



Billing Code 6355-01-P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1130

[Docket No. CPSC-2018-0018]

Amendment to Requirements for Consumer Registration of Durable Infant or Toddler Products

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: In 2009, the Consumer Product Safety Commission (CPSC) fulfilled a statutory requirement in the Consumer Product Safety Improvement Act of 2008 (CPSIA) to issue a rule requiring manufacturers of durable infant or toddler products to establish a consumer registration program. The Commission now proposes to amend the definition of “durable infant or toddler product” in the rule to include the full statutory definition; clarify that the scope of each listed product category is further defined in the applicable mandatory standard; clarify listed product categories using the product name in the applicable mandatory standard; and clarify the scope of the infant carriers and bassinets and cradles product categories.

DATES: Submit comments by [INSERT DATE 75 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments, identified by Docket No. CPSC-2018-0018, may be submitted electronically or in writing:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: <http://www.regulations.gov>. Follow the instructions for submitting comments. CPSC does not accept comments submitted by electronic mail (e-mail), except through

www.regulations.gov. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions in the following way: Mail/Hand delivery/Courier (for paper, disk, or CD-ROM submissions) to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

Instructions: All submissions received must include the agency name and docket number for this proposed rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: <http://www.regulations.gov>. Do not submit electronically any confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to provide such information, please submit it in writing.

Docket: For access to the docket to read background documents or comments received, go to: <http://www.regulations.gov>, and insert the docket number, CPSC-2018-0018, into the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Hope EJ Nesteruk, Project Manager, Children’s Program Manager, Division of Mechanical and Combustion Engineering, Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: 301-987-2579; e-mail: HNesteruk@cpsc.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Statutory Authority

Section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) is the Danny Keysar Child Product Safety Notification Act. Section 104 of the CPSIA requires that for “durable infant or toddler products,” the U.S. Consumer Product Safety Commission (CPSC) must (1) issue a mandatory rule for each product based on the applicable voluntary standard, and (2) issue a rule requiring consumer registration for such products. 15 U.S.C. 2056a(b) and (d).¹ In 2009, the Commission issued a regulation to implement the second requirement, that manufacturers provide a means for consumers to register “durable infant or toddler products,” so that consumers can receive direct notification in the event of a product recall. The rule is codified at 16 CFR part 1130, Requirements for Consumer Registration of Durable Infant or Toddler Products (“part 1130” or the “consumer registration rule”).

The two aspects of section 104, consumer registration and product standards, are both based on the definition of “durable infant or toddler product” set forth in section 104(f) of the CPSIA: “durable products intended for use, or that may be reasonably expected to be used, by children under the age of 5 years.” The statute lists 12 product categories included within the definition, such as cribs, toddler beds, high chairs, strollers, and swings. In a 2009 rulemaking, the Commission explained that the list of products in section 104(f), and codified in the Commission’s consumer registration rule in 16 CFR 1130.2, is not static. At that time, the Commission added six product categories to the 12 listed in the CPSIA. 74 FR 68668, 68669 (Dec. 29, 2009).

¹ Since 2009, the Commission has issued final rules for 22 durable infant or toddler products, and issued one proposed rule for Inclined Infant Sleep Products that has not yet been finalized. Mandatory standards for durable infant or toddler products are codified in 16 CFR parts 1215 through 1235, and part 1237. Part 1236 is reserved for Inclined Infant Sleep Products.

The Commission proposes to make the following changes to part 1130 to clarify the products the rule covers:

- State the full statutory definition of “durable infant or toddler product” in section 104(f)(1);
- Specify that the listed product categories are further defined in the applicable mandatory standards;
- List “sling carriers,” “soft infant and toddler carriers,” “handheld infant carriers,” and “frame child carriers” as a subset of infant carriers, to avoid confusion regarding whether they are subject to the consumer registration rule and to reflect each product category using the name of the applicable mandatory standard;
- Clarify that “bedside sleepers” are a subset of bassinets, to avoid confusion regarding whether they are subject to the consumer registration rule and to reflect the product name used in the mandatory standard; and
- Revise the term “changing tables” to “baby changing products,” to reflect the product name used in the mandatory standard.

This proposed rule is based on a briefing package CPSC staff provided to the Commission on September 26, 2018, Notice of Proposed Rulemaking: Updates to 16 CFR part 1130, Consumer Registration of Durable Infant or Toddler Products (Staff Briefing Package).²

II. Description of the Proposed Rule

A. Definition

The Commission proposes to update the definition of “durable infant or toddler product” in 16 CFR 1130.2(a) to state the full statutory definition of “durable infant or toddler product”

² Staff Briefing Package available at: <https://www.cpsc.gov/s3fs-public/NPR%20-%20Amendment%20to%20Requirements%20for%20Consumer%20Registration%20Durable%20Infant%20or%20Toddler%20Products%20-%20September%2026%202018.pdf?mYkYTfNkAYZ9KDgLEmbA.Mv5s.4P9UqW>.

and to clarify that the scope of the product categories listed can be found in the applicable mandatory standard. Section 104(f) of the CPSIA defines the term “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,” and states that the definition “includes” 12 categories of products:

- (A) full-size cribs and nonfull-size cribs;
- (B) toddler beds;
- (C) high chairs; booster chairs, and hook-on-chairs;
- (D) bath seats;
- (E) gates and other enclosures for confining a child;
- (F) play yards;
- (G) stationary activity centers;
- (H) infant carriers;
- (I) strollers;
- (J) walkers;
- (K) swings; and
- (L) bassinets and cradles.

When the Commission finalized the consumer registration rule in 2009, the Commission listed the 12 statutory product categories, as well as six additional product categories the Commission determined fell within the scope of a “durable infant or toddler product”: children’s folding chairs, changing tables, infant bouncers, infant bathtubs, bed rails, and infant slings. 74 FR at 68669-70. However, the rule did not repeat the statutory phrase: “a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years.” Thus, currently one must look at both section 104(f) of the CPSIA and 16 CFR 1130.2 of the regulation to understand the full definition of “durable infant or toddler product.”

B. Product Categories

Since 2009, as the Commission has issued mandatory rules for the durable infant or toddler products, occasionally the name of the product category in the defined list does not match the name of the product category covered by a mandatory standard, or the scope of the products

covered within a product category may be unclear. To clarify the product categories subject to the consumer registration rule, the Commission proposes to list in the rule the name of each product category that aligns with the name of the product category used in the applicable voluntary or mandatory standard.³ Further, to provide information on the scope of the products covered by a product category, the Commission proposes to state in the rule that the scope of the product category is further defined in the applicable mandatory standard.

1. Infant Carriers

Section 104(f)(H) of the CPSIA lists “infant carriers” as a product category included in the term “durable infant or toddler products.” However, ASTM international has four separate voluntary standards for infant carriers, and the Commission has now issued four separate mandatory standards, one for each subtype of infant carrier:

- 16 CFR 1225, Hand-Held Infant Carriers
- 16 CFR 1226, Soft Infant and Toddler Carriers
- 16 CFR 1228, Sling Carriers
- 16 CFR 1230, Frame Child Carriers

Although the Commission added “Infant Slings” to the list of products in 16 CFR 1130.2(a) when finalizing the 2009 consumer registration rule, the registration rule does not list the other sub-categories of infant carriers. To clarify that all four types of infant carriers are subject to the consumer registration requirement, the Commission proposes to list each type of infant carrier in § 1130.2(a)(8) as a subset of the infant carrier category, using the name in the applicable mandatory standard.

³ Some products may be listed in part 1130 before the Commission issues the corresponding mandatory standard. In those cases, the Commission will list the product category as defined in the current voluntary standard, which typically provides specificity about the scope of the product category.

Accordingly, the Commission proposes to revise § 1130.2(a)(8), which currently states “Infant carriers,” to state: “Infant carriers, including soft infant and toddler carriers, hand-held infant carriers, sling carriers, and frame child carriers.” The Commission also proposes to delete “infant slings” as a separate product category in § 1130.2(a)(18), and to change the product name from “infant slings” to “sling carriers” in the revised § 1130.2(a)(8), to align with the name of the mandatory rule in part 1228. Thus, the proposed language retains the statutorily-defined category of “infant carrier” while clarifying the four types of infant carriers subject to part 1130.

2. Bedside Sleepers

Currently, the product “bedside sleepers”⁴ is not listed in part 1130. However, when the Commission issued a mandatory rule pursuant to section 104(b) of the CPSIA (codified at 16 CFR part 1222) for bedside sleepers, the Commission considered bedside sleepers to be a subset of “bassinets and cradles.” In fact, the bedside sleeper voluntary standard, ASTM F2906, requires testing to ASTM F2194, *Standard Consumer Safety Specification for Bassinets and Cradles*, as the fundamental safety requirement for bedside sleepers. 79 FR 2581, 2583 (Jan. 15, 2014).

Many bedside sleepers on the market are multi-use products that also function as play yards or stand-alone bassinets; such multi-use products are required to provide a consumer registration for their play yard or bassinet mode. However, because bedside sleepers are not specifically listed in part 1130, it may be unclear whether a stand-alone bedside sleeper, *i.e.*, without a secondary use mode, is subject to the consumer registration rule. To resolve any confusion, the Commission proposes to list “bedside sleepers” as a type of bassinet.

⁴ A bedside sleeper is a bassinet-type product, intended to provide a sleeping environment for an infant up to approximately 5 months of age, or when a child begins to push up on his or her hands and knees, whichever comes first. These products are designed to be secured to an adult bed, for the purpose of having a baby sleep in close proximity to an adult.

Accordingly, the Commission proposes to revise § 1130.2(a)(12), which currently states: “Bassinets and cradles,” to state: “Bassinets and cradles, including bedside sleepers.”

3. Changing Tables

Currently, “changing tables” is listed as a durable infant or toddler product in 16 CFR 1130.2(14). However, the Commission’s standard for these products is called “Safety Standard for Baby Changing Products,” codified at 16 CFR part 1235.⁵ CPSC’s standard covers products that are included in the scope of the voluntary standard on which it is based, ASTM F2388 – 18, *Standard Consumer Safety Specification for Baby Changing Products for Domestic Use*. Accordingly, CPSC’s standard includes changing tables, changing table accessories, contoured changing pads, and add-on changing units. Changing table accessories attach to another product to allow it to function as a changing table, and are typically included with the purchase of another product (*e.g.*, crib or play yard) that currently requires product registration. Contoured changing pads and add-on changing units are typically sold independently of other products requiring registration. The Commission proposes revising § 1130.2(a)(14) to change the term “changing tables” to “baby changing products” to be consistent with the Commission’s mandatory standard.

⁵ The final rule for baby changing products was published June 26, 2018, and will become effective 12 months later.

III. Effective Date

The Administrative Procedure Act generally requires that the effective date of a rule be at least 30 days after publication of the final rule. This proposed rule clarifies existing product categories and expands one product category. Accordingly, the Commission proposes two effective dates.

A. Thirty-Day Effective Date

Most of the changes in this proposed rule are clarifications to the definition of “durable infant or toddler product” to state the full statutory definition, and to more clearly identify product categories that already are subject to the consumer registration rule (*i.e.*, the statutory definition, infant carrier list, and bedside sleepers). Because these revisions clarify the text of the rule, and do not impose new burden on any manufacturer, the Commission proposes a 30-day effective date for the addition of the statutory language in § 1130.2(a), as well as the clarifications to product categories in sections 1130.2(a)(8), (a)(11), and (a)(12).

B. Twelve-Month Effective Date

A thirty day effective date is likely insufficient for products that have not previously been required to establish a consumer registration program. In the 2009 registration rulemaking the Commission provided a 12-month effective date for the six product categories the Commission added and six months for the other aspects of the rule. The Commission’s decision to allow a 12-month effective date for added product categories was based on three comments expressing concern that 6 months would be insufficient to establish a consumer registration program, and requesting a one year effective date instead.

Contoured changing pads have not previously been subject to the registration requirement. Although some manufacturers and importers of contoured changing pads likely

distribute other durable infant and toddler products and would, therefore, have an established consumer registration program, the staff briefing package for the final rule for baby changing products identified 25 firms that supply only contoured changing pads to the market and no other changing products.⁶ At least 13 of these firms are not otherwise in the durable infant and toddler product market; therefore, they are unlikely to have an existing consumer registration program. Accordingly, the Commission proposes a 12-month effective date for contoured changing pads. The other types of “baby changing products,” (changing tables, changing table accessories, and add-on changing units) have all been required to be in compliance with part 1130 since December 29, 2010 under the previously listed category “changing tables.” 74 FR at 68669. Therefore, the 12-month effective date would only apply to contoured changing pads.

IV. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, when a notice of proposed rulemaking is required, agencies must review the proposed rule for the rule’s potential economic impact on small entities, including small businesses. Section 603 of the RFA generally requires that agencies prepare an initial regulatory flexibility analysis (IRFA) and make it available to the public for comment when the NPR is published, unless the head of the agency certifies that the rule will not have a significant economic impact on a substantial number small entities. However, pursuant to section 104(d)(1) of the CPSIA, the provision that establishes the requirement for a consumer registration rule, the RFA does not apply when promulgating a rule under this provision. Consequently, the Commission has not prepared an IRFA and no certification is necessary. We note that the amendment mostly provides clarifications that would not have any economic impact. Providing a 12 month effective date for the one product that has

⁶ Available at: <https://www.cpsc.gov/s3fs-public/Final%20Rule%20-%20Safety%20Standard%20for%20Baby%20Changing%20Products%20-%20June%2013%202018.pdf>

not been subject to the registration rule, contoured changing pads, should reduce the economic impact on manufacturers of those products.

V. Environmental Considerations

The Commission's regulations address whether the agency is required to prepare an environmental assessment or an environmental impact statement. Under these regulations, certain categories of CPSC actions normally have "little or no potential for affecting the human environment," and therefore, they do not require an environmental assessment or an environmental impact statement. 16 CFR 1021.5. This proposed rule falls within the categorical exclusion to prepare an environmental impact statement.

VI. Paperwork Reduction Act

Section 104(d)(1) of the CPSIA excludes this rulemaking from the requirements of the Paperwork Reduction Act, 44 U.S.C. sections 3501 through 3520. Consequently, no Paperwork Reduction Act analysis is necessary.

VII. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that when a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a standard or regulation that prescribes requirements for the performance, composition, contents, design, finish, construction, packaging, or labeling of such product dealing with the same risk of injury unless the state requirement is identical to the federal standard. The Commission's authority to issue this consumer registration rule is section 16(b) of the CPSA, 15 U.S.C. 2065(b). Accordingly, this rule is not a consumer product safety standard, and the preemption provision of section 26(a) of the CPSA does not apply to any final rule issued by the Commission.

List of Subjects in 16 CFR Part 1130

Administrative practice and procedure, Business and industry, Consumer protection, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Commission proposes to amend part 1130 of title 16 of the Code of Federal Regulations as follows:

PART 1130 – REQUIREMENTS FOR CONSUMER REGISTRATION OF DURABLE INFANT OR TODDLER PRODUCTS

1. The authority citation for part 1130 continues to read as follows:

Authority: 15 U.S.C. 2056a, 2065(b).

2. Amend § 1130.1 by revising the last sentence in paragraph (c) to read as follows:

§ 1130.1 Purpose, scope, and effective date.

* * * * *

(c) * * * Compliance with this part 1130 shall be required on [DATE THAT IS 12 MONTHS AFTER PUBLICATION OF THE FINAL RULE IN THE *FEDERAL REGISTER*] for contoured changing pads (a type of baby changing product). The rule shall apply to durable infant or toddler products, as defined in § 1130.2(a), that are manufactured on or after those dates.

3. Amend § 1130.2 by:

- a. Revising paragraphs (a) introductory text and (a)(8), (11), (12), (14), and (17);
and
- c. Removing paragraph (a)(18).

The revision reads as follows:

(a) *Definition of Durable Infant or Toddler Product* means the following products intended for use, or that may be reasonably expected to be used, by children under the age of 5 years. The listed product categories are further defined in the applicable standards that the Commission issues under section 104(b) of the Consumer Product Safety Improvement Act of 2008, and include products that are combinations of the following product categories:

* * * * *

(8) Infant carrier, including soft infant and toddler carriers, hand-held infant carriers, sling carriers, and frame child carriers;

* * * * *

(11) Swings;

(12) Bassinets and cradles, including bedside sleepers;

* * * * *

(14) Baby changing products;

* * * * *

(17) Bed rails.

Alberta E. Mills,
Secretary, Consumer Product Safety Commission.

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