

## [Products Liability Law Daily Wrap Up, FINAL RULES—BABY PRODUCTS—Direct final rule incorporates by reference revised standard for full-size baby cribs, \(Jul. 23, 2019\)](#)

Products Liability Law Daily Wrap Up

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Standard now requires all warnings to be affixed somewhere on the product.

The Consumer Product Safety Commission (CPSC) issued a direct final rule revising the agency's mandatory safety standard for full-size baby cribs to incorporate by reference the most recent version of the applicable ASTM standard. The rule will go into effect on October 28, 2019, unless the agency receives significant adverse comment by August 22, 2019. If CPSC receives timely significant adverse comments, the agency will publish notification in the Federal Register, withdrawing this direct final rule before its effective date (*CPSC Final Rule, 84 FR 35293*, July 23, 2019).

**Background.** 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 CPSC to promulgate consumer product safety standards for durable infant or toddler products. The law requires that these standards are to be "substantially the same as" applicable voluntary standards or more stringent than the voluntary standards if the agency 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) 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 CPSC. In addition, the revised voluntary standard shall be considered to be a consumer product safety standard issued by CPSC 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 CPSC (or such later date specified by the agency in the Federal Register) unless, within 90 days after receiving that notice, CPSC 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 agency is retaining the existing consumer product safety standard.

Pursuant to section 104(b)(1) and section 104(c) of the CPSIA, in December 2010, CPSC published a mandatory consumer product safety standard that incorporated by reference ASTM F1169–10, *Standard Consumer Safety Specification for Full-Size Baby Cribs*, codified under CPSC regulations at 16 CFR part 1219 (75 FR 81766). Section 104(c) of the CPSIA stated that the standards for full-size cribs would apply to persons such as those owning or operating child care facilities and places of public accommodation, in addition to persons usually subject to consumer product safety rules. In August 2011, Congress amended section 104 and specifically addressed the revision of the crib standards, stating that any revision of the crib standards after their initial promulgation "shall apply only to a person that manufactures or imports cribs," unless the agency determines that application to any others covered by the initial crib standards is "necessary to protect against an unreasonable risk to health or safety." If the agency does apply the revised crib standard to additional persons, it must provide at least 12 months for those persons to come into compliance. CPSC is not expanding the applicability of the revised FS crib standard in this rule. Thus, the revised FS crib standard will apply to the same entities and in the same manner as other rules the agency issues under section 104 of the CPSIA.

**Revised standard.** The ASTM standard for full-size cribs establishes performance requirements and test procedures to determine the structural integrity of full-size cribs. It also contains design requirements addressing

entanglement on crib corner post extensions, and requirements for warning labels and instructional materials. In addition, the standard addresses bassinet, changing table, or similar accessories to a crib that attach to or rest on a crib in the occupant retention area. The ASTM full-size crib standard was revised previously, and CPSC incorporated the revised standard by reference in July 2012 (77 FR 45242) and December 2013 (78 FR 73692).

In May 2019, ASTM notified CPSC that it revised ASTM's full-size crib standard. The current ASTM standard is ASTM F1169–19, *Standard Consumer Safety Specification for Full-Size Baby Cribs*. Based on a review of the changes between the current CPSC standard, 16 CFR part 1219, and ASTM F1169–19, CPSC concluded that each change made in ASTM F1169–19 either improves the safety of full-size cribs or is neutral in its safety impact.

ASTM 1169–19 revised section 8.4 to make clear that all warnings, including lower-priority warnings, must be affixed somewhere on the crib, and not merely referenced in a manual or instructions. CPSC concluded that this change adds clarity and improves the safety of the standard. The agency determined that all warnings that are intended to be on a full-size crib should be affixed to the product because on-product warnings stay with the product through multiple users, whereas an instruction manual could be discarded, lost, or otherwise not available to another user of the product.

The revised voluntary standard also includes several non-substantive changes that do not affect the safety of full-size cribs, such as spacing, grammar, and punctuation. Under section 1.5, *Scope*, ASTM added language stating that ASTM developed the standard in accordance with principles recognized by the World Trade Organization. In addition, under section 1.4, the word "environmental" was added to the following sentence: "It is the responsibility of the user of this standard to establish appropriate safety, health, and environmental practices and determine the applicability of regulatory limitations prior to use." CPSC concluded that these editorial changes and additions do not impact the safety of full-size cribs.

Because there is no significant change in the way that third party conformity assessment bodies test these products for compliance with the full-size crib standard, the existing notice of requirements (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.

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