



UNITED STATES
 CONSUMER PRODUCT SAFETY COMMISSION
 4330 EAST WEST HIGHWAY
 BETHESDA, MD 20814

This document has been electronically approved and signed.

DATE: October 2, 2019

BALLOT VOTE SHEET

TO: The Commission
 Alberta E. Mills, Secretary

THROUGH: Patricia M. Pollitzer, Assistant General Counsel, Regulatory Affairs
 Mary T. Boyle, Executive Director

FROM: Patricia M. Pollitzer, Assistant General Counsel, Regulatory Affairs
 Meridith L. Kelsch, Attorney, Regulatory Affairs

SUBJECT: ASTM’s Revisions to Safety Standard for Non-Full-Size Baby Cribs and Play Yards

BALLOT VOTE DUE: Tuesday, October 8, 2019

Staff is forwarding to the Commission for consideration, a briefing memorandum recommending that the Commission issue a direct final rule updating the incorporation by reference of the ASTM standard cited in the Commission’s rules for non-full-size baby cribs in 16 CFR part 1220 and play yards in 16 CFR part 1221. Under the Consumer Product Safety Improvement Act of 2008, revised voluntary standards automatically are considered consumer product safety standards, unless the Commission determines and notifies the voluntary standards organization that the revised voluntary standard “does not improve the safety of the consumer product.” Staff recommends that the Commission: (1) allow the revised standard, ASTM F406-19, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards*, to become the CPSC-mandated standard, and (2) publish a direct final rule that revises the references in CPSC’s safety standards for non-full-size baby cribs and play yards to refer to the revised ASTM standard for those products. A draft *Federal Register* notice for that purpose is attached.

Please indicate your vote on the following options:

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

 (Signature)

 (Date)

II. Approve publication of the attached notice in the *Federal Register*, with the specified 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 Standards for Non-Full-Size Baby Cribs and Play Yards

[Billing Code 6355-01-P]

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC-XXXX-XXXX]

16 CFR Parts 1220 and 1221

Revisions to Safety Standards for Non-Full-Size Baby Cribs and Play Yards

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Consumer Product Safety Commission (CPSC) previously published consumer product safety standards for non-full-size baby cribs (NFS cribs) and play yards under section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). The standards incorporated by reference the ASTM voluntary standard for NFS cribs and play yards, with modifications. ASTM recently revised the voluntary standard for NFS cribs and play yards. The CPSIA provides a process for when a voluntary standards organization updates a standard that the Commission incorporated by reference in a section 104 rule. Consistent with that process, this direct final rule revises the mandatory standards for NFS cribs and play yards to incorporate by reference the updated version of the ASTM standard.

DATES: The rule is effective on January 20, 2020, 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 January 20, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CPSC-XXXX-XXXX, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: www.regulations.gov. Follow the instructions for submitting comments provided on the website. To ensure timely processing of comments, please submit all electronic comments through www.regulations.gov, rather than by e-mail to CPSC.

Written Submissions: Submit written comments by mail, hand delivery, or courier to: U.S. Consumer Product Safety Commission, Division of the Secretariat, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

Instructions: All submissions must include the agency name and docket number for this notice. CPSC may post all comments, without change, including any personal identifiers, contact information, or other personal information provided, to: <http://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, submit such information by mail, hand delivery, or courier.

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

FOR FURTHER INFORMATION CONTACT: Justin Jirgl, Compliance Officer, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; email: jjirgl@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background and Statutory Authority

1. Initial Mandatory Standards for Durable Infant or Toddler Products

Section 104 of the CPSIA (Pub. L. 110-314, 122 Stat. 3016) requires the Commission to assess the effectiveness of voluntary standards for durable infant or toddler products¹ 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 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.*

Under this authority, the Commission adopted mandatory standards for NFS cribs and play yards in 16 CFR parts 1220 and 1221, respectively. The Commission defines NFS cribs and play yards in 16 CFR 1220.1(c). In general, a NFS crib is “a bed that is designed to provide sleeping accommodations for an infant” that meets specified dimensions.² A play yard is a framed enclosure that includes a floor and mesh or fabric sides in which children sleep or play.³ The Commission’s mandatory standards incorporated by reference ASTM F406, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards* (ASTM F406), which is the voluntary standard for NFS cribs and play yards. The Commission issued separate rules for

¹ The statute lists NFS cribs and play yards as durable infant or toddler products. 15 U.S.C. 2056a(f)(2).

² 16 CFR 1220.1(c)(1) defines a NFS crib as “a bed that is: (i) Designed to provide sleeping accommodations for an infant; (ii) Intended for use in or around the home, for travel, in a child care facility, in a family child care home, in a place of public accommodation affecting commerce and other purposes; (iii) Has an interior length dimension either greater than 139.7 cm (55 in.) or smaller than 126.3 cm (49 ¾ in.), or, an interior width dimension either greater than 77.7 cm (30 ⅝ in.) or smaller than 64.3 cm (25 ⅜ in.), or both. . . (v) Does not include mesh/net/screen cribs, nonrigidly constructed baby cribs, cradles (both rocker and pendulum types), car beds, baby baskets, and bassinets (also known as junior cribs).” It further states that NFS cribs include, but are not limited to, portable cribs, crib pens, specialty cribs, undersize cribs, and oversize cribs, which the regulation also defines.

³ 16 CFR 1220.1(c)(2) defines a play yard as “a framed enclosure that includes a floor and has mesh or fabric sided panels primarily intended to provide a play or sleeping environment for children. It may fold for storage or travel.”

NFS cribs and play yards, although they are covered by the same voluntary standard, because section 104(c) of the CPSIA includes unique provisions for rules regarding cribs (both full-size and NFS cribs), applying initial crib standards to more parties than are ordinarily subject to section 104 rules.⁴ 15 U.S.C. 2056a(c)(1), (2).

The Commission's standard for NFS cribs initially incorporated by reference ASTM F406-10a, with modifications. 75 FR 81766 (Dec. 28, 2010). When ASTM later updated its standard, issuing ASTM F406-17, the Commission updated the mandatory standard to incorporate by reference this revised edition, with modifications. 83 FR 26206 (June 6, 2018). The mandatory standard for NFS cribs does not apply to play yards, and excludes the provisions in ASTM F406 that only relate to play yards.

The Commission's standard for play yards initially incorporated by reference ASTM F406-12a, with modifications. 77 FR 52220 (Aug. 29, 2012). When ASTM later updated its standard, issuing ASTM F406-13, the Commission updated the mandatory standard to incorporate by reference this revised edition, with modifications. 78 FR 50328 (Aug. 19, 2013).

⁴ Section 104(c) of the CPSIA requires more parties to comply with standards for cribs that the Commission adopts under section 104(b) than other durable infant or toddler product standards. Specifically, section 104(c) prohibits the following parties from manufacturing, selling, contracting to sell or resell, leasing, subletting, offering, providing for use, or otherwise placing in the stream of commerce a crib that is not in compliance with a standard promulgated under section 104(b):

“any person that—(A) manufactures, distributes in commerce, or contracts to sell cribs; (B) based on the person's occupation, holds itself out as having knowledge of skill peculiar to cribs, including child care facilities and family child care homes; (C) is in the business of contracting to sell or resell, lease, sublet, or otherwise place cribs in the stream of commerce; or (D) owns or operates a place of accommodation affecting commerce (as defined in section 4 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. § 2203) applied without regard to the phrase ‘not owned by the Federal Government’).” 15 U.S.C. 2056a(c)(1), (2).

Congress effectively limited this expanded application of crib standards to only initial 104 rules for cribs when it amended the CPSIA in 2011. The amendment added section 104(c)(3), which addresses revisions to crib standards, and allows the expanded application stated in section 104(c)(1) and (2) to apply to revisions to crib standards only in certain circumstances. 15 U.S.C. 2056a(c)(3); P.L. 112-28, 125 Stat. 273 (Aug. 12, 2011).

The mandatory standard for play yards does not apply to NFS cribs, and excludes the provisions in ASTM F406 that only relate to NFS cribs.

2. *Revisions to Section 104 Rules*

The CPSIA specifies the process for when a voluntary standards organization revises a standard that the Commission incorporated by reference in a section 104 rule. First, the voluntary standards organization must notify the Commission of the revision. Once the Commission receives this notification, “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.” 15 U.S.C. 2056a(b)(4)(B).

As noted above, section 104(c) of the CPSIA includes unique provisions for rules regarding cribs. Under sections 104(c)(1) and (2), standards the Commission adopts for cribs under section 104(b) of the CPSIA apply to more parties than are ordinarily subject to section 104 rules.⁵ 15 U.S.C. 2056a(c)(1), (2). However, this expanded application does not apply to revisions to the Commission’s crib standards unless certain circumstances apply.⁶ *Id.* 2056a(c)(3). Section 104(c)(3) states that when the Commission revises a crib standard that it adopted under section 104(b), the revised mandatory standard applies to crib manufacturers and

⁵ See footnote 4, above.

⁶ Congress amended the CPSIA in 2011, adding section 104(c)(3) to address revisions to crib standards, which effectively made the expanded application of crib standards only applicable to the Commission’s initial 104 rules for cribs. 15 U.S.C. 2056a(c)(3); P.L. 112-28, 125 Stat. 273 (Aug. 12, 2011).

importers (rather than the expanded list of parties that are subject to initial crib standards in section 104(c)(1) and (2)). *Id.* However, the Commission may apply revised crib standards to other parties in the expanded list if it determines that it is “necessary to protect against an unreasonable risk to health or safety.” *Id.* If the Commission applies the standard to additional parties, it must provide at least 12 months for parties to comply. *Id.*

ASTM notified the Commission on July 24, 2019 that it had updated the NFS cribs and play yards standard, issuing ASTM F406-19.⁷ As this preamble discusses, the revisions regarding NFS cribs are neutral on safety and the revisions regarding play yards improve or are neutral on safety. Accordingly, the Commission is not making the determination that “the proposed revision does not improve the safety of the consumer product.” The Commission also is not specifying a later effective date than that provided in the statute. Therefore, under the CPSIA, ASTM F406-19 will become the mandatory standard for NFS cribs and play yards effective January 20, 2020, 180 days after CPSC received ASTM’s notice.

In addition, the Commission is not making the determination that applying the revised standard for NFS cribs to additional parties is “necessary to protect against an unreasonable risk to health or safety.” Therefore, the revised mandatory standard for NFS cribs will apply to parties that manufacture or import cribs, and not the additional parties listed in section 104(c)(1) and (2) of the CPSIA.

B. Revised ASTM Standard

The ASTM standard for NFS cribs and play yards includes performance requirements and test methods, as well as requirements for warning labels and instructional literature, to address hazards to children associated with NFS cribs and play yards.

⁷ ASTM approved ASTM F406-19 on March 15, 2019, and published it in May 2019.

As described below, the revisions in ASTM F406-19 regarding NFS cribs provide additional detail and clarity, and are neutral on safety, as compared to 16 CFR part 1220. Similarly, the revisions in ASTM F406-19 regarding play yards provide revised and additional requirements that improve the safety of play yards or are neutral on safety, as compared to 16 CFR part 1221. For this reason, the Commission concludes that the revised standard for NFS cribs maintains the level of safety that the existing regulation provides, and the revised standard for play yards, overall, improves the level of safety that the existing regulation provides. Because the Commission declines to determine that the revised standard “does not improve the safety” of NFS cribs or play yards, the revised ASTM standard will become CPSC’s new standards for these products.

The following sections discuss the revised portions of the ASTM standard and compare them with the existing requirements in 16 CFR parts 1220 and 1221.

1. Revisions Regarding NFS Cribs

The existing mandatory standard for NFS cribs requires compliance with ASTM F406-17, with modifications to exclude several sections of ASTM F406-17 from the mandatory standard. The excluded sections (which address scissoring, shearing, and pinching; bassinet and cradle accessories; and other requirements) are only relevant to play yards. The revised mandatory standard in 16 CFR part 1220 excludes the same requirements.⁸

The only substantive difference between the requirements for NFS cribs in ASTM F406-19 and ASTM F406-17 is that ASTM F406-19 includes a revised toehold provision in the

⁸ Nearly all of the excluded requirements are in the same sections in ASTM F406-19 as they were in ASTM F406-17, with one exception. Specifically, the requirements that were in sections 8.28 to 8.28.4 in ASTM F406-17 are in sections 8.28 to 8.28.3.2 in ASTM F406-19. Accordingly, the Commission is updating the sections referenced in 16 CFR part 1220.

construction and finishing requirements for NFS cribs (section 6.6.3). ASTM F406-19 also includes an editorial revision (section 6.9⁹) that does not alter the substantive requirements for NFS cribs or affect safety.

Section 6.6.3 prohibits the ends and sides of NFS cribs from having surfaces that can serve as toeholds for a child inside the crib, and specifies the dimensions and location of prohibited toeholds. This requirement aims to reduce the risk of children climbing out of NFS cribs by reducing the surfaces children can use as a foothold to boost themselves over the rail of a crib. In ASTM F406-17, this provision specified the upper height limit of prohibited toeholds, but did not specify a lower bound; ASTM F406-19 adds a lower bound of 1 inch. CPSC staff believes that this lower bound is reasonable in light of the lower bound for toeholds specified in the standard for full-size baby cribs, and because it will provide greater clarity for test laboratories to conduct consistent testing for this requirement. Staff believes that this revision is neutral on safety, when compared to the existing standard in 16 CFR part 1220.

2. Revisions Regarding Play Yards

The existing mandatory standard for play yards requires compliance with ASTM F406-13, with modifications. The modifications exclude from the mandatory standard the sections of ASTM F406-13 that address requirements for NFS cribs. In addition, the mandatory standard modifies section 9.4.2.10 of the voluntary standard. Section 9.4.2.10 requires a warning on products with a separate mattress that is not permanently fixed in place to state: “Use ONLY mattress/pad provided by manufacturer,” along with the minimum length, width, and thickness of the mattress. The mandatory standard specifies that play yards that meet the criteria in section

⁹ Section 6.9 states the rationale for the requirement in section 6.8 that specifies the order in which certain performance testing must occur. The editorial revision in section 6.9 of ASTM F406-19 simply corrects a typo, by replacing “the” with “be” in the phrase the “assembly most likely to be affected.”

9.4.2.10 must bear only the warning statement (not the permissible mattress dimensions). The revised mandatory standard in 16 CFR part 1221 includes the same exclusions and modifications.¹⁰

The substantive differences between the requirements for play yards in ASTM F406-19 and ASTM F406-13 are as follows:

- revised and additional requirements to ensure that provisions regarding entrapment in accessories to play yards address cantilevered accessories;
- clarification of where to place a stability testing device;
- a modified mattress vertical displacement test, and an accompanying definition for “mattress support surface”; and
- an alternate on-product warning label for cribs intended for use in child care facilities.

These revisions are discussed below. ASTM F406-19 also includes editorial revisions that do not alter the substantive requirements for play yards or affect safety.¹¹

Cantilevered accessories. ASTM F406-19 includes a definition of cantilevered accessories (section 3.1.4), as well as revised provisions (section 5.15 and 8.26) to address these accessories. ASTM F406-13 included section 5.15 and 8.26, which address entrapment in accessories, but did not explicitly apply these requirements to cantilevered accessories, address how to assess openings in them, or define the term. CPSC staff believes that these modifications improve the safety of play yards, when compared to the existing standard in 16 CFR part 1221, by ensuring the standard assesses entrapment hazards in cantilevered accessories.

¹⁰ All of the excluded and modified requirements are in the same sections in ASTM F406-19 as they were in ASTM F406-13. Accordingly, the sections referenced in 16 CFR part 1221 remain the same.

¹¹ Examples of editorial revisions in ASTM F406-19 include a precautionary caveat in section 1.5 about the safety concerns the standard addresses, as well as explanatory notes or statements to clarify or explain existing requirements.

Stability testing. Section 8.17 in ASTM F406-13 provides a test for assessing the stability of products. In ASTM F406-19, this section remains the same, except with slight wording modifications to provide clarity to test technicians about where, precisely, to place the stability test device. CPSC staff believes that this modification is neutral on safety, when compared to the existing standard in 16 CFR part 1221.

Mattress vertical displacement test. Section 8.28 in ASTM F406-13 provides a mattress vertical displacement test. Section 8.28 in ASTM F406-19 includes the same test, but with slight wording modifications, and includes an additional test. In ASTM F406-19, the original mattress vertical displacement test is referred to as the “primary test,” and the wording of the test procedure replaces “record” with “measure,” and replaces “repeat this test at the other corners” with “repeat this test with the clamp relocated to the other corners.” CPSC staff believes that these wording changes more precisely describe how to conduct the test, which reduces variations in testing, and is neutral on safety when compared to the existing standard in 16 CFR part 1221.

In addition, ASTM F406-19 includes a new “secondary test” to perform if any corner or location does not meet the standard using the primary test. The secondary test applies the same force in the same manner as the primary test, and uses the same criteria for passing (less than 5.25 inch displacement), but measures displacement from different points. While the primary test measures displacement from “the reference point on the clamp relative to the fixed reference point,” the secondary test measures displacement from “the bottom surface of the mattress just beneath the clamp attachment and the mattress support surface.” As the rationale in Note 17 in the standard explains, although the primary test works well for products with a tubular floor support structure, it does not work as well for “products that sit directly on the floor and do not have a tubular floor support structure.” The secondary test addresses these products. CPSC staff

believes that the secondary test is neutral on safety, when compared to the existing standard in 16 CFR part 1221.

Related to the revisions to mattress vertical displacement testing, ASTM F406-19 also includes a new definition and note. Section 3.1.15 of ASTM F406-19 defines “mattress support surface,” which is relevant to the secondary test described above. Section 7.9.1.2, Note 7 explains the rationale for elements of the mattress vertical displacement test, including the displacement limit, which approximately corresponds with a 6-month old child’s head for purposes of assessing entrapment hazards. CPSC staff believes that these revisions are neutral on safety, when compared to the existing standard in 16 CFR part 1221.

Warning statements. Section 9.4.2.11 in ASTM F406-13 requires on-product warning statements to address the following: “Always provide the supervision necessary for the continued safety of your child. When used for playing, never leave child unattended.” ASTM F406-19 includes the same requirement, but allows products that are intended for use in child care facilities to display either the above warning statement or a warning that “child in crib must be under supervision at all times.”¹² CPSC staff believes that, although the warning statement required in ASTM F406-13 was sufficient, the alternative statement may be appropriate for child care facilities, where continued supervision is necessary and expected.

C. Direct Final Rule Process

In this notice, the Commission is updating the version of the ASTM standard incorporated by reference in 16 CFR parts 1220 and 1221 to reflect the revised standard that takes effect by operation of law under the CPSIA. The Commission is issuing this rule as a direct

¹² Note that although the alternative warning statement uses the word “crib,” the requirement applies to all products covered by the standard, which includes both NFS cribs and play yards. This preamble does not list this revision as a change to the NFS cribs standard because the existing NFS cribs standard incorporated by reference a newer version of ASTM F406, which already included this alternative warning statement.

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, the APA provides an exception to this when an agency “for good cause finds” that notice and comment is “impracticable, unnecessary, or contrary to the public interest.” *Id.* 553(b), (c).

When the Commission updates a reference to an ASTM standard that the Commission has incorporated by reference into a rule under section 104 of the CPSIA, notice and the opportunity to comment is unnecessary. This is because, under the terms of the CPSIA, such an update automatically becomes CPSC’s mandatory standard, unless the Commission takes action to prevent it. 15 U.S.C. 2056a(b)(4)(B). With respect to ASTM F406-19, the Commission is not taking action to prevent it from becoming the new mandatory standard for NFS cribs and play yards. Therefore, the revised ASTM standard will become CPSC’s standard by operation of law. Public comments would not influence the substantive changes to the standard or the effect of the revised standard under section 104 of the CPSIA. Therefore, notice and comment are unnecessary.

The purpose of this direct final rule is to update the edition of the standard the regulations reference, so that they accurately reflect the standard in effect under the statute. The Administrative Conference of the United States (ACUS) recommends that agencies use direct final rulemaking when the “unnecessary” prong of the good cause exemption in the APA applies. 60 FR 43108, 43111 (Aug. 18, 1995). With a direct final rule, the rule takes effect on the stated effective date, unless the agency receives an adverse comment within a specified time. This allows the agency to expedite noncontroversial rules, while still allowing for public comment. *Id.* at 43111. A direct final rule is appropriate here because the Commission believes this rule is noncontroversial and will not elicit significant adverse comments.

Unless CPSC receives a significant adverse comment within 30 days of this notice, the rule will become effective on January 20, 2020. Consistent 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 challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without change." *Id.* at 43111.

If the Commission receives a significant adverse comment, it will publish a notice withdrawing this direct final rule before the effective date. Depending on the comment and other relevant considerations, the Commission may address the adverse comment in a subsequent direct final rule, or publish a notice of proposed rulemaking, providing an opportunity for public comments.

D. Incorporation by Reference

Sections 1220.2 and 1221.2 of the direct final rule incorporate by reference ASTM F406-19. The Office of the Federal Register (OFR) has regulations regarding incorporation by reference. 1 CFR part 51. These regulations require the preamble to a final rule to summarize the material and discuss the ways in which the material the agency incorporates by reference is reasonably available to interested parties, and how interested parties can obtain the material. 1 CFR 51.5(b).

In accordance with the OFR regulations, *B. Revised ASTM Standard* of this preamble summarizes the major provisions of ASTM F406-19 that the Commission incorporates by reference into 16 CFR parts 1220 and 1221. Interested parties may obtain a copy of ASTM F406-19 from ASTM, through its website (<http://www.astm.org>), or by mail from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959.

Alternatively, interested parties may inspect a copy of the standard at CPSC's Division of the Secretariat.

E. Certification

The Consumer Product Safety Act (CPSA; 15 U.S.C. 2051-2089) requires manufacturers of products that are 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 product complies with all applicable CPSC requirements. 15 U.S.C. 2063(a). For children's products, the manufacturer must base this certification 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. *Id.* 2063(a)(2). These testing and certification requirements apply to products for which the Commission issues rules under CPSIA section 104, because they are consumer product safety standards. *See id.* 2056a(b).

Because NFS cribs and play yards are children's products, a CPSC-accepted third party conformity assessment body must test samples of these products. These products also must comply with all other applicable CPSC requirements, such as the lead content requirements in section 101 of the CPSIA,¹³ the phthalates prohibitions in section 108 of the CPSIA,¹⁴ the tracking label requirements in section 14(a)(5) of the CPSA¹⁵, and the consumer registration form requirements in section 104(d) of the CPSIA.¹⁶

F. Notice of Requirements

As discussed above, an accredited third party conformity assessment body must test children's products that are subject to a children's product safety rule for compliance with the

¹³ 15 U.S.C. 1278a.

¹⁴ 15 U.S.C. 2057c.

¹⁵ 15 U.S.C. 2063(a)(5).

¹⁶ 15 U.S.C. 2056a(d).

applicable rule. 15 U.S.C. 2063(a)(2). The Commission must publish a notice of requirements (NOR) for third party conformity assessment bodies to obtain accreditation to assess conformity with a children's product safety rule. *Id.* 2063(a)(3)(A).

As the CPSA requires, the Commission published NORs for accreditation of third party conformity assessment bodies for testing NFS cribs and play yards. 15 U.S.C. 2063(a)(3)(B)(ii), (vi); 78 FR 15836 (Mar. 12, 2013) (adopting 16 CFR 1112.15(b)(6) and (7), codifying NORs for NFS cribs and play yards, respectively). The NORs provided the criteria and process for CPSC to accept accreditation of third party conformity assessment bodies for testing NFS cribs to 16 CFR part 1220 and play yards to 16 CFR part 1221. The NORs are listed in the Commission's rule, "Requirements Pertaining to Third Party Conformity Assessment Bodies" in 16 CFR part 1112.

The revised provisions in ASTM F406-19 do not require any significant changes in the test methods or tools that third party conformity assessment bodies use to assess NFS cribs or play yards for compliance with the mandatory standards. Accordingly, laboratories that have demonstrated competence for testing in accordance with ASTM F406-17 for NFS cribs and ASTM F406-13 for play yards would have the competence to test in accordance with the revised mandatory standards. Laboratories will begin testing to the new standards when ASTM F406-19 goes into effect for NFS cribs and play yards, and the existing accreditations that the Commission has accepted for testing to these standards will cover testing to the revised standards. Therefore, the existing NORs for these standards will remain in place, and CPSC-accepted third party conformity assessment bodies will need to update the scope of their accreditations to reflect the revised standards in the normal course of renewing their accreditations.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601-612) requires agencies to consider the potential economic impact of a proposed and final rule on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603, 604. The RFA applies when an agency is required to publish notice of a rulemaking. *Id.* As discussed in *C. Direct Final Rule Process* of this preamble, the Commission has determined that notice and the opportunity to comment are unnecessary for this rule, and therefore, the Commission is not required to publish notice of this rulemaking because it falls under the good cause exception in the APA. *Id.* 553(b). Accordingly, the RFA does not apply to this rulemaking. Nevertheless, we note that this rule will have minimal economic impacts because it incorporates by reference a standard that is largely consistent with the existing mandatory requirements.

H. Paperwork Reduction Act

The current mandatory standards for NFS cribs and play yards include requirements for 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 standards do not substantively alter these requirements. The Commission took the steps required by the PRA for information collections when it adopted 16 CFR parts 1220 and 1221, 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. The Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801-808) states that, before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The submission must

indicate whether the rule is a “major rule.” The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a “major rule.”

Pursuant to the CRA, OIRA designated this rule as not a “major rule,” as defined in 5 U.S.C. 804(2). In addition, to comply with the CRA, CPSC’s Office of the General Counsel will submit the required information to each House of Congress and the Comptroller General.

J. Environmental Considerations

CPSC’s regulations list categories of agency actions that “normally have little or no potential for affecting the human environment.” 16 CFR 1021.5(c). Such actions qualify as “categorical exclusions” under the National Environmental Policy Act (42 U.S.C. 4321-4370m-12), which do not require an environmental assessment or environmental impact statement. One categorical exclusion listed in CPSC’s regulations is for rules or safety standards that “provide design or performance requirements for products.” 16 CFR 1021.5(c)(1). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

K. Preemption

Under the CPSA, no state or political subdivision of a state may establish or continue in effect a requirement dealing with the same risk of injury as a Federal consumer product safety standard under the CPSA unless the state requirement is identical to the Federal standard. 15 U.S.C. 2075(a). However, states or political subdivisions of states may apply to CPSC for an exemption, allowing them to establish or continue such a requirement if the state requirement “provides a significantly higher degree of protection from [the] risk of injury” and “does not unduly burden interstate commerce.” *Id.* 2075(c).

Section 104 of the CPSIA refers to the rules issued under that section as “consumer product safety standards,” and states that a revised standard “is considered a consumer product safety standard issued by the Commission under section 9” of the CPSA. 15 U.S.C. 2056a(b)(1), (b)(4)(B). Accordingly, consumer product safety standards that the Commission creates or revises under CPSIA section 104 preempt state and local requirements in accordance with the preemption provisions in the CPSA.

L. Effective Date

When a voluntary standards organization revises a standard that the Commission adopted as a mandatory standard under section 104 of the CPSIA, the revised standard automatically becomes the new mandatory standard effective 180 days after the Commission receives notification. 15 U.S.C. 2056a(b)(4)(B). The Commission may prevent this automatic effective date by either publishing notice of a later effective date, or rejecting the revision. *Id.*

The Commission is taking neither of those actions with respect to the standards for NFS cribs and play yards. The Commission believes that the statutory effective date is reasonable because it provides sufficient time for firms to make necessary modifications within the usual timeframe provided for children’s product rules. ASTM approved ASTM F406-19 on March 15, 2019 and published it in May 2019, more than 6 months before the statutory effective date. Juvenile product manufacturers are accustomed to adjusting to new voluntary standards within this timeframe because it is consistent with other CPSIA section 104 rules, which generally provide 6-month effective dates, and the Juvenile Products Manufacturers Association typically allows 6 months for products in its certification program to shift to a new standard. Therefore, ASTM F406-19 automatically will take effect as the new mandatory standard for NFS cribs and

play yards on January 20, 2020, 180 days after the Commission received notice of the revision on July 24, 2019.

As a direct final rule, unless the Commission receives a significant adverse comment within 30 days of this notice and publishes a notice withdrawing this rule by the effective date, the rule will become effective on January 20, 2020.

List of Subjects in 16 CFR Part 1220

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

List of Subjects in 16 CFR Part 1221

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

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

PART 1220 – SAFETY STANDARD FOR NON-FULL-SIZE BABY CRIBS

1. Revise the authority citation for part 1220 to read as follows:

Authority: Sec. 104, Public Law 110-314, 122 Stat. 3016 (15 U.S.C. 2056a); Sec. 3, Public Law 112-28, 125 Stat. 273 (August 12, 2011).

2. Revise § 1220.2 to read as follows:

§ 1220.2 Requirements for non-full-size baby cribs.

(a) Except as provided in paragraph (b) of this section, each non-full-size baby crib shall comply with all applicable provisions of ASTM F406-19, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards*, approved March 15, 2019. The Director of the Federal Register approves the incorporation by reference listed in this section in

accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of this ASTM standard from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959; www.astm.org. You may inspect a copy at the Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fedreg.legal@nara.gov, or go to: www.archives.gov/federal-register/cfr/ibr-locations.html.

(b) Comply with the ASTM F406-19 standard with the following exclusions:

- (1) Do not comply with sections 5.6.2 through 5.6.2.4 of ASTM F406-19.
- (2) Do not comply with section 5.16.2 of ASTM F406-19.
- (3) Do not comply with sections 5.19 through 5.19.2.2 of ASTM F406-19.
- (4) Do not comply with section 7, *Performance Requirements for Mesh/Fabric Products*, of ASTM F406-19.
- (5) Do not comply with sections 8.11 through 8.11.2.4 of ASTM F406-19.
- (6) Do not comply with sections 8.12 through 8.12.2.2 of ASTM F406-19.
- (7) Do not comply with sections 8.14 through 8.14.2 of ASTM F406-19.
- (8) Do not comply with sections 8.15 through 8.15.3.3 of ASTM F406-19.
- (9) Do not comply with section 8.16 through 8.16.3 of ASTM F406-19.
- (10) Do not comply with sections 8.28 through 8.28.3.2 of ASTM F406-19.
- (11) Do not comply with sections 8.29 through 8.29.3 of ASTM F406-19.
- (12) Do not comply with sections 8.30 through 8.30.5 of ASTM F406-19.
- (13) Do not comply with sections 8.31 through 8.31.9 of ASTM F406-19.
- (14) Do not comply with sections 9.3.2 through 9.3.2.4 of ASTM F406-19.

3. Revise the authority citation for part 1221 to read as follows:

Authority: Sec. 104, Public Law 110-314, 122 Stat. 3016 (15 U.S.C. 2056a).

4. Revise § 1221.1 to read as follows:

PART 1221 – SAFETY STANDARD FOR PLAY YARDS

§ 1221.1 Scope.

This part establishes a consumer product safety standard for play yards manufactured or imported on or after January 20, 2020.

5. Revise § 1221.2 to read as follows:

§ 1221.2 Requirements for play yards.

(a) Except as provided in paragraph (b) of this section, each play yard must comply with all applicable provisions of ASTM F406-19, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards*, approved on March 15, 2019. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. You may obtain a copy of this ASTM standard from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959; www.astm.org. You may inspect a copy at the Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fedreg.legal@nara.gov, or go to: www.archives.gov/federal-register/cfr/ibr-locations.html.

(b) Comply with the ASTM F406-19 standard with the following exclusions:

(1) Do not comply with section 5.17 of ASTM F406-19.

(2) Do not comply with section 5.20 of ASTM F406-19.

(3) Do not comply with section 6, *Performance Requirements for Rigid Sided Products*, of ASTM F406-19.

(4) Do not comply with sections 8.1 through 8.10.5 of ASTM F406-19.

(5) Instead of complying with section 9.4.2.10 of ASTM F406-19, comply only with the following:

(i) 9.4.2.10 For products that have a separate mattress that is not permanently fixed in place: Use ONLY mattress/pad provided by manufacturer.

(ii) [Reserved]

(6) Do not comply with section 10.1.1.1 of ASTM F406-19.

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



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY, BETHESDA, MD 20814

Memorandum

This document has been electronically
approved and signed.

October 2, 2019

TO : The Commission
Alberta E. Mills, Secretary

THROUGH: Patricia M. Pollitzer, Assistant 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

Hope E J. Nesteruk, Children's Program Manager
Division of Mechanical and Combustion Engineering
Directorate for Engineering Sciences

SUBJECT : Consumer Product Safety Improvement Act of 2008 (CPSIA), as revised by
Pub. L. No. 112-28 (H.R. 2715) Notice of Revision to the Standards for Non-
Full-Size Baby Cribs (16 CFR part 1220) and Play Yards (16 CFR part 1221)

I. INTRODUCTION

The Danny Keysar Child Product Safety Notification Act, section 104 of the 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 a basis for a consumer product safety standard promulgated by the Commission. CPSIA section 104(b)(4)(B) 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 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.

ASTM F406, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards*, applies to two products—non-full-size baby cribs (NFS cribs) and play yards. The CPSIA has unique provisions for cribs (both full-size and NFS cribs). CPSIA Section 104(c). For this reason, the Commission created separate mandatory standards for NFS cribs and play yards and referenced different editions of ASTM F406 for each. Play yards are mesh or fabric-sided products; NFS cribs are expressly excluded from the play yard-specific requirements of ASTM F406, and are thus, distinct in the voluntary standard.

NFS cribs have been regulated by CPSC under the CPSIA since December 29, 2010, when the Commission published a final rule establishing 16 CFR part 1220. At that time, CPSC incorporated by reference the existing ASTM standard, ASTM F406 – 10a, with four modifications and excluded provisions that related only to play yards. ASTM later updated this standard, issuing ASTM F406 – 17. In accordance with CPSIA section 104(b)(4)(B), the Commission incorporated by reference the revised ASTM standard, ASTM F406 – 17, with modifications to remove the provisions that relate only to play yards (§ 1220.2(b)(1),(2),(4), and (6) through (11) of the CPSC standard). 83 FR 26206 (June 6, 2018).

Play yards have been regulated by CPSC under the CPSIA since August 29, 2012, when the Commission published a final rule establishing 16 CFR part 1220. At that time, CPSC incorporated by reference the existing ASTM standard, ASTM– 12a, with modifications to exclude provisions that related only to NFS cribs. ASTM later updated this standard, issuing ASTM F406 – 13. In accordance with CPSIA section 104(b)(4)(B), CPSC incorporated by reference the revised ASTM standard, ASTM F406 – 13, with modifications to remove the provisions that relate only to NFS cribs (§ 1221.2(b)(1) through (6)). 78 FR 50328 (Aug. 19, 2013).

On July 24, 2019 ASTM officially notified CPSC that it published a revised 2019 version of ASTM F406 that affects the requirements for NFS cribs and play yards.

This memorandum outlines the differences between ASTM F406 – 19 and 16 CFR parts 1220 and 1221. Staff recommends allowing this revision to be considered as the new CPSC safety

standards for NFS cribs and for play yards. In addition, staff recommends issuing a direct final rule to incorporate by reference ASTM F406-19 into the two CPSC mandatory standards.

II. REVIEW/COMPARISON OF STANDARDS

A. NFS Cribs (16 CFR part 1220)

The 2019 version is the first revision of ASTM F406 since ASTM F406 – 17. The following summary of revisions focuses on the portions of the standard that apply to NFS cribs and does not include minor editorial revisions, clarifications (*e.g.*, changing “the” to “be” in section 6.9, or an explanatory rationale section, which do not affect the safety of NFS cribs).

Substantive changes

Of the changes within ASTM F406 – 19, the following affect NFS cribs:

- Toehold provisions: In 6.6.3, ASTM approved a revised definition for toeholds to begin 1 inch above the mattress support; whereas, in previous versions of ASTM F406, there was no lower limit. The toehold provisions in the standard are intended to reduce the risk of climbing out, by reducing the surfaces that a child could use to get purchase and boost themselves up over the rail of the crib.

Staff considers this change to be neutral in safety. The change provides a lower bound and a defined area, which increases consistency among test labs. For context, staff considered that for the standard for full-size cribs, the lower bound on the toehold-free area is 3 inches above the mattress support (ASTM F1169-19¹, *Standard Consumer Safety Specification for Full-Size Baby Cribs*, section 5.9). Therefore, this change allows for a toehold within 1 inch of the mattress support, providing a stepping point for climbing over the rail of the crib that is less than that allowed for full size cribs. Staff concludes that a 1-inch lower bound is reasonable and will not affect the safety of NFS cribs with respect to children climbing out, based on the established precedent in full-size cribs.

B. Play Yards (16 CFR part 1221)

There have been three revisions to ASTM F406 since the Commission promulgated 16 CFR 1221, referencing ASTM F406 – 13. These three revisions occurred in 2015, 2017, and 2019 (the current version). Substantive changes for each revision affecting play yards are as follows:

¹ 16 CFR part 1219, the Full-size Crib Standard, references ASTM F1169 – 13; however, ASTM F1169 – 19 will become effective on October 28, 2019. 84 FR 35293 (July 23, 2019).

ASTM F406 – 15 Substantive changes

ASTM approved the following changes:

- A modification in section 5.15, *entrapment in accessories*, to specifically include cantilevered accessories as a type of accessory that must be tested for entrapment. This change improves safety by making sure this type of accessory is addressed by the standard. (ASTM F406-15 also added a corresponding definition of “cantilevered accessory” to section 3.1.4.)
- Minor clarifications in the product stability test method (8.17.4). These changes clarify for test technicians exactly where to place the stability test device. This change does not affect the safety of NFS cribs.
- In section 8.26, *entrapment test*, two changes addressing cantilevered accessories:
 - First, a new method was added to determine the opening for cantilevered accessories (sections 8.26.1.1 and 8.26.1.2) that should be tested for entrapment. This change improves safety by addressing entrapment in cantilevered accessories.
 - Second, the change added requirements for evaluating cantilevered accessories with the small and large head probes while in identified openings (section 8.26.2.1). This change improves the safety of play yards by identifying all openings for cantilevered accessories that must be tested for entrapment and requiring testing of those openings.
- In the instruction requirements in section 9.4.2.11, added flexibility so that products intended for use in child care facilities may substitute the warning: “Child in crib must be under supervision at all times,” in place of: “Always provide the supervision necessary for the continued safety of your child. When used for playing, never leave child unattended.” Although staff believes that the original warning language is adequate, the substitute language may be appropriate in a child care facility, where continued supervision is necessary and expected. Note that while this section uses the term “crib,” there are no clauses that indicate it applies to NFS cribs only. In addition, consumers are known to use the term “crib” for any number of products in which a child sleeps.

ASTM F406 – 17 Substantive changes

The 2017 revision did not affect play yards because it only includes a revision to address a testing requirement for NFS cribs (removing section 6.10, to harmonize with 16 CFR § 1220.2(b)(3)). ASTM F406 – 17 also includes several non-substantive changes that do not affect safety, such as spacing and formatting. ASTM also added language, which it intends to add to all of its standards, stating that ASTM developed the standard in accordance with principles recognized by the World Trade Organization. Adding this text does not affect the safety of play yards.

ASTM F406 – 19 Substantive changes

ASTM approved the following changes:

- A new definition of “mattress support surface” in section 3.1.15, which does not affect the safety of play yards.
- In section 7.9.1.2, a new note describing the rationale for the small head probe and its use. Because this is an explanatory note, it does not affect the safety of play yards.
- A modification to the mattress vertical-displacement test in section 8.28, to include a primary and a secondary test. The mattress vertical-displacement test was originally developed by CPSC staff, validated with stakeholders, and implemented in ASTM F406 – 11, based on three entrapment incidents identified during the Section 104 rulemaking process.²

The Primary Test in ASTM F406 – 19 is the same as the only test in previous versions of ASTM F406, except in the 2019 version, the word “record” is replaced with the word “measure,” and the phrase “repeat the test at the other corners,” is changed to “repeat this test with the clamp relocated to the other corners.” These language changes describe more precisely how the test should be carried out, which reduces testing variability and is neutral in safety.

The other change is the addition of a Secondary Test that is only carried out if the product does not comply with the Primary Test. As the rationale after this section (Note 17) states, the Secondary Test was added to test products more appropriately that sit directly on the floor and do not have a tubular floor support structure. The Secondary Test, like the Primary Test involves applying a 15-pound vertically upward force to a clamping device fastened to a corner of the mattress or removable segmented floor structure, then measuring the vertical displacement of the clamp. The Primary Test, however, requires the displacement to be measured from the clamp to a “fixed reference point”; while the Secondary Test requires the displacement to measure from the bottom surface of the mattress just beneath the clamp attachment to the mattress support surface. The pass/fail criteria (5.25 inches) is the same for both tests. Accordingly, staff concludes that this change clarifies the test methods and includes a test method for certain products without affecting the safety of play yards.

III. DISCUSSION

A. The CPSIA and Cribs

² See notice of proposed rulemaking, Safety Standard for Play Yards, 76 FR 58167, 58171 (Sep. 20, 2011).

The CPSIA has unique provisions for cribs, both full-size cribs and NFS cribs. The statute treats cribs differently than other products covered by section 104. Section 104(c) of the CPSIA states that the standards for full-size and NFS cribs 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.³ The crib standards that the Commission issued in 2010 followed this statutory direction. In Pub. L. No. 112-28, Congress amended section 104 and specifically addressed the revision of the crib standards, stating that any revision of the crib standards “shall apply only to a person that manufactures or imports cribs,” unless the Commission 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 Commission does apply the revised crib standard to additional persons, it must provide at least 12 months for those persons to come into compliance. Staff does not recommend that the Commission expand the applicability of the revised NFS crib standard, because, as detailed above, this revision does not affect the safety of NFS cribs.

B. Staff’s Assessment of the Revised Standards

Under CPSIA section 104(b)(4)(B), 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. As detailed in the staff assessment above, the changes made in ASTM F406 – 19 are neutral on safety for NFS cribs and will improve the standard with respect to play yards. Therefore, staff recommends the Commission allow the revised voluntary standard to become effective as the consumer product safety standards for NFS cribs and play yards, 16 CFR part 1220 and 16 CFR part 1221 pursuant to the statute.

C. Effect of the Changes on Third Party Testing

The notice of requirements (NOR), as set out in the final rules for NFS cribs and play yards, provides the criteria and process for the Commission’s acceptance of accreditation of third party conformity assessment bodies for testing NFS cribs to 16 CFR part 1220 (which incorporated ASTM F406 – 17) and play yards to 16 CFR part 1221 (which incorporated ASTM F406 – 13).

³ Typically, consumer product manufacturers, retailers and distributors must comply with consumer product safety rules. Under section 104(c) of the CPSIA, the initial crib standards applied to: “any person that – (A) manufactures, distributes in commerce, or contracts to sell cribs; (B) based on the person’s occupation, holds itself out as having knowledge of skill peculiar to cribs, including child care facilities and family child care homes; (C) is in the business of contracting to sell or resell, lease, sublet, or otherwise place cribs in the stream of commerce; or (D) owns or operates a place of accommodation affecting commerce (as defined in section 4 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2203) applied without regard to the phrase ‘not owned by the Federal Government’).”

The NORs are listed in the Commission’s rule, “Requirements Pertaining to Third Party Conformity Assessment Bodies” at 16 CFR part 1112.

NFS Cribs

As discussed above, the revision to 6.6.3 concerning the toehold requirements only adds a lower bound to the areas where toeholds may be found, but does not require a new test. The lower bound is identified using measuring devices that labs would be required to have to assess other aspects of the standard. Consequently, this modification would not necessitate any significant change in the way that third party conformity assessment bodies test these products for compliance to CPSC standards.

Play Yards

As discussed above, the revision to 8.28 concerning the mattress vertical displacement test, adds a secondary test; however, the test is quite similar to the existing test in both tools and methods. The section that identifies cantilever accessories for testing uses previously established test methods with existing probes, but adds a plumb line between the accessory and the product top rail to identify areas to be tested for entrapment. The other modifications to the play yard standard—namely, a definition, a clarification, a rationale, and an optional alternative warning statement—do not alter the testing required. Consequently, revising the reference to ASTM F406 – 19 for the play yard standard will not necessitate any significant change in the way that third party conformity assessment bodies test these products for compliance to CPSC standards.

For these reasons stated above, staff recommends that the Commission consider the existing accreditations that CPSC has accepted for testing to these standards to cover testing to the revised standard as well. If the Commission follows this recommendation, the existing NORs for these standards would 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(s). 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.

D. 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, unless the Commission notifies an organization that it has determined that a proposed revision does not improve the safety of a consumer product covered by the standard (or the Commission specifies another date). Under this time frame, ASTM F406 – 19 will become effective on January 20, 2020, unless the Commission specifies a later date. Staff does not believe that a longer effective

date is necessary. JPMA typically allows 6 months for products in their certification program to shift to a new voluntary standard once that new voluntary standard is published. Therefore, juvenile product manufacturers are accustomed to adjusting to new voluntary standards within this time frame. ASTM F406 – 19 was approved on March 15, 2019, published in May 2019, and staff believes that manufacturers should have complying products that meet this standard by January 2020.

IV. RECOMMENDATION

Staff recommends that the Commission allow: (1) provisions regarding NFS cribs in ASTM F406 – 19 to be considered a consumer product safety standard issued by the Commission for NFS cribs, and (2) provisions regarding play yards in ASTM F406 – 19 to be considered a consumer product safety standard issued by the Commission for play yards. Staff also recommends that the Commission issue a direct final rule to revise the references in 16 CFR parts 1220 and 1221 to reflect the revisions. According to CPSIA section 104(b)(4)(B), unless the Commission 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 allowing this effective date, so that ASTM F406 – 19 will become effective on January 20, 2020.