



TO: The Commission
Alberta E. Mills, Secretary

DATE: December 11, 2024

THROUGH: Jessica L. Rich, General Counsel
Austin C. Schlick, Executive Director
Daniel R. Vice, Assistant General Counsel, Regulatory Affairs

FROM: Charlotte G. Alton, Attorney, Regulatory Affairs

SUBJECT: ASTM's Notice of a Revised Voluntary Standard for Non-Full-Size Baby Cribs

BALLOT VOTE DUE: December 17, 2024

The Office of the General Counsel is forwarding for the Commission's consideration a draft direct final rule updating the incorporation by reference of ASTM F406, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards*, in the mandatory standard for Non-Full-Size Baby Cribs (NFS cribs), 16 C.F.R. part 1220.

In part 1220, the Commission has incorporated by reference ASTM F406-22. Pursuant to section 104(b) of the Consumer Product Safety Improvement Act, if ASTM revises ASTM F406, it must notify the Commission. 15 U.S.C. § 2056a(b). On October 7, 2024, ASTM notified the Commission of the revisions in ASTM F406-24. The revised voluntary standard will take effect as CPSC's mandatory standard effective 180 days after ASTM notified the Commission, unless within 90 days after receiving that notice, the Commission responds to ASTM that it has determined that the proposed revision does not improve the safety of the consumer products covered by the standard. 15 U.S.C. § 2056a(b). The Commission accordingly must decide by January 5, 2025, whether to allow the provisions of ASTM F406-24 to go into effect as the mandatory standard for NFS cribs. If the Commission allows ASTM F406-24 to become the new mandatory standard, it would become effective on April 5, 2025.

As reflected in the accompanying draft direct final rule, staff recommends that the Commission allow revised ASTM F406-24 to become the CPSC mandatory standard for NFS cribs. Specifically, staff recommends that the Commission publish a direct final rule that incorporates by reference ASTM F406-24 into 16 C.F.R. part 1220. A draft *Federal Register* notice for that purpose is attached. If the Commission approves the direct final rule, OGC will send the direct final rule to the *Federal Register* for publication.

Please indicate your vote on the following options:

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

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

- I. Accept ASTM F406-24 as the new mandatory standard for NFS cribs and publish the draft *Federal Register* notice to revise the version of the standard incorporated by reference in 16 C.F.R. part 1220.

(Signature)

(Date)

- II. Determine that ASTM F406-24 does not improve the safety of NFS cribs and direct CPSC staff to notify ASTM of this determination and that the Commission is retaining the existing standard for NFS cribs in 16 CFR part 1220.

(Signature)

(Date)

- III. Take other action specified below.

(Signature)

(Date)

Attachment: Draft *Federal Register* Direct Final Rule: Revision to the Voluntary Standard for Non-Full-Size Baby Cribs

[Billing Code 6355-01-P]

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1220

[Docket No. CPSC-2019-0025]

Safety Standard for Non-Full-Size Baby Cribs

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In December 2010, the U.S. Consumer Product Safety Commission (CPSC or Commission) published a consumer product safety standard for non-full-size baby cribs (NFS cribs) pursuant to section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). The Commission's mandatory standard incorporates by reference ASTM F406, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards*, with modifications that exclude sections of ASTM F406 that apply to play yards exclusively. The CPSIA sets forth a process for updating mandatory standards for durable infant or toddler products that are based on a voluntary standard, when a voluntary standards organization revises the standard. On October 7, 2024, ASTM published a revised voluntary standard, and this direct final rule updates the mandatory standard for NFS cribs to incorporate by reference the 2024 version of ASTM F406.

DATES: The rule is effective on April 5, 2025, unless the Commission receives a significant adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If the Commission 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 April 5, 2025.

ADDRESSES: You can submit comments, identified by Docket No. CPSC-2019-0025, 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 typically does not accept comments submitted by email, except as described below.

Mail/Hand Delivery/Courier/Confidential Written Submissions: CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal. You may, however, submit comments by mail, hand delivery, or courier to: Office of the Secretary, 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 email them to: cpsc-os@cpsc.gov.

Instructions: All submissions must include the agency name and docket number. 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 to this website: 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/confidential 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-2019-0025, into the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Frederick DeGrano, Project Manager, Division of Mechanical and Combustion Engineering, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: (301) 987–2711; email: fdegrano@cpsc.gov.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority and Background

A. Statutory Authority

Section 104(b) of the CPSIA 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). Mandatory standards must be “substantially the same as” applicable voluntary standards, or they may be “more stringent” than the voluntary standards, if the Commission determines that more stringent requirements would further reduce the risk of injury associated with the products. *Id.* Accordingly, mandatory standards may be based, in whole or in part, on a voluntary standard.

Section 104(b)(4)(B) of the CPSIA specifies the process for when a voluntary standards organization revises a standard the Commission has incorporated by reference under section 104(b)(1). 15 U.S.C. 2056a(b)(4)(B). 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. To reject a revised standard, the Commission must

¹ Section 104(f)(2)(A) of the CPSIA lists NFS cribs as a durable infant or toddler product. 15 U.S.C. 2056a(f)(2)(A).

notify the voluntary standards organization within 90 days of receiving the notice of revision that the Commission has determined that the revised standard does not improve the safety of the consumer product and that CPSC is retaining the existing standard. If the Commission does not take this action, then the revised voluntary standard will be considered a consumer product safety standard issued under section 9 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2058), effective 180 days after the Commission received notification of the revision (or a later date specified by the Commission in the *Federal Register*). 15 U.S.C. 2056a(b)(4)(B).

Additionally, section 104(c) of the CPSIA contains special provisions for rules regarding cribs, including NFS cribs. Sections 104(c)(1) and (2) make the standards the Commission adopts for cribs under section 104(b) of the CPSIA enforceable against a larger class of parties than are ordinarily subject to section 104 rules.² 15 U.S.C. 2056a(c)(1), (2). However, Congress later limited this expanded application of the crib standards. Section 104(c)(3) of the CPSIA, added in 2011, limits the application of crib rule updates adopted through the section 104 process to manufacturers or importers of cribs, unless the Commission determines that application to any other person described in section 104(c)(2) is “necessary to protect against an unreasonable risk to health or safety.” 15 U.S.C. 2056a(c)(3). The Commission previously updated the NFS cribs rule and did not make the predicate determination in those updates. 83 FR 26206 (June 6, 2018); 84 FR 56684 (Oct. 23, 2019); and 88 FR 13686 (March 6, 2023). The Commission similarly is not making a determination under CPSIA section 104(c)(3) for the current revision to the NFS

² Section 104(c) prohibits 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)(2).

cribs rule. Accordingly, as specified in section 104(c)(3), this direct final rule applies to persons that manufacture or import cribs, but not to the other entities stated in sections 104(c)(1) and (2).

B. Safety Standards for NFS Cribs

On December 28, 2010, under section 104 of the CPSIA, the Commission published the first NFS crib rule that incorporated by reference ASTM F406-10a, *Standard Consumer Safety Specification for Non-Full-Size Cribs/Play Yards*, as the mandatory standard, with modifications to the standard to further reduce the risk of injury and exclude sections of ASTM F406-10a that apply to play yards exclusively. 75 FR 81766, at 81780.³

Section 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 3/4 in.), or, an interior width dimension either greater than 77.7 cm (30 5/8 in.) or smaller than 64.3 cm (25 3/8 in.), or both . . . [and] (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).

16 CFR 1220.1(c)(1). The rule further states that NFS cribs include, but are not limited to, portable cribs, crib pens, specialty cribs, undersize cribs, and oversize cribs, as these products are defined in the rule. *Id.* Generally, the NFS cribs rule applies to rigid-sided products, while the play yard rule applies to mesh-sided products.

After the publication of ASTM F406-10a, CPSC has updated the NFS cribs rule three times, successively incorporating ASTM F406-17 in 2018 (83 FR 26206 (June 6, 2018)), ASTM F406-19 in 2019 (84 FR 56684 (Oct. 23, 2019)), and ASTM F406-22 in 2023 (88 FR 13686 (March 6, 2023)). In all cases, CPSC accepted the revised voluntary standard as the mandatory

³ Commission regulations for play yards are at 16 CFR part 1221.

standard for NFS cribs and updated the incorporation by reference in 16 CFR part 1220 to reflect the newly revised voluntary standard. In all cases, CPSC also maintained the exceptions listed in section 1220.2(b), which lists sections of the voluntary standard that solely apply to play yards and therefore are not incorporated in the NFS cribs standard.

On October 7, 2024, ASTM notified the Commission that it had approved and published a newly revised version of the voluntary standard, ASTM F406-24. As explained in section II.A of this preamble, ASTM F406-24 contains two related, substantive revisions to the voluntary standard. One clarifies the definitions of “play yard/non-full-size crib dependent accessory” and “full accessory.” The other addresses strangulation hazards by expanding the scope of the warning label requirements to all NFS crib accessories and not just those intended to be removed when the NFS crib is occupied. Part II.B of this preamble describes non-substantive clarifications that also were made in the revised voluntary standard.

On October 25, 2024, the Commission published in the *Federal Register* a Notice of Availability, requesting comment on whether the 2024 revision improves the safety of NFS baby cribs and/or play yards. 89 FR 85077. CPSC received one anonymous comment addressing safety of NFS cribs (as well as play yards), which is discussed below.

Based on staff’s evaluation of ASTM F406-24 and consideration of the comment received, the Commission will allow ASTM F406-24 to become the new consumer product safety standard for NFS cribs because it improves safety. Pursuant to CPSIA section 104, the revised voluntary standard will take effect as the new mandatory standard for NFS cribs on April 5, 2025, unless the Commission specifies a later date in the *Federal Register* or notifies ASTM by January 5, 2025, that it has determined the revision does not improve the safety of NFS baby cribs. 15 U.S.C. 2056a(b)(4)(B). This direct final rule updates 16 CFR part 1220 to incorporate

by reference the applicable provisions of the revised voluntary standard, ASTM F406-24, with modifications that maintain the exclusion of requirements that apply solely to play yards.⁴

II. Description of ASTM F406-24 Related to NFS Cribs

The ASTM standard for NFS cribs includes performance requirements, test methods, and requirements for marking, labeling, and instructional literature to address hazards to children associated with NFS cribs. The 2024 revision to the voluntary standard, ASTM F406, includes substantive and non-substantive revisions, as described in sections II.A and B.

A. Substantive changes in ASTM F406-24

1. NFS Crib Accessories Definitions

ASTM F406-24 revises the definitions for “play yard/non-full-size crib dependent accessory” and for “full accessory” to clarify the classification of certain types of accessories and the performance requirements to which they are subject. These revisions address ambiguity in the previous definitions, but in the Commission’s assessment they do not change the scope of the accessories to which the definition applies. Section 3.1.24 defines a “play yard/non-full-size crib dependent accessory” as a component such as a bassinet or changing table that attaches to the NFS crib, and the revision now clarifies that a dependent accessory “can be used with or without a full accessory, and does not fully cover the top opening of the play yard/non-full size crib.” The prior definition did not specifically confirm the dependent accessory’s relation to a full accessory or that this accessory does not fully cover the top of a NFS crib. The revised discussion language in section 3.1.24.2 again confirms that this dependent accessory “does not fully cover the top opening of the play yard/non-full-size crib.” Figure 1 below provides an

⁴ On XXXX, 2024, the Commission voted (X-X) to publish this direct final rule.

example of a changing table accessory that attaches to the top frame of the play yard/non-full-size crib and is therefore classified as a play yard/non-full-size crib dependent accessory.

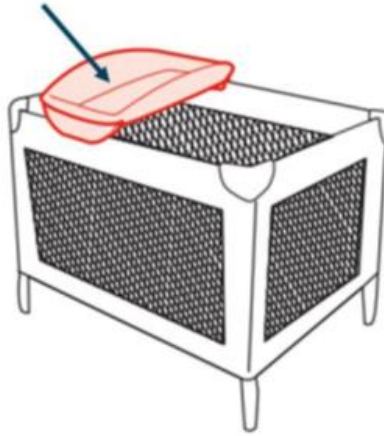


Figure 1. Play Yard/Non-Full-Size Crib Dependent Accessory⁵

Section 3.1.11 defines a “full accessory” as any accessory that fully covers the top opening of a NFS crib without gaps or openings “that would expose the occupant to an entrapment hazard.” ASTM F406-24 adds section 3.1.11.3 to clarify that NFS cribs that can convert to other products are not considered full accessories. The converted products (*i.e.*, products that convert from NFS cribs to another product, such as a bassinet) are subject to requirements or regulations that apply to the converted-to-product’s product category, such as the requirements for bassinets, and not to the requirements for NFS cribs. These revisions clarify the definitions of NFS crib accessories and which category of product an item may fall under. Figure 2 below shows an example of a changing table that can only be attached to the full bassinet accessory, and therefore is also considered a full accessory (unlike the changing table in Figure 1, which only attaches directly to the play yard/non-full-size crib).

⁵ Reprinted, with permission, from ASTM F406-24 *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards*, copyright ASTM International. A copy of the complete standard may be obtained from www.astm.org.

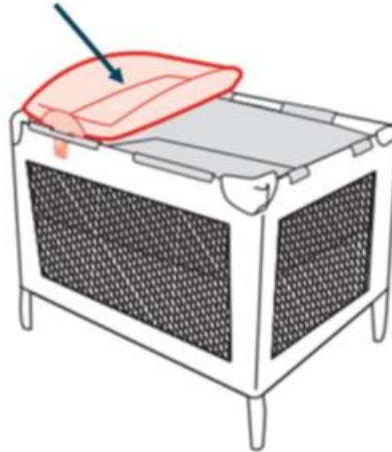


Figure 2. Play Yard/Non-Full-Size Crib Full Accessory⁶

The Commission considers these changes to the accessories' definitions as an improvement in safety because they clarify the requirements of the standard.

2. Strangulation Warning Labels

NFS cribs with attaching accessories present a risk of strangulation in openings between attached accessories and the NFS crib's frame. To better warn about this hazard, ASTM F406-24 revises requirements for warning labels in section 9.6.3 of ASTM F406-24. The previous requirement stated that the manufacturer should add a general description of the hazard relevant to the product, including the nonspecific phrase, "[s]tatement describing the hazard." ASTM F406-24 revises the warning label requirement so that labels explicitly specify that there is a strangulation hazard, which ensures a compelling and vivid description of the hazard and how to avoid it. Figure 3 provides an example of the new strangulation hazard warning label language requirements, which improve safety.

⁶ Reprinted, with permission, from ASTM F406-24 *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards*, copyright ASTM International. A copy of the complete standard may be obtained from www.astm.org.



Figure 3. Strangulation Hazard Warning Label⁷

Further, ASTM F406-24 expands the scope of products to which these warning label requirements apply, to now include all accessories, not just accessories that are intended to be removed from the NFS crib when it is occupied, as previously required in ASTM F406-22. As revised, the warning label requirement now applies to “each play yard/non-full size crib dependent accessory and full accessory.” Therefore, the revision applies to all full accessories and play yard/NFS crib dependent accessories rather than only play yard/NFS crib dependent accessories. The Commission determines that any accessory attached to the top or within the occupant area, regardless of the type of accessory, presents a strangulation hazard when a child is in the occupant area. Therefore, this change in ASTM F406-24 is an improvement in safety.

B. Non-substantive changes in ASTM F406-24

ASTM F406-24 incorporates numerous other marking, labeling, and instructional literature revisions per the recommendations from ASTM’s Ad Hoc Language Task Group. ASTM juvenile products standards have begun adopting “Ad Hoc” recommendations since 2016, to increase the consistency of on-product warning design among juvenile products, and to address warning format issues related to capturing consumer attention, improving readability, and increasing hazard perception and avoidance behavior. The Ad Hoc recommendations have been improved incrementally over the years following publication of

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ASTM F406-19, warranting corresponding improvements to the standard, which are addressed in ASTM F406-24.

Additional clarifications and minor changes have been made to the marking, labeling, and instructional literature sections. For example, ASTM F406-24 includes in Figures A1.50 to A1.52 example warning labels to assist manufacturers in creating warning labels consistent with the requirements, and to assist test labs to verify the labels meet the requirements. In contrast, ASTM F406-22 does not provide example warning labels. The 2024 addition should improve consistency among products while making it easier for manufacturers to create labels that meet the requirements, and for test labs to verify that the labels meet the requirements.

Although they do not materially change the substantive requirements for NFS cribs, these revisions in ASTM F406-24 do improve safety by providing clearer and more complete safety messaging for the subject products.

C. Revision to 16 CFR 1220.2(b)(2)

As a result of revisions in ASTM F406-24, this direct final rule revises 16 CFR 1220.2(b)(2) from “Do not comply with section 5.16.2 through 5.16.2.2 of ASTM F406-22” to “Do not comply with section 5.16.2 of ASTM F406-24.” Sections 5.16.2.1 through 5.16.2.2 were removed in F406-24 and, therefore, only section 5.16.2 must be excluded from this rule, as section 5.16.2 solely applies to play yards and not NFS cribs. Therefore, the Commission is revising the section number reference to reflect the exclusion of the play yard requirement.

D. Public Comments

The Commission requested public comment on how the revisions to ASTM F406-24 affect the safety of NFS cribs and received one anonymous comment. The commenter first asserts that *Entrapment in Accessories* requirements in section 5.15 of ASTM F406-24 do not

address the entrapment hazard present for all openings between accessories or accessories and the NFS crib. However, section 8.26 of ASTM F406-24 confirms that the entrapment hazard evaluation and testing do apply to all openings. Second, the comment notes that the test procedures in section 8.26 that are intended to evaluate free passage of a small head probe through an exposed opening fail to specify a duration of time for how long a test force should be applied. Although the performance requirements in section 8.26 in ASTM F406-24 do not differ from section 8.26 in ASTM F406-22, the Commission agrees with the commenter that this section deserves further review. The Commission expects CPSC staff to continue to work with the ASTM subcommittee to consider the commenter's concern.

Third, the commenter asserts that it is unclear why section 5.15 *Entrapment in Accessories* requirements would apply to full accessories when there is an occupant access door. As stated in ASTM F406-24, section 5.15 applies to full accessories if the NFS crib has "an occupant access door in the walls of the crib." Such an opening may provide access from outside of the NFS crib into the occupant area underneath the full accessory, thereby exposing a child to an entrapment hazard. If there is no occupant access door in the NFS crib walls, there is no such hazard and as a result, the fact that full accessories that attach to the NFS crib are not subject to section 5.15 does not reduce safety.

Finally, the commenter asserts that the section 5.15 requirements are contradictory regarding which requirements apply to a dependent accessory or to a full accessory, claiming that the different testing requirements for each type of accessory are unclear. ASTM F406-24 directs manufacturers to conduct different entrapment testing depending on the type of accessory at issue. Once an accessory is properly classified as a full or dependent accessory, the applicable section 5.15 requirement would apply. Section 3.1.24, for example, specifies that play yard/non-

full-size crib dependent accessories “can be used with or without a full accessory.” Therefore, the fact that an accessory has the means to mechanically attach either to a full accessory or to the NFS crib causes it to be classified as a NFS crib dependent accessory, and therefore subject to the section 5.15 requirements for dependent accessories and not any other requirement that may be contradictory.

E. Summary of Assessment of ASTM F406-24

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. The Commission concludes that the substantive changes in ASTM F406-24 related to NFS cribs improve the safety of NFS cribs, as do the non-substantive changes addressed in section II.B.

III. Incorporation by Reference

Section 1220.2(a) of the direct final rule incorporates by reference ASTM F406-24. 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 II of this preamble summarizes the revised provisions of ASTM F406-24 that the Commission incorporates by reference into 16 CFR part 1220. The standard is reasonably available to interested parties in several ways. Until the direct final rule takes effect, a read-only copy of ASTM F406-24 is available for viewing 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 on the ASTM website at:

<https://www.astm.org/READINGLIBRARY>. Additionally, interested parties can purchase a copy of ASTM F406-24 from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959 USA; phone: 610-832-9585; www.astm.org. Finally, interested parties can schedule an appointment to inspect a copy of the standard at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, telephone: 301-504-7479; email: cpsc-os@cpsc.gov.

IV. Testing and Certification

Section 14(a) of the CPSA (15 U.S.C. 2051-2089) requires manufacturers, including importers, 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.

Additionally, because NFS cribs are children's products, a CPSC-accepted third party conformity assessment body must test samples of the products for compliance with 16 CFR part 1220. Products subject to part 1220 also must be compliant with all other applicable CPSC

requirements, such as the lead content requirements in section 101 of the CPSIA⁸ and the phthalates prohibitions in section 108 of the CPSIA.^{9,10,11} In accordance with section 14(a)(3)(B)(iv) of the CPSIA, the Commission previously published a notice of requirements (NOR) for accreditation of third party conformity assessment bodies (*i.e.*, third party laboratories) for testing NFS cribs, and codified the requirement at 16 CFR 1112.15(b)(6).

The modifications to warning labels and accessory definitions for NFS cribs in ASTM F406-24 do not establish new testing requirements. Accordingly, the revisions do not require that laboratories obtain additional test equipment or new training. The Commission considers third party labs that are currently CPSC-accepted for 16 CFR part 1220 to have demonstrated competence to test NFS cribs to ASTM F406-24, as incorporated into part 1220. Accordingly, the existing accreditations that the Commission has accepted for testing to this standard will cover testing to the 2024 standard. The existing NOR for the Safety Standard for Non-Full-Size Baby Cribs will remain in place, and CPSC-accepted third party labs are expected to update the scope of their accreditations to reflect the revised NFS cribs standard in the normal course of renewing their accreditations.

V. 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)(4)(B).

⁸ 15 U.S.C. 1278a.

⁹ 15 U.S.C. 2057c.

¹⁰ 15 U.S.C. 2063(a)(5).

¹¹ 15 U.S.C. 2056a(d).

The purpose of this direct final rule is to update the reference in the Code of Federal Regulations (CFR) so that it reflects the version of the standard that takes effect by statute. This rule updates the reference in the CFR, but under the terms of the CPSIA ASTM F406-24 takes effect as the new CPSC standard for NFS cribs even if the Commission does not issue this rule. Thus, public comments would not lead to substantive changes to the standard or to the effect of the revised standard as a consumer product safety rule under section 104(b) of the CPSIA. Under these circumstances, notice and comment are unnecessary.

In Recommendation 95-4, the Administrative Conference of the United States (ACUS) endorses direct final rulemaking as an appropriate procedure to expedite rules that are noncontroversial and that are not expected to generate significant adverse comments. *See* 60 FR 43108 (Aug. 18, 1995). ACUS recommends that agencies use the direct final rule process when they act under the “unnecessary” prong of the good cause exemption in 5 U.S.C. 553(b)(4)(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 April 5, 2025. In accordance with ACUS’s recommendation, the Commission considers a significant adverse comment to be “one where the commenter explains why the rule would be inappropriate,” including an assertion challenging “the rule’s underlying premise or approach,” or a claim that the rule “would be ineffective or unacceptable without change.” 60 FR 43108, 43111. As noted, this rule updates a reference in the CFR to reflect a change that occurs by statute.

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.

VI. 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. 5 U.S.C. 601-612. As discussed in section V of this preamble regarding the Direct Final Rule Process, the Commission has determined that notice and the opportunity to comment are unnecessary for this rule. Therefore, the RFA does not apply. The Commission also notes the limited nature of this document, which updates the incorporation by reference to reflect the mandatory CPSC standard that takes effect under section 104 of the CPSIA.

VII. Paperwork Reduction Act

The current mandatory standard for NFS cribs includes requirements for marking, labeling, and instructional literature that constitute a “collection of information,” as defined in the Paperwork Reduction Act (PRA; 44 U.S.C. 3501-3521). The revised mandatory standard for NFS cribs does not alter these requirements. The Commission took the steps required by the PRA for information collections when it adopted 16 CFR part 1220, 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.

VIII. Environmental Considerations

The Commission’s regulations provide for a categorical exclusion 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.

IX. 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.

X. 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 180 days after notification to the Commission, unless the Commission determines that the revision does not improve the safety of the product, or the Commission sets a later date in the *Federal Register*. 15 U.S.C. 2056a(b)(4)(B). The Commission is taking neither of those actions with respect to the revised standard for NFS cribs. Therefore, ASTM F406-24 automatically will take effect as the new mandatory standard for NFS cribs on April 5, 2025, 180 days after the Commission received notice of the revision. As a direct final rule, unless the Commission receives a significant adverse comment within 30 days of this notice, the rule will become effective on April 5, 2025.

XI. 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 (OIRA) determines whether a rule qualifies as a “major rule.”

Pursuant to the CRA, OIRA has determined that 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 1220

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: 15 U.S.C. 2056a.

2. Amend 1220.2 by revising paragraph 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 F406-24, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards*, approved on October 7, 2024. 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. This material is available for inspection at the U.S. Consumer Product Safety Commission and at the National Archives and Records Administration (NARA). Contact the U.S. Consumer Product Safety Commission at: Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, telephone (301) 504-7479, email: cpsc-os@cpsc.gov. For information on the availability of this material at NARA, email fr.inspection@nara.gov, or go to: www.archives.gov/federal-register/cfr/ibr-locations.html. A free, read-only copy of the standard is available for viewing on the ASTM website at <https://www.astm.org/READINGLIBRARY/>. You may also obtain a copy from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959; phone: (610) 832-9585; www.astm.org.

(b) Comply with the ASTM F406-24 standard with the following exclusions:

- (1) Do not comply with sections 5.6.2 through 5.6.2.4 of ASTM F406-24.
- (2) Do not comply with section 5.16.2 of ASTM F406-24.
- (3) Do not comply with sections 5.19 through 5.19.2.2 of ASTM F406-24.
- (4) Do not comply with section 7, *Performance Requirements for Mesh/Fabric Products*, of ASTM F406-24.
- (5) Do not comply with sections 8.11 through 8.11.2.4 of ASTM F406-24.
- (6) Do not comply with sections 8.12 through 8.12.2.2 of ASTM F406-24.
- (7) Do not comply with sections 8.14 through 8.14.2 of ASTM F406-24.
- (8) Do not comply with sections 8.15 through 8.15.3.3 of ASTM F406-24.
- (9) Do not comply with section 8.16 through 8.16.3 of ASTM F406-24.
- (10) Do not comply with sections 8.28 through 8.28.3.2 of ASTM F406-24.
- (11) Do not comply with sections 8.29 through 8.29.3 of ASTM F406-24.

- (12) Do not comply with sections 8.30 through 8.30.5 of ASTM F406-24.
- (13) Do not comply with sections 8.31 through 8.31.9 of ASTM F406-24.
- (14) Do not comply with sections 9.3.2 through 9.3.2.4 of ASTM F406-24.

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



Memorandum

TO: The Commission
Alberta E. Mills, Secretary

THROUGH: Jessica L. Rich, General Counsel
Austin C. Schlick, Executive Director
DeWane Ray, Deputy Executive Director, Safety Operations

FROM: Duane E. Boniface, Assistant Executive Director,
Office of Risk Reduction

Frederick deGrano, Project Manager,
Division of Mechanical and Combustion Engineering
Directorate for Engineering Sciences

Daniel Taxier, Children's Program Manager,
Directorate for Engineering Sciences

SUBJECT: Direct Final Rules to Update *Safety Standard for Non-Full-Size Baby Cribs* and *Safety Standard for Play Yards*

DATE: December 11, 2024

On December 28, 2010, the Commission published a final rule issuing a mandatory standard for non-full-size (NFS) baby cribs, codified in 16 C.F.R. part 1220, *Safety Standard for Non-Full-Size Baby Cribs*. This rule incorporated by reference ASTM F406-10a, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards*, with modifications that exclude those sections of ASTM F406-10a that apply to play yards exclusively (75 FR 81766). Since part 1220 was issued, the Commission has updated the NFS cribs rule to incorporate by reference the 2017, 2019, and 2022 versions of ASTM F406.

On August 29, 2012, the Commission published a final rule issuing a mandatory standard for play yards, codified in 16 C.F.R. part 1221, *Safety Standard for Play Yards*. This rule incorporated by reference the 2012 version of the F406 standard, ASTM F406-12a, with modifications to avoid overlap with part 1220 by excluding sections of ASTM F406-12a that apply to non-full-size cribs exclusively. 77 Fed. Reg. 52,220. Since the publication of ASTM F406-12a, ASTM has published three revisions to the play yard provisions of ASTM F406, in 2013, 2019, and 2022. The Commission updated part 1221 to incorporate by reference the 2013 and 2019 versions. But the Commission rejected the 2022 version because it determined the added provisions allowing for mattresses greater than 1.5 inches thick to be a reduction in safety. In 2024, ASTM revised F406 back to requiring a mattress thickness of 1.5 inches or less, as in the 2019 version that part 1221 currently incorporates by reference.

As explained, part 1220 presently incorporates by reference ASTM F406-22 with modifications, and part 1221 incorporates by reference ASTM F406-19 with modifications. On October 7, 2024, ASTM officially notified the CPSC that the latest update of the Non-Full-Size Baby Cribs/Play Yards standard, ASTM F406-24, was published. On October 25, 2024, the Commission published in the *Federal Register* a Notice of Availability, requesting comment on whether the 2024 revision improves the safety of NFS baby cribs and/or play yards. 89 Fed. Reg. 85,077. CPSC received one anonymous comment addressing the safety of both NFS cribs and play yards.

Staff is providing the Commission a draft final rule addressing F406-24 as it applies to NFS cribs and 16 C.F.R. part 1220, and a draft final rule addressing F406-24 as it applies to play yards and 16 C.F.R. part 1221. In both documents, section II of the preamble describes in detail the relevant revisions made by ASTM F406-24. The following summarizes the substantive revisions for each product:

Substantive revisions applying both to NFS cribs as compared to part 1220, which currently incorporates by reference ASTM F406-22, and to play yards as compared to part 1221, which currently incorporates by reference ASTM F406-19:

- Revised definitions of “play yard/non-full-size crib dependent accessory” and “full accessory” to clarify the classification of certain types of accessories and the performance requirements to which they are subject.
- Application of the scope of the warning label requirements addressing strangulation hazards to all accessories, and not just those intended to be removed when the NFS crib or play yard is occupied.

Additional substantive revisions applying specifically to play yards as compared to part 1221 and ASTM F406-19:

- A new requirement addressing strangulation hazards by limiting the length of loops for cords/straps and by specifying a test to measure the perimeter of cord/strap loops for play yards.
- Modified warning label requirements pertaining to products that have separate, removable mattresses to improve clarity and better ensure that a properly fitting mattress is used in the play yard, thereby reducing the risks of infant sleep hazards such as gap entrapment and suffocation.

ASTM F406-24 also incorporates numerous non-substantive revisions to marking, labeling, and instructional literature revisions per the recommendations from ASTM’s Ad Hoc Language Task Group. Although they do not materially change the substantive requirements for play yards, these revisions do improve safety by providing clearer and more complete safety messaging for the subject products.

Staff reviewed each of the changes to the standard, and as discussed in section II of each of the draft Direct Final Rules, assesses that the revisions in ASTM F406-24 improve the safety of NFS cribs and play yards. 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. Staff therefore recommends the Commission accept the revised voluntary standard and publish the draft Direct Final Rules for NFS cribs and play yards.