



[Billing Code 6355-01-P]

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1229

[Docket No. CPSC-2015-0028]

Revisions to Safety Standard for Infant Bouncer Seats

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In September 2017, the U.S. Consumer Product Safety Commission (CPSC) published a consumer product safety standard for infant bouncer seats under section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). The standard incorporated by reference the ASTM voluntary standard that was in effect for infant bouncer seats at the time, with modified requirements for warning labels. ASTM has since revised the voluntary standard for infant bouncer seats. The CPSIA provides a process for when a voluntary standards organization updates a standard that the Commission incorporated by reference in a section 104 rule. Consistent with that process, this direct final rule revises the mandatory standard for infant bouncer seats to incorporate by reference the updated version of the ASTM standard.

DATES: The rule is effective on December 14, 2019, unless CPSC receives a significant adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If CPSC receives such a comment, it will publish a notice 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 December 14, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CPSC-2015-0028, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: www.regulations.gov. Follow the instructions for submitting comments provided on the website. To ensure timely processing of comments, please submit all electronic comments through www.regulations.gov, rather than by e-mail to CPSC.

Written Submissions: Submit written comments by mail, hand delivery, or courier to: Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

Instructions: All submissions must include the agency name and docket number for this notice. CPSC may post all comments, without change, including any personal identifiers, contact information, or other personal information provided, to: <http://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, submit such information by mail, hand delivery, or courier.

Docket: For access to the docket to read background documents or comments, go to: <http://www.regulations.gov>, and insert the docket number, CPSC-2015-0028, into the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Keysha Walker, Compliance Officer, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-6820; email: kwalker@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background and Statutory Authority

Section 104 of the CPSIA requires the Commission to assess the effectiveness of voluntary standards for durable infant or toddler products and adopt mandatory standards for these products. 15 U.S.C. 2056a(b)(1). The mandatory standard must be “substantially the same as” the voluntary standard, or may be “more stringent than” the voluntary standard, if the Commission determines that more stringent requirements would further reduce the risk of injury associated with the product. *Id.*

Under this authority, the Commission adopted a mandatory rule for infant bouncer seats in 16 CFR part 1229. The rule incorporated by reference ASTM F2167-17, *Standard Consumer Safety Specification for Infant Bouncer Seats*, with more stringent requirements for the content and placement of warning labels. 82 FR 43470 (Sep. 18, 2017). At the time the Commission published the final rule, ASTM F2167-17 was the current version of the voluntary standard. ASTM has since revised the voluntary standard, adopting ASTM F2167-19.¹

The CPSIA specifies the process for when a voluntary standards organization revises a standard that the Commission incorporated by reference in a section 104 rule. First, the voluntary standards organization must notify the Commission of the revision. Once the Commission receives this notification, the statute further provides that “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

¹ ASTM approved ASTM F2167-19 on May 1, 2019, and published it in June 2019.

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.” 15 U.S.C. 2056a(b)(4)(B).

ASTM notified the Commission on June 17, 2019 that it had updated the infant bouncer seat standard. As this preamble discusses, the revised standard includes additional warning label content and placement requirements that are consistent with those in 16 CFR part 1229. Accordingly, the Commission is not determining that “the proposed revision does not improve the safety of the consumer product” and is not specifying a later effective date than that provided in the statute. Therefore, under the CPSIA, ASTM F2167-19 will become the mandatory standard for infant bouncer seats effective December 14, 2019, 180 days after CPSC received ASTM’s notice.

B. Revised ASTM Standard

The ASTM standard for infant bouncer seats includes performance requirements and test methods, as well as requirements for warning labels and instructional literature, to address hazards to children associated with infant bouncer seats.

ASTM F2167-19 includes revised requirements for the content and visibility of on-product warning labels. It also includes editorial revisions that do not alter the substantive requirements or affect safety. As described below, the revisions in ASTM F2167-19 make the standard consistent with the more stringent requirements that the Commission included in 16 CFR part 1229. For this reason, the Commission concludes that the revised standard maintains the level of safety that the existing regulation

provides. Because the Commission declines to determine that the revision “does not improve the safety” of infant bouncer seats, the revised ASTM standard will become the new CPSC standard.

The following are the revised portions of the ASTM standard, as well as a description of how they compare with the existing requirements in 16 CFR part 1229.

1. Visibility of Warning Labels

Section 7.11.3.1 in ASTM F2167-19 provides requirements for the visibility of warnings when an occupant is in the infant bouncer seat. It requires testers to place a CAMI dummy in the product, with restraints engaged, and verify whether the required warnings are unobscured by the dummy, and are visible above an imaginary horizontal line that crosses the torso of the dummy. The standard also provides a figure demonstrating this requirement. In addition, it includes a note stating that the warning placement requirement only applies to portions of the warning that are in English.

These requirements, and the accompanying figure, are consistent with the more stringent requirements that the Commission included in 16 CFR part 1229. The only difference is that 16 CFR part 1229 does not include the note that the visibility requirements only apply to the English portion of warning labels. CPSC staff is satisfied with this change because the warnings are only required to be in English (section 8.4.1).

Section 8.4.3 in the previous version of the standard, ASTM F2167-17, required that warnings be “conspicuous and permanent”; ASTM F2167-19 adds to that requirement that warnings also “comply with placement location where specified.” Although 16 CFR part 1229 does not include this additional language, it is consistent with CPSC’s regulation, which includes warning label visibility requirements.

2. *Warning Label Content*

Sections 8.5.1.1 and 8.5.2.1 in ASTM F2167-19 differ from the 2017 version of the ASTM standard by requiring an additional phrase in the warning statements that labels must address regarding fall hazards (8.5.1.1) and suffocation hazards (8.5.2.1). The previous standard, ASTM F2167-17, required as one part of these statements a warning to “ALWAYS use restraints. Adjust to fit snugly.” Under the revised standard, this portion of the warnings must indicate: “ALWAYS use restraints and adjust to fit snugly, even if baby falls asleep.” This revised wording is the same as the wording that 16 CFR part 1229 requires.

3. *Editorial Revisions*

ASTM F2167-19 also includes editorial revisions that do not affect the substantive requirements in the standard, or safety. These changes are discussed below.

Section 1.7 states a precautionary caveat about the safety concerns the standard addresses. In the previous version of the statement, the caveat instructed users to “establish appropriate safety and health practices”; ASTM F2167-19 revises this to instruct users to “establish appropriate safety, health, and environmental practices.”

Section 8.4.6.2 of ASTM F2167-19 corrects a previously omitted word by adding “preceded” to the requirement that warning statements be preceded by bullet points.

Sections 8.5.3, 9.2.1, and 9.2.2 revise the figure numbers referenced because the addition of the warning placement figure described above resulted in renumbering other figures in the standard.

C. Direct Final Rule Process

In this notice, the Commission is updating the version of the ASTM standard incorporated by reference in 16 CFR part 1229 to reflect the revised standard that takes effect by operation of law under the CPSIA. The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA; 5 U.S.C. 551-559) generally requires agencies to provide notice of a rule and an opportunity for interested parties to comment on it, the APA provides an exception to this when an agency “for good cause finds” that notice and comment is “impracticable, unnecessary, or contrary to the public interest.” *Id.* 553(b), (c).

When the Commission updates a reference to an ASTM standard that the Commission has incorporated by reference into a rule under section 104 of the CPSIA, notice and the opportunity to comment is unnecessary. This is because, under the terms of the CPSIA, such an update automatically becomes CPSC’s mandatory standard, unless the Commission takes action to prevent it. 15 U.S.C. 2056a(b)(4)(B). With respect to ASTM F2167-19, the Commission is not taking action to prevent it from becoming the new mandatory standard. Therefore, the revised ASTM standard will become CPSC’s standard by operation of law. Moreover, the revised infant bouncer seats standard aligns with the Commission’s existing mandatory standard, effectively maintaining the same requirements. Public comments would not influence the substantive changes to the standard or the effect of the revised standard under section 104 of the CPSIA. Therefore, notice and comment are unnecessary.

The purpose of this direct final rule is to update the edition of the standard the regulation references, so that it accurately reflects the standard in effect under the statute.

The Administrative Conference of the United States (ACUS) recommends that agencies use direct final rulemaking when the “unnecessary” prong of the good cause exemption in the APA applies. 60 FR 43108, 43111 (Aug. 18, 1995). With a direct final rule, the rule takes effect on the stated effective date, unless the agency receives an adverse comment within a specified time. This allows the agency to expedite noncontroversial rules, while still allowing for public comment. *Id.* at 43111. A direct final rule is appropriate here because the Commission believes this rule is noncontroversial and will not elicit significant adverse comments.

Unless CPSC receives a significant adverse comment within 30 days of this notice, the rule will become effective on December 14, 2019. Consistent 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 challenges to the rule’s underlying premise or approach, or would be ineffective or unacceptable without change.” *Id.* at 43111.

If the Commission receives a significant adverse comment, it will publish a notice withdrawing this direct final rule before the effective date. Depending on the comment and other relevant considerations, the Commission may address the adverse comment in a subsequent direct final rule, or publish a notice of proposed rulemaking, providing an opportunity for public comments.

D. Incorporation by Reference

Section 1229.2 of the direct final rule incorporates by reference ASTM F2167-19. The Office of the Federal Register (OFR) has regulations regarding 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 parties, and how interested parties can obtain the material. 16 CFR 1229.5(b).

In accordance with the OFR regulations, *B. Revised ASTM Standard* of this preamble summarizes the major provisions of the ASTM F2167-19 standard that the Commission incorporates by reference into 16 CFR part 1229. Interested parties may obtain a copy of ASTM F2167-19 from ASTM, through its website (<http://www.astm.org>), or by mail from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959. Alternatively, interested parties may inspect a copy of the standard at CPSC's Division of the Secretariat.

E. Certification

The Consumer Product Safety Act (CPSA; 15 U.S.C. 2051-2089) requires manufacturers of products that are 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, to certify that the product complies with all applicable CPSC requirements. 15 U.S.C. 2063(a). For children's products, the manufacturer must base this certification on tests of a sufficient number of samples by a third party conformity assessment body accredited by CPSC to test according to the applicable requirements. *Id.* 2063(a)(2). These testing and certification requirements apply to products for which the Commission issues rules under CPSIA section 104, because they are consumer product safety standards. *See id.* 2056a(b).

Because infant bouncer seats are children's products, a CPSC-accepted third party conformity assessment body must test samples of these products. These products also

must comply with all other applicable CPSC requirements, such as the lead content requirements in section 101 of the CPSIA,² the phthalates prohibitions in section 108 of the CPSIA,³ the tracking label requirements in section 14(a)(5) of the CPSA⁴, and the consumer registration form requirements in section 104(d) of the CPSIA.⁵

F. Notice of Requirements

As discussed above, an accredited third party conformity assessment body must test children's products that are subject to a children's product safety rule for compliance with the applicable rule. 15 U.S.C. 2063(a)(2). The Commission must publish a notice of requirements (NOR) for third party conformity assessment bodies to obtain accreditation to assess conformity with a children's product safety rule. *Id.* 2063(a)(3)(A).

As the CPSA requires, the Commission published an NOR for accreditation of third party conformity assessment bodies for testing infant bouncer seats. 15 U.S.C. 2063(a)(3)(B)(vi); 82 FR 43470 (Sep. 18, 2017). The NOR provided the criteria and process for CPSC to accept accreditation of third party conformity assessment bodies for testing infant bouncer seats to 16 CFR part 1229. The NOR is listed in the Commission's rule, "Requirements Pertaining to Third Party Conformity Assessment Bodies" in 16 CFR part 1112.

The revised provisions regarding on-product warning labels in ASTM F2167-19 are consistent with the existing requirements in 16 CFR part 1229. Accordingly, the revisions do not create a significant change in the way that third party conformity assessment bodies test these products for compliance with the infant bouncer seats

² 15 U.S.C. 1278a.

³ 15 U.S.C. 2057c.

⁴ 15 U.S.C. 2063(a)(5).

⁵ 15 U.S.C. 2056a(d).

standard. Laboratories will begin testing to the new standard when ASTM F2167-19 goes into effect, and the existing accreditations that the Commission has accepted for testing to this standard will 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 will need to update the scope of their accreditations to reflect the revised standard in the normal course of renewing their accreditations.

G. Regulatory Flexibility Act

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, and prepare regulatory flexibility analyses. 5 U.S.C. 603, 604. The RFA applies when an agency is required to publish notice of a rulemaking. *Id.* As discussed in *C. Direct Final Rules Process* of this preamble, the Commission has determined that notice and the opportunity to comment are unnecessary for this rule, and therefore, the Commission is not required to publish notice of this rulemaking because it falls under the good cause exception in the APA. *Id.* 553(b). Accordingly, the RFA does not apply to this rulemaking. Nevertheless, we note that this rule will have minimal economic impacts because it incorporates by reference a standard that is consistent with the existing mandatory requirements.

H. Paperwork Reduction Act

The current mandatory standard for infant bouncer seats includes requirements for labeling and instructional literature that constitute a “collection of information,” as defined in the Paperwork Reduction Act (PRA; 44 U.S.C. 3501-3521). The revised mandatory standard does not substantively alter these requirements. The Commission

took the steps required by the PRA for information collections when it adopted 16 CFR part 1229, including obtaining approval and a control number. Because the information collection is unchanged, the revision does not affect the information collection requirements or approval related to the standard.

I. 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.

J. 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). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

K. Preemption

Under 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).

Section 104 of the CPSIA refers to the rules issued under that section as “consumer product safety standards,” and states that a revised standard “is considered a consumer product safety standard issued by the Commission under section 9” of the CPSA. 15 U.S.C. 2056a(b)(1), (b)(4)(B). Accordingly, consumer product safety standards that the Commission creates or revises under CPSIA section 104 preempt state and local requirements in accordance with the preemption provisions in the CPSA.

L. Effective Date

When a voluntary standards organization revises a standard that the Commission adopted as a mandatory standard under section 104 of the CPSIA, the revised standard automatically becomes the new mandatory standard effective 180 days after the Commission receives notification. 15 U.S.C. 2056a(b)(4)(B). The Commission may prevent this automatic effective date by either publishing notice of a later effective date,

or rejecting the revision. *Id.* The Commission is taking neither of those actions with respect to the standard on infant bouncer seats. The Commission believes that the statutory effective date is reasonable because the revised standard is consistent with the existing mandatory standard. Therefore, ASTM F2167-19 automatically will take effect as the new mandatory standard on December 14, 2019, 180 days after the Commission received notice of the revision on June 17, 2019.

As a direct final rule, unless the Commission receives a significant adverse comment within 30 days of this notice and publishes a notice withdrawing this rule by the effective date, the rule will become effective on December 14, 2019.

List of Subjects in 16 CFR Part 1229

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 part 1229 as follows:

PART 1229 – SAFETY STANDARD FOR INFANT BOUNCER SEATS

1. The authority citation for part 1229 continues to read as follows:

Authority: Sec. 104, Public Law 110-314, 122 Stat. 3016 (15 U.S.C. 2056a).

2. Revise § 1229.2 to read as follows:

§ 1229.2 Requirements for infant bouncer seats.

Each infant bouncer seat must comply with all applicable provisions of ASTM F2167-19, *Standard Consumer Safety Specification for Infant Bouncer Seats*, approved May 1, 2019. 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

of this ASTM standard from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959; 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, email fedreg.legal@nara.gov, or go to: www.archives.gov/federal-register/cfr/ibr-locations.html.

Alberta E. Mills,

Secretary,

Consumer Product Safety Commission.

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