game requires multiple cautionary statements; for example, toys that contain both a marble and a small ball. Another concern is that warnings generally should be located where consumers are likely to be looking when the information is needed (Wogalter & Vigilante, 2006). Consumers will not necessarily read sequentially through each section of a catalogue as they would prose, so a single relevant cautionary message at the beginning of a multi-page section could be missed easily.

To address these concerns, the Human Factors staff suggests that shorthand, or abbreviated, versions of the required warnings be permitted in each product advertisement, provided that these are defined with the full warning at the bottom or top of each page—or extending across two facing pages if both pages contain products available for purchase—of the catalogue. Specifically, the staff suggests that the following abbreviated cautionary statements be permitted to be used for each individual product advertisement in place of the full cautionary statement:

Required cautionary statement location	Abbreviated cautionary statement
16 CFR 1500.19(b)(1)	▲ SMALL PARTS. Not for < 3 yrs.
16 CFR 1500.19(b)(2)	▲ BALLOON. Not for < 8 yrs.
16 CFR 1500.19(b)(3)(i) or 16 CFR 1500.19(b)(3)(ii)	▲ SMALL BALL. Not for < 3 yrs.
16 CFR 1500.19(b)(4)(i) or 16 CFR 1500.19(b)(4)(ii)	▲ MARBLE. Not for < 3 yrs.

The Human Factors staff acknowledges that some consumers will not be familiar with the less-than (“<”) symbol, but believes that its use in this case would be acceptable because the full cautionary statement without this symbol will be available to consumers on the same or facing page of the catalogue. This situation will allow consumers who are unfamiliar with the symbol to gradually learn its meaning, similar to the use of abstract or arbitrary symbols in warnings (see Wogalter, Silver, Leonard, & Zakina, 2006), and eventually to associate the abbreviated cautionary statement with the full cautionary statement at a glance. Furthermore, some consumers will understand the less-than symbol immediately and will not have to refer to the full cautionary statement.

As noted above, the bottom or top of each page or two-page spread must provide the definition, or full cautionary statement, for each abbreviated warning on that page. For example:

⚠ SMALL PARTS. Not for < 3 yrs.:

⚠ WARNING:
CHOKING HAZARD--Small Parts.
Not for children under 3 yrs.

⚠ BALLOON. Not for < 8 yrs.:

⚠ 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.

Because the cautionary statements for small balls and marbles may differ depending upon whether the product *is* or *contains* the choking hazard in question, the staff suggests allowing the cautionary statement provided for each to cover both possibilities. For example:

⚠ SMALL BALL. Not for < 3 yrs.:

⚠ WARNING:
CHOKING HAZARD--This toy is or contains
a small ball. Not for children under 3 yrs.

⚠ MARBLE. Not for < 3 yrs.:

⚠ WARNING:
CHOKING HAZARD-- This toy is or contains
a marble. Not for children under 3 yrs.

INTERNET WARNINGS

Although Section 105 of the CPSIA specifies that the Commission shall promulgate regulations to effectuate Section 105 “with respect to catalogues and printed material,” Section 105 also states that advertisements requiring cautionary statements include those on Internet websites. Thus, the CPSC staff has proposed requirements with regard to Internet advertising in addition to those proposed for catalogues and other printed material. Research suggests that warnings that are provided with the product description for Internet sales are just as effective at influencing purchasing decisions as packaging warnings to which consumers are exposed during more traditional, in-person sales, and that consumers actually are more likely to rely upon these warnings while shopping over the Internet because they are unable to directly examine the product for hazards (Santos & Resnick, 2002).

As with catalogues and other printed materials, most of the requirements specified in 16 CFR 1500.121 appear to be ones that could be applied to the cautionary labeling of advertisements on Internet websites. The minimum type-size requirements specified in 16 CFR 1500.121, however, cannot be applied readily since they are based on the area of the principal display panel, and the

analogous area for an Internet advertisement could be limited by the size of the consumer's Internet browser application window or by the computer monitor or display area. These variables could vary considerably. The seemingly most reasonable solution to this would be to apply type-size requirements that are similar to the additional requirements specified above for cautionary statements in advertisements in catalogues and other printed materials. In other words, the Human Factors staff suggests specifying that the minimum type size of these cautionary statements be equal to the size of the largest product-specific descriptive text in the advertisement other than the product name, but no smaller than 0.08 inches.

Research has also found that risk information that is placed below the page scroll of a website is unlikely to be seen (Vigilante & Wogalter, 2005 as cited in Wogalter & Vigilante, 2006). To reduce the likelihood of this occurring, the Human Factors staff suggests that the required cautionary statement be located at the beginning of the advertisement's product-specific descriptive text. Furthermore, the Human Factors staff believes that the use of abbreviated warnings is neither necessary nor desirable for Internet advertisements.

CONCLUSIONS

Most of the size and placement requirements specified in 16 CFR 1500.121 are consistent with commonly accepted hazard-labeling guidelines and appear to be reasonable requirements to reference in the draft proposed rule for the cautionary labeling of advertisements in catalogues or other printed materials. The staff, however, suggests that the letter heights of the text in any cautionary statements not be permitted to be smaller than 0.08 inches and not be permitted to be smaller than the size of the largest product-specific descriptive text in the advertisement other than the product name. Similar suggestions have been offered for cautionary statements that would appear in Internet advertisements. The staff also suggests permitting the use of abbreviated cautionary statements in catalogues and other printed materials, provided that definitions, in the form of full cautionary statements, are included at the bottom of each page of the catalogue. The staff recommends that abbreviated cautionary statements not be allowed for cautionary statements that would appear in Internet advertisements, but that the full cautionary statements appear at the beginning of the advertisement's product-specific descriptive text.

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