



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

BALLOT VOTE SHEET

DATE: **AUG 14 2009**

TO: The Commission

THROUGH: Todd A. Stevenson, Secretary *TAS*
 Maruta Budetti, Executive Director *MZB*
 Cheryl A. Falvey, General Counsel *CAF*
 Philip L. Chao, Assistant General Counsel *PLC*

FROM: Harleigh Ewell, Attorney, GCRA *HE*

SUBJECT: Revocation of Regulation Banning Certain Baby-Walkers and Similar Products -
 16 C.F.R. §§ 1500.18(a)(6) and 1500.86(a)

Ballot Vote Due: **AUG 20 2009**

Attached for the Commission's consideration is a draft proposed rule that would revoke the ban of certain baby-walkers and similar products at 16 C.F.R. §§ 1500.18(a)(6) and 1500.86(a). The Office of the General Counsel is providing its legal analysis concerning this action in a separate (restricted) memorandum.

Please indicate your vote on the proposed revocation of this ban.

I. Approve publication of the draft proposal in the *Federal Register* without change.

 (Signature)

 (Date)

II. Do not approve publication of the draft proposal in the *Federal Register*.

 (Signature)

 (Date)

Note: This document has not been reviewed or accepted by the Commission.
 Initials RF Date 8/14/09

(1) CLEARED for
NO MEMBERS/PRIVILEGES OF
PRODUCTS IDENTIFIED
 EXCEPTED BY: PETITION
 RULEMAKING ADMIN. PROC
 WITH PORTIONS REMOVED

III. Approve publication of the draft proposal in the *Federal Register* with changes.

(Please specify.)

(Signature)

(Date)

IV. Other.

(Please specify.)

(Signature)

(Date)

Attachment: Draft Proposed Rule: Revocation of Regulation Banning Certain Baby-Walkers, Walker-Jumpers, and Similar Products

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

[No. INSERT CPSC DOCKET NO.]

Proposed Rule: Revocation of Regulation Banning Certain Baby-Walkers, Walker-Jumpers, and Similar Products

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Consumer Product Safety Commission ("CPSC" or "Commission") is proposing to revoke certain regulations pertaining to baby-bouncers, walker-jumpers, baby-walkers, and similar products. CPSC is taking this action because the regulations, which originally were issued in 1971, are outdated and do not provide the degree of safety that is provided by currently manufactured baby walkers that comply with a more effective voluntary standard. This action also will eliminate confusion about whether manufacturers should certify that their products comply with these regulations or with a new mandatory safety standard for baby-walkers proposed elsewhere in this issue of the FEDERAL REGISTER.

DATES: Submit comments by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To ensure timely processing of comments, the Commission is no longer directly accepting comments submitted by electronic mail (e-mail). The Commission

encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described below in paragraph 1, "Electronic Submissions."

You may submit comments, identified by Docket No. [insert CPSC docket number], by any of the following methods:

1. Electronic Submissions

Submit electronic comments to the Federal eRulemaking Portal: <http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.regulations.gov>. Follow the instructions for submitting comments.

2. Written Submissions

Submit written submissions in the following ways:

FAX: 301-504-0127.

Mail/Hand delivery/Courier (for paper, disk, or CD-ROM submissions): Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received, including any personal information provided, may be posted without change to <http://frwebgate.access.gpo.gov/cgi->

[bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.regulations.gov](http://www.regulations.gov/bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.regulations.gov). Accordingly, we recommend that you not submit confidential business information, trade secret information, or other sensitive information that you do not want to be available to the public. For additional information on comments, see part E of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts.

FOR FURTHER INFORMATION CONTACT:

Technical information. Patricia Edwards, Division of Mechanical Engineering, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, 301-504-7577, pedwards@cpsc.gov.

Legal information. Harleigh Ewell, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, 301-504-7683, hewell@cpsc.gov.

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) ban any "baby-bouncer," "walker-jumper," or "baby-walker" and any other similar article" (referred to below as "baby-walkers") 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 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 can be found at 16 CFR
1500.86(a)(4). These include any baby-walker where:

(i) 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

(ii) 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

(iii) 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

(iv) The articles are designed and constructed to prevent accidental collapse while in use; and

(v) 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

(vi) Any article which is introduced into interstate commerce after the effective date of [the regulation] is labeled:

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

(B) 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

(vii) 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) 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. FDA stated that:

The terms "baby-bouncers" and "baby-walkers" are used both by industry and the general public to describe the items intended to be covered by these regulations and the use of these designations will help clarify the scope of the regulations. The phrase "or other

similar articles" clarifies the purpose of the regulations to include within their scope all articles conforming to the descriptions in the regulations whether or not they are called by those specific names.

36 FR 21809.

2. The voluntary standard for infant-walkers. The current voluntary standard for Infant Walkers, *The Standard Consumer Safety Specification for Infant Walkers* (ASTM F977-07) is published by the American Society for Testing and Materials (now ASTM International, or ASTM) (Memorandum from P. Edwards, Project Manager, to the Commission dated _____, 2009). 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.

The University of Michigan study is also the basis for the specifications for allowable openings that are in other ASTM juvenile-product standards. In addition to the study's validity, the standards use this data because the less restrictive dimensional specification allows for products to be made from thinner materials with reinforced

ribbing, such as injection molded plastics. When the existing CPSC regulations were published, baby-walkers were typically made with metal tube frames. Molded plastics are used more predominately today in juvenile products, and, when manufactured in accordance with the ASTM specifications for openings, these materials have not been shown to create finger or toe entrapment or pinch hazards.

The inclusion of the terms "baby-bouncers" and "walker-jumpers" in the regulations may be because some baby-walkers had spring-like devices, and the occupant could bounce or jump while also moving horizontally.

A bouncer seat, as currently defined by ASTM, is a freestanding product intended to support an occupant in a reclined position to facilitate bouncing by the occupant. Intended occupants are infants who have not developed the ability to sit up unassisted (approximately 0 to 6 months of age). These products are covered by ASTM voluntary standard F2167, *Standard Consumer Safety Specification for Infant Bouncer Seats*.

Jumpers are not defined in any ASTM standard, but there are some juvenile products known as jumpers. These include seats suspended from door frames that facilitate jumping. Although these jumpers are not covered by a voluntary standard, the Commission's staff is not aware of

any recent incidents involving these products that would have been prevented by the regulations. Apparently, these products do not currently present the hazards addressed by the regulations.

There also are jumpers mounted on a dedicated freestanding frame. These jumpers are covered under ASTM voluntary standard F2012, *Standard Consumer Safety Performance Specifications for Stationary Activity Centers*.

3. Incident data. The known baby-walker incidents from the year 2000 to the present uncovered no incidents where fingers were pinched, stuck, or entrapped and the specific circumstances were known. From the information available, it appears that the causes of most incidents are outside the scope of CPSC's regulations. CPSC staff did not find any incidents that would be directly impacted if the Commission were to revoke the regulations. Most baby-walker incidents resulting in injuries or deaths are a result of the product falling down steps, a hazard that is not addressed by the existing regulations but that is covered under ASTM's voluntary standard.

4. Compliance/Recall Information. The Commission's Office of Compliance reviewed the recalls and cases opened on baby walkers over the last 20 years. The Compliance staff did not find any recalls associated with openings or

coil springs. One case occurred where the regulation's requirements for openings and coil springs were not met. This case was found when a baby walker was intercepted at the port of entry. The primary hazard associated with this product was lack of stair fall protection. Compliance staff also is not aware of any recalls for finger entrapment hazards in any other juvenile products that conform to ASTM's specifications for openings. This indicates that the voluntary standards are adequate to address the openings hazard.

B. Future mandatory regulation of 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. The CPSIA contains some requirements with broad applicability, as well as some product-specific provisions. 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 is also 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.

Section 104(b) of the CPSIA also specifies that these new mandatory standards for durable infant or toddler products shall be issued on a compressed schedule. The statute directs the Commission to begin the rulemaking for these standards by August 14, 2009, and to promulgate standards for no fewer than two categories of durable infant or toddler products every six months thereafter, beginning with the product categories that the Commission

determines to be of highest priority. This process will continue until the Commission has promulgated standards for all such product categories.

Baby-walkers are one of the first two products addressed in these rulemakings. Elsewhere in this issue of the FEDERAL REGISTER, the Commission is proposing a safety standard for baby-walkers. Thus, the Commission expects that there will be an updated, more effective mandatory standard for baby walkers issued by February 14, 2010. The Commission expects that the requirements of that mandatory standard will be based largely on the provisions of the current ASTM voluntary standard, discussed earlier in part A.2 of this preamble.

To illustrate how a new regulation might use concepts currently seen in the ASTM voluntary standard, the current regulations at 16 CFR 1500.18(a)(6) and 1500.86(a) do not contain requirements to protect against falls down stairs. The voluntary ASTM standard, however, does contain a stair-fall protection provision for baby walkers that provides that a walker must either stop at the edge of a step or be too wide to fit through a standard-size doorway. There have been numerous incidents and deaths associated with baby walkers that do not contain stoppers or brakes to prevent walkers from falling down stairs. CPSC's

Compliance staff has conducted numerous recalls involving baby walkers due to the lack of stair-fall protection. If the CPSC were to promulgate regulations to address stair-fall protection and make any walker that does not contain stair-fall protection a banned product, a number of future incidents and deaths from stair falls would be prevented.

C. Required accredited third party testing and certification for 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 an accredited third party conformity assessment body to be tested for compliance with any applicable children's product safety rule. ("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 part 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. (Products, other than children's products, that are subject to a consumer product safety rule also are subject to testing and certification requirements. 15 U.S.C. 2063(a)(1).) The certification also must be based on a reasonable testing program or a test of each product. For these products, however, the tests are not required to be conducted by an accredited third party conformity assessment body.

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

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).

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 proposed rule, if finalized, would revoke 16 CFR §§ 1500.18(a)(6) and 1500.86(a) and, as a result, make it unproductive to issue a notice of requirements that references those regulations. Furthermore, the requirement for the testing and certification of many products, including baby-walkers, has been stayed by the Commission until Feb. 10, 2010, at which time the Commission will vote on whether to terminate the stay. 74 FR 6396 (Feb. 9, 2009). By then, as noted above in part B of this preamble, the Commission intends to

develop an up-to-date mandatory standard to which baby walkers can be tested and certified.

D. Discussion

As can be seen from the information presented above in part A.2 of this preamble, the Commission's current requirements for baby-walkers are outdated and are not based on the most recent anthropometric data. This unduly restricts the design choices available to the manufacturers of baby walkers without providing any additional safety. Furthermore, the current voluntary standard not only deals adequately with the hazards addressed by the Commission's regulation but also covers other major hazards, such as falls down stairs, associated with the product.

CPSC staff reviewed the existing baby-walker regulation in 2006 as part of the Program for Systematic Review of Commission Regulations and recommended that a project be undertaken to consider revoking the regulations on baby-walkers. (Memorandum to Jacqueline Elder, Assistant Executive Director, Office of Hazard Identification and Reduction, from Patricia Hackett, Division of Mechanical Engineering, dated April, 24, 2007.)

As discussed above in part B of this preamble, the Commission intends to issue a new mandatory standard for

baby walkers in the next year. The new standard is likely to address the stair-fall hazard and be largely based on the current voluntary standard. As noted in part C, after the current stay of testing and certification requirements for many products, including baby walkers, is terminated (on or after Feb. 10, 2010), children's products subject to a mandatory standard will have to be tested by a third party conformity assessment body and certified as complying with the standard. The anticipated new mandatory standard probably will not issue until shortly before or even after Feb. 10, 2010. As that date approaches, notwithstanding the absence of a notice of requirements for baby walkers, if the current mandatory standard is still in place and a rule to revoke it has not been issued, the manufacturers of baby walkers may be uncertain as to what requirements they should certify to after the stay is terminated. To avoid this uncertainty and any associated expense to the industry or conformity assessment bodies, the Commission is proposing to revoke its regulations pertaining to baby-walkers and proposing that any final rule revoking those regulations will become effective on the date of termination of the stay of the testing and certification requirements for baby walkers or upon the effective date of the new mandatory standard to be developed, whichever

occurs first. In the meantime, CPSC's staff will encourage baby walker manufacturers to comply with the voluntary standard.

E. Questions Pertaining to the Products Covered by 16 CFR 1500.18(a)(6) and 1500.86(a) and ASTM's Standards

The Commission notes that there may be some question as to whether there are products that arguably fall within 16 CFR 1500.18(a)(6) and 1500.86(a), but not within any ASTM standard. A possible example of this might be jumpers that affix to door frames, as discussed earlier in part A.2 of this preamble.

Additionally, there may be some question about whether the regulations afford some protections that the ASTM standards do not. For example, if one concluded that certain jumpers are covered by the regulations, but not by ASTM standards, one might assert that the regulations need to be retained to cover such products.

Therefore, the Commission specifically invites comments on: (1) Whether there are products that are covered by 16 CFR 1500.18(a)(6) and 1500.86(a), 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. Identification of the specific product(s) and requirement(s) would be particularly helpful.

F. Paperwork Reduction Act

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

G. Environmental Considerations

This proposed 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.

H. Effective Date

The Commission proposes that a final rule to revoke 16 CFR §§ 1500.18(a)(6) and 1500.86(a) become effective on the date of termination of the stay of the 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 to be developed, whichever occurs first. If necessary, the revocation could become effective immediately upon its date of publication in the *Federal Register*. Section 553(d) of the Administrative Procedure Act ("APA") excludes certain final rules from the otherwise applicable APA requirement that the effective date of a rule be at least 30 days after the rule is published. 5 U.S.C. 553(d). One such exclusion is for a rule that relieves a restriction. Because the proposed rule would, if finalized, relieve certain restrictions for baby-bouncers, walker-jumpers, and baby-walkers, a delayed effective date would not be necessary.

I. References

1. ASTM voluntary standard F977-07, *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 _____, 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 F2012, *Standard Consumer Safety Performance Specifications for Stationary Activity Centers*.

5. ASTM voluntary standard F2167, *Standard Consumer Safety Specification for Infant Bouncer Seats*.

6. 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. 36 FR 7255-56 (April 16, 1971).

8. 36 FR 21809-10 (Nov. 16, 1971).

9. 73 FR 68328 (Nov. 18, 2008).

10. 74 FR 6396 (Feb. 9, 2009).

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous substances, Imports,
Infants and children, Labeling, Law enforcement, Reporting
and recordkeeping requirements, Toys

For the reasons stated above, and under the authority
of 15 U.S.C. 1261-1262 and 5 U.S.C. 553, the Consumer
Product Safety Commission proposes to amend 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. Section 1500.18 is revised by deleting the text in
paragraph (a)(6) and replacing it with "[Reserved]."

3. Section 1500.86 is revised by deleting the text in
paragraph (a)(4) and replacing it with "[Reserved]."

Dated: _____

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



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Memorandum

DATE: **AUG 14 2009**

To: The Commission
Todd Stevenson, Secretary

Through: Cheryl Falvey, General Counsel *File for CAP*
Maruta Budetti, Acting Executive Director *MB*

From: Robert J. Howell, Assistant Executive Director *RJH*
Office of Hazard Identification and Reduction
Patricia L. Edwards, Project Manager *PE*
Directorate for Engineering Sciences

SUBJECT: Notice of Proposed Rulemaking – Revocation of CPSC Regulations for
Baby-Bouncers, Walker-Jumpers, and Baby-Walkers, 16 CFR
§ 1500.18(a)(6) and § 1500.86(a)(4)

Overview

CPSC staff is recommending that the Commission issue a Notice of Proposed Rulemaking (NPR) for the revocation of the existing regulations for baby-bouncers, walker-jumpers, baby-walkers and “any other similar article,” 16 CFR § 1500.18(a)(6) and § 1500.86(a)(4). (For the remainder of this briefing memo, the product will be referred to as a baby-walker). The reasons for the recommendation are outlined in this briefing memo.

CPSIA Requirements

Section 102(a)(2) of the Consumer Product Safety Improvement Act (CPSIA), Mandatory Third Party Testing for Certain Children’s Products, requires that the Commission publish a notice of requirements for the accreditation of third party conformity assessment bodies to assess conformity of baby-bouncers, walkers, and jumpers with 16 CFR § 1500.18(a)(6) and § 1500.86(a)(4).

Section 102(a)(2) of the CPSIA provides that 90 days after the CPSC issues notice of requirements, every importer and manufacturer or private labeler of baby-bouncers, walkers, and jumpers must have their product(s) tested by an accredited independent testing lab and, based on the testing, issue a certificate that the product meets all applicable CPSC requirements and that specifies those requirements.

Section 102(a)(2) of the CPSIA requires the Commission to publish laboratory accreditation requirements for these products by March 12, 2009, and that third-party testing begin by June 2009. However, the Commission has delayed, until February 10, 2010, the testing and certification requirements for some products, including baby-bouncers, walkers and jumpers.

Section 104(b) of the CPSIA, Standards and Consumer Registration of Durable Nursery Products, requires the Commission to study and develop safety standards for certain infant and toddler products, including baby-walkers. The Commission is charged with examining and assessing the effectiveness of any voluntary consumer product safety standards and for promulgating consumer product safety standards for these products.

Baby-walkers have been chosen by CPSC staff as one of the first products to be regulated under section 104 of the CPSIA. CPSC staff is planning a draft Notice of Proposed Rulemaking (NPR) for baby-walkers for Commission review in July 2009. The draft NPR is intended to cover hazards addressed in the existing baby-walker CPSC regulations [16 CFR § 1500.18(a)(6) and § 1500.86(a)(4)] as well as hazards associated with falls down stairs, structural integrity, occupant retention, and loading/stability issues. To meet the schedule outlined in the CPSIA, the mandatory rule for baby-walkers is expected to be approved on or before February 14, 2010.

16 CFR § 1500.18(a)(6) and § 1500.86(a)(4)

The existing CPSC regulation for baby-walkers, 16 CFR § 1500.18(a)(6), bans those products which, because of their design, present a mechanical hazard. The regulations were published in 1971 (see Tab A: Federal Register Vol. 36, No. 221 – Tuesday, November 16, 1971) and transferred to CPSC by the then-U.S. Department of Health, Education and Welfare on May 14, 1973. Specifically, the existing regulations ban any baby-walkers having:

1. An X shaped frame capable of producing a scissoring, shearing, or pinching effect;
2. Two or more parts joined in such a manner as to permit rotational movement capable of exerting a scissoring, shearing or pinching effect;
3. Exposed coil springs which may expand to allow an infant's finger, toe or other body part to be inserted;
4. Holes in plates or tubes which also provide the possibility of insertion of a finger, toe or other body part; or
5. A design and construction that permits accidental collapse.

The exemptions to the ban are in 16 CFR § 1500.86(a)(4) and generally include products that have been designed and constructed to prevent accidental collapse of the product and products whose designs eliminate mechanical hazards associated with scissoring, shearing, pinching, and entrapment or that otherwise injure portions of the human body when in normal use or when subjected to reasonably foreseeable damage or abuse.

The existing regulations do not include any specific requirements pertaining to hazards associated with falls down stairs, structural integrity, occupant retention, or loading/stability issues.

CPSC staff reviewed the existing baby-walker regulation in 2006 as part of the Program for Systematic Review of Commission Regulations. In a memo to Jacqueline Elder, Assistant Executive Director, Office of Hazard Identification and Reduction, on April, 24, 2007, CPSC staff recommended that a project be undertaken in future years to consider eliminating the regulations on baby-walkers, 16 CFR § 1500.18(a)(6) and § 1500.86(a)(4), which are outdated.

Baby-Walker, Baby-Bouncer, or Walker-Jumper

When the regulations were first proposed in 1971 (see Tab B: Federal Register Vol. 36, No 71 – April 16, 1971), the products covered by the rules were specified as “walker-jumpers.” They were also referred to as “baby-bouncers” and “baby-walkers.” The products were described as intended to be used by infants while sitting, walking, bouncing, jumping, and/or reclining. The intended age range for these products was 4 to 18 months in age (see Figures 1-4 for older designs of these products).

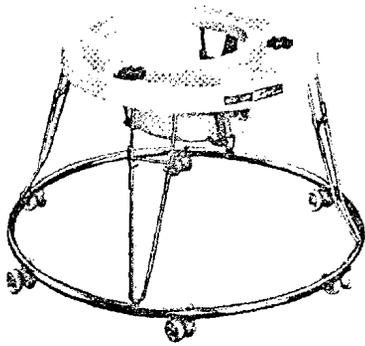


Figure 1: Baby-Walker (circa 1969)

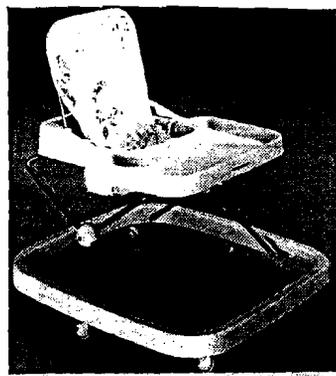


Figure 2: Walker-Jumper (circa 1982)

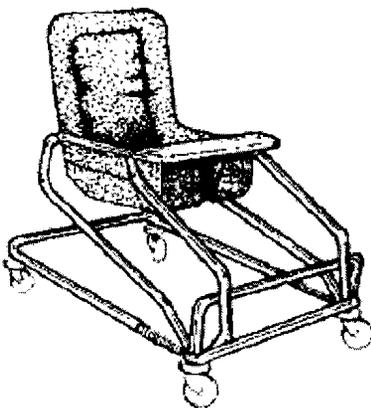


Figure 3: Baby-Bouncer (ref. ASTM F977)

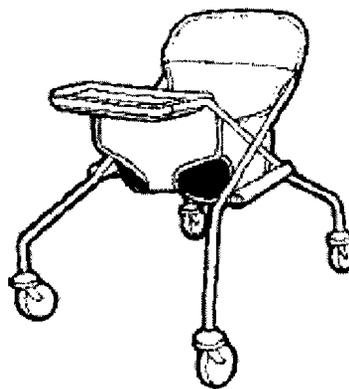


Figure 4: X-Frame Walker (ref. ASTM F977)

The products covered by the 1971 regulations and illustrated in Figures 1-4 are similar to the products covered by the current voluntary standard for Infant Walkers, published by the American Society for Testing and Materials (now ASTM International, or ASTM), F977-07 *Standard Consumer Safety Specification for Infant Walkers* and defined as:

walker, n—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.

Figures 5 and 6 show two different baby-walkers that are currently on the market. Both of these products meet the requirements in the current ASTM walker standard, F977-07.

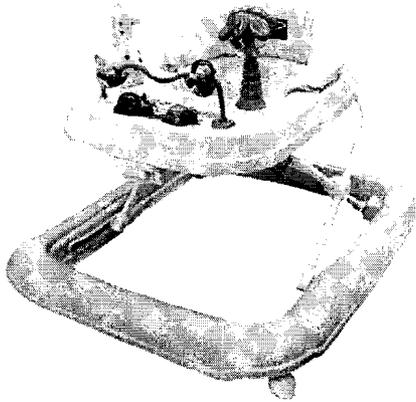


Figure 5: X-Frame Baby-Walker (circa 2009)

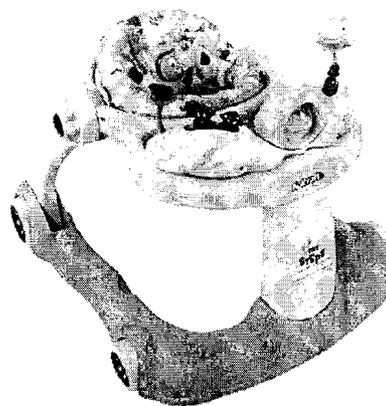


Figure 6: Baby-Walker (circa 2009)

A bouncer seat, as currently defined by ASTM, is a freestanding, product intended to support an occupant in a reclined position to facilitate bouncing by the occupant (see Figure 7). Intended occupants are infants who have not developed the ability to sit up unassisted (approximately 0 to 6 months of age).

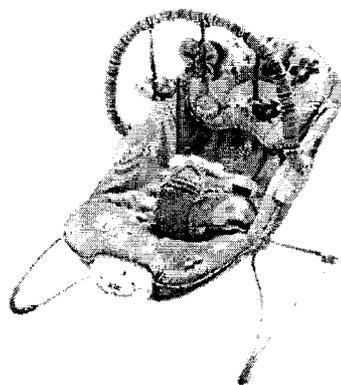


Figure 7: Typical Bouncer Seat (circa 2009)

Based on the definition and intended age range for bouncer seats, it is evident that the bouncer seats are stationary products, not intended to be moved on a horizontal surface by the occupant. ASTM first published F2167 *Standard Consumer Safety Specification for Infant Bouncer Seats* in 2001.

Jumpers are not defined in any ASTM standard, but there are some juvenile products known as jumpers. These include seats suspended from door frames that facilitate jumping, as seen in Figure 8, or freestanding, stationary jumpers as seen in Figure 9. As can be seen with both products, they are not intended to be moved on a horizontal surface by the occupant. These stationary jumpers are covered under ASTM voluntary standard F2012, *Standard Consumer Safety Performance Specifications for Stationary Activity Centers*, which was first published in 2000.

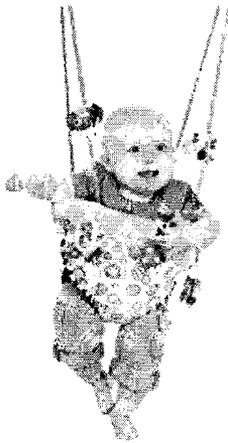


Figure 8: Doorway Jumper (circa 2009)



Figure 9: Stationary Jumper (circa 2009)

The inclusion of the products named “baby-bouncers” and “walker-jumpers” in the 1971 regulations may be because some of the earlier baby-walkers had spring-like devices (see Figures 2 and 3) and thus the occupant could also bounce or jump while using them.

Voluntary Standard for Infant Walkers

The ASTM voluntary standard for infant walkers was first approved and published by ASTM in 1986 as F977-86 *Standard Consumer Safety Specification for Infant Walkers*. The standard has been revised a number of times since then, and the current version was published in 2007 with requirements to address the following:

- Latching or Locking Mechanisms
- Openings
- Scissoring, Shearing, Pinching
- Exposed Coil Springs
- Labeling
- Protective Components

- Stability
- Structural Integrity
- Occupant Retention
- Prevention of Falls Down Step(s)

The requirements in ASTM F977-07 pertaining to scissoring, shearing, pinching, and accidental collapse are similar to but stricter, or more conservative, than the existing CPSC regulation. With regard to exposed coil springs and openings, the ASTM voluntary standard requirements differ somewhat from the existing CPSC regulation. These requirements are discussed in more detail below.

Coil Springs/Openings (Holes) Discussion

Voluntary Standard Requirements

The requirements in ASTM F977-07 for coil springs and openings (holes) are similar in concept to what are found in the mandatory regulations, but are less restrictive in the dimensional aspects of the requirements. 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 regulations ban any baby-walker that contains a hole larger than 0.125” in diameter but does not have an upper limit for the hole size, nor does it contain a depth requirement.

The rationale for the ASTM requirement was based on anthropometric data developed for the CPSC by the University of Michigan in 1975¹. This data set was developed by sampling body measurements of children from 2 weeks to 13 years of age. The relevant dimensions under discussion are the little finger diameter and middle finger diameter. The intent of the ASTM standard is to prevent entrapments by limiting access to openings – making them either too small for the smallest user to penetrate with their smallest finger or larger than the largest user’s biggest finger. The existing CPSC regulations were never revised or updated to take this data into consideration. Thus, the requirements in the regulations are outdated in this respect, and the validity of the dimensional requirements could be called into question.

The University of Michigan study is the basis for the openings requirements found in other ASTM juvenile product standards as well. The standards also use this data because the less restrictive dimensional requirement allows for products to be made from thinner materials with reinforced ribbing, such as injection molded plastics. When the existing regulations were published, baby-walkers were typically made from metal tube frames. Molded plastics are used more predominately today in juvenile products and when manufactured in accordance with the

¹ 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.

ASTM requirements for openings, these materials have not been shown to create finger or toe entrapment or pinch hazards.

Incident Data

A data search for baby-walker incidents from 2000 to the present uncovered a few incidents where fingers were pinched, stuck, or entrapped but no in-depth investigations (IDI's) were conducted for these incidents; thus, the specific circumstances are not known. Research into the incidents involving baby-walkers (as much as was possible given the amount of information available) showed that most dealt with issues that are outside the scope of the existing regulations. Most baby-walker incidents resulting in injuries or deaths are a result of the product falling down steps, a hazard that is not addressed by the existing regulations but is covered under the ASTM voluntary standard. CPSC staff did not find any incidents that would be directly impacted if the Commission were to revoke the regulation.

Compliance/Recall Information

The Office of Compliance staff reviewed the recalls and cases opened on baby-walkers over the last twenty years. The Compliance staff did not find any recalls associated with openings or coil springs. One case occurred where the regulation requirements for openings and coil springs were not met. This case was found when a baby-walker was intercepted at the port of entry. The primary hazard associated with this product was lack of stair fall protection. Compliance staff also is not aware of any recalls for finger entrapment hazards in any other juvenile products that conform to the ASTM openings requirements. This indicates that the requirements in the voluntary standards are adequate to address the openings hazard.

Summary and CPSC Staff Recommendation

The voluntary standard, ASTM F977-07 *Standard Consumer Safety Specification for Infant Walkers*, contains requirements similar to the CPSC existing regulations on baby-walkers [16 CFR § 1500.18(a)(6) and § 1500.86(a)(4)]. The requirements in ASTM F977-07 for coil springs and openings (holes) are less restrictive than the requirements in the regulations. The rationale for the ASTM requirement was based on anthropometric data developed for the CPSC by the University of Michigan in 1975. The existing CPSC regulations were never revised to take this data into consideration.

A review of recent incident data for finger entrapments in juvenile products that conform to ASTM juvenile product standards openings requirements indicates that such problems are not prevalent. It can be concluded that the coil spring and openings requirements in the current baby-walker voluntary standard are adequate to prevent finger or toe entrapment or pinch hazards. In addition, the hazard associated with most baby-walker injuries and deaths, stair falls, is not addressed in the existing regulation, but is covered under the ASTM voluntary standard. Therefore, it is the staff's opinion that the existing regulations on baby-walkers are outdated and should be revoked.

Furthermore, the staff is in the process of preparing a draft Notice of Proposed Rulemaking for a new standard for baby-walkers for the Commission's consideration, as dictated in section 104 of the CPSIA. This proposed regulation would cover the hazards addressed in the existing baby-walker regulations as well as hazards associated with falls down stairs, structural integrity, occupant retention, and loading/stability issues.

As noted above, the staff expects to present a final rule on the new standard for the Commission's consideration on or before February 14, 2010. However, the Commission's stay of testing and certification requirements for baby-walkers may be terminated as of February 10, 2010. As that date approaches, manufacturers will be more concerned about which standard for baby-walkers will be in effect when the stay is terminated (the existing ones found in 16 CFR § 1500.18(a)(6) and § 1500.86(a)(4) or the new standard being developed to comply with section 104 of the CPSIA). This confusion can be eliminated by issuing a rule revoking the existing standard well in advance of February 10, 2010.

For these reasons, the staff recommends that the Commission issue a Notice of Proposed Rulemaking (NPR) for the revocation of the existing regulations for baby-bouncers, walker-jumpers, and baby-walkers; 16 CFR § 1500.18(a)(6) and § 1500.86(a)(4).