

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Baby Walkers; Termination of Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Termination of rulemaking.

SUMMARY: In August of 1994 the U.S. Consumer Product Safety Commission (CPSC or Commission) published an advance notice of proposed rulemaking under authority of the Federal Hazardous Substances Act (FHSA) stating that it had reason to believe that baby walkers might present an unreasonable risk of injury or death due to stair falls. 59 FR 39306.

The Commission now has information that demonstrates that currently available baby walkers do not present "an unreasonable risk of personal injury" due to stair falls. A finding of unreasonable risk of personal injury is a necessary prerequisite under the FHSA for the Commission to declare an article intended for use by children to be a hazardous substance due to a mechanical hazard.

The FHSA also prohibits the Commission from declaring that an article intended for use by children presents a mechanical hazard if there is an adopted and implemented voluntary standard that addresses the risk unless it can make, *inter alia*, one or more of the following findings. One is that compliance with the standard will not adequately reduce or eliminate the risk. Another is that it is unlikely that there will be substantial compliance with the standard.

The Commission finds that currently available information demonstrates that the existing voluntary standard adequately reduces the risk of injury associated with the use of baby walkers. Testing has demonstrated that walkers complying with the voluntary standard are unlikely to fall down stairs. Baby walker-related stair fall injuries have declined substantially as walkers that comply with the voluntary standard have become more widespread in the marketplace. The Commission finds further that there is presently substantial compliance with the voluntary standard (99% according to surveys). The Commission finds further that, because the industry is dominated by five large manufacturers, all of which are presently producing walkers that comply with the voluntary standard, there likely will be substantial compliance with the voluntary standard in the future.

Accordingly, the Commission has terminated the baby walker regulatory proceeding.

Termination of the baby walker stair fall proceeding has no effect on the FHSA baby walker mechanical injury prevention and labeling requirements at 16 CFR 1500.18(a)(6) and 1500.86(a)(4). These requirements remain in full force and effect.

FOR FURTHER INFORMATION CONTACT: Barbara J. Jacobson, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0477, ext. 1206; e-mail: bjacobson@cpsc.gov

SUPPLEMENTARY INFORMATION:

A. The Product

A baby walker is a device that supports a child so that the child can use its feet to move around before, or while, learning to walk. A baby walker generally consists of a fabric seat with leg openings mounted to a rigid plastic deck. The deck is attached to a base that usually has wheels to make it mobile. A walker generally can be folded for storage, and may have a feeding tray, adjustable seat height and a bouncing mechanism. Activity toys may be attached to the tray, and some walkers have wheel lock mechanisms.

B. Background of the Rulemaking

The Commission initiated the proceeding to address baby walker stair falls with an advance notice of proposed rulemaking (ANPR) in August 1994. 59 FR 39306. This proceeding had no effect on the existing baby walker mechanical injury prevention and labeling requirements at 16 CFR 1500.18(a)(6) and 1500.86(a)(4) previously promulgated under authority of the FHSA. These requirements remain in full force and effect.

At the time the ANPR was issued, baby walkers were associated with a higher number of injuries than any other type of nursery product. The majority of the injuries occurred as a result of children falling down stairs while in baby walkers.

Thirteen comments were received in response to the ANPR. Seven commenters supported a mandatory rulemaking. Six commenters were opposed to a mandatory rulemaking. Five of the commenters who opposed the mandatory rulemaking requested that any new baby walker requirements be developed through the ASTM voluntary standards setting process.

After publication of the ANPR, Commission staff worked with the ASTM Walker Subcommittee to add new performance requirements to the

voluntary walker standard to address the stair fall hazard. A revised ASTM F977 standard incorporating these improvements received final ASTM approval on October 10, 1996 and was published in early 1997.¹

C. Relevant Statutory Provisions

The CPSC baby walker proceeding was conducted pursuant to the FHSA. 15 U.S.C. 1261 *et seq.* Section 2(f)(1)(D) of the FHSA defines "hazardous substance" to include any toy or other article intended for use by children that the Commission determines, by regulation, presents an electrical, mechanical, or thermal hazard. 15 U.S.C. 1261(f)(1)(D). An article may present a mechanical hazard if its design or manufacture presents an unreasonable risk of personal injury or illness during normal use or when subjected to reasonably foreseeable damage or abuse. Among other things, a mechanical hazard could include a risk of injury "(5) from lack or insufficiency of controls to reduce or stop motion, * * * or (9) because of any other aspect of the article's design or manufacture." 15 U.S.C. 1261(s). Thus, in this proceeding, for the Commission to declare baby walkers to be hazardous substances due to a mechanical hazard, it would find that currently available baby walkers pose an unreasonable risk of personal injury as a result of "lack or insufficiency of controls to reduce or stop motion."²

Section 3(i)(2) of the FHSA prohibits the Commission from making a determination that an article intended for use by children presents a mechanical hazard, and therefore is a banned hazardous substance by operation of law, if there is an adopted and implemented voluntary standard that addresses the risk in question unless it can make, *inter alia*, one or more of the following findings.³ 15

¹ Copies of ASTM F977-00 Standard Consumer Safety Specification for Infant Walkers are available from ASTM. The URL for the ASTM world wide web site is: www.astm.org

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

³ The FHSA contains two other pertinent constraints on Commission action in the face of voluntary standards activities, neither of which is apropos here. The first directs the Commission to consider publishing as a proposed CPSC regulation an adequate existing standard submitted to it during the period specified in an advance notice of proposed rulemaking (ANPR). 15 U.S.C. 1262(g)(1). No such standard was submitted in response to the August 1994 ANPR. The second requires the Commission to terminate the rulemaking proceeding and rely on an adequate existing voluntary standard developed in response to a commitment and schedule for development thereof

U.S.C. 1262(i)(2). One is that compliance with the standard is not likely to eliminate or adequately reduce the risk. 15 U.S.C. 1262(i)(2)(A)(i). Another is that it is unlikely that there will be substantial compliance with the voluntary standard. 15 U.S.C. 1262(i)(2)(A)(ii).

D. There Has Been a Significant Reduction in the Risk of Injury From Baby Walkers Since 1995

Based on data from the Commission's National Electronic Injury Surveillance System (NEISS), baby walker-related injuries have dropped 63 percent since 1995, from 20,100 emergency room treated injuries to 7,400.⁴ The number of U.S. live births has increased slightly, approximately 4%, since 1995. Comparing the estimated number of injuries over the same time period, the rate of injury per 1,000 live births has dropped 65% from 1995 to 2000.

CPSC received two reports of baby walker-related deaths in 2001, the first reports of baby walker deaths since 1997. The deaths were from head injuries incurred from falls down stairs. Investigations showed that both walkers were older-style walkers manufactured before the stair-fall improvements were incorporated into ASTM voluntary standard F977, Standard Consumer Safety Specification for Infant Walkers.

The Commission concludes that the consistent decrease in injuries would preclude a finding that currently available walkers present "an unreasonable risk of personal injury." 15 U.S.C. 1261(s).

E. ASTM Voluntary Standard F977-00

Beginning in 1994, after publication of the ANPR, CPSC staff worked with the ASTM Walker Subcommittee to add new performance requirements to the voluntary walker standard to address the stair fall hazard. The new performance requirements passed final ASTM balloting in August 1996, received final approval on October 10, 1996, and the revised F977 standard was published by ASTM in early 1997.

The revised standard incorporates a performance test methodology that simulates a child in a walker moving across the floor, through a doorway, and

submitted to it during the period specified in an ANPR. 15 U.S.C. 1262(g)(2). No such commitment and schedule were received in response to the 1994 ANPR.

⁴Memorandum from Debra Sweet, Division of Hazard Analysis, Directorate for Epidemiology, to Barbara Jacobson, Project Manager for Baby Walkers, Directorate for Health Sciences, Baby Walker-Related Deaths and Injuries, March 13, 2002. This and other materials relevant to this proceeding are available on the CPSC website at www.cpsc.gov

to a stairway. A dummy represents a child in the walker. The walker is tested facing forward, backward, and sideways. If the walker passes through the 36-inch wide opening at the end of a test table and falls off the table, the walker fails to meet the performance requirements. If the walker stops at the edge of the test table and any part of the walker extends over the edge of the table, a tip-over test is performed. The walker fails to meet the requirements of the ASTM standard if it then falls off the table during the tip-over test.

The performance test parameters were selected to be representative of stringent conditions, including use of test dummy weights that reflect both ends of the weight range of children 6-15 months old expected to use walkers and maximum expected walker speeds, child strength capabilities, and tip-over conditions.

The CPSC staff conducted two 6-month special studies of walker-related incidents from November 1, 1999 through April 30, 2000 and November 1, 2000 through April 30, 2001 to identify the types of walkers involved in recent stair fall incidents. The results of those studies indicate that most of the recent stair fall incidents involve older walkers not meeting the revised F977 standard. In light of the results of this study, a Commission finding that compliance with ASTM standard F977 is not likely to eliminate or adequately reduce the risk could not be justified. 15 U.S.C. 1262(i)(2)(A)(i).

F. Compliance With ASTM Standard F977

According to information provided to CPSC staff by the Juvenile Products Manufacturers Association (JPMA), all five domestic walker manufacturers comply with the revised ASTM standard. CPSC staff estimates that more than 99 percent of all baby walkers sold in the U.S. between 1997 and 2001 were in compliance with the revised ASTM standard. The JPMA also indicates that 98 percent of the baby walkers currently available for sale in the U.S. comply with revised ASTM standard F977. Apparently, the remaining small percentage of non-complying walkers is imported by small firms. Thus the Commission could not at this time support a finding that it is unlikely that there will be substantial compliance with ASTM F977.

G. Conclusion

As a result of the foregoing analysis, the Commission has made a decision to terminate the baby walker stair fall rulemaking.

To avoid any potential misunderstanding, it is again reiterated that the Commission decision to terminate the baby walker stair fall proceeding has no effect on the FHSA baby walker mechanical injury prevention and labeling requirements at 16 CFR 1500.18(a)(6) and 1500.86(a)(4). These requirements remain in full force and effect.

Dated: May 2, 2002.

Todd A. Stevenson,
Secretary, Consumer Product Safety Commission.

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DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 266-2002]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice, Bureau of Prisons, proposes to exempt a Privacy Act system of records from the following subsections of the Privacy Act: (e)(1) and (e)(5). This system of records is the "Inmate Central Records System, (JUSTICE/BOP-005)", as modified and described in today's notice section of the **Federal Register**. This system continues to be exempted from the subsections of the Privacy Act enumerated in 28 CFR 16.97(a) and (b), as previously promulgated.

The additional exemptions are necessary to preclude the compromise of institution security, to better ensure the safety of inmates, Bureau personnel and the public, to better protect third party privacy, to protect law enforcement and investigatory information, and/or to otherwise ensure the effective performance of the Bureau's law enforcement functions.

DATES: Submit any comments by July 8, 2002.

ADDRESSES: Address all comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (1400 National Place Building).

FOR FURTHER INFORMATION CONTACT: Mary Cahill, (202) 307-1823.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, this order will not have a significant economic impact on a substantial number of small entities.