



# Ballot Vote Sheet

**TO:** The Commission  
Alberta E. Mills, Secretary

**DATE:** June 8, 2022

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

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

**SUBJECT:** ASTM's Revised Safety Standard for Infant Bath Tubs

**BALLOT VOTE DUE:** Tuesday, June 14, 2022

In 2017, the Commission issued a Safety Standard for Infant Bath Tubs (16 CFR part 1234) under the Consumer Product Safety Improvement Act of 2008 (CPSIA). That mandatory standard incorporated by reference ASTM F2670-17, *Standard Consumer Safety Specification for Infant Bath Tubs*. ASTM revised its standard in 2018, and the Commission updated its mandatory standard to incorporate by reference the revised ASTM standard (F2670-18).

ASTM has again revised its standard and notified the Commission of the revised standard (F2670-22). 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.

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

Please indicate your vote on the following options:

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

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

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

[cpsc.gov](http://cpsc.gov)

THIS DOCUMENT HAS NOT BEEN REVIEWED  
OR ACCEPTED BY THE COMMISSION



# Ballot Vote Sheet

\_\_\_\_\_  
(Signature) (Date)  
II. Approve publication of the attached notice in the *Federal Register*, with the following changes.

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\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Signature) (Date)  
III. Determine that the proposed revision does not improve the safety of infant bath tubs and therefore 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: Safety Standard for Infant Bath Tubs

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

**National Product Testing  
& Evaluation Center**  
5 Research Place  
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[Billing Code 6355-01-P]

**CONSUMER PRODUCT SAFETY COMMISSION**

**16 CFR Part 1234**

**[Docket No. CPSC-2015-0019]**

**Safety Standard for Infant Bath Tubs**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Direct final rule.

**SUMMARY:** In March 2017, the U.S. Consumer Product Safety Commission (CPSC) published a consumer product safety standard for infant bath tubs under section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). The standard incorporated by reference the 2017 ASTM voluntary standard for infant bath tubs 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 the voluntary standards organization revises the standard. Consistent with the CPSIA’s update process, the Commission issued a direct final rule in October 2018, that revised the incorporation by reference for the mandatory standard for infant bath tubs to reflect ASTM’s revised 2018 voluntary standard. Also consistent with the CPSIA’s update process, this direct final rule again updates the mandatory standard for infant bath tubs to incorporate by reference ASTM’s 2022 version of the voluntary standard.

**DATES:** The rule is effective on September 24, 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 September 24, 2022.

**ADDRESSES:** You can submit comments, identified by Docket No. CPSC-2015-0019, 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 as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal.

*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. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may e-mail them to: [cpsc-os@cpsc.gov](mailto: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-2015-0019, into the “Search” box, and follow the prompts.

**FOR FURTHER INFORMATION CONTACT:** Salman Sarwar, Compliance Officer, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504-7682; e-mail: [ssarwar@cpsc.gov](mailto:ssarwar@cpsc.gov).

**SUPPLEMENTARY INFORMATION:**

**A. Background**

*1. Statutory Authority*

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

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

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

2. *Safety Standard for Infant Bath Tubs*

Under section 104(b)(1) of the CPSIA, the Commission adopted a mandatory rule for infant bath tubs, codified in 16 CFR part 1234. The rule incorporated by reference ASTM F2670-17, *Standard Consumer Safety Specification for Infant Bath Tubs*, with no modifications. 82 FR 15615 (March 30, 2017). At the time the Commission published the final rule, ASTM F2670-17 was the current version of the voluntary standard.

In July 2018, ASTM notified CPSC that it had issued a revised standard for infant bath tubs, ASTM F2670-18. The Commission concluded that the revisions improved the safety of infant bath tubs. 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 infant bath tubs. The Commission published a direct final rule to update 16 CFR part 1234, incorporating by reference ASTM F2670-18, with no modifications. 83 FR 53371 (Oct. 23, 2018).

On March 28, 2022, ASTM notified CPSC that it has again revised the voluntary standard for infant bath tubs, by approving ASTM F2670-22 on March 1, 2022.<sup>1</sup> As discussed in section **B. Revisions to ASTM F2670**, based on CPSC staff's review of ASTM F2670-22,<sup>2</sup> the Commission will allow the revised voluntary standard to become the mandatory standard because it improves the safety of infant bath tubs.<sup>3</sup> Accordingly, by operation of law under

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<sup>1</sup> ASTM also published ASTM F2670-22 in March 2022.

<sup>2</sup> CPSC staff's briefing package regarding ASTM F2670-22 is available at: [INSERT LINK].

<sup>3</sup> The Commission voted TBD-TBD to approve this notice.

section 104(b)(4)(B) of the CPSIA, ASTM F2670-22 will become the mandatory consumer product safety standard for infant bath tubs on September 24, 2022. 15 U.S.C. 2056a(b)(4)(B). This direct final rule updates 16 CFR part 1234 to incorporate by reference the revised voluntary standard, ASTM F2670-22.

## **B. Revisions to ASTM F2670**

The ASTM standard for infant bath tubs includes performance requirements, test methods, and requirements for warning labels and instructional literature, to address hazards to children associated with infant bath tubs. ASTM F2670-22 contains substantive revisions as well as editorial, non-substantive revisions. Revisions to the standard includes changes to language in the standard describing latching and locking mechanisms (*i.e.*, mechanisms that prevent the product from folding or collapsing in a manner that puts the occupant at risk) and new marking, labeling, warning, and instructional requirements addressing battery-powered infant bath tubs. This section describes the changes in ASTM F2670-22, as compared to ASTM F2670-18, which is the current mandatory standard, and includes an assessment of those changes.

### 1. *Substantive Revisions*

#### a. General Requirements

The general requirement subsection *Resistance to Collapse* has been renamed *Latching and Locking Mechanism(s)*. Section 5.4.1 has been edited to state that products that fold must have a latching and locking mechanism(s) or other means to prevent the product from folding or collapsing in a manner that puts the occupant at risk of injury by falling out of the product or being subjected to contact or pressure by product components. The standard states that “other means” can include, but are not limited to, designs that utilize the occupant, an added

component, or the water that is placed into the product to act in opposition to the folding action or collapse of the product. Latching and locking mechanisms are subject to the same general and performance requirements as required in 16 CFR part 1234 (some non-substantive changes have been made to these requirements).

These changes improve safety, because 16 CFR part 1234 currently does not explicitly require folding infant bath tubs or infant bath tub accessories to have latching and locking mechanisms or “other means” of preventing the product from folding or collapsing.

b. Marking and Labeling

Revisions to the 2022 standard include the addition of specific marking requirements for products that are battery-operated. Currently, 16 CFR part 1234 does not contain any marking and labeling requirements specifically addressing battery-powered infant bath tubs. Section 8.4.1 states that the product’s battery compartment, battery compartment door/cover, or area immediately adjacent to the battery compartment must be marked or labeled permanently and legibly to show the correct battery polarity, size, and voltage. Products utilizing one or more non-replaceable batteries are exempt from this requirement. However, Section 8.4.2 states that products utilizing one or more non-replaceable batteries accessible with the use of a coin, screwdriver, or other common household tool shall be marked or labeled permanently and legibly with a statement that the batteries are not replaceable. If marking or labeling the product is not practicable, then this statement shall be in the instructions.

In addition to on-product marking/labeling requirements, ASTM F2670-22 now includes specific warning requirements for battery-powered infant bath tubs and infant bath tub accessories packaging. Section 8.11 states that packages of infant bath tubs and infant bath tub accessories that use replaceable button or coin cell batteries that are 1.5 V or greater and that are



larger than 15 mm in diameter but fit within the small parts cylinder (see 16 CFR 1501) shall include the following warning:

**⚠ WARNING**

Contains button or coin cell battery. Hazardous if swallowed—see instructions.

This warning is subject to the formatting requirements found in section 8.5, which contains no substantive changes.

The changes in this section improve safety, as they address battery ingestion hazards, which are not currently addressed by 16 CFR part 1234.

c. Instructional Literature

The requirements for instructional literature in ASTM F2670-22 now include cautionary and warning statements specifically for battery-operated products, which are not addressed in 16 CFR Part 1234. Section 9.4 *Cautionary and Warning Statements* now requires that products that operate using replaceable batteries include the following:

**⚠ CAUTION**

To prevent battery leaks, which can burn skin and eyes:

- Remove batteries when storing product for a long time.
- Dispose of used batteries immediately.

Products that use more than one battery in any one circuit must also include the following statements under the same CAUTION header:

- Always replace the entire set of batteries at one time.
- Never mix old and new batteries, or batteries of different brands or types.

These changes improve safety, as they address burn hazards caused by battery leaks, which are not currently addressed by 16 CFR Part 1234.

## 2. *Non-Substantive Revisions*

ASTM F2670-22 also includes several non-substantive changes, such as spacing and formatting. ASTM also revised the language in the introduction and removed CPSIA from its list of referenced documents to bring the standard into alignment with current Ad Hoc Recommended Language.<sup>4</sup> These changes to the text and formatting do not materially affect the safety of infant bath tubs.

### C. **Incorporation by Reference**

Section 1234.2 of the direct final rule incorporates by reference ASTM F2670-22. The Office of the Federal Register (OFR) has regulations regarding incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble to a final rule, ways in which the material the agency incorporates by reference is reasonably available to interested parties, and how interested parties can obtain the material. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR regulations, section **B. Revisions to ASTM F2670** of this preamble summarizes the major provisions of ASTM F2670-22 that the Commission incorporates by reference into 16 CFR part 1234. The standard is reasonably available to interested parties. Until the direct final rule takes effect, a read-only copy of ASTM F2670-22 is available for viewing, at no cost, on ASTM’s website at: <https://www.astm.org/CPSC.htm>. Once the rule takes effect, a read-only copy of the standard will be available for viewing, at no cost, on the ASTM website at: <https://www.astm.org/READINGLIBRARY/>. Interested parties can also

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<sup>4</sup> 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.

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](mailto:cpsc-os@cpsc.gov). Interested parties can purchase a copy of ASTM F2670-22 from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959 USA; telephone: (610) 832-9585; [www.astm.org](http://www.astm.org).

#### **D. Certification**

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

Because infant bath tubs are children’s products, a CPSC-accepted third party conformity assessment body must test samples of the products. Products subject to part 1234 also must comply with all other applicable CPSC requirements, such as the lead content requirements in section 101 of the CPSIA,<sup>5</sup> the tracking label requirements in section 14(a)(5) of the CPSA,<sup>6</sup> and

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<sup>5</sup> 15 U.S.C. 1278a.

<sup>6</sup> 15 U.S.C. 2063(a)(5).

the consumer registration form requirements in section 104(d) of the CPSIA.<sup>7</sup> ASTM F2670-22 makes no changes that would impact any of these existing requirements.

#### **E. Notice of Requirements**

In accordance with section 14(a)(3)(B)(vi) of the CPSA, the Commission previously published a notice of requirements (NOR) for accreditation of third party conformity assessment bodies for testing infant bath tubs. 82 FR 15615 (March 30, 2017). The NOR provided the criteria and process for CPSC to accept accreditation of third party conformity assessment bodies for testing infant bath tubs to 16 CFR part 1234. 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 F2670-22 did not change the testing requirements, testing equipment, or testing protocols for infant bath tubs. Accordingly, the revisions do not change the way that third party conformity assessment bodies test these products for compliance with the safety standard for infant bath tubs. Testing laboratories that have demonstrated competence for testing in accordance with ASTM F2670-18 therefore are competent to test in accordance with the revised standard ASTM F2670-22. Laboratories will begin testing to the new standard when ASTM F2670-22 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 F2670-18 to be capable of testing to ASTM F267-22 as well. Accordingly, the existing NOR for this standard will remain in place, and CPSC-accepted third party conformity assessment bodies are expected to

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<sup>7</sup> 15 U.S.C. 2056a(d).

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 F2670-22 to become CPSC’s new standard because its provisions improve product safety. The purpose of this direct final rule is to update the Code of Federal Regulations (CFR) so that it reflects the version of the standard that takes effect by statute. This rule updates the reference in the CFR, but under the terms of the CPSIA, ASTM F2670-22 takes effect as the new CPSC standard for infant bath tubs, even if the Commission does not issue this rule. Thus, public comments would not alter substantive changes to the standard or the effect of the revised standard as a consumer product safety

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

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

Unless CPSC receives a significant adverse comment within 30 days of this notification, the rule will become effective on September 24, 2022. In accordance with ACUS’s recommendation, the Commission considers a significant adverse comment to be “one where the commenter explains why the rule would be inappropriate,” including an assertion challenging “the rule’s underlying premise or approach,” or a claim that the rule “would be ineffective or unacceptable without a change.” 60 FR 43108, 43111 (Aug. 18, 1995). As noted, this rule merely updates a reference in the CFR to reflect a change that occurs by statute, and public comments should address this specific action.

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

### **G. Regulatory Flexibility Act**

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

### **H. Paperwork Reduction Act**

The current mandatory standard for infant bath tubs 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). While the revised mandatory standard adds additional marking, labeling, and instructional literature language for battery-powered infant bath tubs, the new requirements would not add to the burden hours because the products already require marking, labeling, and instructional literature. The new requirements merely require a small amount of labeling language in addition to that already required by the standard, for infant bath tubs using batteries. Therefore, the new requirements are not measurably more burdensome than the existing requirements. The Commission took the steps required by the PRA for information collections when it promulgated 16 CFR part 1234, and the marking, labeling, and instructional literature for infant bath tubs are currently approved under OMB Control Number 3041-0159. Because the information collection burden is unchanged, the

revision does not affect the information collection requirements or approval related to the standard.

**I. 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 timely notifies the standards organization that it has determined that the revision does not improve the safety of the product, or the Commission sets a later date in the



*Federal Register*. 15 U.S.C. 2056a(b)(4)(B). The Commission is taking neither of those actions with respect to the standard for infant bath tubs. Therefore, ASTM F2670-22 will take effect as the new mandatory standard for infant bath tubs on September 24, 2022, 180 days after March 28, 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 1234**

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 1234 – SAFETY STANDARD FOR INFANT BATH TUBS**

1. The authority citation for part 1234 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 § 1234.2 to read as follows:

**§ 1234.2 Requirements for Infant Bath Tubs.**

Each infant bath tub must comply with all applicable provisions of ASTM F2670-22, *Standard Consumer Safety Specification for Infant Bath Tubs*, approved on March 1, 2022. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A read-only copy of the standard is available for viewing on the ASTM website at <https://www.astm.org/READINGLIBRARY/>. You may obtain a copy from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959; telephone (610) 832-9585; [www.astm.org](http://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](mailto: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](mailto:fr.inspection@nara.gov), or go to: [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html).

Dated: \_\_\_\_\_

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Alberta E. Mills, Secretary  
Consumer Product Safety Commission



# Memorandum

**TO:** The Commission  
Alberta E. Mills, Secretary

**DATE:** June 8, 2022

**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

Zachary S. Foster, Project Manager  
Division of Human Factors, Directorate for Engineering  
Sciences

**SUBJECT:** Consumer Product Safety Improvement Act of 2008 (CPSIA),  
as revised by Pub. L. No. 112-28 - Notice of Revision to the  
Infant Bath Tubs Standard 16 CFR Part 1234

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## Background

In 2017, the Commission adopted the voluntary standard for infant bathtubs, ASTM F2670-17, *Standard Consumer Safety Specification for Infant Bath Tubs*, as a mandatory consumer product safety standard. 16 CFR part 1234 (82 *Fed. Reg.* 15,615 (Mar. 30, 2017)). As discussed in the notice of proposed rulemaking (NPR) (80 *Fed. Reg.* 48769, Aug. 14, 2015) and the 2017 final rule, ASTM was working to include infant bathtub accessories (*i.e.*, products/components intended to be attached to or placed on/in the bathtub to support the infant) in the standard. A revised version of the voluntary standard was published in 2018, and the Commission adopted that revised standard. 16 CFR part 1234 (83 *Fed. Reg.* 53,371 (Oct. 23, 2018)).

In March 2022, ASTM approved a revision to the voluntary standard for infant bathtubs. This revision to the standard includes new marking, labeling, warning, and instructional requirements addressing battery-powered infant bathtubs. This version of the standard also contains revisions to language in the standard describing latching and locking mechanisms (*i.e.*, mechanisms that prevent the product from folding or collapsing in a manner that puts the occupant at risk). On March 28, 2022, ASTM notified the CPSC that ASTM published the revised standard ASTM F2670-22.

Voluntary standards organizations must notify CPSC of revisions to voluntary standards that are a basis for a consumer product safety standard promulgated by the Commission:

*(B) 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 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.*

Accordingly, by statute, the revised ASTM F2670-22 shall be considered a consumer product safety standard issued by the Commission, effective September 24, 2022 (or a later date specified by the Commission in the *Federal Register*), unless the Commission notifies ASTM within 90 days of March 28, 2022 (June 26, 2022) that the Commission has determined that the proposed revision does not improve the safety of infant bath tubs and that the Commission will retain ASTM F2670-18 as the mandatory standard.

This memorandum describes and analyzes the differences between the Commission's mandatory standard for infant bathtubs, 16 CFR part 1234, and ASTM F2670-22, the revised voluntary standard. The memorandum explains staff's recommendation to allow this revision to become the new mandatory safety standard for infant bathtubs. CPSC staff reviewed the revised voluntary standard and concludes that the revised standard improves the safety of infant bathtubs. Accordingly, staff recommends that the Commission allow ASTM F2670- 22 to become a consumer product safety standard and take effect within 180 days of the March 28, 2022, notice from ASTM. Staff also recommends publishing a direct final rule to update the incorporation by reference in 16 CFR part 1234 to reference ASTM F2670-22 as the mandatory standard.

## Discussion

### Review of Differences Between 16 CFR Part 1234 and ASTM F2670 – 22

Since CPSC incorporated by reference ASTM F2670-18 as the mandatory standard for infant bathtubs in October 2018, ASTM published a 2022 revision to ASTM F2670 in March 2022. Below staff summarizes the major revisions in ASTM F2670-22.

ASTM F2670-22 includes several non-substantive changes that do not affect safety, such as spacing and formatting. ASTM also revised the language in the introduction and removed CPSIA from its list of referenced documents to bring the standard into alignment with current recommendations from the Ad Hoc Task Group. The Ad Hoc Task Group was formed to harmonize the wording, as well as the warning format, across durable infant and toddler product voluntary standards. These changes to the text do not affect the safety of infant bathtubs.

### General Requirements

The general requirement subsection *Resistance to Collapse* has been renamed *Latching and Locking Mechanism(s)*. Section 5.4.1 has been revised to require that products that fold must

have a latching and locking mechanism(s) or other means to prevent the product from folding or collapsing in a manner that puts the occupant at risk of injury by falling out of the product or being subjected to contact or pressure by product components. The standard states that “other means” can include, but are not limited to, designs that use the occupant, an added component, or the water that is placed into the product to act in opposition to the folding action or collapse of the product. Latching and locking mechanisms are subject to the same general and performance requirements as required in 16 CFR part 1234 (some non-substantive changes have been made to these requirements).

Staff considers these changes to be an improvement to safety, because 16 CFR part 1234 currently does not explicitly require folding infant bathtubs or infant bathtub accessories to have latching and locking mechanism(s) or “other means” of preventing the product from folding or collapsing. Rather, it simply states that latching and locking mechanisms on the product will be subject to certain requirements, which staff believes can be interpreted as meaning that products are not required to have latching and locking mechanism(s) or “other means” of preventing folding or collapsing.

### **Marking and Labeling**

Revisions to the 2022 standard include the addition of specific marking requirements for battery-operated products. The regulation at 16 CFR part 1234 does not contain any marking and labeling requirements specifically addressing battery-powered infant bathtubs. Section 8.4.1 states that the product’s battery compartment, battery compartment door/cover, or area immediately adjacent to the battery compartment must be marked or labeled permanently and legibly to show the correct battery polarity, size, and voltage. Products using one or more non-replaceable batteries are exempt from this requirement. However, Section 8.4.2 states that products using one or more non-replaceable batteries accessible with the use of a coin, screwdriver, or other common household tool shall be marked or labeled permanently and legibly with a statement that the batteries are not replaceable. If marking or labeling the product is not practicable, then this statement shall be included in the instructions.

In addition to on-product marking/labeling requirements, ASTM F2670-22 now includes specific warning requirements for battery-powered infant bathtubs and infant bathtub accessories packaging. Section 8.11 states that packages of infant bathtubs and infant bathtub accessories that use replaceable button or coin cell batteries that are 1.5 V or greater and that are larger than 15 mm in diameter but fit within the small parts cylinder (see 16 CFR part 1501) shall address the following warning:

**⚠ WARNING**

Contains button or coin cell battery. Hazardous if swallowed—see instructions.

This warning is subject to the formatting requirements found in section 8.5, which contains no substantive changes.

Note: “Address” means that the verbiage can be altered as long as the meaning is the same or information that is product-specific is presented.

Staff considers the changes in this section to be an improvement to safety, as they address battery ingestion hazards, which are not currently addressed by 16 CFR part 1234.

## Instructional Literature

The revised requirements for instructional literature in ASTM F2670-22 now include cautionary and warning statements specifically for battery-operated products, which are not addressed in 16 CFR part 1234. Section 9.4 *Cautionary and Warning Statements* now requires that products that operate using replaceable batteries address the following statement:

### **⚠ CAUTION**

To prevent battery leaks, which can burn skin and eyes:

- Remove batteries when storing product for a long time.
- Dispose of used batteries immediately.

Products that use more than one battery in any one circuit must also address the following statements under the same CAUTION header:

- Always replace the entire set of batteries at one time.
- Never mix old and new batteries, or batteries of different brands or types.

Staff considers these changes to be an improvement to safety, as they address burn hazards caused by battery leaks, which are not currently addressed by 16 CFR part 1234.

### **Staff's Assessment of the Revised Standard**

Under section 104(b)(4)(B) of the CPSIA, unless the Commission determines that ASTM's revision to a voluntary standard that is referenced in a mandatory standard "does not improve the safety of the consumer product covered by the standard," the revised voluntary standard becomes the new mandatory standard. For the reasons stated above, staff concludes that the changes made in ASTM F2670-22 will improve the safety of infant bathtubs and accessories covered by the standard. Therefore, staff recommends that the Commission allow the revised voluntary standard to become effective as a mandatory consumer product safety standard under the statute effective September 24, 2022.

### **Effect of the Changes on CPSC Acceptance of Third-Party Testing Laboratories**

The notice of requirements (NORs), as set forth in the final rule for infant bathtubs, provided the criteria and process for the Commission's acceptance of accreditation of third party conformity assessment bodies for testing infant bathtubs to 16 CFR part 1234 (incorporating ASTM F2670-18). The NORs for all 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 ASTM F2670-22 and determined that the revised standard contains no changes to the testing requirements, testing equipment, or testing protocols. Testing laboratories that have demonstrated competence for testing in accordance with ASTM F2670-18 will have the competence to test in accordance with the revised standard ASTM F2670-22. Therefore, staff recommends that the Commission consider the existing accreditations that have been accepted for testing to this standard also to cover testing to ASTM F2670-22. Accordingly, the existing NOR for this standard will remain in place, and CPSC-accepted third party conformity assessment bodies would be expected to update the scope of the testing laboratories'

accreditation to reflect the revised standard in the normal course of renewing their accreditation.

If the Commission approves the draft direct final rule, CPSC staff will notify all CPSC-accepted laboratories directly and will provide links to the *Federal Register* notice to explain the changes to the standard and the effective date.

### **Effective Date**

Pursuant to section 104(b)(4)(B) of the CPSIA, because ASTM's revised standard improves the safety of infant bathtubs, staff recommends that the Commission allow ASTM F2670-22 to be considered a consumer product safety standard issued by the Commission. Staff supports an effective date 180 days from ASTM's notice of March 28, 2022, which would be September 24, 2022. Staff does not recommend a longer effective date for this update. JPMA typically allows 6 months for products in their certification program to meet the requirements of a new voluntary standard after publication. Therefore, juvenile product manufacturers are accustomed to adjusting to new voluntary standards within this time frame. ASTM F2670-22 was approved on March 28, 2022. By September 24, 2022, manufacturers should already be producing products that meet this standard.

### **Recommendation**

Staff recommends that the Commission allow ASTM F2670-22 to become the CPSC-mandated standard and approve publication of a direct final rule in the *Federal Register* to revise the reference to ASTM F2670-22. Specifically, staff recommends against notifying ASTM of a determination that the revision does not improve the safety of infant bathtubs.