ACTION: Advance notice of proposed rulemaking.

SUMMARY: Based on available data, the Commission has preliminarily determined that there may be an unreasonable risk of injury associated with lawn darts which may be sufficiently severe to warrant regulatory action by the Commission. Lawn darts are devices intended to be used outdoors by being thrown upward and striking the ground point first. A regulation, issued in 1970 by the Food and Drug Administration under the Federal Hazardous Substances Act ("FHSA") and now administered by the Commission, currently bans lawn darts, except for those intended for adult use that (1) are labeled to warn against use by children, (2) include instructions for safe use, and (3) are not sold by toy stores or by store departments dealing predominantly in toys or other children's articles. Despite these restrictions, which are intended to ensure that lawn darts are sold only as a game of skill by adults, serious injuries and deaths to children continue to occur as children continue to play with lawn darts. In addition, the extent to which lawn darts are being sold in violation of these regulations appears to have increased in the past few years. This advance notice of proposed rulemaking ("ANPR") commences a rulemaking proceeding that could result in additional restrictions on the sale of lawn darts or could result in a ban on the manufacture, sale, and distribution of lawn darts. This notice asks for comments on whether such actions would be best accomplished by revoking or amending the present exemption to the FHSA ban, which allows the sale of lawn darts under the conditions described above, or whether action should be taken under the Consumer Product Safety Act, either in addition to revoking or amending the FHSA exemption or in place of such action. In addition, this notice specifically invites any person to submit (1) an existing standard that addresses the risk of injury associated with lawn darts that could be used as a proposed regulation or (2) a statement of intention to develop or propose a voluntary standard to address the risk of injury associated with lawn darts, along with a plan for doing so.

DATE: Comments in response to this ANPR are due no later than December 21, 1987.

ADDRESSES: Comments should be mailed, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 492-6000, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 528, 5401 Westbard Avenue, Bethesda, Maryland.


SUPPLEMENTAL INFORMATION:

A. Background

The Consumer Product Safety Commission was created in May of 1973. Prior to that time, the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261-1270, was administered by the Food and Drug Administration ("FDA"). The FHSA provides that the term "banned hazardous substance" includes "any toy, or other article intended for use by children, which is a hazardous substance." The Child Protection and Toy Safety Act of 1989 (83 Stat. 187-190) amended the FHSA to provide that any toy or other article intended for use by children may be classified as a hazardous substance if it is determined that the article presents an electrical, mechanical, or thermal hazard. Pursuant to this authority, the FDA, on November 17, 1970, proposed, among other things, to declare that lawn darts are banned toys because they present a mechanical hazard and an unreasonable risk of injury. 35 FR 17064.

The FDA received only one comment concerning the proposal to determine that lawn darts present a mechanical hazard. That comment stated that the large outdoor-type darts are intended for use by adults as an outdoor sport or game. The comment contended that suitable labeling can be devised to inform parents or other authorities of the necessity of carefully supervising children if they are to be permitted to play the game and to give other information relating to the safety of all nonplayers in the immediate area.

After considering this comment, the FDA determined in its final rule, published December 19, 1970, that "lawn darts and other similar sharp-pointed toys usually intended for outdoor use and having the potential for causing puncture wound injury, or other injury" presented a mechanical hazard within the meaning of the FHSA, 35 FR 19296. However, the final rule also provided that the following types of lawn darts would not be included within the term "banned hazardous substance":

Lawn darts and similar sharp-pointed articles not intended for toy use and
marked solely as a game of skill for adults, provided such articles:

(1) Be the following statement on the front of the panel of the carton and on any accompanying literature:

Warning: Not a toy for use by children. 
May cause serious or fatal head injury. 
Read instructions carefully. Keep out of the reach of children.

Such statement shall be printed in a sharply contrasting color within a borderline and in letters at least one-quarter inch high on the main panel of the container and at least one-eighth inch high on all accompanying literature, importers, and sellers of lawn darts are complying with the Commission’s regulations under the FSHA.

The ban of lawn darts is codified in §1500.16(a)(4) of Title 16 of the Code of Federal Regulations (CFR). 

In 1984, the Commission received reports that—lawn darts were being sold in certain toy stores. As a result, the Commission’s staff inspected at least 77 retail stores and found seven stores that were selling lawn darts in violation of the ban and exemption. Of the seven retail stores which sold lawn darts, six were toy stores, and three of these were part of the same nationwide chain.

The Commission issued a consumer safety alert in July 1985 warning of the hazards of letting children play with lawn darts.

In June 1987, the Commission’s staff examined the labeling on lawn darts marketed by 14 firms, and products from all 14 firms were found to have labeling violations. Products of eight of the firms were considered to have serious labeling violations, i.e., no required warning statement on the front panel of the package. Other labeling violations included one or more of the following:

- The type size of the required warning statement was smaller than that specified in the exemption, the warning statement was absent from the instructions or was not printed within the borderline as required, and the instructions lacked clear and adequate directions and warnings for safe use.

In addition, Commission field investigators visited 122 retail stores around the country. Included in the 122 stores were 36 toy stores, 60 variety or department stores, and 26 sporting goods stores. Fifty-three of the stores were selling lawn darts, and 16 of these were displaying the product with or in close proximity to toys or sporting goods intended primarily for children.

As a result, the Commission’s compliance staff met on July 17, 1987, with importers and manufacturers of lawn darts, with a representative from the Sporting Goods Manufacturers Association in attendance. At that meeting, the staff discussed five voluntary actions that could be taken by the firms to help assure compliance with the exemption from the ban and to increase consumer awareness of the hazards associated with lawn darts in the hands of children. As a result of this meeting and subsequent requests from industry members for samples of acceptable actions, the Commission believes that lawn dart manufacturers and importers should take the following voluntary actions while the question of regulatory options is being considered by the Commission:

1. The front panel warning label should be modified to make it more conspicuous and readable. The requested modifications include placing the signal word “warning” in upper case letters in type size at least ¼ inch high, in black on an orange “window” that includes the international alert symbol (an exclamation point on a black triangular background). The message should be in upper and lower case black letters, in type size at least ½ inch high, on white. Each sentence should be spaced with a space between these two instructions and the preceding description of the hazard. The recommended front panel warning label reads as follows:

**Warning**

Not a toy for use by children. 
May cause serious or fatal head injury. 
Keep out of reach of children. 
Read instructions carefully.

2. Place a warning label on each lawn dart in a color that contrasts with the firm. The industry attended the July 17, 1987, meeting indicated they would achieve contrast by using another color, such as by contrast-texture.) The recommended label state:

**Warning**

Not a toy for use by children. 
Can cause serious or fatal head injuries. 
Keep children away from throwing or playing. 
The signal word should be in upper case letters in type size at least ¾ inch high. The message words should be an orange “window” that includes the international alert symbol (an exclamation point on a black triangular background). The message should be in upper and lower case black letters, in type size at least ½ inch high. 

3. Change the design of lawn dart packaging to prevent modification, or include a warning against modification with instructions. The Commission recommends the following language:

**Warning**

Not a toy for use by children. 
Can cause serious or fatal head injuries. 
Keep children away from throwing or playing. 
The signal word should be in upper case letters in type size at least ¾ inch high. The message words should be an orange “window” that includes the international alert symbol (an exclamation point on a black triangular background). The message should be in upper and lower case black letters, in type size at least ½ inch high. 

4. Include with each shipment of lawn darts to retailers information on how to display lawn darts. The Commission recommends the following statement:

**Important Safety Information**

It is illegal to sell lawn darts in toy stores or in store departments dealing predominantly in children’s articles. 
DO NOT display lawn darts in sports goods departments near sports equipment intended primarily for children. 

Promote lawn darts for ADULT USE. Children have been injured and killed by lawn darts. 

The heading should appear in upper case letters in at least ¼ inch type and the remainder of the notice appear in upper and lower case letters in at least ½ inch type size.

5. Stop packaging lawn darts in combination sets with other game.

After the meeting on July 17, 1987, the staff wrote to all known lawn dart importers and to the known lawn dart manufacturer and the company that distributes his product both to those 

July 17, 1987, meeting indicated that they would achieve contrast by using another color, such as by contrast-texture.) The recommended label state:

**Warning**

Not a toy for use by children. 
May cause serious or fatal head injuries. 
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Promote lawn darts for ADULT USE. Children have been injured and killed by lawn darts. 

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After the meeting on July 17, 1987, the staff wrote to all known lawn dart importers and to the known lawn dart manufacturer and the company that distributes his product both to those
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4. To direct the staff to develop an ANPR to ban all lawn darts and other similar sharp-pointed toys usually intended for outdoor use and having the potential for causing puncture wounds.

By a unanimous vote, the Commission decided at its October 1, 1987, meeting to issue an ANPR indicating that the Commission may, among other actions, either require the five actions requested of industry at the July 17, 1987, meeting with the staff on ban all lawn darts and similar pointed objects usually intended for outdoor use and having the capacity for causing puncture wound injuries. The latter action would include the possibility of revoking the current exemption from the 1970 ban. Whatever action ultimately would be taken would take into account the results of a surveillance program to be conducted by the Commission's staff three months after publication of the ANPR; the object of the surveillance would be to determine if the industry is in substantial compliance with the existing regulations and with the actions requested at the July 17, 1987, meeting described above. The Commission's final action would further depend upon an evaluation of whether such voluntary or mandatory standards, if enforced, could be expected to protect consumers from unreasonable risk of injuries. In addition, the ANPR would include inquiries to the public which will enable the Commission to obtain information relevant to whether the current exemption should be revoked or amended. The staff was further directed to vigorously enforce the current FHSA provisions on lawn darts and to issue a consumer alert annually.

In addition, the Commission will request the U.S. Customs Service to consider including lawn darts in the Operation Toyland program. This will enable CPSC and the Customs Service to jointly examine incoming shipments of lawn darts. Those which fail to comply with the labeling provisions of the exemption will be seized by the Customs Service.

The staff was also directed to begin immediately preparing an injury update, human factors, analysis, economic cost/benefit report, possible medical evaluation of data, and other relevant data and analysis that will be needed to determine whether further regulatory action for lawn darts is appropriate.

B. The Product

Lawn darts are devices that are intended to be used outdoors and that are designed so that when they are thrown into the air they will contact the ground point first. Often, lawn darts are used in a game where the darts are thrown at a target or other feature on the ground. A lawn dart typically might be about a foot in length and weight perhaps half a pound.

The tip of the lawn dart often consists of a rod about ¼ inch in diameter, with a rounded end. Although the tip is not necessarily sharp enough to present an obvious danger of puncture, the momentum of the dart in flight, when impact occurs with the tip of the dart, can be sufficient to cause puncture or fracture wounds that can cause serious injury or death.

The Commission's staff estimates that at least 500,000 lawn dart sets are sold annually. One domestic manufacturer, a distributor of that manufacturer's products, and 15 importers of lawn darts have been identified. Several firms also have been identified as major distributors or private labelers. Because of the ease of importing the product, it is possible that there are additional private label imports being marketed in this country.

Lawn darts are available in sets by themselves and in combination sets with other lawn games; e.g., badminton and volleyball. In sets by themselves, the retail price for lawn darts range from about $5.00 to $10.00. The average price is about $5.00 per set. Consumers may consider lawn darts that are packaged in combination with other sporting goods equipment to be as safe as the other games in the package, and it appears that consumers would be likely to consider lawn darts appropriate for children if the other games are appropriate for children.

C. Risk of Injury

The risk that the Commission intends to address in this proceeding is that of punctures, fractures, and lacerations to children caused by lawn darts being used by children. As mentioned above, the potential for these devices to cause these types of injuries is not necessarily obvious to parents or other adults who might buy these items or allow their children to play with them, much less to the children themselves.

The Commission's staff estimates that about 6,100 injuries from lawn darts were treated in U.S. hospital emergency rooms between January 1976 and December 1986. This represents an average of 675 injuries per year treated in emergency rooms. Approximately 57% of the injuries involved the head, face, eye, or ear; nearly 8% of the injuries were fractures or puncture wounds. Approximately 54% of the injured victims were hospitalized (on the average, less than approximately 25 per
year), including all of the injuries reported as fractures. Approximately 81% of the victims were under age 15; over 50% of the victims were under age 10. In addition, Commission records dating back to at least 1970 show that at least three children have been killed by injury to the head and/or injury to the hand from lawn darts.

In the 1980 lawn dart injury reports for which information about the user of the lawn darts was available, the majority of the reports indicated that children were playing with the lawn darts, despite the ban and exemption which were developed to keep the product out of the hands of children.

B. Regulatory Alternatives Under Consideration

The potential hazards associated with lawn darts and the compliance of this product with the existing regulations have received much attention and publicity during the past few months. The recent death of a seven-year-old girl and the related information presented at Congressional hearings have raised questions about the adequacy of the existing ban with its broad exemption.

The main question to be decided by the Commission is whether additional restrictions on the sale of lawn darts, such as those discussed in the July 17, 1987 meeting between the industry and the Commission's compliance staff, will be adequate to keep the product out of the hands of children or whether this goal can be achieved only by stopping the sale of the product. Whichever of these approaches is deemed ultimately to be the most appropriate, there is the additional question of whether it can be achieved by voluntary actions on the part of the industry or whether a regulation will be required to ensure that children do not use this product.

The various alternatives are discussed below.

Prohibition of sale versus additional restrictions on sale. The object of this proceeding is to ensure that lawn darts are kept out of the hands of children. From the injuries and deaths that have occurred since the FDA issued the ban and exemption that allowed the sale of lawn darts with certain labels and instructions, and that were not marketed in toy stores or store departments that predominantly sold children's articles, it appears that the existing limitations on the sale of lawn darts may be insufficient. The additional limitations discussed at the July 17, 1987 meeting between the industry and the Commission's compliance staff, if uniformly adopted, should be more effective in avoiding purchase of the product by children or by adults at the immediate instigation of children. Also, the labels should help inform adults before purchase that the product is not suitable for children. In addition, the labels and instructions should better communicate to adults the need to keep the product away from children.

It is not clear, however, that even these additional restrictions on the sale of lawn darts would be adequate to keep the product out of the hands of children. It can be argued that the product has such a strong inherent appeal to children, whom cannot be supervised at every moment, that they will use the product regardless of the warning labels or on the darts themselves or in the instructions. On the other hand, it may be that increased restrictions, coupled with increased efforts by the Commission's staff to ensure that the exemption is not violated, would reduce the risk adequately. The more drastic regulatory alternative of a ban would not be necessary. The Commission solicits comment on the likely efficacy of additional restrictions on the sale of lawn darts to adequately recede the risk to children from this product.

Comment darts would be shipped under specific terms of the five actions requested of the lawn dart industry are also sought.

Statutory remedies. At present, the Commission has not decided which, if any, regulatory option it may elect to address the risks of injury associated with lawn darts. The following is a discussion of the statutory alternatives available to the Commission.

If lawn darts as a class are deemed to be articles intended for use by children, the darts, would be regulated under the provisions of the FHSA for mechanical hazards of children's products. Sec. 211014, (d)(2)15 U.S.C. 1261f51,15 U.S.C. 209(6). If at least some lawn darts were deemed to be children's products, while other lawn darts might not be children's products, a regulatory proceeding to address the hazards could be conducted either under both the CPSC and the FHSA or under the CPSA alone, after a finding that it is in the public interest to do so as provided in section 30(d) of the CPSA.

An article intended for use by children which has been declared by rule to be a hazardous substance is banned under section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261n214, (1)(A), unless exempted. Since a general ban of lawn darts already exists under 16 CFR 1500.16(a),(4), to effect a ban of lawn darts under the FHSA the Commission would revoke the exemption at 16 CFR 1500.66(a),(3).

The Commission is authorized, under section 7 of the CPSA, to promulgate a mandatory consumer product safety standard which sets forth certain performance requirements for a consumer product or which sets forth certain requirements that a product be marked or otherwise adequately warned or labeled. 15 U.S.C. 2056. A performance, warning, or instruction standard must be reasonably necessary to prevent or reduce an unreasonable risk of injury. In addition, if the Commission finds that no feasible consumer product standard under section 7 would adequately protect consumers from an unreasonable risk of injury associated with lawn darts, the Commission may promulgate a rule under section 8 of the CPSA declaring some or all lawn darts to be banned products. 15 U.S.C. 2057.

The procedures and requisite findings to accomplish any of the mandatory regulatory alternatives under consideration under either or both statutes are the same; both acts use a three-stage rulemaking procedure. At each stage of the rulemaking, the Commission is required to consider certain topics and make specified findings, particularly about the status of voluntary standards and about the costs and benefits of the contemplated rule.

The requirements for promulgating a mandatory rule are set out in section 7 of the CPSA, 15 U.S.C. 2056, and section 3(f) of the FHSA, 15 U.S.C. 1261f3. An advance notice of proposed rulemaking ("ANPR") is the first step in a regulatory proceeding that could lead to a final rule. The second step is the issuance of a proposed rule followed by public comment. The third step is the issuance of a final rule. If the Commission decides after this ANPR to proceed with a mandatory standard, its staff could develop a proposed rule. In the alternative, any interested person may in response to this ANPR, submit an existing standard as a proposed mandatory safety standard. In either case, the Commission would proceed with a proposed and a final rule, subject to the second and third rulemaking steps.

However, it may not be necessary to proceed to the second and third rulemaking steps. If the Commission determines that a voluntary standard developed in response to the ANPR is likely to eliminate or adequately reduce the risk of injury, and that it is likely that there will be substantial compliance with such voluntary standard, the CPSC and the FHSA require that the Commission terminate the rulemaking proceeding.
All comments and submissions should be provided to the Office of the Secretary, at the address given at the beginning of this notice, no later than December 21, 1987.


Sadye E. Dunn, Secretary, Consumer Product Safety Commission.

List of Relevant Documents


Petition from David L. Snow asking that the CPSC ban lawn darts (Petition HP-67-3), received in the Office of the Secretary, September 23, 1987.

[FR Doc. 87-2424 Filed 10-19-87; 8:45 am]

BILLING CODE 4355-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Office of the Secretary

24 CFR Part 28

[Docket No. 87-1344; FR-2310]

Implementation of Program Fraud Civil Remedies Act of 1986

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the Program Fraud Civil Remedies Act of 1986 by establishing administrative procedures for imposing civil penalties and assessments against persons who file false claims or statements while applying for certain benefits provided by the Federal Government.


ADDRESS: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10270, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Patricia M. Black, Assistant General Counsel for Inspector General and Administrative Proceedings, Office of General Counsel, Room 10260, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 775-7200. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On October 21, 1986, the President signed the Omnibus Reconciliation Act of 1986, which enacted the Program Fraud Civil Remedies Act of 1986 (PFRA), Pub. L. 99-509. PFRA establishes in HUD, among other authorities, administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to the Department or its agents. In general, anyone who, with knowledge or reason to know, submits a false, fictitious, or fraudulent claim or statement to HUD is liable for a penalty of up to $5,000 per claim and an assessment of up to double damages. However, §25.5(c) of the proposed rule reflects the Act's restricted applicability with respect to certain beneficiaries under any housing assistance program for lower income families or for elderly or handicapped persons administered by HUD. Under this section, the ultimate beneficiary of such programs (examples of which are listed below) may be held liable for a false claim or statement relating to such benefits only if the false claim or statement is made in making application for such benefits and is made with respect to that beneficiary's...