



U.S. CONSUMER PRODUCT SAFETY COMMISSION

4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814-4408

DRAFT Record of Commission Action

(Final Minutes of the Meeting will be posted in 5 days)

Commissioners Voting at Open Decisional Meeting, June 27, 2012

Commissioners Voting: Chairman Inez M. Tenenbaum
 Commissioner Nancy A. Nord
 Commissioner Robert S. Adler
 Commissioner Anne M. Northup

ITEM:

Final Rule: Safety Standard for Play Yards
(Briefing package dated June 6, 2012, OS No. 4079)

DECISION:

The Commission voted unanimously (4-0) to approve a motion drafted by Commissioner Northup, and seconded by Commissioner Adler, to approve the draft *Federal Register (FR)* Final Rule to Establish a Safety Standard for Play Yards with the following modifications: (1) Change the effective date of the Safety Standard for Play Yards Final Rule to 6 months as originally proposed in the Notice of Proposed Rulemaking; (2) Remove the Bassinet Misassembly Requirement from the Safety Standard for Play Yards Final Rule; and (3) Modify the text of the Safety Standard for Play Yards Final Rule, as well as its Preamble, to reflect the above changes. The motion also directed staff to draft and publish the Bassinet Misassembly Requirement in the *FR* as a separate Proposed Rule Amending the Play Yard Mandatory Standard, which will be codified at 16 C.F.R. part 1221 with a 75-day comment period and a proposed effective date six-months from the publication of the Final Rule Amending 16 C.F.R. part 1221.

On the motion of Commissioner Adler, and seconded by Commissioner Nord, the Commission voted unanimously (4-0) to approve publication of the draft Final Rule to Establish a Safety Standard for Play Yards in the *FR* as amended, pursuant to section 104(b) of the Consumer Product Safety Improvement Act of 2008.

Chairman Tenenbaum issued the attached statement regarding this matter.

For the Commission:

Todd A. Stevenson
Secretary

Attachment: Statement of Chairman Tenenbaum



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BETHESDA, MD 20814**

CHAIRMAN INEZ M. TENENBAUM

**STATEMENT OF CHAIRMAN INEZ M. TENENBAUM ON THE FINAL RULE FOR SAFETY STANDARDS
FOR PLAY YARDS**

June 28, 2012

I want to take this opportunity to acknowledge the Commission's unanimous vote to finalize the nation's first mandatory safety standard governing play yards. This is an important step forward in ensuring our most vulnerable citizens—toddlers and infants—are safe when they are laid down to sleep. But there is more to do.

Danny's Law

When Congress passed the Consumer Product Safety Improvement Act of 2008 or CPSIA, it included a variety of new mandatory federal safety standards for durable infant nursery products. Section 104 of the CPSIA requires the CPSC to promulgate two mandatory consumer product safety rules every six months for certain categories of durable infant nursery products that achieve the "highest level of safety that is feasible."

Section 104 is also known as the "Danny Keysar Child Product Safety Notification Act" or "Danny's Law." Danny was just over sixteen-months old in 1998 when the folding rails of the previously-recalled play yard in which he was napping at his childcare facility collapsed in a "V" shape around his neck and suffocated him. He was not the first child to die in the type of side rail collapse that took his life, nor was he the last. In all, there were nearly twenty children who tragically lost their lives this way.

Passing the Final Rule for Safety Standards for Play Yards ("Play Yards Final Rule") honors Danny's memory by making it the law of the land that all importers, manufacturers and distributors of play yards must comply with new strict federal standards. The requirements include, among other things, tests to prevent play yards whose top rails fold down from using hinges that create a "V" or diamond shape when folded to prevent neck entrapment, tests to prevent play yard floor entrapment, and minimum side height requirements to prevent children from getting out of the play yard on their own.

The Bassinet Misassembly Requirement

One requirement that was missing in the Play Yards Final Rule involves the bassinet attachments that commonly come with play yards. The Bassinet Misassembly Requirement was initiated by a

comment to the play yards Notice of Purposed Rulemaking (“NPR”) in response to a recently-discovered hazard: a baby girl, just a day shy of three months old, died when the bassinet play yard attachment in which she was sleeping became detached from the play yard causing her to slip into a corner of the bassinet and suffocate. Our staff concluded that the reason she died was because there were key structural elements—rods—in the bassinet that were not affixed when the product was placed in the play yard. Their omission was not obvious to the baby’s unsuspecting parents. As the baby napped, a clip came unhinged from the side of the play yard and, without the supporting rods, the baby slipped into the corner of the bassinet and suffocated.

Starting in October 2011, CPSC staff worked closely with industry engineers and consumer advocates to create standards to prevent this hidden danger. The task group devised two avenues to prevent bassinet misassembly: (1) permanently affix the key structural elements to the bassinet itself, or (2) create a bassinet that would fail so catastrophically if one of the key structural elements was not installed that it would visually indicate that something was wrong with the bassinet’s assembly.

I am comfortable with the first option. And, it is likely that the vast majority, if not all, play yard manufacturers will opt for this simpler and less-expensive alternative to meet their safety requirements.

During and shortly after, the June 13, 2012, play yards briefing, however, some of my fellow Commissioners expressed concerns about the “catastrophically fail” test. I shared distinct, but similar concerns about this option and whether it would actually prevent the hazard. I thought it best to allow more time to determine whether, for example, a lighter weight should be used as the standard for the test. As a result, I voted along with the rest of the Commissioners to allow additional time for comment on the Bassinet Misassembly Requirement.

While some have voiced concern over the Bassinet Misassembly Requirement under the Administrative Procedures Act,¹ it is evident to me that there was sufficient notice and comment here. The Bassinet Misassembly Requirement arose out of a comment from our play yards NPR and was a logical outgrowth of the play yards rule-making. The NPR specifically mentioned misassembly and “entrapment of children in accessories.” Additionally, the Bassinet Misassembly Requirement was deliberated and drafted over the course of several months by a task group comprised of industry engineers, consumer advocates, and CPSC staff. Based on the fact that there has already been one round of notice and comment and given the extensive input from industry during the subsequent ATSM process, I anticipate that this amendment to the rule will be finalized quickly barring any unforeseen comments on this proposal.

¹ In the June 13, 2012, hearing, I commented on the Juvenile Product Manufacturers Association, Inc. (“JPMA”) sending a last-minute letter complaining there had been insufficient notice and comment on the Bassinet Misassembly Requirement, despite the fact that several of its members sat on the task group that drafted the requirement and the fact that JPMA sent a letter a month earlier which made no such claims. While JPMA’s letter showed, at best, bad timing—and, at worst, downright bad faith—it was ultimately irrelevant to my decision-making on the Play Yards Final Rule.

Looking Forward

I look forward to the task group re-evaluating the “catastrophically fail” option, and CPSC staff finalizing and publishing the Bassinet Misassembly Requirement in a timely manner. It is my expectation that the requirement will become effective a year from now—as it would have had we passed it along with the Play Yards Final Rule—or even sooner. All of the stakeholders participating in this process recognize the need to protect vulnerable children from entrapment and the risk of death the Bassinet Misassembly Requirement is designed to address. In light of the tremendous amount of work by the ASTM committee and our staff on this issue to date, it appears that it would be prudent for play yard manufacturers to take the necessary steps to be prepared for this additional requirement within the next year. I am pleased that we found unanimity in passing the Play Yards Final Rule and allowing additional comment for the Bassinet Misassembly Requirement. I want to thank our professional staff for their excellent work on the Play Yards Final Rule and the hard work they have done, and will do, on its amendment.