

416-375-4539; email: [thd@dehavilland.com](mailto:thd@dehavilland.com); internet: <https://dehavilland.com>.

(5) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

(6) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov), or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Des Moines, Washington, on October 7, 2019.

**Michael Kaszycki,**

*Acting Manager, System Oversight Division, Aircraft Certification Service.*

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**BILLING CODE 4910-13-P**

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Parts 1220 and 1221

[Docket No. CPSC-2019-0025]

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

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Direct final rule.

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

**DATES:** The rule is effective on January 20, 2020, unless CPSC receives a significant adverse comment by November 22, 2019. If CPSC receives such a comment, it will publish a notice in the **Federal Register**, withdrawing this direct final rule before its effective date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of January 20, 2020.

**ADDRESSES:** You may submit comments, identified by Docket No. CPSC-2019-0025, by any of the following methods:

**Electronic Submissions:** Submit electronic comments to the Federal eRulemaking Portal at: [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments provided on the website. To ensure timely processing of comments, please submit all electronic comments through [www.regulations.gov](http://www.regulations.gov), rather than by email to CPSC.

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

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

**Docket:** For access to the docket to read background documents or comments, go to: <http://www.regulations.gov>, and insert the docket number, CPSC-2019-0025, into the "Search" box, and follow the prompts.

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

#### SUPPLEMENTARY INFORMATION:

##### A. Background and Statutory Authority

###### 1. Initial Mandatory Standards for Durable Infant or Toddler Products

Section 104 of the CPSIA (Pub. L. 110-314, 122 Stat. 3016) requires the Commission to assess the effectiveness of voluntary standards for durable infant or toddler products<sup>1</sup> and adopt mandatory standards for these products. 15 U.S.C. 2056a(b)(1). The mandatory standard must be "substantially the same as" the voluntary standard, or may be "more stringent than" the voluntary standard, if the Commission determines that more stringent requirements would

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

further reduce the risk of injury associated with the product. *Id.*

Under this authority, the Commission adopted mandatory standards for NFS cribs and play yards in 16 CFR parts 1220 and 1221, respectively. The Commission defines NFS cribs and play yards in 16 CFR 1220.1(c). In general, a NFS crib is "a bed that is designed to provide sleeping accommodations for an infant" that meets specified dimensions.<sup>2</sup> A play yard is a framed enclosure that includes a floor and mesh or fabric sides in which children sleep or play.<sup>3</sup> The Commission's mandatory standards incorporated by reference ASTM F406, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards* (ASTM F406), which is the voluntary standard for NFS cribs and play yards. The Commission issued separate rules for NFS cribs and play yards, although they are covered by the same voluntary standard, because section 104(c) of the CPSIA includes unique provisions for rules regarding cribs (both full-size and NFS cribs), applying initial crib standards to more parties than are ordinarily subject to section 104 rules.<sup>4</sup> 15 U.S.C. 2056a(c)(1), (2).

<sup>2</sup> 16 CFR 1220.1(c)(1) defines a NFS crib as "a bed that is: (i) Designed to provide sleeping accommodations for an infant; (ii) Intended for use in or around the home, for travel, in a child care facility, in a family child care home, in a place of public accommodation affecting commerce and other purposes; (iii) Has an interior length dimension either greater than 139.7 cm (55 in.) or smaller than 126.3 cm (49¾ in.), or, an interior width dimension either greater than 77.7 cm (30¾ in.) or smaller than 64.3 cm (25¾ in.), or both . . . (v) Does not include mesh/net/screen cribs, nonrigidly constructed baby cribs, cradles (both rocker and pendulum types), car beds, baby baskets, and bassinets (also known as junior cribs)." It further states that NFS cribs include, but are not limited to, portable cribs, crib pens, specialty cribs, undersize cribs, and oversize cribs, which the regulation also defines.

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

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

"any person that—(A) manufactures, distributes in commerce, or contracts to sell cribs; (B) based on the person's occupation, holds itself out as having knowledge of skill peculiar to cribs, including child care facilities and family child care homes; (C) is in the business of contracting to sell or resell, lease, sublet, or otherwise place cribs in the stream of commerce; or (D) owns or operates a place of accommodation affecting commerce (as defined in section 4 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2203) applied without regard

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

The Commission's standard for play yards initially incorporated by reference ASTM F406–12a, with modifications. 77 FR 52220 (Aug. 29, 2012). When ASTM later updated its standard, issuing ASTM F406–13, the Commission updated the mandatory standard to incorporate by reference this revised edition, with modifications. 78 FR 50328 (Aug. 19, 2013). The mandatory standard for play yards does not apply to NFS cribs, and excludes the provisions in ASTM F406 that only relate to NFS cribs.

## 2. Revisions to Section 104 Rules

The CPSIA specifies the process for when a voluntary standards organization revises a standard that the Commission incorporated by reference in a section 104 rule. First, the voluntary standards organization must notify the Commission of the revision. Once the Commission receives this notification, “the revised voluntary standard shall be considered to be a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the date on which the organization notifies the Commission (or such later date specified by the Commission in the **Federal Register**) unless, within 90 days after receiving that notice, the Commission notifies the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard and that the Commission is retaining the existing consumer product safety standard.” 15 U.S.C. 2056a(b)(4)(B).

As noted above, section 104(c) of the CPSIA includes unique provisions for

rules regarding cribs. Under sections 104(c)(1) and (2), standards the Commission adopts for cribs under section 104(b) of the CPSIA apply to more parties than are ordinarily subject to section 104 rules.<sup>5</sup> 15 U.S.C. 2056a(c)(1), (2). However, this expanded application does not apply to revisions to the Commission's crib standards unless certain circumstances apply.<sup>6</sup> *Id.* 2056a(c)(3). Section 104(c)(3) states that when the Commission revises a crib standard that it adopted under section 104(b), the revised mandatory standard applies to crib manufacturers and importers (rather than the expanded list of parties that are subject to initial crib standards in section 104(c)(1) and (2)). *Id.* However, the Commission may apply revised crib standards to other parties in the expanded list if it determines that it is “necessary to protect against an unreasonable risk to health or safety.” *Id.* If the Commission applies the standard to additional parties, it must provide at least 12 months for parties to comply. *Id.*

ASTM notified the Commission on July 24, 2019 that it had updated the NFS cribs and play yards standard, issuing ASTM F406–19.<sup>7</sup> As this preamble discusses, the revisions regarding NFS cribs are neutral on safety and the revisions regarding play yards improve or are neutral on safety. Accordingly, the Commission is not making the determination that “the proposed revision does not improve the safety of the consumer product.” The Commission also is not specifying a later effective date than that provided in the statute. Therefore, under the CPSIA, ASTM F406–19 will become the mandatory standard for NFS cribs and play yards effective January 20, 2020, 180 days after CPSC received ASTM's notice.

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

## B. Revised ASTM Standard

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

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

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

### 1. Revisions Regarding NFS Cribs

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

The only substantive difference between the requirements for NFS cribs in ASTM F406–19 and ASTM F406–17 is that ASTM F406–19 includes a revised toehold provision in the construction and finishing requirements for NFS cribs (section 6.6.3). ASTM F406–19 also includes an editorial revision (section 6.9<sup>9</sup>) that does not

to the phrase “not owned by the Federal Government’.” 15 U.S.C. 2056a(c)(1), (2).

<sup>5</sup> Congress effectively limited this expanded application of crib standards to only initial 104 rules for cribs when it amended the CPSIA in 2011. The amendment added section 104(c)(3), which addresses revisions to crib standards, and allows the expanded application stated in section 104(c)(1) and (2) to apply to revisions to crib standards only in certain circumstances. 15 U.S.C. 2056a(c)(3); Public Law 112–28, 125 Stat. 273 (Aug. 12, 2011).

<sup>6</sup> See footnote 4, above.

<sup>7</sup> Congress amended the CPSIA in 2011, adding section 104(c)(3) to address revisions to crib standards, which effectively made the expanded application of crib standards only applicable to the Commission's initial 104 rules for cribs. 15 U.S.C. 2056a(c)(3); Public Law 112–28, 125 Stat. 273 (Aug. 12, 2011).

<sup>8</sup> ASTM approved ASTM F406–19 on March 15, 2019, and published it in May 2019.

<sup>9</sup> Nearly all of the excluded requirements are in the same sections in ASTM F406–19 as they were in ASTM F406–17, with one exception. Specifically, the requirements that were in sections 8.28 to 8.28.4 in ASTM F406–17 are in sections 8.28 to 8.28.3.2 in ASTM F406–19. Accordingly, the Commission is updating the sections referenced in 16 CFR part 1220.

<sup>9</sup> Section 6.9 states the rationale for the requirement in section 6.8 that specifies the order

alter the substantive requirements for NFS cribs or affect safety.

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

## 2. Revisions Regarding Play Yards

The existing mandatory standard for play yards requires compliance with ASTM F406–13, with modifications. The modifications exclude from the mandatory standard the sections of ASTM F406–13 that address requirements for NFS cribs. In addition, the mandatory standard modifies section 9.4.2.10 of the voluntary standard. Section 9.4.2.10 requires a warning on products with a separate mattress that is not permanently fixed in place to state: “Use ONLY mattress/pad provided by manufacturer,” along with the minimum length, width, and thickness of the mattress. The mandatory standard specifies that play yards that meet the criteria in section 9.4.2.10 must bear only the warning statement (not the permissible mattress dimensions). The revised mandatory standard in 16 CFR part 1221 includes the same exclusions and modifications.<sup>10</sup>

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

- Revised and additional requirements to ensure that provisions regarding entrapment in accessories to

in which certain performance testing must occur. The editorial revision in section 6.9 of ASTM F406–19 simply corrects a typo, by replacing “the” with “be” in the phrase the “assembly most likely to be affected.”

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

play yards address cantilevered accessories;

- clarification of where to place a stability testing device;
- a modified mattress vertical displacement test, and an accompanying definition for “mattress support surface”; and
- an alternate on-product warning label for cribs intended for use in child care facilities.

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

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

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

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

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

safety when compared to the existing standard in 16 CFR part 1221.

In addition, ASTM F406–19 includes a new “secondary test” to perform if any corner or location does not meet the standard using the primary test. The secondary test applies the same force in the same manner as the primary test, and uses the same criteria for passing (less than 5.25 inch displacement), but measures displacement from different points. While the primary test measures displacement from “the reference point on the clamp relative to the fixed reference point,” the secondary test measures displacement from “the bottom surface of the mattress just beneath the clamp attachment and the mattress support surface.” As the rationale in Note 17 in the standard explains, although the primary test works well for products with a tubular floor support structure, it does not work as well for “products that sit directly on the floor and do not have a tubular floor support structure.” The secondary test addresses these products. CPSC staff believes that the secondary test is neutral on safety, when compared to the existing standard in 16 CFR part 1221.

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

*Warning statements.* Section 9.4.2.11 in ASTM F406–13 requires on-product warning statements to address the following: “Always provide the supervision necessary for the continued safety of your child. When used for playing, never leave child unattended.” ASTM F406–19 includes the same requirement, but allows products that are intended for use in child care facilitates to display either the above warning statement or a warning that “child in crib must be under supervision at all times.”<sup>12</sup> CPSC staff

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

believes that, although the warning statement required in ASTM F406–13 was sufficient, the alternative statement may be appropriate for child care facilities, where continued supervision is necessary and expected.

### C. Direct Final Rule Process

In this notice, the Commission is updating the version of the ASTM standard incorporated by reference in 16 CFR parts 1220 and 1221 to reflect the revised standard that takes effect by operation of law under the CPSIA. The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA; 5 U.S.C. 551–559) generally requires agencies to provide notice of a rule and an opportunity for interested parties to comment on it, the APA provides an exception to this when an agency “for good cause finds” that notice and comment is “impracticable, unnecessary, or contrary to the public interest.” *Id.* 553(b), (c).

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

The purpose of this direct final rule is to update the edition of the standard the regulations reference, so that they accurately reflect the standard in effect under the statute. The Administrative Conference of the United States (ACUS) recommends that agencies use direct final rulemaking when the “unnecessary” prong of the good cause exemption in the APA applies. 60 FR 43108, 43111 (Aug. 18, 1995). With a direct final rule, the rule takes effect on the stated effective date, unless the agency receives an adverse comment within a specified time. This allows the agency to expedite noncontroversial rules, while still allowing for public comment. *Id.* at 43111. A direct final rule is appropriate here because the Commission believes this rule is

noncontroversial and will not elicit significant adverse comments.

Unless CPSC receives a significant adverse comment within 30 days of this notice, the rule will become effective on January 20, 2020. Consistent with ACUS’s recommendation, the Commission considers a significant adverse comment to be “one where the commenter explains why the rule would be inappropriate, including challenges to the rule’s underlying premise or approach, or would be ineffective or unacceptable without change.” *Id.* at 43111.

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

### D. Incorporation by Reference

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

In accordance with the OFR regulations, *B. Revised ASTM Standard* of this preamble summarizes the major provisions of ASTM F406–19 that the Commission incorporates by reference into 16 CFR parts 1220 and 1221. Interested parties may obtain a copy of ASTM F406–19 from ASTM, through its website (<http://www.astm.org>), or by mail from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959. Alternatively, interested parties may inspect a copy of the standard at CPSC’s Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone (301) 504–7923.

### E. Certification

The Consumer Product Safety Act (CPSA; 15 U.S.C. 2051–2089) requires manufacturers of products that are subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the

Commission, to certify that the product complies with all applicable CPSC requirements. 15 U.S.C. 2063(a). For children’s products, the manufacturer must base this certification on tests of a sufficient number of samples by a third party conformity assessment body accredited by CPSC to test according to the applicable requirements. *Id.* 2063(a)(2). These testing and certification requirements apply to products for which the Commission issues rules under CPSIA section 104, because they are consumer product safety standards. *See id.* 2056a(b).

Because NFS cribs and play yards are children’s products, a CPSC-accepted third party conformity assessment body must test samples of these products. These products also must comply with all other applicable CPSC requirements, such as the lead content requirements in section 101 of the CPSIA,<sup>13</sup> the phthalates prohibitions in section 108 of the CPSIA,<sup>14</sup> the tracking label requirements in section 14(a)(5) of the CPSA,<sup>15</sup> and the consumer registration form requirements in section 104(d) of the CPSIA.<sup>16</sup>

### F. Notice of Requirements

As discussed above, an accredited third party conformity assessment body must test children’s products that are subject to a children’s product safety rule for compliance with the applicable rule. 15 U.S.C. 2063(a)(2). The Commission must publish a notice of requirements (NOR) for third party conformity assessment bodies to obtain accreditation to assess conformity with a children’s product safety rule. *Id.* 2063(a)(3)(A).

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

The revised provisions in ASTM F406–19 do not require any significant

<sup>13</sup> 15 U.S.C. 1278a.

<sup>14</sup> 15 U.S.C. 2057c.

<sup>15</sup> 15 U.S.C. 2063(a)(5).

<sup>16</sup> 15 U.S.C. 2056a(d).

changes in the test methods or tools that third party conformity assessment bodies use to assess NFS cribs or play yards for compliance with the mandatory standards. Accordingly, laboratories that have demonstrated competence for testing in accordance with ASTM F406–17 for NFS cribs and ASTM F406–13 for play yards would have the competence to test in accordance with the revised mandatory standards. Laboratories will begin testing to the new standards when ASTM F406–19 goes into effect for NFS cribs and play yards, and the existing accreditations that the Commission has accepted for testing to these standards will cover testing to the revised standards. Therefore, the existing NORs for these standards will remain in place, and CPSC-accepted third party conformity assessment bodies will need to update the scope of their accreditations to reflect the revised standards in the normal course of renewing their accreditations.

#### G. Regulatory Flexibility Act

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

#### H. Paperwork Reduction Act

The current mandatory standards for NFS cribs and play yards include requirements for labeling and instructional literature that constitute a “collection of information,” as defined in the Paperwork Reduction Act (PRA; 44 U.S.C. 3501–3521). The revised mandatory standards do not substantively alter these requirements. The Commission took the steps required by the PRA for information collections when it adopted 16 CFR parts 1220 and 1221, including obtaining approval and a control number. Because the

information collection is unchanged, the revision does not affect the information collection requirements or approval related to the standard.

#### I. The Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801–808) states that, before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The submission must indicate whether the rule is a “major rule.” The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a “major rule.”

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

#### J. Environmental Considerations

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

#### K. Preemption

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

Section 104 of the CPSIA refers to the rules issued under that section as

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

#### L. Effective Date

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

The Commission is taking neither of those actions with respect to the standards for NFS cribs and play yards. The Commission believes that the statutory effective date is reasonable because it provides sufficient time for firms to make necessary modifications within the usual timeframe provided for children’s product rules. ASTM approved ASTM F406–19 on March 15, 2019 and published it in May 2019, more than 6 months before the statutory effective date. Juvenile product manufacturers are accustomed to adjusting to new voluntary standards within this timeframe because it is consistent with other CPSIA section 104 rules, which generally provide 6-month effective dates, and the Juvenile Products Manufacturers Association typically allows 6 months for products in its certification program to shift to a new standard. Therefore, ASTM F406–19 automatically will take effect as the new mandatory standard for NFS cribs and play yards on January 20, 2020, 180 days after the Commission received notice of the revision on July 24, 2019.

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

#### List of Subjects

##### 16 CFR Part 1220

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

## 16 CFR Part 1221

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

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

**PART 1220—SAFETY STANDARD FOR NON-FULL-SIZE BABY CRIBS**

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

**Authority:** Sec. 104, Pub. L. 110–314, 122 Stat. 3016 (15 U.S.C. 2056a); Sec. 3, Pub. L. 112–28, 125 Stat. 273.

- 2. Revise § 1220.2 to read as follows:

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

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

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

- (1) Do not comply with sections 5.6.2 through 5.6.2.4 of ASTM F406–19.
- (2) Do not comply with section 5.16.2 of ASTM F406–19.
- (3) Do not comply with sections 5.19 through 5.19.2.2 of ASTM F406–19.
- (4) Do not comply with section 7, *Performance Requirements for Mesh/Fabric Products*, of ASTM F406–19.
- (5) Do not comply with sections 8.11 through 8.11.2.4 of ASTM F406–19.
- (6) Do not comply with sections 8.12 through 8.12.2.2 of ASTM F406–19.
- (7) Do not comply with sections 8.14 through 8.14.2 of ASTM F406–19.
- (8) Do not comply with sections 8.15 through 8.15.3.3 of ASTM F406–19.
- (9) Do not comply with section 8.16 through 8.16.3 of ASTM F406–19.

(10) Do not comply with sections 8.28 through 8.28.3.2 of ASTM F406–19.

(11) Do not comply with sections 8.29 through 8.29.3 of ASTM F406–19.

(12) Do not comply with sections 8.30 through 8.30.5 of ASTM F406–19.

(13) Do not comply with sections 8.31 through 8.31.9 of ASTM F406–19.

(14) Do not comply with sections 9.3.2 through 9.3.2.4 of ASTM F406–19.

**PART 1221—SAFETY STANDARD FOR PLAY YARDS**

- 3. The authority citation for part 1221 is revised to read as follows:

**Authority:** Sec. 104, Pub. L. 110–314, 122 Stat. 3016 (15 U.S.C. 2056a).

- 4. 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 January 20, 2020.

- 5. Revise § 1221.2 to read as follows:

**§ 1221.2 Requirements for play yards.**

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

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

- (1) Do not comply with section 5.17 of ASTM F406–19.
- (2) Do not comply with section 5.20 of ASTM F406–19.
- (3) Do not comply with section 6, *Performance Requirements for Rigid Sided Products*, of ASTM F406–19.
- (4) Do not comply with sections 8.1 through 8.10.5 of ASTM F406–19.
- (5) Instead of complying with section 9.4.2.10 of ASTM F406–19, comply only with the following:
  - (i) 9.4.2.10 For products that have a separate mattress that is not

permanently fixed in place: Use ONLY mattress/pad provided by manufacturer.

(ii) [Reserved]

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

**Alberta E. Mills,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 2019–23088 Filed 10–22–19; 8:45 am]

BILLING CODE 6355–01–P

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 926**

[SATS No. MT–035–FOR; Docket ID: OSM–2013–0009; S1D1S SS08011000 SX064A000 201S180110; S2D2S SS08011000 SX064A000 20XS501520]

**Montana Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving an amendment to the Montana regulatory program (the Montana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Montana proposed revisions and additions to the Montana statute, known as the Montana Code Annotated (MCA) about permit application requirements, coal prospecting requirements, annual reporting requirements for coal permittees, and lawsuits related to damages to water supplies. Montana also proposed to revise its regulations, the Administrative Rules of Montana (ARM), to incorporate changes about a new short form coal prospecting permit process.

**DATES:** The effective date is November 22, 2019.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Fleischman, Chief, Denver Field Division, Telephone: (307) 261–6550. Email address: [jfleischman@osmre.gov](mailto:jfleischman@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Montana Program
- II. Submission of the Proposed Amendment
- III. OSMRE's Findings
- IV. Summary and Disposition of Comments
- V. OSMRE's Decision
- VI. Statutory and Executive Order Reviews

**I. Background on the Montana Program**

Section 503(a) of the Act permits a state to assume primacy for the regulation of surface coal mining and