



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

This document has been electronically
approved and signed.

BALLOT VOTE SHEET

Date: May 23, 2018

TO : The Commission
Alberta E. Mills, Secretary

THROUGH: Patricia M. Hanz, General Counsel
Patricia H. Adkins, Executive Director

FROM : Patricia M. Pollitzer, Assistant General Counsel
Hyun S. Kim, Attorney

SUBJECT : ASTM's Revisions to Safety Standard for Non-Full-Size Baby Cribs

BALLOT VOTE DATE: Wednesday, May 30, 2018

Staff is forwarding to the Commission for consideration, a draft direct final rule, which updates the incorporation by reference of the ASTM standard, cited in the Consumer Product Safety Commission rule for non-full-size baby cribs (NFS cribs), 16 C.F.R. part 1220. Under the Consumer Product Safety Improvement Act of 2008, revised voluntary standards automatically are considered consumer product safety standards, unless the Commission determines and notifies the voluntary standards organization that the revised voluntary standard "does not improve the safety of the consumer product." As discussed in staff materials provided to the Commission, staff recommends that the Commission allow the revised ASTM F406-17, *Standard Consumer Safety Performance for Non-Full-Size Baby Cribs/Play Yards*, to become the CPSC-mandated standard, as applicable, for NFS cribs. Specifically, staff recommends that the Commission publish a direct final rule that revises the reference in CPSC's safety standard for NFS cribs to refer to the revised ASTM standard for those products. A draft *Federal Register* notice for that purpose is attached.

Please indicate your vote on the following options:

I. Approve publication in the *Federal Register* of the draft direct final rule.

Signature

Date

- II. Approve publication in the *Federal Register* of the draft direct final rule, with the changes specified below:

Signature

Date

- III. Do not approve publication in the *Federal Register* of the draft direct final rule.

Signature

Date

- IV. Take other action as specified below:

Signature

Date

Attachment: Draft *Federal Register* notice, titled, "Revisions to Safety Standard for Non-Full-Size Baby Cribs"

[Billing Code 6355-01-P]

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC-2010-0075]

16 CFR Part 1220

Revisions to Safety Standard for Non-Full-Size Baby Cribs

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In accordance with section 104(b) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), also known as the Danny Keysar Child Product Safety Notification Act, the U.S. Consumer Product Safety Commission (CPSC), in December 2010, published a consumer product safety standard for non-full-size baby cribs (NFS cribs). The standard incorporated by reference the applicable ASTM voluntary standard, with several modifications. The CPSIA sets forth a process for updating standards that the Commission has issued under the authority of section 104(b) of the CPSIA. In accordance with that process, we are publishing this direct final rule, revising the CPSC's standard for NFS cribs to incorporate by reference a more recent version of the applicable ASTM standard.

DATES: The rule is effective on September 10, 2018, unless we receive significant adverse comment by **[insert date 30 days after publication in the FEDERAL REGISTER]**. If we receive timely significant adverse comments, we will publish notification in the *Federal Register*, withdrawing this direct final rule before its effective date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of September 10, 2018.

ADDRESSES: You may submit comments, identified by Docket No. CPSC-2010-0075, by any of the following methods:

Submit electronic comments in the following way:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail), except through www.regulations.gov.

Submit written submissions as follows:

Mail/Hand delivery/Courier (for paper, disk, or CD-ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to <http://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

FOR FURTHER INFORMATION CONTACT: Justin Jirgl, Compliance Officer, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814-4408; telephone: 301-504-7814; email: jjirgl@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

The Danny Keysar Child Product Safety Notification Act

Section 104(b)(1)(B) of the CPSIA, also known as the Danny Keysar Child Product Safety Notification Act, requires the Commission to promulgate consumer product safety standards for durable infant or toddler products. The law requires that these standards are to be “substantially the same as” applicable voluntary standards or more stringent than the voluntary standards if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product.

The CPSIA also sets forth a process for updating CPSC’s durable infant or toddler standards when the voluntary standard upon which the CPSC standard was based is changed. Section 104(b)(4)(B) of the CPSIA provides that if an organization revises a standard that has been adopted, in whole or in part, as a consumer product safety standard under this subsection, it shall notify the Commission. In addition, the revised voluntary standard shall be considered to be a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the date on which the organization notifies the Commission (or such later date specified by the Commission in the Federal Register) unless, within 90 days after receiving that notice, the Commission notifies the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard and that the Commission is retaining the existing consumer product safety standard.

The CPSC’s NFS Crib Standard

Section 104(c) of the CPSIA treated cribs differently than other products covered by section 104. Section 104(c) of the CPSIA stated that the standards for full-size and NFS cribs would apply to persons (such as those owning or operating child care facilities and places of public accommodation) in addition to persons usually subject to consumer product safety rules.¹ Pursuant to section 104(b)(1) and section 104(c) of the CPSIA, on December 28, 2010, the Commission published a mandatory consumer product safety standard that incorporated by reference ASTM F406 – 10a, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards*, along with several modifications. (75 FR 81766). These modifications:

- Excluded a requirement to retighten screws and bolts between the crib side latch test and the mattress support vertical impact test (Section 6.1 of ASTM F406-10a; 16 CFR 1220.2(b)(3) of the CPSC standard);
- Clarified how to conduct the spindle/slat static force test with a crib that has folding or movable sides (Section 8.10.1 of ASTM F406-10a; 16 CFR 1220.2(b)(5) of the CPSC standard);
- Revised a warning to replace the words “play yard” with the word “product” (Section 9.4.2.6 of ASTM F406-10a; 16 CFR 1220(b)(12) of the CPSC standard); and

¹ Under section 104(c) of the CPSIA, the initial crib standards applied to: “any person that – (A) manufactures, distributes in commerce, or contracts to sell cribs; (B) based on the person’s occupation, holds itself out as having knowledge of skill peculiar to cribs, including child care facilities and family child care homes; (C) is in the business of contracting to sell or resell, lease, sublet, or otherwise place cribs in the stream of commerce; or (D) owns or operates a place of accommodation affecting commerce (as defined in section 4 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2203) applied without regard to the phrase ‘not owned by the Federal Government’).”

- Removed the provisions that relate only to play yards

(1220.2(b)(1),(2),(4), and (6) through (11) of the CPSC standard).

On August 12, 2011, in Pub.L. No. 112-28, Congress amended section 104 and specifically addressed the revision of the crib standards, stating that any revision of the crib standards after their initial promulgation “shall apply only to a person that manufactures or imports cribs,” unless the Commission determines that application to any others covered by the initial crib standards is “necessary to protect against an unreasonable risk to health or safety.” If the Commission does apply the revised crib standard to additional persons, it must provide at least 12 months for those persons to come into compliance. The Commission is not expanding the applicability of the revised NFS crib standard in this rule. Thus, the revised NFS crib standard will apply to the same entities and in the same manner as other rules the Commission issues under section 104 of the CPSIA.

Although ASTM F406 covers both NFS cribs and play yards, because section 104 has provisions that are specific to cribs, the CPSC created separate standards for NFS cribs and play yards. The safety standard for NFS cribs is set forth in 16 CFR part 1220. The safety standard for play yards is set forth in 16 CFR part 1221. Full-size cribs are addressed in a separate standard that references ASTM F1169-10 (16 CFR part 1219). The CPSC standard for NFS cribs does not apply to play yards, which are mesh or fabric-sided products, and the play yard-specific requirements are expressly excluded from the NFS crib standard.²

Notification of Recent Revision

² See 16 CFR 1220.2(b)(1), (b)(2), (b)(4), and (b)(6)-(b)(11).

On March 14, 2018, ASTM officially notified the CPSC that ASTM has published a revised 2017 version of ASTM F406 in a standard approved on December 1, 2017, ASTM F406-17, *Standard Consumer Safety Performance Specification for Non-Full Size Baby Cribs/Play Yards*. ASTM specifically notified the Commission only on the revisions related to the sections covering NFS cribs, but not on the sections related to the requirements for play yards. As discussed below, the Commission has reviewed the differences between the CPSC standard, 16 CFR part 1220, and ASTM F406-17.

B. Revisions to the ASTM Standard

ASTM has published nine revisions to ASTM F406 since publication of ASTM F406 – 10a. Three of the nine revisions of ASTM F406 affected the requirements for play yards but did not affect the voluntary standard for NFS cribs.³ Four revisions of ASTM F406 affected both NFS cribs and play yards.⁴ Two revisions affected only NFS cribs.⁵ The revisions that impact play yards are not addressed in this rule; only the revisions that relate to NFS cribs are addressed in this rule. There are several differences between 16 CFR part 1220 (which incorporated by reference ASTM F406-10a) and the revised version of the standard, ASTM F406-17. Below, we summarize the differences and the CPSC’s assessment of the revisions that are applicable to NFS cribs.

F406 – 10b Revision

ASTM F406 – 10b, approved and published in December 2010, revised ASTM F406 – 10a. ASTM F406-10b made two significant revisions:

³ F406 – 11, F406 – 11b, and F406 – 12a.

⁴ F406 – 11a, F406 – 12, F406 – 13, and F406 – 15.

⁵ F406 – 12b and F406 – 17.

- Section 8.10.1 – changed provisions on spindles and slats to require that each foldable and moveable side be tested separately. This change harmonized ASTM F406 with 16 CFR 1220.2 (b)(5).
- Section 9.4.2.6, changed the language in the required warning from “play yard” to “product,” which harmonized ASTM F406 with 16 CFR 1220.2 (b)(12).

Previously, when it published the CPSC standard for NFS cribs in 2010, the Commission concluded that these changes would be more stringent than the voluntary standard and would further reduce the risk of injury associated with the product. Accordingly, the Commission finds that these revisions, which remain unchanged in the ASTM F406 – 17, would improve the safety of NFS cribs.

F406 – 11a Revision

ASTM F406 – 11a, approved on July 1, 2011, and published in September 2011, contained two changes to definitions that affected NFS cribs, but did not affect the safety of these products.

- The definition of “non-full-size crib” was modified to clarify that the two dimensions referred to a length and width, rather than two lengths.
- The word “dropside” was removed from “dropside/drop gate,” and the definition was modified to define “drop gates” as telescoping or pivoting, rather than sliding or pivoting.

Because both changes are clarifications, the Commission considers them to be neutral changes regarding safety.

F406 – 12 Revision

ASTM F406 – 12, approved on January 15, 2012, and published in February 2012, contained one change applicable to NFS cribs.

- The definition of “dropgate” was modified to remove the word “telescope,” because drop gates are products that pivot, while a telescoping side would be covered under the definition of “movable side”.

This clarification is a neutral change regarding safety.

F406 – 13 Revision

ASTM F406 – 13, approved on May 1, 2013, and published in May 2013, contained the following changes affecting NFS cribs:

- Section 5.8.3.3 – clarified that removing the mattress is considered one of the two required actions for the release of a “double-action locking or latching device” located under the mattress. The Commission agrees that removing the mattress is an appropriate action and finds this is a neutral change regarding safety.
- Section 5.9.2 – provided an exemption for any “openings in the surface of a mattress support made of a rigid material” that are designed to prevent the entrapment of fingers, toes, hands, or feet if the occupant can readily move, lift, or fold the mattress to expose the opening. Specifically, rigid products, *i.e.*, NFS cribs that have a total mattress thickness greater than 2.5 inches are exempted from this requirement. The Commission agrees that a 2.5-inch thick mattress will render any potential openings inaccessible and finds this is a neutral change regarding safety.

- Section 5.15 - *Entrapment in accessories* clarified the example description; in addition, removed the requirement in section 5.15.2 that all attachment points must remain attached, but retained the requirement that all openings exposed by the test “shall not allow the complete passage of the small head probe.” This change allows for designs where an accessory rests on the top rails of a NFS crib along the full length of the accessory’s edge. In these cases, there are no “attachment points.” This change outlines more clearly the method of performing the test, while applying the test to accessories with and without true attachment points. The Commission concludes this change improves the safety of NFS cribs.
- Section 5.19 – the section on key structural elements, was moved to section 6.18. This a neutral change regarding safety.
- Section 8.26.3 – *Detachment Test* was changed to clarify that the test refers to the “portion of the accessory,” instead of the “attachment portion.” This clarification was necessary due to the changes in section 5.15, and the Commission considers this change improves the safety of the standard.
- Section 6.18 – now contains the provision for NFS cribs previously in section 5.19. This is a neutral change regarding safety.

F406 – 15 Revision

ASTM F406 – 15, approved on November 1, 2015, and published in December 2015, contained the following changes affecting NFS cribs:

- Section 5.15 - *Entrapment in Accessories* was changed to include specifically cantilevered accessories as a type of accessory that must be tested for

entrapment. The Commission finds this change improves the safety of NFS cribs by ensuring this type of accessory is addressed by the standard.

- Section 8.17.4 - Minor clarifications were made in the product stability test regarding placement of the stability test device. This is a neutral change regarding safety.
- Section 8.26 - *Entrapment Test* made two changes to address cantilevered accessories.
 - First, a new method was added to determine the opening for cantilevered accessories (sections 8.26.1.1 and 8.26.1.2) that should be tested for entrapment. The text in section 8.26.1 specifies that the test methods are “performed when accessories are secured to the non-full size crib/play yard”; therefore, the test method for cantilevered accessories is applied to NFS cribs. (Although the test method in 8.26.1.1 identifies the “play yard top rail” in the test reference, instead of both NFS cribs and play yards, this editorial error will be addressed by ASTM).
 - Second, requirements were added to evaluate the small and large head probes used in identified openings (section 8.2.5.2.1).

The Commission considers these changes a safety improvement for NFS cribs because all openings in cantilevered accessories are tested for entrapment.

- Section 9.4.2.11 - added flexibility to the instructions to allow cribs intended for use in child care facilities to substitute the warning, “Child in crib must be under supervision at all times,” in lieu of “Always provide the supervision

necessary for the continued safety of your child. When used for playing, never leave child unattended.” Although CPSC believes that the original warning language is adequate, the substitute language may be appropriate in a child care facility where continued supervision is necessary and expected. The Commission considers this is a neutral change regarding safety.

F406 – 17 Revision

The current version of ASTM F406, ASTM F406 – 17, was approved in December 2017, and published in January 2018. On March 14, 2018, ASTM notified the Commission that ASTM F406 had been revised with a 2017 version for NFS cribs, ASTM F406-17. ASTM F406 – 17 incorporates all the changes discussed above, with one additional change.

- Section 6.10, which allowed for retightening of screws and bolts during testing, was removed. The removal of section 6.10 harmonized ASTM F406 with 16 CFR 1220.2(b)(3).

Because the Commission previously concluded in 2010, when it published the CPSC standard for NFS cribs, that this change would be more stringent than the voluntary standard and would further reduce the risk of injury associated with the product, the Commission considers this change an improvement to the safety of NFS cribs.

As discussed above, the NFS crib standard shares a voluntary standard with play yards. Accordingly, when the CPSC standard was issued in 2010, 16 CFR 1220.2(b) excluded the provisions of ASTM F406-10a that applied only to play yards. Specifically, the CPSC standard excluded:

- Sections 5.6.2 through 5.6.2.4 (top rail testing for scissoring, shearing, pinching);
- Section 5.16.2 (mattress filling materials for play yards);
- Section 7 (performance requirements for mesh/fabric products);
- Sections 8.11 through 8.11.2.4 (test method for mesh/fabric products);
- Sections 8.12 through 8.12.2.2 (floor strength test for mesh/fabric products);
- Sections 8.14 through 8.14.2 (mesh opening test);
- Sections 8.15 through 8.15.3.3 (test for strength of mesh and integrity of attachments);
- Sections 8.16 through 8.16.3 (mesh/fabric attachment strength test method); and
- Sections 9.3.2 through 9.3.2.4 (mesh drop top rails warning requirements).

These sections have been retained in the ASTM F406-17 standard.

Since 2010, seven of the nine revisions to ASTM F406 added or modified play yard-specific requirements and associated test methods. Accordingly, the Commission is excluding all of the provisions that are play yard-specific in ASTM 406-17 from the updated CPSC standard. In addition, several new sections apply only to play yards. The revised CPSC standard that incorporates ASTM F406-17 excludes these provisions regarding play yard test methods:

- Section 5.19 (bassinet/cradle accessories);
- Sections 8.28 through 8.28.4 (mattress vertical displacement test);
- Sections 8.29 through 8.29.3 (top rail configuration test);
- Sections 8.30 through 8.30.5 (top rail to corner post attachment test); and

- Sections 8.31 through 8.31.9 (bassinet and cradle accessory).

In accordance with section 104(b)(4) of the CPSIA, the revised ASTM standard for NFS cribs becomes the new CPSC standard 180 days after the date the CPSC received notification of the revision from ASTM. This rule revises the incorporation by reference in 16 CFR part 1220, to reference ASTM F406-17, for NFS cribs, except for the provisions of ASTM F406-17 that apply to play yards.

C. Incorporation by Reference

The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble to the final rule, ways that the materials the agency incorporates by reference are reasonably available to interested persons and how interested parties can obtain the materials. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR's requirements, section B of this preamble summarizes the major provisions of ASTM F406-17 standard that the Commission incorporates by reference into 16 CFR part 1220. The standard is reasonably available to interested parties, and interested parties may purchase a copy of the standard from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959 USA; phone: 610-832-9585; <http://www.astm.org/>. A copy of the standard can also be inspected at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923.

D. Certification

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, be certified as complying 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 on a sufficient number of samples by a third party conformity assessment body accredited by the Commission to test according to the applicable requirements. As noted in the preceding discussion, standards issued under section 104(b)(1)(B) of the CPSIA are "consumer product safety standards." Thus, they are subject to the testing and certification requirements of section 14 of the CPSA.

Because NFS cribs are children's products, samples of these products must be tested by a third party conformity assessment body whose accreditation has been accepted by the Commission. These products also must comply with all other applicable CPSC requirements, such as the lead content requirements in section 101 of the CPSIA, the phthalates prohibitions in section 108 of the CPSIA, the tracking label requirement in section 14(a)(5) of the CPSA, and the consumer registration form requirements in the Danny Keysar Child Product Safety Notification Act.

E. Notice of Requirements

In accordance with section 14(a)(3)(B)(iv) of the CPSA, the Commission has previously published a notice of requirements (NOR) for accreditation of third party conformity assessment bodies for testing NFS cribs (73 FR 62965 (Oct. 22, 2008)). The NOR provided the criteria and process for our acceptance of accreditation of third party conformity assessment bodies for testing NFS cribs to 16 CFR part 1220 (which

incorporated ASTM F406-10a with several modifications). The NOR is listed in the Commission's rule, "Requirements Pertaining to Third Party Conformity Assessment Bodies." 16 CFR part 1112.

Most of the revisions clarify the existing standard and will use existing test methods with minor adjustments, with only one new test for cantilevered accessories. This test uses previously established test methods with existing probes, but adds a plumb line between the accessory and the product top rail to identify areas to be tested for entrapment. Accordingly, there is no significant change in the way that third party conformity assessment bodies test these products for compliance with the NFS crib standard. Laboratories would begin testing to the new standard when ASTM F406-17 goes into effect, and the existing accreditations that the Commission has accepted for testing to this standard previously would also cover testing to the revised standard. Therefore, the existing NOR for this standard will remain in place, and CPSC-accepted third party conformity assessment bodies are expected to update the scope of the testing laboratories' accreditation to reflect the revised standard in the normal course of renewing their accreditation.

F. Direct Final Rule Process

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA) generally requires notice and comment rulemaking, section 553 of the APA provides an exception when the agency, for good cause, finds that notice and public procedure are "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). The Commission concludes that when the Commission updates a reference to an ASTM standard that the Commission has

incorporated by reference under section 104(b) of the CPSIA, notice and comment is not necessary.

Under the process set out in section 104(b)(4)(B) of the CPSIA, when ASTM revises a standard that the Commission has previously incorporated by reference as a Commission standard for a durable infant or toddler product under section 104(b)(1)(b) of the CPSIA, that revision will become the new CPSC standard, unless the Commission determines that ASTM's revision does not improve the safety of the product. Thus, unless the Commission makes such a determination, the ASTM revision becomes CPSC's standard by operation of law. The Commission is allowing ASTM F406-17 to become CPSC's new standard. The purpose of this direct final rule is merely to update the reference in the Code of Federal Regulations so that it accurately reflects the version of the standard that takes effect by statute. Public comment will not impact the substantive changes to the standard or the effect of the revised standard as a consumer product safety standard under section 104(b) of the CPSIA. Under these circumstances, notice and comment is not necessary. In Recommendation 95-4, the Administrative Conference of the United States (ACUS) endorsed direct final rulemaking as an appropriate procedure to expedite promulgation of rules that are noncontroversial and that are not expected to generate significant adverse comment. *See* 60 FR 43108 (August 18, 1995). ACUS recommended that agencies use the direct final rule process when they act under the "unnecessary" prong of the good cause exemption in 5 U.S.C. 553(b)(B). Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule because we do not expect any significant adverse comments.

Unless we receive a significant adverse comment within 30 days, the rule will become effective on September 10, 2018. 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.

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

G. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that agencies 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 and 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. *Id.* As explained above, the Commission has determined that notice and comment is not necessary for this direct final rule. Thus, the RFA does not apply. We also note 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.

H. Paperwork Reduction Act

The NFS crib standard contains information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The revision made no changes to that section of the standard. Thus, the revision will not have any effect on the information collection requirements related to the standard.

I. Environmental Considerations

The Commission’s regulations provide a categorical exclusion for the Commission’s rules from any requirement to prepare an environmental assessment or an environmental impact statement because they “have little or no potential for affecting the human environment.” 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

J. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a “consumer product safety standard under [the Consumer Product Safety Act (CPSA)]” 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. 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.

The Danny Keysar Child Product Safety Notification Act (at section 104(b)(1)(B) of the CPSIA) refers to the rules to be issued under that section as “consumer product safety standards,” 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 it becomes effective.

K. Effective Date

Under the procedure set forth in section 104(b)(4)(B) of the CPSIA, when a voluntary standard organization revises a standard upon which a consumer product safety standard issued under the Danny Keysar Child Product Safety Notification Act was based, the revision becomes the CPSC standard within 180 days of 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*. The Commission has not set a different effective date. Thus, in accordance with this provision, this rule takes effect 180 days after we received notification from ASTM of revisions to these standards. As discussed in the preceding section, this is a direct final rule. Unless we receive a significant adverse comment within 30 days, the rule will become effective on September 10, 2018.

List of Subjects in 16 CFR Part 1220

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

For the reasons stated above, the Commission amends Title 16 CFR chapter II as follows:

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

1. The authority citation for part 1220 continues to read as follows:

Authority: Sec. 104, Pub. L. 110-314, 122 Stat. 3016 (August 14, 2008); Sec. 3, Pub. L. 112-28, 125 Stat. 273 (August 12, 2011).

2. Revise § 1220.2 to read as follows:

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

(a) Except as provided in paragraph (b) of this section, each non-full-size baby crib shall comply with all applicable provisions of ASTM F406-17, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards*, approved December 1, 2017. The Director of the Federal Register approves the incorporation by reference listed in this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of this ASTM standard from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959 USA; phone: 610-832-9585; <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: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(b) Comply with the ASTM F406-17 standard with the following exclusions:

- (1) Do not comply with sections 5.6.2 through 5.6.2.4 of ASTM F406-17.
- (2) Do not comply with section 5.16.2 of ASTM F406-17.
- (3) Do not comply with sections 5.19 through 5.19.2.2 of ASTM F406-17.
- (4) Do not comply with section 7, *Performance Requirements for Mesh/Fabric Products* of ASTM F406-17.
- (5) Do not comply with sections 8.11 through 8.11.2.4 of ASTM F406-17.
- (6) Do not comply with sections 8.12 through 8.12.2.2. of ASTM F406-17.

- (7) Do not comply with sections 8.14 through 8.14.2 of ASTM F406-17.
- (8) Do not comply with sections 8.15 through 8.15.3.3. of ASTM F406-17
- (9) Do not comply with section 8.16 through 8.16.3 of ASTM F406-17.
- (10) Do not comply with sections 8.28 through 8.28.4 of ASTM F406-17.
- (11) Do not comply with sections 8.29 through 8.29.3 of ASTM F406-17.
- (12) Do not comply with sections 8.30 through 8.30.5 of ASTM F406-17.
- (13) Do not comply with section 8.31 through 8.31.9 of ASTM F406-17.
- (14) Do not comply with section 9.3.2 through 9.3.2.4 of ASTM F406-17.

Dated: _____

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



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

Memorandum

This document has been electronically
approved and signed.

May 23, 2018

TO : The Commission
Alberta E. Mills, Secretary

THROUGH: Patricia M. Hanz, General Counsel
Patricia H. Adkins, Executive Director
DeWane Ray, Deputy Executive Director for Safety Operations

FROM : George A. Borlase, Ph.D., P.E., Assistant Executive Director
Office of Hazard Identification and Reduction

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

SUBJECT : Consumer Product Safety Improvement Act of 2008 (CPSIA), as revised by
Pub. L. No. 112-28) - Notice of Revision to the Non-full-size Baby Cribs
Standard (16 CFR 1220)

I. INTRODUCTION

The Danny Keysar Child Product Safety Notification Act, Pub. L. No. 110-314, Sec. 104(b) (4)(B), as revised by Pub. L. No. 112-28 Sec. 3, instructs the voluntary standards organization, ASTM International (ASTM), to notify the U.S. Consumer Product Safety Commission (CPSC) of revisions to voluntary standards that are a basis for a consumer product safety standard promulgated by the Commission, as outlined below:

“(B) COMMISSION ACTION ON REVISED VOLUNTARY STANDARD - If an organization revises a standard that has been adopted, in whole or in part, as a consumer product safety standard under this subsection, it shall notify the Commission. The revised voluntary standard shall be considered to be a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the date on which the organization notifies the Commission (or such later date specified by the Commission in the Federal Register) unless, within 90 days after receiving that notice, the Commission notifies the organization that it has determined that the proposed revision does not

improve the safety of the consumer product covered by the standard and that the Commission is retaining the existing consumer product safety standard.”

The current safety standard for non-full-size baby cribs (NFS cribs), 16 CFR part 1220, references ASTM F406 – 10a, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards*. On December 28, 2010, the Commission published a final rule issuing the NFS crib standard, incorporating by reference the existing ASTM standard at that time, ASTM F406 – 10a, with four modifications. These four modifications were:

- 1) exclude a requirement to retighten screws and bolts between the crib side latch test and the mattress support vertical impact test (Section 6.1 of ASTM F406-10a; 16 CFR § 1220.2(b)(3) of the CPSC standard);
- 2) clarify how to conduct the spindle/slat static force test with a crib that has folding or movable sides (Section 8.10.1 of ASTM F406-10a; 16 CFR § 1220.2(b)(5) of the CPSC standard);
- 3) revise a warning to replace the words “play yard” with the word “product” (Section 9.4.2.6 of ASTM F406-10a; 16 CFR § 1220(b)(12) of the CPSC standard); and
- 4) remove the provisions that relate only to play yards (§ 1220.2(b)(1),(2),(4), and (6) through (11) of the CPSC standard).

The CPSIA has unique provisions for cribs (both full-size cribs and NFS cribs). For this reason, the CPSC created separate standards for NFS cribs (16 CFR part 1220) and play yards (16 CFR part 1221), even though ASTM F406 covers both products. The CPSC standard for NFS cribs does not apply to play yards, which are mesh or fabric-sided products, and NFS cribs are expressly excluded from the play yard-specific requirements of ASTM F406.¹ The safety standard for play yards is set forth in 16 CFR part 1221.

On March 14, 2018, ASTM officially notified the CPSC, that it has published a revised 2017 version of ASTM F406 to update the requirements for NFS cribs, ASTM F406 – 17. ASTM specially stated that the 2017 revision applies only to NFS cribs and not to the standard for play yards under 16 CFR part 1221.

This memorandum outlines the revisions made to ASTM F406 since CPSC’s standard was published, and it assesses the differences between 16 CFR part 1220 (which incorporated the ASTM F406 – 10a version with modifications) and the current version submitted by ASTM (ASTM F406 – 17). The memorandum also addresses whether these differences would affect how a third party assessment body (also known as a testing laboratory) would test an NFS crib. Finally, the memorandum recommends that the Commission publish a rule in the *Federal Register* revising 16 CFR part 1220 to refer to ASTM F406 – 17.

¹ In 16 CFR § 1220.2(b)(1), (b)(2), (b)(4), and (b)(6)-(b)(11).

II. DISCUSSION

A. *The CPSIA and Cribs*

As noted, the CPSIA treated cribs differently than other products covered by section 104. Section 104(c) of the CPSIA stated that the standards for full-size and NFS cribs would apply to persons (such as those owning or operating child care facilities and places of public accommodation) in addition to persons usually subject to consumer product safety rules.² The crib standards that the Commission issued in 2010 followed this statutory direction. In Pub. L. No. 112-28, Congress amended section 104 and specifically addressed the revision of the crib standards, stating that any revision of the crib standards after their initial promulgation “shall apply only to a person that manufactures or imports cribs,” unless the Commission determines that application to any others covered by the initial crib standards is “necessary to protect against an unreasonable risk to health or safety.” If the Commission does apply the revised crib standard to additional persons, it must provide at least 12 months for those persons to come into compliance. Staff does not recommend that the Commission expand the applicability of the revised crib standard.

B. *Review and Comparison of Revisions to Voluntary Standard*

ASTM has published nine revisions to ASTM F406 since publication of ASTM F406 – 10a. Three³ of the nine revisions of ASTM F406 affected the requirements for play yards but did not affect the voluntary standard for NFS cribs. Four⁴ revisions affected both NFS cribs and play yards. Two revisions affected only NFS cribs.⁵ The revisions that impact play yards only, and play yard-specific changes in revisions affecting NFS cribs, are not discussed here. The following summary of revisions focuses on the standard revisions and portions of each revision that apply to NFS cribs.⁶

² Under section 104(c) of the CPSIA, the initial crib standards applied to: “any person that –
(A) manufactures, distributes in commerce, or contracts to sell cribs;
(B) based on the person’s occupation, holds itself out as having knowledge of skill peculiar to cribs, including child care facilities and family child care homes;
(C) is in the business of contracting to sell or resell, lease, sublet, or otherwise place cribs in the stream of commerce; or
(D) owns or operates a place of accommodation affecting commerce (as defined in section 4 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2203) applied without regard to the phrase ‘not owned by the Federal Government’).”

³ F406 – 11, F406 – 11b, and F406 – 12a

⁴ F406 – 11a, F406 – 12, F406 – 13, and F406 – 15

⁵ F406-12b and F406-17

⁶ Minor, non-substantive editorial revision, such as “load” to “loads” or adding a title to a section number, are not included.

Under section 104, unless the Commission determines, within 90 days of notification of the revision, that the revision “does not improve the safety of the consumer product covered by the standard,” the revised voluntary standard becomes the new CPSC standard effective 180 days after notification (or a later date the Commission specifies).” As detailed in the staff assessment below, the changes made in ASTM F406 – 17 are either neutral or will improve the standard with respect to safety. Collectively, the changes improve safety. In addition, many of the revisions serve to harmonize the voluntary standard with the CPSC standard at 16 CFR part 1220. Therefore, staff recommends that the Commission allow the revised voluntary standard to become effective as a consumer product safety standard and publish a direct final rule in the *Federal Register* to refer to the revised ASTM standard.

F406 – 10b Revision

ASTM F406 – 10b, approved and published in December 2010, was the next revision of the standard following the version that was incorporated into 16 CFR part 1220, *i.e.*, ASTM F406 – 10a. ASTM F406-10b made two significant revisions:

- Section 8.10.1 of ASTM F406, which provides for the testing of spindles and slats, was harmonized with 16 CFR § 1220.2 (b)(5) to remove spindle/slat assemblies for testing and to test each foldable or moveable side separately.
- Section 9.2.4.6, changed the language in the required warning from “play yard” to “product,” which harmonized ASTM F406 with 16 CFR § 1220.2 (b)(12).

Because the Commission concluded when it published the CPSC standard for NFS cribs that these changes would be more stringent than the voluntary standard, and would reduce further the risk of injury associated with the product, staff reiterates that these changes, which remain unchanged in the ASTM F406 – 17, would improve the safety of NFS cribs.

F406 – 11a Revision

ASTM F406 – 11a, approved on July 1, 2011, and published in September 2011, contained two changes to definitions that affected NFS cribs, but did not affect the safety of these products.

- First, the definition of “non-full-size crib” was modified to clarify that the two dimensions referred to a length and width, rather than two lengths.
- Second, “drop side” was removed from “drop side/drop gate,” and the definition was modified to define “drop gates” as telescoping or pivoting, rather than sliding or pivoting. Because both changes are clarifications, neither is expected to affect the safety of NFS cribs.

F406 – 12 Revision

ASTM F406 – 12, approved on January 15, 2012, and published in February 2012, contained one change applicable to NFS cribs. Specifically, the definition of “dropgate” was modified to remove the word “telescope,” because drop gates are products that pivot, while a telescoping side would be covered under the definition of “movable side.” This clarification is not expected to affect the safety of NFS cribs.

F406 – 13 Revision

ASTM F406 – 13, approved on May 1, 2013 and published in May 2013, contained changes throughout the standard affecting NFS cribs, as detailed below.

Regarding the provision for NFS cribs, the following six changes were made:

- Section 5.8.3.3 was changed to clarify that removing the mattress is considered one action of a “double-action locking or latching mechanism.” Staff agreed that removing the mattress is an appropriate action for one of the two actions required and concluded this is a neutral change in safety for NFS cribs.
- In section 5.9.2, which states: “*Openings in the surface of a mattress support made of a rigid material shall be designed to prevent entrapment of fingers, toes, hands, or feet if the occupant can readily move, lift, or fold the mattress to expose the opening,*” an exemption was added. Specifically, rigid products, *i.e.*, NFS cribs that have a total mattress thickness greater than 2.5 inches are exempted from this requirement. In essence, the exemption clarifies that an occupant cannot “*readily move, lift, or fold the mattress*” when the mattress is at least 2.5 inches thick. Staff reviewed this change and concluded that it is neutral in safety because a 2.5-inch thick mattress will render any potential openings inaccessible.
- In section 5.15, *entrapment in accessories*, a clarification was made in the example description. In addition, in 5.15.2, the requirement that all attachment points must remain attached was removed, while keeping the requirement that all openings exposed by the test “shall not allow the complete passage of the small head probe.” This change allows for designs with an accessory that rests on the top rails of an NFS crib along the full length of the accessory’s edge. In a case such as this, there are no “attachment points” per se. Therefore, this change more clearly identifies the method of performing the test, while specifying that the test applies to accessories with and without true attachment points. Therefore, staff concluded that this change improves the safety of NFS cribs by identifying a test method for accessories without attachment points.

- Section 5.19, which applied to key structural elements, was moved to section 6.18. This change is neutral in safety.
- In section 8.26.3, text was changed to clarify that the test refers to the “portion of the accessory,” instead of the “attachment portion.” This clarification was necessary due to the changes in section 5.15, and therefore, is an improvement in safety.
- Section 6.18, now contains the provision for NFS cribs previously in 5.19. This change is neutral in safety.

F406 – 15 Revision

ASTM F406 – 15, approved on November 1, 2015, and published in December 2015, contained changes that affected NFS cribs, as detailed below.

Regarding the provision for NFS cribs, the following six changes were made:

- Section 5.15, *entrapment in accessories*, was modified to specifically include cantilevered accessories as a type of accessory that must be tested for entrapment. This change improves safety by making sure this type of accessory is addressed by the standard.
- Minor clarifications were made in the product stability test method (8.17.4). These changes provided clarity to test technicians as to exactly where to place the stability test device. This change does not affect the safety of NFS cribs.
- In section 8.26, *entrapment test*, two changes were made to address cantilevered accessories.
 - First, a new method was added to determine the opening for cantilevered accessories (sections 8.26.1.1 and 8.26.1.2) that should be tested for entrapment. The text in section 8.26.1 specifies that the test methods are “performed when accessories are secured to the non-full size crib/play yard”; therefore, the test method for cantilevered accessories is applied to NFS cribs. However, the test method in 8.26.1.1 indicates “play yard top rail” as the reference point for the test. Because the superordinate clause in 8.26.1 clearly states “non-full size crib/play yard,” staff believes the test method reference point is understood to be the top rail of the product under evaluation, regardless of whether it is an NFS crib or a play yard. In addition, at the April 30, 2018 meeting of the F15.18 subcommittee for NFS cribs and play yards, the subcommittee discussed changing “play yard” to “product” in section 8.26.1.1 and the subcommittee agreed to ballot the change.
 - Second, the change added requirements for evaluating the small and large head probes while in identified openings (section 8.2.5.2.1). This change improves the

safety of NFS cribs by identifying all openings for cantilevered accessories that must then be tested for entrapment and testing those openings.

- In the instruction requirements in section 9.4.2.11, flexibility was added so that cribs intended for use in child care facilities may substitute the warning “Child in crib must be under supervision at all times,” in lieu of “Always provide the supervision necessary for the continued safety of your child. When used for playing, never leave child unattended.” Although staff believes that the original warning language is adequate, the substitute language may be appropriate in a child care facility where continued supervision is necessary and expected.

F406 – 17 Revision

The current version of ASTM F406, ASTM F406 – 17, was approved in December 2017, and published in January 2018. On March 14, 2018, ASTM notified the Commission of a revision to ASTM F406 that only affected NFS cribs. ASTM F406 – 17 incorporates all the changes discussed above, with the single additional change that removes section 6.10, which allowed for retightening of screws and bolts during testing. The removal of section 6.10 harmonized ASTM F406 with 16 CFR § 1220.2(b)(3). Because the Commission concluded when it published the CPSC standard for NFS cribs that this change would be more stringent than the voluntary standard and would further reduce the risk of injury associated with the product, staff reiterates that this change would improve the safety of NFS baby cribs.

C. Effect of the Changes on Third Party Testing

The NORs provided the criteria and process for the Commission’s acceptance of accreditation of third party conformity assessment bodies for testing NFS cribs to 16 CFR part 1220 (which incorporated ASTM F406 – 10a with modifications). The NORs are listed in the Commission’s rule, “Requirements Pertaining to Third Party Conformity Assessment Bodies.” 16 CFR part 1112. As discussed above, most of the revisions clarify the existing standard and will use existing test methods with minor adjustments, with only one new test, the test for cantilevered accessories. The section that identifies cantilever accessories for testing uses previously established test methods with existing probes, but adds a plumb line between the accessory and the product top rail to identify areas to be tested for entrapment. Revising the reference to ASTM F406 – 17 for the NFS crib standard will not necessitate any significant change in the way that third party conformity assessment bodies test these products for compliance to CPSC standards. Therefore, staff recommends that the Commission consider the existing accreditations that have been accepted for testing to this standard also cover testing to the revised standard. In this case, the existing NOR for this standard will remain in place, and CPSC-accepted third party conformity assessment bodies would be expected to update the scope of the testing laboratories’ accreditation to reflect the revised standard in the normal course of renewing their accreditation.

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

D. Effective Date

According to Pub. L. No. 112-28, unless the Commission notifies an organization that it has determined that a proposed revision does not improve the safety of a consumer product covered by the standard and that the Commission is retaining the existing standard, the revised standard will become effective 180 days after the date on which an organization notifies the Commission of the revision, or a later date that the Commission specifies in the *Federal Register*. In the case of ASTM F406 – 17, the revised standard will become effective on September 10, 2018, unless the Commission specifies a later date. Almost all of the revisions to ASTM F406 that have been adopted in ASTM F406 – 17 were made before December 2015. ASTM F406 – 17 made only one additional change (the removal of section 6.10, which allowed for retightening of screws and bolts during testing). This one change harmonizes with the requirement in 16 CFR § 1220.2(b)(3), which states, “Do not comply with section 6.10 of ASTM F406-10a,” and has been in effect since 2011. Therefore, staff concludes that manufacturers should already be producing products that meet this standard, posing no issues with an effective date of September 10, 2018.

III. CONCLUSION AND RECOMMENDATIONS

A. Exclusions from F406

As discussed above, when the Commission promulgated the final standard for NFS cribs, 16 CFR § 1220.2 (b) included several modifications that were more stringent than ASTM F406 – 10a. These modifications have all been addressed in ASTM F406 – 17. These modifications previously were stated at 16 CFR § 1220.2 (b)(3), (b)(5), and (b)(12). Therefore, staff recommends revising 16 CFR part 1220 to reference ASTM F406 – 17 without these modifications.

Because this NFS crib standard shares a voluntary standard with play yards, 16 CFR § 1220.2(b) excludes from the CPSC standard the provisions of ASTM F406 that apply only to play yards. Specifically, 16 CFR § 1220.2(b) (1), (2), (4), and (6) through (11) exclude NFS cribs from requirements that are specific to play yards. Accordingly, staff concludes CPSC’s revised standard should also exclude these ASTM F406 provisions that apply only to play yards.

In addition, since the final standard for NFS cribs was published in December 2010, seven of the nine revisions to ASTM F406 added or modified play yard-specific requirements and associated test methods. The new play yard test methods are contained in sections 8.28 through 8.31 of ASTM F406 – 17. The performance requirements associated with 8.28, 8.29, and 8.30 are

contained in section 7, *Performance Requirements for Mesh/Fabric Products*, from which NFS cribs are excluded via 16 CFR § 1220.2(b)(4). The test method for section 8.31 is referenced in section 5, *General Requirements*; however, 8.31 applies to “bassinet and cradle accessories,” which are defined as attaching to play yards only.

Because the requirements in 5.19 and the test methods in 8.28 through 8.31 apply only to play yards, staff concludes that the CPSC standard for NFS cribs should exclude these additional provisions of ASTM F406 – 17.

B. Recommendation

Staff recommends that the Commission allow ASTM F406 – 17 to become the CPSC-mandated standard and approve publication of a direct final rule in the *Federal Register* to revise the reference to ASTM F406 – 17. Specifically, staff recommends that the Commission not make a determination that the revision does not improve the safety of NFS cribs. In addition, staff recommends that the Commission exclude from CPSC’s NFS crib standard the ASTM provisions that apply only to play yards.