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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: Final rule.

SUMMARY: Pursuant to the Consumer Product Safety Improvement Act of 2008 (CPSIA), the U.S. Consumer Product Safety Commission (CPSC) is issuing this final rule establishing a safety standard for gates and enclosures that are intended to confine a child. The CPSC is also amending its regulations regarding third party conformity assessment bodies to include the safety standard for gates and enclosures in the list of notices of requirements (NORs).

DATES: This rule will become effective July 6, 2021. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of July 6, 2021.

FOR FURTHER INFORMATION CONTACT: Justin Jirgl, Compliance Officer, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: 301–504–7814; email: *jjirgl@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. Standards issued under section 104 of the CPSIA are to be ''substantially the same as'' the applicable voluntary standards or more stringent than the voluntary standard, if the Commission determines 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,'' and the statute specifies 12 categories of products that are included in the definition. Section 104(f)(2)(E) of the CPSIA specifically identifies ''gates and other enclosures for confining a child'' as a durable infant or toddler product. Additionally, the Commission's regulation requiring product registration cards defines ''gates and other enclosures for confining a child'' as a durable infant or toddler product subject to the registration card rule. 74 FR 68668 (Dec. 29, 2009); 16 CFR 1130.2(a)(5).

As required by section 104(b)(1)(A) of the CPSIA, the Commission consulted with manufacturers, retailers, trade organizations, laboratories, consumer advocacy groups, consultants, and the public to develop this rule, largely through ASTM's standard development process. On July 8, 2019, the Commission issued a notice of proposed rulemaking (NPR) for gates and enclosures.[1] 84 FR 32346. The NPR proposed to incorporate by reference the voluntary standard developed by ASTM International, ASTM F1004–19, *Standard Consumer Safety Specification for Expansion Gates and Expandable Enclosures* (ASTM F1004–19). Additionally, the NPR stated that the Commission agreed that a new requirement in ASTM F1004–19 that all gates, including pressure-mounted gates, meet a 30-pound push-out force test at five test locations, will improve children's safety if the gate is installed correctly. 84 FR at 32351. The NPR discussed concerns with consumer awareness of correct pressure-mounted gate installation, and discussed improvements to ASTM F1004–19 to increase consumer awareness, including the use of visual side-pressure indicators and a separate warning label along the top rail of the gate. *Id.* at 32351–52. The NPR stated that staff would continue to work with ASTM to improve consumer awareness of the importance of proper installation of pressure-mounted gates, and requested comment on improved warnings and visual side-pressure indicators. *Id.* The Commission did not receive any comments.

Since publication of the NPR, CPSC staff has continued to work with the ASTM subcommittee on gates and enclosures on visual side-pressure indicators and a separate warning label, as outlined in the NPR. Although the ASTM standard has not yet been updated, the ASTM subcommittee is moving forward to include a separate warning label (for pressure-mounted gates that rely on the use of wall cups to meet the 30-pound push-out force test), and has started moving forward to include visual side-pressure indicators (for pressure-mounted gates that do not use wall cups to meet the 30-pound push-out force test) to improve correct installation of pressure-mounted gates. Accordingly, for the final rule setting a safety standard for gates and enclosures, the Commission incorporates by reference ASTM F1004–19, with the following additional requirements, depending on the design of a pressure-mounted gate, to further reduce the risk of injury associated with incorrectly installed pressure-mounted gates:

(1) For pressure-mounted gates that include wall cups with the product to meet the 30-pound push-out force test,[2] the gates must include a separate warning label in a conspicuous location on the top rail of the gate regarding correct installation using wall cups, or

(2) For pressure-mounted gates that do not use wall cups to meet the 30-pound push-out force test, the gates must use visual side-pressure indicators to provide consumers feedback as to whether the gate is correctly installed.

Under section 14 of the CPSA, the Commission promulgated 16 CFR part 1112 to establish requirements for accreditation of third party conformity assessment bodies (or testing laboratories) to test for conformity with a children's product safety rule. The final rule amends the list of notices of requirements (NORs) issued by the Commission in 16 CFR part 1112 to include the safety standard for gates and enclosures.

CPSC staff's briefing package supporting this rule (Staff's Final Rule Briefing Package), is available at: *https://www.cpsc.gov/s3fs-public/Final%20Rule%20-%20Safety%20Standard%20for%20Gates%20and%20Enclosures.pdf?lHExt6trsEuD56jiQTi7Ab0TjzdVQ_HH.*

II. Product Description

A. Definition of ''Gates and Other Enclosures''

ASTM F1004–19 defines an ''expansion gate'' as a ''barrier intended

[1] Staff's June 19, 2019 Briefing Package for the NPR (Staff's NPR Briefing Package) is available at: *https://www.cpsc.gov/s3fs-public/Proposed%20Rule%20-%20Safety%20Standard%20for%20Gates%20and%20Enclosures%20-%20June%2019%202019.pdf.*

[2] Note that section 6.7 of ASTM F1004–19 already requires that pressure-mounted gates that rely on the use of wall cups to meet the 30-pound push-out force test in section 6.3 of the standard to include the wall cups and necessary hardware to install them in the product packaging.

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 age 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).[3] 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 surround an area or play-space completely 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 are some non-expandable, fixed-sized gates available for sale.[4] However, most of the gates and enclosures sold in the United States that are intended for 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.

This final rule addresses all children's gates and enclosures intended for confining a child, including non-expandable, fixed-sized gates and enclosures. The scope of the rule includes all products within ASTM F1004–19.

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 also have a means of egress (*i.e.,* some self-supporting barriers have egress panels that resemble gates). 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 mark their walls permanently. 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 127 firms supply gates and enclosures to the U.S. market. The majority of suppliers to the U.S. market are domestic, including domestic importers of gates manufactured elsewhere. About 80 very small, home-based domestic gate manufacturers exist, as well as 37 domestic entities that are considered small based on the U.S. Small Business Administration (SBA) guidelines. The remaining 10 suppliers that are not small domestic businesses include four large domestic firms and six foreign firms. In 2013, approximately 11.1 million gates/enclosures were in use in U.S. households with children under the age of 6, according to the CPSC's 2013 Durable Nursery Product Exposure Survey (DNPES).

Gates and enclosures vary widely in price. Consumers can purchase simple plastic or wooden pressure-mounted gates for as little as $10, while hardware-mounted gates with multiple extensions, and gates intended for daycare use, can cost as much as $700. Most gates retail for $25 to $200. Retail prices for enclosures and modular products that can operate as an enclosure or a gate range from $60 to $550. Fabric gates made by home-based manufacturers typically cost under $50, while custom-made wooden gates by home-based manufacturers can run more than $500 for gates with solid hardwood panels and decorative metal elements. Pressure-mounted gates, particularly hard plastic-molded gates, tend to be the least expensive gates and are sometimes marketed as travel gates. Hardware-mounted gates tend to be slightly more expensive than pressure-mounted gates, although there are many hardware-mounted gates available for less than $40.

The least expensive pressure-mounted gates are a popular choice with consumers, but price may not be the predominant criterion for many customers. Out of several hundred models of gates available on the site of one prominent internet retailer in January 2020, the 10 best-selling baby safety gates ranged in price from $12 to $85. On another major big box store website, the top 10 best-selling gates ranged in price from $17 to $100. In both cases, the best-selling gates included hardware-mounted gates and pressure-mounted gates. All of the best-selling gates were from suppliers that currently claim both ASTM compliance and JPMA certification.

III. Incident Data

A. CPSRMS Data

CPSC staff reviewed incident data associated with children's gates and enclosures as reported through the Consumer Product Safety Risk Management System (CPSRMS).[5] Although gates and enclosures 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 securely to prevent injuries. CPSC staff reviewed the incident data involving older children and adults to determine hazard patterns. However, staff reported incident data in the NPR and this final rule only for *injuries* sustained by children younger than 5 years of age. Gates and enclosures are not intended for children older than 23 months, and the statutory definition of ''durable infant or toddler products'' states that the products are ''intended for use, or that may be reasonably expected to be used, by children under the age of 5 years.'' Section 104(f)(1) of the CPSIA.

The NPR stated that the Commission was aware of 436 incidents in the CPSRMS data, including 108 reported injuries and 19 reported fatalities

[3] 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.

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

[5] CPSC staff searched the CPSC database CPSRMS. 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, the reported incidents provide a minimum number of deaths and incidents occurring during this period and illustrate the circumstances involved in the incidents related to children's gates and enclosures.

Staff also reviewed national injury estimates, discussed below in III.B of this preamble.

involving child gates and enclosures, occurring from January 1, 2008 to October 31, 2018. Since that data extraction, CPSC staff identified an additional 42 incidents in the CPSRMS data, occurring from November 1, 2018 to January 7, 2020, including four reported injuries and three reported fatalities. Accordingly, for the final rule, the Commission is aware of 478 incidents in the CPSRMS data, including 112 reported injuries and 22 fatalities involving gates and enclosures, which occurred from January 1, 2008 to January 7, 2020. Because reporting is ongoing, the number of reported incidents during this period may change in the future.

1. Fatalities

The Commission is aware of 22 deaths that occurred between January 1, 2008 and January 7, 2020. The NPR discussed 19 deaths, stating that 17 of the deaths were associated with the use of a gate, while two were associated with an enclosure. Fifteen of the 19 decedents discussed in the NPR 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 somehow was opened without the caregiver's knowledge (10 incidents); the gate/enclosure was knocked down or pushed out by the decedent because of 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. 84 FR at 32347.

CPSC staff identified three additional fatal incidents since the NPR, reported to have occurred during the period November 1, 2018 to January 7, 2020. All three incidents involved a gate. The new fatalities include: A 2-year-old who drowned after climbing out of a crib, knocking over a baby gate, pushing open a living room door, and gaining access to an in-ground pool; a 23-month-old who suffocated in a gate opening while attempting to climb out of a crib after a baby gate was placed over the crib; and a 2-year-old who suffered asphyxiation after her neck was caught between a baby gate, fabric sheet, and door frame.

2. Nonfatalities

The NPR described 417 nonfatal incidents, and CPSC is aware of an additional 39 nonfatal incidents since the NPR, for a total of 456 nonfatal incidents that reportedly occurred between January 1, 2008 and January 7, 2020. Of the total 456 nonfatal incidents reported, 134 incidents described an injury to a child younger than 5 years of age.

The NPR stated that three of the nonfatal 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, who each suffered a near-drowning episode, and another 2-year-old ended up in a coma following 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. 84 FR at 32347–48. Since the NPR, CPSC is not aware of any additional hospitalizations associated with the use of gates or enclosures.

The NPR stated that 15 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. *Id.* Since the NPR, CPSC is not aware of any additional children who were treated and released from a hospital ED associated with the use of gates or enclosures.

Among the remaining injury reports described in the NPR, 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 at the time of the NPR. *Id.* Since the NPR, four of the additional 39 nonfatal incidents reported an injury to a child younger than 5 years of age. Two reported injuries involved falls related to the failure or collapse of gates and enclosures, resulting in one child bumping her face on the floor after mounting an enclosure that collapsed under her weight, and one child sustaining minor bruises after falling down 14 steps when a gate failed. In two additional reported injuries, children caught their fingers in the gaps of a gate, resulting in a swollen finger, and another child who almost broke his finger in the clasp used to latch a gate.

The remaining 344 nonfatal incidents associated with gates and enclosures that occurred from January 1, 2008 through January 7, 2020, reported that no injury had occurred to a child younger than 5 years of age, or provided no information about any injury. However, staff found that many of the incident descriptions indicated potential injury or death resulting from sharp edges, pinching, falls, entrapments, and choking.

B. National Injury Estimates

CPSC staff also reviewed injury estimates from the National Electronic Injury Surveillance System (NEISS), a statistically valid injury surveillance system.[6] NEISS injury data are gathered from EDs of hospitals selected as a probability sample of all the U.S. hospitals with EDs. As described in the NPR briefing package, staff estimated that a total of 22,840 injuries (sample size=820, coefficient of variation=0.10) related to safety gates and enclosures were treated in U.S. hospital emergency departments from 2008 to 2017. Using NEISS data finalized in spring 2019, staff's update includes injury estimates for 2018, resulting in an estimated total of 25,430 injuries (sample size=928, coefficient of variation=0.11) related to safety gates and enclosures treated in U.S. hospital emergency departments from 2008 to 2018. Staff did not observe a statistically significant trend for this period.

Staff found no recorded fatalities in NEISS. Ninety-five percent of children who went to a hospital ED were treated and released. The breakdown by age in the NEISS data indicates: 18 percent of all children were under 1 year old; 40 percent were at least 1 year old, but less than 2 years old; and 42 percent were more than 2 years old, but less than 5 years old. Due to the limited information from NEISS injury descriptions, which are brief and injury-focused, staff could not feasibly characterize hazard patterns similar to the characterization provided in section IV of this preamble for CPSRMS incident data. Based on the limited information provided, staff found the most frequent NEISS injury characteristics:

- *Hazard*—falls (58 percent) and impact on gate/enclosure (30 percent) were the most common. Approximately 11 percent of the impact injuries occurred when a child on a flight of steps fell and hit a safety gate at the bottom of the stairs. Most of the falls occurred:
  - When a child attempted to climb over or get through a barrier;
  - when a child managed to unlatch a gate/enclosure;
  - when a gate failed to stay upright and locked;

[6] 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.

○ when a child-carrying-adult tripped over a gate/enclosure; or

○ when a child pulled on a gate/enclosure.

• *Injured body part*—head (39 percent), face (21 percent), and mouth (10 percent).

• *Injury type*—lacerations (28 percent), internal organ injury (24 percent), and contusions/abrasions (18 percent).

IV. Hazard Pattern Identification

In the NPR briefing package, staff reviewed the CPSRMS data and identified hazard patterns for the 436 reported incidents (19 fatal and 417 nonfatal) associated with the use of safety gates and enclosures. For the final rule, staff reviewed and incorporated the additional 42 incidents found in the CPSRMS data since the NPR, for a total of 478 reported incidents (22 fatal and 456 nonfatal, including 112 reported injuries) associated with the use of gates and enclosures that occurred from January 1, 2008 to January 7, 2020. Staff found that the hazard patterns largely followed those described in the NPR, except no new incidents were identified in the following categories: *Miscellaneous other issues and consumer comments, climb-over, caregiver mis-step, repaired/modified,* or *undetermined* issues. Staff grouped the hazard patterns into three categories: Product-related, non-product-related, and undetermined. Most of the identified hazard patterns (95%) are product-related hazards. A description of the staff-identified hazard patterns, in order of descending frequency, follows.

A. Product-Related

• *Hardware issues:* Of the 478 incidents, 183 (38%) reported 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, or a suction cup coming loose.

These hardware failures were associated with 39 injuries, including bruises, 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 478 incidents, 109 (23%) reported slats breaking or detaching from the safety gate or enclosure, or splitting. Sixteen injuries were reported in this category, resulting in contusions/abrasions or lacerations. Once the slat(s) broke, the child got injured on it, fell forward through the gap created, or lost balance and fell backwards. One injury incident resulted in treatment at a hospital ED.

• *Poor quality material and finish:* Of the 478 incidents, 58 (12%) 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 478 incident reports, 49 (10%) indicated some problems with the design of the gate or enclosure. The reported problems involved:

○ Opening sizes between slats or enclosure panels that allowed, or could allow, entrapment of a child's limb or head;

○ pinch-points created near an L-shaped clasp on a gate, and during the sliding action of a door on a gate or enclosure;

○ a specific design, which created a foot-hold that a child could use to climb over the safety gate;

○ a specific design that posed a trip hazard when the gate was in the open position;

○ a gate's retraction system, where the gate fails to retract correctly after installation;

○ drilled holes used for connecting gates, which allowed plastic shavings to accumulate; or

○ a specific design involving rails at the bottom of a gate at several different heights, posing a trip hazard.

Staff identified 21 injuries and one death in this category. The injuries included swollen or pinched fingers from inserting them into openings of a gate; three fractures of the finger and one severed fingertip, all treated at a hospital ED. The death resulted from entrapment in a gate, fabric sheet, and door frame.

• *Installation problems:* Of the 478 incident reports, 21 (4%) 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 ''pushed out,'' ''pulled down,'' or ''knocked down.''

Five drowning fatalities were reported in this category. In addition, staff identified 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 478 incident reports (1%) fall within the miscellaneous category, 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. One unspecified injury falls within this category.

• *Instability issues in enclosures:* Four of the 478 incidents (<1%) reported problems with flimsy and/or unstable enclosures that failed to hold together. Two laceration/contusion injuries and one facial injury were reported in this category.

• *Multiple problems from among the above:* Twenty-two of the 478 incident reports (5%) described two or more problems from the preceding product-related issues. Two minor injuries were reported in this category.[7]

B. Non-Product-Related

Twelve of the 478 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;

• Three incidents reported caregiver missteps allowing the gate/enclosure not to be secured in place;

• Four incidents reported misuse of gates in a hazardous manner; and

• One report involving a gate previously repaired/modified and structurally compromised.

Nine deaths are included in this category: Four due to drowning, four 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 forehead concussion.

C. Undetermined

For 13 of the 478 incident reports (3%), staff had insufficient information on the scenario-specific details to

[7] Redistributing these 22 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 this occurrence, the 20 incidents were grouped in a separate subcategory.

determine definitively whether the product failed or user error resulted in the incident. Accordingly, 13 incidents fall within the undetermined category. Staff found seven drowning deaths 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

For the NPR, CPSC staff reviewed recalls involving children's gates and enclosures from January 2008 to December 2018. 84 FR at 32349. During that period, CPSC announced five recalls involving baby gates and one recall involving an enclosure. More than 1 million units (1,318,180), associated with 215 incidents and 13 injuries were recalled for the following hazards to children: Fall, entrapments, tripping, and lacerations. No additional recalls involving gates or enclosures have occurred since December 2018.

V. Overview of 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 to clarify the standard. Revisions 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 surfaces, 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.[8] 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), Perfomance Requirements (section 6), Test Methods (section 7), Marking and Labeling (section 8), and Instructional Literature (section 9).

Scope. The scope of the standard states that it includes products known as expansion gates and expandable enclosures, or known 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. For example, section 3.1.7 of the 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 (see 1.2), but which can be removed by older persons who are able to operate the locking mechanism.''

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

- 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 in which 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 passageways to be blocked off, for example, a 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. This requirement is intended to prevent child 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 child 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 in which children were found with their heads entrapped under a gate, 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 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

[8] A more detailed summary of the changes to ASTM F1004 can be found on page 8 of Staff's Final Rule Briefing Package.

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. Cycling egress panels for 2,000 times tests the durability of gates or enclosures having egress panels that 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 pre-conditioning 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 close automatically 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 closes completely and locks as it is expected and advertised to do, thereby reducing the likelihood of a child accessing potentially hazardous conditions on the other side of an unintentionally unsecured gate.

• *Push-out force strength:* This test must be conducted in five specified locations: The four corners of the gate, as well as the center. The test requires that a horizontal push-out force be applied five times to each of the test locations, and that the maximum force be applied before the gate pushes out of the test fixture. The test requires that data be recorded and averaged for each test location (up to a maximum of 45 pounds). The maximum force of 45 pounds was selected because it simulates the effects of the largest intended occupant's weight. The average push-out force shall exceed 30 pounds in all five test locations (and each individual force shall exceed 20 pounds). This requirement is intended to prevent a child from being able to dislodge the gate and gain access to a hazardous area the gate was meant to keep them from accessing.

• *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 pounds to activate and open the gate; or (2) the lock must have a double-action release mechanism. This requirement is intended to prevent a child 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*.'' This requirement is intended to ensure that any toys that come with an enclosure meet the same safety requirements as toys sold separately from an enclosure.

• *Slat Strength:* This test verifies that no wood or metal vertical members (slats) completely break, or that 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 labels attached by a seam shall not liberate when subjected to a 15-pound pull force. This requirement is intended to ensure that product labels are permanently affixed.

Warning, Labeling and Instructions. These provisions specify the marking, labeling, and instructional literature requirements that must appear on, or with, each gate or enclosure. Warnings are also required on the retail packaging, unless they are visible in their entirety on the gate or enclosure at point of purchase for consumers to see.

• All gates and enclosures must include warnings on the product about the risk of serious injury or death when a product is not installed securely, 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 without the use of wall cups 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.''

C. International Standards for Gates and Enclosures

The NPR discussed CPSC staff's review of two international standards that address gates and enclosures (1) the European Standard, EN 1930:2011/A1 Child use and care articles—Safety barriers—Safety requirements and test methods; and (2) Canadian regulation, SOR/2016–179 Expansion Gates and Expandable Enclosures Regulations (the Canadian regulation refers to an outdated 1986 version of ASTM F1004 which has been superseded by recent versions). 84 FR at 32352. In comparing these two international standards to ASTM F1004–19, staff determined that ASTM F1004–19 is adequate, or more stringent than, the international standards in addressing the hazard patterns identified in the incident data associated with gates and enclosures. *Id.*

VI. Adequacy of ASTM F1004–19 Requirements To Address Identified Hazards

For the NPR, the Commission stated that the current voluntary standard, ASTM F1004–19, adequately 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. 84 FR at 32350. Additionally, in the NPR, the Commission stated that the performance requirements and test methods in ASTM F1004–19 adequately address most of the primary hazard patterns identified in the incident data, except for consumer awareness of whether a pressure-mounted gate is installed correctly. *Id.* at 32350–52. Based on staff's assessment of all 478 reported incidents (22 fatal and 456 nonfatal; 428 associated with the use of a gate and 50 associated with the use of an enclosure) to identify hazard patterns associated with children's gates and enclosures, as well as staff's evaluation of ASTM F1004–19, for this final rule, the Commission concludes that ASTM F1004–19 adequately addresses the identified hazards associated with the use of gates and enclosures except for one—installation issues associated with pressure-mounted gates.[9]

Installation problems are associated with 21 incidents (4%), including five drowning fatalities. The CPSC incident data show that incidents occurred when: A product included unclear instructions; mismatched dimensions between a gate and the opening it was

[9] *See* Staff Final Rule Briefing Package at Tabs B and C.

meant to fit into; and failure of the gate to remain upright in an opening, described as ''pushed out,'' ''pulled down,'' or ''knocked down.'' The most recent revision, ASTM F1004–19, represents a large step forward in addressing installation issues, especially related to pressure-mounted gate push-out hazards. The revision requires all gates to meet the same push-out force (*e.g.,* 30 pounds) with provisions that allow the use of wall cups to meet this requirement. CPSC staff's testing found that most pressure-mounted gates tested can meet the 30-pound push-out force requirements of ASTM F1004–19 with the use of wall cups. Correct installation of pressure-mounted gates depends on consumer awareness and behavior to install the gate correctly. Based on the incident reports and staff's testing, the Commission concludes that additional requirements are necessary to further strengthen the standard to reduce the risk of injury associated with the use of pressure-mounted gates, by increasing the likelihood that caregivers install such gates securely to confine their child.

The Commission will finalize the rule with two alternative requirements, depending on whether wall cups are necessary to meet the 30-pound push-out force test, to address the hazards associated with incorrect installation of pressure-mounted gates. The two alternative requirements specify that: (1) For gates that use wall cups, a separate warning label in a conspicuous location on the top rail of the gate regarding correct installation using wall cups; or (2) for gates that do not use wall cups, visual side-pressure indicators to provide consumers feedback about whether the gate is installed correctly.

A. Separate Warning Label

ASTM F1004–19 currently requires a warning statement about the hazard of installing gates without wall cups: ''You MUST install wall cups to keep the gate in place. Without wall cups, child can push out and escape.'' This warning statement is included within the general warning label, which can have as many as six different required messages in one location. However, the use of wall cups to meet the 30-pound push-out force test, and thus, to improve safety, relies on consumers actually installing the wall cups. To improve the likelihood that consumers will follow directions and heed the associated warning label, the location of the label is important. Installation-related incidents with pressure-mounted gates include deaths and serious injuries, and wall cups are critical features that are necessary for correct installation of some pressure-mounted gates. Accordingly, throughout the consultation process, CPSC staff consistently recommended that ASTM consider locating the pressure-gate/push-out warning as a separate and distinct warning positioned in a highly conspicuous location, such as along the top rail of the gate. A top-rail location would be within the caregiver's line of sight and oriented in a readable direction during normal use of the gate.

In the NPR, staff indicated that further collaboration with stakeholders at ASTM could result in moving the wall cup warning language from its current location. Currently, the wall cup warning language is mixed in with the other warning statements. Staff suggested moving the warning language to a place where the warning is highly conspicuous, separate, and distinct, such as a place along the top rail of the gate that is visible to a caregiver operating the gate. However, no task group or subcommittee meetings occurred between June 2019 and December 2019, nor did ASTM issue a ballot regarding the wall cap warning language. In December 2019, CPSC staff sent a letter [10] to the ASTM subcommittee chair, requesting a subcommittee meeting to discuss specific ballot language about the warning label recommendation. The subcommittee met on January 21, 2020, and agreed to send the proposal to ballot. ASTM issued the ballot on March 5, 2020 (ASTM Ballot F15 (20–02), Item 4), and the ballot closed on April 6, 2020. The ballot received two substantive negative votes. Both negative votes noted that the balloted language stated that all ''products'' must contain the wall cup warning, rather than state that just pressure-mounted gates must contain the warning. On May 6, 2020, ASTM released a ballot containing a revision to the warning label location, containing a clarification to address these negatives by replacing the word ''products'' with ''pressure-mounted gates.'' This ballot closes on June 5, 2020.

To further reduce the risk of injury associated with incorrectly installed pressure-mounted gates, the final rule requires that pressure-mounted gates that rely on wall cups to meet the 30-pound push-out force requirement, must also place a warning regarding installation of wall cups along the top rail of the gate, separate and distinct from other warnings. The wording of this requirement in the final rule harmonizes with the ASTM ballot F15 (20–04), Item 6.

B. Visual Side-Pressure Indicators

Before the NPR, CPSC staff presented a series of recommendations to the F15.16 subcommittee to improve the installation of pressure-mounted gates, including improvements to the push-out test, and potentially using visual indicators to inform caregivers when a pressure-mounted gate is installed securely. Leading up to the NPR, the subcommittee made the recommended improvements in the standard to the push-out test, in addition to requiring that all gates (including pressure-mounted gates) meet 30 pounds of push-out resistance. Although some pressure-mounted gates are capable of meeting 30 pounds of push-out resistance without wall cups when they are installed correctly, most pressure-mounted gates likely will use wall cups. CPSC staff testing found that ASTM F1004–19 requires gates that use wall cups to come with the wall cups and other mounting hardware. As stated above in IV.A, the final rule will also require these gates to place a warning label along the top rail regarding the importance of installing wall cups.

However, for pressure-mounted gates that do not rely on wall cups to meet the 30-pound push-out force test, ASTM F1004–19 contains no requirement to provide feedback to the end consumer to indicate whether the gate is installed correctly. Instructions for pressure-mounted gates without wall cups provide little or no clear direction to help consumers know when the gate is installed correctly, or that it stays in place after several uses. For example, gates currently on the market may instruct the consumer to adjust until secure, or to push the gate to *feel* if it is secure. CPSC staff observed that even when following the manufacturer's instructions, the push-out force for some gates that use tension bolts varies each time the gate is re-installed and tested. Staff also observed that with one metal gate tested, where tension bolts and nuts are used to secure it in place, only a half rotation of the tension nuts would change the distance between the gate and the test fixture by 0.032 inches and result in a gate meeting or not meeting the 30 pound push-out force requirement. These adjustments are barely noticeable to the average consumer, who relies only on *feel,* and not precise measurements or any other feedback.

Staff testing and analysis, discussed in detail in Staff's NPR Briefing Package, Tab C, and Staff's Final Rule Briefing Package, Tab B, suggest that visual

[10] *https://www.regulations.gov/contentStreamer?documentId=CPSC-2019-0014-0006&contentType=pdf.*

indicators can improve the safety of pressure-mounted gates that do not use wall cups. At the time of the NPR, staff recommended continuing to work with the ASTM subcommittee to resolve the issue of visual side-pressure indicators. However, no task group or subcommittee meetings occurred from June 2019 to December 2019; nor did ASTM issue a ballot on this matter. The NPR invited comments on this specific issue, but the Commission received no comments.

In a letter dated December 11, 2019,[11] CPSC staff urged discussion at an ASTM subcommittee meeting regarding ballot language to include a visual side-pressure indicator provision for pressure-mounted gates that do not use wall cups to meet the 30 pound push-out force test in the ASTM standard. On January 21, 2020, the ASTM subcommittee discussed draft language for a visual side-pressure indicator provision. ASTM subcommittee members raised concerns regarding potential issues, such as proposed language using the term ''minimum pressure.'' Some subcommittee members stated that this language implied that a test lab would need to measure the pressure at each corner of the gate. CPSC staff clarified that staff's intention was that the current push-out force performance test would identify gates that indicate incorrectly that the required side pressure is maintained. However, after this discussion, the ASTM subcommittee chair reactivated the visual side-pressure indicator task group to potentially revise the draft proposed language to address subcommittee member concerns.

On March 10, 2020, the task group met to discuss the draft ballot proposal. Task group discussion centered on the testability of the visual side-pressure indicator performance requirement for pressure-mounted gates. The task group meeting concluded with the task group chair agreeing to revise the proposed ballot language to address member concerns and to resend the proposed ballot language to the task group for review. On April 2, 2020, CPSC staff received a draft proposal from the task group chair. On April 22, 2020, the task group chair recirculated the same draft. On April 23, 2020, the task group chair indicated his intention to ballot the proposal, unless there were significant comments from the task group necessitating another meeting. CPSC staff is unaware of any further comment.

After reviewing the revised ballot language for visual side-pressure indicators, CPSC staff concluded that the proposed language adequately addresses staff's concerns and provides a visual indicator of whether a pressure-mounted gate that does not use wall cups to meet the 30-pound push-out force test is installed securely. The Commission agrees, and anticipates that ASTM will ballot this requirement within the next few months to incorporate into ASTM F1004. Accordingly, to further reduce the risk of injury associated with incorrect installation of pressure-mounted gates, the draft final rule requires that pressure-mounted gates that do not use wall cups, to meet the 30-pound push-out force test, must include visual side-pressure indicators to inform caregivers that the gate is installed securely. The language for this requirement in the final rule harmonizes with the ASTM task group draft language circulated April 22, 2020.

VII. Response to Comments

CPSC received three comments on the NPR.[12] A trade association forwarded two comments, one comment did not address the NPR. The two comments generally supported the NPR and the ASTM process. However, the commenter disagreed with the proposed 6-month effective date, anticipating the effect that the standard may have on small businesses. This commenter recommended a 12-month effective date. The Commission agrees, and the final rule contains a 12-month effective date, as discussed below in section X of this preamble.

VIII. Description of the Mandatory Standard for Gates and Enclosures

The Commission concludes that ASTM F1004–19 adequately addresses the hazards associated with gates and enclosures, except for consumer awareness about whether pressure-mounted gates are installed correctly. Thus, for the final rule on safety standards for gates and enclosures, the Commission incorporates by reference ASTM F1004–19, with the addition of the following two alternative requirements to provide consumers with additional information about correct installation of pressure-mounted gates, to further reduce the risk of injury associated with the use of pressure-mounted gates:

(1) For pressure-mounted gates that include wall cups with the product to meet the 30-pound push-out force test, the gates must include a separate warning label in a conspicuous location on the top rail of the gate regarding correct installation using wall cups; or

(2) For pressure-mounted gates that do not use wall cups to meet the 30-pound push-out force test, the gates must use visual side-pressure indicators to provide consumers with feedback on whether the gate is installed correctly.

IX. Incorporation by Reference

Section 1239.2(a) of the final rule provides that each gate and enclosure must comply with applicable sections of ASTM F1004–19. The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. For a final rule, agencies must discuss in the preamble to the rule the way in which materials that the agency incorporates by reference are reasonably available to interested persons, and how interested parties can obtain the materials. Additionally, the preamble to the rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR's requirements, section V.B of this preamble summarizes the provisions of ASTM F1004–19 that the Commission is incorporating by reference. ASTM F1004–19 is copyrighted. Before the effective date of this rule, you may view a copy of ASTM F1004–19 at: *https://www.astm.org/cpsc.htm.* Once the rule becomes effective, ASTM F1004–19 can be viewed free of charge as a read-only document at: *https://www.astm.org/READINGLIBRARY/.* To download or print the standard, interested persons may 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. Alternatively, interested parties may inspect a copy of the standard by contacting Alberta E. Mills, Division of the Secretariat, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: 301–504–7479; email: *cpsc-os@cpsc.gov.*

X. 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). CPSC generally considers 6 months to be sufficient time for suppliers of durable infant and toddler products to come into compliance with a new standard under section 104 of the CPSIA. Six months is also the period that the Juvenile Products Manufacturers Association (JPMA) typically allows for products in

[11] *https://www.regulations.gov/contentStreamer?documentId=CPSC-2019-0014-0006&contentType=pdf.*

[12] Available at *https://www.regulations.gov/docket?D=CPSC-2019-0014.*

the JPMA certification program to transition to a new standard once that standard is published. Accordingly, the NPR proposed a 6-month effective date for gates and enclosures.

We received one comment from a trade association asking for a 12-month effective date, stating that many of its members would require ''significant design changes'' and need time to make these changes. The 30-pound push-out force test was added to the ASTM standard in June 2019, and CPSC's NPR published in July 2019. Therefore, manufacturers of gates and enclosures have already had almost 12 months to address the push-out force requirements in ASTM F1004–19. However, the final rule also includes two alternative requirements to provide consumers with information or feedback on the correct installation of pressure-mounted gates. Additionally, staff advises that most of the companies selling gates and enclosures are small businesses that may need more time to redesign and test their gates to address the push-out force requirement, or work with their suppliers to purchase compliant products. For these reasons, the Commission will set a 12-month effective date for the final rule.

XI. Assessment of Small Business Impact

A. Introduction

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires that agencies review a proposed rule and a final rule for the rule's potential economic impact on small entities, including small businesses. Section 604 of the RFA generally requires that agencies prepare a final regulatory flexibility analysis (FRFA) when promulgating final rules, unless the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Staff prepared a FRFA that is available at Tab D of Staff's Final Rule Briefing Package.

Based on staff's analysis, the Commission concludes that there would not be a significant economic impact on the 23 small suppliers of compliant gates and enclosures. The Commission also expects that the impact on noncompliant suppliers will not be significant for the nine firms that have a diversified product line, or whose gates and enclosures already meet most of the requirements of the standard. However, the Commission concludes that there could be a significant economic impact on five suppliers of noncompliant gates and enclosures. Additionally, staff concludes that it is likely that all 80 of the very small, home-based suppliers will be significantly impacted, and compliance with the mandatory standard will require them to stop selling gates altogether. We provide a summary of the FRFA below.

B. The Market for Gates and Enclosures

Section II.B of this preamble describes the market, including a summary of retail prices, for gates and enclosures. The Durable Nursery Products Exposure Survey (DNPES) found that a slight majority (52%) of U.S. households with children under age 6 have a gate or enclosure in their home, with many households owning more than one gate, and about 11.1 million baby gates and enclosures in use in 2013.[13]

C. Suppliers of Gates and Enclosures and the Impact on Small Businesses

Staff identified 127 firms supplying gates and enclosures to the U.S. market. The majority of suppliers to the U.S. market are domestic, including domestic importers of gates manufactured elsewhere. About 80 very small, home-based domestic manufacturers sell gates.[14] Staff identified another 47 firms that supply gates and/or enclosures that are not home-based and are generally larger than the home-based suppliers, nearly all of which are domestic. These firms include both manufacturers and importers. Because of firm size and/or location of manufacture, 10 companies are out of scope for this analysis on the impact on small domestic businesses. The 37 remaining firms are small domestic entities, based on U.S. Small Business Administration (SBA) guidelines for the number of employees in their North American Industry Classification System (NAICS) codes. These firms typically have at least eight to nine gate models in their product lines, and have much larger sales volumes than the home-based suppliers. Most of the small companies making or importing gates and enclosures do not have gates as their main product line; rather, they sell other nursery items and unrelated consumer products, including toys, furniture, clothing, plastic molded items, infant sleep products, strollers, baby monitors, floor mats, bird feeders, and car seats.

1. Very Small, Home-Based Manufacturers

Approximately 80 very small, home-based manufacturers supply gates to the U.S. market. Most, if not all, of these gates would probably require substantial modifications to comply with the final rule; and staff expects that these firms will stop selling gates. These firms typically sell fewer than 100 items per year, including products other than gates. About 10 home-based manufacturers sell more than 500 items per year, including, but not limited to, gates. About six manufacturers sell fabric gates; the rest sell wooden or wooden and metal gates. Because of the cost of redesigning gates, and/or testing for compliance with the final rule, staff assumes that most of these sellers will stop selling gates when the rule becomes effective.

Staff states that small, home-based manufacturers could re-label their gates as pet gates, thus, reducing the economic impact of this rule. Online reviews of pet gates and child gates show that some parents are already purchasing pet gates for child use, while pet owners are buying child gates for pet use. However, because customers seeking to purchase baby gates will not necessarily consider buying a pet gate instead of a child gate, staff concludes that the impact would likely still be economically significant.

2. Small Manufacturers

a. Small Manufacturers With Compliant Gates and Enclosures

Currently, 14 of the small domestic manufacturers produce gates or enclosures that comply with the previous version of the standard, ASTM F1004–18.[15] Staff assumes that compliant firms will remain compliant with the voluntary standard as it evolves, because compliance is part of an established business practice. Because these firms are already testing to the previous version of the ASTM standard, staff expects that any additional third party testing costs would be minimal. Similarly, all of these firms already have warning stickers and instruction manuals that are compliant with the previous standard. Accordingly, staff expects the costs of any modifications to comply

[13] Karen Melia and Jill Jenkins ''Durable Nursery Products Exposure Survey (DNPES)—Final Summary Report'', prepared for the CPSC by Westat, November 2014.

[14] 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 on-line presence). These suppliers enter and exit on the market relatively frequently; the number found through staff research is an estimation of the actual number at any given time.

[15] A 6-month delay typically occurs between the publication of a new ASTM voluntary standard and its adoption for compliance testing. ASTM F1004–19 was published in June 2019, and therefore, it became effective for testing purposes in January 2020.

with the new standard to be insignificant.

Moreover, the final rule's change in warning label location, for gates that use wall cups to meet the 30-pound push-out force test, and the requirement for visual side-pressure indicators for gates that do not use wall cups to comply with the 30-pound push-out force test, only apply to pressure-mounted gates. Some manufacturers only supply hardware-mounted gates, or have hardware gates as most of their product line. Other manufacturers sell pressure-mounted gates with wall cups supplied, so these manufacturers would only need to change the label. Some manufacturers already sell gates with visual side-pressure indicators.

b. Small Manufacturers With Noncompliant Gates and Enclosures

Four small domestic manufacturers produce gates and enclosures that do not comply with the ASTM standard. Staff does not expect the costs of any product changes to comply with requirements for instruction manuals and labeling to be significant for any of these firms, because they already have instruction manuals and warning labels. All four of these manufacturers appear to be familiar with at least some aspects of safety requirements for durable nursery goods, including testing for compliance. Two manufacturers were compliant with earlier versions of the ASTM standard for gates and enclosures; one manufacturer claims compliance to CPSIA section 101 and 108; and one firm manufactures other products that comply with relevant ASTM standards for durable nursery products.

For the two manufacturers of noncompliant enclosures, staff does not expect that third party testing costs will exceed 1 percent of revenue, because these two manufacturers have millions of dollars in revenue; they already certify compliance with other ASTM standards; and they have few gate or enclosure models in their product lines. For the other two small domestic manufacturers of noncompliant gates and enclosures, the impact may be significant. One of the small manufacturers makes only pressure-mounted gates, although the option for wall cups could make it relatively inexpensive for that firm to achieve compliance without significant redesign. The other manufacturer sells noncompliant gates and enclosures as most of their product line, sells both hardware-mounted and pressure-mounted gates, and some of the gates and enclosures appear to require redesign to meet the standard. If this manufacturer redesigns their product, the cost could be significant.[16]

3. Small Importers

a. Small Importers With Compliant Gates and Enclosures

Staff identified nine gate/enclosure importers currently in compliance with ASTM F1004–18. Staff expects these firms, like small manufacturers of compliant gates and enclosures, to be in compliance with ASTM F1004–19 before the draft final rule becomes effective. Therefore, staff does not expect the economic impact to be significant for any of the importers with compliant gates or enclosures. Any third party testing costs for importers of compliant gates and enclosures would be limited to the incremental costs associated with third party testing over their current testing regime.

b. Small Importers With Noncompliant Gates and Enclosures

Staff identified 10 small importers of noncompliant gates and enclosures. Seven of these firms sell many other products. Thus, dropping gates and enclosures from their product line or finding a new supplier could have a relatively minor impact on their total revenue. Most of the noncompliant gates and enclosures already have some warning labels and instruction manuals; and some claim to be tested for lead, phthalates, and BPA. Therefore, staff concludes that the costs of third party testing to demonstrate compliance could be minimal as a percentage of sales. Staff also finds that it may be possible for these importers to find new suppliers of compliant gates and enclosures.

Several importers of noncompliant gates sell gates with multiple extensions. The ASTM standard requires that gates with extension panels must be compliant in any of the manufacturer's recommended use positions. Staff acknowledges that this could increase testing costs. Accordingly, staff believes it likely that these firms will stop selling gates with more than two extensions. Gates for these importers appear to be very similar to other compliant hardware-mounted gates; therefore, these importers may be able to achieve compliance cost-effectively by importing gates with fewer extensions.

For three of the noncompliant importers, staff believes that a significant economic impact could occur. One small importer of noncompliant enclosures appears to sell enclosures only. Finding an alternative supplier might pose significant costs for this firm. Perhaps this firm could find another compliant supplier relatively easily, given that many different brands of imported enclosures appear very similar; some, in fact, comply with a previous version of the ASTM standard.

The other two small importers of noncompliant gates that could be impacted significantly have gates as a large part of their product line. One of the two small importers sells hardware-mounted gates only; while the other importer already includes wall cups with their pressure-mounted gates. Therefore, staff believes their products could be compliant without significant redesign. However, third party testing to demonstrate compliance may well represent more than 1 percent of revenue for these importers. This could represent a significant impact, unless their supplier absorbs the costs.

D. Other Potential Impacts

The final rule requires suppliers of gates and enclosures to comply with the requirements of the safety standard for gates and enclosures, or stop selling noncompliant gates and enclosures. Accordingly, compliance with the final rule could impact the price and selection of gates and enclosures available to consumers. Compliance with the mandatory standard could also impact suppliers of wall cups, by increasing demand for their products.

Compliance with the standard could raise the retail price of pressure-mounted gates by $5 to $10. We do not believe, however, that this will significantly decrease sales of gates. The price of hardware-mounted gates is unlikely to increase; most of the bestselling gates already cost more than $25. Additionally, many suppliers contract with foreign manufacturers, and some of the companies sell in multiple markets, including Europe, Asia, and Canada. Having a U.S. standard that is more stringent than, or different from, standards in those regions could force companies to develop different gates for different markets, or cause them to develop a more costly gate that meets all the standards.

Some manufacturers may market their noncompliant gates as pet gates. We can see from online reviews of pet gates and child gates that some parents already purchase pet gates for use with children, and likewise, pet owners buy child gates

[16] Firms interviewed during the development of the draft proposed rule indicated that the cost of a redesign could be between $400,000 and $1 million (one firm indicated that the cost could be higher in some cases), depending on the material with which the product is constructed, and the extent of the required structural changes.

for pet use. Some of the pet gates already comply with ASTM and JPMA. The least expensive pet gates retail for approximately $20, more than the current price of the least expensive child gates. Therefore, this remarketing likely will not have a measurable impact on the market for either type of gate. However, the least-expensive dog pens are about half the price of the least-expensive enclosures for children. Accordingly, some manufacturers might remarket their noncompliant enclosures as dog pens.

E. Steps To Minimize Economic Impacts on Small Entities

Based on staff's recommendation and a comment on the NPR, the final rule has a 12-month effective date. A later effective date could reduce the economic impact on firms in two ways. Firms would be less likely to experience a lapse in production/importation, which could result if they are unable to comply and obtain third-party testing within the required timeframe, or find a new supplier. Firms could also spread costs over a longer time period. Suppliers interviewed for the NPR indicated that 12 to 18 months might be necessary, if a complete product redesign were required. Unless suppliers choose to add visual side-pressure indicators to a gate that does not currently have them, or the gate/enclosure of any type does not meet multiple requirements in the ASTM standard, a complete redesign should not be necessary.

Additionally, the final rule provides suppliers of pressure-mounted gates with two alternatives to meet the requirement in the final rule to improve consumer feedback regarding installation of pressure-mounted gates. Firms can either: (1) Include wall cups with the gate and place a separate warning label regarding the importance of installation of the wall cups on the top rail of the gate, or (2) use visual side-pressure indicators to demonstrate that the gate is installed correctly. The wall cups option will not require a redesign for gates that can meet the 30-pound push-out test with wall cups; this option only requires a new label on the top rail of the gate. Suppliers that already include effective visual side-pressure indicators on their gates will likely also be able to meet the standard without a redesign. If CPSC did not provide two options to meet the new requirement, nearly all pressure gate manufacturers would have been required to redesign their gates or would have had to include wall cups in the packaging. Providing two alternative requirements for pressure gate suppliers to meet the standard reduces the impact on small entities.

XII. 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. Safety standards providing requirements for products come under this categorical exclusion. 16 CFR 1021.5(c)(1). The final rule for gates and enclosures falls within the categorical exemption.

XIII. Paperwork Reduction Act

The final 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.

The preamble to the proposed rule (84 FR 32354–55) discussed the information collection burden of the proposed rule and specifically requested comments on the accuracy of our estimates. OMB assigned control number 3041–0182 for this information collection. We did not receive any comment regarding the information collection burden of the proposal. For the final rule, CPSC adjusts the number of small home-based manufacturers from 83 to 80, and the number of other suppliers from 30 to 47. In accordance with PRA requirements, the CPSC provides the following information:

Title: Safety Standard for Gates and Enclosures.

Description: The final rule requires each gate and enclosure to comply with ASTM F1004–19, *Standard Consumer Safety Specification for Expansion Gates and Expandable Enclosures,* with an option to address installation issues associated with pressure-mounted gates. 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	80	2	160	7	1,120
	Other Suppliers	47	8	376	1	376
Labeling Total						1,496
Instructional literature	Home-based manufacturers	80	2	50	100	8,000
Total Burden						9,496

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 (80), 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 gate 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 × 80 entities × 2 models per entity = 1,120 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 (47). These are also mostly small domestic firms, but they are not home-based firms, and they do not operate at the low production volume of the home-based firms. For this second group, all with existing warning labels on their products, and who 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 hour per model × 47 entities × 8 models per entity = 376 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 (1,120 burden hours) + non-home-based manufacturers and importers (376 burden hours) = 1,496 burden hours. We estimate the hourly compensation for the time required to create and update labels is $34.26 (U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' March 2020, Supplementary Table 9, total employer costs for employees in private industry: *http://www.bls.gov/ncs/*). Therefore, the estimated annual cost to industry associated with the labeling requirements is $51,253 ($34.26 per hour × 1,496 hours = $51,252.96). 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 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, over time, to vary substantially, based on CPSC staff's review of the marketplace, currently, there are approximately 80 home-based suppliers of gates and/or enclosures operating in the U.S. market. These firms, on average, typically supply two gates. Therefore, the costs for these firms of designing an instruction manual for their products could be as high as $274,080 (50 hours per model × 80 entities × 2 models per entity = 8,000 hours × $34.26 per hour = $274,080). 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 are already likely providing user instruction manuals 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 9,496 hours at a cost of $325,333 annually. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted the information collection requirements of this final rule to OMB.

XIV. 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 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 Commission 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 standards.'' Therefore, the preemption provision of section 26(a) of the CPSA applies to this final rule issued under section 104.

XV. Amendment to 16 CFR Part 1112 To Include NOR for Gates and Enclosures

The CPSA establishes certain requirements for product certification and testing. 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 Commission, must be certified as complying with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). Certification of children's products subject to a children's product safety rule must be based on testing conducted by a CPSC-accepted third party conformity assessment body. 15 U.S.C. 2063(a)(2). The Commission must publish an NOR for the accreditation of third party conformity assessment bodies to assess conformity with a children's product safety rule to which a children's product is subject. 15 U.S.C. 2063(a)(3). The final rule for gates and enclosures, to be codified at 16 CFR part 1239, is a children's product safety rule that requires the issuance of an NOR.

The Commission 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). Part 1112 became effective on June 10, 2013, and 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. Part 1112 also codifies a list of all of the NORs that the CPSC issued when CPSC published part 1112. All NORs issued after the Commission published part 1112 require the Commission to amend part 1112. Accordingly, the Commission amends part 1112 to include the safety standard for gates and enclosures in the list of other children's product safety rules for which the CPSC has issued NORs.

Laboratories applying for acceptance as a CPSC-accepted third-party conformity assessment body to test to the new standard are 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, the laboratory 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's website at: *www.cpsc.gov/labsearch.*

The Commission certified in the NPR that the proposed NOR for gates and enclosures would not have a significant impact on a substantial number of small laboratories. 84 FR 32356. No substantive factual changes have occurred since the NPR was published, and CPSC did not receive any comments regarding the NOR. Therefore, for the final rule, the Commission continues to certify that amending part 1112 to include the NOR for the gates and enclosures final rule will not have a significant impact on a substantial number of small laboratories.

XVI. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801–808) states that, before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The submission must indicate whether the rule is a ''major rule.'' The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a ''major rule.'' Pursuant to the CRA, this rule does not qualify as a ''major rule,'' as defined in 5 U.S.C. 804(2). To comply with the CRA, the Office of the General Counsel will submit the required information to each House of Congress and the Comptroller General.

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 amends 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.

(a) Except as provided in paragraph (b) of this section, 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 (ASTM F1004–19). 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; *https://www.astm.org.* You may also inspect a copy: Electronically at *https://www.astm.org/READINGLIBRARY/;* in person at the Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone: 301–504–7479, email: *cpsc-os@cpsc.gov;* or in person at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *http://www.archives.gov/federal_register/code_of_federalregulations/ibr_locations.html.*

(b) Comply with ASTM F1004–19 with the following additions or exclusions:

(1) Instead of complying with section 3.1.3 of ASTM F1004–19, comply with the following:

(i) 3.1.3 *conspicuous, adj*—visible when the gate/expandable enclosure is in all manufacturer's recommended use positions, to a person standing near the gate/expandable enclosure at any one position around the gate/expandable enclosure, but not necessarily visible from all positions.

(ii) [Reserved]

(2) Add the following to paragraphs to section 3.1 of ASTM F1004–19:

(i) 3.1.16 *visual side-pressure indicator, n*—a warning system, device, or provision using contrasting colors, lights, or other similar means designed to visually alert the installer/user to the status of the side pressure of a pressure mounted gate during installation and use.

(ii) 3.1.17 *side pressure, n*—force required, at each contact location of the gate and mounting surface, to meet the requirements of 6.3 as determined by the manufacturer.

(3) Add the following paragraphs to section 6 of ASTM F1004–19:

(i) 6.8 *Visual Side-Pressure Indicators*—Any pressure-mounted gate that does not require the use of Pressure-Mounted Gate-Mounting Hardware per 6.7, to meet the performance requirements in 6.3.1, shall include Visual Side-Pressure Indicators.

(ii) 6.8.1 Visual Side-Pressure Indicators shall be conspicuous and readily identifiable to a person installing and standing near the gate.

(iii) 6.8.2 Visual Side-Pressure Indicators shall monitor pressure for each point of contact with the mounting surface utilizing one or more of the following three options. Such indicators, when the gate is tested in accordance with 7.9, shall indicate when the required side pressure has been attained upon installation of the gate, and continue to display the side pressure status while the gate is in a manufacturer's recommend use position.

(iv) 6.8.2.1 A single visual side-pressure indicator for each individual contact point.

(v) 6.8.2.2 A single visual side-pressure indicator for each individual rail (top and bottom), so the opposing horizontal contact points are addressed.

(vi) 6.8.2.3 A single visual side-pressure indicator for the entire gate.

(4) Instead of complying with section 7.9.1.2 of ASTM F1004–19, comply with the following:

(i) 7.9.1.2 Follow the manufacturer's installation instructions when installing the gate in the center of the test opening. For pressure-mounted gates with visual side-pressure indicators, ensure the visual side-pressure indicators are displaying the proper status per manufacturer's instructions.

(ii) [Reserved]

(5) Instead of complying with NOTE 11 of ASTM F1004–19, comply with the following:

(i) Note 11—Address means that verbiage other than what is shown can be used as long as the meaning is the same or information that is product specific is presented. Brackets indicate that optional wording may be used at the manufacturer's discretion if another identifier is more appropriate.

(ii) [Reserved]

(6) Do not comply with section 8.5.3 of ASTM F1004–19.

(7) Add the following paragraphs to section 8.5 of ASTM F1004–19:

(i) 8.5.8 Pressure-mounted gates that provide wall cups or other mounting hardware to meet the requirements of section 6.3 shall have the following warning in the location specified: *You MUST install [wall cups] to keep gate in place. Without [wall cups], child can push out and escape.*

(ii) 8.5.8.1 This warning shall be separate from all other warnings required on the product and shall not include any additional language.

(iii) 8.5.8.2 This warning shall be on the top rail.

(iv) 8.5.8.3 This warning shall be as close as possible to the side of the product where the locking mechanism is located. If the locking mechanism is in the center of the product, then this warning shall be adjacent to the mechanism on either side of it.

(8) Add the following paragraph to section 9 of ASTM F1004–19:

(i) 9.5. For pressure-mounted gates with visual side-pressure indicators, the instructions shall describe the function, use, and importance of the visual side-pressure indicators and shall describe how to make adjustments to meet the side-pressure requirements. Instructions shall include a reminder to routinely check the status of the side pressure indicators during ongoing use of gate.

(ii) [Reserved]

(9) Add the following paragraph to section X1.2.5 of ASTM F1004–19:

(i) X1.2.5.4 The visual side-pressure indicators requirement in 6.8 is to address incidents with pressure-mounted gates, where consumers had difficulty properly installing the gate or uncertainty in the security of the gate, which may lead to the gate being ''pushed out,'' ''pulled down,'' or ''knocked over'' by children.

(ii) [Reserved]

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2020–12561 Filed 7–2–20; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 153 and 157

[Docket No. RM20–15–000; Order No. 871]

Limiting Authorizations To Proceed With Construction Activities Pending Rehearing

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issues this final rule to amend its regulations to preclude the issuance of authorizations to proceed with construction activities with respect to natural gas facilities authorized by order issued pursuant to section 3 or section 7 of the Natural Gas Act until either the time for filing a request for rehearing of such order has passed with no rehearing request being filed or the Commission has acted on the merits of any rehearing request.

DATES: This rule is effective August 5, 2020.

FOR FURTHER INFORMATION CONTACT: Tara DiJohn, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8671, *tara.dijohn@ferc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

1. By this final rule, the Federal Energy Regulatory Commission (Commission or agency) is revising its regulations to preclude the issuance of authorizations to proceed with construction activities with respect to a Natural Gas Act (NGA) section 3 authorization or section 7(c) certificate order until the Commission acts on the merits of any timely-filed request for rehearing or the time for filing such a request has passed. This rule ensures that construction of an approved natural gas project will not commence until the Commission has acted upon the merits of any request for rehearing. The rule imposes no new obligations on the public.

II. Background

2. The NGA vests the Commission with jurisdiction over the transportation and wholesale sale of natural gas in interstate commerce.[1] To meet these aims, the NGA declares that ''the business of transporting and selling natural gas for ultimate distribution to the public is affected with [the] public interest.'' [2]

3. Before a company can construct a natural gas pipeline, it must obtain approval from the Commission under NGA section 7(e), which provides that the Commission ''shall'' issue a certificate if it determines that a proposed pipeline ''is or will be required by the present or future public convenience and necessity.'' [3]

4. If the Commission grants a certificate of public convenience and necessity, the NGA authorizes the certificate holder to exercise eminent domain authority if it ''cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas[.]'' [4]

5. Separately, NGA section 3 prohibits the import or export of natural gas between the United States and a foreign nation without ''first having secured an order of the Commission authorizing it to do so.'' [5] NGA section 3 authority is divided between the Department of Energy, which oversees the import or export of the natural gas commodity,[6] and the Commission, which oversees the siting, construction, and operation of import or export facilities.[7] The Commission ''shall'' authorize proposed import or export facilities unless it finds that construction and operation of the proposed facilities ''will not be consistent with the public interest.'' [8] Unlike section 7, section 3 does not provide for the acquisition of lands through eminent domain.

6. Pursuant to the NGA, the Commission can approve a proposed

[1] 15 U.S.C. 717(a).

[2] *Id.*

[3] *Id.* 717f(e).

[4] *Id.* 717f(h). The NGA specifies that any such condemnation proceedings shall take place in the federal court for the district in which the property is located or in the relevant state court.

[5] 15 U.S.C. 717b.

[6] *Id.* 717b(a)–(c). In 1977, Congress transferred the regulatory functions of NGA section 3 from the Federal Power Commission to the Department of Energy. 42 U.S.C. 7151(b) (Department of Energy Organization Act). The Department of Energy delegated back to the newly created Federal Energy Regulatory Commission the limited authority under NGA section 3(e) to approve the physical facilities. 15 U.S.C. 717b(e).

[7] 15 U.S.C. 717b(e). *See* DOE Delegation Order No. 00–004.00A (effective May 16, 2006) (renewing delegation to the Commission authority over the construction and operation of LNG facilities); *see also* 43 FR 47,769, 47,772 (Oct. 17, 1978) (1978 delegation); 42 U.S.C. 7172(e) (Commission authority includes any matter assigned by the Department).

[8] 15 U.S.C. 717b(a).