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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1221

CPSC Docket No. CPSC-2011-0064

RIN 3041-AC92

Safety Standard for Play Yards

AGENCY: Consumer Product Safety Commission.

ACTION: Final Rule

SUMMARY: The United States Consumer Product Safety Commission (Commission or CPSC or we) is issuing a final rule, amending the play yard mandatory standard.

Currently, the CPSC play yard standard incorporates by reference ASTM F406-12a, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards*. In this final rule, the Commission is amending the play yard standard to incorporate by reference the most recent version of ASTM's play yard standard, ASTM F406-13.

Through this amendment, the Commission is addressing hazards associated with misassembly of play yard bassinet accessories.

DATES: This rule will become effective on February 19, 2014 and will apply to all play yards manufactured or imported on or after that date. The incorporation by reference of the publication listed in this rule is approved by the Director of the *Federal Register* as of February 19, 2014.

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SUPPLEMENTARY INFORMATION:

A. Background

On August 29, 2012, the Commission published a final rule establishing a CPSC safety standard for play yards. 77 FR 52220. On the same date, the Commission published a notice of proposed rulemaking (NPR), seeking comments on the addition of a requirement to the play yard mandatory standard to address the hazards associated with play yard bassinet accessories that can be assembled without key structural elements. 77 FR 52272. The NPR was prompted by the death of an infant in a play yard bassinet accessory, in which the end support rods, which attached two of the bassinet accessory's four sides to the play yard rails, were omitted during assembly. The other two sides were attached with plastic clips. After the infant was left to sleep, one of the plastic clips that attached the bassinet accessory to the play yard detached. Because the support rods were not in place to secure the bassinet accessory, the bassinet sleep surface tilted, and the infant slid into the corner of the tilted bassinet accessory and suffocated.

In the August 2012 NPR, we proposed a provision that would require that all “key structural elements” be permanently attached to the bassinet accessory or pass the “catastrophic failure test,” which is described in more detail in section D of this preamble. In the August 2012 NPR, the term “key structural elements” included all structures that attach the bassinet accessory to the play yard, as well as all structures that reinforce the bassinet accessory mattress by keeping it flat and stable, such as the mattress support rods.

Since publication of the August 2012 NPR, the ASTM play yard subcommittee carefully assessed the incident that prompted this requirement. The subcommittee

worked closely with the ASTM bassinet/cradle subcommittee and chose to address the hazards associated with bassinet accessory misassembly in two different ASTM standards: (1) the play yard standard, ASTM F406-13, now addresses safety issues related to bassinet accessory attachment components (*i.e.*, structures that attach the bassinet accessory to the play yard); and (2) the bassinet standard, ASTM F2194-13, *Standard Consumer Safety Specification for Bassinets and Cradles*, addresses safety issues related to mattress support rods (and all other structures that ensure that the bassinet accessory mattress is flat and stable) through the segmented mattress flatness test contained in the bassinet standard. That approach is now part of the current ASTM standard for play yards, ASTM F406-13, and for bassinets, ASTM F2194-13. Likewise, the Commission is following this approach in the CPSC standard for play yards and in the CPSC standard for bassinets and cradles. The Commission believes that this approach addresses the hazards known to CPSC staff associated with play yard bassinet misassembly.

B. The Product

ASTM F406-13 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.” Play yards are intended for children who are less than 35 inches tall and who cannot climb out of the product. Some play yards include accessory items that attach to the product, such as mobiles, toy bars, canopies, bassinets, and changing tables. The accessory item usually attaches to the side rails or corner brackets of the play yard.

A “bassinet/cradle accessory” is defined in ASTM F406-13 as “an elevated sleep surface that attaches to a play yard designed to convert the product into a bassinet/cradle intended to have a horizontal sleep surface while in a rest (non-rocking) position.” Play yard bassinet accessories commonly consist of a textile shell that provides an elevated sleep surface within the play yard. The floor of the bassinet accessory is typically the same dimensions as the play yard floor. Usually, the segmented mattress pad that is used on the floor of the play yard is inserted into the bassinet shell. The floor of the bassinet accessory is typically reinforced with mattress support rods to ensure a flat, stable sleep surface. The top edges of the sides of the bassinet accessory can be secured to the play yard top rails with any number of devices, but most often is done through plastic clips sewn onto the sides of the shell. Metal rods may also be used to secure the bassinet to the play yard. These metal rods are usually inserted into a sleeve on the top edge of the shell’s side wall and clipped into a play yard’s corner brackets.

C. History of the Play Yard Mandatory Standard

In the *Federal Register* of September 20, 2011 (76 FR 58167), the Commission published an NPR to establish a safety standard for play yards. The NPR proposed incorporating by reference ASTM F406-11. It is important to note that ASTM F406 is the safety standard for both non-full-size cribs and play yards. The NPR for play yards indicated which sections of the ASTM standard would apply to play yards and excluded from CPSC’s play yard standard the provisions of ASTM F406 that apply to non-full-size cribs. After publication of the 2011 NPR, CPSC staff became aware of an incident, mentioned in section A of this preamble and described in more detail in section D of this preamble, where an infant died while sleeping in a play yard bassinet accessory that had

been assembled without end supports. The Commission received a comment to the 2011 NPR requesting that we address play yard bassinet accessory misassembly.

On August 29, 2012, the Commission published a final rule to establish a safety standard for play yards that incorporated by reference ASTM F406-12a. 77 FR 52220. The final rule did not address the hazards associated with the use of play yard bassinet accessories that can be assembled missing key structural elements. On the same date, the Commission published an NPR proposing an addition to the play yard mandatory standard to address the hazards associated with the use of play yard bassinet accessories that can be assembled missing key structural elements and asking for comments on the proposal. 77 FR 52272.

D. The Play Yard Bassinet Accessory Misassembly Provision

1. Summary of the Hazard and the Infant Fatality

Many play yards are sold with accessories that attach to the product, such as mobiles, toy bars, canopies, bassinets, and changing tables. Play yard bassinet accessories are unique among play yard accessories because they are intended to be used as a sleeping environment, and infants are meant to be left unsupervised in them for extended periods of time. Serious injuries or fatalities can result if a play yard bassinet accessory has been assembled without support structures. Those structures are intended to attach the bassinet accessory to the side of the play yard, as well as support the bassinet accessory mattress in order to keep the sleep surface flat and level. A tilt in the sleeping surface of the bassinet can result in an infant getting into a position where he or she is unable to breathe and is at risk of suffocation.

In August 2011, the CPSC received a report of an infant fatality that occurred in the bassinet accessory of a play yard. The child died when the sleeping surface of the bassinet tilted, causing the child to slip into the corner of the bassinet accessory, where she suffocated. A review of the In-Depth Investigation Report (IDI), as well as CPSC staff testing on an exemplar model of the bassinet accessory and play yard involved in the fatality, led CPSC staff to conclude that the incident was caused by the omission of metal support rods that were used to secure two of the bassinet accessory's ends to the side of the play yard. The bassinet accessory also had sewn-on plastic clips that attached the product to the side rails of the play yard. Sometime after the child was placed in the bassinet accessory, one of the plastic clips detached. If the metal support rods had been used in the assembly of the play yard, the detachment of the plastic clip would not have been enough to cause the tilt in the sleeping surface that led to the fatality. However, the plastic clips caused the consumer to assume erroneously that the product was safe when key structural elements, the end support rods that secured the bassinet accessory's ends to the play yard end rails, were missing. The omission of the metal support rods caused the fatal tilt of the bassinet accessory sleep surface and resulted in the infant's death.

As in this case, a consumer initially may not see that supporting rods are missing. If the misassembled accessory supports an infant without a catastrophic and obvious change to the sleep surface, a consumer may continue to use the accessory and inadvertently place a child in danger. If the bassinet's sleep surface tilts while the child is unsupervised, the caregiver may not discover the condition for hours, placing the child in a potentially fatal situation.

2. The Bassinet Misassembly Requirement Contained in the August 2012 NPR

The requirement the Commission proposed in the August 2012 NPR was designed to address the hazards that can occur when play yard bassinet accessories are misassembled by omitting key structural elements during assembly. The NPR proposed two compliance options. First, the bassinet accessory would meet the requirement if all of the key structural elements were attached permanently to the bassinet accessory. This would prevent any support rods, tubes, bars, and hooks from being omitted inadvertently when the consumer assembles the bassinet accessory. Manufacturers who choose to affix all key structural elements to their bassinets permanently would not need to conduct further testing on their product to meet the requirement.

The second method for compliance proposed in the NPR involved a test method that CPSC refers to as the “catastrophic failure test.” If a manufacturer chooses not to attach support rods, tubes, bars, or hooks permanently to the bassinet, the bassinet would have to be tested by removing each key structural element and numbering each from 1 through n. Subsequently, all of the key structural elements would be put back into place. Key structural element number 1 would then be removed from the bassinet. To pass the test when an anthropomorphic infant dummy is placed in the center of the sleep surface, the product must: (1) collapse completely, or (2) tilt more than 30°. The angle of 30° represents a safety factor of three times the 10° maximum safe sleep surface angle of incline. CPSC Human Factors staff concluded that an angle of 30° would be sufficiently obvious to a consumer to discourage the consumer from continuing to use the bassinet. The test would continue until each key structural element has been tested individually (thus, key structural element number 1 would be inserted back into the product, key structural element number 2 would be removed, and the test would be repeated.)

The proposed requirement was meant to ensure that the omission of a key structural element would be so visually obvious that the consumer would not use the product and place the child in danger inadvertently. To pass this test, the item must fail catastrophically when each key structural element is omitted.

3. The Bassinet Misassembly Requirement Contained in ASTM F406-13 and Incorporated in the Final Rule

The work on the play yard bassinet accessory misassembly requirement began after we received a comment on the issue in response to the September 2011 play yard NPR. CPSC staff worked with the ASTM play yard subcommittee for more than a year to develop the language to address this hazard. The ASTM play yard subcommittee is made up of key stakeholders, including manufacturers, retailers, third party test laboratories, independent consultants, consumer advocates, representatives from Health Canada, and CPSC staff.

The result of this effort is the language now contained in ASTM F406-13, which this rule incorporates by reference. The requirement addressing play yard bassinet accessory misassembly is essentially the same as the requirement proposed in the August 2012 NPR, with two important differences that were suggested in comments that the Commission received in response to the August 2012 NPR.

The first difference involves addressing the bassinet accessory structural supporting elements in two different standards: play yards and bassinets/cradles. In the August 2012 NPR, the term “key structural elements,” included all rods, tubes, bars, and hooks that supported the bassinet accessory or that were used in assembling the bassinet accessory. Not only did the term include structures that attach the bassinet to the play

yard, but the term also encompassed the mattress support rods and other structures that support the bassinet accessory mattress in order to keep the sleep surface flat and stable. The ASTM play yard subcommittee, working closely with the ASTM bassinet/cradle subcommittee, determined that any issues dealing with misassembly of the mattress support rods should be addressed in the bassinet standard. Thus, both ASTM subcommittees agreed that: (1) the play yard standard, ASTM F406-13, will address safety issues related to bassinet accessory attachment components (*i.e.*, structures that attach the bassinet accessory to the play yard); and (2) the bassinet standard, ASTM F2194-13, will address mattress support rods (and all other structures that keep the bassinet accessory mattress flat and stable) through the segmented mattress flatness test contained in the bassinet standard.

The second substantive difference is also the result of a comment received in response to the August 2012 NPR. As proposed in the August 2012 NPR, the catastrophic failure test is conducted with a 7.5-pound newborn CAMI dummy. ASTM F406-13 requires that the test be conducted with a four-pound test mass. This weight represents the mass of the smallest newborn known to staff that would be released from a hospital, and thus, the smallest expected play yard bassinet accessory occupant. Using a smaller test mass makes the play yard bassinet misassembly provision in ASTM F406-13 more stringent than the requirement the Commission proposed in the August 2012 NPR.

The final rule incorporates by reference ASTM F 406-13. By referencing this newer version of the ASTM play yard standard, the CPSC standard addresses the hazards known to CPSC staff posed by misassembly of play yard bassinet accessories in substantially the same manner as the Commission proposed in the 2012 NPR. The final

rule continues to exclude from the CPSC's play yard standard the provisions in ASTM F 406 that apply to non-full-size cribs. The Commission has a separate standard for non-full-size cribs. See 16 CFR part 1220.

E. Response to Comments on the Proposed Rule

The preamble to the NPR invited comments concerning all aspects of the proposed rule. We received 13 comments. Many of the comments contained more than one issue. Thus, we organized our responses by issue, rather than respond to each commenter individually. All of the comments can be viewed on www.regulations.gov, by searching under the docket number for this rulemaking, CPSC-2011-0064.

1. Generally Unsupportive

(Comment 1) - Two commenters indicate that they generally do not support the requirement. Both commenters feel that the regulation is unnecessary because the hazard was caused by misassembly of the product.

(Response 1) - The Danny Keysar Child Product Safety Notification Act, section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) requires that we promulgate mandatory regulations for durable infant and toddler products, including play yards, that are substantially the same as an existing voluntary standard, or more stringent than the voluntary standard if the Commission determines that more stringent standards would reduce the risk of injury associated with the product. In this case, we believe that the proposed final rule incorporating by reference ASTM F406-13 is appropriate to reduce the risk of injury associated with play yards. Therefore, the issuance of this final rule fulfills a statutory mandate given to the CPSC by Congress.

In addition, we disagree with the assertion that hazards caused by misassembly should not be addressed through mandatory regulations. The CPSC is often faced with hazards that result from the reasonably foreseeable use of consumer products. Preventing the possibility of misassembly is especially critical when the product in question has been designed to provide a safe sleep environment for an infant, and when the result of misassembly could be severe, such as an infant fatality. The CPSC must assess whether there are solutions that would minimize the possibility of misassembly. One solution could be to improve assembly instructions or warning labels. Another solution, and the one that has been chosen here, is to require that products that must be assembled by consumers be designed in such a way that they are very difficult to misassemble.

(Comment 2) – One commenter expresses a number of concerns about the new requirement. Specifically, the commenter feels that the requirement: (1) does not address completely the hazards that caused the infant fatality; (2) was created too quickly and the process rushed; (3) is design restrictive; and (4) will fail safe products.

(Response 2) – The bassinet accessory misassembly performance requirement and test method were fine-tuned for more than a year from January 2012 through April 2013. The circumstances involving the infant fatality were analyzed in detail and significant changes were made to the requirement to ensure that it addressed the hazard in the least burdensome manner. Notably, the scope of the play yard bassinet accessory misassembly requirement was reduced by focusing only on accessory attachment components and not all key structural elements. This reduction in scope was a direct result of careful analysis of the circumstances that resulted in the infant fatality.

The requirement was created and approved through consultation with members of the ASTM play yard subcommittee, which includes many play yard importers and manufacturers, as well as other stakeholders, such as retailers, testing laboratories, independent consultants, representatives from consumer advocacy groups, and representatives from Health Canada.

To provide manufacturers with options, and to avoid creating a design restrictive standard, two methods of compliance were provided. A manufacturer can permanently attach all accessory attachment components or design a product that passes the catastrophic failure test. Finally, if the standard is found to be too severe and is failing safe products, it can be updated as more data is received by the CPSC.

2. Generally Supportive

(Comment 3) - Several commenters support the new requirement. One commenter notes:

“(o)ur organizations strongly support these specific requirements and test methods as well as the general principle that misassembly is a design safety issue and should be adequately addressed in product safety standards.” Another commenter indicates:

“(w)hile I strongly support and would prefer to see all key structural elements permanently attached to the bassinet accessory, the catastrophic failure test provides an option for manufacturers to come into compliance and appears to address the hazards associated with play yard bassinet accessories.” Another commenter expresses “overall support” for the requirement and notes: “(o)ne infant death is too many, and the CPSC has acted quickly to develop a new safety standard for bassinet accessories.”

(Response 3) – We agree with the commenters.

3. Effective Date

(Comment 4) – We received four comments addressing the appropriate effective date for this regulation. One individual indicates her agreement with the proposed six-month effective date. Other commenters recommend a shorter effective date. Some commenters suggest that a 90-day effective date would be more appropriate because safer products would be available sooner, and manufacturers have had adequate notice that the play yard bassinet accessory misassembly requirement will soon be mandatory. Some commenters note that only products manufactured after the effective date are impacted by the regulation. Thus, products made before the effective date (products that may not be in compliance with the bassinet accessory misassembly requirement contained in ASTM F406-13) can continue to be sold.

(Response 4) – The CPSC has generally recommended a six-month effective date for rules issued under section 104 of the CPSIA and we find no compelling reason to deviate from this practice for this rule. We share concerns about noncompliant products, those manufactured or imported before the effective date, being available for years beyond the effective date. However, ongoing compliance activities would continue to be used to remove unsafe play yards from the market.

4. Coordination Between the Play Yard and Bassinet Standard

(Comment 5) – Four commenters discuss the overlap between the mattress flatness requirement contained in ASTM F2194-13, *Standard Consumer Safety Specification for Bassinets and Cradles*, and the proposed play yard bassinet accessory misassembly requirements. The commenters state that the play yard bassinet accessory misassembly requirements, as published in the August 2012 NPR, contain requirements that are more

appropriately addressed in the bassinet segmented mattress flatness requirement contained in the bassinet voluntary standard.

(Response 5) – The CPSC agrees with these comments. As discussed above, the play yard bassinet accessory misassembly requirement contained in ASTM F406-13 now only applies to accessory attachment components (*i.e.*, those structures that attach the bassinet accessory to the play yard). Misassembly issues related to mattress support rods are now addressed in ASTM F2194-13, the standard for bassinets and cradles. ASTM F2194-13 requires that if the mattress support rods are not permanently attached, the bassinet must be tested pursuant to the mattress flatness test contained in ASTM F2194-13, and the product must pass the mattress flatness test both with and without the mattress support rods in place. The CPSC is finalizing a rule for bassinets/cradles that incorporates by reference ASTM F2194-13.

5. Clarity of “Key Structural Element” Definition

(Comment 6) – One commenter asks that the definition of “key structural element” be clarified. Specifically, the commenter asks if the following are key structural elements: (1) clips that are sewn to the play yard bassinet accessory shell; and (2) metal bars that provide support for the bassinet mattress.

(Response 6) – The definition of “key structural element” presented in the August 2012 NPR has been modified. The final rule incorporates by reference ASTM F406-13. The language published in ASTM F406-13 now limits the scope of the play yard bassinet misassembly requirement by defining “accessory attachment components” as “the components that provide the means of attachment for a bassinet/cradle accessory to a play yard.”

Thus, clips sewn to the play yard bassinet accessory shell that attach the bassinet accessory to the play yard are accessory attachment components. Metal bars that provide support to the bassinet accessory mattress, and that do not attach the bassinet accessory to the play yard, are not accessory attachment components; therefore, they are not subject to the play yard bassinet accessory misassembly requirement contained in ASTM F406-13.

6. Catastrophic Failure Test Is Confusing or Is Arbitrary and Capricious

(Comment 7) – One commenter indicates that it would be easier, and cause less confusion, if the play yard bassinet accessory misassembly provision simply required that all key structural elements be permanently attached to the bassinet accessory instead of giving manufacturers the option of complying with the catastrophic failure test. Another commenter indicates that the permanent affixture test should be the only method of complying with the requirement and asserts that the catastrophic failure test is not the least burdensome requirement and violates the Administrative Procedure Act because it is arbitrary and capricious.

(Response 7) – The catastrophic failure test can appear confusing and counterintuitive because, in order to pass the test, the product must fail catastrophically when one piece is missing. However, this test was thoroughly vetted during the ASTM process. The ASTM subcommittee stakeholders felt that the test is a sound alternative to permanently attaching all accessory attachment components. In fact, initially, CPSC staff suggested that the only method of compliance should be to require that all key structural elements be permanently attached. The catastrophic failure option was added at the request of manufacturers' representatives. However, once the requirement goes into effect, both

ASTM and the CPSC will monitor any issues that arise in using the catastrophic failure test to meet the requirement and will address them as necessary.

Additionally, the catastrophic failure test is an alternative to the permanent affixture test. Although the CPSC does not feel that the permanent affixture test is design restrictive, providing as many alternatives for compliance as possible is important, so that products with drastically different designs are able to meet the requirement.

7. Catastrophic Failure Test and the Test Mass Size, Use, and Location

(Comment 8) – One commenter questions the use of the newborn CAMI dummy (weighing 7.5 pounds), as proposed in the August 2012 NPR. The commenter ultimately questions the use of a test mass at all, hypothesizing that the requirement could be more severe if no test mass were used. Another commenter recommends that the CPSC consider a lighter test mass so that a greater proportion of the newborn population will be covered by the play yard bassinet accessory misassembly requirement.

(Response 8) – We agree that the mass of the newborn CAMI dummy is too large. CPSC staff developed a new four-pound test mass and presented the four-pound test mass proposal to the ASTM play yard subcommittee for review and consideration. The play yard bassinet accessory misassembly requirement, contained in section 5.19 of ASTM F406-13, contains a rationale that states that the four-pound mass represents the weight of the smallest newborn who would be using the bassinet accessory because infants smaller than four pounds are unlikely to be released from a hospital. Using the smallest reasonable mass makes the play yard bassinet accessory misassembly requirement more stringent than the proposal in the August 2012 NPR. Eliminating the test mass entirely, as one commenter suggests, is unnecessarily restrictive.

8. Catastrophic Failure Test and the Basis for the 30° Mattress Angle Requirement

(Comment 9) – Several commenters object to the 30° tilt requirement in the catastrophic failure test. Many commenters feel that the requirement is not adequately supported by scientific data.

(Response 9) – The angle of 30° represents a safety factor of three times the 10° maximum safe sleep surface angle of incline. CPSC Human Factors staff concluded that an angle of 30° would be sufficiently visually obvious to a consumer, such that the consumer would be discouraged from continuing to use the bassinet. Staff then recommended that the ASTM play yard subcommittee review and critique the 30° angle. ASTM stakeholders agreed with CPSC staff that 30° was reasonable and would be considered by caregivers to be obviously hazardous. CPSC staff, as well as ASTM members, can reconsider the tilt angle requirement should evidence be presented indicating that the angle is too small or large.

9. Redundant Product Safety Features

(Comment 10) – One commenter states that the play yard bassinet accessory misassembly requirement, as contained in the August 2012 NPR, may result in manufacturers eliminating “redundant safety features that are already a component of the product.” The commenter mentions mattress support rods as an example of a structure that is not necessary to comply with the voluntary standard but does improve product safety, by helping to create a “flatter and more stable sleeping position.” The commenter concludes that the added cost of being required to permanently affix redundant structures would lead to the elimination of the structures to avoid this cost, resulting in compliant but less safe products being sold.

(Response 10) – Like many members of the ASTM play yard subcommittee, this commenter is concerned that regulating mattress support rods in the play yard rule through the bassinet accessory misassembly requirement is inappropriate. Members of the play yard and bassinet subcommittees resolved this issue by agreeing to regulate bassinet accessory attachment components in the play yard standard, and by agreeing to regulate bassinet accessory mattress support rods in the bassinet/cradle standard. As a result, the play yard bassinet accessory misassembly requirement in F406-13 now only applies to accessory attachment components. Misassembly issues related to mattress support rods are now addressed in ASTM F2194-13, the voluntary standard for bassinets and cradles. ASTM F2194-13 requires that bassinets with removable mattress support rods be tested both with and without the mattress support rods. The bassinet must pass the segmented mattress flatness test contained in ASTM F2194-13 with and without the mattress support rods. In this way, all misassembly issues known to CPSC staff related to play yard bassinet accessories are addressed in either the play yard or the bassinet standard.

10. Other Options for Compliance

(Comment 11) – One commenter asks that a third option for compliance be considered in addition to the two already proposed in the August 2012 NPR. The commenter suggests that a product be considered to be in compliance if the product continues to meet the standard’s requirements after all of the key structural elements are removed.

(Response 11) – This approach has been adopted in the bassinet standard contained in ASTM F2194-13. ASTM F2194-13 requires that removable mattress support rods be tested pursuant to the segmented mattress flatness tests contained in ASTM F2194-13

without the rods in place. If the product passes the mattress flatness test, even without the mattress support rods in place, the product meets the requirements.

We do not agree, however, that this commenter's proposal should be an option for accessory attachment components meant to attach the bassinet accessory to the play yard rails. In the fatal incident, one of the accessory attachment components, the end support rods, was omitted and only the plastic clips were used. The fatality resulted when the caregiver assumed that the product was safe because no visually obvious cues suggested that the product was unsafe. Therefore, for accessory attachment components, we believe that the standard should require that the accessory attachment components be either permanently attached or pass the catastrophic failure test by obviously failing when an accessory attachment component is missing.

11. Cost of Play Yard Bassinet Accessory Misassembly Requirement

(Comment 12) – One commenter indicates that cost of “re-engineering” and “retooling” would be significant. The commenter also mentions that the requirement would necessitate a change to the packaging. The commenter believes that the issue merits additional research.

(Response 12) – Although the new requirement might impose additional costs on manufacturers and importers, staff consulted and worked closely with members of the industry to devise an acceptable solution that would address the safety hazard but not impose unnecessary costs.

12. Ability to Launder

(Comment 13) – One commenter indicates that permanently affixing key structural elements to the product may interfere with the ability to launder the product. The

commenter is specifically concerned about the metal rods that support a bassinet accessory shell or liner. If the metal rods were required to be affixed permanently to the liner, the bassinet accessory shell would be difficult to clean.

(Response 13) – Although the CPSC’s primary concern is that play yards and bassinet accessories are safe, the CPSC does consider practical issues, such as the ability to launder, in connection with new standards and requirements. The commenter’s specific concern regarding the ability to launder a bassinet accessory shell that is supported by metal support rods is no longer an issue addressable by the play yard bassinet accessory misassembly requirement because ASTM F406 no longer applies to mattress support rods. Instead, ASTM F406-13 focuses only on accessory attachment components that attach the bassinet accessory to the play yard.

The bassinet standard applies to mattress support rods. However, the bassinet standard does not require the metal rods to be attached permanently to the liner. If the product passes the segmented mattress flatness test contained in the bassinet standard with the mattress support rods removed, the mattress support rods do not need to be permanently attached.

13. Concern that Patent-Only Technology May Be Required

(Comment 14) – One commenter indicates that there is a patent application pending detailing 10 different methods to “stiffen a play yard mattress pad before it is used in a play yard bassinet accessory.” The commenter acknowledges that “there may not be any products on the market today that would be impacted by this patent application” but that the CPSC should “evaluate this issue and avoid design restrictions that limit marketplace competition.”

(Response 14) – The concern regarding the means of stiffening a mattress pad is no longer an issue for the play yard rule because the play yard bassinet accessory misassembly requirement no longer applies to mattress support rods or any other methods that might be used to stiffen a mattress pad. Instead, the play yard rule only focuses on accessory attachment components that attach the bassinet accessory to the play yard.

Likewise, the bassinet rule, which does address mattress flatness, does not require that a specific design be used to pass the standard. As a result, the bassinet mattress flatness test can be met in a variety of ways without necessarily implicating patented technology.

14. International Harmonization/Impact on Trade

(Comment 15) – One commenter expresses concerns that the requirement could impact trade agreements and emphasizes the importance of international standard harmonization.

(Response 15) – When drafting the NPR for the play yard mandatory standard, published in September 2011, CPSC staff reviewed, compared, and considered a variety of play yard standards, including the Canadian standard, the European standard, and the Australian/New Zealand standard. These international standards vary in a variety of respects. Thus, even if we adopt all or part of an international standard, we still would not achieve complete international harmonization. We are aware of the utility of having harmonized standards in a global marketplace, and we continue to strive to achieve this harmonization whenever practicable. Notably, no other standard addresses the risks associated with play yard bassinet accessory misassembly. However, we will continue to monitor the effects that our standards have on international standards.

15. Deference to ASTM Standard

(Comment 16) – One commenter requests that staff defer to the ASTM standard.

(Response 16) – Under section 104 of the CPSIA, the Commission must establish a mandatory standard for play yards and cannot defer to a voluntary standard. However, the CPSC is incorporating the current ASTM standard, ASTM F406-13, by reference.

F. Effective Date

The Administrative Procedure Act (APA) generally requires that the effective date of a rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). We are providing a six-month effective date, as proposed in the NPR. The CPSC has generally recommended a six-month effective date for rules issued under section 104 of the CPSIA and we find no reason to deviate from this practice for this rule.

G. Regulatory Flexibility Act

1. Introduction

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–605, requires that final rules be reviewed for their potential economic impact on small entities, including small businesses. Section 604 of the RFA requires that we prepare a final regulatory flexibility analysis when promulgating final rules, unless the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. As explained in this section, we certify that the rule will not have a significant impact on a substantial number of small entities.

2. The Market

There are 26 firms known to be supplying play yards to the U.S. market. However, not all 26 firms supply bassinet accessories with the play yard. Of the 26 firms, 11 do not supply bassinet accessories. The remaining 15 firms supply at least one

model of a play yard that is accompanied by a bassinet accessory: 13 are domestic manufacturers or importers; one is a foreign manufacturer; and one is a foreign importer who imports from a foreign country and distributes the products from outside the United States. Under U.S Small Business Administration Guidelines, eight of the 15 firms are small firms (five domestic manufacturers and three domestic importers).

3. Impact of the Standard on Small Businesses

Currently, all but one of the 15 firms supplying play yards to the U.S. market that are accompanied by bassinet accessories have their accessory attachment components permanently attached to the bassinet accessory. The remaining firm has started developing a design that permanently attaches all of the accessory attachment components to the bassinet accessory. Therefore, the CPSC believes that this requirement is not likely to have a significant impact on a substantial number of small entities.

H. Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3521

ASTM F406-12a, which is incorporated by reference into the play yard standard codified at 16 CFR part 1221, requires labels and instructions to be supplied with the product. The PRA requirements for the play yard standard codified at 16 CFR part 1221 have been submitted to the Office of Management and Budget (OMB), and OMB has assigned control number 3041-0152 to the information collection. We estimate that there are no additional burden hours associated with incorporating by reference ASTM F406-13.

I. Environmental Considerations

The Commission's regulations address whether we are required to prepare an environmental assessment or an environmental impact statement. Our rules generally have "little or no potential for affecting the human environment," and therefore, our rules are generally exempt from any requirement to prepare an environmental assessment or impact statement. 16 CFR 1021.5(c)(1). This rule falls within the categorical exclusion.

J. Preemption

Section 26(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2075(a), 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 establish or continue in effect a requirement dealing with the same risk of injury, unless the state's requirement is identical to the federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA refers to the rules to be issued under that section as "consumer product safety rules," thus implying that the preemptive effect of section 26(a) of the CPSA would apply. Therefore, a rule issued under section 104 of the CPSIA will invoke the preemptive effect of section 26(a) of the CPSA when the rule becomes effective.

K. Certification and Notice of Requirements (NOR)

1. Background

Section 14(a) of the CPSA requires that 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) must be certified as complying with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). Section 14(a)(2) of the CPSA requires

that certification of children's products subject to a children's product safety rule be based on testing conducted by a CPSC-accepted third party conformity assessment body (or laboratory). Section 14(a)(3) of the CPSA requires the Commission to publish a notice of requirements (NOR) for laboratories to assess conformity with a children's product safety rule to which a children's product is subject. The rule for 16 CFR part 1221, "Safety Standard for Play Yards," is a children's product safety rule that requires the Commission to issue an NOR.

The Commission recently published a final rule, "Requirements Pertaining to Third Party Conformity Assessment Bodies," 78 FR 15836 (March 12, 2013), which is codified at 16 CFR part 1112 (referred to here as part 1112), and became effective on June 10, 2013. Part 1112 establishes requirements for accreditation for third party conformity assessment bodies to test for conformance with a children's product safety rule in accordance with section 14(a)(2) of the CPSA. The final rule also codifies a list of all the NORs that the CPSC had published, to date, at the time part 1112 was issued. The Commission published an NOR for the play yard rule in the final rule for part 1112. The play yard standard is listed along with all the other children's product safety rules for which the CPSC has issued NORs.

2. Play Yards

Testing laboratories applying to be a CPSC-accepted third party conformity assessment body to test to the standard for play yards are required to meet the accreditation requirements in part 1112. When a laboratory meets the requirements as a CPSC-accepted third party conformity assessment body, the laboratory can apply to the CPSC to have 16 CFR part 1221, "Safety Standard for Play Yards," included in the

laboratory's scope of accreditation. All of the CPSC safety rules included in a laboratory's scope of accreditation are listed on the CPSC website at: www.cpsc.gov/labsearch.

Testing to Functionally Equivalent Provisions of ASTM F406-12a and ASTM 406-13

For purposes of testing, the provisions of revised ASTM F406-13 are equivalent or functionally equivalent to ASTM F406-12a, with one significant exception discussed below. (By "functionally equivalent," we mean that the standards organization made certain changes in the revised standard compared to the earlier standard, but the changes are not substantial and do not affect the associated conformance testing.)

Consequently, the Commission is continuing to recognize acceptance of accreditation of laboratories currently accredited under ASTM F406-12a for the provisions in ASTM F406-13 that are equivalent or functionally equivalent to their corresponding provisions in ASTM F406-12a. The laboratories should test play yards for compliance with ASTM F406-13, and based on such testing, manufacturers should issue certificates under section 14(a)(2) of the CPSA. Laboratories that are accredited to test to provisions of ASTM F406-12a that are equivalent or functionally equivalent for children's product certification purposes do not need to become accredited to ASTM F406-13 before the next time their accreditation body reassesses that laboratory and recognizes that the scope of the laboratory's accreditation includes ASTM F406-13. In the course of applying to the CPSC for acceptance of their accreditation, the laboratory must submit CPSC Form 223 with the applicable accompanying documents to continue to have their accreditation to 16 CFR part 1221 (incorporating by reference ASTM F406-13) accepted. We will revise our listing for the laboratory when the laboratory becomes

accredited to 16 CFR part 1221 (incorporating by reference ASTM F406-13) and the CPSC accepts the laboratory's application for accreditation.

Testing to the New Bassinet Misassembly Provisions

ASTM F406-13 added one new testing requirement that is not present in ASTM F406-12a. Section 8.31 of ASTM F406-13 adds a new test to evaluate conformity with a new substantive requirement found in section 5.19 regarding missing accessory attachment components for play yard bassinet/cradle accessories. Neither of these provisions existed in ASTM F406-12a. Third party testing for section 8.31, as required by the new performance requirement contained in section 5.19, is required only for play yards with bassinet/cradle accessories and applies to products manufactured or imported after this final rule becomes effective.

If a laboratory wishes to test play yards for compliance with the play yard bassinet accessory misassembly requirement, the laboratory will need to become accredited under ASTM F406-13 first. This may mean that the laboratory will need to become accredited to ASTM F406-13 before the regularly scheduled reassessment by their accreditation body.

New Applicants

New third party conformity assessment body applicants that apply for CPSC acceptance on or after February 19, 2014, must be accredited to 16 CFR part 1221 (incorporating by reference ASTM F406-13), when applying for CPSC acceptance of their accreditation to test play yards

3. Retrospective Testing

Some laboratories may want to start testing play yards to assess conformity with the play yard bassinet accessory misassembly requirement before the Commission is able to accept their accreditation to 16 CFR part 1221 (incorporating by reference ASTM F406-13.) Laboratories may begin testing for conformance with the play yard bassinet accessory misassembly requirement before the CPSC accepts their accreditation, and their test results will be valid retrospectively, if the following conditions are met:

- At the time of testing, the product was tested by a laboratory that was ISO/IEC 17025:2005(E) accredited by an ILAC–MRA member at the time of the test. At the time of testing, the scope of the third party conformity body accreditation, as reported by the accreditation body, must include testing in accordance with ASTM F406-13 or 16 CFR part 1221 (incorporating by reference ASTM F406-13). In addition, for firewalled third party conformity assessment bodies, the firewalled third party conformity assessment body must be one that the Commission, by order, has accredited on or before the time that the children’s product was tested, even if the order did not include ASTM F406-13 or 16 CFR part 1221 (incorporating by reference ASTM F406-13) at the time of initial Commission acceptance. For governmental third party conformity assessment bodies, accreditation of the body must be accepted by the Commission on or before the time that the children’s product was tested, even if the scope of accreditation did not include ASTM F406-13 or 16 CFR part 1221 (incorporating by reference ASTM F406-13) at the time of initial CPSC acceptance.
- The test results show compliance with ASTM F406-13 or 16 CFR part 1221 (incorporating by reference ASTM F406-13).

- The play yard was tested on or after May 1, 2013, the date that ASTM approved ASTM F406-13, and before February 19, 2014.
- The laboratory's accreditation remains in effect through February 19, 2014.

List of Subjects in 16 CFR Part 1221

Consumer Protection, Imports, Incorporation by Reference, Infants and Children, Labeling, Law Enforcement, Safety and Toys.

Therefore, the Commission amends Title 16 of the Code of Federal Regulations as follows:

PART 1221-SAFETY STANDARD FOR PLAY YARDS

1. The authority citation for part 1221 continues to read as follows:

Authority: The Consumer Product Safety Improvement Act of 2008, Pub. L. 110-314, section 104, 122 Stat. 3016 (August 14, 2008).

2. Revise § 1221.1 to read as follows:

§ 1221.1 Scope.

This part establishes a consumer product safety standard for play yards manufactured or imported on or after February 19, 2014.

3. 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 F406-13, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards*, approved on May 1, 2013. 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 from ASTM

International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428;

<http://www.astm.org>. You may inspect a copy at the Office of the Secretary, 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,

call 202-741-6030, or go to:

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(b) Comply with the ASTM F406-13 standard with the following exclusions:

(1) Do not comply with section 5.17 of ASTM F406-13.

(2) Do not comply with section 5.20 of ASTM F406-13.

(3) Do not comply with section 6, Performance Requirements for Rigid-Sided Products, of ASTM F406-13, in its entirety.

(4) Do not comply with sections 8.1 through 8.10.5 of ASTM F406-13.

(5) Instead of complying with section 9.4.2.10 of ASTM F406-13, 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 F406-13.

Dated: August 13, 2013

Todd A. Stevenson,
Secretary, Consumer Product Safety Commission

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