



[Billing Code 6355-01-P]

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC-2017-0012]

16 CFR Part 1217

Revisions to Safety Standard for Toddler Beds

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In accordance with section 104(b) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), also known as the Danny Keysar Child Product Safety Notification Act, in April 2011 the U.S. Consumer Product Safety Commission (Commission, or CPSC) published a consumer product safety standard for toddler beds. The standard incorporated by reference the ASTM voluntary standard for toddler beds, with several modifications. The CPSIA sets forth a process for updating standards that the Commission has issued under the authority of section 104(b) of the CPSIA. In accordance with that process, we are publishing this direct final rule, revising the CPSC's standard for toddler beds to incorporate by reference a more recent version of the applicable ASTM standard.

DATES: The rule is effective on June 6, 2017, unless we receive significant adverse comment by **[insert date 30 days after publication in the FEDERAL REGISTER]**. If we receive timely significant adverse comments, we will publish notification in the *Federal Register*, withdrawing this direct final rule before its effective date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of June 6, 2017.

ADDRESSES: You may submit comments, identified by Docket No. CPSC-2017-0012, by any of the following methods:

Submit electronic comments in the following way:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail), except through www.regulations.gov.

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD-ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to <http://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

FOR FURTHER INFORMATION CONTACT: Daniel E. Dunlap, Compliance Officer, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814-4408; telephone: 301-504-7733; email: ddunlap@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

The Danny Keysar Child Product Safety Notification Act. Section 104(b)(1)(B) of the CPSIA, also known as the Danny Keysar Child Product Safety Notification Act, requires the Commission to promulgate consumer product safety standards for durable infant or toddler products. The law requires that these standards are to be “substantially the same as” applicable voluntary standards or more stringent than the voluntary standards if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product.

Section 104(b)(4)(B) of the CPSIA also sets forth a process for updating CPSC’s durable infant or toddler standards when the voluntary standard upon which the CPSC standard was based is changed. Under that process, when an organization revises the voluntary standard, it must notify the Commission. Unless the Commission determines within 90 days of receiving the notice that the revision does not improve the safety of the product, the revised standard is considered to be the new CPSC standard effective 180 days from the date the Commission received notice of the revision (or a later date specified by the Commission).

The CPSC’s Toddler Bed Standard. In accordance with section 104(b)(1) of the CPSIA, on April 20, 2011, the Commission published a safety standard that incorporated by reference ASTM F1821-09, *Standard Consumer Safety Specification for Toddler Beds*, along with several modifications, as a mandatory consumer product safety standard. (76 FR 22019 (April 20, 2011)); correction notice¹ (76 FR 27882 (May 13, 2011)). ASTM officially notified the CPSC on September 25, 2013 that ASTM had

¹ The Office of the *Federal Register* inadvertently omitted the last two sections and figures from the April 20, 2011 *Federal Register* notice.

published a revised 2013 version of ASTM F1821. The Commission voted unanimously to publish a *Federal Register* notice revising the Commission’s toddler bed standard to reference ASTM F1821–13, effective March 24, 2014 (78 FR 73692 (December 9, 2013); codified at 16 CFR part 1217). On April 6, 2015, ASTM officially notified the CPSC that ASTM had revised ASTM’s toddler bed standard again and had published a revised 2015 version of ASTM F1821. Due to an inadvertent omission in the revised standard, the Commission voted unanimously (5-0) to retain the existing consumer product safety standard.² As explained below, ASTM has notified the CPSC that it has published a revised 2016 version of ASTM F1821 that corrects the previous omission.

Notification of Recent Revision. On December 8, 2016, ASTM notified the CPSC of ASTM’s approval and publication of ASTM F1821-16 in a standard approved on October 1, 2016, ASTM F1821-16, *Standard Consumer Safety Performance Specification for Toddler Beds*. As discussed below, the Commission has reviewed the differences between 16 CFR part 1217 and ASTM F1821-16.

B. 2015 and 2016 Revisions to the ASTM Standard

A “toddler bed” is defined in ASTM F1821-16 as any bed sized to accommodate a full-size crib mattress having minimum dimensions of 51 5/8 inches (1310 mm) in length and 27 1/4 inches (690 mm) in width and is intended to provide free access and egress to a child not less than 15 months of age and who weighs no more than 50 pounds (22.7 kg). The standard was developed in response to incident data supplied by the CPSC in an attempt to minimize the following hazards: entrapment in bed end structures, entrapment between the guardrail and side rail, and entrapment in the mattress support

² <https://www.cpsc.gov/th/content/rca-astm%E2%80%99s-revisions-to-toddler-bed-standard>.

system. The standard has provisions that address these hazards. In addition, the ASTM standard has provisions addressing corner post extensions, which may catch cords, ribbons, necklaces or clothing. There are several differences between 16 CFR part 1217 (which incorporates by reference ASTM F1821-13) and the revised version of the standard, ASTM F1821-16. We summarize the differences and the CPSC’s assessment of the revisions below.

ASTM F1821-15 Revision

ASTM F1821-15, approved in February 2015, and published in March 2015, revised ASTM F1821-13. ASTM notified the Commission about this revision on April 6, 2015. This revision contained two significant changes.

- Section 5.10 – *Corner Post Extensions* was modified to allow an exception to the requirement for corner posts so that canopy post extensions 57 inches or greater are allowed on toddler beds. General requirements were added in section 5.10.1 and 5.10.2 so that new protrusion/entanglement hazards are not created as a result of this exception. The Commission considers this a neutral change to the standard.
- Section 6.5 – *End Structures* was modified to address potential entrapment hazards between the side rails and mattress support system. Because guard rails are optional on toddler beds, the ASTM subcommittee recognized the need to address the entrapment hazard with side rails and guardrails, not just the head and foot “end” structures. The Commission considers this a safety improvement to the standard.

As mentioned, the 2015 version should have modified, but inadvertently did *not* modify, the Section 7.5 – *End Structures* test requirements to include testing requirements for potential entrapment in the side rails, as identified in 6.5. Failure to include these requirements negated the intended safety improvement noted in section 6.5.

ASTM F1821 -16 Revision

ASTM F1821-16, approved and published on October 1, 2016, revised ASTM F1821-15. ASTM notified the Commission of this revision on December 8, 2016. This revision contains the test requirements for the side rails, which were missing from ASTM F1821–15. Section 7.5 now includes end structures and side rails in the testing requirements. Section 7.5.1 explains how to test potential entrapment hazards in end structures, and section 7.5.2 explains how to test potential entrapment hazards in side rails. The Commission considers the addition of performance and test requirements for potential entrapment in side rails to improve the safety of toddler beds. Thus, the Commission is allowing the revised version, ASTM F1821-16, to become the new CPSC mandatory standard for toddler beds.

In accordance with section 104(b)(4) of the CPSIA, the revised ASTM standard for toddler beds becomes the new CPSC standard 180 days after the date the CPSC received notification of the revision from ASTM. This rule revises the incorporation by reference in 16 CFR part 1217, to reference ASTM F1821-16.

C. Incorporation by Reference

The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble to the final rule, ways that the materials the agency incorporates

by reference are reasonably available to interested persons and how interested parties can obtain the materials. In addition, the preamble to the final rule must summarize the material. 16 CFR 1217.5(b).

In accordance with the OFR's requirements, section B of this preamble summarizes the major provisions of ASTM F1821-16 standard that the Commission incorporates by reference into 16 CFR part 1217. The standard is reasonably available to interested parties and interested parties may purchase a copy of the standard from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959 USA, phone: 610-832-9585; <http://www.astm.org/>. A copy of the standard can also be inspected at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923.

D. Certification

Section 14(a) of the CPSA requires that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, be certified as complying with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program or, for children's products, on tests on a sufficient number of samples by a third party conformity assessment body accredited by the Commission to test according to the applicable requirements. As noted in the preceding discussion, standards issued under section 104(b)(1)(B) of the CPSIA are "consumer product safety standards." Thus, they are subject to the testing and certification requirements of section 14 of the CPSA.

Because toddler beds are children’s products, samples of these products must be tested by a third party conformity assessment body whose accreditation has been accepted by the Commission. These products also must comply with all other applicable CPSC requirements, such as the lead content requirements in section 101 of the CPSIA, the phthalates prohibitions in section 108 of the CPSIA, the tracking label requirement in section 14(a)(5) of the CPSA, and the consumer registration form requirements in the Danny Keysar Child Product Safety Notification Act.

E. Notice of Requirements

In accordance with section 14(a)(3)(B)(iv) of the CPSA, the Commission has previously published a notice of requirements (NOR) for accreditation of third party conformity assessment bodies for testing toddler beds (76 FR 22030 (April 20, 2011)). The NOR provided the criteria and process for our acceptance of accreditation of third party conformity assessment bodies for testing toddler beds to 16 CFR part 1217 (which incorporated ASTM F1821-13 with several modifications). The NOR is listed in the Commission’s rule, “Requirements Pertaining to Third Party Conformity Assessment Bodies.” 16 CFR part 1112.

No change to the NOR in 16 CFR part 1112 is required for the Commission’s revision to 16 CFR part 1217 updating the reference to ASTM F1821-16 because the NOR currently in effect already requires that the accreditation scope include a reference to 16 CFR part 1217. Laboratories would begin testing to the new standard when it goes into effect. Therefore, the Commission considers the existing accreditations that the Commission has accepted for testing to this standard also to cover testing to the revised standard. The existing NOR for this standard will remain in place, and CPSC-accepted

third party conformity assessment bodies are expected to update the scope of the testing laboratories' accreditation to reflect the revised standard in the normal course of renewing their accreditation.

F. Direct Final Rule Process

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA) generally requires notice and comment rulemaking, section 553 of the APA provides an exception when the agency, for good cause, finds that notice and public procedure are “impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 553(b)(B). The Commission concludes that when the Commission updates a reference to an ASTM standard that the Commission has incorporated by reference under section 104(b) of the CPSIA, notice and comment is not necessary.

Under the process set out in section 104(b)(4)(B) of the CPSIA, when ASTM revises a standard that the Commission has previously incorporated by reference as a Commission standard for a durable infant or toddler product under section 104(b)(1)(b) of the CPSIA, that revision will become the new CPSC standard unless the Commission determines that ASTM's revision does not improve the safety of the product. Thus, unless the Commission makes such a determination, the ASTM revision becomes CPSC's standard by operation of law. The Commission is allowing ASTM F1821-16 to become CPSC's new standard. The purpose of this direct final rule is merely to update the reference in the Code of Federal Regulations so that it accurately reflects the version of the standard that takes effect by statute. Public comment will not impact the substantive changes to the standard or the effect of the revised standard as a consumer

product safety standard under section 104(b) of the CPSIA. Under these circumstances, notice and comment is not necessary. In Recommendation 95-4, the Administrative Conference of the United States (ACUS) endorsed direct final rulemaking as an appropriate procedure to expedite promulgation of rules that are noncontroversial and that are not expected to generate significant adverse comment. *See* 60 FR 43108 (August 18, 1995). ACUS recommended that agencies use the direct final rule process when they act under the “unnecessary” prong of the good cause exemption in 5 U.S.C. 553(b)(B). Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule because we do not expect any significant adverse comments.

Unless we receive a significant adverse comment within 30 days, the rule will become effective on June 6, 2017. In accordance with ACUS’s recommendation, the Commission considers a significant adverse comment to be one where the commenter explains why the rule would be inappropriate, including an assertion challenging the rule’s underlying premise or approach, or a claim that the rule would be ineffective or unacceptable without change.

Should the Commission receive a significant adverse comment, the Commission would withdraw this direct final rule. Depending on the comments and other circumstances, the Commission may then incorporate the adverse comment into a subsequent direct final rule or publish a notice of proposed rulemaking, providing an opportunity for public comment.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that agencies review proposed and final rules for their potential economic impact on small entities, including

small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603 and 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. *Id.* As explained above, the Commission has determined that notice and comment is not necessary for this direct final rule. Thus, the RFA does not apply. We also note the limited nature of this document which updates the incorporation by reference to reflect the mandatory CPSC standard that takes effect under section 104 of the CPSIA.

H. Paperwork Reduction Act

The toddler beds standard contains information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The revision made no changes to that section of the standard. Thus, these revision will not have any effect on the information collection requirements related to that standard.

I. Environmental Considerations

The Commission’s regulations provide a categorical exclusion for the Commission’s rules from any requirement to prepare an environmental assessment or an environmental impact statement because they “have little or no potential for affecting the human environment.” 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

J. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a “consumer product safety standard under [the Consumer Product Safety Act (CPSA)]” 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.

The Danny Keysar Child Product Safety Notification Act (at section 104(b)(1)(B) of the CPSIA) refers to the rules to be issued under that section as “consumer product safety standards,” thus implying that the preemptive effect of section 26(a) of the CPSA would apply. Therefore, a rule issued under section 104 of the CPSIA will invoke the preemptive effect of section 26(a) of the CPSA when it becomes effective.

K. Effective Date

Under the procedure set forth in section 104(b)(4)(B) of the CPSIA, when a voluntary standard organization revises a standard upon which a consumer product safety standard issued under the Danny Keysar Child Product Safety Notification Act was based, the revision becomes the CPSC standard within 180 days of notification to the Commission, unless the Commission determines that the revision does not improve the safety of the product, or the Commission sets a later date in the *Federal Register*. The Commission has not set a different effective date. Thus, in accordance with this provision, this rule takes effect 180 days after we received notification from ASTM of revisions to these standards. As discussed in the preceding section, this is a direct final rule. Unless we receive a significant adverse comment within 30 days, the rule will become effective on June 6, 2017.

List of Subjects in 16 CFR Part 1217

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

For the reasons stated above, the Commission amends 16 CFR chapter II as follows:

PART 1217 – SAFETY STANDARD FOR TODDLER BEDS

1. The authority citation for part 1217 continues to read as follows:

Authority: Sec. 104, Pub. L. 110-314, 122 Stat. 3016 (August 14, 2008); Sec. 3, Pub. L. 112-28, 125 Stat. 273 (August 12, 2011).

2. Revise § 1217.2 to read as follows:

§ 1217.2 Requirements for toddler beds.

Each toddler bed shall comply with all applicable provisions of ASTM F1821-16, Standard Consumer Safety Specification for Toddler Beds, approved October 1, 2016.

The Director of the Federal Register approves the incorporation by reference listed in this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of this ASTM standard from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959 USA; phone: 610-832-9585; <http://www.astm.org/>.

You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923, or at the National Archives and Records Administration (NARA). For

information on the availability of this material at NARA, call 202-741-6030, or go to:

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Dated: February 15, 2017

Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission

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