

No. 20-1373

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

LISA MILICE,
Petitioner

v.

CONSUMER PRODUCT SAFETY COMMISSION,
Respondent.

Petition for Review of a Direct Final Rule of
the Consumer Product Safety Commission

PETITIONER'S APPENDIX VOLUME 1, pp. 1-7

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TABLE OF CONTENTS

- 1. Petition for Review.....Page 1
- 2. Direct Final Rule: *Revisions to Safety Standard for Infant Bath Seats*.....Page 3

No. _____

In the United States Court of Appeals for the Third Circuit

LISA MILICE, *Petitioner*

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CONSUMER PRODUCT SAFETY COMMISSION, *Respondent*

Petition for Review

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PETITION FOR REVIEW

Pursuant to 15 U.S.C. § 2060(a), Petitioner Lisa Milice requests that this Court review Consumer Product Safety Commission's direct final rule *Revisions to Safety Standards for Infant Bath Seats*, 84 Fed. Reg. 49435, which the Commission promulgated on September 20, 2019, and which took effect on December 22, 2019.

Respectfully,

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Rules and Regulations

Federal Register

Vol. 84, No. 183

Friday, September 20, 2019

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1215

[Docket No. CPSC-2009-0064]

Revisions to Safety Standard for Infant Bath Seats

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In December 2013, the U.S. Consumer Product Safety Commission (CPSC) published an update to the consumer product safety standard for infant bath seats. The standard incorporated by reference the applicable ASTM voluntary standard. ASTM has since published two revised versions of the voluntary standard for infant bath seats. We are publishing this direct final rule revising the CPSC's mandatory standard for infant bath seats to incorporate by reference, the most recent version of the applicable ASTM standard.

DATES: The rule is effective on December 22, 2019, unless we receive significant adverse comment by October 21, 2019. 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 publication listed in this rule is approved by the Director of the Federal Register as of December 22, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CPSC-2009-0064, 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. The CPSC does not accept comments submitted by electronic mail (email), except through www.regulations.gov. The CPSC encourages you to submit electronic comments by using the

Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions in the following way: Mail/Hand delivery/Courier (for paper, disk, or CD-ROM submissions), preferably in five copies, to: Division of the Secretariat, 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: <https://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: www.regulations.gov, and insert the docket number, CPSC-2009-0064, into the "Search" box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Keysha Walker, Compliance Officer, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814-4408; telephone: 301-504-6820; email: kwalker@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

1. Statutory Authority

Section 104(b)(1)(B) of the Consumer Product Safety Improvement Act (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 these standards 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.

The CPSIA also sets forth a process for updating CPSC's durable infant or toddler standards when the voluntary standard, upon which the CPSC standard was based, is changed. Section 104(b)(4)(B) of the CPSIA provides that 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. In addition, 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.

2. The Infant Bath Seats Standard

On June 4, 2010, the Commission published a final rule issuing a standard for infant bath seats that incorporated by reference the standard in effect at that time, ASTM F1967-08a, *Standard Consumer Specification for Infant Bath Seats*, with certain modifications to make the standard more stringent. 75 FR 31691. The standard was codified in the Commission's regulations at 16 CFR part 1215. The ASTM standard has been revised twice since the rule issued, with the Commission incorporating by reference, ASTM F1967-11a (77 FR 45242, Jul. 31, 2012), and ASTM F1967-13 (78 FR 73692, Dec. 9, 2013), respectively.

Since December 2013, when the CPSC incorporated by reference ASTM F1967-13 as the mandatory standard for infant bath seats, ASTM published two additional revisions to the standard. On June 25, 2019, ASTM notified the Commission that it has revised ASTM's standard for infant bath seats. The current ASTM standard is ASTM F1967-19, *Standard Consumer Safety Specification for Infant Bath Seats*, approved May 1, 2019. The CPSC reviewed the changes between the current CPSC standard, 16 CFR part

1215 and the two revisions to the standard (ASTM F1967–18 and ASTM F1967–19) since ASTM F1967–13 became mandatory. ASTM did not notify CPSC of the publication of the 2018 version of the standard because ASTM was considering making additional changes in 2019. Consequently, ASTM notified CPSC of the 2019 revision to the standard, which included the changes in the 2018 version of the standard.

B. Revisions to the ASTM Standard

The ASTM standard for infant bath seats establishes performance requirements, test methods, and labeling requirements to address hazards to children associated with infant bath seats, including stability, restraints, suction cups, latching and locking mechanisms, and resistance to collapse. Products commonly referred to as bath rings also are included in the scope of this specification. Traditional infant bath tubs that are used to bathe an infant are not within the scope of this standard.

Under section 104(b)(4)(B) of the CPSIA, unless the Commission determines that ASTM's revision to a voluntary standard that is a CPSC mandatory standard "does not improve the safety of the consumer product covered by the standard," the revised voluntary standard becomes the new mandatory standard. As discussed below, the Commission determines that the changes made in ASTM F1967–19 will either improve the safety of infant bath seats or are neutral with respect to safety. Therefore, the Commission will allow the revised voluntary standard to become effective as a mandatory consumer product safety standard under the statute, effective December 22, 2019.

There are several differences between the current CPSC standard 16 CFR part 1215 (ASTM F1967–13) and the two subsequent revisions to the standard (ASTM F1967–18 and ASTM F1967–19). We summarize the differences and the CPSC's assessment of the revisions below.

1. Differences Between 16 CFR Part 1215 and ASTM F1967–18

The major revisions made in ASTM F1967–18 are summarized below. ASTM F1967–18 includes several changes that improve safety by clarifying testing. ASTM also made several editorial changes, such as spacing, formatting, re-ordering, and renumbering, which do not change the safety of the infant bath seats.

a. Scope

The 2018 version of the ASTM standard adds language (Section 1.5), which ASTM intends to add to all of its standards, stating that ASTM developed the standard in accordance with principles recognized by the World Trade Organization. We conclude that adding this text does not change the safety of infant bath seats.

b. Terminology

The 2018 revision to the standard adds four new definitions to address changes the ASTM subcommittee made to achieve consistency across juvenile product safety standards, including defining the terms "conspicuous," "double action release system," "installation components," and "protective component." Of these new terms, the definition of "double action release system" is significant because it clarifies the actions and the sequence necessary for a release mechanism to be considered a double action release mechanism. Accordingly, we determine that this new definition improves the safety of infant bath seats. The other new definitions are neutral to the safety of infant bath seats.

c. General Requirements

Section 5 *General Requirements* contains a number of minor editorial adjustments. The Commission considers these changes to be neutral to the safety of infant bath seats. ASTM also added section 5.10, to state: "Infant bath seats must comply with applicable requirements of the Consumer Product Safety Improvement Act." The purpose of this statement is to alert potential manufacturers to CPSIA requirements. We consider this statement to be neutral to the safety of infant bath seats because the product must comply with CPSIA, regardless of this requirement in the standard.

d. Performance Requirements

Section 6.1 *Stability* moves wording from an explanatory note into the enforceable performance requirement. Specifically, Section 6.1.2.3 states: "If the product would continue to tip over under the application of force, but it is prevented from doing so by the test platform interior side walls, it shall be considered a tip over." With this change to the stability performance requirement, certain types of contact to the tub fixture test platform are clearly identified as failures. This change will reduce ambiguity in testing to the standard and will lead to more consistent testing. We consider the reduced ambiguity for testing to be an improvement to safety because the

revised language will clarify what constitutes a failure when conducting the testing.

The other changes to the performance requirements in section 6 are editorial in nature: The changes separate the stability requirements and present a succinct modified decimal numbering system, as opposed to paragraph form. We consider these editorial changes to be neutral to the safety of infant bath seats.

e. Test Methods

i. Section 7.1 Latching and Locking Mechanism Tests

Two different latching and locking test procedures (Section 7.1.1.1 and 7.1.2.1), in the 2018 version of the standard reference a new test surface. The new "Test Surface #3" is defined as: "(a)ny area on the side(s) of the test platform (for example, inside surface, outside surface, and top ledge), where safety tread strips are not applied." Therefore, new products that are restrained by the sides of the tub can now be installed and tested according to the manufacturer's instructions by using Test Surface #3. The changes regarding the definition of a new test surface reduce ambiguity in the standard and will lead to more consistent testing. We expect that an increase in testing consistency will improve the safety of bath seats.

ii. Section 7.4 Stability Test

The 2018 ASTM standard made four changes to Section 7.4 *Stability Test*:

- The new tub fixture test platform figures correct dimensioning errors, add a cross-section drawing, define more clearly the location of the cross-sections, and add new dimensions to specify accurately the physical tub detailed in ASTM F1967–18 Footnote #5. Adding the two new cross-section drawings in this section required the rest of the figures in the standard to be renumbered accordingly. These revised fixtures correct errors and increase accuracy and clarity, which we expect will improve the safety of infant bath seats.

- The 2018 version of the ASTM standard adds a requirement for a new test surface and modifies the two existing test surfaces. The 2013 version required testing on only two surfaces, and those two surfaces had to be ". . . within the 24 in. (60.0 cm) length of uniform tub side ledge thickness . . ." The restrictive test surface definitions and the lack of a test surface on the side and end walls of the tub fixture test platform created a conflict between the test procedures and the manufacturer's installation instructions. New products

on the market engage with the side and end walls as part of the new products' retention system. To reduce potential sources of test-to-test and laboratory-to-laboratory variation, the ASTM subcommittee decided to add Test Surface #3, which addresses tub fixture test platform's sides and end walls as a new test surface in Section 7.4.1.2.3. The new language broadens the test procedures and allows for new designs of bath seats to be installed according to the manufacturer's instructions. These changes reduce ambiguity in the standard and lead to more consistent testing. We expect the reduced ambiguity and increased consistency will improve the safety of infant bath seats.

- Section 7.4.3.8 states that the 17.0 lbf applied force shall be perpendicular to the test bar. The 2013 revision stated that the force shall be horizontal. During the stability test, many products deflect elastically, while remaining in the initial manufacturer's recommended-use position. As a product deflects elastically, the test bar rotates in the direction of the applied force. If the test bar rotates, but the applied force remains horizontal, then the angle between the test bar and the applied force changes, reducing the torque applied to the sample. In contrast, the 2018 version states that the applied force must be perpendicular to the test bar, causing the applied torque to remain nominally consistent as the product deflects elastically. We conclude that a test that applies a consistent torque is a more stringent test, and therefore, this change improves the safety of infant bath seats.

- ASTM F1967–13 provides a formula for the baby wash solution that is used in testing, and states the contact information for a specific manufacturer of the solution. However, the company listed is no longer in business. ASTM F1967–18 lists two name-brand baby wash products readily available for purchase. We consider this change neutral to the safety of infant bath seats.

iii. Section 7.5 Static Load Test

The 2018 ASTM standard also changed the static load test in section 7.5, to reflect the new Test Surface #3. This change allows new types of products that are intended to be restrained by the sides of the tub, to be installed according to the manufacturer's instructions. Adding a new test surface reduces ambiguity in the standard and leads to more consistent testing. We consider the reduced ambiguity and increased consistency to improve the safety of infant bath seats.

The second change to Section 7.5.5 requires that a product be tested “. . . in all other manufacturer's recommended use positions.” The revised language improves safety by requiring products be tested in all manufacturer's use positions, not just in one position. Typically, laboratories conduct testing in one position, usually what the laboratory considers to be the most onerous position. This can lead to different results from different laboratories. Adding the statement that testing should be “. . . in all other manufacturer's recommended use positions” will improve test-to-test and laboratory-to-laboratory repeatability. We consider the reduced ambiguity and increased consistency to improve safety.

iv. Section 7.6 Suction Cup Tests

The suction cup test methods in section 7.6 also include the new Test Surface #3 and require testing of the product “. . . in all other manufacturer's recommended use positions.” As noted, testing “in all other manufacturer's recommended use positions” removes the possibility of different laboratories getting different testing results because of ambiguity. Reduced ambiguity leads to improving test-to-test and laboratory-to-laboratory repeatability, resulting in more consistent, testing which improves testing accuracy. We consider the reduced ambiguity and increased consistency to improve safety.

f. Marking and Labeling

Revisions to section 8 in the 2018 standard, regarding *Marking and Labeling*, include changes to the formatting and presentation of the warnings. These revisions result from major changes ASTM initiated for juvenile products. After publishing the 2013 version of the standard, ASTM convened a task group, ASTM Ad Hoc Wording Task Group (Ad Hoc TG), consisting of members of the various durable nursery products voluntary standards committees, including CPSC staff. The purpose of the Ad Hoc TG is to harmonize the wording, as well as the warning format, across durable infant and toddler product voluntary standards. Ad Hoc TG recommendations were published as a reference document, titled, “Ad Hoc Wording—May 4, 2016,” as part of the F15 Committee Documents.

In addition to the formatting changes, the warning statement required by the 2018 ASTM standard includes a personalized warning using the words: “Stay in arms' reach of your baby,” as opposed to: “ALWAYS keep baby within adult's reach.” Research suggests

that personalizing warnings and instructions increase compliance.

The revisions in ASTM F1967—18 incorporate the Ad Hoc Wording recommendations. Accordingly, we consider adopting the Ad Hoc Wording reference document recommendations and the more personal messaging as improvements to safety because they provide noticeable, personalized, and consistent warning labels on infant bath seats.

g. Instructional Literature

The requirements for *Instructional Literature* in section 9 of ASTM F1967—18 are expanded to include infant bath seat labeling requirements similar to the marking and labeling section of the standard. Staff considers these changes to improve the safety of bath seats because they provide noticeable, personalized, and consistent instructional literature.

2. Differences Between 16 CFR Part 1215 and ASTM F1967–19

ASTM F1967–19 revises two sections of the standard. The first, a change to section 7.5.1, allows the static load tests to be conducted on any of the three test surfaces, rather than specify a particular test surface. The second update removes Footnote #6 from the ASTM standard. The standard already covers the same topic in Section 7.4.1.2, and the footnote was incomplete and confusing. Both changes are neutral to the safety of bath seats.

C. Incorporation by Reference

The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble to the final rule, ways that the materials the agency incorporates by reference are reasonably available to interested persons and how interested parties can obtain the materials. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR's requirements, section B of this preamble summarizes the major provisions of the ASTM F1967–19 standard that the Commission incorporates by reference into 16 CFR part 1215. The standard is reasonably available to interested parties, and interested parties may purchase a copy of the standard from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 USA; phone: 610–832–9585; www.astm.org. A copy of the standard can also be inspected at CPSC's Division of the Secretariat, U.S. Consumer Product

Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923.

D. The Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801-808) states that, before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The submission must indicate whether the rule is a “major rule.” The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a “major rule.” Pursuant to the CRA, OIRA designated this rule as not a “major rule,” as defined in 5 U.S.C. 804(2). In addition, to comply with the CRA, the Office of the General Counsel will submit the required information to each House of Congress and the Comptroller General.

E. Certification

Section 14(a) of the CPSA requires 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 accredited by the Commission 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 bath seats are children’s products, samples of these products must be tested by a third party conformity assessment body whose accreditation has been accepted by the Commission. These products also must comply with all other applicable CPSC requirements, such as the lead content requirements in section 101 of the CPSIA, the tracking label requirement in section 14(a)(5) of the CPSA, and the consumer registration form requirements in section 104(d) of the CPSIA.

F. Notice of Requirements

In accordance with section 14(a)(3)(B)(iv) of the CPSIA, the Commission has previously published a notice of requirements (NOR) for accreditation of third party conformity

assessment bodies for testing infant bath seats (75 FR 31688, September 4, 2010). The NOR provided the criteria and process for our acceptance of accreditation of third party conformity assessment bodies for testing infant bath seats to 16 CFR part 1215. 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 at 16 CFR part 1112.

CPSC staff from the Directorate for Laboratory Sciences, Division of Mechanical Engineering, analyzed testing revisions to the infant bath seat standard and found that the revised tests use existing equipment and similar testing protocols. Testing laboratories that have demonstrated competence for testing in accordance with ASTM F1967-13 will have the competence to test in accordance with the revised standard ASTM F1967-19. Therefore, the Commission considers the existing CPSC-accepted laboratories for testing to ASTM F1967-13 to be capable of testing to ASTM F1967-19 as well. Therefore, the Commission considers the existing accreditations that the Commission has accepted for testing to this standard also to cover testing to the revised standard. 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’ accreditation to reflect the revised standard in the normal course of renewing their accreditation.

G. 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.” 5 U.S.C. 553(b)(B). The Commission concludes that when the Commission updates a reference to an ASTM standard that the Commission has incorporated by reference under section 104(b) of the CPSIA, notice and comment is not necessary.

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 as a Commission standard for a durable infant or toddler product 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 F1967-19 to become CPSC’s new standard. The purpose of this direct final rule is merely to update the reference in the Code of Federal Regulations so that it reflects accurately the version of the standard that takes effect by statute. Public comment will not impact the 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 not necessary. In Recommendation 95-4, the Administrative Conference of the United States (ACUS) endorsed direct final rulemaking as an appropriate procedure to expedite promulgating rules that are noncontroversial and that are not expected to generate significant adverse comment. See 60 FR 43108 (August 18, 1995). ACUS recommended 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 we do not expect any significant adverse comments.

Unless we receive a significant adverse comment within 30 days, the rule will become effective on December 22, 2019. 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.

H. 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 RFA applies to any rule that is subject to notice and

comment procedures under section 553 of the APA. *Id.* As explained, the Commission has determined that notice and comment are not necessary for this direct final rule. Thus, the RFA does not apply. We also note the limited nature of this document, which updates the incorporation by reference to reflect the mandatory CPSC standard that takes effect under section 104 of the CPSIA.

I. Paperwork Reduction Act

The standard for infant bath seats contains information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The revisions made no changes to that section of the standard. Thus, the revisions will not have any effect on the information collection requirements related to the standard.

J. 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.

K. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), 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. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the CPSC 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," 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.

L. Effective Date

Under the procedure set forth in section 104(b)(4)(B) of the CPSIA, when a voluntary standard organization revises a standard upon which a consumer product safety standard 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**. The Commission has not set a different effective date. Thus, in accordance with this provision, this rule takes effect 180 days after we received notification from ASTM of revision to this standard. As discussed in the preceding section, this is a direct final rule. Unless we receive a significant adverse comment within 30 days, the rule will become effective on December 22, 2019.

List of Subjects in 16 CFR Part 1215

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

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

PART 1215—SAFETY STANDARD FOR INFANT BATH SEATS

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

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

■ 2. Revise § 1215.2 to read as follows:

§ 1215.2 Requirements for infant bath seats.

Each infant bath seat shall comply with all applicable provisions of ASTM F1967–19, Standard Consumer Safety Specification for Infant Bath Seats, approved May 1, 2019. 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 this ASTM standard from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959 USA; phone: 610–832–9585; www.astm.org. You may inspect a copy at the Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fedreg.legal@nara.gov, or go to: www.archives.gov/federal-register/cfr/ibr-locations.html.

Alberta E. Mills,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2019–19965 Filed 9–19–19; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

[Docket No. ETA–2018–0002]

RIN 1205–AB90

Modernizing Recruitment Requirements for the Temporary Employment of H–2A Foreign Workers in the United States

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor (Department or DOL) is amending its regulations governing the certification of agricultural labor or services to be performed by temporary foreign workers in H–2A nonimmigrant status (H–2A workers). The Department issues this certification pursuant to Section 218(a) of the Immigration and Nationality Act (INA), which requires a prospective employer of H–2A workers to apply for a certification from the Secretary of Labor (Secretary) that there are not sufficient able, willing, and qualified United States (U.S.) workers available to fill the petitioning employer's job opportunity, and that the employment of H–2A workers in that job opportunity will not adversely affect the wages and working conditions of workers in the United States similarly employed. This final rule modernizes and improves the labor market test that the Department uses to assess whether able, willing, and qualified U.S. workers are available by: Rescinding the requirement that an employer advertise its job opportunity in a print newspaper of general circulation in the area of intended employment; expanding and enhancing the Department's electronic job registry; and leveraging the expertise and existing outreach activities of State Workforce Agencies (SWAs) to promote agricultural job opportunities.

DATES: This final rule is effective October 21, 2019.

FOR FURTHER INFORMATION CONTACT:

Thomas M. Dowd, Deputy Assistant Secretary, Employment and Training Administration, Department of Labor, Box #12–200, 200 Constitution Ave. NW, Washington, DC 20210, telephone (202) 513–7350 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed this Appendix with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the appellate CM/ECF system on May 18, 2020. Until further notice from this Court, NCLA has deferred filing paper copies based on the Court's March 17 Notice addressing the COVID-19 pandemic. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

Respectfully,

/s/ Jared McClain

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