Billing Code 6355-01-P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1112 and 1237

[CPSC Docket No. 2017-0023]

Safety Standard for Booster Seats

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) requires the United States Consumer Product Safety Commission (Commission or CPSC) to promulgate consumer product safety standards for durable infant or toddler products. These standards are to be "substantially the same as" applicable voluntary standards, or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. The Commission is proposing a safety standard for booster seats in response to the direction under section 104(b) of the CPSIA. In addition, the Commission is proposing an amendment to include booster seats in the list of notice of requirements (NORs) issued by the Commission.

DATES: Submit comments by [INSERT DATE 75 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**]**. Submit comments regarding information collection by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments related to the Paperwork Reduction Act aspects of the marking, labeling, and instructional literature requirements of the proposed mandatory standard for booster seats should be directed to the Office of Information and Regulatory Affairs, the Office of

Management and Budget, Attn: CPSC Desk Officer, FAX: 202-395-6974, or e-mailed to oira_submission@omb.eop.gov.

Other comments, identified by Docket No. CPSC-2017-0023, may be submitted electronically or in writing:

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

Written Submissions: Submit written submissions by mail/hand delivery/courier 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 proposed rulemaking. 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 that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: http://www.regulations.gov, and insert the docket number, CPSC-2017-0023, into the "Search" box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Celestine T. Kish, Project Manager, Directorate for Engineering Sciences, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: (301) 987-2547; email: *ckish@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Statutory Authority

The CPSIA was enacted on August 14, 2008. Section 104(b) of the CPSIA requires the Commission to: (1) examine and assess the effectiveness of voluntary consumer product safety standards for durable infant or toddler products, in consultation with representatives of consumer groups, juvenile product manufacturers, and independent child product engineers and experts; and (2) promulgate consumer product safety standards for durable infant or toddler products. Standards issued under section 104 are to be "substantially the same as" the applicable voluntary standards, or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product.

Section 104(f)(1) of the CPSIA defines the term "durable infant or toddler product" as "a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years." Section 104(f)(2)(C) of the CPSIA specifically identifies "booster chairs" as a durable infant or toddler product.

Pursuant to section 104(b)(1)(A) of the CPSIA, the Commission consulted with manufacturers, retailers, trade organizations, laboratories, consumer advocacy groups, consultants, and members of the public in the development of this notice of proposed rulemaking (NPR), largely through the ASTM process.

Based on a briefing package prepared by CPSC staff, the proposed rule would incorporate by reference the most recent booster seat voluntary standard developed by ASTM

International, ASTM F2640-17$^{\varepsilon 1}$, *Standard Consumer Safety Specification for Booster Seats*, without modification. [https://cpsc.gov/s3fs-public/Notice%20of%20Proposed%20Rulemaking%20-%20Booster%20Seats%20-%20May%203%202017.pdf?97pmoM5UAGyQBBPFtTPyvFu_RjCZMAwL] If finalized, the ASTM standard would be a mandatory safety rule under the Consumer Product Safety Act (CPSA).

The testing and certification requirements of section 14(a) of the CPSA apply to the standards promulgated under section 104 of the CPSIA. Section 14(a)(3) of the CPSA requires the Commission to publish an NOR for the accreditation of third party conformity assessment bodies (test laboratories) to assess conformity with a children's product safety rule to which a children's product is subject. The proposed rule for booster seats, if issued as a final rule, would be a children's product safety rule that requires the issuance of an NOR. To meet the requirement that the Commission issue an NOR for the booster seats standard, this NPR also proposes to amend 16 CFR part 1112 to include 16 CFR part 1237, the CFR section where the booster seat standard will be codified if the standard becomes final.

II. Product Information

A. Definition of "Booster Seat"

ASTM F2640-17$^{\varepsilon 1}$ defines a "booster seat" as "a juvenile chair, which is placed on an adult chair to elevate a child to standard dining table height. The booster seat is made for the purpose of containing a child, up to 5 years of age, and normally for the purposes of feeding or eating. A booster seat may be height adjustable and include a reclined position." Booster seats may be constructed from a wide variety of materials, including wood, plastic, fabric, metal, and/or foam. Most booster seats, notably those intended for home use, have removable trays,

allowing a table to be used as an alternative eating surface. Some booster seats are intended to double as floor seats for toddlers, and others are high chair/booster seat combination products. The ASTM standard covers combination products when they are in their booster seat configuration.

Several suppliers produce booster seats that are designed specifically for use in restaurants. These suppliers sell their "food-service" booster seats directly to restaurants or through restaurant supply companies; however, consumers may purchase these products directly, for example online through third parties such as Amazon.com. Consequently, these food-service booster seats may also be found in homes. Furthermore, consumers use these food-service booster seats in establishments open to the public. ASTM F2640-17 $^{\varepsilon 1}$ broadly defines booster seats as "a juvenile chair, which is placed on an adult chair to elevate a child to standard dining table height." There is no exclusion for food-service booster seats and ASTM subcommittee members have stated in several subcommittee meetings that food-service booster seats are included in the standard.

The standard does *not* cover car booster seats, which are also sometimes referred to as "booster seats."

B. Booster Seat Means of Attachment to Adult Chairs

Currently, booster seats use a variety of methods to secure the booster on an adult chair; most employ a method of attachment, such as straps or suction, to attach to an adult chair. However, a few booster seats rely on the occupant's weight (along with anti-skid bottoms or grip feet to minimize slippage by means of friction) to secure the booster seat onto an adult chair. As discussed below in section VI.A., not all methods of securing a booster seat to an adult chair comply with the attachment requirements in ASTM F2640-17$^{\varepsilon 1}$.

III. Incident Data

The Commission is aware of a total of 867 incidents (2 fatal, 865 nonfatal) related to booster seats, reported to have occurred between January 1, 2008 and September 30, 2016. Information on 83 percent of these incidents was based on retailer and manufacturer reports submitted through the CPSC's "Retailer Reporting Program." Various sources, such as hotlines, Internet reports, newspaper clippings, medical examiners, and other state and local authorities provided the CPSC with the remaining incident reports. Because reporting is ongoing, the number of reported fatalities, nonfatal injuries, and non-injury incidents may change in the future.

A. Fatalities

CPSC has reports of two fatalities associated with the use of a booster seat:

- In one incident, a 22-month-old female, sitting on a booster seat attached to an adult chair, pushed off from the table and tipped the adult chair backwards into a glass panel of a china cabinet behind her. The cause of death was listed as "exsanguination due to hemorrhage from incised wound."
- In the other incident, a 4-year-old male fell from a booster seat to the floor; he seemed uninjured at the time, but later that evening when riding his bike, the child fell, became unresponsive, and later died. The cause of death was multiple blunt force trauma.

B. Nonfatalities

CPSC has reports of 146 booster seat nonfatal injury incidents occurring between January 1, 2008 and September 30, 2016. Among the incidents with age information available, a

majority of the incidents involved children 18 months and under. The severity of the injury types among the 146 reported injuries were as follows:

- Four children required a hospital admission. The injuries were skull fractures, concussions, and other head injuries.
- Another 22 children were treated and released from a hospital emergency department (ED) for injuries resulting mostly from falls.
- The remaining incidents primarily involved contusions, abrasions, and lacerations, due to falls or entrapment of limbs/extremities.

The remaining 719 non-injury incident reports specified that no injury had occurred or provided no information about any injury. However, many of the descriptions indicated the potential for a serious injury or even death.

C. Hazard Pattern Identification

CPSC staff considered all 867 reported incidents to identify hazard patterns associated with booster seats; subsequently, staff considered the hazard patterns when reviewing the adequacy of ASTM F2640-17$^{\varepsilon 1}$. CPSC staff identified the following hazard patterns associated with booster seats:

1. **Restraint/Attachment Problems** (37%): 317 incidents involved the mechanism for attaching a booster seat to an adult chair, or the restraint system that contains the child within the booster seat. Issues with the attachment mechanism included anchor buckles/clasps/straps breaking, tearing, fraying, detaching or releasing. Restraint-system problems included: buckles/prongs breaking, jamming, releasing too easily, or separating from straps; straps tearing or fraying, pinching, or coming undone; and general

inadequacy or ineffectiveness of restraints in containing the child in place. In 18 incident reports, it was not clear from the report if the buckle or strap referred to in the report meant the restraint or the attachment system. In eight of the incident reports, both systems were reported to have failed. Thirty-seven injuries are included in this category, of which seven were treated at a hospital ED.

2. **Seat-Related Issues** (29%): 254 incidents involved seat-related issues. These incidents included failure of the lock/latch that controls the seat-recline function; seat pads tearing, cracking, and/or peeling; the seat back detaching altogether; seat height adjustment lock/latch failure; and seat detachment from the base available for certain models. Twenty-one injuries are included in this category, two resulting in hospitalizations and five of which were ED-treated injuries.
3. **Tray-Related Issues** (20%): 171 incidents involved issues relating to booster seat trays. These incidents included tray paint finish peeling off, trays failing to lock/stay locked, trays with sharp protrusions on the underside, trays too tight/difficult to release, and trays pinching fingers. These incidents also included complaints about broken toy-accessories, which are usually attached to the tray (or tray-insert). Thirty-six injuries are included in this category, including one that required ED treatment.
4. **Design Problems** (4%): 33 incidents involved a potential entrapment hazard due to the design of the booster seat. Most of these incidents involved limbs, fingers, and toes entrapped in spaces/openings between the armrest and seat

back/tray, between passive crotch restraint bar and seat/tray, between tray inserts, or in toy accessories. Fifteen injuries were included in this category, two requiring ED treatment.

5. **Stability-Related Issues** (4%): 31 incidents involved issues of booster seat stability. Most of these incidents (27 of 31) concerned the adult chair to which the booster seat was attached tipping back or over. Some of these incidents resulted from the child pushing back from the table or counter. Twenty-two injuries (including two hospitalizations and five ED-treated injuries) and one fatality are included in this category.
6. **Armrest Problems** (3%): 24 incidents involved booster seat armrests cracking or breaking. In a few cases, the armrest reportedly arrived broken inside the booster seat packaging. One injury is included in this category.
7. **Miscellaneous Product Issues** (2%): 16 miscellaneous incidents involved a variety of product-related issues, including unclear assembly instructions, poor quality construction, odor, rough surface, breakage, or loose hardware at unspecified sites. Nine injuries were included in this category, including two ED-treated injuries.
8. **Combination of Multiple Issues** (2%): 17 incidents involved a combination of the above-listed product hazards. Four injuries were included in this category.
9. **Unknown Issues** (< 0.5%): Four incidents involved unknown issues. In these incidents, insufficient information was available for CPSC staff to determine how the incidents occurred. In one incident in this category, a

fatality, there were confounding factors reported that likely contributed to the death. One other injury was reported in this category.

D. Product Recalls

Compliance staff reviewed recalls of booster seats that occurred from January 1, 2008 to September 30, 2016. During that time, there was one consumer-level recall involving booster seats. The recall was conducted to resolve a fall hazard caused when the stitching on the booster seat's restraint straps loosened, allowing the straps to separate from the seat and the child to fall out of the seat.

IV. International Standards for Booster Seats

CPSC staff identified one international standard—BS EN16120 Child Use and Care Articles – Chair Mounted Seat—intended for a similar product category. EN16120 addresses products for a more narrow age range of children (up to 36 months); whereas, F2640-17$^{\varepsilon 1}$ includes products intended for children up to 5 years of age. Some individual requirements in the EN16120 standard are more stringent than ASTM F2640-17$^{\varepsilon 1}$. For example, EN16120 contains requirements for head entrapment, lateral protection, surface chemicals, cords/ribbons, material shrinkage, packaging film, and monofilament threads. Conversely, some individual requirements in F2640-17$^{\varepsilon 1}$ are more stringent than those found in EN 16120; ASTM F2640-17$^{\varepsilon 1}$ includes requirements for tray performance and toy accessories. CPSC staff believes that the current ASTM standard, ASTM F2640-17$^{\varepsilon 1}$, is the most comprehensive of the standards to address the identified product hazards.

V. Voluntary Standard–ASTM F2640

A. History of ASTM F2640

The voluntary standard for booster seats was first approved and published in 2007, as ASTM F2640-07, *Standard Consumer Safety Specification for Booster Seats*. ASTM has revised the voluntary standard nine times since then. The current version of the standard, ASTM F2640-17$^{\varepsilon 1}$ was approved on March 01, 2017 and published in March 2017.

B. Description of the Current Voluntary Standard–ASTM F3118-17$^{\varepsilon 1}$

ASTM F2640-17$^{\varepsilon 1}$ includes the following key provisions: scope, terminology, general requirements, performance requirements, test methods, marking and labeling, and instructional literature.

Scope. This section states the scope of the standard, detailing what constitutes a booster seat. As stated in section II.A. of this preamble, the Scope section describes a booster seat as "a juvenile chair, which is placed on an adult chair to elevate a child to standard dining table height." The scope section further specifies appropriate ages for children using a booster seat, stating that a "booster seat is made for the purpose of containing a child, up to 5 years of age, and normally for the purposes of feeding or eating."

Terminology. This section provides definitions of terms specific to this standard.

General Requirements. This section addresses numerous hazards with several general requirements; most are also found in the other ASTM juvenile product standards. The general requirements included in this section are:

- Sharp edges or points;
- Small parts;
- Wood parts;

- Lead in paint;
- Scissoring, shearing, and pinching;
- Openings;
- Exposed coil springs;
- Protective components;
- Labeling; and
- Toys.

Performance Requirements and Test Methods. These sections contain performance requirements specific to booster seats (discussed here) and the test methods that must be used to assess conformity with such requirements.

- **Tray impact test**: This test assesses the tray's resistance to breaking into small pieces or creating sharp points/edges when dropped from a specified height.
- **Tray engagement test**: This test assesses the tray's ability to remain engaged to the booster seat when subjected to a specified force horizontally and vertically.
- **Static load test**: This test assesses whether the booster seat can support its maximum recommended weight, by gradually applying a static load on the center of the seating surface for a specified amount of time.
- **Restraint system test**: This test assesses whether the restraint system can secure a child in the manufacturer's recommended-use positions.
- **Attachment test**: This test specifies that a booster seat must have a means of attaching a booster seat to an adult chair and assesses the booster seat's ability to remain fastened to the adult chair when force is applied.

- **Structural integrity**: This requirement assesses the durability of the locking/latching devices to prevent folding or adjustment of the booster seat.
- **Maximum booster seat dimensions**: This requirement assesses how large a booster seat can be in relation to the adult chair dimensions specified on the booster seat's packaging.

Marking and Labeling. This section contains various requirements relating to warnings, labeling, and required markings for booster seats. This section prescribes various substance, format, and prominence requirements for such information.

Instructional Literature. This section requires that easily readable and understandable instructions be provided with booster seats. Additionally, the section contains requirements relating to instructional literature contents and format.

VI. Assessment of the Voluntary Standard ASTM F2640-17$^{\varepsilon 1}$

CPSC staff identified 867 incidents (including two fatalities) related to the use of booster seats. CPSC staff examined the incident data, identified hazard patterns in the data, and worked with ASTM to develop the performance requirements in ASTM F2640. The incident data and identified hazard patterns served as the basis for the development of ASTM F2640-17 $^{\varepsilon 1}$ by ASTM with CPSC staff support throughout the process.

CPSC believes that the current voluntary standard, ASTM F2640-17 $^{\varepsilon 1}$, addresses the primary hazard patterns identified in the incident data. The following section discusses how each of the identified product-related issues or hazard patterns listed in section III.C. of this preamble is addressed by the current voluntary standard:

A. Restraint/Attachment Problems

Restraint system and attachment problems included buckles/prongs breaking, jamming, releasing too easily, or separating from straps; straps tearing or fraying, pinching, or coming

undone; and inadequacy or ineffectiveness of restraints in containing the child in place, Similarly, complaints about the seat attachment system involved anchor buckles/clasps/straps breaking, tearing, fraying, detaching, or releasing. CPSC evaluated the attachment and restraint system tests in ASTM F2640-17 $^{\varepsilon 1}$, and believes that these tests adequately address this hazard.

Section 6.5 of ASTM F2640-17 $^{\varepsilon 1}$ requires that a booster seat must have a means of "attaching" to an adult chair, and be able to withstand a specified force without becoming detached from the adult chair. Booster seats may employ several methods to secure to an adult chair, including straps, suction, and anti-skid bottoms or grip feet that minimize slippage on the chair by means of friction. However, because "grip feet" and "friction bottoms" do not actually *attach (i.e.,* fasten) the booster seat to an adult chair, a majority of ASTM subcommittee members, as well as CPSC staff, does not consider these means of *securing* booster seats to an adult chair to be a means of *attachment* that Section 6.5 requires. Conversely, because suction physically fastens the booster seat to an adult chair, CPSC staff and a majority of ASTM subcommittee members consider suction to be a means of attachment under Section 6.5 of the current ASTM standard; nevertheless, any booster seat using suction as a means of attachment must still pass the attachment test to be compliant.

Thus, promulgating the requirements of ASTM F2640-17$^{\varepsilon 1}$ as a mandatory standard might result in the following: (1) booster seats that currently use grip feet/friction bottoms to secure the booster seat to the surface upon which it sits (disproportionately used on food-service booster seats) would not comply with the mandatory standard due to their lack of a means of attachment; and (2) booster seats that currently use suction as a means of attachment may not pass the mandatory standard's attachment test. CPSC requests comments on the effect of ASTM F2640-17 $^{\varepsilon 1}$'s attachment requirements becoming mandatory on booster seats that currently use

grip feet/friction bottoms to secure the booster to the surface upon which it sits. Furthermore, CPSC requests comments on whether a suction attachment method is capable of passing ASTM F2640-17$^{\varepsilon 1}$'s attachment test.

B. **Seat-Related Issues**

Seat-related issues included failure of the lock/latch that controls the seat-recline function; seat pads tearing, cracking, and/or peeling; seat backs detaching altogether; seat height adjustment lock/latch failures; and seat detachment from the base that is available for certain models. CPSC evaluated the static load and dynamic booster seat tests in ASTM F2640-17 $^{\varepsilon 1}$, and believes that these tests adequately address this hazard.

C. **Tray-Related Issues**

Tray-related issues included trays with paint finish peeling off, trays failing to lock/stay locked, trays with sharp protrusions on the underside, trays that were too tight/difficult to release, and trays pinching fingers. Upon evaluation, CPSC believes that the general requirements section of F2640-17 $^{\varepsilon 1}$ adequately addresses peeling paint, sharp protrusions, and pinching hazards, and the standard's tray engagement test adequately address the tray locking failures.

D. **Design Problems**

Booster seat design problems resulted in limbs, fingers, and toes entrapped in spaces/openings between the armrest and seat back/tray, between passive crotch restraint bar and seat/tray, between tray inserts, or in toy accessories. CPSC evaluated the general requirements of ASTM 2640-17 $^{\varepsilon 1}$ (namely requirements relating to scissoring, shearing, and pinching, openings, and toys) and believes that the ASTM standard adequately addresses this hazard.

E. **Stability-Related Issues**

Stability-related incidents included instances where the adult chair to which the booster seat was attached, tipped back or tipped over. Addressing the stability of the booster seat while attached to an adult chair is difficult in a standard for booster seats because stability is dependent on the adult chair. The ASTM booster seat subcommittee and CPSC staff worked diligently to find an effective requirement to adequately address stability without specifying requirements for the adult chair. Although ASTM F2640-17$^{\varepsilon 1}$ does not contain a performance requirement to address this hazard, it does contain a labeling requirement, whereby booster seats must contain a cautionary statement: "Never allow a child to push away from table." Moreover, ASTM F2640-17$^{\varepsilon 1}$ requires a booster seat to identify on the booster seat packaging the size of adult chair on which the booster seat can fit, thereby allowing consumers to make a more informed purchasing choice.

F. Armrest Problems

Armrest problems included booster seat armrests cracking, and in a few cases, the armrest arriving to the consumer broken in the packaging. CPSC evaluated the static and dynamic load tests contained in ASTM F2640-17$^{\varepsilon 1}$, and believes that those tests adequately address armrest-related hazards.

G. Miscellaneous Product-Related Issues

Miscellaneous product-related issues included unclear assembly instructions, poor quality construction, odor, rough surface, breakage, or loose hardware at unspecified sites. CPSC evaluated the general requirements section, as well as the instructional literature requirements of ASTM F2640-17$^{\varepsilon 1}$, and believes that those requirements adequately address this hazard.

VII. Proposed Standard for Booster Seats

As discussed in the previous section, the Commission concludes that ASTM F2640-17$^{\varepsilon 1}$ adequately addresses the hazards associated with booster seats. Thus, the Commission proposes to incorporate by reference ASTM F2640-17$^{\varepsilon 1}$, without modification, into the final rule.

VIII. Proposed Amendment to 16 CFR part 1112 to Include NOR for Booster Seats

The CPSA establishes certain requirements for product certification and testing. 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, must be certified as complying with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). Certification of children's products subject to a children's product safety rule must be based on testing conducted by a CPSC-accepted third party conformity assessment body. *Id*. 2063(a)(2). The Commission must publish an NOR for the accreditation of third party conformity assessment bodies to assess conformity with a children's product safety rule to which a children's product is subject. *Id.* 2063(a)(3). Thus, the proposed rule for 16 CFR part 1237, *Standard Consumer Safety Specification for Booster Seats*, if issued as a final rule, would be a children's product safety rule that requires the issuance of an NOR.

The Commission published a final rule, *Requirements Pertaining to Third Party Conformity Assessment Bodies*, 78 FR 15836 (March 12, 2013), codified at 16 CFR part 1112 (part 1112) and effective on June 10, 2013, which establishes requirements for accreditation of third party conformity assessment bodies to test for conformity with a children's product safety rule in accordance with section 14(a)(2) of the CPSA. Part 1112 also codifies all of the NORs issued previously by the Commission.

All new NORs for new children's product safety rules, such as the booster seats standard, require an amendment to part 1112. To meet the requirement that the Commission issue an NOR

for the booster seats standard, as part of this NPR, the Commission proposes to amend the existing rule that codifies the list of all NORs issued by the Commission to add booster seats to the list of children's product safety rules for which the CPSC has issued an NOR.

Test laboratories applying for acceptance as a CPSC-accepted third party conformity assessment body to test to the new standard for booster seats would be required to meet the third party conformity assessment body accreditation requirements in part 1112. When a laboratory meets the requirements as a CPSC-accepted third party conformity assessment body, the laboratory can apply to the CPSC to have 16 CFR part 1237, *Standard Consumer Safety Specification for Booster Seats*, included in the laboratory's scope of accreditation of CPSC safety rules listed for the laboratory on the CPSC website at: www.cpsc.gov/labsearch.

Incorporation by Reference

The Commission proposes to incorporate by reference ASTM F2640-17$^{\varepsilon 1}$, without modification. The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. For a proposed rule, agencies must discuss in the preamble to the NPR ways that the materials the agency proposes to incorporate by reference are reasonably available to interested persons or how the agency worked to make the materials reasonably available. In addition, the preamble to the proposed rule must summarize the material. 1 CFR 51.5(a).

In accordance with the OFR's requirements, section V.B. of this preamble summarizes the provisions of ASTM F2640-17$^{\varepsilon 1}$ that the Commission proposes to incorporate by reference. ASTM F2640-17$^{\varepsilon 1}$ is copyrighted. By permission of ASTM, the standard can be viewed as a read-only document during the comment period on this NPR, at: http://www.astm.org/cpsc.htm. Interested persons may also purchase a copy of ASTM F2640-17$^{\varepsilon 1}$ from ASTM International,

100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; http://www.astm.org/cpsc.htm. One may also inspect a copy at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923.

IX. Effective Date

The Administrative Procedure Act (APA) generally requires that the effective date of a rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). Although a 6-month effective date has been adopted for several other section 104 rules, the Commission is proposing an effective date of 12 months after publication of the final rule in the Federal Register to allow booster seat manufacturers additional time to bring their products into compliance after the final rule is issued. CPSC was unable to rule out a significant economic impact for some booster seat importers and small firms, and a 12-month effective date will allow additional time for manufacturers and importers to make necessary changes to bring their booster seats into conformance with the ASTM F2640-17 $^{\varepsilon 1}$ and arrange for third party testing.

X. Regulatory Flexibility Act

A. Introduction

The Regulatory Flexibility Act (RFA) requires that agencies review a proposed rule for the rule's potential economic impact on small entities, including small businesses. Section 603 of the RFA generally requires that agencies prepare an initial regulatory flexibility analysis (IRFA) and make the analysis available to the public for comment when the agency publishes an NPR. 5 U.S.C. 603. Section 605 of the RFA provides that an IRFA is not required if the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Staff could not rule out a significant economic impact on 20 of the 29 small

suppliers of booster seats to the U.S. market. Accordingly, staff prepared an IRFA and poses several questions for public comment to help staff assess the rule's potential impact on small businesses.

The IRFA must describe the impact of the proposed rule on small entities and identify significant alternatives that accomplish the statutory objectives and minimize any significant economic impact of the proposed rule on small entities. Specifically, the IRFA must contain:

- a description of the reasons why action by the agency is being considered;
- a succinct statement of the objectives of, and legal basis for, the proposed rule;
- a description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply;
- a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities subject to the requirements and the type of professional skills necessary for the preparation of reports or records; and
- identification, to the extent possible, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule; and

  In addition, the IRFA must describe any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and minimize any significant economic impact of the proposed rule on small entities.

B. Market Description

The Commission has identified 49 firms supplying booster seats to the U.S. market, 39 that supply home-use booster seats, and 10 that supply food-service booster seats. Forty-four of

these firms (28 manufacturers, 15 importers, and one supplier with an unknown supply source) are domestic. The remaining five firms are foreign.

C. Reason for Agency Action and Legal Basis for Proposed Rule

As discussed in section I. of this preamble, section 104 of the CPSIA requires the CPSC to promulgate consumer product safety standards for durable infant or toddler products that are substantially the same as, or more stringent than, the relevant voluntary standard. Section 104(f)(2)(C) of the CPSIA specifically identifies "booster chairs" as a durable infant or toddler product for which the Commission shall promulgate a consumer product safety standard.

D. Impact of Proposed 16 CFR Part 1237 on Small Businesses

CPSC staff is aware of 49 firms currently marketing booster seats in the United States, 44 that are domestic. Under U.S. Small Business Administration (SBA) guidelines, a manufacturer is considered small if it has 500 or fewer employees; and importers and wholesalers are considered small if they have 100 or fewer employees. Staff limited its analysis to domestic firms because SBA guidelines and definitions pertain to U.S.-based entities. Based on these guidelines, 29 of the 44 domestic firms are small—18 manufacturers, 10 importers, and one firm with an unknown supply source. Additional unknown small domestic booster seat suppliers may be operating in the U.S. market.

1. Small Manufacturers

i. Small Manufacturers with Compliant Booster Seats

Of the 18 small manufacturers, eight produce booster seats that comply with ASTM F2640-14, the voluntary standard currently in effect for testing purposes under the Juvenile Product Manufactures Association (JPMA) certification program. In general, it is expected that the small manufacturers whose booster seats already comply with the current voluntary standard

will remain compliant with the voluntary standard as it evolves, because these small manufacturers follow, and in some cases, participate actively in the standard development process. ASTM F2640-17$^{\varepsilon 1}$ has already been published and will be in effect by the time the mandatory standard becomes final. Moreover, history indicates that these firms are likely to be in compliance by the time the mandatory standard takes effect.

All but one of these eight already-compliant firms supply home-use booster seats that use straps/belts as an attachment method. The remaining small manufacturer uses suction to attach their home-use booster seat to adult chairs. It is unclear whether the suction-type booster seats would pass the attachment test in ASTM F2640-17$^{\varepsilon 1}$ without modifications. Several participants in the ASTM voluntary standards development process, including one of the supplier representatives contacted by CPSC staff, believes that belts and/or straps will be required to pass the attachment test. If modifications were required, the impact could be significant. The firm could undertake efforts to improve their existing suction system, or they could modify the chair to use strap/belt attachment system, which would involve creating new product molds, as well as the cost of the belts and buckles. Several of the supplier representatives staff contacted believe that a complete redesign for booster seats costs approximately $500,000. Although it is unlikely that the cost of addressing the attachment performance requirement would be that high, any change that involves redesign can be expensive, and the affected firm likely has relatively low sales revenue. Therefore, staff cannot rule out a significant impact on this firm.

ii. Small Manufacturers with Noncompliant Booster Seats

Ten small manufacturers produce booster seats that do not comply with the voluntary standard; half are home-use booster seat manufacturers, and the other half are food-service booster seat manufacturers. Staff cannot rule out a significant economic impact for any of these

small manufacturers. The booster seats manufactured by all 10 firms are likely to require modifications, some of which may be significant, to meet the requirements of the voluntary standard. For example, eight of the 10 firms use attachment methods other than belts or straps, such as suction or friction, on one or more of their booster seat products. Six of those firms supply plastic or foam booster seats, which are likely to be more expensive to modify than wooden booster seats. In addition, some plastic booster seats may require a complete redesign to comply with the warning label requirements, even if sufficient space is available on the product to display the labels.

Staff cannot determine the extent and cost of the changes required for compliance of these manufacturers' booster seat products; therefore, staff cannot rule out a significant economic impact on these businesses. However, based on the revenue data available for these firms, the impact is not likely to be significant for two of the firms, unless modifications that cost more than $200,000 are required. The impact on five of the firms could be significant, even with relatively minor changes (*i.e.,* less than $40,000). Without additional information, staff cannot determine the impact on the remaining three firms.

The Commission requests information on the changes that may be required to meet the voluntary standard, ASTM F2640-17$^{\varepsilon 1}$ and, in particular, the time and cost associated with any necessary redesign or retrofitting. The Commission also requests information on the degree to which modifications required as a result of ASTM F2640-17$^{\varepsilon 1}$'s attachment test may add to a firm's costs.

iii. Third Part Testing Costs for Small Manufacturers

Under section 14 of the CPSA, once the requirements of ASTM F2640-17$^{\varepsilon 1}$ are effective, all manufacturers will be subject to the third party testing and certification requirements under

the 1107 rule. Third party testing will include any physical and mechanical test requirements specified in the final booster seat rule. Manufacturers and importers should already be conducting required lead testing for booster seats. Third party testing costs are in addition to the direct costs of meeting the requirements of the booster seat standard.

Eight of the 18 small booster seats manufacturers are already testing their products, although not necessarily by a third party, to verify compliance with the ASTM standard. For these manufacturers, the impact on testing costs will be limited to the difference between the cost of third party tests and the cost of current testing regimes. CPSC staff contacted small booster seat manufacturers. They estimate that third party testing booster seats to the ASTM voluntary standard would cost about $500 to $1,000 per model sample. For the eight small manufacturers that are already testing, the incremental costs are unlikely to be economically significant.

For the 10 small manufacturers that are not currently testing their products to verify compliance with the ASTM standard, the impact of third party testing could result in significant costs for three firms. Although CPSC does not currently know how many samples will be needed to meet the "high degree of assurance" criterion required in the 1107 rule, testing costs could exceed one percent of gross revenue for two of these firms, if five samples are needed to be tested (assuming high-end testing costs of $1,000 per model sample). Revenue information was not available for the third firm, but that firm's revenue appears to be very small. Accordingly, that firm might be significantly affected by third party testing costs.

The Commission welcomes comments regarding overall testing costs and incremental costs due to third party testing (*i.e.*, how much does moving from a voluntary to a mandatory third party testing regime add to testing costs, in total, and on a per-test basis). In addition, the

Commission seeks comments on the number of booster seat units that typically need to be tested to provide a "high degree of assurance."

2. Small Importers

CPSC does not believe that any of the 10 small importers of booster seats currently complies with the ASTM standard. There is insufficient information to rule out a significant impact for any of the 10 small importers supplying noncompliant booster seats. Whether there will be a significant economic impact will depend upon the extent of the changes required to comply and the responses of importers' supplying firms. Any increase in production costs experienced by their suppliers from changes made to meet the mandatory standard may be passed on to these importers. Costs would include expenses associated with coming into compliance with the voluntary standard, as well as costs associated with the attachment test (all of the home-use booster seats supplied by these firms already use straps/belts, but neither of the food-service suppliers appears to do so, and therefore, they will likely need to make changes to come into compliance).

Four of the 10 importers with noncompliant booster seats (two import food-service booster seats, and two import home-use booster seats) do not appear to have direct ties to their product suppliers. These firms may opt to switch to alternative suppliers (or, in some cases, alternative products), rather than bear the cost of complying with the standard. Although it is unclear whether the costs associated with changing suppliers would be significant for these firms.

The remaining six firms (all of which import home-use booster seats) are directly tied to their foreign suppliers, and therefore, finding an alternative supply source would not be a viable alternative. The foreign suppliers of these firms, however, may have an incentive to work with

their U.S. subsidiaries/distributors to maintain an American market presence. It is also possible that these firms may discontinue the sale of booster seats altogether because booster seats are not a large component of their product lines. CPSC staff was unable to determine whether exiting the booster seats market would generate significant economic impacts due to the lack of sales revenue for booster seats, as well as the lack of revenue data for most of these firms.

As with manufacturers, importers will be subject to third party testing and certification requirements; consequently, importers will be subject to costs similar to those of manufacturers, if their supplying foreign firm(s) does not perform third party testing. Moving to third party certification for the requirements of the proposed rule is unlikely to result in significant costs for the four small importers for whom revenue data are available. However, there was no revenue data available for the remaining six small importers; accordingly, CPSC had no basis for examining the size of the impact on those firms.

3. Summary

In summary, based upon current information, CPSC cannot rule out a significant economic impact for 20 of the 29 booster seat firms operating in the U.S. market. The 12-month proposed effective date would help to spread costs over a longer time-frame.

4. Alternatives

One alternative is available to minimize the economic impact on small entities supplying booster seats while also meeting the statutory objectives. The Commission could allow a later effective date than proposed.

The Commission is proposing a 12-month effective date to allow booster seat manufacturers additional time (beyond the more usual 6-month effective date) to bring their products into compliance after the final rule is issued. The Commission believes that the

proposed 12-month effective date would allow firms that may not be aware of the ASTM voluntary standard, or may believe that their product falls outside the scope of the standard, additional time to make this determination and thereafter, bring their products into compliance. The Commission could further reduce the proposed rule's impact on small businesses by setting an effective date later than 12 months after the final rule is issued. A later effective date would reduce the economic impact on firms in two ways. First firms would be less likely to experience a lapse in production/importation, which could result if they are unable to bring their products into compliance and certify compliance based on third party tests within the required timeframe. Additionally, firms could spread the costs of developing compliant products over a longer time period, thereby reducing their annual costs, as well as the present value of their total costs (*i.e.,* they could time their spending to better accommodate their individual circumstances).

E. Impact of Proposed 16 CFR Part 1112 Amendment on Small Businesses

This proposed rule also would amend part 1112 to add booster seats to the list of children's products for which the Commission has issued an NOR. As required by the RFA, staff conducted a Final Regulatory Flexibility Analysis (FRFA) when the Commission issued the part 1112 rule (78 FR 15836, 15855-58). The FRFA concluded that the accreditation requirements would not have a significant adverse impact on a substantial number of small testing laboratories because no requirements were imposed on test laboratories that did not intend to provide third party testing services. The only test laboratories that were expected to provide such services were those that anticipated receiving sufficient revenue from the mandated testing to justify accepting the requirements as a business decision.

Based on similar reasoning, amending 16 CFR part 1112 to include the NOR for the booster seat product standard will not have a significant adverse impact on small test

laboratories. Moreover, based upon the number of test laboratories in the United States that have applied for CPSC acceptance of accreditation to test for conformance to other mandatory juvenile product standards, we expect that only a few test laboratories will seek CPSC acceptance of their accreditation to test for conformance with the booster seats standard. Most of these test laboratories will have already been accredited to test for conformance to other mandatory juvenile product standards, and the only costs to them would be the cost of adding the booster seat standard to their scope of accreditation. Consequently, the Commission certifies that the proposed NOR amending 16 CFR part 1112 to include the infant booster seat standard will not have a significant impact on a substantial number of small entities.

XI. Environmental Considerations

The Commission's regulations address whether the agency is required to prepare an environmental assessment or an environmental impact statement. Under these regulations, certain categories of CPSC actions normally have "little or no potential for affecting the human environment," and therefore, they do not require an environmental assessment or an environmental impact statement. Safety standards providing requirements for products come under this categorical exclusion. 16 CFR 1021.5(c)(1). The proposed rule falls within the categorical exclusion.

XII. Paperwork Reduction Act

This proposed rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). In this document, pursuant to 44 U.S.C. 3507(a)(1)(D), we set forth:

- a title for the collection of information;

- a summary of the collection of information;
- a brief description of the need for the information and the proposed use of the information;
- a description of the likely respondents and proposed frequency of response to the collection of information;
- an estimate of the burden that shall result from the collection of information; and
- notice that comments may be submitted to the OMB.

Title: Safety Standard for Booster Seats.

Description: The proposed rule would require each booster seat to comply with ASTM F2640-17$^{\varepsilon 1}$, *Standard Consumer Safety Specification for Booster Seats.* Sections 8 and 9 of ASTM F2640-17$^{\varepsilon 1}$ contain requirements for marking, labeling, and instructional literature. These requirements fall within the definition of "collection of information," as defined in 44 U.S.C. 3502(3).

Description of Respondents: Persons who manufacture or import booster seats.

Estimated Burden: We estimate the burden of this collection of information as follows:

Table 1 – Estimated Annual Reporting Burden

16 CFR Section	Number of Respondents	Frequency of Responses	Total Annual Responses	Hours per Response	Total Burden Hours
1237	49	2	98	1	98

Our estimate is based on the following:

Forty-nine known entities supply booster seats to the U.S. market and may need to make some modifications to their existing warning labels. We estimate that the time required to make these modifications is about 1 hour per model. Based on an evaluation of supplier product lines,

each entity supplies an average of 2 models of booster seats; therefore, the estimated burden associated with labels is 1 hour per model x 49 entities x 2 models per entity = 98 hours. We estimate the hourly compensation for the time required to create and update labels is $33.53 (U.S. Bureau of Labor Statistics, "Employer Costs for Employee Compensation," December 2016, Table 9, total compensation for all sales and office workers in goods-producing private industries: http://www.bls.gov/ncs/). Therefore, the estimated annual cost to industry associated with the labeling requirements is $3,286 ($33.53 per hour x 98 hours). No operating, maintenance, or capital costs are associated with the collection.

Section 9.1 of ASTM F2640-17$^{\varepsilon 1}$ requires instructions to be supplied with the product. Under the OMB's regulations (5 CFR 1320.3(b)(2)), the time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the "normal course of their activities" are excluded from a burden estimate, where an agency demonstrates that the disclosure activities required to comply are "usual and customary." We are unaware of booster seats that generally require use instructions but lack such instructions. Therefore, we tentatively estimate that no burden hours are associated with section 9.1 of ASTM F2640-17$^{\varepsilon 1}$, because any burden associated with supplying instructions with booster seats would be "usual and customary" and not within the definition of "burden" under the OMB's regulations.

Based on this analysis, the proposed standard for booster seats would impose a burden to industry of 98 hours at a cost of $3,286 annually.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted the information collection requirements of this rule to the OMB for review. Interested persons are requested to submit comments regarding information collection by **[INSERT DATE**

30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], to the Office of Information and Regulatory Affairs, OMB (see the ADDRESSES section at the beginning of this notice).

Pursuant to 44 U.S.C. 3506(c)(2)(A), we invite comments on:

- whether the collection of information is necessary for the proper performance of the CPSC's functions, including whether the information will have practical utility;
- the accuracy of the CPSC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- ways to enhance the quality, utility, and clarity of the information to be collected;
- ways to reduce the burden of the collection of information on respondents, including the use of automated collection techniques, when appropriate, and other forms of information technology; and
- the estimated burden hours associated with label modification, including any alternative estimates.

XIII. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that when 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 standard or regulation that prescribes requirements for the performance, composition, contents, design, finish, construction, packaging, or labeling of such product 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. Section 104(b) of the CPSIA refers to the rules to be issued under that section as

"consumer product safety rules." Therefore, the preemption provision of section 26(a) of the CPSA would apply to a rule issued under section 104.

XIV. Request for Comments

This NPR begins a rulemaking proceeding under section 104(b) of the CPSIA to issue a consumer product safety standard for booster seats, and to amend part 1112 to add booster seats to the list of children's product safety rules for which the CPSC has issued an NOR. We invite all interested persons to submit comments on any aspect of this proposal. In addition to requests for specific comments elsewhere in this NPR, the Commission requests comments on the differences between home-use and food-service booster seats and the ability of each type of booster seat to meet the requirements in the proposed booster seat standard, the proposed effective date, and the costs of compliance with, and testing to, the proposed booster seats standard. During the comment period, ASTM F2640-17$^{\varepsilon 1}$, *Standard Consumer Safety Specification for Booster Seats*, is available as a read-only document at: http://www.astm.org/cpsc.htm.

Comments should be submitted in accordance with the instructions in the **ADDRESSES** section at the beginning of this notice.

List of Subjects

16 CFR Part 1112

Administrative practice and procedure, Audit, Consumer protection, Reporting and recordkeeping requirements, Third party conformity assessment body.

16 CFR Part 1237

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

For the reasons discussed in the preamble, the Commission proposes to amend Title 16 of the Code of Federal Regulations as follows:

PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

1. The authority citation for part 1112 continues to read as follows:

Authority: 15 U.S.C. 2063; Pub. L. 110-314, section 3, 122 Stat. 3016, 3017 (2008).

2. Amend § 1112.15 by adding paragraph (b)(47) to read as follows:

§ 1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule or test method?

***** ***** ***** ***** *****

(b) * * *

(47) 16 CFR part 1237, Safety Standard for Booster Seats.

* * * * *

3. Add part 1237 to read as follows:

PART 1237-SAFETY STANDARD FOR BOOSTER SEATS

Sec.

1237.1 Scope.

1237.2 Requirements for booster seats.

Authority: Sec. 104, Pub. L. 110-314, 122 Stat. 3016 (August 14, 2008); Sec. 3, Pub. L. 112-28, 125 Stat. 273 (August 12, 2011).

§ 1237.1 Scope.

This part establishes a consumer product safety standard booster seats.

§ 1237.2 Requirements for booster seats.

Each booster seat must comply with all applicable provisions of ASTM F2640-17$^{\varepsilon 1}$, Standard Consumer Safety Specification for Booster Seats (approved on March 1, 2017). 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 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; http://www.astm.org/cpsc.htm. 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: May 15, 2017

_____

Todd A. Stevenson,
Secretary, Consumer Product Safety Commission

[FR Doc. 2017-10044 Filed: 5/18/2017 8:45 am; Publication Date: 5/19/2017]