



[Billing Code 6355-01-P]

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1216 and 1223

Safety Standards for Infant Walkers and Infant Swings

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 walkers and infant swings. These standards incorporated by reference the ASTM voluntary standards associated with those products, with some modifications. In August 2011, Congress enacted legislation which sets forth a process for updating standards that the Commission has issued under the authority of the CPSIA. In accordance with that process, the CPSC is publishing this direct final rule, revising the CPSC's standards for infant walkers and infant swings, to incorporate by reference more recent versions of the applicable ASTM standards.

DATES: The rule is effective on October 7, 2013, 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 October 7, 2013.

ADDRESSES: You may submit comments, identified by Docket No. CPSC-2013- 0025, by any of the following methods:

Submit electronic comments in the following way:

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

Submit written submissions in the following way:

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 walkers standard, contact Carolyn Manley, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814-4408; telephone (301) 504-7607; cmanley@cpsc.gov. For information related to the infant swings standard, contact Keysha L. Watson, Office of Compliance and Field

Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814-4408; telephone (301) 504-6820; kwatson@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

The Danny Keysar Child Product Safety Notification Act. The Consumer Product Safety Improvement Act of 2008 (CPSIA, Pub. Law 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 walkers and infant swings. 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.

P.L. 112-28. On August 12, 2011, Congress enacted P.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 and infant or toddler standards when the voluntary standard upon which the CPSC standard was based is changed. 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.

P.L. 112-28, section 3.

Notification and Review of Revisions. On April 10, 2013, ASTM notified CPSC of ASTM's approval and publication of revisions to ASTM F977, Standard Consumer Safety Specification for Infant Walkers and ASTM F2088, Standard Consumer Safety Specification for Infant Swings. In its notification, ASTM stated that revisions to these standards have occurred since the Commission adopted the earlier versions of the standards as CPSC mandatory standards.

The Commission has reviewed the revisions. As explained below, ASTM's revisions to its standards for infant walkers and infant swings make these revised ASTM standards nearly the same as the CPSC-mandated standards for these products. In accordance with P.L. 112-28, the revised standard shall be considered a consumer product safety rule unless the Commission notifies ASTM that these revisions do not improve the safety of these consumer products and that the Commission is retaining the existing standard. Because the Commission declines to make such a notification to ASTM, we are publishing this direct final rule, revising the incorporation by reference included in each of these rules so that they will accurately reflect the revised version of the relevant ASTM standards.

B. Revisions to the Particular ASTM Standards

1. Infant Walkers

On June 21, 2010, the Commission published a final rule issuing a safety standard for infant walkers that incorporated by reference ASTM F977-07, *Standard Consumer Specification for Infant Walkers*, with 22 modifications to make the standard more stringent. 75 FR 35266.

ASTM notified CPSC that the current version of the ASTM standard for infant walkers is ASTM F977-12, which was approved on May 1, 2012, and published in May 2012. There have been four revisions to ASTM F977 since publication of ASTM F977-07:

- ASTM F977-09, approved on November 1, 2009, and published in December 2009;
- ASTM F977-11a, approved on September 26, 2011, and also published in September 2011;
- ASTM F977-11b, approved on December 1, 2011, and published in January 2012; and
- ASTM F977-12 approved on May 1, 2012 and also published in May 2012.

The first two revisions referenced above contain changes that matched closely or identically the various modifications included in 16 CFR part 1216. The latter two revisions of ASTM F977 contain changes to the standard that were not included in 16 CFR part 1216.

As revised, ASTM F977-12 differs from 16 CFR part 1216 in the following ways:

- ASTM F977-12 includes a revised forward stability test procedure that is needed for testing certain style walkers;

- Two references to federal regulations that are no longer valid were removed from ASTM F977-12, as well as a requirement that was written in the standard twice;
- A few sections in ASTM F977-12 have modified language that corrects errors or adds clarity to the section; and
- Other minor editorial changes were made throughout the standard, as needed.

Most of these changes are editorial in nature. The change to the forward stability test procedure adds a new step to the test procedure that enables test laboratories to test certain styles of walkers more effectively. This additional step requires the test laboratory to exchange the specified aluminum stop with one that is “suitable” to complete the test. Because these changes make the revised ASTM standard nearly the same as the CPSC mandatory standard for walkers, the Commission declines to notify ASTM that it is retaining the existing standard and therefore, in accordance with P.L. 112-28, the revised ASTM standard for infant walkers becomes the new CPSC standard 180 days from the date the CPSC received notification of the revision from ASTM. This rule revises the incorporation by reference at 16 CFR part 1216, to reference the revised ASTM standard.

2. Infant Swings

On November 7, 2012, the Commission published a final rule issuing a standard for infant swings that incorporated by reference ASTM F2088-12a, with two modifications to make the standard more stringent. 77 FR 66703.

ASTM notified CPSC that the current version of the ASTM standard for infant swings is ASTM F2088-13, which was approved on January 15, 2013, and published in February 2013. ASTM F2088-13 is the first revision since 16 CFR part 1223 was

published. The changes to the ASTM standard were made specifically to bring the standard into accord with CPSC's regulation. These changes were made to address three sections of the standard:

- Mobile Attachment Strength (7.12);
- Warning labels (8.3.1); and
- Instructional Literature (9.2).

The changes made to the mobile attachment strength section of the standard update the testing requirements to bring testing into accordance with the CPSC regulation. The other changes to this section are editorial and include removing references to the previous test fixture and renumbering the figures to place the figure of the new Hinged Weight Gage – Infant before the other test figures. ASTM F2088-13 revises the warning label requirements that were in ASTM F 2088-12a to bring the standard into accord with CPSC's regulation. There are two differences between these changes and CPSC's regulation. First, ASTM switched the order of the first two warnings. The CPSC regulation places the adjustable seat recline warning before the fall and strangulation warning. Second, in the warning about the adjustable seat recline, the CPSC regulation includes the statement: "Young infants have limited head and neck control." To reduce the amount of information on the warning label, ASTM removed that statement from the warning but left it in the instructional literature. The statement was intended to provide more clarification; however, the same information is implied by other references to head control in the warning, so limiting that statement to the instructional literature as ASTM has done in F2088-13 is acceptable.

Because the Commission declines to notify ASTM that it is retaining the existing standard, in accordance with P.L. 112-28, the revised ASTM standard for infant swings becomes the new CPSC standard 180 days from the date we received notification of the revision from ASTM. This rule revises the incorporation by reference at 16 CFR part 1223 to reference the revised ASTM standard.

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, notice and comment is not necessary. P.L. 112-128 provides for updating of durable infant or toddler product standards that the Commission issues under the Danny Keysar Child Product Safety Notification Act, if ASTM revises the underlying voluntary standard and the Commission does not determine that the revision “does not improve the safety of the consumer product covered by the standard.”

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 P.L. 112-28. Thus, the Commission believes that issuance of a rule revising the incorporation by reference in these circumstances is appropriate. However, little would be gained by allowing public comment because P.L. 112-28 requires that the CPSC’s

mandatory standard must change to the revised voluntary standard (unless the Commission has made the requisite finding concerning safety).

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).

Thus, the Commission is publishing this rule as a direct final rule because we do not expect any significant adverse comments. Revising the references to the ASTM standards reflects what occurs by operation of law under P.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 October 7, 2013. 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 P.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 October 7, 2013.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that agencies review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603 and 604. The changes to the incorporation by reference in the infant walkers and infant swings standards will not result in any substantive changes to the standards. Therefore, this 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

Both the infant walkers standard and the infant swings standard 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 walkers and infants swings are children's products, they must be tested by a third party conformity assessment body whose accreditation has been accepted by the Commission. They 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 notices of requirements for accreditation of third party conformity assessment bodies for testing infant walkers (75 FR 35282 (June 21, 2010)) and infant swings (78 FR 15836 (March 12, 2013)). The notices of requirements provided the criteria and process for our acceptance of accreditation of third party conformity assessment bodies for testing infant walkers to 16 CFR part 1216 (which incorporated ASTM F977-07 with modifications) and for testing infant swings to 16 CFR part 1223 (which incorporated ASTM F2088-12a with modifications). This rule revises the references to the standards that are incorporated by reference in the CPSC's infant walkers and infant swings standards.

1. Infant Walkers

As discussed previously, the revised ASTM F977-12 standard for infant walkers is nearly the same as the infant walkers standard that the Commission mandated, with one exception regarding an alternative test method. Section 7.3.2.4 of ASTM F977-12 has added a new alternative test method concerning the forward stability test procedure that would affect how a third party assessment body would test certain styles of walkers. The revised test procedure was added to the ASTM standard because testing laboratories were having difficulty completing the forward stability test on certain styles of walkers. The test method requires that the walkers be manually tipped over. This is accomplished by blocking the walker up against a specified aluminum stop and then applying a horizontal force to the walker until it tips over. The amount of force required to tip the walker over determines whether the walker passes or fails the requirement. With certain styles of walkers, the aluminum stop that is specified in the standard is ineffective, and the walker will not tip over, but rather, the wheels lift and “jump” the stop. Therefore, ASTM added an additional step in the test procedure for walkers that will not tip over during the procedure specified in section 7.3.2.4 of the revised standard. This additional step requires the third party conformity assessment body to exchange the specified aluminum stop with one that is “suitable” to complete the test.

Thus, revising the infant walkers reference will necessitate, in limited circumstances, one change in the way that third party conformity assessment bodies are testing walkers for compliance to the CPSC standard. However, the Commission considers the existing accreditations that the Commission has accepted for testing to the infant walkers standard to continue to be acceptable because the original test method for

ASTM F977-07 remains unchanged in ASTM F977-12 for most walkers that undergo the test. The existing NOR remains in place for ASTM F977, and CPSC-accepted third party conformity assessment bodies are expected to update the scope of their accreditation to reflect ASTM F977-12 in the normal course of renewing their accreditation. Third party conformity assessment bodies that are currently accepted by the CPSC to test for ASTM F977-07 may conduct testing for the alternative test method in ASTM F977-12 before having updated their scope of accreditation under the normal renewal process.

2. Infant Swings

As discussed previously, the revised standard for infant swings, ASTM F2088-13, is nearly the same as the infant swings standard that the Commission mandated. The principal difference is in requirements for the warning label. This would not necessitate any change in the way that a test laboratory would test the product. Thus, revising the reference to specify ASTM F2088-13 will not necessitate any change in the way that third party conformity assessment bodies are testing infant swings for compliance to CPSC the standard. Therefore, the NOR does not require modification, and the Commission considers the existing accreditations that the Commission has accepted for testing to the ASTM F2088-12a infant swings standard also to cover testing to the revised standard, ASTM F2088-13.

List of Subjects in 16 CFR Parts 1216 and 1223

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 1216 – SAFETY STANDARD FOR INFANT WALKERS

1. The authority citation for part 1216 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).

2. Revise § 1216.2 to read as follows:

§ 1216.2 Requirements for infant walkers.

Each infant walker shall comply with all applicable provisions of ASTM F977-12, Standard Consumer Safety Specification for Infant Walkers, approved on May 1, 2012. 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 1223 – SAFETY STANDARD FOR INFANT SWINGS

3. The authority citation for part 1223 is revised to read as follows:

Authority: The Consumer Product Safety Improvement Act of 2008, Pub. Law 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 § 1223.2 to read as follows:

§ 1223.2 Requirements for infant swings.

Each infant swing shall comply with all applicable provisions of ASTM F2088-13, Standard Consumer Safety Specification for Infant Swings, approved on January 15, 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: June 19, 2013

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

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