

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 982 is amended as follows:

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 982.242 is added to read as follows:

(Note: The following section will not be published in the Code of Federal Regulations.)

Section 982.242 Free and restricted percentages—1993-94 marketing year.

(a) The interim final free and restricted percentages for merchantable filberts/hazelnuts for the 1993-94 marketing year shall be 11 and 89 percent, respectively.

(b) The final free and restricted percentages for merchantable filberts/hazelnuts for the 1993-94 marketing year shall be 13 and 87 percent, respectively.

Dated: February 18, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94-4234 Filed 2-24-94; 8:45 am]

BILLING CODE 3410-02-P

Animal and Plant Health Inspection Service**9 CFR Part 77**

[Docket 91-161-2]

Tuberculosis in Cattle and Bison

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the tuberculosis regulations by adding a definition for States whose accredited-free status has been suspended due to detection of tuberculosis in any cattle or bison in those States, and by adding requirements for moving cattle and bison interstate from States whose accredited-free status has been suspended. This action clarifies the requirements concerning the interstate movement of cattle and bison.

EFFECTIVE DATE: March 28, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald Stenseng, Senior Staff Veterinarian, Cattle Diseases and

Surveillance Staff, Veterinary Services, APHIS, USDA, room 734, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8715.

SUPPLEMENTARY INFORMATION:**Background**

The "Tuberculosis" regulations, contained in 9 CFR part 77 (referred to below as the regulations), regulate the interstate movement of cattle and bison because of tuberculosis. Bovine tuberculosis is the contagious, infectious and communicable disease caused by *Mycobacterium bovis*. The requirements of the regulations concerning the interstate movement of cattle and bison not known to be affected with, or exposed to, tuberculosis are based on whether the cattle and bison are moved from jurisdictions designated as accredited-free States, modified accredited States, or nonmodified accredited States.

The status of a State is based on its freedom from evidence of tuberculosis, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards contained in a document captioned "Uniform Methods and Rules—Bovine Tuberculosis Eradication," which has been made part of the regulations via incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

On August 13, 1993, we published in the *Federal Register* (58 FR 43086-43087, Docket No. 91-161-1) a proposal to amend the regulations by adding a definition for States whose accredited-free status has been suspended due to detection of tuberculosis in any cattle or bison in those States, and by adding requirements for moving cattle and bison interstate from States whose accredited-free status has been suspended.

We solicited comments concerning our proposal for a 60-day comment period ending October 12, 1993. We received three comments by that date. They were from two marketing cooperatives and a veterinary medical association. All responses were in favor of the proposed rule as written.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866.

Cattle and bison moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Cattle and bison

not known to be affected with or exposed to tuberculosis are already allowed to move interstate without restriction from modified accredited States and accredited-free States, including States whose accredited-free status has been suspended. We are clarifying the regulations with respect to requirements for the interstate movement of cattle and bison from a State whose accredited-free status has been suspended. Consequently, this action will not have any economic impact on those persons affected by this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, 9 CFR part 77 is amended as follows:

PART 77—TUBERCULOSIS

1. The authority citation for part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115-117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 77.1 is amended by adding in alphabetical order a definition for "Accredited-free (suspended) State" to read as follows:

§ 77.1 Definitions.

Accredited-free (suspended) State.
(1)(i) A State with the status of an accredited-free State is designated as accredited-free (suspended) if tuberculosis is detected in any cattle or bison in the State.

(ii) A State is qualified for redesignation of accredited-free status after the herd in which tuberculosis is detected has been quarantined, an epidemiological investigation has confirmed that the disease has not spread from the herd, and all reactor cattle and bison have been destroyed.

(2) Accredited-free (suspended) States: None.

3. Section 77.3 is revised to read as follows:

§ 77.3 Movement from accredited-free States, accredited-free (suspended) States, and modified accredited States.

Cattle or bison not known to be affected with or exposed to tuberculosis, originating in an accredited-free State, an accredited-free (suspended) State, or a modified accredited State, may be moved interstate without restriction.³

Done in Washington, DC, this 18th day of February 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94-4328 Filed 2-24-94; 8:45 am]

BILLING CODE 3410-34-P

9 CFR Part 92

[Docket No. 93-113-2]

Horses From Portugal

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are declaring Portugal free of African horse sickness and removing Portugal from the list of countries which the Animal and Plant Health Inspection Service considers affected with African horse sickness. This action relieves certain restrictions on the importation into the United States of horses from Portugal.

EFFECTIVE DATE: March 14, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Chief Staff Veterinarian, Import-Export Products Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA.

³ The regulations of the State of destination should be consulted before shipments are made from accredited-free, accredited-free (suspended) and modified accredited States.

room 753, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7885.

SUPPLEMENTARY INFORMATION:**Background**

The regulations on animal importations in 9 CFR parts 92 and 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products to prevent the introduction of various livestock diseases, including African horse sickness (AHS). AHS is a fatal equine viral disease not found in the United States.

On November 1, 1993, we published in the *Federal Register* (58 FR 58304-58305, Docket No. 93-113-1) a proposal to amend the regulations by removing Portugal from the list in § 92.308(a)(2) of countries which the Animal and Plant Health Inspection Service considers affected with AHS.

We solicited comments concerning our proposed rule for a 30-day period ending on November 29, 1993. During that period, we received two comments, both from horse associations. Both associations supported the proposed rule; one made additional comments not related to the proposed rule. Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposed rule as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions, and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the *Federal Register*. This rule removes Portugal from the list in § 92.308(a)(2) of countries which APHIS considers affected with AHS. We have determined that approximately 2 weeks are needed to ensure that APHIS personnel at ports of entry receive official notice of this change in the regulations. Therefore, the Administrator of the APHIS has determined that this rule should be made effective 15 days after publication in the *Federal Register*.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

The number of horses imported into the United States is small; we estimate, using 1991 and 1992 figures, that only 0.2 to 0.3 percent of all horses in the United States have been imported.

Furthermore, during the last 2 years, only one horse has been imported from Portugal. Therefore, we anticipate that any increase in horse imports from Portugal as a result of this rule will be insignificant.

Principally, this rule will allow horses from Portugal to make temporary visits to the United States for shows or sporting events. Currently, such visits are impractical, since horses imported from Portugal must be quarantined in New York for at least 60 days, at a cost to importers of approximately \$4,700 per horse. The rule will allow horses from Portugal making temporary visits to the United States to enter through a variety of ports and be quarantined for a shorter, and less expensive, period. Accordingly, though this rule may have a positive economic impact on importers bringing horses from Portugal into the United States for temporary visits, we anticipate that the overall economic impact on businesses and individuals will be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.308 [Amended]

2. In § 92.308, paragraph (a)(2) is amended by removing "Portugal,".

Done in Washington, DC, this 18th day of February 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94-4325 Filed 2-24-94; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93-ASO-22]

Establishment of Class E Airspace; Puerto Rico, PR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at San Juan, Puerto Rico. This action reestablishes a portion of airspace that was lost as a result of the terminal airspace reconfiguration. Controlled airspace extending from 1200 feet and 2700 feet is needed to contain IFR operations in the area and to provide necessary air traffic services.

EFFECTIVE DATE: 0901 UTC, April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Patterson, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5585.

SUPPLEMENTARY INFORMATION:

History

On November 19, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at San Juan, Puerto Rico. The terminal airspace configuration final rule dated August 27, 1992, amended the size of the 1200 ft. transition area from a 100-mile radius of San Juan, Puerto Rico to an area extending approximately 15 miles north of San Juan. This reduced area is not adequate to provide necessary air traffic services. This action will establish 1200 ft. and 2700 ft. Class E airspace and replace a portion of the airspace that was lost (58 FR 65949).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The coordinates for this airspace docket are based on North American Datum 83. This amendment is the same as that proposed in the notice with the exception of removing Warning Areas from the description that are outside this Class E airspace and the additional of a set of coordinates to more clearly describe the actual area. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at San Juan, Puerto Rico to provide controlled airspace for aircraft arriving and departing San Juan.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them 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 impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified 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

Aviation safety, 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 14 CFR 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.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005, Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ASO PR E5 Puerto Rico, PR—San Juan-Fernando Luis Ribas Dominicci Airport, PR

(Lat. 18°27'25" N, long. 66°05'53" W)

That airspace extending upward from 1,200 feet above the surface beginning at lat. 18°50' N, long. 68°00' W; to lat. 18°45'22.62" N, long. 66°54'58.15" W; to lat. 18°33' N, long. 64°22' W; to lat. 17°20' N, long. 64°22' W; to lat. 17°29' N, long. 64°54' W; to lat. 17°50' N, long. 65°34' W; to lat. 17°42' N, long. 68°00' W; to the point of beginning; excluding that airspace within Warning Areas W-370A, W-371, W-373A; and that airspace extending upward from 2,700 feet above the surface beginning at lat. 18°33' N, long. 64°22' W; to lat. 18°25' N, long. 62°52' W; to lat. 17°47' N, long. 62°23' W; to lat. 17°22' N, long. 62°59' W; to lat. 16°58' N, long. 63°00' W; to lat. 17°20' N, long. 64°22' W; to the point of beginning; and that airspace extending upward from 2,700 feet above the surface beginning at lat. 18°45'22.62" N, long. 66°54'58.15" W; to lat. 19°00' N, long. 66°10' W; to lat. 19°00' N, long. 65°45' W; to lat. 18°45' N, long. 64°22' W; to lat. 18°33' N, long. 64°22' W; to the point of beginning.

* * * * *

Issued in College Park, Georgia, on February 7, 1994.

Michael J. Powderly,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 94-4366 Filed 2-24-94; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Requirements for Clacker Balls; Amendments

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission amends its existing regulation, under the Federal Hazardous Substances Act, that bans clacker balls that do not meet specified requirements. The amendments include revising the definition of clacker ball to exclude those devices where the balls are suspended by plastic rods that are integrally molded to the balls and are mounted on a pivot so that movement

of the balls is essentially limited to a single plane. The amendments also exempt from the ban those clacker balls that meet specified maximum ball-weight and cord-length specifications and a minimum safety factor specification. The amendments clarify the regulation and benefit consumers, manufacturers, importers, distributors, and retailers by allowing the marketing of currently-banned products that do not present the unreasonable risk of injury the ban was intended to prevent.

DATES: The amendments are effective March 25, 1994.

FOR FURTHER INFORMATION CONTACT: Frank Krivda, Division of Regulatory Management, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0400.

SUPPLEMENTARY INFORMATION:

A. Background

The Commission's regulations, issued under the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261-1277, ban clacker balls (defined in 16 CFR 1500.18(a)(7)), unless the clacker balls meet the requirements in 16 CFR 1500.86(a)(5). The regulations define clacker balls as consisting of two balls of plastic or another material connected by a length of line or cord or similar connector * * * intended to be operated in a rhythmic manner by an upward and downward motion of the hand so that the two balls will meet forcefully at the top and bottom of two semicircles thus causing a "clacking" sound, which toys present a mechanical hazard because their design or manufacture presents an unreasonable risk of personal injury from fracture, fragmentations, or disassembly of the toy and from propulsion of the toy or its part(s). (But see § 1500.86(a)(5))

These requirements were issued in 1971 by the Food and Drug Administration, which administered the FHSA at that time.

The criteria in § 1500.86(a)(5) were designed to ensure the safety of the type of clacker ball that was on the market before the regulation was issued in 1971. This type of clacker ball used balls that were relatively large and heavy, and the balls were mounted on flexible cords. The criteria include an impact test for the balls and strength tests for the cords and attachment points.

In August of 1989, Mr. William Hones of Fascinations Toys and Gifts, Inc., petitioned the Commission to amend its requirements for clacker balls to exclude products that (1) mechanically restrict the motion of the balls to a plane perpendicular to a supporting shaft and

(2) withstand impact and centrifugal stresses at least 10 times those produced in normal use. [1, Tab A]¹ The petitioner marketed a product similar to a clacker ball but that operated in the manner that would be excluded by the requested amendment.

The device marketed by the petitioner mounted the balls by integrally molding them onto the apex of a V-shaped plastic member mounted so that the arms of the V pivot on a shaft. This mounting limits the movement of the balls to a single plane that is perpendicular to the axis of the shaft. Compared to the pre-1972 type of clacker balls, the petitioner's product had lighter balls and shorter mounting arms. Because of this, the petitioner's product did not generate the impact or centrifugal forces that the earlier clacker balls did. The Commission's staff agreed that the criteria of § 1500.18(a)(5) vastly exceeded the stresses generated by petitioner's device and by various other brands and types of clacker balls that were on the market.

After considering the petition, the Commission decided that the term "clacker ball" did not encompass the product marketed by the petitioner and similar products. The Commission (3-0) also directed the staff to prepare, for the Commission's consideration, a draft **Federal Register** notice that would propose to amend the definition of clacker ball to explicitly exclude petitioner's and similar products and to amend § 1500.86(a)(5) to exempt clacker balls meeting maximum ball-weight and cord-length specifications and a minimum safety factor specification. On June 25, 1993, the Commission published proposed amendments in the **Federal Register**, 58 FR 34385. The period for public comment on the proposal ended on September 8, 1993; no comments were received.

B. Procedure

A regulation such as the Commission's clacker ball regulation is issued under section 3(e) of the FHSA, 15 U.S.C. 1262(e), which applies to determinations that a toy or other article intended for use by children presents a mechanical, electrical, or thermal hazard and is thus a hazardous substance pursuant to section 2(f)(1)(D), 15 U.S.C. 1261(f)(1)(D). The original issuance of such a regulation would be governed by the procedure in section 3(f) of the FHSA, 15 U.S.C. 1262(f), which specifies a three-stage rulemaking procedure that is initiated by the

publication of an advance notice of proposed rulemaking ("ANPR"). The amendments issued below, however, eliminate from the scope of the rule those products that do not present the mechanical risk that the regulation originally intended to cover.

Accordingly, since new obligations are not being imposed, sections 3 (e) and (f) do not apply. In addition, the provisions of section 3(f) governing the required content of the ANPR show that the ANPR is intended to apply only to cases where new requirements are being imposed and not to the case where previously covered products are being exempted or otherwise released from coverage. Therefore the two-stage rulemaking procedures of the Administrative Procedure Act, 5 U.S.C. 553, apply.

C. The Amendments

Amended § 1500.18(a)(7). As explained above, the device marketed by the petitioner was mounted on plastic rods so that the balls move only in a single plane. This prevents off-center hits of the balls, and the limitation to "plastic" material should limit any likelihood of loose particles caused by flaking or fragmentation of the balls. The Commission determined that the definition of clacker ball did not cover the petitioner's device, or similar devices with these features. Therefore, the amendments add language specifically stating that the definition of clacker ball "does not include products that are constructed such that the connecting members consist of plastic rods integrally molded to the balls and are mounted on a pivot so that movement of the balls is essentially limited to a single plane."

Amended § 1500.86(a)(5). As discussed above, the Commission concluded that the criteria in the current exemption in § 1500.86(a)(5) are too stringent for the lighter and smaller clacker balls that are currently on the market, which have balls with masses of less than 12 grams each and pivot lengths of less than 180 mm (7.1 inches). Accordingly, the staff examined how the exemption criteria might be changed so that they would be more appropriate for these lighter and smaller clacker balls. The criteria that must be changed in order to do this are (1) The cord-strength requirement of § 1500.86(a)(5)(i)(B), (2) the ball-impact test in § 1500.86(a)(5)(ii)(B), (3) the cord-strength test of § 1500.86(a)(5)(ii)(D), and (4) the holding-device strength test of § 1500.86(a)(5)(ii)(E). These criteria are discussed separately below. How the formulae for adjusting these factors were derived is explained in detail in the

¹ Numbers in brackets represent the number of a relevant document in Appendix 1 (List of Relevant Documents) at the end of this notice.

report "Engineering Analysis Supporting Proposed Amendments to the Clacker Ball Regulation at 16 CFR Sections 1500.18(a)(7) and 1500.86(a)(5)," Scott R. Heh, CPSC Directorate for Engineering Sciences, December 1992 [6, Tab B]. For clacker balls with masses of 12 grams or more, or with pivot lengths of 180 mm or more, the current provisions of the regulation will continue to apply.

Cord-strength test. The staff calculated the safety factor that the current regulation applied to the large and heavy clacker balls that the regulation was intended to address and determined that it provides a cord-strength safety factor, for those clacker balls, of approximately 35. Therefore, this safety factor was also applied to the reduced forces proposed to be allowed when testing the cord strength of smaller and lighter clacker balls.

The tensile forces applied to the cord of a clacker ball during use are mainly due to the centrifugal forces generated by the motion of the balls. The centrifugal force of an object is equal to the mass of the object times its acceleration, which in turn is a function of the velocity of the object and the radius of the curve being traveled by the object. The velocity of the ball is established by specifying a maximum "clack" rate of 20 clacks per second. (As specified in the definition of clacker ball at § 1500.18(a)(7), a clack is produced when the two balls collide at the top and bottom of their semicircular paths. The highest clack rate that the Commission's staff was able to achieve in testing was 17 clacks per second.)

Applying the safety factor of 35, the adjusted cord strength value in Newtons can be calculated by $0.1382(m_b)(R_p)$, where m_b is the mass of a single ball in grams and R_p is the radius of the arc described by the ball (pivot length) in mm. Accordingly, the Commission is amending the regulation as set forth below so that this adjusted cord strength value will be one of the criteria for exempting the smaller and lighter clacker balls described above.

Ball-impact test. The current regulation provides that a clacker ball shall be tested by 10 drops of a 5-lb steel weight from a height of 48 inches. The Commission's staff determined that this provides a safety factor of about 20 for the large and heavy clacker balls for which the test was designed.

The clacker ball experiences an impact related to the magnitude of the kinetic energy it achieves in use, which is a function of the mass of the clacker ball times its velocity. The velocity can be calculated from the "clack rate," which, as described above, is assumed

to be 20 clacks per second. Accordingly, the height from which a 5-lb weight must be dropped in order to achieve an impact equal to what the clacker ball can generate, times the safety factor of 20, can be calculated as $179 \times 10^{-5}(m_b)(R_p)^2$, where m_b is the mass of a single ball in grams and R_p is the radius of the arc described by the ball (pivot length) in mm. Accordingly, the Commission amends its regulations to allow this adjusted drop height value to be one of the criteria for exempting the smaller and lighter clacker balls described above.

Holding device test force. Present § 1500.86(a)(5)(ii)(E) provides that the device for holding the cords together shall be tested by applying a force of 50 lb to each cord separately, while the holding device is clamped in position. Since this is half the force provided by the current regulation for the cord-strength test, the Commission amends its regulations to allow an adjusted holding device test force of half the adjusted cord-strength test force, to exempt the smaller and lighter clacker balls described above.

D. Metric Units

Current Federal policy encourages the use of metric units in regulations. Exec. Order No. 12770, 3 CFR, 1991 Comp., p. 343. Accordingly, wherever current § 1500.86(a)(5) uses inch/pound units that can be specified instead in metric units, the amendments proposed below give the corresponding metric units as the primary criteria, with the inch/pound equivalent in parentheses.

E. Correction

The exemptions at § 1500.86(a)(5) have a typographical error in the table in § 1500.86(a)(5)(vi). The word "rental" in the heading of the first column should be "retail." Accordingly, the amendments issued below correct this discrepancy.

F. Effective Date

This amendment grants an exemption. A delayed effective date of 30 days from the date a final rule is issued will be sufficient for parties to test their products to determine whether the products comply with the amended regulation. Accordingly, these amendments will become effective March 28, 1994.

G. Regulatory Flexibility Act Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 et seq.) generally requires the agency to prepare initial and final

regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. The purpose of the Regulatory Flexibility Act, as stated in section 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economics prepared Initial and Final Regulatory Flexibility Act Analyses to examine the effect of the rule on small entities. [6, Tab D; 8, Tab D] The findings of the Final Regulatory Flexibility Analysis are repeated below.

The potential cost of the rule includes the possibility of future injury or death associated with these products, if that were due to less safe clacker balls being on the market because the exemption criteria of the regulation were made less stringent. The Commission has no information that would support a conclusion that this will occur.

The Commission is aware of 13 incidents from January 1, 1973, through 1992 that were associated with clacker balls. [6, Tab C] Three of these incidents involved fatalities. In one of these fatal incidents, a child strangled when she got the cord of a clacker ball around her neck. In the two others, infants were asphyxiated when clacker balls obstructed their airways. Such strangulation and asphyxiation hazards are not addressed by the current requirements for clacker balls.

The remaining 10 incidents involved injuries incurred when users were hit with clacker balls (4), fell on clacker balls (2), or ingested a piece of broken clacker ball (1), or involved a burn (1) or poisonings (2) associated with clacker balls that made a cracking sound and emitted smoke when the balls struck each other. None of these incidents is known to be due to any deficiency in the clacker balls' impact resistance, cord strength, or holding-device strength.

Based on the available epidemiological and engineering information, no potential injuries or deaths are expected to be associated with the amended definition and exemption. Accordingly, no significant costs are expected to be associated with these changes.

The amended definition and exemption will provide benefits to marketers of the product by allowing the

continued marketing of these products as toys and novelties. Marketers would also benefit through an elimination of any uncertainty about enforcement of the existing regulations, and the regulation's effects on future product development would be clarified. The marketers would also benefit by avoiding any cost increases that would be caused by having to come into compliance with the present regulation.

Consumers obtain utility from the use of these products. Sales in 1990 of products similar to the petitioner's are estimated at 10-12 million units, which were valued at \$25-30 million. Sales in 1991 declined to about one million units, and 1992 sales were around two million units. Sales of lightweight, short-cord clacker balls are thought to be insignificant compared to the number of products like the petitioner's that are marketed. However, the available information is not sufficient to enable an accurate estimate. To the extent that consumers enjoy the use of these products, their continued availability is a benefit, and the loss of this product on the market would be a loss to consumers.

All the firms known to be currently marketing these products are small firms. The rule is expected to have a positive impact on these firms.

For the reasons given above, the Commission concludes that the amendments to the Commission's regulations for clacker balls, issued below, will not have any significant adverse economic effect on a substantial number of small entities.

H. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission preliminarily assessed the possible environmental effects associated with the proposed amendments to the clacker ball regulations. [6, Tab D] Because that assessment found that there were no significant environmental effects from the rule, no final assessment is required.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, Toys.

I. Conclusion

For the reasons given above, the Commission amends 16 CFR part 1500 as follows:

PART 1500—[AMENDED]

1. The authority citation for part 1500 is revised to read as follows:

Authority: 15 U.S.C. 1261-1277.

2. Section 1500.18(a)(7) is amended by replacing the second sentence with two new sentences to read as follows:

§ 1500.18 Banned toys and other banned articles intended for use by children.

(a) * * *

(7) * * * (But see § 1500.86(a)(5).) This does not include products that are constructed so that the connecting members consist of plastic rods integrally molded to the balls and are mounted on a pivot so that movement of the balls is essentially limited to a single plane.

§ 1500.86 [AMENDED]

3. Section 1500.86(a)(5)(i)(B) is amended by:

- Replacing "100 pounds" with "445 Newtons (100 pounds)" and
- Adding a new sentence at the end of the paragraph, to read as follows:

§ 1500.86 Exemptions from classification as a banned toy or other banned article for use by children.

(a) * * *

(5) * * *

(i) * * *

(B) * * * Clacker balls where the mass of each ball is less than 12 grams (0.42 oz.) and the distance between the center of the pivot and the center of the ball cannot exceed 180 mm (7.1 inches) may have a minimum cord breaking strength of less than 445 Newtons (100 pounds), as computed by the following formula:

Adjusted Cord Breaking Strength in Newtons = $0.1382(m_b)(R_p)$, where m_b = mass of a single ball in grams and R_p = pivot length in mm.

4. Section 1500.86(a)(5)(ii)(B) is amended by:

- Replacing "5-pound" with "2.25 kg (5-pound)"
- Replacing "2¼-inch" with "57-mm (2¼-inch)"
- Replacing "48 inches" with "1220 mm (48 inches)"
- Replacing "2⅜-inch" with "60-mm (2⅜-inch)" and
- Adding a sentence after the first sentence and before the last sentence, to read as follows:

§ 1500.86 Exemptions from classification as a banned toy or other banned article for use by children.

(a) * * *

(5) * * *

(ii) * * *

(B) * * * Clacker balls where the mass of each ball is less than 12 grams (0.42 oz.) and the distance between the center of the pivot and the center of the ball cannot exceed 180 mm (7.1 inches) may be tested by dropping the impact weight from a height of less than 1220 mm (48 in.), where the height is computed as follows:

Adjusted drop height in mm = $179 \times 10^{-5}(m_b)(R_p^2)$, where m_b = mass of a single ball in grams and R_p = pivot length in mm. * * *

5. Section 1500.86(a)(5)(ii)(D) is amended by:

- Replacing "100-pound" with "445 Newton (100-pound)" and
- Adding two sentences before the last sentence, to read as follows:

§ 1500.86 Exemptions from classification as a banned toy or other banned article for use by children.

(a) * * *

(5) * * *

(ii) * * *

(D) * * * Clacker balls where the mass of each ball is less than 12 grams (0.42 oz.) and the distance between the center of the pivot and the center of the ball cannot exceed 180 mm (7.1 inches) may be tested with a force of under 445 Newtons (100 pounds). The test force for these clacker balls shall be the same as the cord breaking strength calculated in § 1500.86(a)(5)(i)(B). * * *

6. Section 1500.86(a)(5)(ii)(E) is amended by:

- Replacing "50-pound" with "222-Newton (50-pound)" and
- Adding two sentences after the first sentence and before the last sentence, to read as follows:

§ 1500.86 Exemptions from classification as a banned toy or other banned article for use by children.

(a) * * *

(5) * * *

(ii) * * *

(E) * * * Clacker balls where the mass of each ball is less than 12 grams (0.42 oz.) and the distance between the center of the pivot and the center of the ball cannot exceed 180 mm (7.1 inches) may have their holding device tested with a force of less than 222 Newtons (50 pounds). The holding device test force for these clacker balls shall be half of the cord breaking strength calculated in § 1500.86(a)(5)(i)(B). * * *

§ 1500.86 [Amended]

7. Section 1500.86(a)(5)(iv)(C) is amended by:

- a. Replacing "one-quarter inch" with "6 mm (¼ inch)" and
- b. Replacing "one-eighth inch" with "3 mm (⅛ inch)".

8. Section 1500.86(a)(5)(vi) is amended by replacing "rental" in the heading of the first column of the table with "retail".

Dated: February 18, 1994.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Appendix 1—List of Relevant Documents

(This Appendix will not be printed in the Code of Federal Regulations.)

1. Briefing Package—Petition HP 90-2—Clacker Balls: Executive Summary and briefing memorandum "Petition HP 90-2: Clacker Balls," John D. Preston, Project Manager, CPSC Directorate for Engineering Sciences, dated Jan. 27, 1992, with Tabs A, C, and F-J.

TAB A—Petition.

TAB C—Photograph of petitioner's clacker ball.

TAB F—Memorandum from Debbie Tinsworth, CPSC/EPHA, to John Preston, CPSC/ESME, "Clacker Ball Incident Data," April 18, 1991.

TAB G—Memorandum from Terrance R. Karels, CPSC/ECPA to John Preston, Project Manager, "Clacker Ball Petition, HP 90-2," July 23, 1991.

TAB H—Memorandum from John Preston, CPSC/ESME, "Petition HP 90-2, Clacker Balls," October 4, 1991.

TAB I—Memorandum from Bob Poth, CPSC/CERM, to John Preston, Project Manager, CPSC/ESME, "Background of CE Action on 'Newton's Yo-Yo'," Sept. 18, 1991.

TAB J—Proposed Enforcement Policy.

2. Tape recording of Commission briefing on March 25, 1992.

3. Memorandum from John Preston, Project Manager, to the Commission, "Response to Commission Request for Options and Resource Estimates to Respond to the Clacker Ball Petition," June 5, 1992, with revised vote sheet.

4. Commissioners' ballot vote sheets, signed June 29-30, 1992.

5. Letter from the Commission's Secretary to Mr. William G. Hones, President of Fascinations Toys and Gifts, Inc., dated Sept. 23, 1992.

6. Briefing package "Proposed Amendments to the Clacker Ball Regulation at 16 CFR Sections 1500.18(a)(7) and 1500.86(a)(5)," consisting of Executive Summary, briefing memorandum, and Tabs A-E.

Briefing Memorandum, "Proposed Rule Amending the Clacker Ball Regulation at 16 CFR § 1500.18(a)(7) and § 1500.86(a)(5)," April 13, 1993.

TAB A—Photographs of products.

TAB B—Engineering report from Scott Heh, ESME, "Engineering Analysis Supporting Proposed Amendments to the Clacker Ball Regulation at 16 CFR Sections 1500.18(a)(7) and 1500.86(a)(5)," December 17, 1992.

TAB C—Memorandum from Suzanne P. Cassidy, EPHA, "Injuries and Deaths Associated with Clacker Balls," Feb. 1, 1993.

TAB D—Memorandum from A. Homan, ECPA, to Scott R. Heh, ESME, "Regulatory Flexibility and Regulatory Analyses, Economic and Environmental Assessments: Proposed Amendments to the Clacker Ball Regulations," December 10, 1992.

TAB E—Draft Federal Register notice 7. 58 FR 34385 (June 25, 1993).

8. Briefing memorandum from Scott Heh, Project Manager, to the Commission, "Final Rule Amending the Clacker Ball Regulation at 16 C.F.R. Sections 1500.18(a)(7) and 1500.86(a)(5), with Tabs A-E, dated January 19, 1994:

TAB A—Photographs of Products.

TAB B—Memorandum from Suzanne Cassidy EPHA, to Scott Heh, Project Manager, "Injuries and Deaths Associated with Clacker Balls," dated February 1, 1993.

TAB C—Memorandum from Suzanne Cassidy, EPHA, to Scott Heh, Project Manager, "Data Update on Injuries and Deaths Associated with Clacker Balls," dated November 4, 1993.

TAB D—Memorandum from A. Homan, ECPA, "Regulatory Flexibility and Regulatory Analyses, and Economic Assessments: Final Regulatory Amendments to the Clacker Ball Regulation," dated December 1, 1993.

TAB E—Draft Federal Register notice.

[FR Doc. 94-4359 Filed 2-24-94; 8:45 am]

BILLING CODE 6355-01-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 201 and 202

[Docket No. R-94-1636; FR-3021-F-02]

RIN 2502-AF29

Tiered Pricing

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule implements section 203(t) of the National Housing Act. That section prohibits tiered pricing involving a variation in mortgage charge rates that exceeds two percentage points for FHA insured mortgages made by a mortgagee in an area. The purpose of the rule is to eliminate a mortgagee's discriminatory pricing of FHA insured mortgages in a particular area that would either discourage home purchases or place an unfair burden of costs on the borrower. The rule also implements section 539(a)(2) of the National Housing Act by providing a procedure for requests for determination

of a mortgagee's compliance with tiered pricing restrictions or compliance by a mortgagee or Title I lender with related prohibitions on establishing minimum loan amounts.

EFFECTIVE DATE: March 28, 1994.

FOR FURTHER INFORMATION CONTACT:

William Heyman, Director, Office of Lender Activities and Land Sales Registration, Department of Housing and Urban Development, room 9156, 451 Seventh Street SW., Washington, DC 20410, Telephone Number (202) 708-1824; TDD telephone number (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Introduction

The information collection requirements contained in this rule have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control numbers 2502-0265 and 2502-0059.

Section 330(a) of the Cranston-Gonzalez National Affordable Housing Act, entitled "Limitation on Tiered Pricing Practices," amended Section 203 of the National Housing Act to add subsection (t). The new provision restricts "tiered pricing" of single family FHA-insured mortgages. "Tiered pricing" occurs when a mortgagee varies its charges for the same type of mortgage in the same area, usually based on the principal amount of the loan.

Under section 203(t), no mortgagee may make or hold FHA insured mortgages if the customary lending practices of the mortgagee, as determined by HUD, provide for variations of more than two percentage points in the mortgage charge rate based on interest rate, level of discount points, loan origination fees, or any other amount charged to a mortgagor by the mortgagee with respect to a mortgage made within a designated area. The section is concerned with lending practices that may unfairly impose costs and charges that are higher for smaller loans than for larger loans.

HUD published a proposed rule on July 14, 1993, 58 FR 37885, with a request for public comments. HUD received 37 public comments. More than half were from State Bankers Associations; comments also were received from the American Bankers Association, the Mortgage Bankers Association, and mortgagees. The following section summarizes the principal points of the public comments, explains how HUD has responded to the public comments, and