



Ballot Vote Sheet

TO: The Commission
Alberta E. Mills, Secretary

THROUGH: Austin C. Schlick, General Counsel
Jason K. Levine, Executive Director

FROM: Daniel R. Vice, Assistant General Counsel,
Regulatory Affairs
David M. DiMatteo, Attorney, Regulatory Affairs

SUBJECT: ASTM's Revised Safety Standard for Infant Bouncer
Seats

DATE: August 24, 2022

BALLOT VOTE DUE: Tuesday, August 30, 2022

In 2017, the Commission issued a Safety Standard for Infant Bouncer Seats (16 CFR part 1229) under the Consumer Product Safety Improvement Act of 2008 (CPSIA). That mandatory standard incorporated by reference ASTM F2167-17 *Standard Consumer Safety Specification for Infant Bouncer Seats*, with modifications to make the standard more stringent. In 2019 the Commission updated the mandatory standard by incorporating by reference ASTM F2167-19, without modifications.

ASTM has revised its standard and notified the Commission of the revised standard (ASTM F2167-22). Under the CPSIA, when ASTM notifies CPSC that it has revised a voluntary standard for a durable infant or toddler product that the Commission has incorporated by reference, the revised standard automatically becomes the mandatory standard, unless the Commission determines that the revised standard "does not improve the safety of the consumer product" and so notifies the voluntary standards organization.

Staff is forwarding to the Commission a briefing memorandum recommending that the Commission issue a direct final rule to update the ASTM standard incorporated by reference in the Safety Standard for Infant Bouncer Seats. Attached for Commission consideration is a draft *Federal Register* notice for that purpose. If approved by the Commission, the Office of the General Counsel will seek approval of the incorporation by reference from the Office of the Federal Register, in accordance with the requirements in 1 CFR part 51, and upon receiving such approval, will send the notice to the *Federal Register* for publication.

U.S. Consumer Product
Safety Commission
4330 East-West Highway
Bethesda, MD 20814

National Product Testing
and Evaluation Center
5 Research Place
Rockville, MD 20850

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Ballot Vote Sheet

Please indicate your vote on the following options:

- I. Approve publication of the attached notice in the *Federal Register*, as drafted.

(Signature)

(Date)

- II. Approve publication of the attached notice in the *Federal Register*, with the following changes.

(Signature)

(Date)

- III. Determine that the proposed revision does not improve the safety of infant bouncer seats and therefore do not approve publication of the attached notice in the *Federal Register*.

(Signature)

(Date)

- IV. Take other action specified below.



United States
Consumer Product Safety Commission
cpsc.gov | info@cpsc.gov | 800.638.2772

Ballot Vote Sheet

(Signature)

(Date)

Attachment: Draft *Federal Register* notice: Safety Standard for Infant Bouncer Seats

**U.S. Consumer Product
Safety Commission**
4330 East-West Highway
Bethesda, MD 20814

**National Product Testing
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[Billing Code 6355-01-P]

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1229

[Docket No. CPSC-2015-0028]

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 for infant bouncer seats that had been adopted earlier in 2017 and was in effect at the time. In 2019, ASTM updated the mandatory standard for infant bouncer seats and the Commission accepted the update and revised the mandatory standard by incorporating by reference ASTM F2167-19, without modifications. In 2022, ASTM has updated the standard for infant bouncer seats once again. Consistent with the CPSIA's process for updating mandatory standards for durable infant or toddler products that are based on a voluntary standard, when the voluntary standards organization revises the standard, this direct final rule updates the mandatory standard for infant bouncer seats to incorporate by reference ASTM's 2022 version of the voluntary standard.

DATES: The rule is effective on December 19, 2022, 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 19, 2022.

ADDRESSES: You can 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: <https://www.regulations.gov>. Follow the instructions for submitting comments. Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. CPSC typically does not accept comments submitted by electronic mail (e-mail), except as described below.

Mail/hand delivery/courier/confidential Written Submissions: CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal. You may, however, submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504-7479.

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: <https://www.regulations.gov>. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may e-mail them to: cpsc-os@cpsc.gov.

Docket: For access to the docket to read background documents or comments received, go to: <https://www.regulations.gov>, and insert the docket number, CPSC-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; e-mail: KWalker@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

1. Statutory Authority

Section 104(b)(1) of the CPSIA requires the Commission to assess the effectiveness of voluntary standards for durable infant or toddler products and to adopt mandatory standards for these products. 15 U.S.C. 2056a(b)(1). A mandatory standard must be “substantially the same as” the corresponding voluntary standard, or it 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.*

Section 104(b)(4)(B) of the CPSIA specifies the process for updating the Commission’s rules when a voluntary standards organization revises a standard that the Commission previously incorporated by reference under section 104(b)(1). First, the voluntary standards organization must notify the Commission of the revision. Once the Commission receives this notification, the Commission may reject or accept the revised standard. The Commission may reject the revised standard by notifying the voluntary standards organization, within 90 days of receiving notice of the revision, that it has determined that the revised standard does not improve the safety of the consumer product and that it is retaining the existing standard. If the Commission does not take

this action to reject the revised standard, then the revised voluntary standard will be considered a consumer product safety standard issued under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the Commission received notification of the revision or on a later date specified by the Commission in the *Federal Register*. 15 U.S.C. 2056a(b)(4)(B).

2. *Safety Standard for Infant Bouncer Seats*

Under section 104(b)(1) of the CPSIA, the Commission adopted a mandatory rule for infant bouncer seats, codified in 16 CFR part 1229. The rule incorporated by reference ASTM F2167-17, *Standard Consumer Safety Specification for Infant Bouncer Seats*, with modifications to make the standard more stringent. 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 revised the voluntary standard in May 2019. In September 2019, the Commission revised the mandatory standard to incorporate by reference ASTM F2167-19, without modifications. 84 FR 46878 (Sep. 6, 2019).

On June 22, 2022, ASTM notified CPSC that it had once more revised the voluntary standard for infant bouncer seats, by approving ASTM F2167-22 on May 1, 2022. On June 30, 2022, the Commission published a notice of availability in the *Federal Register* regarding the revised voluntary standard and sought comments on the effect of the revisions on the safety of the standard for infant bouncer seats. 87 FR 39068 (Jun. 30, 2022). No comments were submitted.

As discussed in section **B. Revisions to ASTM F2167**, based on CPSC staff's review of ASTM F2167-22,¹ the Commission will allow the revised voluntary standard to become the mandatory standard because it improves the safety of infant bouncer seats.² Accordingly, by

¹ CPSC staff's briefing package regarding ASTM F2167-22 is available at: [INSERT LINK].

² The Commission voted T-B-D to approve this notice.

operation of law under section 104(b)(4)(B) of the CPSIA, ASTM F2167-22 will become the mandatory consumer product safety standard for infant bouncer seats on December 19, 2022. 15 U.S.C. 2056a(b)(4)(B). This direct final rule updates 16 CFR part 1229 to incorporate by reference the revised voluntary standard, ASTM F2167-22.

B. Revisions to ASTM F2167

The ASTM standard for infant bouncer seats includes performance requirements, test methods, and requirements for warning labels and instructional literature, to address hazards to children associated with infant bouncer seats. ASTM F2167-22 contains substantive revisions as well as editorial, non-substantive revisions. These revisions from ASTM F2167-19 to ASTM F2167-22 consist of changes to the infant bouncer seat warning label language, as well as changes that do not impact safety because they do not change the meaning of the standard and are editorial in nature. The Commission concludes that these changes collectively improve the safety of infant bouncer seats, and none of the changes has an adverse effect on safety. Below is a detailed discussion of the substantive and non-substantive changes made to ASTM F2167-19.

Substantive changes in ASTM F2167-22

ASTM F2167-22 revised the suffocation-related warnings to clarify that the product is not intended or safe for sleep and directs consumers to move the baby to a flat sleep surface if the baby falls asleep in the product. Specifically, in section 8.5.2 of ASTM F2167-19, the suffocation hazard warning language stated:

Suffocation hazard: Babies have suffocated when bouncers have tipped over on soft surfaces.

- NEVER use product on a bed, sofa, cushion, or other soft surface.
- NEVER leave baby unattended.

To prevent falls and suffocation:

- ALWAYS use restraints and adjust to fit snugly, even if baby falls asleep.

ASTM F2167-22 revises the suffocation hazard warning section to the following:

Suffocation hazard: Babies have suffocated when bouncers tipped over on soft surfaces and/or when bouncers have been used as a sleep product.

- NEVER use on a bed, sofa, cushion, or other soft surface.
- Stay near and watch baby during use. This product is not safe for sleep or unsupervised use. If baby falls asleep, remove baby as soon as possible and place baby on a firm, flat sleep surface such as a crib or bassinet.

To prevent falls and suffocation:

- ALWAYS use restraints and adjust to fit snugly.

Among other changes, the statements advising caregivers to always use restraints and adjust to fit snugly, which is on both the fall hazard and suffocation hazard warnings, have now been updated by removing the statement: “even if baby falls asleep.” Specifically, sections 8.5.1.1 and 8.5.2.1 of ASTM F2167-19 contained the statement:

- ALWAYS use restraints and adjust to fit snugly, even if baby falls asleep.

ASTM F2167-22 revised the statement to the following:

- ALWAYS use restraints and adjust to fit snugly.

The phrase “even if baby falls asleep” in the 2019 version may suggest to users that using bouncers for infant sleep is acceptable. The ASTM subcommittee has since concluded that bouncers should not be used for sleep. Thus, the 2022 revision deletes this phrase and adds clarifying language to communicate clearly to consumers that: “This product is not safe for sleep

or unsupervised use,” while reinforcing the message that babies should sleep in cribs, bassinets, or other firm, flat sleep surfaces. These changes improve safety.

The Commission also considers the change from “NEVER leave child unattended” to “Stay near and watch baby during use” to be an improvement in safety. Consumers are more likely to understand a message directly instructing them on what to do to avoid the hazard. A user study³ conducted for CPSC to assess this language concluded that caregivers prefer clear and straight-to-the-point phrases. The researchers further concluded that many caregivers misinterpret the words “unattended” and “unsupervised,” and these terms should be replaced with less ambiguous phrases.

The Commission considers the modified suffocation warnings an improvement to safety because they provide clear and concise instructions for safe use of an infant bouncer. The new warning statement provides concise guidance to the caregiver that infant bouncer seats are not safe for sleep, and it provides guidance that is consistent with CPSC messaging about the importance of placing sleeping babies on firm, flat sleep surfaces, such as a crib or bassinet.

Finally, changes were made to the wording in the corresponding Figures indicated below to reflect the current Ad-Hoc Recommendations⁴:

- Figure. 11 Fall Hazard Warnings;
- Figure. 12 Suffocation Hazard Warnings; and
- Figure. 13 Instruction Warnings Statements

³ <https://cpsc.gov/s3fs-public/Refining-Sleep-Messaging-for-Seated-Non-Sleep-Products-Focus-Group-Study-4-15-22.pdf?VersionId=aEey8C2nwBfXGrmCEYcLr7QEXexqZMmg>

⁴ ASTM Ad Hoc Wording Task Group (Ad Hoc TG) consists of members of various durable nursery product voluntary standards committees, including CPSC staff. The Ad Hoc TG’s purpose is to harmonize the wording of common sections (*e.g.*, introduction, scope, protective components) and warning label requirements across voluntary standards for durable infant and toddler products.

These changes improve safety because they are consistent with revisions to language made to *Subsection 8.5.1.1 and 8.5.2.1*, and thus may avoid consumer confusion, and because they discourage caregivers from using the product for sleep.

Non-substantive changes in ASTM F2167-22

ASTM F2167-22 makes several non-substantive changes to the standard including adding *X1.9 Subsection 8.5.2.1* to the appendix which changes the form of an added statement to explain the non-relevance and removal of “*even if baby is sleeping*” from the Appendix Rationale in the new standard. This change does not impact safety because it does not affect the information available to consumers. Finally, several minor editorial changes adding hyphens to language in the standard were made. The Commission finds that the non-substantive changes made in ASTM F2167-22 regarding safety for infant bouncer seats do not impact safety.

C. Incorporation by Reference

Section 1229.2 of the direct final rule incorporates by reference ASTM F2167-22. The Office of the Federal Register (OFR) has regulations regarding incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble to a final rule, ways in which the material the agency incorporates by reference is reasonably available to interested parties, and how interested parties can obtain the material. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR regulations, section **B. Revisions to ASTM F2167** of this preamble summarizes the major new provisions of ASTM F2167-22 that the Commission incorporates by reference into 16 CFR part 1229. The standard is reasonably available to interested parties. Until the direct final rule takes effect, a read-only copy of ASTM F2167-22 is available for viewing, at no cost, on ASTM’s website at: <https://www.astm.org/CPSC.htm>. Once

the rule takes effect, a read-only copy of the standard will be available for viewing, at no cost, on the ASTM website at: <https://www.astm.org/READINGLIBRARY/>. Interested parties can also schedule an appointment to inspect a copy of the standard at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone: (301) 504-7479; e-mail: cpsc-os@cpsc.gov. Interested parties can purchase a copy of ASTM F2167-22 from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959 USA; telephone: (610) 832-9585; www.astm.org.

D. Certification

Section 14(a) of the Consumer Product Safety Act (CPSA; 15 U.S.C. 2051-2089) requires manufacturers of 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, to certify that the products comply 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 of a sufficient number of samples by a third party conformity assessment body accredited by CPSC to test according to the applicable requirements. As noted, 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 bouncer seats are children's products, a CPSC-accepted, third party conformity assessment body must test samples of the products. Products subject to part 1229 also must comply with all other applicable CPSC requirements, such as the lead content

requirements in section 101 of the CPSIA,⁵ the tracking label requirements in section 14(a)(5) of the CPSA,⁶ and the consumer registration form requirements in section 104(d) of the CPSIA.⁷ ASTM F2167-22 makes no changes that impact any of these existing requirements or the methods of compliance with them.

E. Notice of Requirements

In accordance with section 14(a)(3)(B)(vi) of the CPSA, the Commission previously published a notice of requirements (NOR) for accreditation of third party conformity assessment bodies for testing infant bouncer seats. 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 NORs for all mandatory standards for durable infant or toddler products are listed in the Commission’s rule, “Requirements Pertaining to Third Party Conformity Assessment Bodies,” codified in 16 CFR part 1112. *Id.* CPSC-accepted testing laboratories that have ASTM F2167-19 in their scope of accreditation are competent to conduct testing to ASTM F2167-22. None of the changes to the standard would affect a CPSC-accepted laboratory’s ability to conduct testing to the revised standard.

Therefore, the Commission considers the existing CPSC-accepted laboratories for testing to ASTM F2167-19 to be capable of testing to ASTM F2167-22 as well. Accordingly, the existing NOR for this standard will remain in place, and CPSC-accepted, third party conformity assessment bodies are expected to update the scope of the testing laboratories’ accreditations to reflect the revised standard in the normal course of renewing their accreditations. Thus, laboratories will begin testing to the new standard when ASTM F2167-22 goes into effect, and

⁵ 15 U.S.C. 1278a.

⁶ 15 U.S.C. 2063(a)(5).

⁷ 15 U.S.C. 2056a(d).

the existing accreditations that the Commission has accepted for testing to this standard will cover testing to the revised standard.

F. Direct Final Rule Process

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, section 553 of the APA provides an exception when the agency “for good cause finds” that notice and comment are “impracticable, unnecessary, or contrary to the public interest.” *Id.* 553(b)(B). The Commission concludes that when it updates a reference to an ASTM standard that the Commission incorporated by reference under section 104(b) of the CPSIA, notice and comment are not necessary.

Specifically, under the process set out in section 104(b)(4)(B) of the CPSIA, when ASTM revises a standard that the Commission has previously incorporated by reference under section 104(b)(1)(B) of the CPSIA, that revision will become the new CPSC standard, unless the Commission determines that ASTM’s revision does not improve the safety of the product. Thus, unless the Commission makes such a determination, the ASTM revision becomes CPSC’s standard by operation of law. The Commission is allowing ASTM F2167-22 to become CPSC’s new standard because its provisions improve product safety. The purpose of this direct final rule is to update the Code of Federal Regulations (CFR) so that it reflects the version of the standard that takes effect by statute. This rule updates the reference in the CFR, but under the terms of the CPSIA, ASTM F2167-22 takes effect as the new CPSC standard for infant bouncer seats, even if the Commission does not issue this rule. Thus, public comments would not alter substantive changes to the standard or the effect of the revised standard as a consumer product safety

standard under section 104(b) of the CPSIA. Under these circumstances, notice and comment are unnecessary.

In Recommendation 95-4, the Administrative Conference of the United States (ACUS) endorses direct final rulemaking as an appropriate procedure to expedite rules that are noncontroversial and not expected to generate significant adverse comments. *See* 60 FR 43108 (Aug. 18, 1995). ACUS recommends that agencies use the direct final rule process when they act under the “unnecessary” prong of the good cause exemption in 5 U.S.C. 553(b)(B). Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule, because CPSC does not expect any significant adverse comments.

Unless CPSC receives a significant adverse comment within 30 days of this notification, the rule will become effective on December 19, 2022. 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 a change.” 60 FR 43108, 43111 (Aug. 18, 1995). As noted, this rule merely updates a reference in the CFR to reflect a change that occurs by statute, and public comments should address this specific action.

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

G. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601-612) generally requires agencies to review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603, 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. *Id.* As discussed in section **F. Direct Final Rule Process** of this preamble, the Commission has determined that notice and the opportunity to comment are unnecessary for this rule. Therefore, the RFA does not apply. CPSC also notes the limited nature of this document, which merely updates the incorporation by reference to reflect the mandatory CPSC standard that takes effect under section 104 of the CPSIA.

H. Paperwork Reduction Act

The current mandatory standard for infant bouncer seats includes requirements for marking, labeling, and instructional literature that constitute a “collection of information,” as defined in the Paperwork Reduction Act (PRA; 44 U.S.C. 3501-3521). Although the revised mandatory standard revises existing marking and labeling, and instructional literature language for infant bouncer seats, the revisions would not add to the burden hours because the products already require marking, labeling, and instructional literature. The new requirements merely require new words or wording changes to language already required by the standard for infant bouncer seats. Therefore, the new requirements are not materially more burdensome than the existing requirements. Conforming the mandatory standard for infant bouncer seats to ASTM’s revision of the voluntary standard also reduces burdens on manufacturers who would follow the updated voluntary standard, and thus, in the absence of this rule, would be subject to partially inconsistent requirements.

The Commission took the steps required by the PRA for information collections when it promulgated 16 CFR part 1229, and the marking, labeling, and instructional literature for infant bouncer seats is currently approved under OMB Control Number 3041-0159. Because the information collection burden is unchanged, the revision does not affect the information collection requirements or approval related to the standard.

I. Effective Date

Under the procedure set forth in section 104(b)(4)(B) of the CPSIA, when a voluntary standards organization revises a standard that the Commission adopted as a mandatory standard, the revision becomes the CPSC standard 180 days after notification to the Commission, unless the Commission timely notifies the standards organization that it has determined that the revision does not improve the safety of the product, or the Commission sets a later date in the *Federal Register*. 15 U.S.C. 2056a(b)(4)(B). The Commission is taking neither of those actions with respect to the standard for infant bouncer seats. Therefore, ASTM F2167-22 will take effect as the new mandatory standard for infant bouncer seats on December 19, 2022, 180 days after June 22, 2022, when the Commission received notice of the revision.

J. Preemption

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

104 of the CPSIA takes effect, it will preempt state and local laws in accordance with section 26(a) of the CPSA.

K. Environmental Considerations

Commission rules are categorically excluded from any requirement to prepare an environmental assessment or an environmental impact statement where 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.

L. 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 CRA submission must indicate whether the rule is a “major rule.” The CRA states that the Office of Information and Regulatory Affairs determines whether a rule qualifies as a “major rule.”

Pursuant to the CRA, this rule does not qualify as a “major rule,” as defined in 5 U.S.C. 804(2). To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General.

List of Subjects in 16 CFR Part 1229

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

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

PART 1229 – SAFETY STANDARD FOR INFANT BOUNCER SEATS

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

Authority: Section 104, Pub. L. No. 110-314, 122 Stat. 3016 (August 14, 2008) 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 F2167-22, *Standard Consumer Safety Specification for Infant Bouncer Seats*, approved on approved May 1, 2022. 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. A read-only copy of the standard is available for viewing on the ASTM website at <https://www.astm.org/READINGLIBRARY/>. You may obtain a copy from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959; 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) 504-7479, e-mail cpsc-os@cpsc.gov, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, e-mail fr.inspection@nara.gov, or go to: www.archives.gov/federal-register/cfr/ibr-locations.html.

Dated: _____

Alberta E. Mills, Secretary

Consumer Product Safety Commission



United States
Consumer Product Safety Commission

Staff Briefing Package

Notice of Revision to the Safety Standard for Infant Bouncer Seats (16 C.F.R. Part 1229)

August 24, 2022

For additional information, contact:

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*This report was prepared by the CPSC staff.
It has not been reviewed or approved by,
and may not necessarily reflect the views of,
the Commission.*



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Briefing Memorandum



United States
Consumer Product Safety Commission
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Briefing Memorandum

TO: The Commission
Alberta E. Mills, Secretary

DATE: August 24, 2022

THROUGH: Austin C. Schlick, General Counsel
Jason K. Levine, Acting Executive Director
DeWane Ray, Deputy Executive Director for
Safety Operations

FROM: Duane E. Boniface, Assistant Executive Director
Office of Hazard Identification and Reduction

Suad Wanna-Nakamura, Ph.D.,
Division of Pharmacology and Physiology
Directorate for Health Sciences

SUBJECT: Notice of Revision to the Safety Standard for Infant Bouncer Seats (16 C.F.R. Part 1229)

I. Introduction/Background

On September 18, 2017, the Commission published in the *Federal Register* a mandatory safety standard for infant bouncer seats that incorporated by reference the voluntary standard in effect at that time, ASTM F2167-17 *Standard Consumer Specification for Infant Bouncer Seats*. 82 FR 43470 (Sep. 18, 2017). The Commission made some modifications to the standard to improve safety.

The final rule codified the standard for infant bouncer seats at 16 C.F.R. part 1229. The mandatory standard included performance requirements, test methods, and requirements for warning labels to address hazards associated with the use of infant bouncer seats.

Since promulgation of the final rule, ASTM revised the voluntary standard in May 2019. That revision made the standard consistent with the more stringent requirements the Commission had added in 2017. In September 2019, the Commission published a direct final rule that revised the mandatory standard to incorporate by reference ASTM F2167-19. 84 FR 46878 (Sep. 6, 2019).

In May 2022, ASTM published another revised version of the standard, F2167-22, which ASTM approved on May 1, 2022. ASTM notified the Commission of this revision on June 22, 2022.

On June 30, 2022, the Commission published a notice of availability (NOA) in the *Federal Register*, requesting comment on whether the latest revision to ASTM F2167-19 improves the safety of infant bouncer seats (87 FR 39068). Public comment closed on July 14, 2022. CPSC did not receive any comments.

This memorandum outlines the differences between ASTM F2167-22 and the most current version of ASTM F2167-19 that is incorporated by reference into 16 C.F.R. part 1229. Staff recommends that the Commission allow ASTM F2167-22 to become the mandatory standard.

II. Discussion

The CPSC's mandatory Safety Standard for infant bouncer seats in 16 C.F.R. part 1229 currently incorporates by reference ASTM F2167-19, with no modifications. The changes from ASTM F2167-19 to ASTM F2167-22 consist of changes to the infant bouncer seat warning label language, as well as three non-substantive changes¹ that do not impact safety because they do not change the meaning of the standard and are editorial in nature. Staff concludes that all of the substantive changes to the standard improve the safety of infant bouncer seats.

Substantive Revisions in ASTM F2167-22 and Comparison to ASTM F2167-19

ASTM F2167-22 revised the suffocation-related warnings to clarify that the product is not intended or safe for sleep and directs consumers to move the baby to a flat sleep surface if the baby falls asleep in the product. Staff finds the modified warnings improve safety because they provide "clear and concise instructions for safe use of an infant bouncer." (Balci-Sinha, 2022 Tab A).

Specifically, in section 8.5.2 of ASTM F2167-19, the suffocation hazard warning language stated:

Suffocation hazard: Babies have suffocated when bouncers have tipped over on soft surfaces.

- NEVER use product on a bed, sofa, cushion, or other soft surface.
- NEVER leave baby unattended.

To prevent falls and suffocation:

- ALWAYS use restraints and adjust to fit snugly, even if baby falls asleep.

ASTM F2167-22 revised the suffocation hazard warning in this section to the following:

Suffocation hazard: Babies have suffocated when bouncers tipped over on soft surfaces and/or when bouncers have been used as a sleep product.

- NEVER use on a bed, sofa, cushion, or other soft surface.

¹ Non-substantive changes in sections 7.10.1, 7.10.2, and 8.4.6 include the addition of a hyphen to the words "single action, double action and ragged right".

- Stay near and watch baby during use. This product is not safe for sleep or unsupervised use. If baby falls asleep, remove baby as soon as possible and place baby on a firm, flat sleep surface such as a crib or bassinet.

To prevent falls and suffocation:

- ALWAYS use restraints and adjust to fit snugly.

The statements advising caregivers always to use restraints and adjust to fit snugly, which is on both the fall hazard and suffocation hazard warnings, have now been updated by removing the statement: “even if baby falls asleep.” Specifically, in sections 8.5.1.1 and 8.5.2.1 of ASTM F2167-19, the following statement was present:

- ALWAYS use restraints and adjust to fit snugly, even if baby falls asleep.

ASTM F2167-22 revised the statement to the following:

- ALWAYS use restraints and adjust to fit snugly.

The warning language in the 2019 version that recommended using and adjusting the restraints includes the phrase: “even if baby falls asleep,” which may suggest to users that using bouncers for infant sleep is acceptable. The language may even encourage caregivers to use the product for more prolonged periods of sleep or unattended use. The ASTM subcommittee concluded that bouncers should not be used for sleep. Thus, the 2022 revision deletes this phrase and adds clarifying language to communicate clearly to consumers that: “This product is not safe for sleep or unsupervised use,” while reinforcing the message that babies should sleep in cribs, bassinets, or other firm, flat sleep surfaces. Staff determined that the change from: “NEVER leave child unattended” to: “Stay near and watch baby during use” is an improvement in safety. Consumers are more likely to understand a message directly instructing them on what to do to avoid the hazard. In a user study conducted for CPSC to gather caregivers’ perspectives on products in which infants may fall asleep (e.g., rockers, bouncers, swings, or stroller/carrier travel systems), also concluded that caregivers preferred clear and straight-to-the-point phrases; researchers concluded that the word “unattended” needed to be replaced with a clear and less ambiguous phrase, since many caregivers misinterpreted the words “unsupervised” or “unattended.” (Balci-Sinha, 2022 Tab A. *ESHF Staff’s Assessment of Revisions to ASTM F2167-22 Infant Bouncer Seats (16 C.F.R. Part 1229)*).

Also, consistent changes were made to the wording in the corresponding Figures, as follows: Figure.11 Fall Hazard Warnings; Figure.12 Suffocation Hazard Warnings; and in Figure. 13, Instruction Warnings Statements to reflect the current Ad-Hoc Recommendations.² Staff considers these changes to be an improvement to safety because the changes are consistent with revisions to language made to *Subsection 8.5.1.1 and 8.5.2.1*. and because they discourage care givers from using the product for sleep.

² ASTM Ad Hoc Wording Task Group (Ad Hoc TG) consists of members of various durable nursery product voluntary standards committees, including CPSC staff. The Ad Hoc TG’s purpose is to harmonize the wording of common sections (e.g., introduction, scope, protective components) and warning label requirements across durable infant and toddler product voluntary standards.

The following has been added to the Appendix:

X1.9 Subsection 8.5.2.1—Change in the form of an added statement to explain the non-relevance and removal of “*even if baby is sleeping*” from the Appendix Rationale in the new standard. Staff considers this a neutral change, because the phrase is no longer relevant since the product is not to be used for sleeping.

Staff’s Assessment of the Revised Standard

Under section 104(b)(4)(B) of the CPSIA, unless the Commission determines that ASTM’s revision to a voluntary standard that is referenced in a mandatory standard “does not improve the safety of the consumer product covered by the standard,” the revised voluntary standard becomes the new mandatory standard. Engineering Science Human Factors (ESHF) staff reviewed the changes made to the wording in 8.5.1 Fall Hazard Warnings and 8.5.2. Suffocation Hazard sections of the standard and concluded that the substantial change in the latest revision to ASTM F2167-22 provides consumers with a “clear and concise instructions for safe use of infant bouncer,” and thus, the change is an improvement to safety (Balci-Sinha, 2022 Tab A).

III. Conclusion

The new warning statement provides concise guidance to the caregiver that infant bouncer seats are not safe for sleep, and it provides guidance that is consistent with CPSC messaging about the importance of placing sleeping babies on firm, flat sleep surfaces, such as a crib or bassinet.

Effect of the Changes to the Voluntary Standard on Third Party Testing

The notice of requirements (NOR), as set forth in the final rule for infant bouncer seats, provides the criteria and process for the Commission’s acceptance of accreditation of third party conformity assessment bodies for testing to the requirements of frame child carriers in 16 C.F.R. part 1229 (which incorporated ASTM F2167-17). The NORs are listed in the Commission’s rule, “Requirements Pertaining to Third Party Conformity Assessment Bodies,” at 16 C.F.R. part 1112. Staff recommends that the Commission consider the existing accreditations that CPSC accepted for testing to the mandatory standard for infant bouncer seats to cover testing to the revised standard. The CPSC-accepted testing laboratories that have ASTM F2167-19 in their scope of accreditation are competent to conduct testing to the ASTM F2167-22. Therefore, none of the changes to the standard would impede a CPSC-accepted laboratory from being able to conduct testing to the revised standard. If the Commission accepts this recommendation, the existing NOR for this standard would remain in place, and CPSC-accepted, third party conformity assessment bodies who intend to test infant bouncer seats would be expected to update the scope of their accreditation, in the normal course of renewal, to reflect the revised standard. If the Commission approves the draft direct final rule, CPSC staff will notify all CPSC-accepted laboratories by e-mail and will provide links to the *Federal Register* notice to explain the changes to the standard and the effective date.

Effective Date

Section 104(b)(4)(B) of the CPSIA, provides that the revised standard will become effective 180 days after the date on which an organization notifies the Commission of the revision, unless the Commission notifies the organization, within 90 days of receiving the notification of the revision, that it has determined that the proposed revision does not improve the safety of a consumer product covered by the standard, or the Commission specifies a later effective date in the *Federal Register*. Under this time frame, ASTM F2167-22 will become the new mandatory standard for infant bouncer seats as of December 19, 2022, unless the Commission notifies ASTM by September 20, 2022, that it has determined that the proposed revision does not improve the safety of infant bouncer seats, or the Commission specifies a later effective date in the *Federal Register*.

IV. Recommendation

Staff assesses that the changes made are an improvement to safety because the new language clearly communicates to caregivers that infant bouncer seats are safe for sleep. It is consistent with CPSC messaging about the importance of placing babies for sleep in cribs, bassinets and similar sleep products.

Thus, staff recommends that the Commission allow ASTM F2167-22 to become the mandatory standard. Staff also recommends that the Commission issue a direct final rule to revise the incorporation by reference in 16 C.F.R. part 1229 to reflect the revised voluntary standard. Staff recommends that the Commission allow the revised standard to take effect on the statutory 180-day effective date of December 19, 2022. The revised standard will take effect then as the new mandatory standard unless the Commission notifies ASTM by September 20, 2022 or specifies a later date in the *Federal Register*.

**Tab A: ESHF Staff's Assessment of Revisions to
ASTM F2167-22 Infant Bouncer Seats (16 C.F.R.
Part 1229)**



United States
Consumer Product Safety Commission
 cpsc.gov | info@cpsc.gov | 800.638.2772

Memorandum

TO: Suad Wanna-Nakamura, PhD, Project Manager
 Division of Pharmacology and Physiology
 Assessment
 Directorate for Health Sciences

DATE: August 24, 2022

THROUGH: Mark Kumagai, Associate Executive Director
 Directorate for Engineering Sciences

FROM: Rana Balci-Sinha, PhD, Director
 Division of Human Factors
 Directorate for Engineering Sciences

SUBJECT: ESHF Staff's Assessment of Revisions to ASTM F2167-22 Infant Bouncer Seats (16 C.F.R. Part 1229)

I. Introduction

This memorandum provides the Directorate for Engineering Sciences, Division of Human Factors (ESHF) staff's assessment of the most recent revisions made to the marking and labeling requirements in ASTM F2167-22 Standard Consumer Safety Specification for Infant Bouncer Seats. The current mandatory standard codified in the Code of Federal Regulations (CFR) part 1229 incorporates by reference ASTM F2167-19.

II. Review of Substantive Change to ASTM F2167-22

Changes to the infant bouncer seat warning label language and staff's responses are described as follows:

1. Fall Hazard Warnings: Section 8.5.1 of the ASTM F2167-19 stated "ALWAYS use restraints and adjust to fit snugly, even if baby falls asleep." In ASTM F2167-22, this wording has changed to "ALWAYS use restraints and adjust to fit snugly." The same change also occurred in the Suffocation Hazards section of the label (section 8.5.2.1.)

The purpose of this change is to ensure that there are no references to sleep in the infant bouncer seat. Staff determines that this is an improvement to safety because infant bouncer seats should not be used for sleep; reference to sleep in the product's warning

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label gives an inaccurate message to consumers that, if the baby is restrained, then it may be safe for babies to sleep in the product. The message in the 2019 version of the standard is contradictory to the guidance provided by the American Academy of Pediatrics (AAP). AAP does not recommend sitting devices, such as car seats, strollers, swings, infant carriers, and infant slings to be used for routine sleep, particularly for infants younger than 4 months.³ Given that bouncers are another sitting device, the same message applies to infant bouncer seats.

2. Suffocation Hazards: Section 8.5.2.1 in ASTM F2167-19 stated: “Suffocation hazard: Babies have suffocated when bouncers tipped over on soft surfaces.” This language has been changed in ASTM F2167-22 to: “Suffocation hazard: Babies have suffocated when bouncers tipped over on soft surfaces and/or when bouncers have been used as a sleep product.”

Staff determines that this change is an improvement in safety because infant bouncer seats should not be used for sleep, and alerting consumers to the fact that using infant bouncer seats as a sleep product can lead to suffocation is critical information to dissuade consumers from using infant bouncer seats as sleep surfaces. Research shows that providing explicit information to consumers about consequences can increase the perception of injury severity and perceived hazard.⁴ A user study conducted for CPSC to gather caregivers’ perspectives on products in which infants may fall asleep, such as rockers, bouncers, swings, or stroller/carrier travel systems, also concluded that caregivers prefer clear and straight-to-the-point phrases.⁵

The AAP, according to their guidance on safe sleep that was updated in June 2022, recommends against the use of sitting devices, such as car seats, strollers, swings, infant carriers, and infant slings for routine sleep, particularly for infants younger than 4 months.⁶ Given that infant bouncer seats are another type of sitting device, the same message applies to infant bouncer seats.

3. Suffocation Hazards: Section 8.5.2.1 in ASTM F2167-19 stated: “NEVER leave baby unattended.” In ASTM F2167-22, this language has changed to: “Stay near and watch baby during use. This product is not safe for sleep or unsupervised use. If baby falls asleep, remove baby as soon as possible and place baby on a firm, flat sleep surface such as a crib or bassinet.”

³ American Academy of Pediatrics (2022). AAP Updates Safe Sleep Recommendations: Back is Best. <https://www.aap.org/en/news-room/news-releases/aap/2022/american-academy-of-pediatrics-updates-safe-sleep-recommendations-back-is-best/>

⁴ DeJoy, D. M. (1999). Motivation. In M. S. Wogalter, D. M. DeJoy & K. R. Laughery (Eds.), Warnings and risk communication. Philadelphia, PA: Taylor & Francis.

⁵ <https://cpsc.gov/s3fs-public/Refining-Sleep-Messaging-for-Seated-Non-Sleep-Products-Focus-Group-Study-4-15-22.pdf?VersionId=aEey8C2nwBfXGrmCEYcLr7QEXeqZMmg>

⁶ American Academy of Pediatrics (2022). AAP Updates Safe Sleep Recommendations: Back is Best. <https://www.aap.org/en/news-room/news-releases/aap/2022/american-academy-of-pediatrics-updates-safe-sleep-recommendations-back-is-best/>

- a. Staff assesses that the change from: “Never leave child unattended” To: “Stay near and watch baby during use” is an improvement in safety. The statement: “Never leave child unattended” is a double-negative that requires consumers to interpret what is meant by “unattended.”⁷ Furthermore, consumers are more likely to understand a message directly instructing them on what to do to avoid the hazard. In the user study referenced above, researchers concluded that the word “unattended” needed to be replaced with a clear and less ambiguous phrase, since many caregivers misinterpreted the words “unsupervised” or “unattended.”
- b. Staff determines that the addition of the new language stating: “This product is not safe for sleep or unsupervised use. If baby falls asleep, remove baby as soon as possible and place baby on a firm, flat sleep surface such as a crib or bassinet”: is an improvement in safety. The basis for this addition is the AAP’s guidance on safe sleep that states: “If your baby falls asleep in a car seat, stroller, swing, infant carrier or sling, you should move them to a firm sleep surface on their back as soon as possible.”⁸ The new language clearly states that the bouncer is not safe for sleep. It further directs that, in the case that baby falls asleep, caregivers should move the baby to a firm, flat sleep surface. The infant sleep products rule requires that any product marketed or intended for sleep must meet one or more of the federal safety standards for cribs, bassinets and cradles, play yards, or bedside sleepers.⁹ The new language provides tangible examples that consumers can refer to as a safe sleep surface, such as a crib and a bassinet. In addition, CPSC staff contracted for a study with focus groups and contextual interviews to gather caregivers’ perspectives regarding products in which infants may fall asleep and that the manufacturer asserts are not intended for infant sleep.¹⁰ Infant products that were included in this study were rockers, bouncers, swings, or stroller/carrier travel systems. This study sought to capture caregivers’ beliefs about the safety, utility, and risks of infants falling asleep in seated products, their reaction to labels designed to warn against unsupervised sleep, and their ability to discern how those labels influence caregiver behavior. Caregivers evaluated specific language stating: “If baby falls asleep, move baby as soon as possible to a firm, flat sleep surface such as a crib or bassinet.” Overall, the phrase was well received and met their recommendation of wanting clear guidance of what to do if their child falls asleep in one of these products.

⁷ Smith, T. P. (2018). Human Factors Staff Response to NPR Comments, and Revised Warning Requirements for High Chairs (CPSIA Section 104). CPSC Memorandum to Stefanie C. Marques, Project Manager, High Chairs Rulemaking, U.S. Consumer Product Safety Commission, Rockville, MD. Accessed at <https://cpsc.gov/s3fs-public/Final%20Rule%20-%20Safety%20Standard%20for%20High%20Chairs%20-%20May%2030%202018.pdf?mBuoGQbhpGcMFyO6it0gNeBOOFZrTA9>

⁸ Moon, R. (2022). How to Keep Your Sleeping Baby Safe: AAP Policy Explained. <https://www.healthychildren.org/English/ages-stages/baby/sleep/Pages/A-Parents-Guide-to-Safe-Sleep.aspx#:~:text=If%20your%20baby%20falls%20asleep,specifically%20marketed%20for%20infant%20sleep.>

⁹ CPSC (2022). CPSC’s New Federal Infant Sleep Products Safety Standard Takes Effect. <https://www.cpsc.gov/Newsroom/News-Releases/2022/CPSCs-New-Federal-Infant-Sleep-Products-Safety-Standard-Takes-Effect>

¹⁰ <https://cpsc.gov/s3fs-public/Refining-Sleep-Messaging-for-Seated-Non-Sleep-Products-Focus-Group-Study-4-15-22.pdf?VersionId=aEey8C2nwBfXGrMCEYclR7QEXeqZMmq.>

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III. Conclusion

ESHF staff concludes that the wording changes to sections 8.5.1 Fall Hazard Warnings and 8.5.2 Suffocation Hazard in ASTM F167-22 are an improvement to safety. The removal of “even if baby falls asleep,” the plain explanation of consequences of using an infant bouncer seat as a sleep surface, clear instruction to stay near and watch children during use, the specific guidance that the product is “not safe for sleep,” and the explicit directions to move the infant to a safe sleep product such as a crib or bassinet, all provide consumers with clear and concise instructions for safe use of an infant bouncer.