



UNITED STATES
 CONSUMER PRODUCT SAFETY COMMISSION
 4330 EAST WEST HIGHWAY
 BETHESDA, MD 20814

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BALLOT VOTE SHEET

Date: November 21, 2013

TO : The Commission
 Todd A. Stevenson, Secretary

THROUGH: Elliot F. Kaye, Executive Director
 Stephanie Tsacoumis, General Counsel

FROM : Patricia M. Pollitzer, Assistant General Counsel

SUBJECT : ASTM's Revisions to Safety Standards for Infant Bath Seats, Toddler Beds,
 and Full-Size Cribs

BALLOT VOTE DATE: November 27, 2013

Staff is forwarding for Commission consideration a direct final rule updating the incorporation by reference of ASTM standards cited in Consumer Product Safety Commission rules for infant bath seats, toddler beds, and full-size cribs. Under the Consumer Product Safety Improvement Act of 2008, revised voluntary standards automatically are considered consumer product safety standards unless the Commission determines and notifies the voluntary standards organization that the revised voluntary standard "does not improve the safety of the consumer product." As further discussed in staff materials provided to the Commission, staff recommends with respect to each of infant bath seats, toddler beds, and full size cribs that the Commission act to allow the ASTM revisions to become the CPSC mandated standards. Specifically, staff recommends that the Commission publish a direct final rule that revises the references in CPSC's safety standards for infant bath seats, toddler beds, and full-size cribs to refer to the revised ASTM standards for those products. A draft *Federal Register* notice for that purpose is attached.

Please indicate your vote on the following options:

- I. Approve publication in the *Federal Register* of the draft direct final rule revising the references in the CPSC's standards for infant bath seats, toddler beds, and full-size cribs.

 Signature

 Date

II. Approve publication in the *Federal Register* of the draft direct final rule revising the references in the CPSC's standards for infant bath seats, toddler beds, and full-size cribs, with changes (please specify changes):

Signature

Date

III. Do not approve publication in the *Federal Register* of the draft direct final rule revising the references in the CPSC's standards for infant bath seats, toddler beds, and full-size cribs.

Signature

Date

IV. Take other action (please specify):

Signature

Date

Attachment: Draft *Federal Register* notice, titled, "Revisions to Safety Standards for Infant Bath Seats, Toddler Beds, and Full-size Cribs"

[Billing Code 6355-01-P]

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1215, 1217 and 1219

Revisions to Safety Standards for Infant Bath Seats, Toddler Beds, and Full-Size Baby Cribs

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In accordance with section 104(b) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), also known as the Danny Keysar Child Product Safety Notification Act, the U.S. Consumer Product Safety Commission (Commission or CPSC) has published consumer product safety standards for numerous durable infant or toddler products, including infant bath seats, toddler beds, and full-size baby cribs. These standards incorporated by reference the ASTM voluntary standards associated with the products, with some modifications. In August 2011, Congress enacted Pub. L. 112-28, which sets forth a process for updating standards that the Commission has issued under the authority of section 104(b) of the CPSIA. In accordance with that process, the CPSC is publishing this direct final rule, revising the CPSC's standards for infant bath seats, toddler beds, and full-size cribs, to incorporate by reference more recent versions of the applicable ASTM standards.

DATES: The rule is effective on March 24, 2014, 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 publications listed in this rule is approved by the Director of the Federal Register as of March 24, 2014.

ADDRESSES: You may submit comments, identified by Docket No. [INSERT NUMBER], by any of the following methods:

Submit electronic comments via:

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

Submit written submissions by:

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

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

FOR FURTHER INFORMATION CONTACT: For information related to the infant bath seat standard, contact: Keysha Walker, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814-4408; telephone: (301) 504-6820; e-mail: kwalker@cpsc.gov. For information related to

the toddler bed standard, contact Daniel Dunlap, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814-4408; telephone: (301) 504-7733; e-mail: ddunlap@cpsc.gov. For information related to the full-size crib standard, contact Justin Jirgl, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814-4408; telephone: (301) 504-7814; e-mail: jjirgl@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

The Danny Keysar Child Product Safety Notification Act. The Consumer Product Safety Improvement Act of 2008 (CPSIA, Pub. L. 110-314) was enacted on August 14, 2008. Section 104(b) of the CPSIA, also known as the Danny Keysar Child Product Safety Notification Act, requires the Commission to promulgate consumer product safety standards for durable infant or toddler products. The law requires that these standards are to be “substantially the same as” applicable voluntary standards or more stringent than the voluntary standards if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. Under the statute, the term “durable infant or toddler product” explicitly includes infant bath seats, toddler beds, and full-size cribs. In accordance with section 104(b), the Commission has published safety standards for these products that incorporate by reference the relevant ASTM standards, with certain modifications that make the voluntary standard more stringent.

Pub. L. 112-28. On August 12, 2011, Congress enacted Pub. L. 112-28, amending and revising several provisions of the CPSIA, including the Danny Keysar Child Product Safety Notification Act. The revised provision sets forth a process for updating CPSC's durable infant or toddler standards when a voluntary standard group changes a voluntary standard upon which the CPSC standard was based. This provision states:

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. 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.

Pub. L. 112-28, section 3.

Notification and Review of ASTM Revisions. On September 25, 2013, ASTM notified CPSC of ASTM's approval and publication of revisions to ASTM F1967, Standard Consumer Specification for Infant Bath Seats; ASTM F1821, Standard Consumer Safety Specification for Toddler Beds; and ASTM F1169, Standard Consumer Safety Specification for Full-Size Baby Cribs. In the notification, ASTM stated that ASTM has revised these standards since the Commission adopted the earlier versions of the standards as CPSC mandatory standards.

The Commission has reviewed the revisions. Under Pub. L. 112-28, the revised standards shall be considered consumer product safety rules, unless the Commission determines and notifies ASTM that these revisions do not improve the safety of these

consumer products and that the Commission is retaining the existing standard. The Commission has declined to make such a determination and notification to ASTM with respect to these revisions. Accordingly, we are publishing this direct final rule, which revises the incorporation by reference included in each of these rules so that the Code of Federal Regulations will accurately reflect the revised version of the relevant ASTM standards.

B. Revisions to the Particular ASTM Standards

1. Infant Bath Seats

Background. On June 4, 2010, the Commission published a final rule for infant bath seats that incorporated by reference ASTM F1967-08a, Standard Consumer Specification for Infant Bath Seats, with certain modifications to make the standard more stringent. (75 FR 31691). On May 16, 2012, ASTM notified the CPSC that ASTM had approved and published a revised version of the bath seat standard, ASTM F1967-11a. In accordance with Pub. L. 112-28, the revised standard was considered a consumer product safety standard issued by the Commission in the absence of a notification to ASTM of a Commission determination that the proposed revision did not improve safety. The Commission published a final rule incorporating by reference the revised bath seat standard, ASTM F1967-11a, as the Commission's standard for infant bath seats. 77 FR 4542 (July 31, 2012).

Subsequently, ASTM notified us on September 25, 2013, that ASTM has revised ASTM's infant bath seat standard again; the current ASTM standard is ASTM F1967-13.

There are several differences between ASTM F1967-11a, the version that CPSC currently mandates as the safety standard for bath seats, and the revised voluntary

standard, ASTM F1967-13. In this section of the preamble, we summarize those differences.

Attachment Components. The 2013 version of the ASTM standard contains a new definition and requirement for attachment components. The requirement specifies that all components needed to attach the bath seat to the bath tub (attachment components) must be permanently attached to the bath seat. Staff is aware of a bath seat design that provides some attachment components that are separate from the bath seat. With this design, consumers must install the attachment components, consisting of adhesive discs, on to the bath tub surface. If the consumer fails to install the adhesive discs or fails to install them properly, these bath seats pose a tip over hazard. We believe requiring all attachment components to be permanently attached to the bath seats will increase the safety of bath seats.

Test Surface Preparation. ASTM F1967-11a specifies that bath seats be tested for stability on two specific test surfaces and also provides specific directions for preparing the test surfaces. Staff is aware of third party testing laboratories that interpreted one step in the testing preparation directions differently than ASTM intended. Following this alternate interpretation, the testing laboratory provided passing test results for some bath seats that otherwise would not have passed the stability requirement. Therefore, ASTM changed this section of the standard to specify more clearly test surface preparation. We believe this change will improve the safety of bath seats because the revised provision would prevent bath seats that should, in ASTM's view, be deemed non-complying from passing the requirement in the future.

Definition of a Bath Seat/Restraints Systems. In 2011, ASTM changed the definition of a “bath seat” to specify better the type of support that a bath seat provides. Before the ASTM F1967-11a version, the definition of “bath seat” did not specify the type of support the product provided. The revised (and current) definition states that a bath seat provides, at a minimum, support to the front and back of a seated infant. Thus, a product with only back support is no longer considered a bath seat. ASTM F1967-13 removes a provision that applied to bath seats with only back support because the provision is no longer relevant, given the current definition of “bath seat” as a product with front and back support. This change thus removes an obsolete provision.

Suction Cup Requirements. ASTM clarified two requirements for testing bath seats that use suction cups. The standard provides two suction cup test requirements: one provision evaluates the attachment between the suction cups and the test surface; the other evaluates the attachment of the suction cups to the bath seat itself. The first difference between the two versions clarifies the test requirement to emphasize that the bath seat must actually attach to the test surfaces as part of the test. The second difference specifies that this particular test only needs to be performed on one of the two test surfaces. Both revisions are clarifications.

Markings and Labeling. ASTM made two minor changes to labeling requirements. One revision changed the test for label permanency to the relative humidity (RH) to be a range rather than a specific RH. Staff considers this a practical change that is needed because producing an exact RH for the test is difficult. The second change to the labeling requirements removes the word “adult” before the term

“caregiver” in a provision that requires a warning to “be located on the product so that it is visible to the [adult] caregiver.”

Assessment. Except for the revisions for attachment components and test surface preparation, the revisions discussed above do not make any substantial change to the standard. Staff’s opinion is that the new requirement for attachment components and the change to the test surface preparation provision will improve the safety of the bath seats. As a result, the Commission did not determine or notify ASTM that the revised standard does not improve the safety of infant seats.

In accordance with Pub. L. 112-28, the revised ASTM standard for infant bath seats therefore becomes the new CPSC standard 180 days after the date the CPSC received notification of the revision from ASTM. This rule revises the incorporation by reference at 16 CFR part 1215, to reference the revised ASTM standard, ASTM F1967-13.

2. Toddler Beds

Background. On April 20, 2011, the Commission published a final rule for toddler beds that incorporated by reference ASTM F1821-09, Standard Consumer Safety Specification for Toddler Beds, with several modifications to make the standard more stringent. 76 FR 22019 (correction notice, 76 FR 27882 (May 13, 2011)). On May 16, 2012, ASTM notified the Commission that ASTM had revised ASTM’s toddler bed standard and published ASTM F1821-11b. The CPSC reviewed the revised standard and concluded that the revision, ASTM F1821-11b, did not improve the safety of toddler beds. The revised standard contained several provisions for guardrail height and guardrail strength that were less stringent than the CPSC’s existing standard in 16 CFR

part 1217. The Commission retained ASTM F1821-09 as the standard incorporated by reference into the CPSC's mandatory standard at 16 CFR part 1217. The staff briefing package discussing staff's review of ASTM F1821-11b is posted on the Commission's website at:

<http://www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2012/ASTMRevisioinstoSafetyStandardsforDurableInfantToddlerProducts.pdf>.

Revised Standard. On September 25, 2013, ASTM notified the Commission that ASTM has revised ASTM F1821 again and has published a new version, ASTM F1821-13. This version contains 12 significant changes from ASTM F1821-09. These changes bring the ASTM standard into accord with the CPSC's mandatory standard for toddler beds at 16 CFR part 1217.

Assessment. Staff has concluded that the revised standard, ASTM F1821-13, is neutral with respect to safety as compared to the prior standard. Staff recommends that the Commission allow the ASTM revisions to the toddler bed standard to become the CPSC-mandated standards.

Nothing in Section 104 obligates the Commission to make a determination that safety is not improved or to notify the applicable standards organization accordingly. As a result, where a proposed revision to the voluntary standard does not impact safety, the Commission has the discretion to make no determination, which would result in the revised voluntary standard becoming the applicable consumer product safety standard. In the toddler bed situation, because the revised standard is neutral with respect to safety, a determination by the Commission under the statute is not warranted and the revised voluntary standard will therefore become effective as a consumer product safety standard

pursuant to the statute. The revisions bring ASTM F1821 into accord with the CPSC's regulation in 16 C.F.R. part 1217.

In accordance with Pub. L. 112-28, the revised ASTM standard for toddler beds becomes the new CPSC standard on March 24, 2014, which is 180 days after the date we received notification of the revision from ASTM. The rule the Commission issues today revises the incorporation by reference at 16 CFR part 1217 to reference the revised ASTM standard, ASTM F1821-13.

3. Full-Size Cribs

Background. On December 28, 2010, the Commission published a final rule for full-size cribs that incorporated by reference ASTM F1169-10, *Standard Consumer Safety Specification for Full-Size Baby Cribs*, along with two modifications. On May 16, 2012, ASTM notified the CPSC that ASTM had published a revised 2011 version of ASTM's standard, ASTM F1169-11. The CPSC reviewed the revised standard and determined that the revision, ASTM F1169-11, was essentially identical to the full-size crib standard that the Commission mandated at 16 CFR part 1219. Staff's briefing package is available at

<http://www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2012/ASTMRevisioinstoSafetyStandardsforDurableInfantToddlerProducts.pdf> . In accordance

with Pub. L. 112-28, the Commission published a final rule that incorporated by reference the revised full-size crib standard, ASTM F1169-11, as the Commission's standard for full-size cribs. 77 FR 4542 (July 31, 2012). As noted above, ASTM notified us on September 25, 2013, that ASTM again has revised ASTM's full-size crib standard; the current ASTM standard is ASTM F1169-13.

Revised Standard. The revised standard, ASTM F1169-13, differs from ASTM F1169-11 (the current CPSC standard) in one aspect that is reflected in two sections of the revised standard. ASTM F1169-11 requires that before and after testing a crib, the crib must comply with all general requirements of the standard. These general requirements address the distance between slats. However, the specific testing procedure for slats allows for one slat to fail during testing if the load at failure is at least 60 pounds and an additional 25 percent of the slats are tested and meet the 80-pound force requirement. Thus, a tested crib potentially could comply with the specific testing procedures for slats even if a slat failed during testing, but not meet the general slat spacing requirements because of the failed slat. In that situation, the crib would not comply with the requirements in the current standard because the crib would not meet all of the general requirements after the crib had been tested.

The revised standard, ASTM F1169-13, provides an exception for this specific situation so that a crib's failure to meet the slat spacing requirement under the testing circumstances described above would not cause the crib to be considered noncompliant.

Assessment. The revision clarifies the intent of the ASTM standard and removes an unintended inconsistency. The revision does not change the substantive requirements of the standard.

As previously noted, the Commission is not obligated to make a determination that safety is not improved or to notify the applicable standards organization accordingly. As a result, where a proposed revision to the voluntary standard does not impact safety, the Commission has the discretion to make no determination, which would result in the revised voluntary standard becoming the applicable consumer product safety standard. In

the crib situation, because the revised standard is neutral with respect to safety, a determination by the Commission under the statute is not warranted. The revised voluntary standard will therefore become effective as a consumer product safety standard pursuant to the statute.

In accordance with Pub. L. 112-28, the revised ASTM standard for full-size cribs becomes the new CPSC standard on March 24, 2014, which is 180 days after the date the CPSC received notification of the revision from ASTM. This rule revises the incorporation by reference at 16 CFR part 1219, to reference the revised ASTM standard, ASTM F1169-13.

C. 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.” The Commission concludes that in the context of these revisions to ASTM standards upon which CPSC’s durable infant or toddler product standards are based, which automatically become consumer product standards and which simply would be incorporated by reference into applicable regulatory provisions, notice and comment is not necessary.

Without Commission action to update the incorporation by reference in the CPSC’s mandated standards, the standard published in the Code of Federal Regulations will not reflect the revised ASTM standard that will be in effect by operation of law under Pub. L. 112-28. For accuracy and to avoid misleading the public as to the

applicable consumer product standard, the Commission believes that issuing a rule revising the incorporation by reference in these circumstances is appropriate. 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). 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.

Revising the regulatory references to the ASTM standards will conform the regulation to the substantive change in the applicable consumer product standard that will occur by operation of law under Pub. L. 112-28. Public comment will not impact the substantive changes to the standards or the effect of the revised standards as consumer product safety standards under Pub. L 112-28. Therefore, there is little for the public to comment upon.

Unless we receive a significant adverse comment within 30 days, the rule will become effective on March 24, 2014. 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.

D. Effective Date

Under the procedure set forth in Pub. L. 112-28, when a voluntary standard organization revises a standard upon which a consumer product safety standard issued under the Danny Keysar Child Product Safety Notification Act was based, the revision becomes the CPSC standard within 180 days of notification to the Commission, unless the Commission determines that the revision does not improve the safety of the product, or the Commission sets a later date in the **Federal Register**. In accordance with this provision, this rule establishes an effective date that is 180 days after we received notification from ASTM of revisions to these standards. As discussed in the preceding section, this is a direct final rule. Unless the Commission receives a significant adverse comment within 30 days, the rule will become effective on March 24, 2014.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that agencies review proposed and final rules for the rules' potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603 and 604. The changes to the incorporation by reference in the infant bath seat, toddler bed, and full-size crib standards reflect changes made by operation of law under Pub. L. 112-28. Therefore, the rule will not have any economic impact on small entities.

F. 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.

G. Paperwork Reduction Act

The infant bath seat, toddler bed, and full-size crib standards contain information-collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). No changes have been made to those sections of the standards. Thus, these revisions will not have any effect on the information-collection requirements related to those standards.

H. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a “consumer product safety standard under [the Consumer Product Safety Act (CPSA)]” is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances.

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

I. Certification

Section 14(a) of the CPSA imposes the requirement 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 (test laboratory) 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 infant bath seats, toddler beds, and full-size 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 of section 101 of the CPSIA, the tracking label requirement in section 14(a)(5) of the CPSA, and the consumer registration form requirements in the Danny Keysar Child Product Safety Notification Act.

J. Notice of Requirements

In accordance with section 14(a)(3)(B)(iv) of the CPSIA, the Commission has previously published NORs for accreditation of third party conformity assessment bodies for testing infant bath seats (75 FR 31688 (June 4, 2010)); toddler beds (76 FR 22030 (April 20, 2011)); and full-size cribs (75 FR 81789 (December 28, 2010)). The NORs

provided the criteria and process for our acceptance of accreditation of third party conformity assessment bodies for testing infant bath seats to 16 CFR part 1215; for testing toddler beds to 16 CFR part 1217; and for testing full-size cribs to 16 CFR part 1219. These NORs are listed in the Commission's rule, "Requirements Pertaining to Third Party Conformity Assessment Bodies." 16 CFR part 1112.

The revisions discussed above do not add any new provisions that would require a third party conformity assessment body (testing laboratory) to conduct additional tests. As discussed above, the infant bath seat revision adds a requirement that attachment components must be permanently attached to the bath seat. Although this is a new requirement, the revision does not involve a new test, only a brief evaluation. The revisions to the toddler bed standard bring the ASTM standard into accord with the CPSC standard. Thus, the revised toddler bed standard will not change existing test methods. The revision to the full-size crib standard is a clarification and will not change the existing test methods in that standard.

Revising the references for the infant bath seat, toddler bed, and full-size crib standards will not necessitate any change in the way that third party conformity assessment bodies test these products for compliance to CPSC standards. Therefore, the Commission considers the existing accreditations that the Commission has accepted for testing to these standards also to cover testing to the revised standards. The existing NORs for these standards 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 standards in the normal course of renewing their accreditation.

List of Subjects

16 CFR Part 1215, Part 1217, and Part 1219

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

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

PART 1215 – SAFETY STANDARD FOR INFANT BATH SEATS

1. The authority citation for part 1215 continues to read as follows:

Authority: The Consumer Product Safety Improvement Act of 2008, Pub. L. 110-314, Sec. 104, 122 Stat. 3016 (August 14, 2008); section 3 of Pub. L. 112-28, 125 Stat. 273 (August 12, 2011).

2. Revise § 1215.2 to read as follows:

§ 1215.2 Requirements for infant bath seats.

Each infant bath seat shall comply with all applicable provisions of ASTM F1967-13, Standard Consumer Safety Specification for Infant Bath Seats, approved on August 1, 2013. 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 these ASTM standards from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959 USA, telephone: 610-832-9585; <http://www.astm.org/>. You may inspect copies at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West

Highway, Bethesda, MD 20814, telephone 301-504-7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to:

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

PART 1217 – SAFETY STANDARD FOR TODDLER BEDS

3. The authority citation for part 1217 is revised to read as follows:

Authority: The Consumer Product Safety Improvement Act of 2008, Pub. L. 110-314, Sec. 104, 122 Stat. 3016 (August 14, 2008); section 3 of Pub. L. 112-28, 125 Stat. 273 (August 12, 2011).

4. Revise § 1217.2 to read as follows:

§ 1217.2 Requirements for toddler beds.

Each toddler bed shall comply with all applicable provisions of ASTM F1821-13, Standard Consumer Safety Specification for Toddler Beds, approved on June 1, 2013. 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 Barr Harbor Drive, PO Box 0700, West Conshohocken, PA 19428; telephone 610-832-9585; www.astm.org. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to:

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

PART 1219 – SAFETY STANDARD FOR FULL-SIZE BABY CRIBS

5. The authority citation for part 1215 continues to read as follows:

Authority: The Consumer Product Safety Improvement Act of 2008, Pub. L. 110-314, Sec. 104, 122 Stat. 3016 (August 14, 2008); section 3 of Pub. L. 112-28, 125 Stat. 273 (August 12, 2011).

6. Revise § 1219.2 as follows:

§ 1219.2 Requirements for full-size baby cribs.

Each full-size baby crib shall comply with all applicable provisions of ASTM F1169-13, Standard Consumer Safety Specification for Full-Size Baby Cribs, approved May 1, 2013. 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 Barr Harbor Drive, PO Box 0700, West Conshohocken, PA 19428; telephone 610-832-9585; www.astm.org. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Dated: _____

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



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY, BETHESDA, MD 20814

Memorandum

This document has been electronically
approved and signed.

November 20, 2013

TO: The Commission
Todd Stevenson, Secretary

THROUGH: Stephanie Tsacoumis, General Counsel
Elliot F. Kaye, Executive Director
Robert J. Howell, Deputy Executive Director for Safety Operations

FROM: George A. Borlase, Assistant Executive Director
Office of Hazard Identification and Reduction

Patricia Edwards, Project Manager
Directorate for Engineering Sciences

SUBJECT: Consumer Product Safety Improvement Act of 2008 (CPSIA), as revised
by PL 112-28 (H.R. 2715) - Notice of Revision to the Infant Bath Seat
Standard, 16 C.F.R. Part 1215

I. INTRODUCTION

The Danny Keysar Child Product Safety Notification Act Pub. L. No. 110-314, Sec. 104(b) (4)(B), as revised by Pub. L. No. 112-28 (H.R. 2715) Sec. 3, instructs the voluntary standards organization, ASTM International (ASTM), to notify the U.S. Consumer Product Safety Commission (CPSC) of revisions to voluntary standards that are a basis for a consumer product safety standard promulgated by the Commission, as outlined below:

“(B) COMMISSION ACTION ON REVISED VOLUNTARY STANDARD - 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. 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.”

The current safety standard for infant bath seats, 16 C.F.R. part 1215, was last updated in 2012 (77 Fed. Reg. 45242 July 31, 2012), and references ASTM F1967-11a, *Standard Consumer Safety Specification for Infant Bath Seats*, with no modifications. ASTM officially notified the CPSC on September 25, 2013, that ASTM has published and submitted a revised 2013 version of ASTM F1967.

This memorandum outlines the differences between 16 C.F.R. part 1215 and ASTM F1967-13, and determines whether any differences would affect how a third party conformity assessment body (testing laboratory) would test a bath seat, and recommends that the Commission publish a rule in the *Federal Register* revising 16 C.F.R. part 1215 to refer to ASTM F1967-13.

II. DISCUSSION

A. Review of the Differences Between ASTM F1967-11a and ASTM F1967-13

ASTM F1967-13 is the only revision to the standard since the publication of ASTM F1967-11a. Appendix A provides the exact wording differences between the two versions. The differences are summarized below, referencing the number shown in Appendix A.

Attachment Components (differences #1 and #4) - The 2013 version of the ASTM standard contains a new definition and requirement that pertains to attachment components. The requirement specifies that all attachment components, *i.e.*, the components that provide the means of attaching the bath seat to the bath tub, must be permanently attached to the bath seat.

Staff is aware of a bath seat design that utilizes some attachment components that are separate from the bath seats. The bath seat itself has permanently attached suction cups that serve as the attachment components when used on a smooth tub surface, but the product also comes with another form of attachment components - four adhesive discs, which are separate components not attached to the bath seat. When the bath seat is used on a slip-resistant tub surface, consumers are instructed to attach the adhesive side of the discs directly onto the bath tub surface, and then install the bath seat onto the smooth top surface of the adhesive discs. If the discs are not used, the bath seat is still functional, but it will not properly adhere to the slip-resistant bath tub surface. Therefore, if the consumer fails to install the adhesive discs or fails to install the discs properly, a tip-over hazard can result because the bath seat is not securely attached. It is staff's opinion that by requiring all attachment components to be permanently attached to the bath seat will increase the safety because the use of a bath seat without all

needed attachment components renders the product less stable and more prone to tipping over, which could result in injury or death.

Test Surface Preparation (difference # 6) – This change pertains to the test equipment used for the stability performance requirement. ASTM F1967-11a specifies that bath seats be tested for stability on two specific test surfaces and also provides specific directions for preparing the test surfaces. The standard requires a specific model bath tub to be used as the test surfaces. One surface (test surface #1) is intended to simulate a non-slip bathing surface and test surface #2 is a relatively smooth surface (the bare, unmodified bath tub surface). In order to simulate a non-slip surface as required in test surface #1, the standard outlines how to modify and prepare the bare tub surface using commercially available non-slip safety tread strips. The preparation steps require the test labs to install the safety tread strips to the bare surface of the bath tub. Staff is aware of testing laboratories that interpreted the placement of the safety tread strips in the testing preparation directions differently than ASTM intended. Following this alternate interpretation, the testing laboratory was able to provide passing test results for some bath seats that otherwise would not have passed the stability requirement. Therefore, ASTM revised this section of the standard to specify and clarify the preparation of test surface #1. Staff believes that this revision will improve the safety of bath seats because the revised language would prevent bath seats that should, in ASTM's view, be deemed non-complying from passing the requirement in the future.

Definition of a Bath Seat/Restraint System (difference #2) – In 2011, ASTM revised the definition of a bath seat to clarify the type of support that a bath seat provides. Before the ASTM F1967-11a version of the standard, the type of support provided was not specified in the definition. The revised (and current) definition states that a bath seat provides, at a minimum, support to the front and back of a seated infant. This revision was made in response to 16 C.F.R. part 1215, which contained a more specific definition of a bath seat than was in the ASTM standard at the time the mandatory safety standard first went into effect in December 2010. ASTM F1967-11a also has a requirement for restraint systems that applies to bath seats that provide support for the back only. However, under the current definition (that was added in 2011), a bath seat with only back support is no longer defined as a bath seat. Therefore, this entire section (6.2.2) is obsolete and no longer relevant, and ASTM has removed it from ASTM F1967-13.

Suction Cup Requirements (differences #3 and #7) – ASTM made two clarifications to the standard that pertain to the testing of bath seats that use suction cups. There are two suction cup test requirements: (a) one that evaluates the attachment between the suction cups and the test surface, and (b) one that evaluates the attachment of the suction cups to the bath seat itself. The first difference between the two versions (#3) is a clarification for the test requirement (a) above, to emphasize that the bath seat must actually attach to the test surfaces as part of the

test. The second difference (#7) is a wording modification in requirement (b) above, specifying that this particular test only needs to be performed on test surface #2. Both of these differences are wording clarifications.

Markings and Labeling (differences #5 and #8) – ASTM made two minor changes to the labeling requirements. In one (#5), the relative humidity (RH) specified in the test for label permanency was changed to be a range, rather than a specific RH. Staff considers this a practical change, needed because it is difficult to produce an exact RH for the test. The second change (#8) removes the word “adult” before the term “caregiver” in a provision that requires a warning to “be located on the product so that it is visible to the [adult] caregiver.” Staff does not expect these changes to affect the substance of the standard.

B. Staff's Assessment of the Revised Standard

Only the differences discussed above that relate to attachment components and test surface preparation make a substantial change in content or intent. As discussed above, it is staff's opinion that both of the revisions will improve the safety of bath seats.

Under Pub. L. No. 112-28, unless the Commission determines that ASTM's revision “does not improve the safety of the consumer product covered by the standard,” ASTM F1967-13 will become the new mandatory standard for bath seats. Based on the staff's review of the differences outlined above and staff's conclusion that the revised ASTM standard will improve the safety of bath seats, staff recommends that the Commission not determine that “the revision does not improve the safety of the product” for purposes of Section 104 of Pub. L. No. 112-28. This will allow the revised standard, ASTM F1967-13, to be considered the consumer product safety standard for bath seats.

C. Effect of the Changes on Third Party Testing

Of the eight differences noted above and outlined in Appendix A, staff considers five (#s 3, 5, 6, 7, and 8) to be clarifications or minor revisions that should not affect how a testing laboratory conducts testing on bath seats. One other revision (#2), removes an obsolete requirement, and therefore, would not have any effect on test laboratories. The last two revisions state a new requirement for how bath seats would be evaluated (#s 1 and 4). Although this provision is new to the standard, it is not considered a test and it does not require any specialized expertise. Thus, staff does not expect these revisions to have an effect on the test procedures.

III. RECOMMENDATIONS

Because staff believes that the revisions reflected in the recently-adopted ASTM F1967-13 will improve the safety of bath seats, staff recommends that the revised voluntary standard should therefore become effective as a consumer product safety standard pursuant to the statute. Specifically, staff recommends that the Commission not make a determination that the revision does not improve the safety of the product. Staff also recommends that the Commission approve the draft *Federal Register* notice to specify ASTM F1967-13 as the new safety standard referenced in 16 C.F.R. part 1215. According to Pub. L. No. 112-28, the revised standard will become effective on March 24, 2014, unless the Commission specifies a later date. Staff believes the date of March 24, 2014, provides adequate notice. ASTM approved the revised standard on August 1, and staff believes that manufacturers should be able to produce complying products by March 24, 2014.

Staff also recommends that the existing accreditations accepted by the Commission for testing to the bath seat standard continue to be accepted. The effect on test laboratories is not expected to be substantial. Additionally, staff recommends that the existing notice of requirements should remain unchanged for ASTM F1967-13. Staff expects CPSC-accepted third party testing laboratories to update the scope of the testing laboratories accreditation to reflect ASTM F1967-13 in the normal course of accreditation renewal. Finally, staff recommends that third party testing laboratories currently accepted by the CPSC that test to the provisions under ASTM F1967-11a, should be allowed to conduct testing to ASTM F1967-13, before being required to update the scope of accreditation under the normal renewal process.

Appendix A: Differences Between ASTM F1967-11a and ASTM F1967-13
 (underlined text indicates new language, ~~strikeout~~ text indicates removed language)

#	Section in Standard	F1967-11a vs. F1967-13 (underline represents new text, strikeouts represent removed text)
1	3.1.1 (Definitions of Terms Specific to This Standard)	3.1.1 <u>attachment components, n- components of the bath seat that provide the means of attachment to the adult bath tub, including, but not limited to, clamps, arms, suction cups, and pads.</u>
2	6.2 (Restraint System)	6.2 Restraint System: 6.2.1 Bath seats, when in the manufacturer's recommended use position(s), which provide support for an occupant's back and support for the sides or front, or both, of the occupant's torso must provide a passive crotch restraint and comply with 6.2.1.1. The bath seat shall not include any additional restraint system which requires action on the part of the caregiver to secure the restraint. 6.2.1.1 A passive crotch restraint shall be assembled as part of the bath seat before shipment from the manufacturer or shall be designed such that the bath seat cannot be used without the passive crotch restraint in place. The passive crotch restraint shall be permanently attached to the bath seat. 6.2.2 Bath seats, when in the manufacturer's recommended use position(s), which provide support for an occupant's back only and do not provide support for the sides and/or front of the occupant's torso must comply with 6.2.2.1. 6.2.2.1 These bath seats are not required to have a restraint; however, if one is provided, it must be either a passive crotch restraint which complies with 6.2.1 or both a waist and crotch restraint in which the crotch restraint shall be designed such that its use is mandatory when the restraint system is in use.
3	6.4.2 (Specific Requirements for Suction Cups)	6.4.2 The bath seat shall <u>attach and</u> remain attached to the <u>each</u> test surface and shall not become damages or broken after testing in accordance with 7.6.2.
4	6.6 (Attachment Components)	<u>6.6 Attachment Components - Before shipment, all attachment components shall be permanently attached to the bath seat. Attachment components shall be considered permanent if they cannot be removed without the use of a tool.</u>
5	7.3.1 (Permanency of Labels and Warnings)	7.3.1 To determine the permanence of a label or printing applied to the surface of the product, first completely submerge the label or printed area for 20 min in clear water that is at an initial temperature of 100 to 105°F (37.8 to 40.6°C). Drain off the excess water and let the label or printed area air dry for 24h at 73 +/- 9°F (23 to 29°C), 50 to 70 <u>20 to 70</u> % RH, prior to conducting any permanency tests.
6	7.4.3.6 (Test Surface #1)	7.4.3.6 The safety tread strips shall then be applied evenly on the surface no more than <u>at a distance 1/2 in. (12mm) of 0.375 +/- 0.125 in. (9.5 +/- 3 mm)</u> apart from edge to edge.
7	7.6.1.1 (Suction Cup Attachment to Bath Seat)	7.6.1.1 Install the product according to the manufacturer's instructions onto the test surface <u>#2</u> specified in 7.4.3. 7.4.3.2. Flood the surface with clear water that is at an initial temperature of 100 to 105°F (37.8 to 40.6°C) to a depth of 2 in. (51 mm) above the highest point of the occupant seating surface. Allow the product to soak for a minimum of 20 min.
8	8.2 (Marking and Labeling)	8.2 The warning specified in 8.1 shall be located on the product so that it is visible to the adult caregiver when the product is in the manufacturer's recommended use position(s) and the occupant is in the product.



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY, BETHESDA, MD 20814

Memorandum

This document has been electronically
approved and signed.

Date: November 20, 2013

TO: The Commission
Todd Stevenson, Secretary

THROUGH: Stephanie Tsacoumis, General Counsel
Elliot F. Kaye, Executive Director
Robert J. Howell, Deputy Executive Director for Safety Operations

FROM: George B. Borlase, Assistant Executive Director
Office of Hazard Identification and Reduction

Celestine T. Kiss, Project Manager
Division of Human Factors, Directorate for Engineering Sciences

SUBJECT: Consumer Product Safety Improvement Act of 2008 (CPSIA), as revised
by Pub. L. No. 112-28 (H.R. 2715) Notice of Revision to the Toddler
Beds Standard

I. INTRODUCTION

The Danny Keysar Child Product Safety Notification Act Pub. L. No. 110-314, Sec. 104(b) (4)(B), as revised by Pub. L. No. 112-28 (H.R. 2715) Sec. 3, instructs the voluntary standards organization, ASTM International (ASTM), to notify the U.S. Consumer Product Safety Commission (CPSC) of revisions to voluntary standards that are a basis for a consumer product safety standard promulgated by the Commission, as outlined below:

“(B) COMMISSION ACTION ON REVISED VOLUNTARY STANDARD - 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. 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.”

In 2011, the Commission adopted ASTM F1821 - 09, *Standard Consumer Safety Specification for Toddler Beds*, along with several modifications, as a mandatory consumer product safety standard. 16 C.F.R. part 1217 (76 Fed. Reg. 22019 April 20, 2011); correction notice ¹ (76 Fed. Reg. 27882 May 13, 2011). ASTM officially notified the CPSC on September 25, 2013, that ASTM published a revised 2013 version of ASTM F1821.

This memorandum outlines the differences between 16 C.F.R. part 1217 and ASTM F1821 - 13 and provides a staff recommendation to allow this revision to be considered as the new safety standard referenced in 16 C.F.R. part 1217.

II. REVIEW/COMPARISON OF STANDARDS

ASTM has published four revisions to ASTM F1821 since publication of ASTM F1821 - 09. On May 16, 2012, ASTM notified CPSC that ASTM had recently published a revised standard for toddler beds (F1821 – 11b). However, in accordance with Pub. L. No.112-28, the Commission reviewed the revision and concluded that ASTM F1821-11b did not include several of the modifications the Commission had made in the CPSC’s mandatory toddler bed standard. Therefore, the Commission determined that ASTM F1821-11b did not improve the safety of toddler beds and the Commission notified ASTM that it was retaining the existing CPSC standard for toddler beds at 16 C.F.R. part 1217 without change. ASTM has revised ASTM F1821 again and notified the Commission of this latest revision. The most recent version of the ASTM standard, ASTM F1821 - 13, is now aligned more closely to the CPSC’s mandatory standard.

F1821 - 13 Revision

ASTM F1821 - 13, approved in June 2013, and published in July 2013, is the latest version of the standard following F1821 - 11b. ASTM notified the Commission about this revision on September 25, 2013. This latest revision contains 12 significant changes. The changes were made to bring the most current ASTM standard into accord with the CPSC’s regulation in 16 C.F.R. part 1217, which incorporates ASTM F-1821 – 09, plus modifications. The changes are discussed below:

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

1. The following sections of the ASTM standard have been changed to the exact wording, or wording that is slightly different from, 16 C.F.R. part 1217. Where the adopted wording is slightly different from 16 C.F.R. part 1217, staff believes that the substance of the resulting language in the ASTM standard achieves the same desired outcome as 16 C.F.R. part 1217.
 - a. 6.4.1 Guardrail height
 - b. 6.4.2 Guardrail strength
 - c. 6.7 Spindle/Slat Static Load Strength
 - d. 7.9 Guardrail Strength Test
 - i. 7.9.1
 - ii. 7.9.2
 - e. 7.10 Spindle/Slat Testing for Guardrails, Side Rails, and End Structures
 - f. 8. Marking and Labeling
 - g. FIG. 11 Guardrail Strength Testing
2. Sections 8.2.3 and 8.2.4.3 of the ASTM standard, as modified, departed from the CPSC regulation with respect to the reference to mattress thickness. Specifically, ASTM changed the wording for the primary display panel of retail packaging and the on-bed labeling to require manufacturers to specify the maximum thickness of the mattress and display the cautionary entrapment label specified. Currently, 16 C.F.R. part 1217 requires that the label state the *minimum* (emphasis added) mattress thickness; however, the guardrail height requirements are based on the *maximum* mattress thickness, thereby making the maximum measurement essential.
3. Section 9 – The Instructional Literature provisions distinguish between the requirements for toddler beds that convert from a full-size crib and requirements for stand-alone toddler beds. The convertible beds must meet the instructional literature requirements from the full-size crib standard. The stand-alone toddler beds must meet the requirements in F1821 - 13.

B. Staff's Assessment of the Revised Standard

Under Pub. L. No. 112-28, unless the Commission determines that ASTM's revision "does not improve the safety of the consumer product covered by the standard," F1821 - 13 will become the new mandatory standard for toddler beds. Nothing in Section 104 obligates the Commission to make a determination that safety is not improved or to notify the applicable standards organization accordingly. As a result, where a proposed revision to the voluntary standard does not impact safety, the Commission has the discretion to make no determination, which would result in the revised voluntary standard becoming the applicable consumer product safety standard. In the toddler bed situation, because the revised standard is neutral with respect to safety, staff believes that a determination by the Commission under the statute is not warranted and the revised voluntary standard should therefore become effective as a consumer product safety standard pursuant to the statute. The revisions bring ASTM F1821 into accord with the

CPSC's regulation in 16 C.F.R. part 1217.

C. Effect of the Changes on Third Party Testing

Because ASTM F1821 - 13 incorporates all the modifications included in 16 C.F.R. part 1217 without changes to existing test methods, this revision does not require any change to the existing notice of requirements published on April 20, 2011, by the Commission for 16 C.F.R. part 1217. *See* 78 Fed. Reg. 22030.

III. RECOMMENDATION

Staff recommends that the Commission allow ASTM F1821 - 13 to be considered a consumer product safety standard issued by the Commission and that the Commission revise the reference in 16 C.F.R. part 1217 to reflect the revision. According to Pub. L. No. 112-28, unless the Commission notifies an organization that it has determined that a proposed revision does not improve the safety of a consumer product covered by the standard and that the Commission is retaining the existing standard, the revised standard will become effective 180 days after the date on which an organization notifies the Commission of the revision. In the case of ASTM F1821-13, the revised standard will become effective on March 24, 2014, unless the Commission specifies a later date. Staff believes that the date of March 24, 2014, is sufficient time for industry to meet the standard because the federal regulation has been in effect since October 20, 2011, and the latest version of the ASTM voluntary standard is essentially the same as the federal regulation. In addition, according to the ASTM standard, *"1.4 No toddler bed produced after the approval date of this consumer safety specification shall indicate compliance with this specification, either by label or by other means, unless it conforms to all the requirements contained herein."* ASTM F1821-13 has been approved since June 1, 2013, so manufacturers should already be producing products that meet this standard.

Staff also recommends that the existing laboratory accreditations accepted by the Commission for testing to the toddler bed standard continue to be accepted because the change in the safety standard does not result in any new or modified testing from the current standard. Additionally, staff recommends that the existing notice of requirements (NOR) should remain unchanged for ASTM F1821-13. Staff expects CPSC-accepted third party testing laboratories to update the scope of the testing laboratories accreditation to reflect ASTM F1821-13 in the normal course of accreditation renewal. Finally, staff recommends that third party testing laboratories currently accepted by the CPSC to test for ASTM F1821-09 should be allowed to conduct testing to ASTM F91169-13, before being required to update the scope of accreditation under the normal renewal process.



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY, BETHESDA, MD 20814

Memorandum

This document has been electronically
approved and signed.

Date: November 20, 2013

TO: The Commission
Todd A. Stevenson, Secretary

THROUGH: Stephanie Tsacoumis, General Counsel
Elliot F. Kaye, Executive Director
Robert J. Howell, Deputy Executive Director for Safety Operations

FROM: George A. Borlase, Ph.D., P.E., Assistant Executive Director
Office of Hazard Identification and Reduction

Patricia Edwards, Project Manager
Directorate for Engineering Sciences

SUBJECT: Consumer Product Safety Improvement Act of 2008 (CPSIA), as revised
by P.L. 112-28, Notice of Revision to the Full-Size Crib Standard 16
C.F.R. part 1219

I. INTRODUCTION

The Danny Keysar Child Product Safety Notification Act Pub. L. No. 110-314, Sec. 104(b) (4)(B), as revised by Pub. L. No. 112-28 (H.R. 2715) Sec. 3, instructs the voluntary standards organization, ASTM International (ASTM), to notify the U.S. Consumer Product Safety Commission (CPSC) of revisions to voluntary standards that are a basis for a consumer product safety standard promulgated by the Commission, as outlined below:

“(B) COMMISSION ACTION ON REVISED VOLUNTARY STANDARD - 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. 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.”

On December 28, 2010, the Commission published a mandatory consumer product safety standard for full-size cribs that incorporated by reference ASTM F1169-10, *Standard Consumer Safety Specification for Full-Size Baby Cribs*, along with two modifications. 16 C.F.R. part 1219 (75 Fed. Reg. 81766). On May 16, 2012, ASTM officially notified the CPSC that ASTM published a revised 2011 version of ASTM F1169 for consideration to be the CPSC's new full-size baby crib safety standard. As a result, on November 21, 2012, 16 C.F.R. part 1219 was revised to reference ASTM F1169-11, with no modifications. On September 25, 2013, ASTM notified the CPSC once again that ASTM had published a revised standard, ASTM F1169-13.

This memorandum outlines the differences between 16 C.F.R. part 1219 and ASTM F1169-13, assesses the revised standard, and explains whether any differences would affect how a third party assessment body would test a full-size crib.

II. REVIEW/COMPARISON OF STANDARDS

A. Differences in the Standards

As revised, ASTM F1169-13 has one difference from 16 C.F.R. part 1219. This difference is reflected in two sections of the revised standard: the general requirement in section 5.13 and the performance requirement in section 6.7 *Spindle/Slat Strength Testing*. Appendix A shows the changes in these sections.

Section 5.13 of the current CPSC standard (which is the same as ASTM F1169-11) requires that before and after testing a crib, the crib must comply with all general requirements stated in section 5 of the standard. Section 5 includes section 5.8, *Spacing of Crib Components*, which contains requirements for the distance between slats. However, the testing procedure for slats (stated in section 7.7) allows for one slat to fail during testing if the load at failure is at least 60 pounds and an additional 25 percent of the slats are tested and meet the 80-pound force requirement. Thus, a tested crib potentially could comply with section 7.7 even if a slat failed during testing, but not meet the slat spacing requirements in section 5.8 because of the failed slat. In that situation, the crib would not comply with the requirements in the current standard because the crib would not meet all of the general requirements after the crib had been tested.

The revision provides an exception for this specific situation so that a crib's failure to meet the slat spacing requirement under the testing circumstances described above would not cause the crib to be considered noncompliant, even though the crib meets the slat strength testing requirements stated in section 7.7.

B. Staff's Assessment of the Revised Standard

The purpose of section 5.13 is to prevent the testing of a crib from creating hazardous conditions. However, the spindle/slat strength test requirement is a unique test, based on the properties of wood. The requirement, as developed and first included in ASTM F1169-10, allows for a single slat failure but only under strict requirements. After ASTM F1169-10 was published, the ASTM subcommittee noted that there was a conflict in the way the standard was written. To allow the failure of a single slat (as permitted in section 6.7), section 5.13 also needed to be changed, to exempt that single slat failure from having to meet the slat spacing requirement in section 5.8 after testing. This was an unintended contradiction in the standard that could cause a crib, in certain circumstance, not to comply with the standard. Staff agrees with the changes included in ASTM F1169-13 and feels that the changes clarify the intent of section 5.13, and remove the inconsistency.

Under Pub. L. No. 112-28, unless the Commission determines that ASTM's revision "does not improve the safety of the consumer product covered by the standard," ASTM F1169-13 will become the new mandatory standard for full-size cribs. Nothing in Section 104 obligates the Commission to make a determination that safety is not improved or to notify the applicable standards organization accordingly. As a result, where a proposed revision to the voluntary standard does not impact safety, the Commission has the discretion to make no determination, which would result in the revised voluntary standard becoming the applicable consumer product safety standard. In the crib situation, because the revised standard is neutral with respect to safety, staff believes that a determination by the Commission under the statute is not warranted and the revised voluntary standard should therefore become effective as a consumer product safety standard pursuant to the statute. The changes included in ASTM F1169-13 remove an inconsistency between two provisions in the previous version of the ASTM standard, but the changes do not affect the substance of the standard.

C. Effect of the Changes on Third Party Testing

The differences noted in ASTM F1169-13 would not add any new provisions that would require a third party assessment body (such as a test laboratory) to conduct additional or different tests. If a test laboratory has a crib with one allowable broken slat, the testing laboratory would no longer have to assess the spacing on either side of the broken slat to the requirements outlined in section 5.8. This should be the only difference test laboratories should encounter. Thus, test laboratories will not be expected to conduct any new or different tests from the existing mandatory standard.

III. RECOMMENDATIONS

Staff recommends that the Commission allow ASTM F1169-13 to be considered a consumer product safety standard issued by the Commission and that the Commission revise the reference in 16 C.F.R. part 1219 to reflect the revision. According to Pub. L. No. 112-28, unless the Commission notifies an organization that it has determined that a proposed revision does not improve the safety of a consumer product covered by the standard and that the Commission is retaining the existing standard, the revised standard will become effective 180 days after the date on which an organization notifies the Commission of the revision. In the case of ASTM F1169-13, the standard would become effective on March 24, 2014, unless the Commission specifies a later date. Given the minimal difference between the current CPSC standard and the ASTM revision, staff believes the date of March 24, 2014, is adequate.

Staff also recommends that the existing laboratory accreditations accepted by the Commission for testing to the full-size crib standard continue to be accepted because the change in the safety standard does not result in any new or modified testing from the current standard. The only effect on test laboratories will be a possible reduction in some evaluations of tests performed in accordance with 5.13. Additionally, staff recommends that the existing notice of requirements (NOR) should remain unchanged for ASTM F1169-13. Staff expects CPSC-accepted third party testing laboratories to update the scope of the testing laboratories accreditation to reflect ASTM F1169-13 in the normal course of accreditation renewal. Finally, staff recommends that third party testing laboratories currently accepted by the CPSC to test for ASTM F1169-11 should be allowed to conduct testing to ASTM F91169-13, before being required to update the scope of accreditation under the normal renewal process.

Appendix A: Differences Between ASTM F1169-11 and ASTM F1169-13

Underlined text indicates language that is new in ASTM F1169-13.

Section 5.13

5.13 Except as noted in 6.7, before and after testing, the product shall comply with all the requirements of Section 5.

Section 6.7

6.7 Spindle/Slat Strength Testing—After testing in accordance with the procedure in 7.7, there shall be no complete breakage of any spindle/slat or complete separation of either end of a spindle/slat from the crib assembly's horizontal members when tested per 7.7.2 and 7.7.3 except as explained in 7.7.4. Any failure, as defined in this paragraph, when testing per 7.7.4 and 7.7.5 shall constitute a failure of the test. Audible indications during testing shall not constitute evidence of failure. After testing, the spacing between all adjacent intact spindles/slats shall comply with requirements of 5.8.2. Spacing between slats that have an intervening gap due to an allowable slat breakage shall not be evaluated for compliance with 5.8.2. Any resultant damage to the rail or slat, or both, arising from an allowed slat breakage, under subsection 7.7, shall not be evaluated for compliance with any other section of this standard.