

Damage Mitigation Guidelines (EDMGs) for licensee staff expected to implement the strategies and those licensee staff expected to make decisions during emergencies, including emergency coordinators and emergency directors. The petitioner cites Section 4.2.5, pages 46–50—regarding the strengthening and integration of onsite emergency response capabilities such as emergency operating procedures, SAMGs, and EDMGs—of the Fukushima Task Force Report as the rationale for its PRM.

#### IV. Conclusion

The Commission is currently reviewing the Fukushima Task Force Report, including each issue presented in the six petitions for rulemaking. The petitioner solely and specifically cites the Fukushima Task Force Report as the rationale and bases for its six PRMs. The NRC will consider the issues raised by these PRMs through the process the Commission has established for addressing the recommendations from the Fukushima Task Force Report and is not providing a separate opportunity for public comment on the PRMs at this time.

Dated at Rockville, Maryland, this 14th day of September 2011.

For the Nuclear Regulatory Commission.

**Annette Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 2011–24079 Filed 9–19–11; 8:45 am]

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## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1221

[CPSC Docket No. CPSC–2011–0064]

RIN 3041–AC92

### Safety Standard for Play Yards

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Section 104(b) of the Consumer Product Safety Improvement Act of 2008 (“CPSIA”) requires the United States Consumer Product Safety Commission (“Commission,” “CPSC,” or “we”) to promulgate consumer product safety standards for durable infant or toddler products. These standards are to be “substantially the same as” applicable voluntary standards or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. The Commission is proposing a safety

standard for play yards in response to the direction under Section 104(b) of the CPSIA.

**DATES:** Submit comments by December 5, 2011.

**ADDRESSES:** Comments related to the Paperwork Reduction Act aspects of the marking, labeling, and instructional literature of the proposed rule should be directed to the Office of Information and Regulatory Affairs, OMB, Attn: CPSC Desk Officer, Fax: 202–395–6974, or e-mailed to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov).

Other comments, identified by Docket No. CPSC–2011–0064, may be submitted electronically or in writing:

**Electronic Submissions:** Submit electronic comments to the Federal eRulemaking Portal at: <http://www.regulations.gov>. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer directly accepting comments submitted by electronic mail (e-mail), except through <http://www.regulations.gov>. The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

**Written Submissions:** Submit written submissions in the following way: 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 502, 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 rulemaking. 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 that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>, and insert the docket number, CPSC 2011–0064, into the “Search” box and follow the prompts.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

##### A. Background and Statutory Authority

The Consumer Product Safety Improvement Act of 2008 (“CPSIA,” Pub. L. 110–314) was enacted on August 14, 2008. Section 104(b) of the CPSIA requires the Commission to promulgate consumer product safety standards for durable infant and toddler products. These standards are to be “substantially the same as” applicable voluntary standards or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. The term “durable infant or toddler product” is defined in section 104(f)(1) of the CPSIA as a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years. Play yards are one of the products specifically identified in section 104(f)(2)(F) as a durable infant or toddler product.

In this document, the Commission proposes a safety standard for play yards. The proposed standard is based on the voluntary standard developed by ASTM International (formerly the American Society for Testing and Materials), ASTM F 406–11, “Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards” (“ASTM F 406–11”). The ASTM standard is copyrighted but can be viewed as a read-only document, only during the comment period on this proposal, at <http://www.astm.org/cpsc.htm>, by permission of ASTM.

##### B. The Product

###### 1. Definition

ASTM F 406–11 defines a “play yard” as a “framed enclosure that includes a floor and has mesh or fabric sided panels primarily intended to provide a play or sleeping environment for children. It may fold for storage or travel.” Play yards are intended for children who are less than 35 inches tall who cannot climb out of the product. Play yards are convenient because they usually fold for storage or travel. Some play yards include accessory items that attach to the product, including mobiles, toy bars, canopies, bassinets, and changing tables. The accessory item(s) usually attaches to the side rails or corner brackets of the play yard.

###### 2. The Market

Based on a 2005 survey conducted by American Baby Group titled, “2006 Baby Products Tracking Study,” we estimate that approximately 2.9 million

play yards are sold in the United States each year. We estimate that there are 23 manufacturers or importers supplying play yards to the U.S. market. Eleven firms are domestic manufacturers, and 10 firms are domestic importers. Two firms are foreign importers.

Play yards from 11 of the 23 firms have been certified as compliant with the ASTM voluntary play yard standard by the Juvenile Products Manufacturers Association (“JPMA”), the major U.S. trade association that represents juvenile product manufacturers and importers. In addition, three other firms claim compliance with the ASTM voluntary play yard standard and, in some cases, provide test results publicly.

### C. Incident Data

The CPSC’s Directorate for Epidemiology reports that there have been 2,128 incidents reported to the Commission regarding play yards from early November 2007 until early April 2011. Of the 2,128 reported incidents, there were 49 fatalities, 165 nonfatal injuries, and 1,914 noninjury incidents. The data is drawn from the CPSC’s “Early Warning System” (“EWS”), a database created in late 2007, which allows the Commission to monitor incoming incident data closely. Once an incident report is entered into EWS, it is carefully reviewed by a subject matter expert. Thus, EWS contains the best data to support the play yard regulatory work.

#### 1. Fatalities

From early November 2007 through early April 2011, there were 49 fatalities associated with play yards. Twenty-seven deaths are attributable to unsafe sleep environments within the play yard, such as the presence of soft or extra bedding, or unsafe sleep practices, such as putting infants to sleep on their stomach instead of their back.

Ten suffocation deaths were caused by unsafe environments around the play yard. Examples of hazardous surroundings include: window blind cords or computer cords that fell into the play yard where the cords formed dangerous loops and resulted in strangulation fatalities. Other deaths were caused when items were placed on top of the play yard to prevent the child from climbing out. These items, such as wood, mesh gates, or crib tents, caused suffocation deaths when children tried to crawl out of the product and became stuck between the side rail and the item placed on top of the play yard.

The remainder of the fatal incidents include:

- Two children were killed in separate incidents when they were able to climb out of a play yard and gain access to a pool. Both children drowned in the pool.

- Two toddlers were killed in separate incidents while standing up in a play yard. It is believed that they leaned forward against the side rail (possibly to reach an object that the child had thrown outside the play yard), lost consciousness, and suffocated when the pressure from the side rail compressed the airway.

- One toddler was killed when the play yard collapsed unexpectedly. The child was trapped and suffocated.

- One death was caused by a looped strap hanging from a changing table accessory. The changing table was supported by the side rails of the play yard. The looped strap fell into the play yard space occupied by the child and resulted in the child’s strangulation.

- One death was caused by an assembly error that occurred when the mattress pad was not secured completely to the bottom of the play yard. The child suffocated in the pocket created between the unsecured mattress pad and the floor of the play yard.

- Five other deaths are associated with play yards, but there was insufficient information to determine the cause.

#### 2. Nonfatal Injuries

From early November 2007 through early April 2011, there were 2,079 nonfatal incident reports. Of those, 165 incidents involved an injury, and four of those required hospitalization. Although the remaining 1,914 nonfatal incident reports did not result in an injury, many of the descriptions indicate the potential for serious injury or death.

The largest number of nonfatal incident reports were attributable to the unexpected collapse of the side rail of a play yard. Of the 2,079 nonfatal incident reports, 1,902 involved the collapse of one or more sides of a play yard. Of the 165 incidents involving an injury, 124 were the result of a play yard side rail collapse. Of the 124 injuries, there was one hospitalization for a concussion that was caused by the collapse of a side rail.

The remainder of the nonfatal injury incidents included:

- Eight injuries caused by broken or detached component parts, such as loose wheels or loose hardware, which resulted in instability or collapse of the product.

- Eight injuries caused by various product-related problems, including sharp surfaces.

- Five injuries related to the mesh or fabric sides of the play yard, such as stitching that unraveled, tears in the fabric, mesh holes that were too large, and mesh material that was too abrasive.

- Five injuries related to the mattress pad or the floor of the play yard.

Examples of injuries in this category included: Mattresses or pads that were insufficiently fastened to the play yard floor, resulting in toddlers becoming trapped under the mattress or pad.

- Five injuries related to toddlers climbing out or falling out of the play yard. This category included one toddler who was hospitalized for a serious head injury after climbing or falling out of the play yard.

- Four injuries resulted when children were standing in the play yard, lost their balance, and fell.

- Two injuries caused by broken or hazardous accessories, such as dangling straps from changing tables. Other examples of hazardous accessories included: broken or detached components from music boxes, trays, mirrors, and toy holders.

- Two injuries related to assembly errors, including one child who was hospitalized with a severe finger laceration after getting his or her finger caught in the play yard as it was being assembled.

- One injury that resulted in a hospitalization was caused by the presence of soft bedding in the play yard. This was a severe injury to a 7-week-old infant who suffered brain damage.

- One other injury is associated with play yards, but there was insufficient information to determine the cause.

### D. Play Yard International Standards and the ASTM Voluntary Standard

Section 104(b)(1)(A) of the CPSIA requires the Commission to consult representatives of “consumer groups, juvenile product manufacturers, and independent child product engineers and experts” to “examine and assess the effectiveness of any voluntary consumer product safety standards for durable infant or toddler products.” Through the ASTM process, we consulted with manufacturers, retailers, trade organizations, laboratories, consumer advocacy groups, consultants, and members of the public. Most of the consultation involved assessing and reviewing the ASTM standard, which is the primary play yard standard in effect in the United States. Significantly, in 2010, in consultation with ASTM, we identified three hazards that were not addressed in the ASTM play yard standard. Those three hazards are now addressed in ASTM 406–11 and include

new requirements to address side rails that collapse into a dangerous V-shape (discussed in section E.5 below); new requirements to address structural failures related to corner brackets (discussed in section E.8 below); and new requirements to address mattress displacement (discussed in section E.10 below).

In addition to reviewing the ASTM standard, we reviewed several international standards.

### 1. International Standards

We reviewed several international standards when working with ASTM to create ASTM 406–11, including:

- The European Standard, BS EN 12227–1 & 2: 2010, “Playpens for domestic use”;
- the Australian and New Zealand Standard, AS/NZ S2195: 2010, “Folding cots—Safety Requirements”; and
- the Canadian standard, C.R.C., c. 932, “Playpen Regulations.”

We considered the Australian and New Zealand Standard when we, in consultation with ASTM, devised the performance requirement and test method to address V-shape side rail collapses. Ultimately however, CPSC and ASTM chose to use a test method meant to prevent neck entrapment in expansion gates that exists in ASTM F 1004–09, “Standard Consumer Safety Specification for Expansion Gates and Expandable Enclosures.”

We considered the European Standard when we, in consultation with ASTM, devised the performance requirement and test method to address structural failures in corner brackets. Ultimately, the test method found in the European Standard was rejected because its main purpose is to test latch durability, rather than corner post durability. The requirements currently found in ASTM F 406–11 to address this hazard were developed by CPSC staff and are better suited than the requirements in the European Standard to test corner post durability.

We also considered the European Standard when we, in consultation with ASTM, created the mattress displacement performance requirement and test method. While the requirements in ASTM F 406–11 are similar to those in the European Standard, we, in consultation with ASTM staff, made changes that will result in more reliable and repeatable results.

### 2. The ASTM Voluntary Standard

ASTM F 406 was first approved and published in 1977. ASTM has revised the standard several times since then, with the most current version, ASTM F

406–11, published on May 15, 2011. Historically, one of the most significant changes occurred in ASTM F 406–02, published in June 2002, when the standard for non-full-size cribs merged with the play yard standard to group products with similar uses, and took on its current name, “Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards.”

The proposed rule would only pertain to play yards. In the **Federal Register** of December 28, 2010 (75 FR 81766), we issued a final rule on safety standards for non-full-size cribs. Thus, the proposed rule would exclude provisions of ASTM F 406–11 that apply to non-full-size cribs. The proposed rule would exclude from the play yard standard sections 5.17, 5.19, 5.20, the entirety of section 6, section 8.1 through 8.10.5, and section 10.1.1.1 of ASTM F 406–11. In addition, for section 9.4.2.10 of ASTM F 406–11, we propose to include only the first section, which is a labeling requirement meant to inform consumers that only the mattress or pad provided by the manufacturer should be used. The remainder of section 9.4.2.10 of ASTM F 406–11 is applicable to non-full-size cribs and would be excluded from the play yard standard.

Many play yards include accessory items, such as bassinets or changing tables that attach to the side of the play yard rails. While ASTM F 406–11 contains requirements to address entrapment of children in accessories, such as requirements designed to prevent changing table straps from forming loops that enter the play yard space and could cause strangulation, the specific requirements for accessories will be addressed in separate rulemakings. For example, ASTM F 406–11 addresses possible entrapment in bassinet attachments, but the performance requirements, test methods, and warning provisions for the bassinet itself will be handled in a separate rulemaking.

The key provisions of the current ASTM play yard standard include: Definitions; general requirements; performance requirements; specific test methods; and requirements for marking, labeling, and instructional literature.

**Definitions.** The definition of “play yard (aka playpen)” is 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.”

**General Requirements and Specific Test Methods.** The play yard standard contains general requirements that the product must meet, as well as mandated test methods that must be used to

ensure that the product meets those requirements, including:

- Requirements for corner posts;
- Restrictions on sharp points and edges (as well as their protective caps), small parts, lead paint, and flammable solids;
- Specifications to prevent scissoring, shearing, and pinching;
- Requirements for toy accessory items;
- Specifications on latching and locking mechanisms;
- Specifications on openings (intended to prevent finger and toe entrapment), labeling (intended to prevent labels from being removed and ingested or aspirated on), coil springs and protrusions;
- Requirements that the play yard be stable;
- Requirements meant to protect a child from entrapment in accessory items, such as a bassinet or changing table, as well as requirements to protect a child from being strangled in a cord or strap that accompanies the product or an accessory item (such as the restraint straps on a changing table); and
- Specifications for the mattress in a play yard.

**Performance Requirements and Specific Test Methods.** The play yard standard provides performance requirements that the product must meet, as well as mandated test methods that must be used to ensure that the product meets the performance requirements, including:

- A side height requirement (the side of the play yard must be, at least, 20 inches from the top of the noncompressed mattress pad to the top of the side rail);
- Side deflection and strength requirements (the play yard must be able to withstand testing without collapsing, and the hinge and latch mechanisms must remain operational);
- Floor strength requirements;
- Requirements to address the material that covers the top rail, as well as specifications for the mesh or fabric used in play yards;
- Requirements addressing mattress displacement;
- Requirements to eliminate the risk that the side rails will form a dangerous V-shape when collapsed; and
- Requirements addressing corner bracket failures.

**Order of Testing.** ASTM F 406–11 also addresses the order of testing. ASTM F 406–11 clarifies that the general requirements, such as restrictions on corner posts, must be met both before and after the performance requirement test methods have been completed.

Additionally, ASTM F 406–11 indicates that the tests to determine

compliance with the performance requirements must be conducted in the order specified in the standard because the testing sequence can influence the test results. Therefore, the standard lists tests in a way such that the most potentially destructive tests are performed last.

*Marking, Labeling, and Instructional Literature.* ASTM F 406–11 has requirements for marking, labeling, and instructions that must accompany a play yard, including warnings regarding proper use of accessory attachment items, and warnings regarding suffocation hazards that may arise if soft bedding is added to the product.

#### **E. Assessment of Voluntary Standard ASTM F 406–11**

We considered the fatalities, injuries, and noninjury incidents associated with play yards, and we evaluated the voluntary standard to determine whether ASTM F 406–11 addresses the incident or whether more stringent standards are required that would further reduce the risk of injury associated with the products. We discuss our assessment in this section, but our assessment does not include deaths and injuries associated with play yards where there was insufficient evidence to determine the cause.

##### **1. Unsafe Sleep Environment and Unsafe Sleep Practices**

Unsafe sleep environments, such as sleep environments that contain additional or soft bedding, and unsafe sleep practices, such as placing infants to sleep on their stomach instead of their back, resulted in 27 fatalities and one very serious injury that required hospitalization and resulted in brain damage to the child. Unsafe sleep environments and unsafe sleep practices are not attributable to the design or construction of play yards. ASTM F 406–11 includes product warnings that address the hazards of soft bedding and the hazards associated with placing a child to sleep on their stomach. We do not believe that there are additional requirements that can be put in place in the standard to address unsafe sleep environments and unsafe sleep practices.

##### **2. Hazardous Surroundings**

Ten suffocation deaths were attributable to unsafe environments around the play yard. Examples of hazardous surroundings include: Window blind cords and computer cords that fall into a play yard, forming a loop, and causing strangulations. Other deaths were caused when caregivers placed an object on top of the

play yard to keep the child in the play yard, and fatalities resulted when children tried to climb out of the play yard and became trapped between the cover and the side rail. Risks due to hazardous surroundings are not attributable to the design or construction of play yards. ASTM F 406–11 includes product warnings that address the dangers of placing a product near windows where cords can cause strangulation. ASTM F 406–11 also includes a warning about the dangers of using improvised netting or covers over play yards. We do not believe that there are additional requirements that can be put in place in the standard to address this issue.

##### **3. Risks Associated With Children Climbing Out or Falling Out of a Play Yard**

Two children were killed when they were able to climb out or they fell out of their play yard and accessed a pool. Both children drowned. Additionally, five children were injured after climbing or falling out of their play yard, including one injury that resulted in a serious head injury and required hospitalization.

We considered alternatives that might make it less likely that a child could climb or fall out of a play yard. For example, play yards could be mandated to have higher sides, or manufacturers could provide a “lid” or cover to the play yard. However, in both cases, we felt that these solutions might create additional hazards. Higher sides might make it more difficult for a caregiver to put the child inside the play yard and might increase the chance that caregivers will find alternative, but less safe, sleep environments (such as allowing infants to sleep in adult beds). Requiring a lid or cover increases the chances that the lid or cover will fail in some way, allowing children to attempt to climb out of the product, only to become stuck between the lid and the side rail, which could cause suffocation.

Therefore, we determined that warnings are the most appropriate way to address climb-out and fall-out hazards. ASTM F 406–11 includes product warnings indicating that play yards are designed for children who are not able to climb out of the play yard. There are additional warning requirements regarding removing any object that can serve as a step that would enable a child to climb out of the play yard. We do not believe that there are additional requirements that can be put in place in the standard to address this issue.

##### **4. Standing/Choking Deaths**

Two toddlers were killed in a similar, but currently unexplained, manner. In both situations, the toddler stood up in the play yard and placed his or her neck against the side rail. In both situations, it is believed that they leaned forward against the side rail (possibly to reach an object that the child had thrown outside the play yard), lost consciousness, and suffocated when the pressure from the side rail compressed the airway. We have investigated both deaths and believe that further review by CPSC staff is warranted to determine if the design or construction of the play yard contributed to the deaths. If we conclude that the design or construction of the play yard did contribute to these deaths, we will determine whether additional requirements are necessary. Because the causation of these incidents is unclear, we are not proposing additional requirements in the standard to address the possibility of standing/choking deaths at this time.

##### **5. Side Rail Collapse**

One child was killed when a play yard’s side rails collapsed, trapping the child and resulting in suffocation. Additionally, 124 of the 165 nonfatal injury reports are attributable to side rail collapse. One injury required hospitalization for a concussion. The largest number of nonfatal incident reports (1,902 out of 2,079 reports) are attributable to play yard side rail collapse. We reviewed these incidents and have determined that the majority are caused by failure of the side rail latch that keeps the side rail locked and in place.

Side collapse issues were addressed significantly in 1997, in ASTM F 406–97, which required the side rails of play yards to have a locking device in order to prevent the center hinge from collapsing and causing the side rail to fall. In 1999, ASTM added a test method that required the locking mechanism on the side rail hinges to withstand a force of 100 pounds, applied diagonally, without breaking or disengaging.

In August 2009, after a significant number of recalls involving side collapse issues, ASTM published ASTM F 406–09, which included, for the first time, a false latch test in the ASTM play yard standard. The addition of the false latch test was designed to ensure that the top rail does not give the appearance of being locked, when, in fact, the locking device is not engaged completely.

The recalls related to side collapse, which prompted the change in the 2009 ASTM standard include:

- A January 2009 recall of 200,000 play yards. The CPSC press release can be found here: <http://www.cpsc.gov/cpscpub/prerel/prhtml09/09098.html>.
- An April 2009 recall of 25,000 play yards. The CPSC press release can be found here: <http://www.cpsc.gov/cpscpub/prerel/prhtml09/09187.html>.
- A July 2009 recall of about 1 million play yards. The CPSC press release can be found here: <http://www.cpsc.gov/cpscpub/prerel/prhtml09/09265.html>.

Additionally, ASTM F 406–11 includes a performance requirement and test method that addresses a side rail collapse issue that was a problem in the past but was never adequately addressed in past editions of the ASTM play yard standard. In brief, when folding play yards were relatively new products in the 1990s, some products did not include features designed to prevent unintentional collapse of the side rails. Some play yards collapsed into a V-shape. If a child's neck is caught in the V-shape, the child could suffocate. Most producers of play yards chose to stop designing products that could form a V-shape when the side rails collapsed. The ASTM standard, however, was not revised to ban this design. According to a CPSC press release, originally issued on August 21, 1998, and last revised on May 10, 2004, 13 children died from suffocation in play yards where the side rail collapsed into a V-shape. (These fatalities are not included in the list of incident data referenced throughout this document because they pre-date the creation of the Early Warning System database [the database used to support the regulatory work here]). The press release also mentioned that more than 1.5 million play yards with this dangerous design flaw have been recalled in past years. The press release can be found at: <http://www.cpsc.gov/cpscpub/prerel/prhtml98/98156.html>.

Thus, after a review of the incidents, as well as an assessment of the locking and latching provisions, the false latch provision, and the new provisions meant to prevent a side collapse that results in a V-shape, we determined that these performance requirements and test methods are sufficient to address play yard side rail collapse issues. Thus, we are not proposing additional requirements at this time.

#### 6. Hazards Related to Accessories

Play yards often are sold with accessory items, such as changing tables and bassinets, which are meant to attach to the side rails of the play yard. One child was killed when a dangling strap from a changing table accessory formed

a loop inside the occupant area of the play yard, resulting in the child's strangulation. The play yard involved in the fatality prompted a recall of 425,000 play yards. That recall was issued on September 27, 2007. The CPSC press release for the recall can be viewed at: <http://www.cpsc.gov/cpscpub/prerel/prhtml07/07315.html>. Additionally, there were two injuries caused by broken or hazardous accessories.

In 2005, ASTM published ASTM F 406–05a, which included a section to address entrapment in accessories. The requirement and the accompanying test method were designed to ensure that accessories cannot create openings that can entrap a child's head. In 2008, ASTM published ASTM F 406–08, which included a provision that prohibits the use of an accessory of cords and straps that are capable of forming a loop that could strangle a child. The 2008 ASTM standard also added requirements for toy attachments intended to address incidents related to broken or detached components from music boxes, mirrors, and toy holders.

We believe that these requirements are sufficient to address these hazards, and we are not proposing additional requirements at this time.

#### 7. Assembly Errors

One fatality and two injuries are attributable to assembly errors. The death occurred when the mattress pad of the play yard was not completely secured to the floor of the play yard. The child suffocated in the pocket created between the unsecured pad and the floor of the product.

An assembly error was the cause of one very serious injury, which required a hospitalization and occurred when a child got his or her finger caught in the gap between the corner bracket and the side rail of the play yard as it was being assembled. The child suffered a severe laceration that required medical attention.

ASTM F 406–11 contains provisions requiring clear, easy-to-read assembly instructions. We believe that these requirements are sufficient to address these hazards, and we are not proposing additional requirements at this time.

#### 8. Broken or Detached Component Parts Leading to Structural Failures

Eight injuries, including bruises and cuts, were caused by broken or detached component parts, such as loose wheels or loose hardware, which led lead to the product becoming unstable or collapsing. Most incidents involved structural failure at the corner brackets of the play yard, resulting in rivets pulling through the corner brackets,

cracking of the plastic under the rivets' heads, and rivets and plastic pieces falling out of the corner bracket. This causes the play yard to collapse.

We believe corner post failures are caused by repeated loading of the side rails by one of the following methods:

- Caregivers inadvertently and repeatedly leaning on the side rails to reach the child or to use the bassinet or changing table accessory;
- Children who use the side rails for support while standing; and/or
- Accessories that are attached to and removed repeatedly from the side rails and corner posts.

In 2010, CPSC staff recommended a new performance requirement and test method to address this hazard, which was included for the first time in ASTM F 406–11. We believe that these requirements are sufficient to address these hazards, and we are not proposing additional requirements at this time.

#### 9. Mesh and Fabric Sides

Five injuries are related to the mesh or fabric sides of the play yard, such as stitching that unraveled, tears in the fabric, mesh holes that were too large and caught an infant's tooth, and mesh material that was too abrasive.

ASTM F 406–11 contains several performance requirements and test methods to address hazards caused by mesh or fabric. We believe that these requirements are sufficient to address the associated hazards, and we are not proposing additional requirements at this time.

#### 10. Mattress Pad or Play Yard Floor Hazards

Five injuries are attributable to problems with the mattress pad or floor of the play yard. Most of these incidents are related to mattress displacement, which occurs when children are able to pull up the mattress and become trapped between the floor of the play yard and the mattress. The mattress of most play yards is attached to the product by hook and loop straps, commonly referred to as "Velcro" straps. The other commonly used method is a "Velcro" patch.

ASTM F 406–11 includes a performance requirement and a test method that would require a play yard mattress to be able to withstand a certain amount of force before it can be lifted high enough to allow a child to become trapped between the mattress and the play yard floor. We believe that these requirements are sufficient to address these hazards, and we are not proposing additional requirements at this time.

### 11. Impact on Play Yard

There were four injuries that occurred in play yards because children were standing up in a play yard, lost their balance, and fell. ASTM F 406–11 does include product warnings that address the need to provide supervision, as necessary, when the child is in the product, particularly when the child is playing in the play yard. We believe that these requirements are sufficient, and we are not proposing additional requirements at this time.

### 12. Other Product-Related Concerns

Eight injuries were caused by other product-related problems, such as sharp surfaces. For the incidents where we could determine the problem's cause, we believe that the current requirements are sufficient to address these hazards, and we are not proposing additional requirements at this time.

### F. Description of Proposed Changes to ASTM Standard

The proposed rule would create a new part 1221 titled, "Safety Standard for Play Yards." The proposal would establish ASTM F 406–11, "Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards," as a consumer product safety standard, but with certain changes. We are proposing three changes to ASTM F 406–11, as it applies to play yards. The provisions of ASTM 406–11 that apply to non-full-size cribs have been excluded because those products are addressed in a separate rulemaking.

Two of the three proposed changes would clarify the existing provisions. Clarification will reduce potential misinterpretations that could result in improper testing. Thus, these clarifications will strengthen the standard and reduce the risk of injury by ensuring that play yard testing is performed properly.

The last proposed change would affect the test method for determining the strength of corner brackets. The method in ASTM F406–11 currently requires the tester to use a specific size clamp. The proposed change would allow the tester some flexibility, within a carefully selected range, in choosing the clamp to account for play yards with hinges that vary in size. By allowing the tester to choose the most appropriate clamp, we are strengthening the standard and reducing the risk of injury by ensuring that the appropriate testing equipment is used. Using the most appropriate testing equipment will ensure that the test is performed properly and that only the safest play yards will pass laboratory testing and enter the market.

We describe these proposed changes immediately below:

#### 1. Clarifying the Equipment Needed To Perform the Floor Strength Test (Section 8.12.1)

Currently, ASTM F 406–11 contains a performance standard to measure the floor strength of a play yard. Section 8.12.1 of ASTM F 406–11 specifies the use of a "Wood block, 6 by 6 in. (150 by 150 mm)." However, the test method in ASTM F 406–11 requires the use of two wood blocks to test the floor strength of the play yard. The proposed rule, therefore, would clarify that "2 Wood blocks" are needed.

#### 2. Clarifying the Floor Strength Test Method (Section 8.12.2.1)

The current text of the test method for measuring the floor strength of play yards states that the tester must "(p)lace a 50-lb (23-kg) and a 30-lb (14-kg) weight each onto a 6 by 6-in. (150 by 150-mm) wood block spaced 6 +/- 1/2 in. (150 +/- 13 mm) apart and maintain for 60s." The proposed rule would simplify this sentence by dividing it into three sentences by replacing it with the following: "Place the wood blocks 6 +/- 1/2 inch (150 mm +/- 13 mm) apart. Place 50-lb (23-kg) weight on one wood block and a 30 lb (24 kg) weight on the other wood block. Maintain for 60 s." This revision also clarifies that the wood blocks should be put into position before the weight is applied.

#### 3. The Shape and Area of the Clamping Surface for the "Top Rail to Corner Post Attachment Test" (Section 8.30.3.1)

Currently, ASTM F 406–11 contains a performance standard to address the structural failure of corner brackets of play yards. The test method directs the tester to use clamps to apply a twisting motion to the rail, which strains the corner brackets. The product will fail the test if, for example, there is cracking of the corner brackets. The current test method specifies the shape and area of the clamping surfaces (2 by 2 in.). The proposed rule would allow the tester to choose the shape and area of the clamping surface, within a specified range (1-square-inch to 4 square inches) to accommodate the variety of hinge latching devices in different models of play yards.

#### 4. Exclusion of ASTM F 406–11 Sections That Are Applicable to Non-Full-Size Cribs

The proposed rule would pertain only to play yards. In the **Federal Register** of December 28, 2010 (75 FR 81766), we issued a final rule on safety standards for non-full-size cribs. Thus, the

proposed rule would exclude the provisions of ASTM F406–11 that apply to non-full-size cribs. Specifically, the proposal would exclude sections 5.17, 5.19, 5.20, the entirety of section 6, section 8.1 through 8.10.5, and section 10.1.1.1 of ASTM F 406–11. In addition, for section 9.4.2.10 of ASTM F 406–11, the proposal would include only the first section, which is a labeling requirement meant to inform consumers that only the mattress or pad provided by the manufacturer should be used. The remainder of section 9.4.2.10 of ASTM F 406–11 is applicable to non-full-size cribs, and it would be excluded from the play yard standard.

### G. Effective Date

The Administrative Procedure Act ("APA") generally requires that the effective date of the rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). To allow time for play yards to come into compliance, we intend for the standard to become effective 6 months after the publication of the final rule in the **Federal Register**. We invite comment on how long it will take play yard manufacturers to come into compliance.

### H. Regulatory Flexibility Act

#### 1. Introduction

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–612, requires agencies to consider the impact of proposed rules on small entities, including small businesses. Section 603 of the RFA requires that we prepare an initial regulatory flexibility analysis and make it available to the public for comment when the notice of proposed rulemaking is published. The initial regulatory flexibility analysis must describe the impact of the proposed rule on small entities and identify any alternatives that may reduce the impact. Specifically, the initial regulatory flexibility analysis must contain:

- A description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply;
- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and legal basis for, the proposed rule;
- A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities subject to the requirements and the type of professional skills necessary for the preparation of reports or records; and

- An identification, to the extent possible, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule.

In addition, the initial regulatory flexibility analysis must contain a description of any significant alternatives to the proposed rule that would accomplish the stated objectives of the proposed rule and, at the same time, reduce the economic impact on small businesses.

## 2. The Market

Based on a 2005 survey conducted by American Baby Group titled, “2006 Baby Products Tracking Study” and Centers for Disease Control and Prevention birth data, we estimate that approximately 2.9 million play yards are sold in the United States each year. We estimate that there are at least 23 manufacturers or importers supplying play yards to the United States market. Eleven of these firms are domestic manufacturers, and 10 of these firms are domestic importers. Two of the firms are foreign importers.

Under the U.S. Small Business Administration (“SBA”) guidelines, a manufacturer of play yards is small if it has 500 or fewer employees, and an importer is considered small if it has 100 or fewer employees. Based on these guidelines, 10 domestic manufacturers and all 10 of the domestic importers known to supply play yards to the U.S. market are small businesses. The remaining entities include a large domestic manufacturer and two foreign importers. There may be additional unknown small manufacturers and importers operating in the U.S. market.

The Juvenile Product Manufacturers Association (“JPMA”) runs a voluntary certification program for juvenile products. Certification under the JPMA program is based on the ASTM voluntary play yard standard. Eleven of the 23 manufacturers or importers have been certified as compliant with the ASTM voluntary play yard standard by the JPMA. Three additional manufacturers or importers claim to comply with the ASTM voluntary play yard standard, but they do not participate in the JPMA certification program. In some cases, these three manufacturers or importers may provide test results on-line. Seven small domestic manufacturers supplying play yards to the U.S. market claim to comply with the ASTM voluntary play yard standard. Of the importers, six claim to comply with the ASTM voluntary play yard standard.

## 3. Impact of the Proposal on Small Business

Section 104 of the CPSIA requires the CPSC to promulgate standards for durable infant or toddler products, including play yards. The impact of this rulemaking, if finalized, could have a significant impact on several small manufacturers and importers whose play yards are not ASTM-compliant. The impact of the proposed standard on small manufacturers and importers will differ, based on whether their products are already in compliance with the ASTM voluntary play yard standard.

Of the 10 small domestic manufacturers, seven produce play yards that are certified as compliant by JPMA or claim to be in compliance with the voluntary standard. There will be little or no impact on these firms. The three noncompliant manufacturers may need to modify their product substantially to meet the ASTM standard. The costs associated with these modifications might include product redesign. The redesign could be minor if, for example, the manufacturer needs to use additional or different fabric or mesh. However, the changes could be more significant if a redesign of the product frame is required. The impact of these costs may be mitigated if they are treated as new product expenses and amortized.

Of the 10 small domestic importers, six import play yards that are certified as compliant by JPMA or claim to be in compliance with the voluntary standard. The four noncompliant importers may need to find an alternative source if their existing supplier does not modify their play yards to comply with the standard. However, the impact of that decision could be mitigated by replacing the noncompliant product with a compliant product made by a different manufacturer. Deciding to import an alternative product would be a reasonable and realistic way to offset any lost revenue.

Two of the noncompliant importers import products from a specific foreign country. For these entities, finding an alternative supply source may not be an option. However, they could stop importing noncompliant play yards and replace them with other juvenile products.

The information in this section assumes that three domestic manufacturers and four domestic importers do not comply with the voluntary standard. This may not be the case. We have identified many cases where products that are not certified by JPMA, or do not otherwise claim

compliance with the voluntary standard, actually meet the relevant standard. To the extent that this is true, the impact of the proposed rule will be less significant than described.

## 4. Alternatives

For the 13 small domestic entities that already comply with the voluntary standard, there are few or no costs associated with the three minor changes being proposed. For the seven small domestic entities that are not compliant (or where it is unknown if they are compliant) the adoption of the voluntary standard as a mandatory consumer product safety standard could result in substantial costs.

For these entities, setting an effective date longer than 6 months could reduce the impact. This would allow small manufacturers additional time to make necessary changes to their product, and it would allow small importers to find alternative sources. It would also allow entities to spread costs over a longer period of time.

## 5. Conclusion of Initial Regulatory Flexibility Analysis

It is possible that the proposed standard, if finalized, could have a significant impact on some small businesses whose play yards are not ASTM-compliant. The extent of these costs is unknown. For manufacturers of noncompliant play yards, product redesign might be necessary, and it is possible that the costs could be large for some entities. Importers may need to find alternative sources of play yards. Additionally, all manufacturers and importers will eventually be subject to third party testing and certification requirements, as discussed in section L below.

We invite comments describing the possible impact of this rule on manufacturers and importers, as well as comments containing other information describing how this rule will affect small businesses.

## I. Environmental Considerations

The Commission’s regulations address whether we are required to prepare an environmental assessment or an environmental impact statement. If our rule has “little or no potential for affecting the human environment” it will be categorically exempted from this requirement. 16 CFR 1021.5(c)(1). The proposed rule falls within the categorical exemption.

## J. Paperwork Reduction Act

This proposed rule contains information collection requirements that are subject to public comment and



review by the Office of Management and Budget (“OMB”) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). In this document, pursuant to 44 U.S.C. 3507(a)(1)(D), we set forth:

- A title for the collection of information;
- A summary of the collection of information;
- A brief description of the need for the information and the proposed use of the information;

- A description of the likely respondents and proposed frequency of response to the collection of information;

- An estimate of the burden that shall result from the collection of information; and
- Notice that comments may be submitted to the OMB.

*Title:* Safety Standard for Play Yards.

*Description:* The proposed rule would require each play yard to comply with ASTM F 406–11, Standard Consumer

Safety Specification for Non-Full-Size Baby Cribs/Play Yards. Sections 9 and 10 of ASTM F 406–11 contain requirements for marking, labeling, and instructional literature. These requirements fall within the definition of “collection of information,” as defined in 44 U.S.C. 3502(3).

*Description of Respondents:* Persons who manufacture or import play yards.

*Estimated Burden:* We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

| 16 CFR Section  | Number of respondents | Frequency of responses | Total annual responses | Hours per response | Total burden hours |
|-----------------|-----------------------|------------------------|------------------------|--------------------|--------------------|
| 1221.2(a) ..... | 9                     | 3                      | 27                     | 1                  | 27                 |

*Our estimates are based on the following:*

Section 9.1.1.1 of ASTM F 406–11 requires that the name and the place of business (city, state, mailing address, including zip code, or telephone number) of the manufacturer, distributor, or seller be marked clearly and legibly on each product and its retail package. Section 9.1.1.2 of ASTM F 406–11 requires a code mark or other means that identifies the date (month and year, as a minimum) of manufacture.

There are 23 known entities supplying play yards to the U.S. market. Fourteen entities produce labels that comply with the standard. Thus, there would be no additional burden on these entities. Under the OMB’s regulations (5 CFR 1320.3(b)(2)), the time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the “normal course of their activities” are excluded from a burden estimate, where an agency demonstrates that the disclosure activities required to comply are “usual and customary.” Therefore, because these 14 entities already produce labels that comply with the standard, we tentatively estimate that there are no burden hours associated with Sections 9.1.1.1 and 9.1.1.2 of ASTM F 406–11 because any burden associated with supplying these labels would be “usual and customary” and not within the definition of “burden” under the OMB’s regulations.

We assume that the remaining nine entities use labels on their products and their packaging but might need to modify their existing labels. The estimated time required to make these modifications is about 1 hour per model. Each entity supplies an average of three different models of play yards;

therefore, the estimated burden hours associated with labels is 1 hour per model  $\times$  9 entities  $\times$  3 models per entity = 27 hours.

We estimate that the hourly compensation for the time required to create and update labels is \$27.98. This is based on data from March 2011, provided by the U.S. Bureau of Labor Statistics. The information is available at: <http://www.bls.gov/news.release/pdf/ecec/pdf> in Table 9, under the heading “all workers, goods-producing industries” and the subheading “sales and office.” Therefore, the estimated annual cost to industry associated with the proposed labeling requirements is \$755.46 (\$27.98 per hour  $\times$  27 hours = \$755.46).

Section 10.1 of ASTM F 406–11 requires instructions to be supplied with the product. Play yards are products that generally require assembly, and products sold without such information would not be able to compete successfully with products supplying this information. Under the OMB’s regulations (5 CFR 1320.3(b)(2)), the time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the “normal course of their activities” are excluded from a burden estimate, where an agency demonstrates that the disclosure activities required to comply are “usual and customary.” Therefore, because we are unaware of play yards that generally require some installation, but lack any instructions to the user about such installation, we tentatively estimate that there are no burden hours associated with section 10.1 of ASTM F 406–11 because any burden associated with supplying instructions with play yards would be “usual and customary” and not within

the definition of “burden” under the OMB’s regulations.

Based on this analysis, the proposed standard for play yards would impose a burden to industry of 27 hours at a cost of \$755.46 annually.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted the information collection requirements of this rule to the OMB for review. Interested persons are requested to submit comments regarding information collection by October 20, 2011, to the Office of Information and Regulatory Affairs, OMB (see the **ADDRESSES** section at the beginning of this notice).

Pursuant to 44 U.S.C. 3506(c)(2)(A), we invite comments on:

- Whether the collection of information is necessary for the proper performance of the CPSC’s functions, including whether the information will have practical utility;
- The accuracy of the CPSC’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, utility, and clarity of the information to be collected;
- Ways to reduce the burden of the collection of information on respondents, including the use of automated collection techniques, when appropriate, and other forms of information technology; and
- the estimated burden hours associated with label modification, including any alternative estimates.

#### K. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may 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. Section 104(b) of the CPSIA refers to the rules to be issued under that section as “consumer product safety rules,” thus implying that the preemptive effect of section 26(a) of the CPSA would apply. Therefore, a rule issued under section 104 of the CPSIA will invoke the preemptive effect of section 26(a) of the CPSA when it becomes effective.

#### L. Certification

Section 14(a) of the CPSA imposes the requirement that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, must be certified as complying with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). 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 discussed in section A of this preamble, section 104(b)(1)(B) of the CPSIA refers to standards issued under this section as “consumer product safety standards.” Similarly, such standards also would be subject to section 14 of the CPSA. Therefore, any such standard would be considered a “consumer product safety rule” to which products subject to the rule must be certified.

Because play yards are children’s products, they must be tested by a third party conformity assessment body whose accreditation is accepted by the Commission. In the future, the Commission will issue a notice of requirements to explain how laboratories can become accredited as third party conformity assessment bodies to test play yards to the new safety standard. (Play yards also must comply with all other applicable CPSC requirements, such as the lead content and phthalate content requirements in section 101 and 108 of CPSIA respectively; the tracking label requirement in section 14(a)(5) of the CPSA; and the consumer registration form requirements in section 104 of the CPSIA.)

#### M. Request for Comments

This proposed rule begins a rulemaking proceeding under section 104(b) of the CPSIA to issue a consumer product safety standard for play yards. We invite all interested persons to submit comments on any aspect of the proposed rule. Comments should be submitted in accordance with the instructions in the **ADDRESSES** section at the beginning of this notice.

#### List of Subjects in 16 CFR Part 1221

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

Therefore, the Commission proposes to amend Title 16 of the Code of Federal Regulations by adding a new part 1221 to read as follows:

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

Sec.

1221.1 Scope.

1221.2 Requirements for play yards.

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

##### § 1221.1 Scope.

This part establishes a consumer product safety standard for play yards.

##### § 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 F 406–11, Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards, approved on May 15, 2011. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; <http://www.astm.org/cpsc.htm>. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

(b) Comply with the ASTM F 406–11 standard with the following additions or exclusions:

(1) Do not comply with section 5.17 of ASTM F 406–11.

(2) Do not comply with section 5.19 of ASTM F 406–11.

(3) Do not comply with section 5.20 of ASTM F 406–11.

(4) Do not comply with section 6, Performance Requirements for Rigid Sided Products, of ASTM F 406–11, in its entirety.

(5) Do not comply with sections 8.1 through 8.10.5 of ASTM F 406–11.

(6) Instead of complying with section 8.12.1 of ASTM F 406–11, comply with the following:

(i) 8.12.1 *Equipment* – 2 Wood blocks, 6 by 6 in. (150 by 150 mm).

(7) Instead of complying with section 8.12.2.1 of ASTM F 406–11, comply with the following:

(i) 8.12.2.1 Remove cushions that are not part of the floor or mattress support. Place the wood blocks 6 +/- 1/2 inch (150 mm +/- 13 mm) apart. Place 50-lb (23-kg) weight on one wood block and a 30-lb (14 kg) weight on the other wood block. Maintain for 60 s. Perform the test in those locations deemed to be the weakest or the most likely to fail. Remove the load and check for structural failure.

(8) Instead of complying with section 8.30.3.1 of ASTM F 406–11, comply with the following:

(i) 8.30.3.1 Mount a rigid and substantially horizontal moment arm weighing less than 5 lb (2.2 kg) to the hinge/latching device at the longitudinal center of the top rail through two clamping surfaces, each 1 in<sup>2</sup>–4 in<sup>2</sup> (6.5 cm<sup>2</sup>–26 cm<sup>2</sup>) designed to firmly grasp the hinge latching device. The moment arm shall be at least 24 in (603 mm) long and extend towards the outside of the play yard.

(9) Instead of complying with section 9.4.2.10 of ASTM F 406–11, comply with only 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.

(10) Do not comply with section 10.1.1.1 of ASTM F 406–11.

Dated: September 15, 2011.

**Todd A. Stevenson,**

Secretary, Consumer Product Safety Commission.

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