



[Billing Code 6355-01-P]

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC-2010-0075]

16 CFR Part 1219

Revisions to Safety Standard for Full-Size Baby Cribs

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In December 2010, the U.S. Consumer Product Safety Commission (Commission or CPSC) published a consumer product safety standard for full-size baby cribs (FS cribs). The standard incorporated by reference the applicable ASTM voluntary standard. ASTM has since published several revisions to the voluntary standard for FS cribs. We are publishing this direct final rule, revising the CPSC's mandatory standard for FS cribs to incorporate by reference the most recent version of the applicable ASTM standard.

DATES: The rule is effective on October 28, 2019, 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 October 28, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CPSC-2010-0075, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: <https://www.regulations.gov>. Follow the instructions for submitting comments. The CPSC does not accept comments submitted by electronic mail (e-mail), except through www.regulations.gov. The CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

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

Instructions: All submissions received must include the agency name and docket number for this proposed rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: <https://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: <https://www.regulations.gov>, and insert the docket number, CPSC-2010-0075, into the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Justin Jirgl, Compliance Officer, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814-4408; telephone: 301-504-7814; email: jjirgl@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

1. Statutory Authority

Section 104(b)(1)(B) of the Consumer Product Safety Improvement Act (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.

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. Section 104(b)(4)(B) of the CPSIA provides that if an organization revises a standard that has been adopted, in whole or in part, as a consumer product safety standard under this subsection, it shall notify the Commission. In addition, the revised voluntary standard shall be considered to be a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the date on which the organization notifies the Commission (or such later date specified by the Commission in the Federal Register) unless, within 90 days after receiving that notice, the Commission notifies the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard and that the Commission is retaining the existing consumer product safety standard.

2. *The FS Crib Standard*

Section 104(c) of the CPSIA treated cribs (both full-sized and non-full-sized cribs) differently than other products covered by section 104. Section 104(c) of the CPSIA stated that the standards for FS cribs would apply to persons (such as those owning or operating child care facilities and places of public accommodation) in addition to persons usually subject to consumer product safety rules.¹ Pursuant to section 104(b)(1) and section 104(c) of the CPSIA, on December 28, 2010, the Commission published a mandatory consumer product safety standard that incorporated by reference ASTM F1169-10, *Standard Consumer Safety Specification for Full-Size Baby Cribs*, codified under CPSC regulations at 16 CFR part 1219. (75 FR 81766).

On August 12, 2011, in Pub.L. No. 112-28, Congress amended section 104 and specifically addressed the revision of the crib standards, stating that any revision of the crib standards after their initial promulgation “shall apply only to a person that manufactures or imports cribs,” unless the Commission determines that application to any others covered by the initial crib standards is “necessary to protect against an unreasonable risk to health or safety.” If the Commission does apply the revised crib standard to additional persons, it must provide at least 12 months for those persons to come into compliance. The Commission is not expanding the applicability of the revised FS crib standard in this rule. Thus, the revised FS crib standard will apply to the same

¹ Under section 104(c) of the CPSIA, the initial crib standards applied to: “any person that – (A) manufactures, distributes in commerce, or contracts to sell cribs; (B) based on the person’s occupation, holds itself out as having knowledge of skill peculiar to cribs, including child care facilities and family child care homes; (C) is in the business of contracting to sell or resell, lease, sublet, or otherwise place cribs in the stream of commerce; or (D) owns or operates a place of accommodation affecting commerce (as defined in section 4 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2203) applied without regard to the phrase ‘not owned by the Federal Government’).”

entities and in the same manner as other rules the Commission issues under section 104 of the CPSIA.

B. Revision to the ASTM Standard

The ASTM standard for full-size cribs establishes performance requirements and test procedures to determine the structural integrity of full-size cribs. It also contains design requirements addressing entanglement on crib corner post extensions, and requirements for warning labels and instructional materials. In addition, the standard addresses bassinet, changing table, or similar accessories to a crib that attaches to or rests on a crib in the occupant retention area.

The ASTM FS crib standard was revised in 2011, and the Commission incorporated by reference the revised standard as the mandatory FS crib standard on July 31, 2012 (77 FR 45242). The ASTM standard was revised again in 2013, and the Commission incorporated by reference the revised standard as the mandatory FS crib standard on December 9, 2013 (78 FR 73692). On May 2, 2019, ASTM notified the Commission that it has revised ASTM's FS crib standard; the current ASTM standard is ASTM F1169-19, *Standard Consumer Safety Specification for Full-Size Baby Cribs*. Based on a review of the changes between the current CPSC standard, 16 CFR part 1219 and ASTM F1169-19, the Commission concludes that each change made in ASTM F1169-19 either improves the safety of FS cribs or is neutral in its safety impact.

Section 8.4 of ASTM 1169 was revised to require all warning labels to be affixed to the product. Previous versions of ASTM F1169 required the highest priority warning messages (*e.g.*, the suffocation warning) to be “visible in [their] entirety when one short side and one long side of the crib are positioned in a corner formed by two vertical walls”

(Section 8.3.1); however, the provision allowed some additional lower-priority warning messages (*e.g.*, strangulation and fall) to be placed in another location, as long as the “visible” warning identified the location of the additional warnings. ASTM 1169-19 revised section 8.4 to make clear that *all* warnings, including lower-priority warnings, must be affixed somewhere on the crib, and not merely referenced in a manual or instructions.

The Commission concludes that this change adds clarity and improves the safety of the standard. The Commission determines that all warnings that are intended to be on a FS crib should be affixed to the product because on-product warnings stay with the product through multiple users, whereas an instruction manual could be discarded, lost, or otherwise not be available to another user of the product.

ASTM F1169 –19 also includes several non-substantive changes that do not affect the safety of FS cribs, such as spacing, grammar, and punctuation (*e.g.*, “in” to “in.”; “manufacturers” to “manufacturer’s”; and “as per” to “in accordance with”). Under section 1.5, Scope, ASTM added language stating that ASTM developed the standard in accordance with principles recognized by the World Trade Organization. In addition, under section 1.4, the word “environmental” was added to the following sentence: “It is the responsibility of the user of this standard to establish appropriate safety, health, and environmental practices and determine the applicability of regulatory limitations prior to use.” The Commission concludes that these editorial changes and additions do not impact the safety of FS cribs.

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. 1 CFR 51.5(b).

In accordance with the OFR's requirements, section B of this preamble summarizes the major provisions of the ASTM F1169-19 standard that the Commission incorporates by reference into 16 CFR part 1219. 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; www.astm.org. A copy of the standard can also be inspected at CPSC's Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923.

D. The Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801-808) states that, before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The submission must indicate whether the rule is a "major rule." The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a "major rule." Pursuant to the CRA, OIRA designated this rule as not a "major rule,"

as defined in 5 U.S.C. 804(2). In addition, to comply with the CRA, the Office of the General Counsel will submit the required information to each House of Congress and the Comptroller General.

E. 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 FS cribs 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 section 104(d) of the CPSIA.

F. 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 FS cribs (73 FR 62965 (Oct. 22, 2008)). The NOR provided the criteria and process for our acceptance of accreditation of third party conformity assessment bodies for testing FS cribs to 16 CFR part 1219. The NOR is listed in the Commission's rule, "Requirements Pertaining to Third Party Conformity Assessment Bodies." 16 CFR part 1112.

The revision to section 8.4 concerning the on-product warning label clarifies the existing standard and does not require a new test. The requirement that the warning label be attached to the product can be assessed by visual inspection. Accordingly, there is no significant change in the way that third party conformity assessment bodies test these products for compliance with the FS crib standard. Laboratories would begin testing to the new standard when ASTM F1169-19 goes into effect, and the existing accreditations that the Commission has accepted for testing to this standard previously would also cover testing to the revised standard. Therefore, 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.

G. 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 F1169-19 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 October 28, 2019. 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.

H. 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.

I. Paperwork Reduction Act

The FS crib 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, the revision will not have any effect on the information collection requirements related to the standard.

J. 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.

K. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the CPSC for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA refers to the rules to be issued under that section as "consumer product safety rules," thus, implying that the preemptive effect of section 26(a) of the CPSA would apply. Therefore, a rule issued under section 104 of the

CPSIA will invoke the preemptive effect of section 26(a) of the CPSA when it becomes effective.

L. 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 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 revision to this standard. 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 October 28, 2019.

List of Subjects in 16 CFR Part 1219

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

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

PART 1219 – SAFETY STANDARD FOR FULL-SIZE BABY CRIBS

1. The authority citation for part 1219 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 § 1219.2 to read as follows:

§ 1219.2 Requirements for full-size baby cribs.

Each full-size baby crib must comply with all applicable provisions of ASTM F1169-19, *Standard Consumer Safety Specification for Full-Size Baby Cribs* approved March 15, 2019. 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; www.astm.org. You may inspect a copy at the Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: www.archives.gov/federal-register/cfr/ibr-locations.html.

Alberta E Mills, Secretary
U.S. Consumer Product Safety Commission

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