

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

RIN 3041-AC77

Revocation of Regulations Banning Certain Baby-Walkers

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: In this document, the Consumer Product Safety Commission ("CPSC" or "Commission") is revoking its existing regulations pertaining to baby-walkers because those regulations are being replaced by a new and more comprehensive safety standard applicable to baby-walkers. The new standard is being added by the Commission in a separate document published elsewhere in this issue of the FEDERAL REGISTER.

DATES: Effective [insert the date 6 months from the date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

A. Background

1. The CPSC's regulation for baby-walkers. CPSC regulations at 16 CFR 1500.18(a)(6) and 1500.86(a)(4) ban any "baby-bouncer," "walker-jumper," "baby-walker," and "any other similar article" that does not meet specified safety criteria. These regulations were issued in 1971 by the Food and Drug Administration ("FDA") under the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261-1278 (available at <http://www.cpsc.gov/businfo/fhsa.pdf>). 36 FR 21809 (Nov. 16, 1971). On May 14, 1973, the functions under the FHSA were transferred to the then newly-created CPSC.

Specifically, 16 CFR 1500.18(a)(6) bans baby-walkers, baby-bouncers, walker-jumpers and "any other similar article" that is intended to support very young children while "sitting walking, bouncing, jumping, and/or reclining," and which, because of its design, has any exposed parts capable of causing amputation, crushing, lacerations, fractures, hematomas, bruises, or other injuries to fingers, toes, or other parts of the anatomy of young children. The regulation describes the hazardous design features of such articles warranting the ban as including, but not being limited to, one or more of the following:

- Areas about the point on each side of the article where the frame components are joined together to form

an X-shape capable of producing a scissoring, shearing, or pinching effect;

- Other areas where two or more parts are joined in such a manner as to permit rotational movement capable of exerting a scissoring, shearing, or pinching effect;
- Exposed coil springs which may expand sufficiently to allow an infant's finger, toe, or other body part to be inserted, in whole or in part, and injured by being caught between the coils of the spring or between the spring and another part of the article;
- Holes in plates or tubes which also provide the possibility of insertion of a finger, toe, or other part of the anatomy that could then be injured by the movement of another part of the article; or
- A design and construction that permits accidental collapse while in use.

Exemptions to the ban are at 16 CFR 1500.86(a)(4). These include any baby-walker (or the other subject products) where:

- The frames are designed and constructed in a manner to prevent injury from any scissoring, shearing, or pinching when the members of the frame or other components rotate about a common axis or fastening point or otherwise move relative to one another; and

- Any coil springs which expand when the article is subjected to a force that will extend the spring to its maximum distance so that a space between successive coils is greater than one-eighth inch (0.125 inch) are covered or otherwise designed to prevent injuries; and
- All holes larger than one-eighth inch (0.125 inch) in diameter, and slots, cracks, or hinged components in any portion of the article through which a child could insert, in whole or in part, a finger, toe, or any other part of the anatomy, are guarded or otherwise designed to prevent injuries; and
- The articles are designed and constructed to prevent accidental collapse while in use; and
- The articles are designed and constructed in a manner that eliminates from any portion of the article the possibility of presenting a mechanical hazard through pinching, bruising, lacerating, crushing, breaking, amputating, or otherwise injuring portions of the human body when in normal use or when subjected to reasonably foreseeable damage or abuse; and
- Any article which is introduced into interstate commerce after the effective date of [the regulation] is labeled:

-- With a conspicuous statement of the name and address of the manufacturer, packer, distributor, or seller; and

-- With a code mark on the article itself and on the package containing the article or on the shipping container, in addition to the invoice(s) or shipping document(s), which code mark will permit future identification by the manufacturer of any given model (the manufacturer shall change the model number whenever the article undergoes a significant structural or design modification);

and

- The manufacturer or importer of the article shall make, keep, and maintain for 3 years records of sale, distribution, and results of inspections and tests conducted in accordance with this subparagraph and shall make such records available at all reasonable hours upon request by any officer or employee of the Consumer Product Safety Commission and shall permit such officer or employee to inspect and copy such records, to make such stock inventories as such person deems necessary, and to otherwise check the correctness of such records.

The existing regulations do not include any requirements specifically pertaining to hazards associated with falls down

stairs, structural integrity, occupant retention, or loading/stability issues.

As discussed earlier in this part A.1 of this preamble, the regulations at 16 CFR 1500.18(a)(6) and 1500.86(a)(4) apply to any "baby-bouncer," "walker-jumper," "baby-walker," and "any other similar article." The regulations do not define those terms, and when FDA promulgated those regulations in 1971, it expressly rejected comments that sought a description of the regulated articles [Ref. 9]. (Documents supporting statements in this notice are identified by [Ref. #], where # is the number of the reference document as listed below in section G of this notice.)

2. Recent statutory changes affecting baby-walkers. The Consumer Product Safety Improvement Act of 2008 ("CPSIA"), Pub. L. No. 110-314, 122 Stat. 3016 (available at <http://www.cpsc.gov/cpsia.pdf>), was enacted on August 14, 2008. Section 104 of the CPSIA directs the Commission to take a number of actions concerning "durable infant or toddler products." Section 104(f) of the CPSIA defines a durable infant or toddler product as a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years. This includes cribs, toddler beds, high chairs, booster chairs, hook-on chairs, bath seats, gates and other enclosures for confining a child, play yards, stationary activity centers,

infant carriers, strollers, walkers, swings, bassinets, and cradles. Section 104(b) of the CPSIA provides, in part, that the Commission shall, in consultation with representatives of consumer groups, juvenile product manufacturers, and independent child product engineers and experts, examine and assess the effectiveness of any voluntary consumer product safety standards for durable infant or toddler products. The Commission also is directed to promulgate consumer product safety standards that are substantially the same as such voluntary standards or that are more stringent than such voluntary standards if the Commission determines that more stringent standards would further reduce the risk of injury associated with the products.

Baby-walkers are one of the first two products addressed in these rulemakings. On September 3, 2009, the Commission proposed a safety standard for infant walkers. 74 FR 45704. Elsewhere in this issue of the FEDERAL REGISTER, the Commission is issuing a new safety standard for infant walkers, based largely on the provisions of the current ASTM voluntary standard. Given the anticipated new safety standard for infant walkers, the Commission, on September 3, 2009, proposed a rule to revoke 16 CFR 1500.18(a)(6) and 1500.86(a)(4). 74 FR 45714.

3. The voluntary standard for infant walkers. The current voluntary standard for Infant Walkers, *The Standard Consumer Safety Specification for Infant Walkers* (ASTM F977-07) [Ref. 1]

is published by the American Society for Testing and Materials (now ASTM International, or ASTM). The ASTM voluntary standard defines an infant walker as a mobile unit that enables a child to move on a horizontal surface when propelled by the child sitting or standing within the walker, and that is in the manufacturer's recommended use position. This standard has provisions to address the following:

- Latching or Locking Mechanisms;
- Openings;
- Scissoring, Shearing, and Pinching;
- Exposed Coil Springs;
- Labeling;
- Protective Components;
- Stability;
- Structural Integrity;
- Occupant Retention; and
- Prevention of Falls Down Step(s).

ASTM F977-07 contains provisions pertaining to scissoring, shearing, pinching, and accidental collapse that are stricter, or more conservative, than the existing CPSC regulation. With regard to exposed coil springs and openings, the ASTM voluntary standard differs somewhat from the existing CPSC regulation.

The specifications in ASTM F977-07 for coil springs and openings (holes) are similar in concept to those in the mandatory regulation, but are less restrictive as to allowable dimensions. For instance, the voluntary standard prohibits any hole or slot between 0.210" and 0.375" in size that extends entirely through a wall section of any rigid material less than 0.375" thick. The existing regulation bans any baby-walker that contains a hole larger than 0.125" in diameter, and it does not contain a depth requirement.

The rationale for the ASTM standard was based on anthropometric data developed for the CPSC by the University of Michigan in 1975. (Snyder, R. G., Spencer, M. L., Owings, C. L. & Schneider, L. W. (1975), *Physical Characteristics of Children As Related to Death and Injury for Consumer Product Design and Use, Prepared for the Consumer Product Safety Commission (UM-HSRI-BI-75-5 Final Report Contract FDA-72-70 May 1975)*, Highway Safety Research Institute, The University of Michigan, May 31, 1975.) This data set sampled body measurements of children from 2 weeks to 13 years of age. The measurements relevant here are the little finger diameter and middle finger diameter. The intent of the ASTM standard is to prevent entrapments by making openings either too small for the smallest user to penetrate with their smallest finger or larger than the largest user's biggest finger (thereby allowing the finger to be withdrawn

without entrapment). The existing CPSC regulations were never revised or updated to take this data into consideration. Thus, the requirements in the CPSC regulations are outdated in this respect. However, the CPSC regulations also provide that hazards presented by holes and by maximum coil spring spacing are acceptable if they are "otherwise designed to prevent injuries." This allows baby-walkers that comply with the ASTM voluntary standard to also comply with the CPSC requirements.

B. Required Accredited Third Party Testing and Certification of Baby-Walkers

Section 14(a)(2) of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2063(a)(2) (available at <http://www.cpsc.gov/cpsia.pdf>), as amended by section 102 of the CPSIA, requires manufacturers and private labelers of children's products (such as baby-walkers) that are subject to a children's product safety rule to submit sufficient samples of the children's product, or samples that are identical in all material respects to the product, to a CPSC-recognized accredited third party conformity assessment body (i.e., testing laboratory) to be tested for compliance with any applicable children's product safety rule. (The term "children's product safety rule" is defined at 15 U.S.C. 2063(f)(1). See also 15

U.S.C. 2052(a)(5), 2052(a)(6).) For the purposes of the CPSA, the term "manufacturer" includes an importer. 15 U.S.C. 2052(a)(11).

The Commission has issued regulations at 16 CFR 1110 concerning the content of certificates of compliance and limiting the parties who must issue such certificates to the United States importer and, in the case of domestically produced products, the United States manufacturer. Based on such testing, the manufacturer and private labeler must issue a certificate stating that such children's product complies with the children's product safety rule based on the assessment of a third party conformity assessment body accredited to conduct such tests.

Unless stayed by the Commission, these requirements apply to any such children's product that is manufactured more than 90 days after the Commission has established and published a notice of the requirements for accreditation of third party conformity assessment bodies to assess conformity with any children's product safety rule to which such children's product is subject. Section 14(a)(3) of the CPSA, 15 U.S.C. 2063(a)(3). However, if the Commission determines that an insufficient number of third party conformity assessment bodies have been accredited to permit certification for a children's product safety rule, the Commission may extend the deadline for certification to such

rule by not more than 60 days. Section 14(a)(3)(F) of the CPSA, 15 U.S.C. 2063(a)(3)(F).

Section 14(a)(3) of the CPSA also provides a schedule for the dates by which the Commission must publish the notices of the requirements for accreditation of third party conformity assessment bodies for various children's products. For "baby bouncers, walkers, and jumpers," the statute specified that the Commission publish a notice of the requirements for accreditation of third party conformity assessment bodies "to assess conformity with parts 1500.18(a)(6) and 1500.86(a)" and that such publication occur not later than 210 days after the date of enactment of the CPSIA, or March 12, 2009. The Commission did not issue that notice of requirements because the proposed rule to revoke 16 CFR 1500.18(a)(6) and 1500.86(a)(4) made it unproductive to issue a notice of requirements that referenced those regulations. As noted above, elsewhere in this issue of the FEDERAL REGISTER the Commission is issuing a final safety standard for infant walkers, 16 CFR part 1216, effective [insert date that is 6 months after publication in the FEDERAL REGISTER]. Also, the Commission is issuing a notice of requirements for testing infant walkers for certification to the new safety standard for infant walkers. On a schedule to be determined, the Commission also will issue a notice of

requirements applicable to the current requirements for baby-bouncers, walker-jumpers, and similar products.

C. Issues Presented in the Proposal and CPSC's Responses

In the preamble to the proposed rule (74 FR at 45718), the Commission noted that there could be some question about whether there are products that fall within 16 CFR 1500.18(a)(6) and 1500.86(a)(4), but not within any ASTM standard. A possible example of this might be jumpers that affix to door frames.

The Commission specifically invited comments on: (1) Whether there are products that are covered by 16 CFR 1500.18(a)(6) and 1500.86(a)(4), but not by any ASTM voluntary standard; (2) whether retention of CPSC's current regulations for those specific products is warranted; and (3) whether there are specific requirements in 16 CFR 1500.18(a)(6) and 1500.86(a), but not in any ASTM standard, that warrant retention.

There were no comments filed in the docket for the proposed revocation of 16 CFR 1500.18(a)(6) and 1500.86(a)(4) (CPSC Docket No. CPSC-2009-0066). However, in the companion proposal to issue a new safety standard for infant walkers based on ASTM F 977-07 (CPSC Docket No. CPSC-2009-0065), one commenter argued that the old regulations should still apply to the products other than infant walkers. Another commenter, although

apparently focusing on a potential time gap between revoking the old regulations and issuing the new regulation for infant walkers, stated "we cannot allow for some products to not be covered by the safety standard regulations possibly increasing the number of injured children."

The Commission concludes that it is not in the public interest to revoke the existing requirements of 16 CFR 1500.18(a)(6) and 1500.86(a)(4) as they apply to baby-bouncers, walker-jumpers, and any other similar article except baby-walkers. Having these requirements will make it easier to obtain a recall or other corrective actions if products that present a hazard due to a failure to meet some existing requirement. Any negative effect of having particular dimensions specified in these regulations that are based on outdated anthropometric data is neutralized by the provision in the regulations that allows products that are "otherwise designed to prevent injuries." The Commission would consider an effective requirement based on current anthropometric data to be designed to prevent injuries. Accordingly, only the requirements in 16 CFR 1500.18(a)(6) and 1500.86(a) that apply to baby-walkers are being revoked.

D. Paperwork Reduction Act

This rule does not impose any information collection requirements. Accordingly, this rule is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501-3520.

E. Environmental Considerations

This rule falls within the scope of the Commission's environmental review regulation at 16 CFR 1021.5(c)(1), which provides a categorical exclusion from any requirement for the agency to prepare an environmental assessment or environmental impact statement for rules that revoke product safety standards. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Effective Date

The preamble to the proposed rule specified that the revocation of the existing regulations would be effective upon the date of termination of the stay of testing and certification requirements originally announced in the FEDERAL REGISTER of February 9, 2009 (74 FR 6396), or upon the effective date of the new mandatory standard, whichever occurs first (see 74 FR at 45718). The reason that the proposed revocation could become effective upon the termination of the stay of testing and

certification, even though the new mandatory standard was not yet issued, was to prevent firms from having to test and certify infant walkers to a standard that would shortly be replaced by a newer, more comprehensive one.

After the proposal was published in the FEDERAL REGISTER, the Commission extended the stay for many children's products, including baby-walkers, baby-bouncers, walker-jumpers, and similar products, to 90 days after the Commission issues a notice of requirements for the applicable regulatory requirement [Ref. 12]. Because the Commission will not be issuing a notice of requirements for testing and certifying baby-walkers to the standards in 16 CFR 1500.18(a)(6) and 1500.86(a)(4), no testing or certification to those standards will be required. Accordingly, the revocation of the provisions of those standards applicable to baby-walkers can become effective on the effective date of the new mandatory standard for infant walkers without requiring any testing under the old standard. Testing and certification to the requirements of 16 CFR 1500.18(a)(6) and 1500.86(a)(4) as they apply to the products other than baby walkers will be required 90 days after the Commission publishes a notice of requirements for those products at some future date.

G. References

1. ASTM voluntary standard F 977-07, *Standard Consumer Safety Specification for Infant Walkers*.
2. Memorandum from P. Edwards, Project Manager, to the Commission, "Notice of Proposed Rulemaking - Recommending the Revocation of CPSC Regulation for Baby Bouncers, Walker-Jumpers, and Baby-Walkers, 16 CFR §1500.18(a)(6) and § 1500.86(a)(4)," dated August 14, 2009.
3. Snyder, R. G., Spencer, M. L., Owings, C. L. & Schneider, L. W. (1975), *Physical Characteristics of Children As Related to Death and Injury for Consumer Product Design and Use, Prepared for the Consumer Product Safety Commission (UM-HSRI-BI-75-5 Final Report Contract FDA-72-70 May 1975)*, Highway Safety Research Institute, The University of Michigan, May 31, 1975.
4. ASTM voluntary standard F 2012, *Standard Consumer Safety Performance Specifications for Stationary Activity Centers*.
5. ASTM voluntary standard F 2167, *Standard Consumer Safety Specification for Infant Bouncer Seats*.
6. CPSC staff memorandum to Jacqueline Elder, Assistant Executive Director, Office of Hazard Identification and Reduction, from Patricia Hackett, Division of Mechanical Engineering, "Regulatory Review of CPSC Regulation for Baby

Bouncers, Walker-Jumpers, and Baby-Walkers, 16 CFR §§ 1500.18(a)(6) and 1500.86(a)(4)," dated April, 24, 2007.

7. CPSC staff memorandum from Mark E. Kumagai, Director, Division of Mechanical Engineering, Directorate for Engineering Sciences, "Staff Draft Proposed Final Rule - Revocation of CPSC Regulation for Baby-Walkers, 16 CFR 1500.18(a)(6) and 1500.86(a)(4)," May 5, 2010.

8. 36 FR 7255-56 (April 16, 1971).

9. 36 FR 21809-10 (Nov. 16, 1971).

10. 73 FR 68328 (Nov. 18, 2008).

11. 74 FR 6396 (Feb. 9, 2009).

12. 74 FR 68588 (Dec. 28, 2009).

List of Subjects in 16 CFR Part 1500

Baby walkers, Consumer protection, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, Toys

For the reasons stated in the preamble, the Consumer Product Safety Commission amends 16 CFR part 1500 as follows:

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES; ADMINISTRATION AND
ENFORCEMENT REGULATIONS

1. The authority citation for 16 CFR part 1500 continues to read as follows:

AUTHORITY: 15 U.S.C. 1261-1278.

2. Amend § 1500.18(a)(6) introductory text by revising the first sentence to read as follows:

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

(a) * * *

(6) Any article known as a "baby-bouncer" or "walker-jumper" and any other similar article (referred to in this paragraph as "article(s)"), except an infant walker subject to part 1216, which is intended to support very young children while sitting, bouncing, jumping, and/or reclining, and which because of its design has any exposed parts capable of causing amputation, crushing, lacerations, fractures, hematomas, bruises, or other injuries to fingers, toes, or other parts of the anatomy of young children.

3. Amend § 1500.86 by revising paragraph (a)(4) introductory text to read as follows:

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

(a) * * *

(4) Any article known as a "baby-bouncer" or "walker-jumper" and any other similar article (referred to in this paragraph as "article(s)"), except an infant walker subject to part 1216 of this chapter, described in § 1500.18(a)(6) provided:

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Dated: June 9, 2010

Todd Stevenson, Secretary
U.S. Consumer Product Safety Commission

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