



**Billing Code 6355-01-P**

**CONSUMER PRODUCT SAFETY COMMISSION**

**16 CFR Parts 1112 and 1231**

**[Docket No. CPSC-2015-0031]**

**Safety Standard for High Chairs**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final rule.

**SUMMARY:** The Consumer Product Safety Improvement Act of 2008 (CPSIA) directs the Commission to issue standards for durable infant or toddler products. To comply with section 104 of the CPSIA, CPSC is issuing a safety standard for high chairs. This rule incorporates by reference ASTM F404-18, *Standard Consumer Safety Specification for High Chairs* (ASTM F404-18). In addition, this rule amends the regulations regarding third party conformity assessment bodies to include the safety standard for high chairs in the list of Notices of Requirements (NORs).

**DATES:** The rule will become effective on June 19, 2019. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of June 19, 2019.

**FOR FURTHER INFORMATION CONTACT:** Keysha Walker, Office of Compliance and Field Operations, U.S. Consumer Product Safety Commission; 4330 East West Highway, Bethesda, MD 20814; email: [KWalker@cpsc.gov](mailto:KWalker@cpsc.gov); telephone: (301) 504-6820.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background and Statutory Authority**

Congress enacted the CPSIA (Pub. L. No. 110-314, 122 Stat. 3016), as part of the Danny Keysar Child Product Safety Notification Act, on August 14, 2008. Section 104(b) of the CPSIA requires CPSC 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 or toddler products. Any standard CPSC adopts under this mandate must be substantially the same as the applicable voluntary standard, or more stringent than the voluntary standard if CPSC determines that more stringent requirements would further reduce the risk of injury associated with the product. Section 104(f)(1) of the CPSIA defines the term “durable infant or toddler product” as “a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years,” and section 104(f)(2)(C) specifically identifies high chairs as a durable infant or toddler product.

On November 9, 2015, the Commission issued a notice of proposed rulemaking (NPR), proposing to incorporate by reference the then-current voluntary standard for high chairs, ASTM F404-15, with more stringent requirements for rearward stability and warnings on labels and in instructional literature. 80 FR 69144; 81 FR 3354 (January 21, 2016) (correcting an error in the NPR). After the Commission issued the NPR, ASTM revised the voluntary standard several times, as discussed in section V of this preamble, and published the current version of the standard, ASTM F404-18, in March 2018.

In this final rule, the Commission is incorporating by reference ASTM F404-18, with no modifications, as the mandatory safety standard for high chairs. As section 104(b)(1)(A) of the CPSIA requires, CPSC staff consulted with manufacturers, retailers, trade organizations, laboratories, consumer advocacy groups, consultants, and the public to develop this standard, largely through the ASTM standard-development process. In addition, this final rule amends the list of NORs in 16 CFR part 1112 to include the standard for high chairs.

## **II. Product Description**

ASTM F404-18 defines a “high chair” as “a free standing chair for a child up to 3 years of age which has a seating surface more than 15 in. above the floor and elevates the child normally for the purposes of feeding or eating.” The ASTM standard further specifies that a high chair may be sold with or without a tray, have adjustable heights, or recline for infants.<sup>1</sup>

High chairs are available in various designs, including four-legged A-frame styles, single-leg pedestals, Z-frame styles, and restaurant-style. Construction materials often include a plastic, wood, or metal frame, and a padded fabric seat. Some designs include a tray or mounted toy accessories, fold for storage and transport, or convert for continued use as a child grows.

ASTM F404-18 requires high chairs to have a passive crotch restraint (*i.e.*, two separate bounded openings for the occupant’s legs) and a three-point restraint system; some designs also include a rigid front torso support or a five-point restraint system with shoulder harnesses.

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<sup>1</sup> After the Commission issued the NPR, staff learned of a reclined infant seat accessory for a high chair product that is intended for young infants. The product consists of a high chair base that is sold separately from, but accommodates, several seat accessories that are appropriate for different ages and sizes of children. One of the seat accessories is a reclined seat that, when placed on the high chair base, allows infants to be raised to the height of a dining table. Based on the characteristics of the infant seat accessory, its intended use, and marketing materials, CPSC staff believes that these products also meet the definition of a high chair.

### **III. Market Description**

CPSC staff has identified 59 domestic firms that currently supply high chairs to the U.S. market. Thirty-three of these firms manufacture high chairs and the remaining 26 firms are importers. Forty-three of the firms (26 manufacturers and 17 importers) are small, according to the U.S. Small Business Administration's (SBA) standards,<sup>2</sup> and the remaining 16 (7 manufacturers and 9 importers) are large. Of the 59 domestic firms, 43 market their high chairs only to consumers, and 4 sell their high chairs to both consumers and restaurants. In addition, staff identified 9 foreign firms that supply high chairs to the U.S. market, including 8 manufacturers and 1 importer. Staff also identified numerous high chairs that are manufactured outside the United States and bought domestically through online sales.

At the time CPSC staff assessed the high chairs market, 13 of the 26 small domestic manufacturers, and 9 of the 17 small domestic importers, reported that they complied with the ASTM standard for high chairs.

### **IV. Incident Data**

CPSC receives data regarding product-related injuries from several sources. One source is the National Electronic Injury Surveillance System (NEISS), from which CPSC can estimate, based on a probability sample, the number of injuries that are treated in U.S. hospital emergency departments (U.S. EDs) nationwide that are associated with specific consumer products. Other sources include reports from consumers and others through the Consumer Product Safety Risk Management System (which also includes some NEISS data) and reports from retailers and manufacturers through CPSC's Retailer Reporting System—CPSC refers to these sources collectively as Consumer Product Safety Risk Management System data (CPSRMS).

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<sup>2</sup> Under SBA size standards, a high chair manufacturer is "small" if it has 500 or fewer employees, and an importer is "small" if it has 100 or fewer employees.

The preamble to the NPR summarized reports of high chair-related incidents that occurred between January 1, 2011 and December 31, 2014, which CPSC received through CPSRMS sources. For the final rule, CPSC staff has updated this information to reflect newly reported high chair incidents that occurred between January 1, 2011 and December 31, 2014, as well as new incidents that occurred between January 1, 2015 and September 30, 2017. In total, CPSC has received 1,842 reports of high-chair related incidents that occurred between January 1, 2011 and September 30, 2017. These incidents involved 2 fatalities and 271 reported injuries.<sup>3</sup> Of the incidents that reported the age of the child involved, the majority of incidents involved children between 7 and 18 months old.

The preamble to the NPR also summarized NEISS estimates for high chair-related incidents that occurred between January 1, 2011 and December 31, 2014. After the Commission issued the NPR, complete injury data became available for 2015 and 2016, and CPSC staff has updated this information for the final rule. Including this new data and extrapolating from the probability sample, CPSC staff estimates that there were 49,900 high chair-related injuries treated in U.S. EDs between January 1, 2011 and December 31, 2016. There were no deaths reported through NEISS for this period. There was no statistically significant increase or decrease in the estimated injuries from year-to-year between 2011 and 2016, and there was no statistically significant trend in the data over this period. Similarly to the CPSRMS data, of the incidents that reported the age of the child involved, most incidents involved children between 7 and 23 months old.

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<sup>3</sup> The NPR indicated that CPSC had received 1,296 reports of high chair-related incidents that occurred between January 1, 2011 and December 31, 2014, of which 1 was fatal and 138 reported injuries. Since the NPR, CPSC received an additional 546 reports of high-chair related incidents that occurred between January 1, 2011 and September 30, 2017, of which 1 was fatal and 133 reported injuries.

*A. Fatalities*

CPSC is aware of two fatal incidents that occurred between January 1, 2011 and September 30, 2017. As the NPR stated, CPSC staff has been unable to collect detailed information about the fatal incident that was reported in 2014. CPSC received another report of a high chair-related fatality in 2016; this incident involved strangulation, but CPSC staff was unable to obtain additional details about the incident.

*B. Nonfatal Injuries*

Of the total 271 nonfatal injuries reported to CPSC through CPSRMS sources that occurred between January 1, 2011 and September 30, 2017, 1 involved a child who was admitted to the hospital with a skull fracture and retinal hemorrhage; 15 were treated in U.S. EDs for injuries including a puncture wound to the forehead, a broken collarbone, a compound fracture of the finger, lacerations, and contusions; and 1 reported a head injury and broken wrist, but did not indicate the treatment the child received. The remaining injuries primarily consisted of contusions, abrasions, and lacerations, resulting from falls or entrapment of limbs or extremities.

The injuries and treatments reported through NEISS for 2015 and 2016 were consistent with those for 2011 through 2014, described in the NPR. In most cases, the patient was treated in the U.S. ED and released (94 percent for 2011-2014, and 95 percent for 2015-2016). The most commonly injured body parts were the head (65 percent for 2011-2016) and face (17 percent for 2011-2016). The most common types of injuries were injuries to internal organs (48 percent for 2011-2014, and 51 percent for 2015-2016), contusions and abrasions (22 percent for 2011-2014, and 16 percent for 2015-2016), and lacerations (11 percent for 2011-2014, and 16 percent for 2015-2016).

CPSC staff also assessed NEISS data to determine the hazards associated with high chairs in restaurants. There were an estimated 1,600 injuries treated in U.S. EDs between 2011 and 2016, which were related to high chairs in restaurant settings. Most incidents involved users falling from the high chair. Of the reports that indicated the cause of the fall, it commonly occurred when a child attempted to climb into or out of the high chair; the high chair tipped over; or consumers did not use restraints or the restraints failed or were defeated.

### *C. Hazard Patterns*

The hazards reported in the new incidents are consistent with the hazard patterns staff identified in the incidents presented in the NPR. The hazard in nearly all reported incidents, both those discussed in the NPR (96 percent) and in the new incidents (95 percent), involved issues with specific components of the high chair, including the frame, seat, restraint system, armrest, tray, toy accessories, and footrest. Design, stability, and other general product issues accounted for 4 percent of incidents discussed in the NPR and 3 percent of the new incidents.

Most of the NEISS incidents reported for 2015 and 2016 involved falls from high chairs, often when a child attempted to climb into or out of the high chair; when the chair tipped over when a child pushed back or rocked while in the high chair; or when a component of the high chair (*e.g.*, restraint, tray, lock) failed or disengaged.

## **V. ASTM F404-18**

In this final rule, the Commission incorporates by reference ASTM F404-18. The Commission is incorporating by reference ASTM F404-18 because it includes provisions that are the same as, or consistent with, the requirements proposed in the NPR, and CPSC staff believes that the standard addresses the hazards associated with high chairs.

#### *A. History of ASTM F404*

ASTM F404, *Standard Consumer Safety Specification for High Chairs*, is the voluntary standard that addresses the hazard patterns associated with the use of high chairs. ASTM first approved and published the standard in 1975, as ASTM F404-75. ASTM has revised the standard numerous times since then. In the NPR, the Commission proposed to incorporate by reference ASTM F404-15, with modifications.

After the Commission issued the NPR, ASTM revised ASTM F404 five times. CPSC staff worked with representatives of manufacturers, consumer groups, retailers, and other industry members and groups on the ASTM subcommittee on high chairs to develop requirements to address the hazards associated with high chairs, including issues and requirements raised in the NPR, concerns raised by members of the ASTM subcommittee, and comments on the NPR. CPSC staff also participated in the ASTM Ad Hoc Committee on Standardized Wording for Juvenile Product Standards (Ad Hoc TG) to finalize recommendations for warning labels, entitled, “Recommended Language Approved by Ad Hoc Task Group, Revision C” (November 10, 2017), to provide consistent and effective warnings for juvenile product standards. The most recent version of the standard, ASTM F404-18, reflects the work of these groups. ASTM approved ASTM F404-18 on February 15, 2018, and published it in March 2018.

#### *B. ASTM F404-18: Comparison with the NPR and Assessment of Requirements*

In the NPR, the Commission proposed to incorporate by reference ASTM F404-15, which addressed many of the hazard patterns associated with high chairs, with modifications to three areas of the standard. The Commission proposed more stringent requirements than those in



ASTM F404-15 for rearward stability, warnings on labels, and instructional literature.

Specifically, the Commission proposed:

- more stringent rearward stability requirements, including test procedures, a formula for determining a “rearward stability index” (RSI), and a requirement that high chairs have an RSI of at least 50;
- more stringent warning content, format, and placement requirements than those in ASTM F404-15; and
- warning content in instructional literature that aligned with the modified warning labels, as well as formatting requirements for warnings in instructions.

The requirements in ASTM F404-18 are largely the same as those the Commission proposed in the NPR. ASTM F404-18 includes the same scope, definitions, general requirements (*e.g.*, threaded fasteners; latching and locking mechanisms), performance requirements, and test methods that the Commission proposed to incorporate by reference from ASTM F404-15. In addition, ASTM F404-18 includes modifications to reflect the more stringent requirements the Commission proposed in the NPR, to address comments filed in response to the NPR, and to provide additional detail and clarity. The following discussion compares the areas in which the NPR and ASTM F404-18 differ, and describes CPSC staff’s assessment of the ASTM F404-18 provisions.

#### *1. Stability Requirements*

In the NPR, the Commission proposed to require the forward and sideways stability requirements in ASTM F404-15 and more stringent rearward stability requirements, consisting of a test method and formula for determining the RSI for a high chair, and a minimum RSI of 50. ASTM F404-18 includes these requirements, with some additional details and minor changes for

clarification. First, ASTM F404-18 includes additional details about how to perform stability testing (*e.g.*, using a low stretch cord), and, in particular, how to perform stability testing when product features vary (*e.g.*, reclining seat backs; high chairs without trays; when test weights cannot be centered on the seat). Second, ASTM F404-18 includes minor wording changes to provide clarity, such as describing the point at which a high chair becomes unstable (for purposes of calculating the RSI) as the point where it “begins to tip over,” instead of the point at which it is on “the verge of tipping over.” This wording maintains the meaning in the NPR, but adds clarity, in response to comments requesting clarification.

CPSC staff in the Division of Mechanical and Combustion Engineering has reviewed the stability requirements in ASTM F404-18 and believes that they adequately address the stability issues associated with high chairs. The stability requirements in ASTM F404-18 are largely the same as the more-stringent stability requirements the Commission proposed in the NPR (maintaining the same test method, formula, and RSI limit), which staff believes are effective, and the minor modifications added to ASTM F404-18 add clarity and detail.

## *2. Warning Label Requirements*

In the NPR, the Commission proposed more stringent warning label content, format, and placement requirements than those in ASTM F404-15. ASTM F404-18 also includes more stringent warning label requirements than those in ASTM F404-15, but the requirements are not identical to those in the NPR.

*Content.* The content of the warnings in ASTM F404-18 are nearly identical to those the Commission proposed in the NPR, with minor changes to some wording. For example, ASTM F404-18 requires the phrase “Fall Hazard” to appear before the warning statement. In addition, one of the NPR warnings stated: “children have suffered skull fractures after falling from high

chairs”; in contrast, ASTM F404-18 states: “children have suffered severe head injuries including skull fractures when falling from high chairs.” ASTM F404-18 also includes some changes to how warnings are phrased, but conveys the same information as the wording in the NPR (e.g., “falls can happen quickly,” versus “falls can happen suddenly”).

CPSC staff in the Division of Human Factors (HF) has reviewed the warning label content requirements in ASTM F404-18 and believes that the warning content is largely consistent with that in the NPR, addressing the same general information, and staff concludes that the changes do not undermine the effectiveness of the warnings. Staff believes that warning of severe head injuries, coupled with citing skull fractures as one possible example of such an injury, is an effective way to warn users about the potential consequences of the fall hazard. Moreover, staff believes that this warning avoids the impression that the NPR language may have given, which is that skull fractures are the only type of potential injury. In addition, staff believes that the phrase, “Fall Hazard,” is unnecessary, but is not problematic.

*Format.* The NPR and ASTM F404-18 include the same requirements for size and organization of warning labels, but handle some other formatting requirements differently. After the Commission issued the NPR, the Ad Hoc TG finalized its recommendations for warning labels, which address warning format. The goal of the Ad Hoc TG recommendations is to provide consistent and effective warnings for juvenile products by addressing warning format issues that impact consumer attention, readability, hazard perception, and avoidance behaviors.

The Ad Hoc TG recommendations are based largely on the requirements of ANSI Z535.4, *American National Standard for Product Safety Signs and Labels* (ANSI Z535.4), with additional content to account for the wide range and unique nature of durable nursery products, the concerns of industry representatives, and CPSC staff’s recommendations. ANSI Z535.4

addresses format topics, such as safety alert symbols, signal words, panel format, color, and letter style; and additional Ad Hoc TG recommendations address text size, alignment, and organization.

The warning format requirements in ASTM F404-18 align with the Ad Hoc TG recommendations. The warning format requirements in the NPR differ from ASTM F404-18 in the following ways:

- where the NPR proposed a specific typeface and required certain words to be in bold, ASTM F404-18 only recommends avoiding certain kinds of typeface (*e.g.*, narrow); and
- where the NPR detailed specific requirements for colors, borders, typeface, and referred to ANSI Z535.4 for optional additional guidance, ASTM F404-18 simply requires conformance to ANSI Z535.4, which includes provisions on these topics.

HF staff has reviewed the warning label format requirements in ASTM F404-18 and believes that they are appropriate. The warning format requirements in ASTM F404-18 are largely consistent with the provisions in the NPR, because the NPR discussed the same format topics and referenced ANSI Z535.4; and the requirements resolve many of the comments filed in response to the NPR by clarifying conflicting or unclear provisions. Because the requirements align with the Ad Hoc TG recommendations, staff believes they are effective.

*Placement.* The NPR proposed requiring all warning content to appear on one label that was visible both when putting a child in the high chair and once a child was in the high chair. ASTM F404-18 allows the warning content to appear on two labels. One label, addressing fall injuries and restraints, must be visible when putting a child in the high chair; the second label, addressing attendance, must be visible when a child is in the high chair.

HF staff has reviewed the warning label placement requirements in ASTM F404-18 and believes that they are sufficient. In response to the NPR, commenters identified challenges the placement requirements in the NPR posed. For example, commenters noted that it would be difficult for high chair models with design or size limitations to meet the placement requirements proposed in the NPR because the proposal required a single label with more content that was visible during all stages of use. After considering these comments, staff agrees that the two warning labels ASTM F404-18 requires are justified. Staff believes that the placement requirements in ASTM F404-18 are adequate because they require each of the warnings to be visible at the time the information is most relevant.

First, ASTM F404-18 requires the fall-related warnings to be visible to caregivers when putting a child into the high chair. Warning caregivers of the hazard, potential injuries, and how to avoid the hazard is most relevant when they are placing the child into the high chair, because it informs them of the risks from the outset of use, and may motivate them to use restraints appropriately. Thus, it is likely more important to include these warnings on a label that is visible when placing a child in the high chair, than on a label that is visible during use. Second, ASTM F404-18 requires the warning to “stay near and watch child during use” to be visible when the child is in the high chair. Reminding caregivers to supervise children is most relevant when a child is already in the high chair, and the caregiver may become distracted or leave the child unattended. Accordingly, it is likely more important to include this warning on a label that is visible during use, rather than on a label that is visible when initially putting a child into the high chair. Thus, although staff believes it would be ideal to convey all warning information in a place that is visible during all stages of use, given design and space limitations, the placement requirements in ASTM F404-18 are appropriate.

### 3. *Instructional Literature Requirements*

In the NPR, the Commission proposed more stringent content and design requirements for warnings in instructional literature than those in ASTM F404-15. ASTM F404-18 also requires more stringent instructional literature requirements than ASTM F404-15, although the design requirements are not identical to those in the NPR.

The warning content requirements for instructional literature in ASTM F404-18 are consistent with those in the NPR. Both the NPR and ASTM F404-18 required instructional literature to contain the warning statements specified for on-product warning labels, by referencing the applicable sections regarding on-product warning labels (*i.e.*, Section 8).

With respect to the design of warnings in instructional literature, the NPR proposed highly contrasting colors and referenced ANSI Z535.6, *Product Safety Information in Product Manuals, Instructions, and Collateral Materials* (ANSI Z535.6), for optional design guidance. Like the NPR, ASTM F404-18 references ANSI Z535.6, but also includes more-detailed requirements regarding text size, alignment, and organization, and requires conformance with ANSI Z535.4 (with some exceptions for areas that are not critical for instructions). These requirements eliminate some areas of confusion commenters noted regarding the requirements proposed in the NPR.

HF staff has reviewed the instructional literature requirements in ASTM F404-18 and believes they are effective. The requirements in ASTM F404-18 are consistent with the types of formatting and content provisions proposed in the NPR and are based on the Ad Hoc TG recommendations, which staff believes are effective and resolve areas of confusion raised in the NPR comments.

#### *4. Restaurant-Style High Chairs*

The NPR discussed whether a mandatory standard should apply to restaurant-style high chairs (*i.e.*, high chairs intended for use in restaurants, also known as “food service high chairs”) or whether the hazards, environment, and product features useful in a restaurant, as well as compliance costs, justified fully or partially exempting restaurant-style high chairs from the final rule or creating different requirements for them. The ASTM standard does not distinguish restaurant-style high chairs from those intended for home use, and applies to all high chairs.

CPSC has determined that restaurant-style high chairs should remain within the scope of the final rule, consistent with ASTM F404-18. NEISS data indicate that an estimated 1,600 incidents related to high chairs occurred in restaurants and were treated in U.S. EDs between 2011 and 2016. The hazard patterns in these incidents appear similar to those in homes, primarily involving children falling from high chairs due to issues with restraints, tip overs, or when a child was climbing into or out of the high chair. In addition, CPSC staff identified four firms that sell restaurant-style high chairs to both restaurants and consumers. Finally, section 104 of the CPSIA requires the Commission to adopt a mandatory standard that is substantially the same as the voluntary standard, or more stringent than the voluntary standard. Because the voluntary standard for high chairs applies to all high chairs, including those used in restaurants, excluding them from the final rule or applying less stringent requirements for restaurant-style high chairs would be inconsistent with the CPSIA.

#### *C. Incorporation by Reference*

The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. These regulations require the preamble to a final rule to summarize the material and discuss the ways in which the material the agency incorporates by reference is

reasonably available to interested persons, and how interested parties can obtain the material. 1 CFR 51.5(b). In accordance with the OFR regulations, this section summarizes ASTM F404-18, and describes how interested parties may obtain a copy of the standard.

ASTM F404-18 contains requirements concerning:

- threaded fasteners;
- sharp edges and points;
- small parts;
- wood parts;
- latching or locking mechanisms;
- permanency of labels;
- openings;
- lead in paint;
- forward, sideways, and rearward stability;
- exposed coil springs;
- scissoring, shearing, and pinching;
- restraint systems;
- structural integrity;
- tray latch release mechanisms;
- side containment;
- protrusions;
- protective components;
- tray or front torso support;



- static loads on the seat, step, footrest, and tray;
- bounded openings;
- warnings and labels; and
- instructional literature.

The standard also includes test methods to assess conformance with these requirements.

Interested parties may obtain a copy of ASTM F404-18 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 at CPSC's Office of the Secretary.

## **VI. Comments Filed in Response to the NPR**

CPSC received 16 comments in response to the NPR. The comments are available in the docket for this rulemaking, CPSC-2015-0031, at: [www.regulations.gov](http://www.regulations.gov). A summary of the comments, grouped by topic, and CPSC staff's responses are below.

### *A. Effective Date*

*Comment:* CPSC received a comment from four consumer advocate groups that supported the proposed 6-month effective date. Another commenter, representing juvenile product manufacturers, requested a 1-year effective date, stating that additional time would be necessary to change products to meet the new requirements, particularly for warning labels and instructional literature.

*Response:* The warning label and instructional literature requirements in the final rule should require less-burdensome product changes than the proposed rule, particularly because the final rule allows for two separate labels with distinct placement requirements. This reduces the need for a longer effective date. However, some firms will need to modify their products to meet

the final rule. For 49 percent of small firms, CPSC staff cannot rule out the possibility that the final rule will have a significant economic impact. In addition, staff believes that some firms may not be aware of the ASTM standard or that CPSC is issuing a rule on high chairs. A longer effective date would reduce this impact. Accordingly, the Commission is providing a longer effective date for the final rule than proposed. The rule will take effect 12 months after publication of this final rule.

*B. Passive Crotch Restraint*

*Comment:* One commenter stated that the ASTM requirement that passive crotch restraints must be permanently attached to a high chair or tray before shipment (section 6.9.1.5) should not apply to high chairs for which consumers assemble every component, with instructions.

*Response:* CPSC believes that this exception would be inappropriate for two reasons. First, CPSC staff believes that it is important for passive restraints to be attached permanently to a high chair or tray before shipment, because it helps ensure that users do not intentionally or inadvertently assemble or use a high chair without the passive restraint. This requirement is intended to reduce the likelihood of death from positional asphyxia. Second, section 104 of the CPSIA does not permit CPSC to create such an exception. Section 104 requires the Commission to adopt a mandatory standard for high chairs that is “substantially the same as” or “more stringent than” the voluntary standard. Because ASTM F404 requires permanent attachment of passive restraints (and has since 2015), creating an exception to this requirement would be less stringent than the voluntary standard.

### *C. Rearward Stability*

Two commenters raised issues regarding the clarity and repeatability of the proposed rearward stability requirements.

*Comment:* One commenter pointed out that § 1231.2(b) of the proposed rule, which the Commission proposed to replace section 6.5 of ASTM F404-15, would have required compliance with sections 7.7.2.4 to 7.7.2.4.6 of ASTM F404, instead of all of section 7.7.

*Response:* Some section references were mistakenly omitted from the ASTM standard when ASTM revised the stability requirements in the standard. Correspondingly, the NPR included incomplete section references. ASTM corrected this error in later revisions to ASTM F404. Section 6.5 of ASTM F404-18, which the Commission incorporates by reference in this final rule, now properly references all of section 7.7.

*Comment:* One commenter stated that the phrase “verge of tipping over,” used to determine the RSI, is subjective, and will cause variation in measurements of tipping distance.

*Response:* ASTM revised this language in ASTM F404-18 to add clarity, and the provision now states: “the point that [the high chair] becomes unstable and begins to tip over,” which CPSC staff believes addresses this issue.

*Comment:* One commenter stated that the rearward tipping force load application “must be reached in at least 5 seconds” and suggested that the load force varies, depending on how quickly or slowly a particular tester applies this load, leading to variation in the RSI of about 4 points.

*Response:* ASTM F404-15, which was in effect at the time the Commission issued the NPR, stated: “Gradually apply the force over a period of 5 s.” In the NPR, the Commission proposed to modify this language to state: “Gradually increase the horizontal force over a period

of at least 5 seconds.” ASTM F404-18 includes the language proposed in the NPR, which makes it clear that 5 seconds is a minimum, not a maximum, timeframe, and to emphasize that testers should apply the load slowly and steadily. As in other ASTM standards that include stability requirements, the 5-second reference is not meant to be an upper time limit during which testers must hurriedly apply force. If testers apply force sufficiently slowly, negligible dynamic force should factor into the equation and maximum tip-over force readings will be consistent.

*Comment:* One commenter stated that the wording, diagram, and calculation formula for rearward stability in the NPR are confusing and flawed, including confusing identifiers, crossed out words, and multiple definitions of “F.”

*Response:* ASTM revised the diagram in ASTM F404-18 to resolve these issues, removing crossed out words and defining the forces more clearly, by designating F1 and F2 as unique and clearly identified forces. Likewise, the RSI calculation in ASTM F404-18 includes the maximum F2 force, rather than the original, ambiguous force F. The new diagram is in ASTM F404-18 Figure 10, and the RSI formula is in section 7.7.2.6(4).

#### *D. Warning Labels*

##### *1. Content*

CPSC received five comments that discussed issues related to warning content. One commenter supported the Commission’s proposed warning content, particularly the statement: “Falls can happen quickly if child is not restrained properly.” Another commenter supported the warning content in ASTM F404-15, rather than the NPR, but did not provide specific reasons for preferring the ASTM content. The remaining three comments discussed the following issues.

*Comment:* Two commenters were concerned about the increased length of the proposed warning, and one of the two was concerned with the proposed requirement that all warning information appear on a single label.

*Response:* These comments address two related issues—spreading warning content across multiple labels, and the length of warning content. With respect to the first issue, the NPR proposed to require all warnings to appear on a single label. The NPR and staff’s supporting briefing package explained the reasons for that proposed requirement. As an example, in ASTM F404-15, the warning: “Never leave child unattended,” did not appear on the same label that described the fall hazard and potential consequences. However, never leaving a child unattended is one behavior consumers can use to avoid the fall hazard. Consequently, staff believed that the warning would be more effective if the mitigating behavior appeared on the same label as the information about the hazard and consequences. Unlike the NPR, ASTM F404-18 spreads the required warnings across two labels. As section V of this notice discusses, HF staff believes that spreading the warnings across two labels is acceptable.

With respect to the length of warning content, the warnings the Commission proposed in the NPR were longer than the warnings in ASTM F404-15. ASTM F404-18 includes revised warning content that is consistent with the NPR. CPSC staff worked with ASTM to ensure that ASTM F404-18 includes the essentials of the warnings the NPR proposed, but also addresses comments submitted in response to the NPR, and ASTM subcommittee members’ concerns. This final rule incorporates by reference ASTM F404-18, without modifications. CPSC staff maintains that the additional warning content proposed in the NPR, and the analogous content in ASTM F404-18, is appropriate, because it addresses deficiencies in the warning content in ASTM F404-15. For example, the description of injuries that could be sustained from high chair

incidents in ASTM F404-15 (*i.e.*, “serious injury or death”) was vague. Research suggests that more explicit descriptions improve consumer compliance with recommended hazard-avoidance behaviors. Similarly, the warning in ASTM F404-15 did not describe the speed with which incidents can occur. This information is important because consumers have reported that they may not use restraints on high chairs because they think they can notice and stop emerging incidents in time. In addition, the warning did not state that a tray is not intended to restrain a child. This information is necessary because consumers have reported that they consider the tray, functionally, to be part of a high chair’s restraint system, and some incidents suggest that consumers rely on the tray alone to restrain the child. Finally, the warning lacked a statement about properly adjusting the restraint system. There have been fall-related incidents where children were restrained, but the restraint system was loose or otherwise allowed the child to wriggle out.

Staff acknowledges that consumers are more likely to fully read short warnings than longer ones. However, brevity is only one factor to consider when designing a warning. A short warning is unlikely to be effective if it does not convey all key information about the hazards, and carefully selected additional content can enhance consumer compliance with warnings. In addition, staff does not consider the warnings in the NPR and ASTM F404-18 to be unusually long, or so long that they would dissuade consumers from reading the full content.

*Comment:* Two commenters stated that referring to serious injuries broadly, such as “serious injury or death,” is likely to be more effective than a specific and limited reference to “skull fractures.” One of these commenters stated that referring to skull fractures alone, may cause caregivers to ignore other, more frequent risks.

*Response:* ASTM F404-18 includes broader language (*i.e.*, “severe head injuries”) than the Commission proposed in the NPR, in addition to the specific injuries (*i.e.*, “skull fractures”) referenced in the NPR warning. Staff believes that including the broader language avoids the perception that skull fractures are the only type of serious injuries that occur. Staff believes that coupling the broad and specific injuries, rather than stating only the broader injury, is important to improve consumer compliance with the recommended hazard-avoidance behavior because research shows that more explicit or detailed information in a warning increases warning effectiveness, and vividness increases the salience of the message, which triggers the reader’s motivation to act.

*Comment:* Two commenters noted that CPSC should not require the warning statement about trays (*i.e.*, “Tray is not designed to hold child in chair”) for high chairs that do not have trays.

*Response:* CPSC agrees with this comment. ASTM F404-18 requires the same warning regarding trays as the Commission proposed in the NPR, but only requires this warning for high chairs that are designed to be used with a tray.

## 2. *Format*

CPSC received several comments regarding the warning format requirements proposed in the NPR. A summary of the comments, and staff’s responses, are below. First, however, is a general discussion of the changes to warning format requirements in the ASTM standard since the NPR. These changes are the result of the Ad Hoc TG’s efforts and address comments CPSC received about warning format.

After the Commission issued the NPR, there were several developments related to warning format and design. In short, the Ad Hoc TG finalized and published recommendations

for warning format, and ASTM revised the warning requirements in ASTM F404-18 to be consistent with the Ad Hoc TG recommendations.

The Ad Hoc TG was formed to develop standardized language across ASTM juvenile products standards, and was developing recommendations for warning format when the Commission issued the high chairs NPR. HF staff serves on the Ad Hoc TG, as well as the ANSI Z535 Committee on Safety Signs and Colors. In this capacity, staff collaborated with the other members of the Ad Hoc TG to develop the finalized recommendations for warning format.

With the goal of providing consistent formatting requirements for all juvenile-product standards and addressing warning format issues that impact the effectiveness of warnings, the Ad Hoc TG recommendations require warning content to be “easy to read and understand”; not contradict information elsewhere on the product; be in English (at a minimum); and meet various formatting requirements. The formatting requirements include minimum text size; text alignment; bullet, lists, outline, and paragraph forms for hazard-avoidance statements; and compliance with sections of ASNI Z535.4—specifically, sections 6.1 to 6.4 (which include requirements for safety alert symbols, signal words, and warning panel format, arrangement, and shape), 7.2 to 7.6.3 (which include color requirements), and 8.1 (which addresses letter style). The Ad Hoc TG recommendations also include recommended requirements for general labeling issues, such as labeling permanency, and content related to manufacturer contact information and date of manufacture.

The Ad Hoc TG recommendations and the resulting changes to ASTM F404-18 address many of the comments filed in response to the proposed warning format requirements in the NPR. Below are the comments CPSC received on that topic, and staff’s responses.



*Comment:* Four commenters objected to the NPR proposal to require “key words” to appear in boldface, because the phrase is open to interpretation. One commenter also noted that because the NPR proposed to require warnings to “address” the specified warning content, rather than state it exactly as phrased in the standard, a rule could not designate specific words as “key words.”

*Response:* The commenter is correct that the standard does not define “key words” and requires warning statements to “address” the specified warning content, rather than state it exactly as it is worded in the standard. ASTM F404-18 does not include this proposed requirement.

*Comment:* Three commenters stated that there is no clear definition or understanding of “non-condensed” sans serif typeface, and this provision may be misinterpreted or confusing. One commenter also stated that some compressed and narrow typefaces are easy to read, and therefore, the rule should not preclude them.

*Response:* There is no formal definition of “non-condensed typeface,” and some condensed typefaces could be adequately legible. ASTM F404-18 does not include the proposed provision or prohibit the use of condensed type, but it does include a note that recommends avoiding typefaces with “large height-to-width ratios, which are commonly identified as ‘condensed,’ ‘compressed,’ ‘narrow,’ or similar.”

*Comment:* Two commenters stated that the proposed note, referring readers to ANSI Z535.4 for “optional additional guidance,” may not be clear to manufacturers or test laboratories.

*Response:* ASTM F404-18 does not include the proposed note; instead, the standard includes specific warning format requirements and requires conformance to the 2011 version of ANSI Z535.4.

*Comment:* Two commenters stated that the reference to “instructions” in section 8.4.2 of the NPR is inappropriate because section 8 of the standard addresses warnings, not instructions (which are addressed in section 9).

*Response:* ASTM F404-18 corrects this inconsistency, referring to “marking or labeling” rather than “labels or written instructions.”

*Comment:* One commenter stated that the NPR proposal that warning message text must be black on a white background conflicts with the NPR proposal that warning statements be in “highly contrasting colors.”

*Response:* ASTM F404-18 does not include the proposed requirements as they were stated in the NPR. Instead, ASTM F404-18 requires conformance with ANSI Z535.4-2011, section 7.3, which requires message panel text to be black lettering on a white background or white lettering on a black background. These color requirements apply unless special circumstances preclude the use of these colors (section 7.6.3), in which case the warning text must contrast with the background.

*Comment:* One commenter stated that the proposed warning requirements should apply only to the warnings that the standard requires, and not to additional warnings that are not requirements.

*Response:* Since the Commission issued the NPR, CPSC staff has continued to work with the Ad Hoc TG to develop final warning format recommendations, which ASTM F404-18 includes. Consistent with the Ad Hoc TG recommendations, ASTM F404-18 requires all warnings to meet the format requirements in the standard. CPSC staff believes that all warning statements should meet these format requirements because they are important to capture consumer attention, improve readability, and increase hazard perception and avoidance behavior.

*Comment:* Two commenters recommended that CPSC wait to issue a mandatory standard for warnings until the Ad Hoc TG completes its work on general warning format requirements.

*Response:* The Ad Hoc TG has completed and published its recommendations, and ASTM F404-18 includes updates to reflect those recommendations.

### 3. Placement

*Comment:* Four commenters discussed warning placement. One commenter supported the proposed placement requirements (*i.e.*, that the warning be visible while placing the child in the high chair and while the child is seated in the high chair) and the remaining three commenters did not. These three commenters raised general concerns about limited space on some high chairs, especially models with low seatbacks. The commenters stated that it would be difficult, and perhaps impossible, to meet the proposed placement requirements on those models, suggesting that manufacturers would have to redesign or discontinue the models. The commenters emphasized the need for flexibility. One commenter stated that there is no clear evidence that a label that is visible when a child is in a high chair, or a secondary label if the seatback is not high enough, will actually change caregivers' behaviors.

*Response:* Consistent with these comments, ASTM F404-18 includes modified warning placement requirements, which provide greater flexibility than the requirements proposed in the NPR. ASTM F404-18 requires two labels, each with respective placement requirements, which CPSC staff believes are sufficient. ASTM F404-18 requires that fall-related warnings be visible to a caregiver only when placing a child into the high chair. CPSC staff believes this is sufficient because this allows caregivers to see the warning about the hazard, its consequences, and the key actions to avoid the hazard, immediately before this information is relevant. Although the warning may not be visible once a child is in the high chair, the warning likely would be visible

when the high chair is not in use, exposing consumers to the message at other times, such as when cleaning or moving the high chair.

ASTM F404-18 also requires a second warning statement (which may appear on a separate label), instructing caregivers to “stay near and watch child during use.” This warning must be “conspicuous” (*i.e.*, visible to a person standing near the high chair when a child is in the high chair, but not necessarily visible from all positions). Commenters and ASTM high chair subcommittee members have pointed out that this warning statement also applies to hazards other than falls, such as choking hazards. CPSC staff agrees and believes that this warning, in a conspicuous location, separate from the fall-related warning, will serve as a general reminder to remain with a child who is in the high chair. Because the warning statement must be visible when the child is still seated in the high chair, caregivers will be more likely to see the warning when they are about to leave the seated child than if the warning statement were included as part of the warning that must be visible while placing the child into the high chair.

#### *4. Miscellaneous Comments About Warning Labels*

*Comment:* Three commenters stated that there is no justification to revise the ASTM F404-15 warning requirements. Two of these commenters noted that ASTM F404-15 had only recently been adopted, so there is no evidence that the warning requirements are ineffective.

*Response:* In accordance with the statutory language in the CPSIA, when assessing an ASTM standard for rulemaking under section 104, CPSC staff considers whether more stringent requirements would further reduce the risk of injury associated with the product. Accordingly, for this rulemaking, staff considered whether more stringent warning requirements for high chairs would further reduce the risk of injury, were appropriate, and were supported by scientific

and technical literature. Based on staff's assessment, the NPR proposed more stringent warning requirements, many of which ASTM F404-18 includes.

*Comment:* One commenter stated that large warning labels would be sufficient to address the hazards associated with high chairs.

*Response:* Staff does not believe that warnings, alone, are sufficient to address the demonstrated hazards. Literature on safety and warnings consistently identifies a hierarchy of approaches to controlling hazards. In this hierarchy, warnings are less effective at eliminating or reducing exposure to hazards than designing the hazard out of a product or guarding consumers from the hazard. Warnings are less effective than these other approaches because they do not prevent consumer exposure to the hazard. Rather, warnings rely on educating consumers about the hazard and then persuading them to alter their behavior to avoid the hazard. For warnings to be effective, consumers need to behave consistently, which may not be the case when situational factors, such as fatigue, stress, or social influences, impact precautionary behavior. As a result, warnings should supplement, rather than replace, design standards or provisions that attempt to guard consumers from a hazard, unless those alternatives are not possible.

*Comment:* One commenter recommended adding pictograms to the warning provisions in the standard to convey the hazard effectively and reduce language barriers.

*Response:* Well-designed graphics may be useful to convey the fall hazard associated with high chairs. However, designing effective graphics can be difficult. Some seemingly obvious graphics can be misinterpreted. Consequently, CPSC staff believes that it is appropriate to permit supporting graphics in high chair warnings, but not require them.

*Comment:* One commenter noted that the NPR included warning requirements for high chairs that have seats that are also used as seats in strollers, but does not address high chairs with seats that also function as booster seats.

*Response:* A product with a seat that functions as a seat for a high chair and a booster seat must meet the requirements in both the high chair and booster seat standards. CPSC staff believes that manufacturers are capable of meeting the requirements of both standards, and therefore, staff does not believe that revisions to the requirements are necessary.

#### *E. Instructional Literature*

*Comment:* Three commenters expressed confusion about the proposed color requirements for instructional literature in the NPR. Two commenters stated that the requirements were contradictory, and another commenter stated that the proposed color requirements take away the flexibility to use other colors.

*Response:* CPSC agrees that the proposed color requirements for instructional literature may be unclear and that manufacturers should have some flexibility in choosing colors for instructional literature. After the Commission issued the NPR, the Ad Hoc TG published recommendations for the format of warnings in instructional literature. The instructional literature requirements in ASTM F404-18 are based on those recommendations, and CPSC believes that the requirements are appropriate and address commenters' concerns. ASTM F404-18, section 9.3, clarifies that instructional literature is not required to meet the same color requirements as on-product labels. Instead, section 9.4 of ASTM F404-18 provides flexibility, stating that warnings must stand out within instructional literature, by requiring "the signal word and safety alert symbol [to] contrast with the background of the signal word panel, and the warnings [to] contrast with the background of the instructional literature."

*Comment:* Two commenters stated that the sentence “Additional warnings similar to the statements included in this section shall also be included,” which was in proposed § 1231.2(e)(1) in the NPR, was unclear.

*Response:* The ASTM high chairs subcommittee replaced this statement in ASTM F404-18 with a new section 9.3, which states: “The instructions shall address the following additional warnings.” This modification should resolve any confusion.

*Comment:* Two commenters stated that the note proposed in the NPR, referring readers to ANSI Z535.6 for “optional additional guidance,” may not be clear to manufacturers or test laboratories.

*Response:* ASTM standards regularly use “notes” to make suggestions that are not mandatory requirements. Because other ASTM standards include notes, manufacturers and test laboratories understand their meaning and know that they are not requirements. In addition, the Ad Hoc TG recommendations, which were developed in collaboration with industry members, reference ANSI Z535.6 for additional guidance on the design of warnings in instructional literature. In accordance with that recommendation, ASTM F404-18 includes the note referring to ANSI Z535.6.

#### *F. Restaurant-Style High Chairs*

*Comment:* CPSC received three comments about restaurant-style high chairs. Commenters suggested that stability or warning and instructional requirements, alone, would be adequate for restaurant-style high chairs; that there should be a separate commercial high chair standard; or that no standard is necessary for these products. Commenters cited several reasons to create a different standard for restaurant-style high chairs. For example, commenters noted that restaurant settings make particular features useful in a high chair, such as large seats,

trayless designs, and the ability to stack multiple high chairs. In addition, consumer behavior, such as more-attentive supervision of children, may occur in restaurant settings. Moreover, commenters stated, injury data do not indicate a need to regulate these products. One manufacturer noted receiving complaints about a restaurant-style high chair that conformed to ASTM F404. The complaints stated that it was difficult for children to get in and out of the chair, the chair did not accommodate children wearing bulky clothing, and the chair did not accommodate children over one-year old. One commenter noted that some restaurant-style high chairs are only available through commercial portals, while another commenter noted that restaurant-style high chairs are sold to the public for home use. Commenters suggested using educational efforts, such as affixing labels or instructions to restaurant-style high chairs to inform consumers and restaurant staff about proper use, the intended setting, and hazards; or providing similar information on packaging, product websites, and at points of sale.

*Response:* CPSC understands that there may be differences in the useful features and level of supervision in restaurant settings and homes. It is possible that requiring restaurant-style high chairs to meet ASTM F404-18 would interfere with design features that make high chairs useful in a restaurant setting, such as large leg openings. In addition, it is possible that design features that meet ASTM F404-18 could contribute to injuries in a restaurant setting. For example, small leg openings could make it more difficult to remove children from a high chair when they are wearing bulky outerwear or shoes; or consumers may opt for potentially hazardous alternatives to a high chair if the high chair is inconvenient to use, such as placing children on an unsecured and elevated chair. However, CPSC staff does not have evidence that these possibilities will occur.



To the contrary, CPSC has several reasons to believe that the final rule should apply to all high chairs, including restaurant-style high chairs. First, after issuing the NPR, CPSC staff further examined incident data to determine the extent to which high chair-related injuries occur in restaurant settings. Staff found that between 2011 and 2016, there were an estimated 1,600 injuries treated in U.S. EDs that involved high chairs in restaurant settings. Most incidents involved children falling from high chairs, commonly when climbing into or out of the high chair, when the high chair tipped over, or when restraints were not used, failed, or were defeated. These hazard patterns are consistent with high chair incidents in homes. As a result, CPSC believes that there is no safety justification to exclude restaurant-style high chairs from the final rule.

Second, although only a small number of firms sell restaurant-style high chairs directly to consumers for use in their homes, these sales indicate that the features and settings for restaurant-style high chairs do not provide a basis for distinguishing them from home-use high chairs. CPSC staff identified four firms that supply high chairs to the U.S. market that sell their high chairs to both consumers and restaurants.

Third, CPSIA section 104 requires the Commission to adopt a mandatory standard that is substantially the same as the voluntary standard, or more stringent than the voluntary standard. Because ASTM F404 applies to all high chairs, excluding restaurant-style products from the mandatory standard would make the mandatory standard less stringent than the voluntary standard, contrary to the CPSIA requirement.

## **VII. Final Rule**

Section 1231.2(a) of the final rule requires high chairs to comply with ASTM F404-18 and incorporates the standard by reference. Section V of this preamble describes the OFR

requirements for incorporating material by reference. In accordance with those requirements, section V summarizes ASTM F404-18, explains how the standard is reasonably available to interested parties, and how interested parties may obtain a copy of the standard.

The final rule also amends 16 CFR part 1112 to add a new § 1112.15(b)(44) that lists 16 CFR part 1231, *Safety Standard for High Chairs*, as a children's product safety rule for which the CPSC has issued an NOR. Section XIII of this preamble provides additional information about certifications and NORs.

### **VIII. Effective Date**

The Administrative Procedure Act (5 U.S.C. 551-559) generally requires that agencies set an effective date for a final rule that is at least 30 days after the *Federal Register* publishes the final rule. 5 U.S.C. 553(d). The NPR proposed that the final rule for high chairs, and the amendment to part 1112, would take effect 6 months after publication. CPSC received comments requesting an implementation date of 1 year, asserting that additional time would be necessary for firms to modify products to meet the standard. CPSC believes that 1 year is sufficient for firms to modify their products to meet the new standard. Therefore, this rule will take effect 1 year after publication in the *Federal Register*, and will apply to products manufactured or imported on or after that date.

## **IX. Paperwork Reduction Act**

This rule contains information collection requirements that are subject to public comment and Office of Management and Budget (OMB) review under the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501-3521). Under the PRA, CPSC must estimate the “burden” associated with each “collection of information.” 44 U.S.C. 3506(c).

In this rule, section 8 of ASTM F404-18 contains labeling requirements that meet the definition of “collection of information” in the PRA. 44 U.S.C. 3502(3). In addition, section 9 of ASTM F404-18 requires instructions to be provided with high chairs; however, CPSC believes this requirement can be excluded from the PRA burden estimate. OMB allows agencies to exclude from the PRA burden estimate any “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,” if the disclosure activities required to comply are “usual and customary.” 5 CFR 1320.3(b)(2). Because high chairs generally require use and assembly instructions, and CPSC staff is not aware of high chairs that generally require instructions but lack them, CPSC believes that providing instructions with high chairs is “usual and customary.” For this reason, CPSC’s burden estimate includes only the labeling requirements.

The preamble to the NPR discussed the information collection burden of the proposed rule and requested comments on the accuracy of CPSC’s estimates. 80 FR 69158 to 69159. CPSC did not receive any comments about the information collection burden of the proposed rule. However, the information collection burden has changed since the NPR because CPSC staff has identified 68 high chair suppliers (59 domestic firms and 9 foreign firms), rather than the 62 firms identified in the NPR, that it estimates will be subject to the information collection burden. Accordingly, the estimated burden of this collection of information is as follows:

TABLE 1.—*Estimated Annual Reporting Burden*

16 CFR Section	Number of Respondents	Frequency of Responses	Total Annual Responses	Hours per Response	Total Burden Hours
1231.2	68	2	136	1	136

The estimated reporting burden is based on CPSC staff’s expectation that all 68 high chair suppliers will need to modify their labels to comply with the final rule. CPSC staff estimates that it will take about 1 hour per model to make these modifications and, based on staff’s evaluation of product lines, that each supplier has an average of 2 models of high chairs. As a result, CPSC estimates that the burden associated with the labeling requirements is: 68 entities × 1 hour per model × 2 models per entity = 136 hours. CPSC staff estimates that the hourly compensation for the time required to create and update labels is \$34.21 (U.S. Bureau of Labor Statistics, “Employer Costs for Employee Compensation,” Sept. 2017, Table 9, total compensation for all sales and office workers in goods-producing private industries: <http://www.bls.gov/ncs/>). Therefore, the estimated annual cost associated with the labeling requirements is: \$34.21 per hour × 136 hours = \$4,652.56. CPSC does not expect there to be operating, maintenance, or capital costs associated with this information collection.

As the PRA requires, CPSC has submitted the information collection requirements of this final rule to OMB. 44 U.S.C. 3507(d). OMB has assigned control number 3041-0173 to this information collection.

**X. Regulatory Flexibility Act**

*A. Introduction*

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601-612) requires agencies to consider the potential economic impact of a proposed and final rule on small entities, including small businesses. Section 604 of the RFA requires agencies to prepare and publish a final regulatory

flexibility analysis (FRFA) when they issue a final rule, unless the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The FRFA must discuss:

- the need for and objectives of the rule;
- significant issues raised in public comments about the initial regulatory flexibility analysis (IRFA), a response to comments from the Chief Counsel for Advocacy of the SBA, the agency's assessment of the comments, and any changes made to the rule as a result of the comments;
- the description and estimated number of small entities that will be subject to the rule;
- the reporting, recordkeeping, and other compliance requirements of the rule, as well as the small entities that would be subject to those requirements, and the types of skills necessary to prepare the reports or records;
- steps the agency took to minimize the significant economic impact on small entities; and
- the factual, policy, and legal reasons the agency selected the alternative in the final rule, and why it rejected other significant alternatives.

5 U.S.C. 604.

Based on an assessment by staff from CPSC's Directorate for Economic Analysis, CPSC cannot certify that this rule will not have a significant economic impact on a substantial number of small entities. As a result, staff has prepared a FRFA. This section summarizes the FRFA for this final rule. The complete FRFA is available as part of the CPSC staff's briefing package at: <https://cpsc.gov/s3fs-public/Final%20Rule%20-%20Safety%20Standard%20for%20High%20Chairs%20-%20May%2030%202018.pdf?mBuoGQbhxpGcMFyO6it0gNeBOOFZrTA9>.

*B. Reason for Agency Action*

Section 104 of the CPSIA requires the Commission to issue a mandatory standard for high chairs that is substantially the same as the voluntary standard, or more stringent than the voluntary standard. In this final rule, the Commission incorporates by reference the voluntary standard, ASTM F404-18, as the mandatory safety standard for high chairs. This rule aims to address the safety hazards associated with high chairs that are demonstrated in incident data.

*C. Comments Relevant to the FRFA*

CPSC did not receive any comments specifically addressing the IRFA that accompanied the proposed rule or from the Chief Counsel for Advocacy of SBA. However, CPSC received comments about the effective date of the final rule and restaurant-style high chairs, which are relevant to the FRFA insofar as they impact the costs associated with the rule.

*1. Effective Date*

In the NPR, the Commission proposed that the rule would take effect 6 months after publication in the *Federal Register*. One comment, from four consumer advocate groups, expressed support for the proposed 6-month effective date. Another comment, filed on behalf of juvenile product manufacturers, requested a 1-year effective date, to provide time for firms to change their products to meet the new standard.

After considering these comments, and the potential economic impact of the rule on small firms, the Commission is extending the effective date for the final rule to 1 year. CPSC staff believes that this longer effective date will reduce the economic impact of the rule on firms, some of which may not be aware of the ASTM standard or the rulemaking, by reducing the potential for a lapse in production or imports while bringing products into compliance with the rule, and spreading the costs of compliance over a longer time period.

## *2. Restaurant-Style High Chairs*

CPSC received three comments about restaurant-style high chairs. Section VI of this preamble detailed these comments. To summarize, commenters noted that it may be appropriate to apply only some requirements, no requirements, or to create new requirements for restaurant-style high chairs. Commenters noted that restaurant settings make certain features useful on a high chair, which may not comply with the standard, and that safety features may be less necessary in restaurants, where caregivers are likely to be near children and supervising them when they are in a high chair.

CPSC has considered this information and believes that it is appropriate to apply the final rule to all high chairs, including restaurant-style high chairs. The final rule may particularly impact firms that supply restaurant-style high chairs, because they have features intended to accommodate restaurant settings and these features may be difficult to retain while complying with the standard, thereby requiring more extensive changes than home-use models. Nevertheless, consumer safety, home-use of these products, and statutory limitations justify applying the rule to all high chairs. The rationale for including restaurant-style high chairs in the rule is discussed elsewhere in this notice.

### *D. Description of Small Entities Subject to the Rule*

CPSC staff identified 68 firms that supply high chairs to the U.S. market, of which 59 are domestic, and 9 are foreign. Of the 59 domestic firms, 33 manufacture high chairs, and 26 of those 33 manufacturers are small, according to SBA's standards. The remaining 26 domestic firms import high chairs, and 17 of those 26 importers are small, according to SBA's standards. Of the 59 domestic firms, 43 market their high chairs only to consumers, and 4 sell their high

chairs to both consumers and restaurants. It is possible that there are additional high chair suppliers in the U.S. market that staff has not identified.

*E. Description of the Final Rule*

Sections V and VII of this preamble describe the requirements in the final rule, which incorporates by reference ASTM F404-18. In addition, the final rule amends the regulations regarding third party conformity assessment bodies to include the safety standard for high chairs in the list of NORs.

*F. Impact on Small Businesses*

For the FRFA, staff limited its analysis to the 59 domestic firms staff identified as supplying high chairs to the U.S. market because SBA guidelines and definitions apply to domestic entities. In assessing whether a rule will have a significant economic impact on small entities, staff generally considers impacts “significant” if they exceed 1 percent of a firm’s revenue.

*1. Small Manufacturers*

At the time staff prepared the FRFA, 13 of the 26 small manufacturers reported that their high chairs complied with the ASTM standard that was in effect for testing purposes. Staff believes that firms that report complying with the voluntary standard will continue to comply with the standard as it evolves, as part of an established business practice. Of these 13 firms, 2 manufacture compact high chairs with limited space for warning labels. In the IRFA, staff predicted that the proposed rule could have a significant impact on these two firms because the NPR required a single warning label to be visible when placing a child in the high chair and when the child was seated in the high chair. However, the final rule does not include this requirement, instead dividing the warning information over two labels, each with different



placement requirements. This change reduces the burden on firms to modify their products to accommodate labeling requirements. Therefore, staff does not expect the final rule to have a significant economic impact on any of these 13 firms and third party testing costs are expected to be minimal because these firms already test their products for compliance with the voluntary standard.

The remaining 13 small manufacturers produce high chairs that do not comply with the voluntary standard. Seven of these firms manufacture high chairs for home use, and six produce restaurant-style high chairs. For the seven firms that manufacture high chairs for home use, the final rule could have a significant economic impact. The cost of redesigning their products to meet ASTM F404-18 could exceed 1 percent of each firm's respective revenue. In addition, these firms do not have extensive product lines; one of these firms produces only high chairs. For the six firms that manufacture high chairs for restaurant settings, the final rule could also have a significant economic impact. In particular, two of these firms make plastic high chairs, which could require them to create new molds for their products to comply with the rule. Staff believes that third party testing costs could potentially have a significant economic impact on some of these firms, but these costs would be small, relative to the overall impact of the rule.

## *2. Small Importers*

At the time staff prepared the FRFA, 9 of the 17 small importers reported that their high chairs complied with the ASTM standard that was in effect for testing purposes. In the IRFA, staff anticipated that the proposed rule could have a significant economic impact on four of these firms because they imported compact high chairs that might have needed to be redesigned to create space for a label that met the proposed label placement requirements. Because the final rule does not include this requirement, allowing greater flexibility, staff does not expect that

these firms will have to redesign their products. One importer supplies a relatively new type of high chair that includes a reclining seat insert, but preliminary staff testing indicates that the product meets the requirements in the final rule. In addition, staff believes that any third party testing costs these importers may incur would be limited to the incremental costs associated with third party testing over their current testing regimes. Therefore, staff does not expect the final rule to have a significant economic impact on any of these nine firms.

The remaining eight small importers supply high chairs that do not comply with the voluntary standard. Staff does not have sufficient information to conclude that the rule will not have a significant economic impact on these firms. The economic impact of the rule on importers depends on the extent of the changes needed for their products to comply with the rule and the response of their suppliers. Staff generally cannot determine this information for importers that do not already comply with the voluntary standard. Nevertheless, staff expects that the final rule will have a smaller economic impact than the proposed rule, because the final rule includes less-burdensome warning placement requirements than the NPR.

Suppliers are more likely to pass on the costs of producing or redesigning products to comply with the final rule to importers with whom they do not have direct ties. Six of the eight small importers of noncompliant high chairs do not have direct ties with their suppliers. To avoid these costs, the six importers may replace their suppliers, select alternative products, or stop supplying high chairs if they have diverse product lines. For the remaining two importers that have direct ties to their suppliers, finding an alternative supply source likely is not a viable alternative. However, these firms' foreign suppliers may absorb some of the costs to maintain a presence in the U.S. market. Alternatively, these two importers could stop supplying high chairs, although this may be unlikely because both firms have only a few products in their product lines.

In addition, staff believes that third party testing could result in significant costs for two of the firms that import noncompliant high chairs. For one of these firms, testing costs could exceed 1 percent of its gross revenue if it tests as few as two units per model. The second firm would need to test about three units per model before testing costs would exceed 1 percent of its gross revenue. For two additional small importers of noncompliant high chairs, each of which supply only one high chair model, staff could not obtain revenue data to determine the potential impact of third party testing.

### *3. Accreditation Requirements for Testing Laboratories*

Section 14 of the Consumer Product Safety Act (CPSA; 15 U.S.C. 2051-2089) requires all children's products that are subject to a children's product safety rule to be tested by a third party conformity assessment body (*i.e.*, testing laboratory) that has been accredited by CPSC. Testing laboratories that want to conduct this testing must meet the NOR for third party conformity testing. The final rule amends 16 CFR part 1112 to establish an NOR for testing laboratories to test for compliance with the high chair rule.

In the IRFA for this rule, staff anticipated that the accreditation requirements would not have a significant economic impact on a substantial number of small laboratories because: (1) the rule imposed requirements only on laboratories that intended to provide third party testing services; (2) laboratories would assume the costs only if they anticipated receiving sufficient revenue from the testing to justify accepting the requirements as a business decision; and (3) most laboratories would already have accreditation to test for conformance to other juvenile product standards, thereby limiting the costs to adding the high chair standard to their scope of accreditation. CPSC has not received any information to date that contradicts this assessment.

Therefore, staff believes that the NOR for the high chair standard will not have a significant economic impact on a substantial number of small entities.

*G. Alternatives and Steps to Minimize Economic Impacts*

In the NPR, the Commission discussed several alternatives to the proposed rule that would reduce the economic impact of the rule on small entities. In effect, the Commission has incorporated two of these alternatives into the final rule.

One option the Commission discussed in the NPR involved modifying the rule to require compliance with the ASTM standard, without the additional more stringent requirements proposed in the NPR, or at least without the more stringent label placement requirements in the NPR. This alternative would allow the Commission to meet the mandate in CPSIA section 104 to adopt a rule that is substantially the same as the voluntary standard, but reduce the economic impact of the rule by reducing the changes needed to conform to the rule.

ASTM F404-18 includes the more stringent requirements proposed in the NPR, except for the label placement requirements, which remain consistent with ASTM F404-15. Under the final rule, firms will not have to meet additional, more stringent requirements than those in the voluntary standard. Moreover, the warning label placement requirements in the final rule provide more flexibility than the NPR—allowing for two separate labels, each of which is subject to only one visibility requirement, rather than two—thereby requiring less-burdensome product changes than the proposed rule. Therefore, in effect, the Commission has adopted this alternative, by incorporating by reference ASTM F404-18 without additional, more stringent requirements, and eliminating the more stringent label placement requirements proposed in the NPR.

Another alternative CPSC considered was extending the effective date of the rule. In the NPR, the Commission proposed a 6-month effective date for the final rule, consistent with other

durable infant and toddler product rules. CPSC received comments about the effective date, suggesting that firms need 1 year to modify products to meet the standard, as some firms will need to redesign their products, test new products, and modify their production processes. Based on this information, CPSC believes that 1 year is a reasonable amount of time to account for needed changes, and is extending the effective date of the rule to 1 year. This should reduce the economic costs of the rule for small entities. Setting a later effective date reduces the likelihood of a lapse in production or imports if firms cannot comply with the standard or obtain third party testing within the time provided. In addition, a later effective date spreads the costs of compliance over a longer period, reducing annual costs and the present value of total costs.

Finally, CPSC considered partially or fully excluding restaurant-style high chairs from the final rule, or adopting more-limited requirements for these products. The requirements could be particularly costly for manufacturers and importers of restaurant-style high chairs because this style of chair has features intended to accommodate restaurant settings that would be difficult to retain while complying with the standard. As discussed previously in this preamble, although excluding restaurant-style high chairs from the final rule would reduce the economic impact on several small entities, CPSC believes that this alternative would not be appropriate given incident data, home use of these products, and the mandate in CPSIA section 104.

## **XI. Environmental Considerations**

CPSC's regulations list categories of agency actions that "normally have little or no potential for affecting the human environment." 16 CFR 1021.5(c). Such actions qualify as "categorical exclusions" under the National Environmental Policy Act (42 U.S.C. 4321-4370m-12), which do not require an environmental assessment or environmental impact statement. One categorical exclusion listed in CPSC's regulations is for rules or safety standards that "provide

design or performance requirements for products.” 16 CFR 1021.5(c)(1). Because the final rule for high chairs creates design or performance requirements, the rule falls within the categorical exclusion.

## **XII. Preemption**

Under section 26(a) of the CPSA, no state or political subdivision of a state may establish or continue in effect a requirement dealing with the same risk of injury as a federal consumer product safety standard under the CPSA unless the state requirement is identical to the federal standard. 15 U.S.C. 2075(a). However, states or political subdivisions of states may apply to CPSC for an exemption, allowing them to establish or continue such a requirement if the state requirement “provides a significantly higher degree of protection from [the] risk of injury” and “does not unduly burden interstate commerce.” *Id.* 2075(c).

One of the functions of the CPSIA was to amend the CPSA, adding several provisions to the CPSA, including CPSIA section 104 in 15 U.S.C. 2056a. As such, consumer product safety standards that the Commission creates under CPSIA section 104 are covered by the preemption provision in the CPSA. As a result, the preemption provision in section 26 of the CPSA applies to the mandatory safety standard for high chairs.

## **XIII. Testing, Certification, and Notification of Requirements**

Section 14(a) of the CPSA requires the manufacturer or private labeler of a children’s product that is subject to a children’s product safety rule to certify that, based on a third party conformity assessment body’s testing, the product complies with the applicable children’s product safety rule. 15 U.S.C. 2063(a)(2)(A), 2063(a)(2)(B). Section 14(a) also requires CPSC to publish an NOR for a third party conformity assessment body (*i.e.*, testing laboratory) to obtain accreditation to assess conformity with a children’s product safety rule. 15 U.S.C. 2063(a)(3)(A).

Because this safety standard for high chairs is a children's product safety rule, it requires CPSC to issue an NOR.

On March 12, 2013, the Commission published a final rule in the *Federal Register*, entitled *Requirements Pertaining to Third Party Conformity Assessment Bodies*, establishing 16 CFR part 1112, which sets out the general requirements and criteria concerning testing laboratories. 78 FR 15836. Part 1112 includes procedures for CPSC to accept a testing laboratory's accreditation and lists the children's product safety rules for which CPSC has published NORs. When CPSC issues a new NOR, it must amend part 1112 to include that NOR. Accordingly, the Commission is amending part 1112 to include the high chairs standard.

Testing laboratories that apply for CPSC acceptance to test high chairs for compliance with the new high chair rule would have to meet the requirements in part 1112. When a laboratory meets the requirements of a CPSC-accepted third party conformity assessment body, the laboratory can apply to CPSC to include 16 CFR part 1231, *Safety Standard for High Chairs*, in the laboratory's scope of accreditation of CPSC safety rules listed on the CPSC website at: [www.cpsc.gov/labsearch](http://www.cpsc.gov/labsearch).

As the RFA requires, CPSC staff conducted a FRFA for the rulemaking in which the Commission adopted part 1112. 78 FR 15836, 15855-58. To summarize, the FRFA concluded that the accreditation requirements would not have a significant economic impact on a substantial number of small laboratories because no requirements were imposed on laboratories that did not intend to provide third party testing services. The only laboratories CPSC expected to provide such services were those that anticipated receiving sufficient revenue from the mandated testing to justify accepting the requirements as a business decision.

By the same reasoning, adding an NOR for the high chair standard to part 1112 will not have a significant economic impact on small test laboratories. A relatively small number of laboratories in the United States have applied for accreditation to test for conformance to existing juvenile product standards. Accordingly, CPSC expects that only a few laboratories will seek accreditation to test for compliance with the high chair standard. Of those that seek accreditation, CPSC expects that most will have already been accredited to test for conformance to other juvenile product standards. The only costs to those laboratories will be the cost of adding the high chair standard to their scopes of accreditation. For these reasons, CPSC certifies that amending 16 CFR part 1112 to include an NOR for the high chairs standard will not have a significant economic impact on a substantial number of small entities.

### **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 1231**

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

For the reasons discussed in the preamble, the Commission amends 16 CFR chapter II as follows:

### **PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES**

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

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



2. Amend § 1112.15 by adding paragraph (b)(44) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(44) 16 CFR part 1231, Safety Standard for High Chairs.

\* \* \* \* \*

3. Add part 1231 to read as follows:

**PART 1231-SAFETY STANDARD FOR HIGH CHAIRS**

Sec.

1231.1 Scope.

1231.2 Requirements for high chairs.

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

**§ 1231.1 Scope.**

This part establishes a consumer product safety standard for high chairs.

**§ 1231.2 Requirements for high chairs.**

(a) Each high chair shall comply with all applicable provisions of ASTM F404-18, *Standard Consumer Safety Specification for High Chairs*, approved on February 15, 2018. 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; <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: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(b) [Reserved]

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**Alberta E. Mills,**

*Secretary,*

*Consumer Product Safety Commission.*

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