



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Todd Stevenson
Secretary
Office of the Secretary
Consumer Product Safety Commission

Tel: 301-504-0800 ext 1239
Fax: 301-504-0127
Email: cpSC-os@cpSC.gov

April 16, 2002

Gretchen Dykstra
Commissioner
New York City Department of Consumer Affairs
42 Broadway
New York, NY 10004

Dear Ms. Dykstra:

The Commission has considered the remaining issues from petition HP 93-1, which was submitted by the New York City Department of Consumer Affairs in 1993. The petition requested that the Commission (1) ban backyard play sets that do not meet the provisions of ASTM's F1148 voluntary standard for home playground equipment and (2) develop a mandatory standard to address eight specific aspects that the petitioner alleged are hazardous. In 1996, the Commission voted to deny the request to ban backyard play sets that did not meet the ASTM standard and to deny three of the other requests. At that time, the Commission voted to defer a decision on the remaining five requests which were to: (1) ban play sets that do not clearly and conspicuously direct consumers to use and maintain adequate ground surfacing; (2) ban play sets that do not have handrails (guardrails) on all platforms at least 30 inches above the protective surfacing; (3) ban play sets that have free-swinging rope swings; (4) ban play sets that do not require the play set to be anchored into the ground if the play set includes one or more swings; and (5) ban play sets with swing seats made of wood, metal, plastic, or any other hard and heavy material capable of inflicting serious injury to a child. The Commission has now voted to deny these remaining five requests for the reasons stated below.

The Commission's regulations specify that any person may file a petition requesting that the Commission initiate a proceeding to issue a regulation under any of the statutes administered by the Commission. 16 C.F.R. § 1051.2(a). These regulations also set out factors for the Commission to consider in determining whether to grant or deny a petition. Three of the factors are applicable here: (1) whether the product presents an unreasonable risk of injury; (2) whether a rule is reasonably necessary to eliminate the risk of injury; and (3) whether failure to initiate rulemaking would unreasonably expose the petitioner or other consumers to the risk of injury alleged by the petition. 16 C.F.R. § 1051.9(a). Based on consideration of these factors, the Commission voted to deny the petition.

For the Commission to issue a rule banning play sets with the characteristics identified above it would have to find that play sets with those characteristics present a mechanical hazard. 15 U.S.C. § 1261(f)(1)(D). A mechanical hazard exists when through normal use or when subjected to reasonably foreseeable damage or abuse, a product's design or manufacture presents an unreasonable risk of injury. *Id.* § 1261(s). A determination of unreasonable risk involves balancing the likelihood and severity of injury with any harm likely to result from regulation. See Southland Mower v. Consumer Product Safety Commission, 619 F. 2d 499 (D.C. Cir. 1980). Although the Commission does not have to make a finding that an unreasonable risk exists at the time it decides whether to grant a petition, the question of whether it could make that finding in the future is a factor for the Commission to examine.

Requests Addressed by the Revised ASTM Standard

The Commission reviewed the current ASTM standard on backyard play sets. The ASTM Home Playground Subcommittee revised its standard in response to four of the petition's five remaining requests. These revisions were approved and published in the 1998 version of the ASTM F1148 standard. These revisions require that (1) a CPSC consumer information sheet about playground surfacing materials accompany play set manual/instructions; (2) play sets have guardrails on all platforms over 30 inches high and protective barriers on platforms higher than 48 inches; (3) climbing ropes, chains, or cables be secured at both ends, and that instructions provide a warning against attaching items to the play set that could pose a strangulation hazard; and (4) play set shipping cartons have labels and instructions informing the consumer if equipment must be anchored. The Commission believes that these revisions adequately address these four petition issues.

The Commission also considered the level of compliance with the ASTM standard. It reviewed a conformance monitoring program for home playground equipment that CPSC staff conducted in FY 1999 to 2000. The monitoring program examined three of these four issues (a determination of whether a play set required anchoring could not be readily checked at the manufacturer's site) and found that the five major manufacturers, whose sales accounted for 97% of all backyard play sets sold annually, had a 100% conformance rate for all three of the provisions evaluated.

Based on the substance of the ASTM provisions addressing these four issues and the high level of conformance, the Commission determined that for these four issues, backyard play sets do not present an unreasonable risk of injury, a rule to eliminate the risk of injury identified in the petition is not reasonably necessary, and failure to begin a rulemaking proceeding as requested by the petitioner would not unreasonably expose the petitioner or other consumers to the risk of injury alleged in the petition.

Request Concerning Swing Seats

The petition's fifth request was to ban backyard play sets with swing seats made of wood, metal, plastic or other hard and heavy material. The existing ASTM standard contains provisions addressing impact injuries for single-occupancy swings, but not for multiple-occupancy swings.

The staff conducted a special study of injuries and deaths associated with children's playground equipment, which was published in April 2001. According to that study, deaths from swing impact appear to have almost disappeared since the staff's previous study in 1990. No swing impact deaths involving home playground equipment were reported since 1990. The staff reports one serious injury associated with swing impact on a home play set in the period from January 1995 through December 2000. The special study's review of NEISS data from November 1998 through October 1999, reports injuries involving impact with moving swings were associated with about 6 percent of the total incidents. The Commission concludes that these incident data do not indicate that swings on backyard play sets pose an unreasonable risk of injury or that a mandatory standard is necessary to address swing-impact hazards.

Conclusion

For the reasons stated above, the Commission has denied the remaining five requests from Petition HP 93-1 submitted by the New York City Department of Consumer Affairs.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd A. Stevenson". The signature is fluid and cursive, with a large initial "T" and "S".

Todd A. Stevenson
Secretary