



Ballot Vote Sheet

TO: The Commission
 Alberta E. Mills, Secretary

THROUGH: Austin C. Schlick, General Counsel
 Mary T. Boyle, Executive Director

FROM: Daniel R. Vice, Assistant General Counsel,
 Regulatory Affairs
 Meridith L. Kelsch, Attorney, Regulatory Affairs

SUBJECT: ASTM's Revised Safety Standard for High Chairs

DATE: April 6, 2022

BALLOT VOTE DUE: Tuesday, April 12, 2022

Staff is forwarding to the Commission a briefing memorandum recommending that the Commission issue a direct final rule to update the ASTM standard incorporated by reference in the Safety Standard for High Chairs, codified in 16 CFR part 1231. In 2018, the Commission issued the mandatory standard under the Consumer Product Safety Improvement Act of 2008 (CPSIA), incorporating by reference ASTM F404-18, *Standard Consumer Safety Specification for High Chairs*, and has since updated the standard to incorporate by reference ASTM F404-20. Under the CPSIA, when ASTM revises a voluntary standard for a durable infant or toddler product that the Commission has incorporated by reference, the revised standard automatically becomes the mandatory standard, unless the Commission determines that the revised standard “does not improve the safety of the consumer product” and so notifies the voluntary standards organization. ASTM updated the voluntary standard for high chairs, issuing ASTM F404-21, and notified the Commission of the revised standard. Staff recommends that the Commission allow the revised voluntary standard to become the mandatory standard and publish a direct final rule to revise part 1231 to reference ASTM F404-21. Attached for Commission consideration is a draft *Federal Register* notice for that purpose. If approved by the Commission, the Office of the General Counsel will seek approval of the incorporation by reference from the Office of the Federal Register, in accordance with the requirements in 1 CFR part 51, and upon receiving approval of the incorporation by reference, will send the notice to the *Federal Register* for publication.

Please indicate your vote on the following options:

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

 (Signature)

 (Date)



Ballot Vote Sheet

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

(Signature)

(Date)

III. Do not approve publication of the attached notice in the *Federal Register*.

(Signature)

(Date)

IV. Take other action specified below.

(Signature)

(Date)

Attachment: Draft *Federal Register* notice: Revisions to Safety Standard for High Chairs

[Billing Code 6355-01-P]

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1231

[Docket No. CPSC-2015-0031]

Revisions to Safety Standard for High Chairs

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In June 2018, the U.S. Consumer Product Safety Commission (CPSC) published a consumer product safety standard for high chairs under section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). The standard incorporated by reference the 2018 ASTM voluntary standard for high chairs that was in effect at the time. The CPSIA sets forth a process for updating mandatory standards for durable infant or toddler products that are based on a voluntary standard, when a voluntary standards organization revises the standard. Consistent with the CPSIA update process, the Commission issued a direct final rule in April 2021, to revise the incorporation by reference for the mandatory standard for high chairs, to reflect ASTM's revised 2020 voluntary standard. Also consistent with the CPSIA update process, this direct final rule again updates the mandatory standard for high chairs to incorporate by reference ASTM's 2021 version of the voluntary standard.

DATES: The rule is effective on July 23, 2022, unless CPSC receives a significant adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If CPSC receives such a comment, it will publish a notice in the *Federal Register*, withdrawing this direct final rule before its effective date. The incorporation

by reference of the publication listed in this rule is approved by the Director of the Federal Register as of July 23, 2022.

ADDRESSES: You can submit comments, identified by Docket No. CPSC-2015-0031, 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. CPSC does not accept comments submitted by electronic mail (e-mail), except through <https://www.regulations.gov>, and as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/hand delivery/courier Written Submissions: Submit comments by mail/hand delivery/courier to: Division of the Secretariat, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504-7479. Alternatively, as a temporary option during the COVID-19 pandemic, you may e-mail such submissions to: cpsc-os@cpsc.gov.

Instructions: All submissions must include the agency name and docket number for this direct final rule. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: <https://www.regulations.gov>. Do not submit electronically: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier written submissions.

Docket: For access to the docket to read background documents or comments received, go to: <https://www.regulations.gov>, and insert the docket number, CPSC-2015-0031, into the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Keysha Walker, Compliance Officer, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504-6820; e-mail: KWalker@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

1. Statutory Authority

Section 104(b)(1) of the CPSIA requires the Commission to assess the effectiveness of voluntary standards for durable infant or toddler products and adopt mandatory standards for these products. 15 U.S.C. 2056a(b)(1). The mandatory standard must be “substantially the same as” the voluntary standard, or it may be “more stringent than” the voluntary standard, if the Commission determines that more stringent requirements would further reduce the risk of injury associated with the product. *Id.*

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

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

2. *Safety Standard for High Chairs*

Under section 104(b)(1) of the CPSIA, the Commission adopted a mandatory rule for high chairs, codified in 16 CFR part 1231. The rule incorporated by reference ASTM F404-18, *Standard Consumer Safety Specification for High Chairs*, with no modifications. 83 FR 28358 (June 19, 2018). At the time the Commission published the final rule, ASTM F404-18 was the current version of the voluntary standard.

In April 2019, ASTM notified CPSC that it had issued a revised standard for high chairs, ASTM F404-18a. In accordance with the procedures set out in section 104(b)(4)(B) of the CPSIA, the Commission determined that the updated standard did not improve the safety of high chairs and notified ASTM accordingly, retaining ASTM F404-18 as the mandatory standard.¹

In January 2021, ASTM notified CPSC that it had issued a revised standard for high chairs, ASTM F404-20. The Commission concluded that the revisions improved the safety of high chairs or were neutral with respect to safety. As such, in accordance with the procedures set out in section 104(b)(4)(B) of the CPSIA, the revised standard became the new mandatory standard for high chairs, effective July 3, 2021. The Commission published a direct final rule to update 16 CFR part 1231, incorporating by reference ASTM F404-20, with no modifications. 86 FR 17296 (Apr. 2, 2021).

¹ Staff's briefing package regarding ASTM F404-18a is available at: <https://www.cpsc.gov/s3fs-public/Update%20to%20Voluntary%20Standard%20for%20High%20Chairs.pdf>.

On January 24, 2022, ASTM notified CPSC that it had revised the voluntary standard for high chairs, approving ASTM F404-21 on November 15, 2021.² As discussed below, based on CPSC staff's review of ASTM F404-21,³ the Commission will allow the revised voluntary standard to become the mandatory standard because the revised requirements in the voluntary standard either improve the safety of high chairs, or are neutral with respect to safety.⁴ Accordingly, by operation of law under section 104(b)(4)(B) of the CPSIA, ASTM F404-21 will become the mandatory consumer product safety standard for high chairs on July 23, 2022. 15 U.S.C. 2056a(b)(4)(B). This direct final rule updates 16 CFR part 1231 to incorporate by reference the revised voluntary standard, ASTM F404-21.

B. Revisions to ASTM F404

The ASTM standard for high chairs includes performance requirements, test methods, and requirements for warning labels and instructional literature, to address hazards to children associated with high chairs, including stability, structural integrity, trays, restraints, and entrapment. This section describes the changes in ASTM F404-21, as compared to ASTM F404-20, which is the current mandatory standard, and includes an assessment of those changes. ASTM F404-21 contains substantive revisions, as well as editorial, non-substantive revisions.

1. Substantive Revisions

ASTM F404-21 includes updates to section 7.7, Stability Testing, to clarify the design and placement of test weights, which are used to conduct forward, sideways, and rearward stability testing, prescribed in sections 7.7.2.5, 7.7.2.6, and 7.7.27 of the standard.

² ASTM published ASTM F404-21 in January 2022.

³ CPSC staff's briefing package regarding ASTM F404-21 is available at: TBD.

⁴ The Commission voted TBD-TBD to approve this notice.

The first revision is in section 7.7.1 of the standard. This section states that the test weight is a “steel weight” with specified dimensions. In ASTM F404-20, note 11 to section 7.7.1 stated that the steel test weight size was designed to allow the use of eight stacked plates of standard, cold-rolled steel, with specified dimensions. In ASTM F404-21, note 11 has been revised to allow for the use of a solid steel block as the test weight, as an alternative to the stack of cold-rolled steel plates. CPSC staff considers this revision neutral with respect to the safety of high chairs because the mass, dimensions, and shape of the test weights under both alternatives remain the same, and this revision does not affect the stability testing specified in sections 7.7.2.5, 7.7.2.6, and 7.7.2.7.

The second revision is in section 7.7.2.3, which specifies the placement of test weights on the seat. ASTM F404-20 specified that test weights were to be placed horizontally on the seat bottom with the longest dimension in the front-to-back direction and in contact with the seat back. However, testing laboratories identified issues with the horizontal placement of test weights for high chairs with certain features (*e.g.*, passive crotch restraints, curved surfaces, or non-rigid seat surfaces). For example, for high chairs with curved seat backs or bottoms, the test weight could not be placed sufficiently far back on the seat, and the center of the test weight was forward of the center of the seat. This was problematic because the test weight is intended to represent an occupant sitting in the high chair, and an occupant’s weight would be located at the center of the seat. If, for example, the horizontal placement of the test weight resulted in the weight being forward of where a child-occupant’s weight would be, the high chair may appear more stable during rearward stability tests than it would be during real-world use.

To address this issue, in ASTM F404-21, section 7.7.2.3 and note 12 to that section have been revised so that when test weights cannot be centered on a seating surface when oriented

horizontally, they may be oriented vertically on the seat to align the center of the test weights with the center of the seat. CPSC staff considers this revision an improvement to the safety of high chairs because it allows a closer alignment of the center of the test weights with the center of the seating surface, resulting in a more accurate and representative measurement of stability.

The third revision relocated section 7.7.2.1 to section 7.7.2.4. This section specifies that, for high chairs that include a tray, the tray is to be adjusted to the rear position, closest to the seat back for stability testing. In ASTM F404-20, tray adjustment occurred at the beginning of the stability testing procedure, before test weights were placed in the high chair. However, adjusting the tray to the rearward position first could interfere with the placement of the test weights on the seating surface. To ensure the proper placement of test weights on the seat bottom, in ASTM F404-21, the tray adjustment has been moved, to come after the placement of test weights. It now specifies that, for high chairs that include a tray, the tray is to be adjusted to the rear position, closest to the seat back or until the tray comes into contact with the test weight on the seat. CPSC staff considers this revision an improvement to the safety of high chairs because it allows for the proper placement of test weights on the high chair, which facilitates more accurate and representative assessments of stability.

2. Non-Substantive Revisions

ASTM F404-21 also includes minor additions and revisions that are editorial and do not alter any substantive requirements in the standard. These changes include changing section numbers referenced throughout the standard to reflect updated section numbers in section 7 of the standard; revising wording for clarity; adding conversions to metric units for certain measurements; and changing the phrase “restraining system” to “restraint system,” to be

consistent with other standards. Because these revisions do not change any substantive requirements, they are neutral with respect to the safety of high chairs.

C. Incorporation by Reference

Section 1231.2 of the direct final rule incorporates by reference ASTM F404-21. The Office of the Federal Register (OFR) has regulations regarding incorporation by reference. 16 CFR part 51. Under these regulations, agencies must discuss, in the preamble to a final rule, ways in which the material the agency incorporates by reference is reasonably available to interested parties, and how interested parties can obtain the material. In addition, the preamble to the final rule must summarize the material. 16 CFR 51.5(b).

In accordance with the OFR regulations, section **B. Revisions to ASTM F404** of this preamble summarizes the major provisions of ASTM F404-21 that the Commission incorporates by reference into 16 CFR part 1231. The standard is reasonably available to interested parties. Until the direct final rule takes effect, a read-only copy of ASTM F404-21 is available for viewing, at no cost, on ASTM's website at: <https://www.astm.org/CPSC.htm>. Once the rule takes effect, a read-only copy of the standard will be available for viewing, at no cost, on the ASTM website at: <https://www.astm.org/READINGLIBRARY/>. Interested parties can also schedule an appointment to inspect a copy of the standard at CPSC's Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone: (301) 504-7479; e-mail: cpsc-os@cpsc.gov. Interested parties can purchase a copy of ASTM F404-21 from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959 USA; telephone: (610) 832-9585; www.astm.org.

D. Certification

Section 14(a) of the Consumer Product Safety Act (CPSA; 15 U.S.C. 2051-2089) requires manufacturers of products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, to certify that the products comply with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program, or for children's products, on tests of a sufficient number of samples by a third party conformity assessment body accredited by CPSC to test according to the applicable requirements. As noted, standards issued under section 104(b)(1)(B) of the CPSIA are "consumer product safety standards." Thus, they are subject to the testing and certification requirements of section 14 of the CPSA.

Because high chairs are children's products, a CPSC-accepted third party conformity assessment body must test samples of the products. Products subject to part 1231 also must comply with all other applicable CPSC requirements, such as the lead content requirements in section 101 of the CPSIA,⁵ the phthalates prohibitions in section 108 of the CPSIA⁶ and 16 CFR part 1307, the tracking label requirements in section 14(a)(5) of the CPSA,⁷ and the consumer registration form requirements in section 104(d) of the CPSIA.⁸

E. Notice of Requirements

In accordance with section 14(a)(3)(B)(iv) of the CPSIA, the Commission previously published a notice of requirements (NOR) for accreditation of third party conformity assessment bodies for testing high chairs. 83 FR 28358 (June 19, 2018). The NOR provided the criteria and

⁵ 15 U.S.C. 1278a.

⁶ 15 U.S.C. 2057c.

⁷ 15 U.S.C. 2063(a)(5).

⁸ 15 U.S.C. 2056a(d).

process for CPSC to accept accreditation of third party conformity assessment bodies for testing high chairs to 16 CFR part 1231. The NORs for all mandatory standards for durable infant or toddler products are listed in the Commission’s rule, “Requirements Pertaining to Third Party Conformity Assessment Bodies,” codified in 16 CFR part 1112. *Id.*

ASTM F404-21 includes revised requirements for testing high chairs. However, these revisions to test requirements do not require additional equipment or significant changes to existing test protocols. The change to test weight design provides an alternative to the existing requirement, giving testing laboratories more flexibility in creating test weights. The changes to test weight orientation and tray adjustment merely alter the timing and placement of features during existing test procedures. Accordingly, the revisions do not significantly change the way that third party conformity assessment bodies test these products for compliance with the safety standard for high chairs. Laboratories will begin testing to the new standard when ASTM F404-21 goes into effect, and the existing accreditations that the Commission has accepted for testing to this standard will cover testing to the revised standard. Therefore, the Commission considers the existing CPSC-accepted laboratories for testing to ASTM F404-20 to be capable of testing to ASTM F404-21 as well. Accordingly, the existing NOR for this standard will remain in place, and CPSC-accepted third party conformity assessment bodies are expected to update the scope of the testing laboratories’ accreditations to reflect the revised standard in the normal course of renewing their accreditations.

F. Direct Final Rule Process

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA; 5 U.S.C. 551-559) generally requires agencies to provide notice of a rule and an opportunity for interested parties to comment on it, section 553 of the APA provides an

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

Specifically, under the process set out in section 104(b)(4)(B) of the CPSIA, when ASTM revises a standard that the Commission has previously incorporated by reference under section 104(b)(1)(B) of the CPSIA, that revision will become the new CPSC standard, unless the Commission determines that ASTM’s revision does not improve the safety of the product. Thus, unless the Commission makes such a determination, the ASTM revision becomes CPSC’s standard by operation of law. The Commission is allowing ASTM F404-21 to become CPSC’s new standard because its provisions either improve product safety or are neutral with respect to safety. The purpose of this direct final rule is to update the reference in the Code of Federal Regulations (CFR) so that it reflects the version of the standard that takes effect by statute. This rule updates the reference in the CFR, but under the terms of the CPSIA, ASTM F404-21 takes effect as the new CPSC standard for high chairs, even if the Commission does not issue this rule. Thus, public comments would not alter substantive changes to the standard or the effect of the revised standard as a consumer product safety standard under section 104(b) of the CPSIA. Under these circumstances, notice and comment are unnecessary.

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

Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule, because CPSC does not expect any significant adverse comments.

Unless CPSC receives a significant adverse comment within 30 days of this notification, the rule will become effective on July 23, 2022. In accordance with ACUS's recommendation, the Commission considers a significant adverse comment to be "one where the commenter explains why the rule would be inappropriate," including an assertion challenging "the rule's underlying premise or approach," or a claim that the rule "would be ineffective or unacceptable without a change." 60 FR 43108, 43111 (Aug. 18, 1995). As noted, this rule merely updates a reference in the CFR to reflect a change that occurs by statute, and public comments should address this specific action.

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

G. Regulatory Flexibility Act

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

which merely updates the incorporation by reference to reflect the mandatory CPSC standard that takes effect under section 104 of the CPSIA.

H. Paperwork Reduction Act

The current mandatory standard for high chairs includes requirements for marking, labeling, and instructional literature that constitute a “collection of information,” as defined in the Paperwork Reduction Act (PRA; 44 U.S.C. 3501-3521). The revised mandatory standard does not alter these requirements. The Commission took the steps required by the PRA for information collections when it adopted 16 CFR part 1231, including obtaining approval and a control number. Because the information collection is unchanged, the revision does not affect the information collection requirements or approval related to the standard.

I. 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 where they “have little or no potential for affecting the human environment.” 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

J. Preemption

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

that provision “consumer product safety standards.” Therefore, once a rule issued under section 104 of the CPSIA takes effect, it will preempt in accordance with section 26(a) of the CPSA.

K. Effective Date

Under the procedure set forth in section 104(b)(4)(B) of the CPSIA, when a voluntary standards organization revises a standard that the Commission adopted as a mandatory standard, the revision becomes the CPSC standard 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*. 15 U.S.C. 2056a(b)(4)(B). The Commission is taking neither of those actions with respect to the standard for high chairs. Therefore, ASTM F404-21 will take effect as the new mandatory standard for high chairs on July 23, 2022, 180 days after January 24, 2022, when the Commission received notice of the revision.

L. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801-808) states that before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The CRA submission must indicate whether the rule is a “major rule.” The CRA states that the Office of Information and Regulatory Affairs determines whether a rule qualifies as a “major rule.”

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

List of Subjects in 16 CFR Part 1231

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

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

PART 1231 – SAFETY STANDARD FOR HIGH CHAIRS

1. The authority citation for part 1231 continues to read as follows:

Authority: Sec. 104, Pub. L. 110-314, 122 Stat. 3016 (15 U.S.C. 2056a); Sec 3, Pub. L. 112-28, 125 Stat. 273.

2. Revise § 1231.2 to read as follows:

§ 1231.2 Requirements for High Chairs.

Each high chair shall comply with all applicable provisions of ASTM F404-21, *Standard Consumer Safety Specification for High Chairs*, approved on November 15, 2021. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A read-only copy of the standard is available for viewing on the ASTM website at <https://www.astm.org/READINGLIBRARY/>. You may obtain a copy from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959; telephone (610) 832-9585; www.astm.org. You may inspect a copy at the Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone (301) 504-7479, e-mail cpsc-os@cpsc.gov, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, e-mail fr.inspection@nara.gov, or go to: www.archives.gov/federal-register/cfr/ibr-locations.html.

Alberta E. Mills,
Secretary,
Consumer Product Safety Commission.



Memorandum

TO: The Commission
Alberta E. Mills, Secretary

THROUGH: Austin C. Schlick, General Counsel
Mary T. Boyle, Executive Director
DeWane Ray, Deputy Executive Director for Safety Operations

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

Stefanie Marques, Ph.D., High Chairs Project Manager
Division of Physiology and Pharmacology
Directorate for Health Sciences

SUBJECT: Notice of Revision to the Safety Standard for High Chairs
(16 CFR Part 1231)

DATE: April 6, 2022

I. Introduction

The Danny Keysar Child Product Safety Notification Act, section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA), instructs voluntary standards organizations, such as ASTM International (ASTM), to notify the U.S. Consumer Product Safety Commission (CPSC) of revisions to voluntary standards that are the basis for consumer product safety standards promulgated by the Commission. Section 104(b)(4)(B) of the CPSIA states:

COMMISSION ACTION ON REVISED VOLUNTARY STANDARD - If an organization revises a standard that has been adopted, in whole or in part, as a consumer product safety standard under this subsection, it shall notify the Commission. The revised voluntary standard shall be considered to be a consumer product safety standard issued by the Commission under section 2058 of this title [i.e., section 9 of the Consumer Product Safety Act (15 U.S.C. 2058)], effective 180 days after the date on which the organization notifies the Commission (or such later date specified by the Commission in the Federal Register) unless, within 90 days after receiving that notice, the Commission notifies the organization that it has determined that the proposed revision does not improve the safety of the consumer

product covered by the standard and that the Commission is retaining the existing consumer product safety standard.

On June 19, 2018, under section 104 of the CPSIA, the Commission published a final rule establishing a mandatory Safety Standard for High Chairs, codified in 16 CFR part 1231, incorporating by reference, without change, ASTM F404-18, *Standard Consumer Safety Specification for High Chairs*. The effective date for the final rule was June 19, 2019. Since publication of the mandatory standard, ASTM has published several revisions of the high chair standard. In April 2019, ASTM notified CPSC that it had issued ASTM F404-18a. Consistent with staff's recommendation, on June 11, 2019, the Commission voted not to accept the revision as the updated standard because it did not improve the safety of high chairs, and staff notified ASTM accordingly on June 19, 2019.¹ In January 2021, ASTM notified CPSC that it had issued ASTM F404-20, which addressed CPSC's concerns about stability testing in ASTM F404-18a. Consistent with staff's recommendation, the Commission accepted this update, and on April 2, 2021, the Commission published a direct final rule updating 16 CFR part 1231 to incorporate by reference, without change, ASTM F404-20. 86 Fed. Reg. 17296. The update took effect on July 3, 2021. On January 24, 2022, ASTM officially notified CPSC that it had issued an update of the high chair standard, ASTM F404-21, approved on November 15, 2021, and published in January 2022.

This memorandum discusses the differences between 16 CFR part 1231 and the revised ASTM voluntary standard for high chairs, ASTM F404-21. Based on staff's evaluation of the revised voluntary standard, staff recommends that the Commission allow ASTM F404-21 to be considered the new consumer product safety standard for high chairs. Additionally, staff recommends that the Commission issue a direct final rule to update the incorporation by reference in part 1231 to reflect that ASTM F404-21 will become the mandatory standard for high chairs.

II. Discussion

a. Review and comparison of ASTM F404-21 and ASTM F404-20

ASTM F404-21 updates section 7.7 *Stability Testing* to clarify the composition and placement of the test weights to conduct the forward, sideways, and rearward stability testing requirements described in sections 7.7.2.5, 7.7.2.6, and 7.7.2.7. The substantive revisions in section 7.7 are as follows:

¹ Staff's briefing package is available at: <https://www.cpsc.gov/s3fs-public/Update%20to%20Voluntary%20Standard%20for%20High%20Chairs.pdf>; Record of Commission Action is available at: <https://www.cpsc.gov/s3fs-public/RCA%20-%20Update%20to%20CPSIA%20Section%20104%20Revised%20Voluntary%20Standard%20High%20Chairs%20-%20June%2011%202019.pdf>.

- Section 7.7.1 provides that the test weight is a “steel weight” with specified dimensions. In ASTM F404-21, note 11 now allows for the use of a solid steel block as the test weight, as an alternative to the stack of cold rolled steel plates. The 2020 version of ASTM F404 required the test weights to be placed horizontally on the seat bottom with the longest dimension (7.2 in.) in the front-to-back direction and in contact with the seat back, regardless of seat attributes. The test weights are to represent an occupant sitting on the chair. The ballot for this change stated that the clarification was to avoid issues during laboratory audits and certification of their test equipment.

Staff concludes that the test weight revisions in section 7.7 *Stability Testing* are neutral to the safety of high chairs. Because the mass, dimensions, and shape of the test weights are unaffected, these revisions does not impact the stability testing specified in sections 7.7.2.5, 7.7.2.6, and 7.7.2.7.

- *Section 7.7.2.3*, note 12 has been expanded to allow for a vertical orientation of the test weights onto the seat to ensure they are as close as possible to the center of the seat for high chairs with physical features that present a challenge, such as high chairs with passive crotch restraints, high chairs with curved surfaces (back and/or bottom), and high chairs with a non-rigid seat surface. Test laboratories identified that the horizontal placement of the test weights could be located forward of the center of the seat depending on the seat attributes (*e.g.*, curved back and/or bottom). This forward placement of the test weight does not simulate the position of the child in the high chair and is not representative of actual stability scenarios when occupied. For instance, with the current test weight placement (horizontal), a high chair may appear to be stable (passing the rearward stability tests), when it would fail if the weight was centered in the seat as for an actual child. To address this issue, in the 2021 version of the standard, ASTM would allow the test weight to be placed with the 7.2 in. dimension vertically. Because the other two dimensions of the test weights are narrower (2.5 in and 4 in.), the change would help align the center of the test weights with the center of the seat without interference. The new orientation of the test weight (vertically) would only take place if the first option (horizontally) cannot be attained due to the challenge presented by the physical features of the chair stated above.

Staff concludes that this change improves the safety of high chairs, because it ensures the center of the test weights positioned closer to the center of the occupant’s seating, resulting in a more accurate and representative measurement of stability.

- Section 7.7.2.1. was relocated to Section 7.7.2.4 and describes how the tray should be positioned during stability testing, for high chairs that include a tray. This section

states: to “adjust the tray into the rear position, closest to the seat back or until the tray contacts the test weights placed in the seat.” The relocation of this section to the last step of the test set up order was because the tray could otherwise interfere with the placement of the test weights. The change would now allow for the proper placement of the test weights onto the seat bottom, before installing and adjusting the tray.

Staff concludes that this change improves the safety of high chairs, because it ensures a proper placement of the test weights upon the high chair, which is essential for the stability testing.

In addition to the substantive changes discussed above, ASTM F404-21 made several non-substantive editorial changes throughout the revised standard. These include changing the section numbers referenced throughout the standard to reflect updated section numbers in section 7; revising wording for clarity; adding conversions to metric units for certain measurements; and changing the wording “restraining system” to “restraint system” to be consistent with other standards. Staff assesses that these are non-substantive changes because they are neutral regarding the safety of high chairs.

b. Effect of changes on third party testing

The notice of requirements (NOR), as set out in the final rule for high chairs, provides the criteria and process for the Commission’s acceptance of accreditation of third party conformity assessment bodies (testing laboratories) for testing high chairs to 16 CFR part 1231 (which incorporates by reference ASTM F404-20). The NORs for children’s product safety rules are listed in the Commission’s rule, *“Requirements Pertaining to Third Party Conformity Assessment Bodies,”* at 16 CFR part 1112.

Although the revised voluntary standard includes changes that affect stability testing, it does not require the purchase of new equipment to conduct the stability testing, because the revised test weight provision is an alternative to the existing provision. This change provides testing laboratories with more flexibility in creating testing weights. The additional substantive changes just alter the timing or placement of features during existing test procedures. Accordingly, CPSC staff concludes that testing laboratories that have demonstrated competence for testing in accordance with ASTM F404 will have the competence to test in accordance with the revised standard, and the standard changes will have a neutral effect on safety in this respect.

For these reasons, staff recommends that the Commission accept the existing accreditations for testing to this standard as sufficient for testing to the revised standard as well. If the Commission follows this recommendation, the existing NOR for this standard would remain in place, and CPSC-accepted third party conformity assessment bodies would be expected to update the scope of the testing laboratories’ accreditations to reflect the revised standard in the normal course of renewing their accreditations. If the Commission approves the draft direct final

rule, CPSC staff will notify all CPSC-accepted laboratories by e-mail and will provide links to the *Federal Register* notice to explain the changes to the standard and the effective date.

c. Effective date

Section 104(b)(4) of the CPSIA provides that the revised standard will become effective 180 days after the date on which an organization notifies the Commission of the revision. Therefore, ASTM F404-21 would be considered the new mandatory standard for high chairs effective on July 23, 2022, unless the Commission specifies a later date in the *Federal Register*, or notifies ASTM by April 22, 2022² that it has determined that the proposed revision does not improve the safety of high chairs. Manufacturers and importers of durable infant or toddler products, including high chairs, are accustomed to adjusting to new voluntary standards within this time frame. Staff is currently unaware of any reason to extend the effective date beyond 180 days.

III. Recommendations

Based on staff's analysis of ASTM F404-21, staff concludes that the revised standard improves the safety of high chair products, because it provides a more accurate measurement of the stability of a high chair. Additionally, staff concludes the other editorial revisions in ASTM F404-21 are safety-neutral revisions. Staff recommends that the Commission allow ASTM F404-21 to become the mandatory consumer product safety standard for high chairs. Staff also recommends that the Commission issue a direct final rule to revise the incorporation by reference in 16 CFR part 1231 to reflect the updated standard. Under section 104(b)(4)(B) of the CPSIA, unless the Commission publishes a later effective date or notifies an organization that it has determined that a proposed revision does not improve the safety of a consumer product covered by the standard, and that the Commission is retaining the existing standard, the revised standard will become effective 180 days after the date on which an organization notifies the Commission of the revision. Staff recommends that the Commission allow ASTM F404-21 to become the new mandatory standard for high chairs effective July 23, 2022.

² The 90-day notification date falls on April 24, 2022. However, because that is a Sunday, notification would need to be provided by April 22, 2022 to meet the statutory deadline.