

[Products Liability Law Daily Wrap Up, TOP STORY—BABY PRODUCTS—CPSC proposes safety standard for children’s gates and enclosures, \(Jul. 9, 2019\)](#)

Products Liability Law Daily Wrap Up

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NPRM addresses hazards such as small parts, lead paint, and scissoring.

The Consumer Product Safety Commission (CPSC) published a notice of proposed rulemaking (NPRM) proposing a safety standard for gates and enclosures for children pursuant to Section 104(b) of the Consumer Product Safety Improvement Act of 2008 (CPSIA). The agency is also amending its regulations regarding third-party conformity assessment bodies to include the safety standard for gates and enclosures in the list of notice of requirements (NORs) issued by CPSC. Comments on the NPRM are due by September 23, 2019 (*CPSC Proposed Rule*, [84 FR 32346](#), July 8, 2019).

Background. Section 104(b) of the CPSIA, part of the Danny Keysar Child Product Safety Notification Act, requires CPSC to: (1) examine and assess the effectiveness of voluntary consumer product safety standards for durable infant or toddler products, in consultation with representatives of consumer groups, juvenile product manufacturers, and independent child product engineers and experts; and (2) promulgate consumer product safety standards for durable infant and toddler products. These standards are to be "substantially the same as" the applicable voluntary standards or more stringent than the voluntary standard if the agency concludes that more stringent requirements would further reduce the risk of injury associated with the product. The term "durable infant or toddler product" is defined in the statute as "a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years." "Gates and other enclosures for confining a child" are specifically identified in section 104(f)(2)(G) of the CPSIA as a durable infant or toddler product.

NPRM. In developing this proposal, CPSC consulted with manufacturers, retailers, trade organizations, laboratories, consumer advocacy groups, consultants, and members of the public. The proposed rule is based on the voluntary standard developed by ASTM International, ASTM F1004–19, *Standard Consumer Safety Specification for Expansion Gates and Expandable Enclosures* (ASTM F1004–19). ASTM F1004–19 defines an expansion gate as a "barrier intended to be erected in an opening, such as a doorway, to prevent the passage of young children, but which can be removed by older persons who are able to operate the locking mechanism." The voluntary standard defines an expandable enclosure as a "self-supporting barrier intended to completely surround an area or play space within which a young child may be confined." These products are intended for young children aged 6 months through 24 months.

CPSC staff reviewed 436 reported incidents involving gates and enclosures (19 fatal and 417 nonfatal) to identify hazard patterns associated with the use of these products. The analysis indicated that all children’s gates and enclosures present the same hazards, whether they expand or not. These hazards include injuries caused by hardware-related issues, slat problems, poor quality materials and finish, design issues, and installation problems.

CPSC has concluded that the current voluntary standard, ASTM F1004–19, sufficiently addresses many of the general hazards associated with the use of children’s gates and enclosures, such as wood parts, sharp points, small parts, lead in paint, scissoring, shearing, pinching, openings, exposed coil springs, locking and latching, and protective components. Accordingly, the agency is proposing to incorporate by reference ASTM F1004–19, without change. In addition to the general requirements, ASTM F1004–19 contains performance requirements and test methods specific to gates and enclosures. The following are included in these performance and testing

requirements: (1) height of sides—the vertical distance from the floor to the lowest point of the uppermost surface must not be less than 22 inches when measured from the floor in order to prevent "intended occupants" from being able to lean over and possibly tumble over the top of the gate; (2) bottom spacing—the space between the floor and the bottom edge of an enclosure or gate must not permit the complete passage of the "small torso probe" when it is pushed into the opening with a 25-pound force, which is a requirement that is intended to address incidents in which children's heads were entrapped after having pushed their way, feet first, into gaps created between the gate and the floor; and (3) slat strength—a test to verify that no wood or metal slats completely break or either end of the slats completely separate from the gate or enclosure when a force of 45 pounds is applied horizontally, and is a requirement to check that gates and enclosures retain their structural integrity when children push or pull on the gate or enclosure slats.

CPSC is also proposing that the standard become effective 6 months after publication of a final rule in the Federal Register. The agency believes that most firms should be able to comply with the 6-month time frame, but requests comments, particularly from small businesses, regarding the feasibility of complying with the proposed 6-month effective date.

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