

Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, 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).

#### The Proposed Amendment

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

#### PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120. E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

##### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward for 700 feet or more above the surface of the earth.*

\* \* \* \* \*

##### ASO KY E5 Pikeville, KY [New]

Pike County—Hatcher Field Airport, KY  
Lat. 37°33'44"N, long. 82°33'56"W  
Prestonburg, Big Sandy Regional Airport, KY  
Lat. 37°45'04"N, long. 82°38'13"W

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Pike County—Hatcher Field Airport; excluding that airspace within the Prestonburg, KY Class E airspace area.

\* \* \* \* \*

Issued in College Park, Georgia, on July 8, 1999.

**Wade T. Carpenter,**

*Acting Manager, Air Traffic Division Southern Region.*

[FR Doc. 99–18204 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–13–M

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Chapter II

#### Dive Sticks; Advance Notice of Proposed Rulemaking; Request for Comments and Information

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Commission has reason to believe that certain dive sticks may present an unreasonable risk of injury. Such dive sticks are constructed in such a manner that children can become impaled on them when jumping into shallow water where the dive sticks are oriented in an upright position. This impalement can result in serious injuries. Dive sticks are one of several types of devices used for underwater retrieval activities in swimming pools. They are typically made of rigid plastic, and are or can be weighted so that when dropped into water they sink and stand upright on the bottom. Dive sticks have a variety of shapes, but many have a hollow tube cross section or a solid X-shaped cross section. Dive sticks are sold under a variety of names such as dive sticks, diving sticks, fish sticks, sticks and batons.

This advance notice of proposed rulemaking (“ANPR”) initiates a rulemaking proceeding that could result in a rule banning dive sticks with certain characteristics that cause them to be hazardous. This proceeding is commenced under the Federal Hazardous Substances Act.

The Commission solicits written comments concerning the risks of injury associated with dive sticks, the regulatory alternatives discussed in this ANPR, other possible ways to address these risks, and the economic impacts of the various regulatory alternatives. The Commission also invites interested persons to submit an existing standard, or a statement of intent to modify or develop a voluntary standard, to address the risk of injury described in this ANPR.

**DATES:** Written comments and submissions in response to this ANPR must be received by September 14, 1999.

**ADDRESSES:** Comments should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway,

Bethesda, Maryland; telephone (301) 504–0800. Comments also may be filed by telefacsimile to (301)504–0127 or by email to cpssc-os@cpssc.gov. Comments should be captioned “ANPR for Dive Sticks.”

**FOR FURTHER INFORMATION CONTACT:** Scott R. Heh, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0494, ext. 1308.

#### SUPPLEMENTARY INFORMATION:

##### A. The Product

Dive sticks are one of several types of devices used for underwater retrieval activities in swimming pools. They are typically made of rigid plastic, and are, or can be weighted so that when dropped into water they sink and stand upright on the bottom. Dive sticks have a variety of shapes, but many have a hollow tube cross section or a solid X-shaped cross section. Dive sticks are sold under a variety of names such as dive sticks, diving sticks, fish sticks, sticks and batons.

The Commission’s technical staff preliminarily considers a dive stick that has all of the following characteristics to pose a hazard for traumatic injuries to the perineum, including laceration and perforation injuries associated with rectal and vaginal impalement:

1. The product is essentially rigid.
2. The product is weighted, or can be weighted, so that when dropped in the water, it sinks to the bottom and stands upright.
3. The product has an elongated shape with a top end that is small enough in cross section to concentrate the force of impact and allow penetration of the rectum or vagina. (As examples, a hazardous dive stick could have a cylindrical shape with a blunt end or it may have a more pointed end, such as one product that is shaped like a shark silhouette.)

##### B. The Risk of Injury

###### 1. Description of Injury

When used in shallow water, serious rectal or vaginal impalement injuries can occur when a child accidentally falls on or jumps buttocks-first into the water, and lands on a dive stick. Facial and eye injuries are also possible when a child attempts to retrieve a dive stick under the water.

While penetrating injuries account for only a very small percentage of traumatic injuries in children, they are severe. Falls on vertical objects may result in traumatic injuries to the perineum. The severity of rectal or vaginal lesions after impalement depends on the degree of penetration by

the object. This in turn is dependent on the force of impact and the physical properties of the involved object (size and surface characteristics). The severity of injury could range from laceration of the rectum and sphincter, to puncture wounds and tears of the colon. High impact forces may also cause injuries to the vulva, vaginal canal, and blood vessels beneath the perineal skin in females. In males, such impacts may cause perforation injuries to the genitalia, urethra, ureter and bladder. All these types of perforation and impalement injuries in males and females require hospitalization and surgery.

Because of the septic nature of the area, the main complication after perineum injuries is lesion infection, which may lead to abscess and possible sepsis in extreme cases. To avoid subsequent septic complications, the management of these pediatric injuries often requires aggressive and drastic surgical means. Perineal injuries (with or without rectal injury) often require fecal diversion (proximal colostomy), wound drainage, and the use of a broad-spectrum antibiotic in pre- and post-operative stages. The damage caused by deep penetration into the rectal or vaginal area may have devastating effects on children's health. In addition to long-term physiological effects on children, these types of injuries have the potential to cause long-lasting emotional trauma.

## 2. Injury Data

The Commission has learned of seven incidents in which dive sticks caused serious injury to young children. Six of these were impalement incidents that resulted in serious vaginal or rectal injuries. The seventh incident was a facial laceration just below the eye. All the victims were children ranging in age from six to nine years old. Each of the incidents occurred with vertical-standing toy dive sticks. The eye/facial injury was from a shark-shaped dive stick. All of the vaginal and rectal injuries were from baton-shaped dive sticks, approximately 7<sup>7</sup>/<sub>8</sub> to 8<sup>5</sup>/<sub>8</sub> inches long and 7<sup>1</sup>/<sub>8</sub> to one inch in diameter. The victims were injured while playing in shallow water. Three incidents occurred in small wading pools with water levels between 12 and 24 inches. One occurred in a spa with unknown water depth and one in a 3-foot pool with approximately 27 inches of water. Another incident occurred in a swimming pool with an unknown depth of water. The incidents are as follows:

a. July 22, 1990—The 7-year-old female victim was playing with her cousins in an above-ground swimming

pool. She jumped up and out of the water, tucked her knees to her chest to do a "cannon ball" jump and re-entered the water. The victim entered the water buttocks first and rapidly descended to the bottom of the pool, where her buttocks came in contact with the upright, cylindrical toy dive stick. The toy dive stick caused lacerations around the victim's rectum. No stitches were required and the victim has recovered fully.

b. July 22, 1993—The 8-year-old girl was sitting on the edge of her family's spa with her feet in the water. She used her arms to push off the edge and sit on a lower step of the spa, without seeing the vertical-standing, cylindrical toy dive stick on the same lower step. The toy dive stick slipped past the victim's swimsuit and penetrated her vagina. Immediate medical attention was sought, and surgery was performed to repair multiple internal, vaginal lacerations. Additional surgery was necessary 5 months later. No recovery records are available.

c. July 24, 1995—The 9-year-old female victim jumped into a swimming pool and landed on a toy dive stick causing deep vaginal lacerations.

d. August 3, 1997—The 6-year-old female victim jumped into her inflatable wading pool. The victim's buttocks area landed on top of the vertical-standing, cylindrical toy dive stick. The product and the girl's swimsuit were projected into her rectum. The victim was admitted to a children's hospital for surgery to repair perineal and external sphincter lacerations. The victim has recovered from the incident, but will be examined periodically.

e. June 10, 1998—The eight-year-old female victim was playing with her brother in a wading pool. She fell backwards in the pool, landing on the cylindrical toy dive stick that was standing upright on the bottom of the pool. The toy dive stick penetrated the vagina. A physician surgically repaired the laceration with both internal and external sutures. The victim has recovered.

f. June 28, 1998—The 7-year-old boy and his brother had been playing with the cylindrical toy dive sticks prior to the incident. The victim ran and jumped buttocks first into the wading pool. He impaled himself via the rectum on a toy dive stick that was standing upright in the water. Surgery was performed to repair a laceration of the rectum, and a temporary colostomy was performed to repair the perforated intestine. The victim healed, but continues to complain of abdominal pain.

g. August 13, 1998—The 6-year-old female victim and three other children

were in a small wading pool playing with toy dive sticks that were shaped like sharks. The victim stuck her face into the pool to retrieve the toy dive stick and hit her face on the toy. She received a 3/4 inch laceration below her left eye, which required sutures to close. The victim has recovered.

## C. Relevant Statutory Provisions

This proceeding is conducted pursuant to the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261 *et seq.* Section 2(f)(1)(D) of the FHSA defines "hazardous substance" to include any toy or other article intended for use by children that the Commission determines, by regulation, presents an electrical, mechanical, or thermal hazard. 15 U.S.C. 1261(f)(1)(D). An article may present a mechanical hazard if its design or manufacture presents an unreasonable risk of personal injury or illness during normal use or when subjected to reasonably foreseeable damage or abuse. Among other things, a mechanical hazard could include a risk of injury or illness "(3) from points or other protrusions, surfaces, edges, openings, or closures, \* \* \* or (9) because of any other aspect of the article's design or manufacture." 15 U.S.C. 1261(s).

Under section 2(q)(1)(A) of the FHSA, a toy, or other article intended for use by children, which is or contains a hazardous substance accessible by a child is a "banned hazardous substance." 15 U.S.C. 1261(q)(1)(A).

Section 3(f) through 3(i) of the FHSA, 15 U.S.C. 1262 (f)–(i), governs a proceeding to promulgate a regulation determining that a toy or other children's article presents an electrical, mechanical, or thermal hazard. As provided in section 3(f), this proceeding is commenced by issuance of this ANPR. After considering any comments submitted in response to this ANPR, the Commission will decide whether to issue a proposed rule and a preliminary regulatory analysis in accordance with section 3(h) of the FHSA. If a proposed rule is issued, the Commission would then consider the comments received in response to the proposed rule in deciding whether to issue a final rule and a final regulatory analysis. 15 U.S.C. 1262(i).

## D. Regulatory Alternatives

One or more of the following alternatives could be used to reduce the identified risks associated with dive sticks.

1. *Mandatory rule.* The Commission could issue a rule declaring certain dive sticks to be banned hazardous substances. This rule could define the

banned products in terms of physical or performance characteristics, or both.

2. *Labeling rule.* The Commission could issue a rule banning dive sticks that did not contain specified warnings and instructions.

3. *Voluntary standard.* If the industry developed, adopted, and conformed to an adequate voluntary standard, the Commission could defer to the voluntary standard in lieu of issuing a mandatory rule.

4. *Reliance on recalls.* The Commission has obtained voluntary corrective actions with respect to certain dive sticks. The Commission could continue to rely on corrective actions, both voluntary and mandatory, in lieu of or in addition to a mandatory rule.

#### E. Existing Standards

The Commission is not aware of any state, voluntary, foreign, international, or other standards dealing with the described risk of injury.

#### F. Market Information

##### 1. The Product

Dive sticks are one of several types of devices used for underwater retrieval activities in swimming pools. They are typically made of rigid plastic, and are or can be weighted so that when dropped into water they sink and stand upright on the bottom. They are usually cylindrical in shape, but some have shapes that resemble such things as fish, sharks, or other sea creatures. Typically, the length is 8 inches or less and the diameter is one inch or less. Dive sticks and other dive toys are often numbered with a point value (e.g., 10 through 60) for counting up totals in games. In some cases, the units with the higher point values may be shorter than those with lower point values.

Dive sticks are usually sold in sets of 3 to 6 sticks. They are often sold as part of a package that contains other toys, such as dive disks, eggs, and rings (e.g., a package may include 3 dive sticks, 3 dive rings, and 3 dive disks). They are also sold with things such as masks, goggles, or snorkels. At retail they cost from \$4 to \$7 per set, or about \$1 per individual stick. Even when sold with other products such as disks, rings, and snorkels, they usually cost less than \$10.

Dive sticks and other dive toys are widely available. They are often sold in the seasonal aisles of grocery and drug stores and can be purchased at many department and variety stores. Dive toys are also available through some mail order catalogs and at various pool dealers.

##### 2. Substitutes

A wide range of substitutes is available for dive sticks. The closest substitute may be dive rings since these are also weighted so that they stand up on the bottom of the pool. Other substitutes are dive disks, which are flat, plastic disks that sink to the bottom of the pool, but lie flat rather than on end. There are also a variety of dive eggs. In general, these substitutes are manufactured and sold by the same companies that manufacture and sell dive sticks, often in the same package. The retail prices of these substitutes are about the same as the retail prices for the dive sticks.

##### 3. Sales and Number Available for Use

Dive sticks have been sold for over 20 years. However, historical sales data are not available to determine whether or not there has been a trend in their use. Based on information that several companies provided to the CPSC, over 19 million dive sticks have been sold. Current sales of individual dive sticks appear to be at least 4 million units annually. Since they are usually sold in packages of 3 to 6 sticks each, this indicates that around 1 million packages are purchased annually.

In trade publications, dive sticks are classified in the water/pool/sand toys category. This category includes products such as water guns, floats, wading pools, and sand buckets. Sales vary with season, with more sold in the summer than in the winter. Sales of water/pool/sand toys also tend to vary from year to year depending on how hot the summer or swimming season is. In 1997, retail sales of water/pool/sand toys exceeded \$450 million, according to a trade publication. Since dive sticks retail for approximately \$1 per stick, dive sticks likely make up less than one percent of retail sales in this category.

A substantial number of dive sticks are likely available for use for several years after their purchase. Since several million dive sticks have been sold annually for the last few years, the total number available for use could easily exceed 10 million units. Assuming dive sticks are sold in sets of 3 to 6 each, this indicates that several million households are likely to own dive sticks.

##### 4. Suppliers

The CPSC's staff has identified at least 15 firms that manufacture or import dive sticks into the United States. Most of the firms that import dive sticks obtain their product from China, Hong Kong, or Taiwan. There may be other manufacturers or importers that the staff

has not identified. Additionally, because of the simplicity of the product, there are few barriers to entry into the market.

The staff's initial research indicates that most of the firms that have been identified are small businesses according to the Small Business Administration guidelines because they have fewer than 100 employees for importers or 500 employees for manufacturers. However, in all cases, dive sticks probably account for a very small percentage of any firm's sales. Several of the manufacturers market various types of pool toys. Others have additional lines such as other types of toys or pool equipment.

##### 5. Economic Considerations

The CPSC is aware of 7 injuries involving dive sticks since 1990 that resulted when a child hit a dive stick standing upright on the bottom of a pool. Although the number of injuries is low, some of the injuries are severe. Some of the injuries have resulted in damage to the victim's rectal or vaginal areas. At least four of these incidents required hospitalization, and in one case a temporary colostomy was performed.

The societal costs of these incidents include primarily medical costs, lost productivity, and pain and suffering. The total societal costs of the incidents are likely to be relatively low since the incidents of concern appear to be relatively rare. However, the severity of some of the incidents indicates that the average societal costs of the incidents requiring hospitalization may exceed \$100,000, based on estimates obtained from the Directorate for Economic's Injury Cost Model for hospitalized cases involving punctures or lacerations to the victims lower trunk area.

The cost of modifying dive sticks to reduce or remove the risk is likely to be low. For example, dive sticks could be modified so that they lie horizontally on or at an angle at the bottom of the pool, rather than vertically. Such a change may involve some changes in tooling, molds, and design, but little in terms of production and material costs. Such a change is unlikely to substantially reduce the utility of the product to consumers. Another option may be to manufacture dive sticks from a material that is less rigid and unlikely to cause serious injury to a person who falls on the product. Moreover, commercial substitutes for dive sticks already are available. These substitutes are not dangerous but provide the same play experience. If hazardous dive sticks were banned altogether, there is little, if any, reason to doubt that these

substitutes would enjoy increased purchases.

### G. Solicitation of Information and Comments

This ANPR is the first step of a proceeding that could result in a mandatory rule for dive sticks to address the described risk of injury. All interested persons are invited to submit to the Commission their comments on any aspect of the alternatives discussed above. In particular, CPSC solicits the following additional information:

1. The models and numbers of dive sticks produced for sale in the U.S. each year from 1990 to the present;
  2. The names and addresses of manufacturers and distributors of dive sticks;
  3. The expected useful life of dive sticks.
  4. Comparisons of the utility obtained from dive sticks versus substitute products (e.g., dive rings or disks or dive sticks that lie horizontally, rather than vertically);
  5. The number of persons injured or killed by the hazards associated with dive sticks;
  6. The circumstances under which these injuries and deaths occur, including the ages of the victims;
  7. An explanation of designs that could be adapted to dive sticks to reduce the described risk of injury;
  8. Physical or performance characteristics of the product that could or should not be used to define which products might be subject to a rule;
  9. The costs to manufacturers involved in either redesigning dive sticks to remove the risk or removing dive sticks from the market.
  10. Other information on the potential costs and benefits of potential rules;
  11. Steps that have been taken by industry or others to reduce the risk of injury from the product;
  12. The likelihood and nature of any significant economic impact of a rule on small entities;
  13. The costs and benefits of mandating a banning, labeling or instructions requirement.
- Also, in accordance with section 3(f) of the FHSA, the Commission solicits:
1. Written comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk.
  2. Any existing standard or portion of a standard which could be issued as a proposed regulation.
  3. A statement of intention to modify or develop a voluntary standard to address the risk of injury discussed in this notice, along with a description of a plan (including a schedule) to do so.

Comments should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207-0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504-0800. Comments also may be filed by telefacsimile to (301) 504-0127 or by email to [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov). Comments should be captioned "ANPR for Dive Sticks." All comments and submissions should be received no later than September 14, 1999.

Dated: July 12, 1999.

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 99-18113 Filed 7-15-99; 8:45 am]

BILLING CODE 6355-01-P

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

#### 29 CFR Part 2510

RIN 1210-AA48

#### Plans Established or Maintained Pursuant to Collective Bargaining Agreements Under Section 3(40)(A) of ERISA

**AGENCY:** Pension and Welfare Benefits Administration, Department of Labor.

**ACTION:** Negotiated rulemaking committee notice of meeting.

**SUMMARY:** The Department of Labor's (Department) ERISA Section 3(40) Negotiated Rulemaking Advisory Committee (Committee) was established under the Negotiated Rulemaking Act of 1990 and the Federal Advisory Committee Act (the FACA) to develop a proposed rule implementing the Employee Retirement Income Security Act of 1974 (ERISA), as amended. The purpose of the proposed rule is to establish a process and criteria for a finding by the Secretary of Labor that an agreement is a collective bargaining agreement for purposes of section 3(40) of ERISA. The proposed rule will also provide guidance for determining when an employee benefit plan is established or maintained under or pursuant to such an agreement. Employee benefit plans that are established or maintained for the purpose of providing benefits to the employees of more than one employer are "multiple employer welfare arrangements" (MEWAs) under section 3(40) of ERISA, and therefore are subject

to certain state laws, unless they meet one of the exceptions set forth in section 3(40)(A). At issue in this regulation is the exception for plans or arrangements that are established or maintained under one or more agreements which the Secretary finds to be collective bargaining agreements. It is the view of the Department that it is necessary to distinguish organizations that provide benefits through collectively bargained employee representation from organizations that are primarily in the business of marketing commercial insurance products.

**DATES:** The Committee will meet from 9:00 to approximately 5 pm on each day on Wednesday, August 25, 1999, and Thursday, August 26, 1999.

**ADDRESSES:** This Committee meeting will be held at the offices of the US Department of Labor, Room N-3437, Conference Room C/D. All interested parties are invited to attend this public meeting. Seating is limited and will be available on a first-come, first-serve basis. Individuals with disabilities wishing to attend who need special accommodations should contact, at least 4 business days in advance of the meeting, Ellen Goodwin, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N-4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202) 219-4600; fax (202) 219-7346). The date, location and time for subsequent Committee meetings will be announced in advance in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Ellen Goodwin, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N-4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202) 219-4600; fax (202) 219-7346). This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Minutes of all public meetings and other documents made available to the Committee will be available for public inspection and copying in the Public Documents Room, Pension and Welfare Benefits Administration, US Department of Labor, Room N-5638, 200 Constitution Avenue, NW, Washington, DC from 8:30 a.m. to 4:30 p.m. Any written comments on these minutes should be directed to Ellen Goodwin, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N-4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202) 219-4600; fax (202) 219-7346). This is not a toll-free number.