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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1112 and 1239

Docket No. CPSC-2019-0014

Safety Standard for Gates and Enclosures

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Consumer Product Safety Improvement Act of 2008 (CPSIA) requires the United States Consumer Product Safety Commission (Commission or CPSC) to promulgate consumer product safety standards for durable infant or toddler products. Accordingly, the Commission is proposing a safety standard for gates and enclosures in response to the direction under Section 104(b) of the CPSIA. The Commission 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 the Commission.

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

ADDRESSES: Comments related to the Paperwork Reduction Act aspects of the marking, labeling, and instructional literature of the proposed rule should be directed to the Office of Information and Regulatory Affairs, OMB, Attn: CPSC Desk Officer, FAX: 202-395-6974, or e-mailed to oir_submission@omb.eop.gov.

Other comments, identified by Docket No. CPSC-2019-0014, 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. The CPSC does not accept comments submitted by electronic mail (e-mail), except through www.regulations.gov. The 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), preferably in five copies, 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 confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted 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-2019-0014, into the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Hope Nesteruk, Project Manager, Directorate for Engineering Sciences, 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(b) of the CPSIA, part of the Danny Keysar Child Product Safety Notification Act, requires the Commission 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 Commission 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 section 104(f)(1) of the CPSIA 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.

Pursuant to Section 104(b)(1)(A), the Commission consulted with manufacturers, retailers, trade organizations, laboratories, consumer advocacy groups, consultants, and members of the public in the development of this proposed standard, largely through the ASTM process. 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). The ASTM standard is copyrighted, but it can be viewed as a read-only document during the comment period at: <https://www.astm.org/CPSC.htm>, by permission of ASTM.

II. Product Description

A. Definition of “Gates and other Enclosures”

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” (section 3.1.7). ASTM F1004–19 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” (section 3.1.6). These products are intended for young children aged 6 months through 24 months (section 1.2).

Although the title of the ASTM F1004–19 standard and its definitions include the word “expansion” and “expandable” before the words “gate” and “enclosure,” respectively, the scope of the ASTM F1004–19 standard includes all children’s gates and enclosures, whether they expand or not. ASTM F1004–19 covers: “[p]roducts known as expansion gates and expandable enclosures, *or by any other name,*” (section 1.2, emphasis added).¹ Both expandable gates and non-expandable gates may serve as barriers that are intended to be erected in an opening, such as a doorway, to prevent the passage of young children. Both expandable enclosures and non-expandable enclosures may serve as barriers intended to completely surround an area or play-space to confine young children. Similarly, all children’s gates and enclosures, whether they expand or not, can be removed by older persons who are able to operate the locking mechanism.

CPSC staff’s review of enclosures shows that all enclosures are expandable. Staff’s review of gates showed that there some non-expandable, fixed-sized gates available for sale.² However, most of the gates and enclosures sold in the United States that are intended for

¹ Gates or enclosures for non-domestic use (such as commercial or industrial), and those intended for pets only, are not covered under the scope of ASTM F1004-19.

² The vast majority of non-expandable, fixed-size gates are sold by home-based manufacturers with very low sales volumes.

children expand because they vary in width (for gates) or shape (enclosures). CPSC staff's review of hazard patterns indicates 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. Accordingly, the proposed CPSC standard addresses all children's gates and enclosures intended for confining a child, including non-expandable, fixed-sized gates and enclosures.

Gates and enclosures may be made of a wide range of materials: plastic, metal, wood, cloth, mesh, or combinations of several materials. Gates typically have a means of egress that allows adults to pass through them; but some enclosures (*i.e.*, some self-supporting barriers have egress panels that resemble gates) also have a means of egress. Gates may be hardware-mounted, pressure-mounted, or both. Hardware-mounted gates generally require screws and cannot be removed without tools. Pressure-mounted gates attach like a pressure-fit curtain rod, using pressure on each end to hold the gate stable; they are intended for consumers who prefer to be able to move their gate, or who do not want to permanently mark their walls. Mounting cups can be attached to one or more locations, and the gate can be removed, as needed, or moved to other locations.

B. Market Description

Approximately 113 firms supply gates and enclosures to the U.S. market. The vast majority of suppliers to the U.S. market are domestic (109 firms). Of these, 83 appear to be very small, home-based domestic manufacturers. Approximately 10.86 million gates/enclosures were in use in U.S. households with children under the age of 5 in 2013, according to the CPSC's 2013 Durable Nursery Product Exposure Survey (DNPES).

Gates and enclosures vary widely in price. Plastic pressure gates can be purchased for as little as \$10, but designer metal gates can cost as much as \$430. Retail prices for enclosures and products that can operate either as an enclosure or gate range from \$74 to \$585, with the less expensive products tending to be made of plastic, and the more expensive products tending to be made of wood.³ Gates supplied by home-based manufacturers average \$200, although fabric gates are less expensive (\$44 on average), and wooden gates with iron spindles are more expensive (\$525 on average).

III. Incident Data

CPSC staff reviewed incident data associated with children's gates and enclosures as reported through the Consumer Product Safety Risk Management System (CPSRMS).⁴ Staff also reviewed national injury estimates, discussed below. Although these products are intended for use with young children between the ages of 6 months and 24 months, interaction with the gates and enclosures with older siblings and adult caregivers is a foreseeable use pattern, and adults are required to install such products properly to prevent injuries. CPSC staff reviewed the incident data involving older children and adults to determine hazard patterns; however, only *injuries* sustained by children younger than 5 years of age were included in the incident data reported for the proposed rule. The Commission is aware of a total of 436 reported incidents related to gates and enclosures that occurred between January 1, 2008 and October 31, 2018. Of the 436 incidents, 394 were associated with the use of a gate, while 42 were associated with an enclosure. Nineteen of the incidents reported a fatality; 108 of the 417 nonfatal incidents

³ Some of the enclosures designed for daycare centers and preschools can run above \$1,000 with all the specialty extensions.

⁴ The CPSC databases searched were the In-Depth Investigation (INDP) file, the Injury or Potential Injury Incident (IPII) file, and the Death Certificates (DTHS) file. These reported deaths and incidents are neither a complete count of all that occurred during this time period nor a sample of known probability of selection. However, they do provide a minimum number of deaths and incidents occurring during this time period and illustrate the circumstances involved in the incidents related to children's gates and enclosures.

reported an injury. Because reporting is ongoing, the number of reported fatalities, nonfatal injuries, and non-injury incidents may change in the future.

A. Fatalities

The Commission is aware of 19 deaths that occurred between January 1, 2008 and October 31, 2018. Seventeen of the deaths were associated with the use of a gate, while two were associated with an enclosure. Fifteen of the 19 decedents drowned, 13 in a backyard pool, one in a backyard hot tub, and one in a 5-gallon bucket of water inside the house. In these incidents, the decedents managed to get past the gate/enclosure when it was left open or was opened somehow, without the caregiver's knowledge (10 incidents); the gate/enclosure was knocked down or pushed out by the decedent due to incorrect or unsecured installation (4 incidents); or the decedent climbed over the gate/enclosure (1 incident). The decedents ranged in age from 9 months to 3 years.

Of the remaining four of 19 total deaths reported: an 8-month-old was found trapped between a mattress and an expansion gate in a recreational vehicle; a 23-month-old was trapped under a TV that fell on him when he was hanging on the edge of a safety gate that was secured to the TV stand with a rope; a 20-month-old was entrapped between a wall and a repaired/modified safety gate when the gate partially detached from the wall; and a 2-year-old got his neck entrapped between two safety gates set up in a stacked configuration.

B. Nonfatalities

The Commission is aware of a total of 417 nonfatal incidents related to safety gates and enclosures that reportedly occurred between January 1, 2008 and October 31, 2018. Of these, 108 incidents reported an injury to a child younger than 5 years of age.

Three of the injuries reportedly required hospitalization and two additional injuries needed overnight observation at a hospital. Among the hospitalized were a 2-year-old and an 18-month-old, both suffered a near-drowning episode, and another 2-year-old who ended up in a coma due to a fall when she pushed through a safety gate at the top of stairs. Of the two children who were held at a hospital for overnight observation, one fell down stairs when a safety gate collapsed, and the other swallowed a bolt or screw that liberated from a gate.

Fifteen additional children were reported to have been treated and released from a hospital emergency department (ED). Their injuries included: (a) finger fractures, amputations, and/or lacerations usually from a finger getting caught at the hinge; and (b) near-drowning, poison ingestion, arm fracture, thermal burn, head injury, or contusions.

Among the remaining injury reports, some specifically mentioned the type of injury, while others only mentioned an injury, but no specifics about the injury. Head injuries, concussions, teeth avulsions, sprains, abrasions, contusions, and lacerations were some of the common injuries reported.

The remaining 309 incidents reported that no injury had occurred or provided no information about any injury. However, some of the descriptions regarding the incidents indicated the potential for a serious injury or even death.

C. National Injury Estimates

CPSC staff also reviewed injury estimates from the National Electronic Injury Surveillance System (NEISS), a statistically valid injury surveillance system.⁵ NEISS injury data are gathered from EDs of hospitals selected as a probability sample of all the U.S. hospitals with EDs. CPSC staff found an estimated total of 22,840 injuries (sample size=820, coefficient of

⁵ According to the NEISS publication criteria, to derive a reportable national estimate, an estimate must be 1,200 or greater, the sample size must be 20 or greater, and the coefficient of variation must be 33 percent or smaller.

variation=0.10) related to children's gates and enclosures that were treated in U.S. hospital EDs over the 10-year period 2008-2017. There was no statistically significant trend observed over the entire 2008-2017 period. NEISS data for 2018 will be reviewed prior to the issuance of a final rule.

No fatalities were reported through NEISS. About 19 percent of the injured victims were less than a year old; 40 percent were at least a year old, but less than 2 years of age; and another 41 percent were at least 2, but less than 5 years of age. NEISS injury descriptions are brief and focus more on the injury than the scenario-specific details. Therefore, a detailed hazard pattern characterization, as conducted for incidents reported through CPSRMS, is not feasible. However, based on the limited information available, CPSC staff determined that some of the most frequent NEISS injury characteristics were as follows:

- Hazard – falls (57%) and impact on gate/enclosure (31%). Most of the falls occurred when:
 - a child successfully climbed over the barrier and (usually) fell down a flight of steps; when a child unsuccessfully attempted to climb over the barrier; or a child-carrying-adult tripped on a gate/enclosure and dropped the child;
 - gates failed to remain upright and locked; or
 - a child managed to defeat the barrier by crawling/sliding under, or “getting around” the barrier in an unspecified manner.
- Injury – almost 10 percent of the impact injuries occurred when a child fell down a flight of steps and hit a safety gate at the bottom of the stairs:
 - Injured body part – head (40%), face (21%), and mouth (10%).

- Injury type – lacerations (28%), internal organ injury (23%), and contusions/abrasions (20%).

Most of the injured victims were treated and released (97%).

IV. Hazard Pattern Identification

CPSC staff reviewed 436 reported incidents (19 fatal and 417 nonfatal) to identify hazard patterns associated with the use of children's gates and enclosures. Staff grouped the hazard patterns into three categories: product-related, non-product-related, and undetermined. Most of the reported problems (94%) were product-related. The categories and subcategories (in order of descending frequency) are:

A. Product-Related

- **Hardware issues:** Of the 436 incidents, 163 (37%) reported some sort of hardware-related problems. These problems were due to:
 - lock/latch hardware (*e.g.*, lock or latch breaking, not latching correctly, opening too easily, or getting stuck)
 - hinge hardware (mostly breaking and causing the gate to fall off)
 - mounting hardware (mostly breaking and causing gate to fall off), or
 - other hardware such as a slide guide or a swing-control clip (breaking or coming loose).

These hardware failures were associated with 38 injuries, such as contusions, lacerations, head injuries, and two fractures; five of the injuries were treated in a hospital ED, and one needed overnight observation at a hospital.

- **Slat problems:** Of the 436 incidents, 107 (25%) reported slats breaking or detaching from the safety gate or enclosure. Sixteen injuries were reported in this category, resulting in

contusions/abrasions or lacerations. Once the slat(s) broke, the child either got injured on it, fell forward through the gap created, or lost balance and fell backwards. One of the injuries was treated at a hospital ED.

- **Poor quality material and finish:** Of the 436 incidents, 50 (11%) reported problems with small parts liberating, splintered welding, sharp edges and protrusions, rails bending out of shape, fabric/mesh panels sagging, and poor quality of stitching on fabric panels. Eighteen injuries, mostly lacerations and abrasions, were reported in this category.
- **Design issues:** Of the 436 incident reports, 42 (10%) indicated some problems with the design of the gate or enclosure. The reported problems were with:
 - the opening size between slats or enclosure panels that allowed a child to get their limbs or head entrapped;
 - the pinch-point created during the opening and closing action of the door on the gate or enclosure;
 - a specific design, which created a foot-hold that a child could use to climb over the safety gate; or
 - a specific design that posed a trip hazard when the gate was in the open position.

Nineteen injuries were in this category, including three fractures of the finger and one severed fingertip, all treated at a hospital ED.

- **Installation problems:** Of the 436 incident reports, 20 (5%) indicated problems with installation due to:
 - unclear installation instructions;
 - mismatched dimensions between the safety gate and the doorway/hallway opening; or

- unknown reasons; in these cases, the gate/enclosure was reported to have been installed, but was somehow “pushed out” or “pulled down.”

Four drowning fatalities were reported in this category. In addition, there were four nonfatal injuries: one a hospitalization of a comatose child; another child treated and released from a hospital ED following a near-drowning episode; and the remaining two, relatively minor laceration/contusion injuries.

- ***Miscellaneous other issues and consumer comments:*** Seven of the 436 incident reports (2%) included three complaints about an ineffective recall remedy, one complaint about poor product packaging, and three consumer concerns about the safety of a specific design. There was one unspecified injury in this category.
- ***Instability issues in enclosures:*** Three of the 436 incidents (< 1%) reported problems with flimsy and/or unstable enclosures. Two laceration/contusion injuries were reported in this category.
- ***Multiple problems from among the above:*** Twenty of the 436 incident reports (5%) described two or more problems from the preceding product-related issues. Two minor injuries were reported in this category.⁶

B. Non-Product-Related

Eleven of the 436 incident reports (3%) described non-product-related issues, such as incorrect use of the product, or the child managing to bypass the barrier altogether. Specifically:

- Four incidents reported the child climbing over the gate/enclosure;

⁶ Redistributing these 20 complaints among the other pertinent subcategories within the product-related issues does not alter the ranking of the listed subcategories. However, the redistribution would result in the within-subcategory incident numbers adding up to *more* than the total number of incident reports. To prevent that, the 20 incidents were grouped in a separate subcategory.

- Three incidents reported caregiver missteps allowing the gate/enclosure not to be secured in place;
- Three incidents reported misuse of gates in a hazardous manner; and
- One report involving a gate previously repaired/modified and structurally compromised.

Eight deaths are included in this category: four due to drowning, three due to entrapments, and one due to a TV tip over. Among the three injuries, one required hospitalization following a near-drowning episode, and one fractured arm was treated at a hospital ED; the third injury was a concussion of the forehead.

C. Undetermined

Thirteen of the 436 incident reports (3%) fell into the undetermined category. There was insufficient information on the scenario-specific details for CPSC staff to determine definitively whether the product failed or user error resulted in the incidents. Seven drowning deaths were reported in this category. Among the five nonfatal injuries, one was a hospitalization due to near-drowning, two were treated at a hospital ED for poisonous ingestion and burn, respectively, and two were minor injuries.

D. Product Recalls

CPSC staff reviewed recalls involving children's gates and enclosures from January 2008 to December 2018. During that period, there were five recalls involving baby gates and one recall involving an enclosure. The total number of units recalled was 1,318,180. The recalls involved fall, entrapment, tripping, and laceration hazards to children. There were a total of 215 incidents reported, of which 13 resulted in injuries.

V. Voluntary Standard - ASTM F1004

A. History of ASTM F1004

The voluntary standard for gates and enclosures was first approved and published in 1986 (ASTM F1004-86, *Standard Consumer Safety Specification for First-Generation Standard Expansion Gates and Expandable Enclosures*). Between 1986 and 2013, ASTM F1004 underwent a series of revisions to improve the safety of gates and enclosures and the clarity of the standard. Revisions made during this period included provisions to address foot-pedal actuated opening systems, warnings, evaluation of all manufacturer's recommended use positions, test fixture improvements, entrapment in openings along the side of the gate, lead-containing substances in surface, along with other minor clarifications and editorial corrections.

Beginning in 2014, CPSC staff worked closely with ASTM to address identified hazards and to strengthen the voluntary standard and improve the safety of children's gates and enclosures in the U.S. market. ASTM made revisions through several versions of the standard (ASTM F1004-15, ASTM F004-15a, ASTM F1004-16, ASTM F1004-16a, ASTM F1004-16b, and ASTM F1004-18) to address hazards associated with bounded openings, slat breakage/slat connection failures, mounting/hinge hardware issues, latch/lock failures, pressure gate push-out forces, and warning labels and instructions. The current voluntary standard is ASTM F1004-19, which was approved on June 1, 2019.

B. Description of the Current Voluntary Standard-ASTM F1004-19

ASTM F1004-19 includes the following key provisions: Scope (section 1), Terminology (section 3), General Requirements (section 5), Performance Requirements (section 6), Test Methods (section 7), Marking and Labeling (section 8), and Instructional Literature (section 9).

Scope. This section states the scope of the standard, and includes products known as expansion gates and expandable enclosures, or by any other name, and that are intended for

young children age 6 months through 24 months. ASTM has stated that the standard applies to all children's gates, including non-expandable, fixed-sized gates and enclosures.

Terminology. This section provides definitions of terms specific to the standard.

General Requirements. This section addresses numerous hazards with several general requirements, most of which are also found in the other ASTM juvenile product standards. ASTM F1004–19 has requirements to address the following safety issues common to many juvenile products. The general requirements included in this section address:

- Wood parts;
- Screws;
- Sharp edges or points;
- Small parts;
- Openings;
- Exposed coil springs;
- Scissoring, shearing, and pinching;
- Labeling;
- Lead in paint; and
- Protective components.

Performance Requirements and Test Methods. These sections contain performance requirements specific to children's gates and enclosures and the test methods that must be used to assess conformity with such requirements. These requirements include:

- **Completely bounded openings:** Openings within the gate or enclosure, and completely bounded openings between the gate and the test fixture, shall not permit the complete passage of the small torso probe when it is pushed into the opening with a 25-pound

force. This requirement is intended to address incidents where children were found with their heads entrapped after having pushed their way into gaps created between soft or flexible gate and enclosure components, and between the gate and the sides of passageway to be blocked off, *e.g.*, door frame or wall.

- **Height of sides:** The vertical distance from the floor to the lowest point of the uppermost surface shall not be less than 22 inches when measured from the floor. The requirement is intended to prevent intended occupants from being able to lean over, and then tumble over the top of the gate.
- **Vertical strength:** After a 45 pound force is exerted downward along the uppermost top rail, edge, or framing component, gates and enclosures must not fracture, disengage, fold nor have a deflection that leaves the lowest point of the top rail below 22 inches from the ground. For gates, the 45 pound vertical test force is applied five times to the mid-point of the horizontal top rail, surface or edge of each gate (or each of the top points of a gate that doesn't have a horizontal top edge). This test is carried out with the gate installed at both the maximum and minimum opening widths recommended by the manufacturer. For enclosures, the 45 pound force is applied to every other uppermost rail, surface, or edge and every other top joint of the enclosure. This requirement is intended to check that gates and enclosures retain their intended occupants even when children hang from or attempt to climb up the gates.
- **Bottom spacing:** The space between the floor and the bottom edge of an enclosure or gate shall not permit the complete passage of the small torso probe when it is pushed into the opening with a 25 pound force. This requirement is intended to address incidents

where children were found with their heads entrapped after having pushed their way, feet first, into gaps created between the gate and the floor.

- **Configuration of uppermost edge:** Partially bounded openings at any point in the uppermost edge of a gate or enclosure that is greater than 1.5 inches in width and more than 0.64 inches in depth must not allow simultaneous contact between more than one surface on opposite sides of a specified test template. The template was dimensioned so as to screen out non-hazardous openings with angles that are either too narrow to admit the smallest user's neck, or too wide to entrap the largest user's head. This requirement is intended to address head/neck entrapment incidents reported in the "V" shaped openings common in older, "accordion style" gates.
- **Latching/locking and hinge mechanisms:** This hardware durability test requires egress panels on gates and enclosures to be cycled through their fully open and closed positions 2,000 times. Pressure gates without egress panels are cycled through installation and removal 550 times. The 2,000 cycles tests the durability of gates or enclosures having egress panels which are expected to be operated twice a day through the lifetime of the product. Pressure gates without egress panels are intended to be installed in locations not accessed as frequently, and thus, are tested through a reduced 550 cycle test. This preconditioning test is intended to address incidents involving failures of latches, hinges, and hardware.
- **Automatic closing system:** Immediately following the cyclic preconditioning test, an egress panel marketed to have an automatic closing feature must continue to automatically close when opened to a width of 8 inches as well as when it is opened to its maximum opening width. This requirement is intended to check that a gate fully closes

and locks as it is expected and advertised to do, thereby reducing the likelihood of an occupant accessing potentially hazardous conditions on the other side of an unintentionally unsecured gate.

- **Push-out force strength:** Five test locations are specified for this test: the four corners of the gate as well as the center. A horizontal push-out force is applied five times to each of the test locations and the maximum force applied before the gate pushes out of the test fixture is recorded and averaged for each test location (up to a maximum of 45 lb). The maximum force of 45 lb was selected because it simulates the effects of the largest intended occupant's weight. The average push-out force shall exceed 30 lb in all five test locations (and each individual force shall exceed 20 lb.) This requirement is intended to prevent the intended occupant from being able to dislodge the gate and gain access to a hazardous area the gate was meant to protect them from.
- **Locking devices:** Locking devices shall meet one of two conditions: 1) if the lock is a single-action latching device, the release mechanism must require a minimum force of 10 lb to activate and open the gate, or else 2) the lock must have a double action release mechanism. This requirement is intended to prevent the intended occupant being contained by the gate from being able to operate the locking mechanism.
- **Toys:** Toy accessories shall not be attached to, or sold with, a gate. Toy accessories attached to, removable from, or sold with an enclosure, shall meet applicable requirements of specification ASTM F963 "*Consumer Safety Specification for Toy Safety.*"
- **Slat Strength:** This test verifies that no wood or metal vertical members (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. The test is conducted on 25 percent of all gate slats, excluding adjacent slats. This requirement is intended to check that gates and enclosures retain their structural integrity when children push or pull on the gate or enclosure slats.

- **Label testing:** Paper and non-paper labels (excluding labels attached by a seam) shall not liberate without the aid of tools or solvents. Paper or non-paper attached by a seam shall not liberate when subjected to a 15-lb pull force.

Warning, Labeling and Instructions. These provisions specify the marking, labeling and instructional literature requirements that must appear on or with each gate or enclosure.

- All gates and enclosures must include warnings on the product about the risk of serious injury or death when a product is not securely installed, must warn the consumer to never use the gate with a child who is able to climb over or dislodge the gate, and to never use the gate to prevent access to a pool.
- Pressure-mounted gates with a single-action locking mechanism on one side of the gate must include the following warning: Install with this side AWAY from child.
- Enclosures with locking or latching mechanisms must include the following warnings:
Use only with the [locking/latching] mechanism securely engaged.
- Gates that do not pass the push-out test requirements must include the following warning on the product: You MUST install [wall cups] to keep gate in place. Without [wall cups] child can push out and escape.

These warnings are also required on the retail packaging unless they are visible in their entirety to consumers on the gate or enclosure at point of purchase.

VI. Adequacy of ASTM F1004-19 Requirements

The Commission concludes 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.

In addition to the general requirements, ASTM F1004-19 contains performance requirements and test methods specific to gates and enclosures. The Commission determines that the current voluntary standard addresses the primary hazard patterns identified in the incident data. This section discusses the hazard patterns that account for the reported incidents and injuries and how the current voluntary standard addresses each. To assess the adequacy of ASTM F1004-19, CPSC staff considered all 436 reported incidents (19 fatal and 417 nonfatal) to identify hazard patterns associated with children's gates and enclosures.

A. Hardware Issues

This hazard is associated with 163 incidents (37%). The CPSC incident data show that hardware failures, (*e.g.*, broken hinges, locks, and mounting brackets) led to contusions, lacerations, head injuries, and fractures. To identify gates and enclosures that have hardware issues, such as those found in the incident data, ASTM F1004-19 provides a latching/locking and hinge performance test that cycles gates through 2,000 complete "open and closing" cycles and 550 installation/removal cycles for pressure gates without egress panels. The Commission concludes that this performance requirement adequately addresses the hazard pattern associated with hardware failures.

B. Slat Problems

This hazard is associated with 107 incidents (25%). The CPSC incident data show that problems occurred when slats broke or detached from gates or enclosures, resulting in contusions

and lacerations. The ASTM F1004-19 standard includes a performance requirement that slats must withstand a 45-pound force, which is the pulling force of the largest intended occupant. The Commission concludes that this performance requirement adequately addresses the hazard pattern associated with slat failures.

C. Material and Finish

This hazard is associated with 50 incident reports (11%). The CPSC incident data show that problems occurred with small parts breaking free to become potential choking hazards; splintering wood, or welding, sharp edges, protrusions, rails bending out of shape; fabric/mesh panels sagging, and poor quality stitching on fabric panels. ASTM F1004-19 (General Requirements) contains many requirements that address these issues, such as sharp points or edge, small parts, and bans on the use of transverse/lateral joints in all wood components. ASTM F1004-19 also tests openings within gates or enclosures and completely bounded openings, as well as bottom spacing between the bottom of the gate or enclosure and the floor, which also help reduce issues with rails or flexible barrier materials bending out of shape. The Commission concludes that these performance requirements adequately address the hazard pattern associated with material and finish failures.

D. Design Issues

This hazard is associated with 42 incident reports (10%). The CPSC incident data show that problems occurred when an aspect of the design of the gate or enclosure failed, such as the opening size between slats or panels that allowed for entrapments, moving gate components causing scissoring or pinching issues, features that were able to be used as footholds, or sections that posed a trip hazard when the gate was in an opened position. ASTM F1004-19 contains several performance tests that specifically address entrapments in openings, including the

completely bounded openings and bottom spacing tests. The general openings and scissoring, shearing, and pinching performance requirements also help address hazards related to openings. The Commission concludes that these performance requirements adequately address the hazard pattern associated with design issues.

E. Installation Problems

This hazard is associated with 20 incidents (5%). The CPSC incident data show that problems occurred when there were unclear instructions, mismatched dimensions between gates and the openings they were meant to fit into, and failure of the gate to remain upright in the opening. ASTM F1004-19 includes several provisions requiring that warnings, labeling, and instructions be easy to read and understand for proper installation of gates. In addition, ASTM F1004-19 provides that all gates must meet a 30 lbs of push-out force at five test locations.

The Commission agrees that the requirement to meet the 30-lb push-out force for all gates will improve children's safety, if the gate is installed correctly. The ASTM F1004-19 standard allows the use of mounting hardware or wall cups to meet the 30-lb push-out force requirement. Although the Commission determines that these provisions generally address the installation hazard patterns because they help clarify the requirements for proper installation, ASTM may be able to make improvements in the future to increase the consumer's awareness of the importance of proper installation of pressure-mounted gates.

Currently, the ASTM standard does not require pressure-mounted gates to provide the consumer with reliable feedback indicating that the gate has been installed correctly with enough side pressure to prevent a child from knocking it over. Manufacturers' instructions for some pressure-mounted gates provide little or no clear direction for consumers to know when the gate is installed correctly or will stay in place after several uses. Some of the designs require the user

to push or pull on the gate to have a *feel* that the gate is properly installed (*e.g.* “turn the nut . . . until the gate is snug”; “turn the hand wheels until firm tension is achieved”); or make precise measurements for installation (*e.g.*, the distance between the gate frame and the wall to ensure both sides are equally spaced). These tasks are often subjective or cumbersome to guarantee proper installation.

CPSC staff intends to collaborate with ASTM in the future to improve the installation of pressure-mounted gates with the use of visual side-pressure indicators. Because pressure-mounted gates rely on friction force to resist a push-out force applied to the gate, side-pressure force is a key component to the gate performance. The more side-pressure force exerted by the gate to the wall/door opening, the more resistance to push-out forces. Effective visual side-pressure indicators would make it more likely that test technicians install the gate with sufficient side-force pressure and could provide consistency and validity to the test results. Equally important, visual side-pressure indicators could provide a way for consumers to know when their gate is installed with sufficient side pressure, particularly as they are not expected to have or use force gauges during installation. Visual indicators may also help inform consumers during the lifecycle of the product, when readjustment is necessary. Accordingly, the Commission seeks comment regarding the use and feasibility of visual side pressure indicators for pressure-mounted gates and whether such indicators would be effective in addressing installation failures.

F. Miscellaneous

Seven of the incidents (2%) raised miscellaneous issues, including three complaints about an ineffective recall remedy, one complaint about poor product packaging, and three consumer concerns about the safety of a specific design. The issues are not addressed in ASTM 1004-19,

but they do not relate directly to improving the safety of gates or enclosures. Accordingly, the Commission does not recommend changes to the ASTM standard to address these issues.

G. Enclosure Instability

A few (<1%) incident reports came from consumers who described problems with flimsy or unstable enclosures. ASTM F1004–19 contains several requirements that help address the product durability issues reported in these enclosure incidents. The vertical strength requirement was expanded to test not only the joints between the enclosure panels, but also to test the top rails of the panels themselves. Additionally, the cyclic locking/latching tests whether the hardware in these products is durable and capable of withstanding regular use. Many of the general requirements, such as those concerning sharp edges, small parts, wood parts, and protective components, also help to address issues in this category. The Commission concludes that these performance requirements are adequate to address the hazard pattern associated with unstable enclosures.

H. Warnings and Instructional Literature

ASTM F1004-19 includes updated warning format requirements that are aligned with ASTM's Ad Hoc Wording Task Group recommendations. The Ad Hoc Task Group harmonized the wording and language used across nursery product standards. This task group also developed recommendations for harmonizing warning formats across standards. CPSC staff has worked closely with this group to develop ad hoc recommendations that are based largely on the requirements of the ANSI Z535.4, *American National Standard for Product Safety Signs and Labels*.

The Commission expects that the ASTM F1004-19's labeling requirements will reduce inconsistencies currently seen on gates and enclosures, and will address numerous warning

format issues to capture consumer attention better, improve readability, and increase hazard perception and avoidance behavior. In addition, the Commission determines that the instructional literature, also aligned with the Ad Hoc Task Group's wording design or form requirements, improves the required warning statements in the instructions. However, the Commission believes that additional collaboration with ASTM regarding the placement and wording of the warning label on gates for wall cups on pressure-mounted gates may improve consumers' awareness of the importance of proper wall cup installation.

ASTM F1004-19 currently requires a warning statement about the hazard of installing gates without wall cups. This warning statement is included within the general warning label; however, the label can have as many as six different required messages in one location:



As discussed, there is no objective measure for consumers to confirm the correct installation of the gate. CPSC staff intends to work with ASTM to improve the installation of pressure-mounted gates with the use of visual side-pressure indicators to provide an objective way for test technicians and consumers to know when their gate is installed with sufficient side pressure. In addition, although some pressure-gate manufacturers generally instruct consumers

that wall cups are required if they need to install a pressure-mounted gate at the top of the stairs, consumers may not be aware that wall cups need to be installed if the gate is used in other locations, or that wall cups need to be reinstalled if the gate is moved to a different location. Additional collaboration with ASTM is needed to assess whether a wall cup warning label statement that is separate and distinct from the general warning label, and placed conspicuously on the top rail of the gate, may increase the likelihood of the consumer noticing, comprehending, and complying with the warning. Accordingly, the Commission seeks comment on whether the placement and wording of the wall cup warning should be modified, and whether such changes would be effective in addressing installation failures.

VII. International Standards

CPSC staff reviewed the performance requirements of the current ASTM standard, ASTM F1004-19, to the performance requirements of other standards that address children's gates and enclosures including:

- The European Standard, EN 1930:2011/A1, Child use and care articles – Safety barriers – Safety requirements and test methods (EN standard); and
- The Canadian regulation, SOR/2016-179, Expansion Gates and Expandable Enclosures Regulations (SOR standard).

CPSC staff determined that, for most of the relevant performance requirements, the SOR standard refers to an older version of ASTM F1004, published in 1986 (ASTM F1004-86), which has been superseded. Staff compared the applicable performance requirements of the SOR standard and EN standard to the current ASTM F1004 standard, ASTM F1004-19, including the following requirements: side height and vertical load, footholds, head entrapment, latch/lock conditioning test and automatic closing system, scissoring, shearing, and pinching, entanglement

by protruding parts, neck entrapment in V shaped opening, packaging, construction and structural integrity, push-out test, hazardous materials, flammability, and protective components. CPSC staff's review showed that, for all of the requirements, the current ASTM F1004-19 standard is adequate, or more stringent than, the international standards in addressing the hazards identified in incidents associated with children's gates and enclosures.

VIII. Incorporation by Reference

The Commission is proposing to incorporate by reference, ASTM F1004-19, without change. The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. These regulations require that, for a proposed rule, agencies discuss in the preamble to the NPR ways that the materials the agency proposes to incorporate by reference are reasonably available to interested persons, or explain how the agency worked to make the materials reasonably available. In addition, the preamble to the proposed rule must summarize the material. 1 CFR 51.5(a).

In accordance with the OFR's requirements, section V.B of this preamble summarizes the provisions of ASTM F1004-19 that the Commission proposes to incorporate by reference. ASTM F1004-19 is copyrighted. By permission of ASTM, the standard can be viewed as a read-only document during the comment period on this NPR, at: <http://www.astm.org/cpsc.htm>. Interested persons may also purchase a copy of ASTM F1004-19 from ASTM, through its website (<http://www.astm.org>), or by mail from ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; <http://www.astm.org>. Alternatively, interested parties may inspect a copy of the standard at CPSC's Division of the Secretariat.

IX. Effective Date

The Administrative Procedure Act (APA) generally requires that the effective date of a rule be at least 30 days after publication of the final rule (5 U.S.C 553(d)). The Commission proposes that the standard become effective 6 months after publication of a final rule in the *Federal Register*. Barring evidence to the contrary, the Commission generally considers 6 months to be sufficient time for suppliers to come into compliance with a new standard, and this is typical for other CPSIA section 104 rules. Six months is also the period that the Juvenile Products Manufacturers Association (JPMA) typically allows for products in their certification program to shift to a new standard once that new standard is published. The Commission is not aware of any information suggesting that 6 months is not an appropriate time frame for suppliers to come into compliance. Therefore, juvenile product manufacturers are accustomed to adjusting to new standards within this time frame. The Commission believes that most firms should be able to comply with the 6-month time frame, but asks for comments, particularly from small businesses, regarding the feasibility of complying with the proposed 6-month effective date. We also propose a 6-month effective date to the amendment to part 1112.

X. Assessment of Small Business Impact

A. Introduction

The Regulatory Flexibility Act (RFA) requires that proposed rules be reviewed for their potential economic impact on small entities, including small businesses. Section 603 of the RFA requires that agencies prepare an initial regulatory flexibility analysis (IRFA) and make it available to the public for comment when the general notice of proposed rulemaking (NPR) is published, unless the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Based on current information, the Commission cannot rule out that incorporating by reference ASTM F1004-19 as a mandatory

CPSC safety standard would have a significant impact on a substantial number of small entities involved in the manufacturing or importing of children's gates and enclosures,

B. Small Entities to Which the Proposed Rule Would Apply

CPSC staff identified 113 firms supplying gates and enclosures to the U.S. market. The vast majority of suppliers are domestic (109 firms). The U.S. Small Business Administration (SBA) size guidelines identify any manufacturer as "small" if it employs fewer than 500 employees. Out of 113 firms, 83 appear to be very small, home-based domestic manufacturers.⁷ They typically have only one or two gates in their product line and supply few other products. They generally also have low sales volumes. None of the home-based manufacturers appears to supply enclosures.

An additional 30 firms that are larger than the home-based suppliers supply gates and/or enclosures; 26 of the 30 are domestic. These firms include manufacturers and importers. Twenty-three of the 30 firms, although not as small as the home-based suppliers, are still small domestic entities, based on SBA guidelines for the number of employees in their North American Industry Classification System (NAICS) codes. These firms typically have eight to nine gate models in their product lines and have much larger sales volumes than the home-based suppliers. Of the 23 small domestic suppliers, 13 supply only gates, six supply only enclosures, and four firms supply gates and enclosures. The remaining four firms are foreign manufacturers.

C. Costs of Proposed Rule to Be Incurred by Small Manufacturers

CPSC staff is aware of 106 small, domestic firms currently marketing gates and enclosures in the United States. It appears unlikely that there would be a significant economic impact on the 17 suppliers (12 manufacturers and 5 importers) of compliant gates and

⁷ These suppliers were identified online, and staff believes that there may be additional home-based suppliers operating in the gates market on a very small scale (possibly including some without an online presence).

enclosures. These suppliers are already compliant with the current ASTM voluntary standard (ASTM F1004-18) and are likely to remain compliant with the new standard. However, based upon current information, the Commission cannot rule out a significant economic impact on six suppliers of noncompliant gates and enclosures and 83 home-based suppliers of gates.

For the three domestic manufacturers of gates and enclosures that do not comply with the voluntary standard, the cost of bringing products into compliance may be significant.⁸ Several firms indicate that the cost of a redesign could be between \$400,000 and \$1 million, depending on the materials used to construct the product. The changes in the requirements for instruction manuals and labeling are not expected to be significant for these firms. Typically, these firms have already developed and provided warning labels and instruction manuals with their products. For two of the three small manufacturers of noncompliant gates, third party testing costs are not expected to exceed 1 percent of revenue because they have high revenue levels and few gate models in their product lines. The revenue level for the third firm is unknown.

For the three domestic importers/wholesalers that supply gates and enclosures that do not comply with the voluntary standard, the cost of ensuring compliance with the proposed standard could be significant, depending upon the extent of the changes required, and the response of their supplying firms. Finding another supplier, or dropping the product line entirely, are options for importers/wholesalers if their existing supplier does not make the necessary product changes. The impact on a given firm will depend on the revenue generated by the product line, the cost of finding an alternative supplier, and the variety of other products in their product line. Third party testing costs may also have a significant impact. However, CPSC staff was unable to find

⁸ Generally, we believe that impacts of less than one percent of a firm's revenue are unlikely to be significant. We cannot rule out the possibility that impacts of greater than one percent of revenue could be significant for some firms in some cases.

revenue information for two firms, and testing costs could exceed 1 percent of revenue for the third firm.

Additionally, it is likely that all 83 of the very small, home-based suppliers identified would be significantly impacted, regardless of whether they require modifications to meet the performance requirements of the proposed standard. Most of the firms are likely to leave the market because their revenue from the sale of gates does not appear to be sufficiently large to justify third party testing costs and the cost of developing warning labels and instructional literature if these have not been provided before. If confronted by these costs, most of these very small, home-based manufacturers could stop selling gates or go out of business.

The Commission seeks comments on the changes that may be required to meet the voluntary standard, ASTM F1004-19, and in particular, whether redesign would be necessary, and what the associated costs are and the time required to bring the products into compliance. The Commission also seeks comments from individuals/firms familiar with various gates made by home-based suppliers who can provide additional information on the different styles of gates provided by home-based versus non-home-based suppliers. The Commission is particularly interested in how these firms are likely to respond to the proposed rule and the costs and time frame that would be required to modify any product, if applicable. Additionally, the Commission requests information on the number of home-based suppliers, and on the significance of gates sales specifically, to their total revenue.

D. Alternatives

The Commission is proposing a 6-month effective date for the rule. A later effective date could reduce the economic impact on firms in two ways. First, firms would be less likely to experience a lapse in production/importation, which could result if they are unable to comply and

have their products tested by a third party within the required timeframe. Second, firms could spread costs over a longer time period, thereby reducing their annual costs, as well as the present value of their total costs. Suppliers interviewed for the rulemaking indicated that 12–18 months might be necessary if a complete product redesign were required. Additional time might also be necessary for home-based suppliers that currently are not providing warning labels or instructional materials with their products to develop them.

The Commission seeks comments on the impact of the proposed rule on small manufacturers and importers, in general, as well as alternative effective dates, or any other alternatives that could mitigate the impact on small firms. When suggesting an alternative, please provide specific information on the alternative, and the extent to which it could reduce the impact.

XI. Environmental Considerations

The CPSC's regulations address whether we are required to prepare an environmental assessment or an environmental impact statement. 16 CFR part 1021. Those regulations state that certain categories of CPSC actions normally have "little or no potential for affecting the human environment," and therefore, do not require an environmental assessment or an environmental impact statement. 16 CFR 1021.5(c)(1). Rules or safety standards that provide design or performance requirements for products are among the listed exempt actions. Thus, the proposed rule falls within the categorical exemption.

XII. Paperwork Reduction Act

This proposed rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork

Reduction Act of 1995 (PRA; 44 U.S.C. 3501–3521). Under 44 U.S.C. 3507(a)(1)(D), an agency must publish the following information:

- a title for the collection of information;
- a summary of the collection of information;
- a brief description of the need for the information and the proposed use of the information;
- a description of the likely respondents and proposed frequency of response to the collection of information;
- an estimate of the burden that shall result from the collection of information; and
- notice that comments may be submitted to the OMB.

In accordance with this requirement, the CPSC provides the following information:

Title: Safety Standard for Gates and Enclosures

Description: The proposed rule would require each gates and enclosure to comply with ASTM F1004-19, *Standard Consumer Safety Specification for Expansion Gates and Expandable Enclosures*, with no modifications. Sections 8 and 9 of ASTM F1004-19 contain requirements for marking, labeling, and instructional literature. These requirements fall within the definition of “collection of information,” as defined in 44 U.S.C. 3502(3).

Description of Respondents: Persons who manufacture or import gates or enclosures.

Estimated Burden: We estimate the burden of this collection of information under 16 CFR part 1239 as follows:

Table 1 – Estimated Annual Reporting Burden

Burden Type	Type of Supplier	Number of Respondents	Frequency of Responses	Total Annual Responses	Hours per Response	Total Burden Hours
Labeling	Home-based manufacturers	83	2	166	7	1,162
	Other Suppliers	30	8	240	1	240
<u>Labeling Total</u>						1,402
Instructional literature	Home-based manufacturers	83	2	50	100	8,300
TOTAL BURDEN						9,702

Our estimate is based on the following:

Two groups of firms that supply gates and enclosures to the U.S. market may need to modify their existing warning labels. The first are very small, home-based manufacturers (83), who may not currently have warning labels on their gates (CPSC staff did not identify any home-based suppliers of enclosures). CPSC staff estimates that it would take home-based manufacturers approximately 15 hours to develop a new label; this translates to approximately 7 hours per response for this group of suppliers. Therefore, the total burden hours for very small, home-based manufacturers is 7 hours per model x 83 entities x 2 models per entity = 1,162 hours.

The second group of firms supplying gates and enclosures to the U.S. market that may need to make some modifications to their existing warning labels are non-home-based manufacturers and importers (30). These are also mostly small domestic firms, but are not home-based and do not operate at the low production volume of the home-based firms. For this second group, all of whom have existing warning labels on their products and are used to working with warning labels on a variety of other products, we estimate that the time required to make any

modifications now or in the future would be about 1 hour per model. Based on an evaluation of supplier product lines, each entity supplies an average of 8 models of gates and/or enclosures; therefore, the estimated burden associated with labels is 1 hours per model x 30 entities x 8 models per entity = 240 hours.

The total burden hours attributable to warning labels is the sum of the burden hours for both groups of entities: very small home-based manufacturers (1,162 burden hours) + non-home-based manufacturers and importers (240 burden hours) = 1,402 burden hours. We estimate the hourly compensation for the time required to create and update labels is \$34.50 (U.S. Bureau of Labor Statistics, “Employer Costs for Employee Compensation,” December 2018, Table 9, total compensation for all sales and office workers in goods-producing private industries:

<http://www.bls.gov/ncs/>). Therefore, the estimated annual cost to industry associated with the labeling requirements is \$48,369 (\$34.50 per hour x 1,402 hours = \$48,369). No operating, maintenance, or capital costs are associated with the collection.

ASTM F1004-19 also requires instructions to be supplied with the product. Under the OMB’s regulations (5 CFR 1320.3(b)(2)), the time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the “normal course of their activities” are excluded from a burden estimate, where an agency demonstrates that the disclosure activities required to comply are “usual and customary.” As with the warning labels, the reporting burden of this requirement differs for the two groups.

Many of the home-based gate manufacturers supplying on a very small scale may provide either no instructions or only limited instructions with their products as part of their “normal course of activities.” CPSC staff estimates that each home-based entity supplying homemade gates and/or enclosures might require 50 hours to develop an instruction manual to accompany

their products. Although the number of home-based suppliers of gates and/or enclosures is likely to vary substantially over time, based on CPSC staff's review of the marketplace, currently, there are approximately 83 home-based suppliers of gates and/or enclosures operating in the U.S. market. These firms typically supply two gates on average. Therefore, the costs of designing an instruction manual for these firms could be as high as \$286,350 (50 hours per model x 83 entities x 2 models per entity = 8,300 hours x \$34.50 per hour = \$286,350). Not all firms would incur these costs every year, but new firms that enter the market would and this may be a highly fluctuating market.

The non-home-based manufacturers and importers likely are providing user instruction manuals already with their products, under the normal course of their activities. Therefore, for these entities, there are no burden hours associated with providing instructions.

Based on this analysis, the proposed standard for gates and enclosures would impose an estimated total burden to industry of 9,702 hours at a cost of \$334,719 annually.

In compliance with the PRA (44 U.S.C. 3507(d)), we have submitted the information collection requirements of this rule to the OMB for review. Interested persons are requested to submit comments regarding information collection by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, to the Office of Information and Regulatory Affairs, OMB (see the ADDRESSES section at the beginning of this notice). Pursuant to 44 U.S.C. 3506(c)(2)(A), we invite comments on:

- the estimated burden hours required for very small, home-based manufacturers to modify (or, in some cases, create) warning labels;
- the estimated burden hours required for very small, home-based manufacturers to modify (or, in some cases, create) instruction manuals;

- whether the collection of information is necessary for the proper performance of the CPSC's functions, including whether the information will have practical utility;
- the accuracy of the CPSC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- ways to enhance the quality, utility, and clarity of the information to be collected;
- ways to reduce the burden of the collection of information on respondents, including the use of automated collection techniques, when appropriate, and other forms of information technology; and
- the estimated burden hours associated with label modification, including any alternative estimates, for both home-based and non-home-based suppliers.

XIII. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where 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 requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the CPSC for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA refers to the rules to be issued under that section as "consumer product safety rules," thus, implying that the preemptive effect of section 26(a) of the CPSA would apply. Therefore, a rule issued under section 104 of the CPSIA will invoke the preemptive effect of section 26(a) of the CPSA when it becomes effective.

XIV. Certification and Notice of Requirements (NOR)

Section 14(a) of the CPSA imposes the requirement that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard or regulation under any other act enforced by the CPSC, must be certified as complying with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). Section 14(a)(2) of the CPSA requires that certification of children's products subject to a children's product safety rule be based on testing conducted by a CPSC-accepted third party conformity assessment body. Section 14(a)(3) of the CPSA requires the Commission to publish a notice of requirements (NOR) for the accreditation of third party conformity assessment bodies (or laboratories) to assess conformity with a children's product safety rule to which a children's product is subject. The proposed rule for 16 CFR part 1239, "Safety Standard for Gates and Enclosures," when issued as a final rule, will be a children's product safety rule that requires the issuance of an NOR.

The CPSC published a final rule, *Requirements Pertaining to Third Party Conformity Assessment Bodies*, 78 FR 15836 (March 12, 2013), which is codified at 16 CFR part 1112 (referred to here as Part 1112). This rule took effect on June 10, 2013. Part 1112 establishes requirements for accreditation of third party conformity assessment bodies (or laboratories) to test for conformance with a children's product safety rule in accordance with Section 14(a)(2) of the CPSA. The final rule also codifies all of the NORs that the CPSC had published, to date. All new NORs, such as the gates and enclosures standard, require an amendment to part 1112. Accordingly, in this document, we propose to amend part 1112 to include the gates and enclosures standard, along with the other children's product safety rules for which the CPSC has issued NORs.

Test laboratories applying for acceptance as a CPSC-accepted third party conformity assessment body to test to the new standard for gates and enclosures would be required to meet

the third party conformity assessment body accreditation requirements in part 1112. When a laboratory meets the requirements as a CPSC-accepted third party conformity assessment body, it can apply to the CPSC to have 16 CFR part 1239, *Safety Standard for Gates and Enclosures*, included in its scope of accreditation of CPSC safety rules listed for the laboratory on the CPSC website at: www.cpsc.gov/labsearch.

In connection with the part 1112 rulemaking, CPSC staff conducted an analysis of the potential impacts on small entities of the proposed rule establishing accreditation requirements, 77 FR 31086, 31123-26 (May 24, 2012), as required by the RFA and prepared an Initial Regulatory Flexibility Analysis (IRFA). The IRFA concluded that the requirements would not have a significant adverse impact on a substantial number of small laboratories because no requirements are imposed on laboratories that do not intend to provide third party testing services under section 14(a)(2) of the CPSA. The only laboratories that are expected to provide such services are those that anticipate receiving sufficient revenue from providing the mandated testing to justify accepting the requirements as a business decision. Laboratories that do not expect to receive sufficient revenue from these services to justify accepting these requirements would not likely pursue accreditation for this purpose. Similarly, amending the part 1112 rule to include the NOR for gates and enclosures would not have a significant adverse impact on small laboratories. Moreover, based upon the number of laboratories in the United States that have applied for CPSC acceptance of the accreditation to test for conformance to other juvenile product standards, we expect that only a few laboratories will seek CPSC acceptance of their accreditation to test for conformance with the gates and enclosures standard. Most of these laboratories will have already been accredited to test for conformance to other juvenile product standards and the only costs to them would be the cost of adding the gates and enclosures

standard to their scope of accreditation. As a consequence, the Commission certifies that the proposed notice requirements for the gates and enclosures standard will not have a significant impact on a substantial number of small entities.

XIV. Request for Comments

This proposed rule begins a rulemaking proceeding under section 104(b) of the CPSIA for the Commission to issue a consumer product safety standard for gates and enclosures, and to amend part 1112 to add gates and enclosures to the list of children's product safety rules for which the CPSC has issued an NOR. In addition to requests for specific comments elsewhere in this NPR, the Commission invites all interested persons to submit comments on any aspect of the proposed rule.

Comments should be submitted in accordance with the instructions in the **ADDRESSES** section at the beginning of this notice.

List of Subjects

16 CFR Part 1112

Administrative practice and procedure, Audit, Consumer protection, Reporting and recordkeeping requirements, Third party conformity assessment body.

16 CFR Part 1239

Consumer protection, Imports, Incorporation by reference, Infants and children, Labeling, Law enforcement, and Toys.

For the reasons discussed in the preamble, the Commission proposes to amend parts 1112 and 1239 of Title 16 of the Code of Federal Regulations as follows:

PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

1. The authority citation for part 1112 continues to read as follows:

Authority: 15 U.S.C. 2063; Pub. L. 110-314, section 3, 122 Stat. 3016, 3017 (2008).

2. Amend § 1112.15 by adding paragraph (b)(49) to read as follows:

§ 1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule and/or test method?

* * * * *

(b) ***

(49) 16 CFR part 1239, Safety Standard for Gates and Enclosures.

3. Add part 1239 to read as follows:

PART 1239-SAFETY STANDARD FOR GATES AND ENCLOSURES

Sec.

1239.1 Scope.

1239.2 Requirements for Gates and Enclosures.

Authority: Sec. 104, Pub. L. 110-314, 122 Stat. 3016 (15 U.S.C. 2056a).

§ 1239.1 Scope.

This part establishes a consumer product safety standard for gates and enclosures.

§ 1239.2 Requirements for gates and enclosures.

Each gate and enclosure must comply with all applicable provisions of ASTM F1004-19, Standard Consumer Safety Specification for Expansion Gates and Expandable Enclosures, approved on June 1, 2019. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428;

www.astm.org/cpsc.htm. You may inspect a copy at the Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to:

www.archives.gov/federal-register/cfr/ibr-locations.html.

Alberta E. Mills,
Secretary, Consumer Product Safety Commission

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