

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

2013 MAY 30 PM 3:14

STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: West Virginia Department of Health and Human Resources TITLE NUMBER: 78

RULE TYPE: Legislative CITE AUTHORITY: 49-2B-4

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Child Care Centers Licensing

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 1, 2013 AT 12 noon ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Beth Hall Chambers, Program Manager

WV DHHR - Division of Early Care and Education  
350 Capitol Street

Room B-18  
Charleston, WV 25301

or: beth.h.chambers@wv.gov

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Agency: **HEALTH AND HUMAN RESOURCES**  
 CBD Number: \_\_\_\_\_ Version: \_\_\_\_\_ Bill Number: \_\_\_\_\_  
 Resolution Number: \_\_\_\_\_  
 CBD Subject: **Child Care Center Licensing**

**FUND (S)**

0403-Div of Human Services General Administration Fund, 8722 -Cons Federal Funds Div Human Services Gen Admin Fund

**Sources of Revenue**

General Fund     x     Special Fund \_\_\_\_\_ Other Fund (Specify) \_\_\_\_\_ federal \_\_\_\_\_  
**Does the proposed legislation create:**  
 New Program \_\_\_\_\_ New Fund \_\_\_\_\_ Neither \_\_\_\_\_

**Fiscal Note Summary**

**Explain in a clear and concise manner what effect this measure will have on costs and revenues of state government.**

The proposed rule includes revisions to be compatible with WV code paragraph 49-2b specifically regarding emergency plans and to be compatible with a revision of CFR 16, parts 1219,1220, and 1500 in the Federal Register, Volume 75 Number 248 by the Consumer Product Safety Commission.

The proposed rule will have no fiscal impact on state revenues or expenditures. Requirements in the rule may have fiscal impacts on child care centers which have noncompliant cribs, noncompliant diaper changing surfaces or equipment not compliant with Consumer Product Safety Commission's guidelines.

**Fiscal Note Detail**

**Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.**

Effect of Proposal	Fiscal Year		
	2013 Increase/Decrease (use "-" )	2014 Increase/Decrease (use "-" )	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0	0	0
<b>Personal Services</b>			
<b>Current Expenses</b>			
<b>Repairs and Alterations</b>			
<b>Buildings</b>			
<b>Equipment</b>			
<b>Land</b>			
<b>Other Assets</b>			
<b>2. Estimated Total Revenues</b>			

**3. Explanation of above estimates (including long-range effect):**

Please explain increases and decreases in personal services, current expenses, etc., including assumptions and data source and delineation between start-up and ongoing costs. Please also include a long-range schedule of costs and revenues if fiscal impact is expected to vary in future years.

[Empty box for explanation of estimates]

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

[Empty box for identifying areas of vagueness or technical defects]

Date

5/30/13

Agency

Department of Health and Human Resources

Authorized Representative

[Signature]

Rocco S. Fucito  
Cabinet Secretary

**78CSR1**

**TITLE 78  
LEGISLATIVE RULES  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**SERIES 1  
CHILD CARE CENTERS LICENSING**

**Statement of Circumstances**

The rule is being revised for the following reasons:

- To be compatible to WV Code §49-2B, specifically regarding emergency plans
- To be compatible with a revision of CFR 16, Parts 1219, 1220, and 1500 in the Federal Register, Volume 75, Number 248 by the Consumer Product Safety Commission
- To correct errors
- To clarify certain requirements and update references
- To require written accident and incident reports
- Incorporating safe sleep in staff orientation
- Easing requirement for centers experiencing turnover in infant/toddler staff
- To include recommendations regarding obesity prevention, specifically with nutrition and physical activity
- Phasing out of certain infant/toddler equipment and applying requirement to new diaper changing surfaces
- To incorporate recommendations made by nurse health consultants on medication and care plans
- To clarify all transportation requires appropriate passenger restraints

**Brief Summary for Proposed Revision to Rule**

Significant changes include:

- Clarifying that information about liability insurance, Workers Compensation and Unemployment Compensation insurance is included in the information provided to parents or staff
- Requiring that protective service record checks be conducted every five years
- Reducing the number of hours an infant/toddler mentor must be on site when one is required
- Requiring a long term substitute must meet minimum qualifications so that the he/she is not required to work under continuous supervision
- Phasing out the use of multiple bucket-seat tables
- Requiring cribs to meet federal standards and eliminating the use of playpens
- Clarifying surfacing requirements for indoor climbing equipment and reducing the amount of use zone necessary for climbing equipment in an infant/toddler area

**78CSR1**

**TITLE 78  
LEGISLATIVE RULES  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**SERIES 1  
CHILD CARE CENTERS LICENSING**

- Strengthening language regarding the provision of active play, both indoor and outdoor, for all ages of children
- Simplifying and strengthening language regarding the use of media viewed on a screen
- Clarifying when a medical plan of care is needed
- Clarifying the storage of medication and requiring a health provider's written instruction for the use of gels and liquids with benzocaine
- Strengthening language that ties infant nutrition standards to the Child and Adult Care Food Program standards while eliminating redundancy of the requirements with material referenced in the Appendix
- Requiring new diaper changing surfaces to be located in the immediate area of a hand washing sink
- Including recommendations to strengthen emergency and disaster plans, specifically regarding second relocation site and plan for reunification
- Requiring emergency and disaster evacuation plans to be filed with the county Director of the Office of Emergency Services
- Clarifying that outdoor equipment and use zone surfacing must comply with the Consumer Product Safety Commission's guidelines, eliminating specific language from the rule and deleting the related appendix

TITLE 78  
LEGISLATIVE RULES  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
DIVISION OF HUMAN SERVICES

2009 MAY 30 PM 3:14

SERIES 1  
CHILD CARE CENTERS LICENSING

DEPT. OF STATE

§78-1-1. General.

1.1. Scope. -- This rule ~~established~~ establishes standards and procedures for the licensure of child care centers under the provisions of West Virginia Code §49-2B-1, et seq., and related federal and state code. This rule should be read in conjunction with the provisions of West Virginia Code §49-2B-1, et seq. The West Virginia Code is available in public libraries and on the Legislature's web page, <http://www.legis.state.wv.us/>.

1.2. Authority. - West Virginia Code §49-2B-4.

1.3. Filing Date. - ~~May 15, 2009~~

1.4. Effective Date. - ~~April 9, 2009~~

1.5. Purpose. - This rule governs the regulation of child care centers in West Virginia. This rule amends 78 C.S.R. 1, effective April 9, 2009.

§78-1-2. Application and Enforcement.

2.1. Application. This rule applies to any facility maintained by the state or any county or municipality of the state, or any agency or facility operated by an individual, firm, corporation, association or organization, public or private, for the care of thirteen (13) or more children for child care services in any setting, if the facility is open for more than thirty (30) days per year per child. any individual, firm, corporation, association or organization, public or private, that operates child care centers for the care of thirteen (13) or more children on a nonresidential basis.

2.2. Enforcement. This rule is enforced by the Secretary of the Department of Health and Human Resources.

§78-1-3. Definitions.

3.1. ~~Active Media. - Materials that the child can control while participating in an activity such as taking pictures with cameras, making audio or video tapes, playing video games or working on a computer.~~

3.21. Adequate Supervision. -- The observation, oversight, and guidance of the individual child or groups of children, by the staff member taking responsibility for the ongoing activity of each child or group of children so that the staff member is close enough to intervene, if necessary, to protect the child from harm. Adequate supervision requires the staff member's physical presence, knowledge of the child's program of activities, individual needs, habits, interests and special

problems, if any, and the acceptance of accountability for the child's or groups of children's care.

3.32. Approved Training. -- Training or professional development that has been approved by the Secretary.

3.34. Approved Training Source. -- A training provider that has been approved by the Secretary.

3.45. Authorization and Release for Protective Services Record Check. -- A document provided by the Department, signed by a center's prospective staff member or employee, granting permission to conduct a search of Department records related to his or her involvement in child or adult abuse and neglect allegations, or other investigations documented by the Secretary.

3.56. Certificate of Approval. -- A written certificate issued by the Secretary stating that a child care center operated by the state meets requirements in accordance with the terms and conditions of the certificate and this rule.

3.67. CDA (Child Development Associate) Credential. -- The national early childhood credential administered by the Council for Early Childhood Professional Recognition.

3.78. Child. -- For the purpose of this rule, an individual who is less than 13 years of age.

3.89. Child Abuse and Neglect. -- Physical injury, mental or emotional injury, sexual abuse, sexual exploitation, the sale or the attempted sale, or negligent treatment or maltreatment of a child by a parent, guardian or custodian responsible for the child's welfare, under circumstances which harm or threaten the health and welfare of the child.

3.910. Child Care Center. -- A facility maintained by the state or any county or municipality thereof, or any agency or facility operated by an individual, firm, corporation, association or organization, public or private, for the care of thirteen (13) or more children for child care services in any setting, if the facility is open for more than 30 days per year per child, except:

3.109.a. A kindergarten through grade twelve education program, that is operated by a public school or that is exempt from the compulsory school attendance law by the state department of education;

3.109.b. A West Virginia Pre-K classroom operated by a county Board of Education in a public school setting;

3.109.c. Any other kindergarten, preschool or school program that operates with sessions not exceeding four (4) hours per day for any child;

3.109.d. An individual or facility that offers occasional care of children for brief periods while parents are shopping, engaging in recreational activities, attending religious services or engaging in other business or personal affairs;

3.109.e. Hospitals or other medical facilities that are primarily used for temporary care of children for treatment, convalescence, or testing; and

3.109.f. Persons providing care solely for children related to them.

3.110. Continuous Supervision. -- The availability and responsibility of a staff member to assist with child care at all times.

3.121. Core Knowledge and Core Competencies of Early Childhood Educators. -- The sets of observable skills and knowledge that represent common standards of satisfactory practice in the early childhood field in the state of West Virginia.

3.1312. Criminal Identification Bureau Record (CIB). -- The State Police documentation, as a result of a fingerprinting process, that identifies a person who has been arrested or convicted of criminal behavior.

3.1413. Day Camp. -- A school-age program that is operated when school is not in session, for no more than twelve (12) hours per day and is not primarily outdoor based.

3.1514. Designated Activity Area. -- Room divisions within the center that define limits and reduce distractions. These divisions shall include a temporary wall or physical barrier that is at least three (3) feet in height.

3.1615. Direct Supervision. -- When a qualified staff member is physically present in the same room, area, or vehicle with the child or group of children, visually monitoring the interactions of the children.

3.1716. Disinfect. -- Eliminate virtually all germs from an inanimate surface through the use of chemicals or heat.

3.1817. Driver. -- A staff member who transports center children more than three (3) times per week or a staff member whose job function is to transport children served by the child care center.

3.1918. Early Care and Education Field. -- An area of study that relates to child development, early childhood from birth to eight (8) years of age, child and family studies, early childhood special education or other early childhood fields.

3.2019. Evening Care. -- Care provided after seven o'clock in the evening to a child who does not stay overnight.

3.2120. Field Trip. -- An excursion or special outing away from the site where program activities regularly occur.

3.2221. Full-time Director. -- A director who is present at the center for a minimum of one-half (½) of the hours the center is in operation during a seven day period, or thirty-five (35) hours during the same seven day period, whichever is less.

3.2322. GED. -- A certificate verifying passage of a test of General Educational Development recognized as equivalent to a high school diploma.

3.2423. Governing Body. -- The individual owner of the center or the group of persons that have the administrative control and legal authority to set policy and oversee operations of a child care center.

3.2524. Group. -- A specific number of children, distinct from the larger population of children, who regularly meet together and interact with each other and with one (1) or more specific staff members, in an assigned space. The size of the group and required number of staff are determined by the staff:child ratio set out in this rule.

3.25. Immediate Area. -- Within reach, easily accessible and in the same room.

3.26 Infant. -- A child between the age of six (6) weeks and the age of ambulation, usually through twelve (12) months.

3.2627. Level I Field Trip. -- An excursion or outing to a destination that is thirty (30) minutes or less from the center or from the site where program activities regularly occur.

3.2728. Level I Water Activity. -- Any activity occurring in or near water eighteen (18) inches deep or less.

3.2829. Level II Field Trip. -- An excursion or outing to a destination that is more than thirty (30) minutes from the center or from the site where program activities regularly occur.

3.2930. Level II Water Activity. -- Any activity occurring in or near water with a depth of more than eighteen (18) inches.

3.301. License. -- A written certificate issued by the Secretary authorizing a person, corporation, partnership, voluntary association, municipality, county, or any agency thereof, to operate a child care center in accordance with the terms and conditions of the license and this rule.

3.302. Licensed Capacity. -- The maximum number of children permitted in a center.

3.303. Licensed Health Care Provider. -- For the purpose of this rule, an individual who holds a license to practice in West Virginia as a physician, Doctor of Medicine or (MD), Doctor of Osteopathy (DO) or, physician's assistant (PA), chiropractor or nurse practitioner.

3.334. Licensee. -- The holder of a license or certificate of approval obtained from the Secretary to operate a child care center in West Virginia.

3.35. Medical Plan of Care. -- A document that provides specific health care information, including any medications, procedures, precautions or adaptations to diet or environment that may be needed to care for a child with chronic medical conditions or special health care needs. Medical plans of care also describe signs and symptoms of

impending illness and outline the response needed to those signs and symptoms.

3.3436. Medication Error. -- An error caused by either:

3.3436.a. Failure to administer a dose of medication; or

3.3436.b. The administration of a medication:

3.3436.b.1. To the incorrect child;

3.3436.b.2. In the incorrect dosage;

3.3436.b.3. At the incorrect time, other than within thirty (30) minutes before or after the scheduled time;

3.3436.b.4. In the incorrect form;

3.3436.b.5. By the incorrect method or route; or

3.3436.b.6. That is incorrect itself.

3.37. Moderate to Vigorous Physical Activity. -- Levels of activity that are conducted at varying intensities. Moderate physical activity is faster than a slow walk, but still allows children to talk easily. It increases the heart rate and breathing rate. Vigorous physical activity is rhythmic, repetitive physical movement that uses large muscle groups, causing children to breathe rapidly and only enabling them to speak in short phrases. Typically children's heart rates are substantially increased and they are likely to be sweating. Toddlers and preschoolers generally accumulate vigorous physical activity over the course of the day in very short bursts, usually fifteen (15) to thirty (30) seconds.

3.38. Multifunction school activity bus. - Any vehicle operated by the center that can carry eleven or more passengers meeting the federal motor safety standards applicable to school buses with some exclusions regarding traffic control devices.

3.3539. Night Time Care. -- Care provided to the child who stays during nighttime hours or overnight, which may include the time usually designated as sleep time.

3.3740. Out-of-school Time Program. -- A program that offers activities to children before and after school, on school holidays, when school is closed because of an emergency, and on school calendar days set aside for teacher activities.

3.3841. Parent. -- The biological or adoptive parent or parents of a child, a person or persons, or the Department, who has legal custody of a child, or the lawful guardian of a child.

~~3.39. Passive Media. -- Materials that the child cannot control while participating in an activity such as watching television, films and video tapes.~~

3.4042. Person-in-Charge. -- The qualified staff member with responsibility for the daily operation of the center at any specific time.

3.4143. Plan of Correction. -- A written agreement between the Department and a center, approved prior to implementation, that outlines the steps the center shall take to correct deficiencies identified by the Secretary through an inspection or the investigation of a complaint.

3.4244. Practicum Contact Hour. -- A period of supervised experience recognized for credit toward a credential by an educational institution or similar organization.

3.45 Professional Development. -- A continuum of learning and support opportunities designed to prepare individuals for work with and on behalf of young children and their families, as well as opportunities that provide ongoing experiences to enhance this work. Professional development programs encompass both education and training programs.

3.4346. Qualified Staff. -- A staff member who has a high school diploma or GED and meets the requirements under this rule for the position of director, assistant director, lead teacher, teacher, assistant teacher, or teaching assistant.

3.4447. Registered Apprenticeship Certificate for Child Development Specialist. -- A nationally recognized credential awarded by the United States Department of Labor for the successful completion of a combination of classroom and on-the-job training.

3.4548. Related Field. -- As approved by the Secretary, an area of study that includes credit hours may be associated with the early child care and education field, including elementary education, social work, recreation and leisure studies, nursing, counseling, psychology, and administration related to the care and education of the child from birth through twelve (12) years of age.

3.4649. Relevant Work Experience. -- Work that is directly with or on behalf of children from birth through twelve (12) years of age, and their families in areas of supervision, leadership or management; program coordination, development or regulation; training, instruction or technical assistance; or evaluation or research. Private or family child care is considered relevant work experience only if the care was regulated care and can be verified.

3.4750. Responsible Person. -- A parent, center staff member, or other person designated by the parent in written information, to drop off or pick up the child.

3.4851. Sanitize. -- Destroy pathogens on food contact surfaces, such as utensils, cups and glasses, through the use of processes involving chemicals or heat that do not pose a threat to food safety.

3.4952. Secretary. -- The Secretary of the Department of Health and Human Resources or his or her designee.

3.5053. School -Age Child. -- A person who is between five (5) and thirteen (13) years of age and is eligible to attend school or is enrolled in grades K-12.

3.5154. School-Age Program. -- Services provided by a center for the care and supervision for school-age children. These programs include summer recreation camps, day camps and out-of-school time programs.

3.55 Screen Media. -- Forms of communication or entertainment viewed on a screen such as televisions, computer monitors, digital gaming equipment, etc.

3.5156. Serious Occurrence. -- An event that either harms or could potentially harm a child or compromises the operation of the center. It may include:

3.5156.a. A child who dies while in care;

3.5156.b. A child who is injured while in care to the extent that the child requires medical care beyond immediate first aid;

3.5156.c. A diagnosed reportable communicable disease that is introduced in the center;

3.5156.d. A medication error that occurs;

3.5156.e. A legal action involving or affecting the operation of the center;

3.5156.f. A serious violation of a licensing requirement, such as use of physical punishment or failure to supervise; or

3.5256.g. A report given to Child Protective Services of suspected abuse or neglect of a child at the center.

3.5257. Special Activities. -- Potentially dangerous organized recreation that require special technical skills, safety equipment, safety regulations, or involve fire or heat-producing equipment. These include, but are not limited to, Level II water activities, archery, gymnastics, karate, horseback riding, bicycling, rock climbing, spelunking, hiking and cookouts.

3.5358. Staff Member. -- Any center personnel, including substitutes and student interns, whether or not he or she receives compensation.

3.5459. Staff:Child Ratio. -- A relationship which describes the number of children that one (1) qualified staff member or substitute is permitted to supervise. The number varies according to the ages and developmental levels of the children and the types of activities in which they are participating.

3.5560. Statement of Criminal Record. -- A Department provided document signed by a person of his or her arrests or convictions and the authorization for the Department to do a search for a criminal record and release the findings to the center.

3.5661. Substitute. -- An individual who is present at the center to maintain the staff:child ratio when a qualified staff member is absent.

3.5762. Summer Recreation Camp. -- A school age program that operates during the summer months, whose program orientation is primarily

recreational, and of which eighty percent (80%) of the program occurs outdoors.

3.5863. Support Staff. -- Staff who carry out duties not regularly involving the supervision of children.

3.5964. Teen Aide. -- An individual who is between thirteen (13) and eighteen (18) years of age who works with or without compensation under the direct supervision of a qualified staff member who has a minimum of the qualifications of an assistant director or lead teacher.

3.6065. Time-Out. -- A positive behavioral support strategy to help children change their undesired behavior. ~~Time-out-Period.~~ A The time-out period is the length of time when the child is removed from regular activities as a consequence for specific behavior.

3.66 Toddler -- A child between ambulation to twenty-four (24) months of age.

3.6167. Training. -- ~~Classroom instruction and programs of self-instruction including distance education provided through a variety of media, seminars, workshops, conferences, on-the-job training, and mentoring~~ that is designed to impart knowledge or skills.

3.6268. Type I Center. -- A child care center with a capacity of thirty (30) or fewer children.

3.6369. Type II Center. -- A child care center with a capacity of thirty-one (31) to sixty (60) children.

3.6470. Type III Center. -- A child care center with a capacity of sixty-one (61) or more children.

3.6571. Universal Precautions. -- Procedures to be followed for infection control in all situations to prevent the transmission of blood borne germs that may be spread through blood or body fluids that might contain blood.

3.6672. Use Zone. -- The surface under and around a piece of equipment onto which the child falling from or exiting from that the equipment is expected to land.

3.6773. Variance. -- A written declaration by the Secretary that a certain requirement of this rule may be satisfied in a manner different from that set forth in the rule.

3.6874. Volunteer. -- An individual who provides a direct service to the center for two (2) or more hours a week on a scheduled basis, without compensation, and is eighteen (18) years of age or older; provided, that a parent of an enrolled child working directly with his or her own child is not considered a volunteer under this rule.

3.6975. Waiver. -- A written declaration by the Secretary that a certain requirement of this rule may be treated as inapplicable in a particular circumstance.

3.7076. West Virginia Training Certificate in Early Care and Education (WVTCECE). -- A certificate for completing one hundred twenty (120) hours of training in the core competencies of early childhood education awarded through the WV STARS Professional Development System.

3.77. WV STARS. -- West Virginia State Training and Registry System.

**§78-1-4. Licensing Information and Provisions.**

4.1. Requirements for a License or Certificate of Approval.

4.1.a. Before establishing or operating a child care center:

4.1.a.1. A center operator and each member of the governing body shall verify in writing that he or she has read this rule and is responsible for compliance with its requirements;

4.1.a.2. A child care center, other than one operated by the state, shall obtain a license from the Secretary; and

4.1.a.3. A child care center operated by the state shall obtain a certificate of approval from the Secretary.

4.1.b. A license or certificate of approval is valid for up to two (2) years from the date of issuance, as determined by the Secretary, unless revoked or modified to provisional status.

4.1.c. A license or certificate of approval is valid only for the center and its location named in the application and is not transferable.

4.1.d. A licensee shall post the license or certificate of approval in a conspicuous place in the center.

4.1.e. If the ownership of a center changes, the new owner shall apply for a license and shall not operate until an initial license is issued.

4.1.f. Before the location of a center changes, the licensee shall:

4.1.f.1. Inform the Secretary of the planned change at least sixty (60) days prior to the relocation; and

4.1.f.2. Apply for a new license or certificate of approval and shall not operate at the new location until an initial license or certificate of approval is issued.

4.2. Application for a License or Certificate of Approval.

4.2.a. For each center to be licensed or approved, an applicant shall submit a completed application as prescribed by the Secretary.

4.2.b. An incomplete application shall be considered withdrawn if not completed within thirty (30) days of submission.

4.2.b-c. A licensee shall submit an application for renewal of a license or certificate of approval to the Secretary not less than sixty (60) days prior to the expiration of the current license.

4.3. Waivers and Variances.

4.3.a. A center shall comply with the provisions of West Virginia Code §49-2B-1 et seq., the requirements of this rule, terms of its license or certificate of approval and any plan of correction, unless a written waiver or variance has been granted by the Secretary. A center may not obtain a waiver of the requirements of this rule on the basis of the inability to achieve compliance with the rule.

4.3.b. A request for a variance or waiver shall be submitted to the Secretary in writing. The request shall include:

4.3.b.1. The specific requirement of this rule requested to be waived or varied; and

4.3.b.2. The reason or reasons for seeking a waiver or variance.

4.3.c. A waiver or variance of a specific provision of this rule may be granted by the Secretary only if the following criteria are met:

4.3.c.1. The center has documented and demonstrated that the provision of the rule is inapplicable in a particular circumstance, or that the center complies with the intent of the provision in the rule in a manner not permitted by the rule;

4.3.c.2. The health, safety, and well-being of a child is not endangered; and

4.3.c.3. The waiver or variance agreement contains provisions for a regular review of the waiver or variance.

4.3.d. The waiver or variance agreement is subject to immediate cancellation if a center fails to comply with the stated terms of this rule.

4.4. Amendment of a License or Certificate of Approval.

4.4.a. A current licensee shall apply for an amendment of a license or certificate of approval when:

4.4.a.1. Implementing an additional program or changing a program described in the statement of purpose; or

4.4.a.2. Seeking to change the licensed capacity of the center.

4.4.b. In addition to a completed application requesting an amendment, a licensee shall submit to the Secretary in writing any of the following that apply to the change:

4.4.b.1. A copy of the center's revised statement of purpose as described in Subsection 6.2 of this rule;

4.4.b.2. The qualifications of the director and staff members;

4.4.b.3. A copy of the center's revised plan for meeting program requirements and staff:child ratios;

4.4.b.4. A floor plan reflecting changes to the structure being used by a child care center;

4.4.b.5. A positive inspection report from the State Fire Marshal following any changes to the center's operation and premises;

4.4.b.6. A positive inspection from the county Department of Health, including the Department of Health Child Care Center Inspection Report and the Department of Health Inspection Report for Food Service Establishments;

4.4.b.7. A Written menus review developed by a dietician or nutritionist and certificate of approval as evidenced by a copy of the Child Care Center Menu Checklist or a written statement, or proof of participation in from the Child and Adult Care Food Program administered by the Office of Child Nutrition in the Department of Education; and

4.4.b.8. A Pest Management Report as required by the West Virginia Department of Agriculture.

4.5. The Secretary may issue the following types of licenses or approvals:

4.5.a. An initial six month license or certificate of approval for applicants establishing a new service;

4.5.b. A regular or renewal license for a period of up to two (2) years for a licensee in compliance with this rule;

4.5.c. A provisional license for a licensee not in full compliance with this rule, but does not pose a significant risk to children. ~~A provisional license expires six (6) months from the date of issuance, and may not be consecutively reissued.~~

4.6. Conditions of a License or Certificate of Approval. As a condition of issuing a license or a certificate of approval the Secretary may:

4.6.a. Limit the age, problems, type of behaviors, physical or mental conditions of children allowed admission to a particular center;

4.6.b. Prohibit intake of any children; or

4.6.c. Reduce the number of children that the center is licensed to receive.

4.7. Denial or Revocation of a License or Certificate of Approval.

4.7.a. The Secretary may deny, refuse to renew, or revoke a license or certificate of approval if the center materially violates any provisions of West Virginia Code ~~§49-2B-1 et seq.~~, violates any terms or

conditions of the license or certificate of approval, or fails to maintain established requirements of child care.

4.7.b. When the Secretary denies, refuses to renew, or revokes a license or certificate of approval, the licensee shall not operate the center without a court order pending administrative or judicial review.

4.8. Closing of Center by the Secretary.

4.8.a. If the Secretary finds that the operation of a child care center constitutes an immediate danger of serious harm to the children served by the center, the Secretary shall issue an order of closure terminating the operation of the center.

4.8.b. A center ordered closed by the Secretary may not operate pending administrative or judicial review without a court order.

4.9. Administrative and Judicial Review.

4.9.a. Administrative and judicial review are subject to the provisions of §29A-5-1 et seq. of the West Virginia Code.

4.9.b. A decision issued by the Secretary may be made effective from the date of issuance. Immediate relief may be obtained upon a showing of good cause made by a verified petition to the circuit court of Kanawha County or the circuit court of any county where the affected center is located.

4.9.c. The pendency of administrative or judicial review shall not prevent the Secretary from obtaining injunctive relief pursuant to the West Virginia Code §49-2b-5.

**§78-1-5. Inspection and Investigation.**

5.1. An applicant or licensee shall permit the Secretary access to the center to conduct announced and unannounced inspections of all aspects of the center's operation and premises.

5.2. A licensee shall provide all information requested by the Secretary.

5.3. When an inspection or complaint investigation finds non-compliance with this rule, the Secretary may require a plan of correction.

5.4. The Secretary may request the licensee to submit the results of a health examination, psychological examination or drug and alcohol screening result on the licensee or any personnel of the center if good cause is found during an inspection or investigation.

**§78-1-6. Governance.**

6.1. Administrative Structure.

6.1.a. General. The Licensee is legally accountable for the operation of the center and shall:

6.1.a.1. Ensure the center's compliance with the provisions of West Virginia Code §49-2B-1 et seq. and the requirements of this rule.

6.1.a.2. Implement a statement of purpose as described in this rule; and

6.1.a.3. Develop policies and procedures to be kept in an administrative manual as described in this section to guide the operation of the center.

6.1.b. A center shall have a governing body to ensure that the responsibilities of the licensee are carried out.

6.1.b.1. The governing body shall ~~be comprised of~~ have at least one (1) parent of a child currently served by the center, or when no parent is available for the governing body, a parent advisory committee shall be established as described in this section;

6.1.b.2. No staff member, staff family member, or employee of a public agency that regulates or makes eligibility decisions for the center may serve, but the director may be an ex-officio non-voting member;

6.1.b.3. The governing body shall meet at least four (4) times in a twelve month period and preserve in writing the minutes of each meeting, including but not limited to, the meeting's date and time, members in attendance, issues considered, and decisions made.

6.1.b.4. The governing body shall appoint a full-time director to manage the daily operations at each site where a center operates; submit the director's qualifications in writing for approval by the Secretary prior to employment; conduct an annual evaluation of the director; and oversee any necessary action regarding the director's job performance.

6.1.c. An unincorporated, individual licensee (owner) may act as the governing body. In addition to the requirements listed in paragraph 6.1.b.4. of this subsection, the owner shall appoint a parent advisory committee comprised of parents of children currently served by the center that meets at least four (4) times in a twelve month period.

## 6.2. Statement of Purpose.

6.2.a. An applicant or licensee shall ensure that each center has a written statement of purpose that includes:

6.2.a.1. The type of care and programs offered by the center;

6.2.a.2. The goals and objectives for each of the offered programs;

6.2.a.3. The ages of the children served;

~~6.2.a.4. The licensed capacity;~~

6.2.a.5-4. The scheduled days and hours of operations; and

6.2.a.65. The admission and discharge policies; and

6.2.a.76. The provisions made by the applicant or licensee to ensure safety and reduce risk of harm.

6.2.b. An applicant or licensee shall ensure that the statement of purpose is:

6.2.b.1. Available to staff members and parents at all times; and

6.2.b.2. Reviewed with all staff members whenever changes are made.

6.3. Administrative Manual.

6.3.a. An applicant or licensee shall ensure that each center has an administrative manual that includes the center's policies and procedures with the dates they were implemented or revised, regarding:

6.3.a.1. Confidentiality and information disclosure and secure disposition of records;

6.3.a.2. Admission and discharge;

6.3.a.3. Personnel:

6.3.a.3.A. Employment;

6.3.a.3.B. Termination;

6.3.a.3.C. Use of uncompensated personnel;

6.3.a.3.D. Background checks including criminal convictions and abuse and neglect findings;

6.3.a.3.E. Compensation, including a statement of coverage or exemption from coverage of Workers Compensation and Unemployment Compensation;

6.3.a.3.F. Circumstances under which the center reserves the right to require drug and alcohol screening for drivers, other staff and volunteers; and

6.3.a.3.G. Periodic performance evaluations;

6.3.a.4. Behavior management including, a description of methods used for positive guidance, when the use of time-out or other behavior consequences are to be communicated to the parent and what process the center uses to determine and develop behavior management plans;

6.3.a.5. Reporting of abuse;

6.3.a.6. Health policies for staff and children, including, addressing, at a minimum, immunization, any parental objection to treatment, exclusion and re-admittance of the child with a communicable illness, and medication administration the health requirements of this rule;

6.3.a.7. Attendance;

6.3.a.8. Emergencies;

6.3.a.9. Transportation; and

6.3.a.10. Grievance procedures.

6.3.b. An applicant or licensee shall ensure that the administrative manual is:

6.3.b.1. Available to staff members at all times; and

6.3.b.2. Reviewed with all staff members when changes are made.

6.4. Standards of Ethical Conduct. A center shall not misrepresent or operate a program in any way that is misleading, deceptive or illegal.

6.5. Grievance Procedure. A center shall develop and implement a written grievance procedure for families and employees. The procedure shall be written in clear and simple language and shall include at least the following provisions:

6.5.a. A center shall ensure that families and employees can express concerns or make complaints without fear of retaliation;

6.5.b. The center shall explain the procedure to parents and employees and obtain written acknowledgment that an explanation of the procedure has been provided.

6.6. Records and Information Disclosure.

6.6.a. Records. A center shall maintain the confidentiality of all records, including:

6.6.a.1. Child records according to the following guidelines:

6.6.a.1.A. A center where the child is currently enrolled shall keep the child's records on the premises and have a procedure for the maintenance, security and disposition of records;

6.6.a.1.B. A center shall store and secure records against loss, tampering, or unauthorized use and establish procedures restricting access to records and unauthorized use under the provisions of West Virginia Code §61-3C-1 et seq.; and

6.6.a.1.C. A center shall retain records for a minimum of three (3) years following the child's discharge.

6.6.a.2. Staff records according to the following guidelines:

6.6.a.2.A. A center shall keep all current staff records on file on the premises and have a procedure for the maintenance, security and disposition of records;

6.6.a.2.B. A center that operates at more than one (1) site shall keep current staff members' emergency medical information on file at

each location where a staff member is employed and at a central location;  
and

6.6.a.2.C. A center that operates at more than one (1) site may keep all staff records at a central location as long as the central location is in West Virginia.

6.6.b. Information Disclosure.

6.6.b.1. A center shall keep all information about the child confidential and shall only disclose it to staff members caring for the child in accordance with the center's policies and procedures.

6.6.b.2. A center shall obtain the written consent of the child's parent before disclosing information about the child, ~~including photographs, audio or video recordings, or verbal statements about the child,~~ except when disclosing information to the Secretary or his or her designee.

**§78-1-7. The Child and Family.**

7.1. Admission, Discharge, Basic Rights and Records.

7.1.a. A center shall develop, implement and maintain an admission policy and procedure ensuring that prior to the admission of the child to the center:

7.1.a.1. The parent completes and submits an application for child care services;

7.1.a.2. The director or designated staff member documents in the child's file, a meeting with the parent to exchange information about the center's programs and the specific needs of the child, including information about any individual characteristics and personality factors that may influence the child's behavior and well-being at the center, and any special family considerations that are relevant to child care;

7.1.a.3. A The center provides to the parent a copy of its statement of purpose and discusses it with the parent;

7.1.a.4. A The center provides information about its liability insurance coverage, including information regarding coverage or non-coverage of accidents or injuries; and

7.1.a.5. A The center informs the parent of the details of the agreements to be signed by the parent, including, but not limited to, an agreement that:

7.1.a.5.A. The center prohibits corporal punishment on its premises and during off-site center activities while the child is participating;

7.1.a.5.B. The parent has access to the center when his or her child is in attendance; and

7.1.a.5.C. The parent has received and discussed a copy of the center's policies on:

7.1.a.5.C.1. Behavior management and the reporting of child abuse and neglect;

7.1.a.5.C.2. Immunization, parental objections to treatment, the dismissal and re-admittance to the center of the child with a communicable illness, procedures for notifying the child's parent in advance of its policies on the exclusion and re-admittance of ill children, procedures for informing the parent of each child of the exclusion policy, and medication administration;

7.1.a.5.C.3. Confidentiality and information disclosure;  
and

7.1.a.5.C.4. Meal and nutrition policy;

7.1.a.5.C.5. Emergency evacuation and sheltering procedures; and

7.1.a.5.C.6. Discharge policies.

7.1.b. The center shall ensure the parent has access to a copy of this rule;

7.1.c. The center shall inform the parent of its requirements for signed permission prior to the child's participation in field trips, water activities and other special activities; and

7.1.d. The center shall inform the parent of his or her right to report to the Secretary any complaints related to compliance with the provisions of West Virginia Code §49-2B-1 et seq. and the requirements of this rule.

7.2. Discharge Policies. A center shall develop, implement and maintain policies and procedures, including criteria, for a child's discharge from the center:

7.2.a. When the parent withdraws the child from a center;

7.2.b. When a center asks a parent to remove his or her child;  
and

7.2.c. When a center informs the parent in advance of the request for discharge, except in cases of emergencies or investigations related to child abuse and neglect.

7.3. Basic Rights. A center shall ensure that the child and the child's family have equal access to programs regardless of race, religion, ethnicity, gender, ability or sexual orientation.

7.4. Information About Child. For each child enrolled at a center, the center shall maintain a file in one central location that includes the following current information:

7.4.a. The child's name, address, gender and date of birth;

7.4.b. The name of the child's parent, and the parent's home and work telephone numbers and addresses;

7.4.c. The name, physical address and telephone number of at least one (1) additional individual who can assume responsibility if the center cannot locate the parent;

7.4.d. The names, addresses and telephone numbers of the child's sources of primary medical care and emergency medical care;

7.4.e. The child's health insurance coverage and policy number;

7.4.f. A signed permission from the parent for emergency medical treatment and transportation;

7.4.g. A signed permission to release the child to someone other than the parent, with the names, addresses and telephone numbers of the one (1) person or several persons permitted to take the child from the center;

7.4.h. Information and special instructions from the child's parent or licensed health care provider about any special dietary or other needs because of a medical or other reason;

7.4.i. A signed permission from the parent to take photographs or make audio and/or video recording of the child;

7.4.j. Legal verification of custody when one (1) parent is the sole legal guardian of the child by virtue of a court proceeding;

7.4.k. Health records as described in Subsections 15.1 and 15.2 of this rule;

7.4.l. The dates of enrollment and discharge;

7.4.m. Scheduled days and hours of attendance; and

7.4.n. The name and telephone number of the school-age child's school.

7.5. Information for emergency purposes. A center shall keep two (2) copies of the information in Subdivision 7.4.a. through 7.4.h. of this rule, with the parent's original signature on both copies, and shall keep:

7.5.a. One (1) copy in the center's files to be easily accessible at all times; and

7.5.b. The other copy in the center's emergency file, described in this rule, where it is available to accompany the child when the child is off-site.

7.6. Exchanging information with the parent. The center shall develop a plan for ongoing communication with the parent that includes a ~~pre-admission meeting in which the center:~~

7.6.a. A pre-admission meeting in which the center ~~D~~-discusses with the parent an oral or written system for exchanging information

regularly about the child including the child's health and any events at home or at the center that may influence the child's behavior and well being; and

7.6.b. ~~Provides~~Providing a signed incident or accident report when an incident or accident resulted in first aid. The report shall include, at a minimum, the time, date, location, description of the incident or accident, the action taken and the name of the staff person responsible for the child at that time;

7.6.c. Providing a signed serious occurrence report as required in Section 19 of this rule; and

7.6.d. Providing the parent opportunities to volunteer at the center.

#### **§78-1-8. Staffing.**

8.1. This section applies to all center personnel including the private owners, volunteers, and parents who receive compensation for their duties or who are used by the center to meet staff:child ratios.

8.2. Persons at a child care center who are not subject to this rule include:

8.2.a. An adult who is in the center for brief periods in the normal course of carrying out business or professional activities and is not left alone with the children; or

8.2.b. A parent of an enrolled child who is at the center only for the purpose of performing parental responsibilities in relation to his or her own child.

#### 8.3. Staffing Procedures.

8.3.a. A center shall provide each new staff member with a notification letter that includes his or her effective date of hire, position title, qualifications, duties and responsibilities at the time of hiring.

8.3.b. A center shall conduct performance evaluations:

8.3.b.1. On all staff at least once a year; and

8.3.b.2. On all newly employed staff members and staff members new to their positions, ~~initially~~, at three (3) months, six (6) months, and twelve (12) months.

8.3.c. A center shall provide each staff member with:

8.3.c.1.a A written copy of his or her most recent evaluation, signed by the center's director or director's designee and the evaluated staff member; and

8.3.c.2. a A continuing education professional development plan based on the evaluation.

8.3.d. A center shall maintain a file for each staff member that includes:

8.3.d.1. A current job description;

8.3.d.2. ~~Written references,~~ Documentation that references have been verified including three (3) references for the center director and two (2) references for other staff members; ~~and~~

8.3.d.3. Records of employment, including a duplicate copy of all performance evaluations; and

8.3.d.4. A verification of the staff member's education and qualifications.

8.4. Staff Character and Background.

8.4.a. A center shall use staff members and volunteers with:

8.4.a.1. A good reputation and character;

8.4.a.2. Sufficient education, training and experience to provide the skills necessary for carrying out the essential functions of his or her job with or without reasonable accommodation;

8.4.a.3. Sound judgment, emotional maturity, and an understanding of children;

8.4.a.4. A demonstrated ability to perform assigned tasks;

8.4.a.5. The ability to correct hazards that might harm the health, safety and well-being of the children;

8.4.a.6. The ability to work with children without mistreatment or abuse;

8.4.a.7. The ability to encourage children and to provide them with a variety of learning and social experiences appropriate to the age of the children;

8.4.a.8. The ability to support children's physical, emotional, psychological, social and personal development; and

8.4.a.9. The ability to communicate effectively and to respect confidentiality.

8.4.b. No person shall be on the premises or have contact with the children in care whose health or behavior would harm the children, or who is under the influence of a controlled substance, including alcohol or a legal pharmaceutical that impairs his or her functioning.

8.4.c. Other than the exceptions cited in Subdivision 8.4.e. of this subsection, a center shall ensure that a criminal background investigation is performed on each staff member and volunteer through the West Virginia Department of Military Affairs and Public Safety, Criminal Identification Bureau (CIB) and an authorized agency in a previous state

of residence, if applicable, and shall keep the following information on file:

8.4.c.1. A completed, and signed Statement of Criminal Records. A copy of the statement shall be on file no later than the date of hire;

8.4.c.2. A CIB records check, except as described in this section; and

8.4.c.3. A report of a Federal Bureau of Investigation (FBI) records check, for any staff member who has lived outside West Virginia within the past five (5) years, or has established residence outside West Virginia for more than one (1) year since turning eighteen (18) years of age; and

8.4.c.4. Notation with a date and signature of a check of the West Virginia State Police online sex offender registry prior to the use or employment of a staff member or volunteer.

8.4.d. A center shall ensure that each staff member and volunteer has a completed, signed, and dated Authorization and Release for Protective Services Record Check. A copy of the release shall be on file and the original submitted to the Department no later than the date of hire. The release shall be on file no later than the date of hire.

8.4.e. A center does not require a criminal records check on the following:

8.4.e.1. A new staff member who has on file at the center documentation of the required criminal history investigations within the previous twelve (12) months;

8.4.e.2. An individual not associated with the center, but contracted to provide lessons or other services for brief periods to the children while center staff are present; or

8.4.e.3. A parent who transports children on an irregular basis for field trips without pay or compensation.

8.4.f. Prior to receiving the CIB and FBI reports required under this rule on any staff member, a center shall have in place a safety plan that ensures that the staff member works under direct supervision and is not left alone with a child.

8.4.g. The Secretary may require a CIB or FBI check for good cause.

8.4.h. For individuals over thirteen (13) and under eighteen (18) years of age, prior to permitting them direct contact with the children on a regular basis, a center shall have on file a signed affidavit from the individual's parent stating that his or her child has never been arrested or convicted of an offense against a person.

8.4.i. A center shall update the following reports in each staff member's file:

8.4.i.1. The Statement of Criminal Record every two (2) years;  
and

8.4.i.2. The completed CIB and, if required, FBI report at least every five (5) years; and

8.4.i.3. The Authorization and Release for Protective Services Record Check submitted to the Department at least every five (5) years.

8.5. Hiring Prohibitions

8.5.a. A center shall not employ or use an individual who is currently under indictment or charged with any crime, is currently on parole or probation for a felony conviction, or has been convicted or entered a plea of guilty or no contest to any of the following:

8.5.a.1. ~~A violent felony crime against a person including, but not limited to, abduction, rape, sexual assault, homicide, hate crimes, kidnapping, felonious assault or battery;~~

8.5.a.2. Child or adult abuse or neglect, or the exploitation of a child or an incapacitated adult;

8.5.a.3. Domestic violence or spousal abuse;

8.5.a.4. Felony arson;

8.5.a.5. A felony or misdemeanor crime against a child or incapacitated adult;

8.5.a.6. Felony conviction for Driving Under the Influence (DUI) or drug-related offenses within the last ten (10) years;

8.5.a.7. Neglect or abuse by a care giver; or

8.5.a.8. ~~Pornography and sexual offense crimes involving children or incapacitated adults, including purchase or sale of a child, incest, sexual abuse, or indecent exposure.~~

8.5.b. A center shall not hire or continue to employ or use any individual who is determined by the Department to have abused or neglected a child or incapacitated adult. The effective date for this requirement is July 1, 2003. The date of the finding of abuse or neglect may occur prior to July 1, 2003.

8.5.c. A center may not employ or use an individual who has entered a plea of guilty or no contest, or has been convicted of a felony, or two (2) or more misdemeanor crimes that are not listed in Subdivision 8.5.a. unless the Secretary grants a waiver.

8.5.d. A center may not use an individual who failed to disclose a conviction or pending charges on a Statement of Criminal Record or failed to disclose a finding of abuse or neglect on an Authorization and Release for Protective Services Record Check unless the Secretary grants a waiver.

8.5.e. A center shall have policies and procedures that include protocols requiring:

8.5.e.1. A staff member or volunteer to report his or her criminal arrest, charge, indictment, or conviction for a criminal offense to the center director within twenty-four (24) hours;

8.5.e.2. A staff member to report to the center director that he or she is subject of an abuse or neglect investigation;

8.5.e.3. The center to notify the Secretary of the staff member's report within twenty-four (24) hours; and

8.5.e.4. That the center prohibit a staff member or volunteer who is accused of having sexually abused or otherwise injured a child or incapacitated adult from caring for or having contact with children pending the outcome of an investigation.

8.5.f. If a center chooses to advocate for a waiver for an employee, then it shall have policies and procedures regarding waivers that do not conflict with Department policies. The policy must include procedures for:

8.5.f.1. Informing the staff member of the waiver process and time limit for requesting a waiver;

8.5.f.2. Providing a statement of support for the waiver request from the center director;

8.5.f.3. Ensuring that the staff member does not have contact with, or is removed from contact with, the children until the Secretary reaches a decision on the waiver unless the licensee, staff member and the Department agree to a written safety plan that permits the staff member to continue in a staff position until the Secretary reaches a decision.

8.5.g. A center shall secure from the employee a recent health assessment performed not more than 90 days prior to the date hired for the employee and signed by a licensed health care provider. The health assessment shall be on file no later than 30 days from the first date of employment. A health assessment for a volunteer shall be on file if the volunteer is scheduled to work at least forty (40) hours per month in the center. The health assessment shall include:

8.5.g.1. A significant health history which the center needs to know in order to protect the health of the employee or the health and safety of children in care;

8.5.g.2. A physical examination, including vision and hearing screening;

8.5.g.3. A statement that the prospective staff member has no known condition or disease which would interfere with the proper care of children; and

8.5.g.4. A tuberculosis risk assessment that is repeated annually or a tuberculosis screening by the Mantoux method, if a screening is indicated by the tuberculosis risk assessment.

8.5.h. For staff currently employed, a center shall keep on file a health assessment that is updated every two (2) years.

8.6. Staff Responsibilities, Qualifications and Training Requirements.

8.6.a. A center shall assign one (1) individual the responsibility for monitoring and implementing training and maintaining training records.

8.6.b. A center shall require all staff to meet training requirements and pre-service education qualifications other than that noted in requirement 8.6.c. of this subsection. Provided: Staff persons who have remained employed by the center since July 1, 2003 and have been in continuous employment in that position or one requiring greater qualifications in a child care setting since July 1, 1998, shall be considered to meet the qualification of their position.

8.6.c. A center may offer an applicant for a lead teacher or teacher position conditional employment for a period of up to six (6) months pending completion of the pre-service education and training requirements described in this section.

8.6.d. Prior to or during the first week of employment and prior to having sole responsibility for a group of children, a center shall provide orientation to the staff member that includes a review of:

8.6.d.1. Licensing, other regulatory requirements, and a center's administrative manual;

8.6.d.2. Policies, staff duties and professional development plans;

8.6.d.3. Policies and procedures for confidentiality and information disclosure, behavior management, and reporting child abuse and neglect,~~and emergencies;~~

8.6.d.4. Policies and procedures for basic sanitation and infection control;

8.6.d.5. Policies and procedures for safety, including prevention of injury both indoors and outdoors, and fire safety, emergency response including the use of fire extinguishers and, for programs serving infants, safe sleep practices;

8.6.d.6. The statement of purpose;

8.6.d.7. The daily schedule of the center and the specific schedule for the group of children to which the staff person is assigned, including the planned program of activities, routines and transitions; and

8.6.d.8. Communication at a center, including procedures to inform staff of any special dietary or other needs of the children for whom they will be responsible.

8.6.e. A center shall document that orientation training was provided by having the staff member and center director sign a statement acknowledging receiving orientation training and shall keep the statement in the staff member's file.

8.6.f. A center shall ensure that all staff members receive approved training in:

8.6.f.1. Cardiopulmonary Resuscitation (CPR) and First Aid. Within six (6) months of employment or use staff members shall have current CPR certification appropriate to the age of the children in care and current first aid training. Except in the first year of employment or use, training in CPR and First Aid is in addition to the requirement for annual professional development.

8.6.f.2. Abuse Recognition and Prevention. Within six (6) months of employment or use, staff members shall have training in child abuse recognition and prevention. Training in child abuse recognition and prevention may be used to meet the requirement for annual professional development described in this section.

8.6.g. Prior to administering medication, the qualified staff member shall have training from an approved training source in medication administration. Training in medication administration may be used to meet the requirement for annual professional development described in this section.

8.6.h. A center shall ensure that prior to assuming management duties, including supervising other qualified staff members, assisting the director or serving as the designated person-in-charge of a center, a qualified staff member:

8.6.h.1. Completes the requirements for orientation training and management orientation training that includes a detailed review of the center's administrative manual and management practices; and

8.6.h.2. Co-signs with the director a statement which is kept in the staff member's file acknowledging he or she received management training.

8.6.i. A center that operates or plans to operate programs for children twenty-four (24) months of age and under shall meet the requirements of this Subdivision for staff training:

8.6.i.1. Prior to starting the program, shall ensure that each qualified staff member caring for the child has received a minimum of forty (40) hours of approved training related to the care of children twenty-four (24) months of age and under, and shall submit documented evidence of the training to the Secretary.

8.6.i.2. For an existing program which has been approved to expand the program or experiences staff turnover, shall ensure that within six (6) months of beginning to care for children twenty-four months of age and under, each qualified staff member shall have a minimum of forty (40) hours of approved training related to the care of children twenty-four (24) months of age and under. Until all staff members meet the requirements of this section, the center shall ensure:

8.6.i.2.A. That one (1) qualified staff member who has completed the minimum approved training, is present in the infant/toddler program for at least half of the operating hours daily; That at least one (1) qualified staff member, who has completed the minimum approved training, is present in the program for at least seven (7) hours daily during the time when most children under 24 months of age are present;

8.6.i.2.B. That each staff member has a written plan for the completion of training that is agreed upon during orientation; and

8.6.i.2.C. That the center develops a mentoring plan which provides for weekly mentoring by a qualified and trained staff person for each staff member that has not completed approved training.

#### 8.7. Professional Development

8.7.a. All qualified staff shall complete fifteen (15) hours of approved training within the first year of employment according to the following:

8.7.a.1. A director shall have six (6) hours in management training within the required fifteen (15) hours; and

8.7.a.2. Qualified staff members shall have six (6) hours of training related to the age group of children for which they care, within the required fifteen (15) hours.

8.7.b. All qualified staff shall apply for credentialing on the WV STARS Career Pathway.

8.7.c. All qualified staff shall complete the approved training which is necessary to keep the credential current.

8.7.d. All staff in positions that are not qualified staff positions shall have training within the first six (6) months of employment related to their responsibilities, renew child abuse and neglect recognition every three years and keep first aid and CPR certification current.

#### **§78-1-9. Staff Responsibilities and Qualifications.**

9.1. The Director shall:

9.1.a. Manage the daily operations of the center, including administering finances and human resources;

9.1.b. Supervise the teaching staff and the daily activities of support staff who provide services to the center and conduct a staff meeting at least once a month;

9.1.c. Make curricular decisions and plans and supervise all aspects of the children's program;

9.1.d. Communicate with staff members, children, parents, and the public;

9.1.e. Communicate with the Department and regulatory agencies to ensure compliance with all requirements;

9.1.f. Keep a record of any hours and days he or she has regular responsibility for an assigned group of children in a Type I or Type II center;

9.1.g. Not have regular responsibility for an assigned group of children in a Type III center;

9.1.h. Have the following qualifications:

9.1.h.1. Be at least twenty-one (21) years of age, provide evidence of at least one (1) year of relevant work experience; and have a minimum of a high school diploma or equivalent and;

9.1.h.2. In a Type I center, have a minimum of:

9.1.h.2.A. A CDA credential and three hundred (300) hours of relevant work experience working with young children or twelve (12) college credits in an early care and education field and three hundred (300) hours of relevant work experience working with young children; or

9.1.h.2.B. A total of ten (10) years of relevant work experience.

9.1.h.3. In a Type II center, have a minimum of:

9.1.h.3.A. A registered Apprenticeship Certificate for Child Development Specialist;

9.1.h.3.B. Twenty-eight (28) college credits, with at least nine (9) credit hours in early childhood development; or

9.1.h.3.C. Fifteen (15) years of relevant work experience.

9.1.h.4. In a Type III center, have a minimum of:

9.1.h.4.A. An associate's degree in early care and education;

9.1.h.4.B. A bachelor's or associate's degree in a related field with twelve (12) credit hours in early childhood development or early childhood education and ninety (90) practicum contact hours in the field of early childhood;

9.1.h.4.C. A bachelor's degree in a related field and a total of two (2) years of relevant work experience; or

9.1.h.4.D. A degree in a business, management or administration field with twelve (12) credit hours in early childhood development or early childhood education and three hundred (300) hours of relevant work experience-working with young children.

9.1.i. Designate a person-in-charge to perform the duties of the director during all hours of operation when the director is not present at the center. The person-in-charge shall be a qualified staff member with a minimum qualification of teacher.

9.2. Assistant Director or Lead Teacher.

9.2.a. The duties and role of assistant director or lead teacher may be shared by the director and a teacher.

9.2.b. The assistant director or lead teacher may have responsibility for supervision, care and education of children and may be regularly assigned to a group of children.

9.2.c. The assistant director or lead teacher shall:

9.2.c.1. Plan and adopt programming that conforms to the core competencies of early childhood education and may implement daily program activities;

9.2.c.2. Coordinate the activities of teachers, assistant teachers, teaching assistants, and assist the director with designated activities;

9.2.c.3. Be at least twenty-one (21) years of age and have a minimum of one (1) year of relevant work experience and one of the following additional qualifications:

9.2.c.3.A. A CDA credential and three hundred (300) hours of relevant work experience working with young children or twelve (12) college credits in an early care and education field and three hundred (300) hours of relevant work experience working with young children;

9.2.c.3.B. A total of two (2) years of relevant work experience;

9.2.c.3.C. A registered Apprenticeship Certificate for Child Development Specialist, or twenty-eight (28) college credits, with at least nine (9) credit hours in early childhood development.

9.3. Teacher. A teacher shall:

9.3.a. Have responsibility for the supervision, care and education of children and be regularly assigned to a group of children;

9.3.b. Practice the core competencies of early childhood educators, and plan and implement daily program activities;

9.3.c. Coordinate the activities of assistant teachers and teaching assistants, and may assist the director, assistant director or lead teacher with designated activities; and

9.3.d. Be at least eighteen (18) years of age and have a minimum of one (1) year of relevant work experience and have one of the following additional qualifications:

9.3.d.1. A West Virginia Training Certificate in Early Care and Education (WVTCECE) or its equivalent;

9.3.d.2. A CDA credential and three hundred (300) hours of relevant work experience working with young children or twelve (12)

college credits in an early care and education field and three hundred (300) hours of relevant work experience working with young children; or

9.3.d.3. A total of two (2) years of relevant work experience.

9.4. Assistant Teacher. An assistant teacher shall:

9.4.a. Practice the core competencies of early childhood educators;

9.4.b. Work with young children with guidance from a qualified staff member who qualifies, at a minimum, as a teacher;

9.4.c. Coordinate daily activities and supervise teaching assistants in the absence of the teacher; and

9.4.d. Have the following qualifications:

9.4.d.1. Be at least eighteen (18) years of age and have a minimum of one (1) year of relevant work experience;

9.4.d.2. Have a West Virginia Training Certificate in Early Care and Education (WVTCECE) or its equivalent.

9.5. Teaching Assistant. A teaching assistant shall:

9.5.a. Assist other qualified staff members with the care and education of the child, but shall not have responsibility for a group of children;

9.5.b. Work under the continuous supervision of a qualified staff member who qualifies, at a minimum, as an assistant teacher;

9.5.c. Have the following qualifications:

9.5.c.1. Be at least eighteen (18) years of age; and

9.5.c.2. Be enrolled in the WVTCECE program or its equivalent.

9.6. Teen Aide. A teen aide shall:

9.6.a. Be at least two (2) years older than the oldest child in the group with whom he or she is working; and

9.6.b. Not be left alone with a child other than his or her own child.

9.7. Student Intern. A center that uses student interns shall ensure that:

9.7.a. The student intern fulfills the requirements of an educational or training program;

9.7.b. The student intern performs duties under the direct supervision of a qualified staff member who has at least the qualifications of an assistant teacher;

9.7.c. The student intern receives periodic supervision from the educational or training program teacher-coordinator;

9.7.d. The student intern is not left alone with a child other than his or her own child;

9.7.e. A copy of the student intern's training plan and training agreement developed jointly by the educational or training institution and the center are on file at the center.

9.8. Substitute. The center shall ensure that:

9.8.a. A substitute has the appropriate background checks as required by this rule;

9.8.b. A substitute used in a position for less than two (2) weeks does not have sole responsibility for a group of children and works under the continuous supervision of, at a minimum, an assistant teacher; and

9.8.c. A substitute filling a position for more than two (2) weeks meets the minimum qualifications of the position for which he or she is substituting. A substitute meeting the qualifications of the position does not require continuous supervision, if the position does not require it.

9.9. Support Staff. The center shall ensure that support staff have appropriate qualifications for providing services to the center and meet the general and health requirements set forth in this rule.

9.10. Driver. A driver shall:

9.10.a. Be at least 21 years of age;

9.10.b. Have a valid driver's license that authorizes the driver to operate the vehicle being driven;

9.10.c. Upon hire, have evidence of a safe driving record for the five year period prior to hiring and have no record of DUI related convictions for a five year period;

9.10.d. Not be impaired to drive at the time of transporting children including impairment caused by prescription medication;

9.10.e. Submit to a drug and alcohol testing if required by center policy; and

9.10.f. Not be used if he or she refuses a required drug and alcohol test or tests positive.

9.11. Volunteer. The center shall ensure that prior to providing a direct service to the center, a volunteer:

9.11.a. Is not less than eighteen (18) years of age;

9.11.b. Receives direct supervision from a qualified staff member who is not less than twenty-one (21) years of age; and

9.11.c. Is not left alone with a child other than his or her own child.

**§78-1-10. Supervision of Children in Groups.**

10.1. A center shall ensure that:

10.1.a. The children have adequate supervision at all times;

10.1.b. Staff members are awake and performing their duties during work hours;

10.1.c. When a play area is used that is accessible to the public, the boundaries of the play area are clearly marked and known to the children;

10.1.d. The children remain in areas approved for daily program activities and do not go into other areas including the kitchen, unless it is part of the planned, supervised experience.

10.1.e. Children are accompanied by staff when utilizing public restroom or restrooms at the center that the general public is permitted to use.

10.2. Children shall be assigned to distinct groups according to the following:

10.2.a. Each group shall be assigned a room or area of a room as a home base, even if the group moves to other areas, inside and outside a center, for daily activities;

10.2.b. When more than one (1) group of children up to school-age uses the same room, a center shall divide the room into a designated activity area for each group;

10.2.c. A center shall separate indoor areas regularly occupied by older children from children twenty-four (24) months of age and under;

10.2.d. A center shall ensure that a common outdoor area is not regularly used at the same time by groups of school-age children and by groups five (5) years of age and younger.

10.2.e. During brief times, not to exceed thirty (30) minutes, when children are normally arriving and departing, and for short periods of scheduled activities such as eating, the center may combine groups of children, including groups of children twenty-four (24) months and under and groups of older children; and

10.2.f. During short periods of time for special occasions such as field trips, the center may combine school-age groups of children with children over the age of twenty-four (24) months.

10.3. Staff:Child Ratios.

10.3.a. When children are on the premises, a center shall ensure that at least two (2) staff members are on duty at all times.

10.3.b. When only one (1) qualified staff person is required to meet ratios at the beginning and end of the day, the second staff member may be a support staff member who is readily available in case of emergencies. A center shall ensure that while children are on the premises, the qualified staff member has completed a course in child first aid and has current certification in CPR appropriate to the age of the children in care.

10.3.c. A center shall assign each group of children to a qualified staff member or team of qualified staff members, maintaining at all times the staff:child ratios required under this rule. When groups are combined, a center shall continue to maintain the staff:child ratios required under this rule.

10.3.d. When more than one (1) qualified staff member is assigned to a group, a center shall designate one (1) qualified staff member as group leader with responsibility for planning the activities of the group to ensure that each child in the group receives developmentally appropriate care and adequate supervision on a day-to-day basis.

10.3.e. When only one (1) qualified staff member is assigned to a group, there shall be a plan enabling the qualified staff member to call a second staff member for help without leaving the group.

10.3.f. In determining and maintaining the staff:child ratio, a center shall not include any qualified staff member who is performing other duties such as cooking, bookkeeping, or life-guarding; or another individual with designated responsibility for a special activity; or a support staff member who is not directly working with the children except in an emergency situation when staff may be reassigned to supervise the children.

10.3.g. In determining and maintaining the staff:child ratio, a center shall have a plan to ensure that a qualified substitute is available if needed and is available when a staff person is absent for longer than a continuous two (2) week period.

10.4. A student intern who is at least 17 years of age, a Youth Apprentice, and in the second year of classes in the Child Development Specialist program approved by the WV Department of Education may count in the staff:child ratio, but may not work alone.

10.5. A center shall group children and consider their ages when determining the staff:child ratio as follows:

10.5.a. A center shall count each child twelve (12) years of age and under who is present and being cared for in the child care center, including a child of the director or a staff member, and shall not consider a teen aide to be a child;

10.5.b. When children are at the center, the center may use either a single grouping or a mixed-age combination to calculate the ratio according to the following:

10.5.b.1. For each single-age group at a center, the center shall maintain the staff:child ratio and group size described in Table A of Appendix 78-1 FE of this rule;

10.5.b.2. For each mixed age group at a center, the center shall maintain the staff:child ratio and group size described in Table A of Appendix 78-1 FE of this rule for the youngest child in the group; and

10.5.b.3. When providing evening and nighttime care, a center shall maintain the staff:child ratio and group size described in Table A of Appendix 78-1 FE of this rule. In addition, a center shall ensure that:

10.5.b.3.A. At least one (1) qualified staff member is in each room visually supervising the children at all times and checking at least hourly on each sleeping child; and

10.5.b.3.B. Each qualified staff member required to meet the staff:child ratio is on the premises and within calling distance of the rooms occupied by the children.

10.5.c. Special circumstances with staff:child ratio are:

10.5.c.1. During nap time or sleep time:

10.5.c.1.A. For groups of children twelve (12) months of age and under, a center shall ensure that each qualified staff member required to meet the staff:child ratio described in Table A of Appendix 78-1 FE of this rule, is present in the nap or sleep area and able to see and hear all of the children at all times;

10.5.c.1.B. For groups of children over twelve (12) months of age who participate in a nap-time program, a center shall ensure that at least one (1) qualified staff member is in each area visually supervising the children and each qualified staff member required to meet the staff:child ratio is on the premises and within calling distance of the areas occupied by the children;

10.5.c.2. During transportation:

10.5.c.2.A. At all times when transporting a child, a center shall ensure that no child is unattended in a vehicle;

10.5.c.2.B. During Pick-up and Drop-off service:

10.5.c.2.B.1. A second staff person or volunteer shall accompany the driver during routine transportation for the purpose of pick-up and drop-off service when the vehicle will transport more than two children and at least one of those children is under the age of two years;

10.5.c.2.B.2. A second staff person or volunteer shall accompany the driver during routine transportation for the purpose of pick-up and drop-off service when the vehicle will transport more than four children of any age.

10.5.c.2.B.3. There shall be a staff or designated responsible person present outside the vehicle to supervise when children are loading or unloading from a vehicle.

10.5.c.3. Water activities.

10.5.c.3.A. When a child is participating in a Level I or Level II water activity, except a swimming lesson with a qualified instructor, a center shall maintain staff:child ratios described in Table B of Appendix 78-1 FE of this rule; and

10.5.c.3.B. When two (2) or more children twenty-four (24) months of age and under are participating in a Level I or Level II water activity in a mixed age group, except a swimming lesson with a qualified instructor, the center shall ensure that at least two (2) qualified staff members are present;

10.5.c.4. Field Trips.

10.5.c.4.A. A center shall ensure that when a child is participating in a Level I field trip, that the staff:child ratio is maintained in accordance with Table A of Appendix 78-1 FE of this rule and that at least one staff member or volunteer accompanies one (1) qualified staff member who must be present at all times;

10.5.c.4.B. A center shall ensure that when a child is participating in a Level II field trip that the staff:child ratio is maintained in accordance with Table A of 78-1 FE of this rule and that at least two (2) qualified staff members are present at all times.

**§78-1-11. Supervision of the Individual Child.**

11.1. Guidance, Behavior Management, and Discipline. A center shall:

11.1.a. Develop, implement and maintain policies and procedures for behavior management that include the prohibitions described in Subsection 11.4. of this rule;

11.1.b. Ensure that the guidance, behavior management and discipline practices are constructive and educational in nature, appropriate to each child's age and circumstances, and in keeping with the center's policies and procedures;

11.1.c. Ensure that staff members are aware of behavior issues relating to an individual child, and treat behavior problems individually and in private;

11.1.d. Delegate behavior management to qualified staff members who have an ongoing relationship with a child; and

11.1.3e. Ensure that when it appears that a child is developing a pattern of unacceptable behavior, the staff member with the delegated responsibility for the child discusses the child's behavior in private with the director and informs the child's parents.

11.2. Guidance. At all times, staff members are responsible for providing positive guidance that is appropriate to each child's age, understanding and circumstances. Staff members shall:

11.2.a. Teach by example;

11.2.b. Recognize and encourage acceptable behavior;

11.2.c. Make eye contact with the child and kneel or sit beside the child whenever possible when speaking to the child;

11.2.d. Supervise with kindness, understanding and firmness;

11.2.e. Define clear limits, set fair and consistent rules and, when appropriate, permit an older child to participate in the development of rules and procedures;

11.2.f. Help a child develop self control to assume responsibility for his or her own actions;

11.2.g. Guide a child's activities in an orderly manner;

11.2.h. Prepare a child for his or her next activity a few minutes ahead of time, and allow the child a brief transition time before beginning the new activity;

11.2.i. Help a child avoid long waiting periods when the child has nothing to do by ensuring that the environment includes materials that hold his or her attention; and

11.2.j. Help a child feel successful at tasks and provide options if chosen tasks prove to be too difficult.

11.3. Behavior Management and Discipline. When a behavior problem arises, qualified staff members shall:

11.3.a. Redirect the child to alternative behavior or other activities;

11.3.b. Encourage the child to control his or her own behavior, cooperate with others and solve problems by talking things out;

11.3.c. Speak so that the child understands that feelings are acceptable, but inappropriate behaviors and actions are not;

11.3.d. Use appropriate time-out periods only as necessary for a child to calm down or gain control of his behavior ~~and not for over one (1) minute for each year of a child's age. Time-out may be used only for children over the age of three (3) years;~~

11.3.e. Time-out is:

11.3.e.1. Used for behaviors that are persistent and unacceptable, used infrequently, and not for over one (1) minute for each year of a child's age;

11.3.e.2. Time-out may be Used only for children over the age of three (3) years;

11.3.e.3. Used by a qualified staff person familiar to the child. The staff person must explain to the child how time-out works before its first use and be clear about the behavior that will result in time-out;

11.3.e.4. Ended in a positive manner. The staff person helps the child explore other options that would have resulted in a different outcome.

11.3.f. Ensure that during a time-out period that removes the child from the group, the child is within sight and hearing of a staff member in a safe, lighted and well-ventilated space;

11.3.g. Maintain perspective about the minor misbehavior of the school-age child and recognize that every infraction does not warrant staff attention or intervention; and

11.3.g.h. Take action that relates to inappropriate behavior and ensure that any action that is taken is without bias and in proportion to the child's act.

11.4. Handling Behavior Problems. Staff members and other adults at a center shall not handle behavior problems by:

11.4.a. Subjecting a child to physical punishment of any kind, including, but not limited to, shaking, striking, spanking, swatting, thumping, pinching, popping, shoving, spitting, biting, hair pulling, yanking, slamming, excessive exercise or any cruel treatment that may cause pain;

11.4.b. Putting anything in or on a child's mouth as punishment;

11.4.c. Restraining a child physically or by placing the child in confining equipment or using any other restrictive means such as straps or ties. A staff person may, in extreme circumstances to protect the child or other persons around him or her, use a gentle method of physically holding the child. The staff person must be an experienced staff member and one that is known to the child and shall only restrain the child by any means other than a firm grasp around a child's arms or legs and then for only as long as is necessary for the child to regain control;

11.4.d. Subjecting a child to psychological punishment of any kind, including, but not limited to, ridicule, humiliation, or negative remarks about the child or the child's family, including remarks about race, gender, religion, or cultural background;

11.4.e. Using harsh or profane language, or actual or implied threats of physical punishment;

11.4.f. Forcing or bribing a child to eat;

11.4.g. Using food as a reward or punishment; Punishing or threatening a child in association with food, rest or toilet training;

11.4.h. Punishing or threatening a child in association with rest or toilet training;

11.4.gi. Isolating a child without supervision or placing the child in a dark area such as a box, closet, or similar confined space;

11.4.hj. Permitting a child to discipline other children;

11.4.ik. Punishing an entire group for the actions of one child or a few children; or

11.4.jl. Seeking or accepting parental permission to use physical punishment or other actions prohibited by this rule.

11.5. Difficult Behavior Plan. When a child's behavior problems continue over time, the director and staff member with delegated responsibility shall develop and implement a plan for managing the difficult behavior. The director shall ensure that:

11.5.a. When possible, a parent is given written communication about the circumstances necessitating the plan and is provided the opportunity to participate in the development of the plan, and, in all cases, the center shall provide the parent with a copy of the completed plan and regular written reports of the child's progress;

11.5.b. When necessary and appropriate, other professionals also participate in the development and implementation of the plan and, when necessary, receive written reports of the child's progress; and

11.5.c. Staff members cooperate in implementing the plan and keep on file at the center a copy of the plan, a record of the steps taken during implementation, and the child's progress in meeting the goals of the plan.

11.6. Abuse and Neglect. A center shall develop, implement and maintain policies and procedures for the reporting of child abuse and neglect that include:

11.6.a. The definition of child abuse and neglect;

11.6.b. The requirement to report immediately, ~~in accordance with West Virginia Code 49-6A-1 et seq.~~, any suspected incident of child abuse and neglect to the director or designated person-in-charge, and to Child Protective Services; or when the staff member believes that the director or designated person-in-charge would not or has failed to report the suspected incident to the Child Abuse Hotline, 1-800-352-6513; and

11.6.c. A statement posted at the center in clear public view stating that the center reports suspected child abuse and neglect to Child Protective Services.

11.7. Informing Staff about Behavior Management and Report Procedures. The center shall inform staff about behavior management procedures and child abuse and neglect reporting by:

11.7.a. Providing each staff member a copy of its policies on behavior management and the reporting of child abuse and neglect, and providing revised policies when changes occur;

11.7.b. Obtaining a signed and dated acknowledgement that the staff member has read and understands the policies or revised policies; and

11.7.c. Placing the signed acknowledgement statement in the staff member's file.

11.8. Informing Parents about Behavior Management and Reporting Procedures. At the time of a child's admission, a center shall inform parents about the center's behavior management procedures and child abuse and neglect reporting requirements by:

11.8.a. Providing to each child's parent written copies and an oral explanation of a center's policies on behavior management and the reporting of child abuse and neglect, and updating parents on policy changes when they occur;

11.8.b. Obtaining a signed and dated acknowledgement that the center has explained the policies and provided the parent with a copy. The statement shall bear the child's name, the date of enrollment, and, if different, the date the parent signs the statement; and

11.8.c. Placing the signed statement in the child's file for as long as the child is enrolled.

#### **§78-1-12. Space Requirement.**

12.1. Licensed Capacity. A center shall ensure that at all times the maximum number of children participating in activities on or off the premises does not exceed the licensed capacity determined by the separately computed area of indoor space, outdoor space and bathroom facilities, not to exceed the lowest number of the three computations. Personnel and group size may be factored into the maximum capacity for certain age groups.

#### **12.2. Indoor Space.**

12.2.a. A center shall provide a minimum of thirty-five (35) square feet per child of usable indoor space that is approved by the Secretary for daily program activities. A center shall make the rooms and areas of the center that are not approved for a child's use inaccessible to the children.

12.2.b. Indoor space for daily program activities does not include any space that is not available for a child's activities including space occupied by columns, vestibules and corridors; fire escapes; areas used exclusively for eating; areas used exclusively for napping; bathrooms; staff lounges; adult work areas including offices, laundry and furnace rooms; kitchens; permanently equipped isolation areas; storage spaces, and areas occupied by furniture except for areas that have:

12.2.b.1. Children's chairs and tables;

12.2.b.2. Adult sized comfortable chairs or a couch;

12.2.b.3. Moveable play equipment and shelves for children's activities; or

12.2.b.4. A surface for changing diapers.

12.2.b.5. For centers that have a separate and distinct designated activity area for children under twelve (12) months of age, cribs may be considered part of that useable indoor space, provided that no more than thirty (30) percent of the useable space is occupied by cribs.

12.2.c. A center shall not provide activity space in a basement area unless the basement area is approved by the State Fire Marshal.

12.3. Outdoor Space.

12.3.a. A center shall provide an outdoor activity area that includes a minimum of seventy-five (75) square feet of space per child, or if the outdoor activity area has less than that a center shall:

12.3.a.1. Establish an outdoor activity schedule for rotating groups of children to meet the minimum space requirement and to ensure that each child has an opportunity to play outdoors each day; and

12.3.a.2. Submit to the Secretary for his or her approval a copy of the current outdoor activity schedule and shall use the outdoor space only after receiving the Secretary's written approval that shall be displayed at the center for public view.

12.3.b. A center shall:

12.3.b.1. Provide an outdoor activity area that is on its premises or immediately adjacent to its premises; or

12.3.b.2. When neither of the options in Paragraph 12.3.b.1. of this rule is possible, shall submit a plan for the Secretary's approval for alternate outdoor activity space to meet the children's outdoor activities requirement and shall use the outdoor space only after receiving the Secretary's written approval.

12.4. Bathrooms. The center shall provide one (1) flush toilet and one (1) lavatory per fifteen (15) children, excluding children in diapers who are not receiving toilet training.

**§78-1-13. Furnishings, Equipment and Materials.**

13.1. General Requirements. A center shall provide furnishings, equipment and materials that:

13.1.a. Are available in sufficient quantity for the number of children;

13.1.b. Are appropriate in type, arrangement and use for the developmental needs of the children;

13.1.c. Are durable and safe;

13.1.d. Are in good repair and free of sharp points or corners, pinch or crush points, splinters, protruding nails or bolts, loose rusty parts, hazardous small parts that may be swallowed, identified poisons or paint that contains lead, and are regularly inspected by staff for potential hazards;

13.1.e. Are regularly cleaned and disinfected;

13.1.f. Are evaluated at regular intervals by the director and teacher to ensure their ongoing appropriateness for the age and number of children; and

13.1.g. Support the children's linguistic and intellectual development, and assist in providing for their physical, emotional, psychological, social and personal needs.

13.2. Specific furnishings shall include:

13.2.a. Children's chairs and tables that are multipurpose and not stationary;

13.2.b. Moveable play equipment;

13.2.c. Open shelves for play equipment for children's daily activities; and

13.2.d. Sleeping equipment as required in this rule.

13.3. Furnishings for Centers with Children Twenty-Four (24) Months of Age and under.

13.3.a. In centers that enroll children twenty-four (24) months of age and under, or children that cannot function independently, a center's furnishings shall include:

13.3.a.1. Adult-sized comfortable chairs and a table or other surface for changing diapers that has raised sides or other features that prevent the child from falling and that are located in an area that is removed from the activities of the other children;

13.3.a.2. Furniture that is child-sized or adapted for children; and

13.3.a.3. Feeding equipment that is appropriate and sufficient for the children's sizes, ages, and numbers served; provided that the center shall not use tables with built-in multiple bucket-type seats after June 30, 2015. When feeding equipment is a high chair, the chair shall have a wide base and a T-shaped safety strap;

13.3.b. Jumpers, and infant walkers, play yards, play pens and "pack and play" cribs or pens are prohibited.

13.4. Sleeping Equipment. A center's sleeping equipment:

13.4.a. For children who participate in a nap-time program shall include:

13.4.a.1. One (1) crib ~~or playpen~~ with a firm mattress for each child twelve (12) months of age and under or who is up to thirty-five (35) inches tall;

13.4.a.2. One (1) crib ~~or playpen~~ with a firm mattress, mat or cot for each child between thirteen (13) and twenty-four (24) months of age; and

13.4.a.3. One (1) mat, cot, or bed for each child over twenty-five (25) months of age;

13.4.b. For evening and nighttime programs shall not include mats as sleeping equipment;

13.4.c. For the care of an ill child shall include at least one (1) disinfected cot;

13.4.d. Shall be cleaned and disinfected at least once a week, or before another child uses it, or immediately after it is soiled;

13.4.e. Includes the following specifications for cribs and ~~playpens~~;

~~13.4.e.1. Cribs shall comply with the federal standards for cribs and non-full size cribs; The distance between the slats, side and end panels of the crib or playpen shall not be more than two (2) and three-eighths (3/8) inches. A playpen with mesh siding shall have mesh that is less than 1/4 inches in size and the mesh shall be securely attached to the sides;~~

13.4.e.2. The mattress shall be manufactured for sale in the United States as infant sleeping equipment and fit the crib snugly with no more than one half (1/2) inch between it and the crib side;

13.4.e.3. The crib shall be sturdy, ~~and non-collapsible~~ and easily disinfected;

13.4.e.4. The minimum height from the top of the mattress to the top of the crib rail shall be twenty (20) inches;

~~13.4.e.5. The crib and playpen drop side latch shall hold the side securely in the raised position, be out of the reach of the child in the crib or playpen, and the rail shall be in the highest raised position when the crib is in use. The playpen side shall never be down when a child is in the playpen;~~

~~13.4.e.6 There shall be no corner post extensions over one-sixteenth (1/16) inch or decorative cutout areas in the end panels of the crib that could entrap the child's head or catch on clothing;~~

~~13.4.e.7. The playpen pad shall be at least one (1) inch thick;~~

13.4.e.85. Each mattress ~~or pad~~ shall have a form fitting cover that is durable and able to be easily disinfected; and

13.4.e.96. ~~Playpens with mesh sides and covered top rails shall not have holes, tears, loose threads or exposed staples. The use of traditional drop side cribs, and any crib manufactured prior to June 28, 2011, is prohibited unless the center obtains a certificate of compliance from the manufacturer that the crib is compliant to the current federal standards.~~

13.4.f. Includes the following specifications for mats:

13.4.f.1. They shall be at least two (2) inches thick; and

13.4.f.2. They shall have form-fitting covers that are durable, waterproof and able to be easily disinfected;

13.4.g. Includes the following specifications for cots:

13.4.g.1. The bottom of the cot's sleeping surface shall not be less than three (3) inches and not more than eighteen (18) inches off the floor;

13.4.g.2. The cot shall be firm enough to support the child;

13.4.g.3. The cot shall be of sufficient size to comfortably accommodate the size and weight of the child; and

13.4.g.4. The cot shall be constructed of a material that can be easily disinfected.

13.4.h. Shall not permit children to:

13.4.h.1. Sleep on the floor;

13.4.h.2. Sleep on the floor in a sleeping bag or on bed linens alone;

13.4.h.3. Sleep in a stacked crib or consecutively attached crib;

13.4.h.4. Share a bed or cot, even with a family member; or

13.4.h.5. Use a crib if they are over thirty-five (35) inches tall.

13.4.i. Includes the following specifications for bedding:

13.4.i.1. Mattresses, ~~playpen pads~~ or cots shall be waterproof or have a waterproof cover;

13.4.i.2. Bedding, including sheets and blankets, shall be clean and in good condition;

13.4.i.3. Bedding shall not be used by more than one child at a time;

13.4.i.4. Bedding shall be used to cover all sleeping surfaces before being used;

13.4.i.5. Seasonally appropriate covers shall be used, sufficient to maintain adequate warmth. For children 12 months of age and younger a sleeper may be worn or a thin blanket used for a covering. If a blanket is used, it shall be tucked around the mattress of the crib and only cover the child as high as his or her chest;

13.4.i.6. Pillows or soft, fluffy bedding shall not be used for the child twelve (12) months of age and under;

13.4.i.7. Pillows or soft fluffy bedding made of substances of animal origin other than wool, including feathers and animal hair, that commonly cause allergic reactions, shall be prohibited; and

13.4.i.8. A center shall change bedding when soiled, prior to use by another child and at least weekly, except sheets on cribs that shall be changed at least daily.

13.4.j. Includes the following requirements when providing evening or nighttime care:

13.4.j.1. Each cot or bed shall have a pillow, pillow case and two (2) sheets; and

13.4.j.2. When the sleeping surface is a mattress, the bottom sheet shall be secure.

13.5. Indoor activity Equipment and Materials. A center shall provide equipment and materials for indoor activities that:

13.5.a. Are appropriate to the child's age and developmental level;

13.5.b. Support many types of activities, including social and fantasy play; exploration and mastery of skills and language; music, art and movement; and gross motor experiences as described in Appendix 78-1 A of this rule;

13.5.c. Are available in sufficient quantity to permit each child to choose from among several of each type, to allow for sharing and prevent conflict, and to allow staff to keep reserves for rotation;

13.5.d. Represent diverse cultures, ethnic groups, gender roles and abilities in ways that do not reinforce stereotypes;

13.5.e. Are clearly organized within activity areas that support programming goals and allow for adequate supervision;

13.5.f. Are complete, sturdy, clean and in good working condition;

13.5.g. Are lead-free and otherwise nontoxic; and

13.5.h. Maximize safety by ensuring that:

13.5.h.1. Indoor play equipment, shelves, and large objects, such as televisions and computer monitors, are firmly anchored;

13.5.h.2. Use zones are extended by at least six (6) feet in all directions from the perimeter of indoor climbing equipment, and ~~landing mats are provided that are at least four (4) inches thick, constructed of materials such as rubber or a rubber composition,~~ the use zone surfacing is constructed of material that has an American Society for Testing and Materials (ASTM) rating for the critical fall height of the equipment. The use zone surfacing shall be securely fixed in place;

13.5.h.3. Climbing equipment for children under twenty-four (24) months may not exceed thirty-two (32) inches in height. If the climbing equipment is located in the designated area for children under twenty-four (24) months, then the use zone shall extend at least thirty-six (36) inches;

13.5.h.4. Small objects, toys and toy parts that have diameters of less than one (1) and one quarter (1/4) inch that can be swallowed are not accessible to children less than four (4) years of age; and

13.5.h.45. Plastic bags, latex gloves and styrofoam objects are not accessible to the child less than four (4) years of age, and that balloons are completely prohibited in a center that serves children less than school age.

13.6. Outdoor Activity Equipment and Materials. A center shall provide equipment and materials for outdoor activities that:

13.6.a. Are appropriate to the child's age and developmental level;

13.6.b. Support many types of experiences as listed in Appendix 78-1 A of this rule;

13.6.c. Are available to the child in sufficient quantity to permit each child to choose at least two (2) types of outdoor play experiences and to allow for sharing and prevent conflict;

13.6.d. When a child is not ambulatory, are appropriate for outings, such as a stroller or carriage; and

13.6.e. Maximize safety by ensuring that:

13.6.3e.1. All outdoor equipment is installed, maintained and used in accordance with the manufacturer's instructions;

13.6.3e.2. The position of the outdoor equipment prevents hazards from conflicting activities;

13.6.3e.3. The use zones are free of obstacles, except for the support structures for the swings;

13.6.3e.4. The supports for climbers, swings, and other heavy equipment are securely anchored so that they pose no threat to the children's safety, even when the equipment is designed to be portable;

13.6.3e.5. Each swing frame for the child twenty-four (24) months of age and under has a maximum of two (2) seats;

13.6.3e.6. Metal equipment is in the shade, if at all possible;

13.6.3e.7. When the center has a sand box, that the box permits drainage, is covered when not in use, and that the sand does not contain toxic or other harmful materials and is free of animal excrement and other debris; and

13.6.3e.8. The outdoor area is free of wading pools and other equipment that might hold water which pose a drowning hazard to the child or a breeding environment for mosquitoes.

13.7. Safety helmets shall be worn by all riders when using a riding toy or riding equipment that requires balancing while moving or when the riding equipment is being used off site.

13.8. Standard trampolines are prohibited unless used as a special activity and the activity complies with sub-section 14.9 of this rule. Trampolines used as part of a child's plan due to special needs are not subject to this prohibition.

13.79. Storage of Equipment, Materials and Supplies. A center shall provide storage for equipment, materials and supplies that includes:

13.79.a. Open shelves, at the appropriate level from the floor, for activity items so that children may select, remove and replace items independently;

13.79.b. A container, shelf, or cupboard that is inaccessible to children but permits staff to reach supplies, such as clean diapers, without leaving a child unattended;

13.79.c. A closet when used that is accessible to children and has a latch with an internal release so that the door can be opened by a child inside the closet; and

13.79.d. Separate storage areas for each child's personal belongings, including appropriate safe storage for the school-age child's money and ongoing projects.

**§78-1-14. Program.**

14.1. For each program offered and for each group of children, a center shall prepare and follow a written daily schedule that:

14.1.a. Reflects the goals and objectives set out in the statement of purpose;

14.1.b. Is based on knowledge of child development and learning, and on the needs of the enrolled children;

14.1.c. When necessary to accommodate the needs of a child, follows a written individualized plan, developed with advice from a

variety of professional sources, including, but not limited to, an early intervention specialist or a licensed health care provider; and

14.1.d. Is posted in clear, public view and in each designated activity area for each group of children.

14.2. A center shall ensure that each program includes flexible program activities that:

14.2.a. Are appropriate to a child's age and developmental level;

14.2.b. Include an appropriate balance of:

14.2.b.1. Indoor and outdoor activities;

14.2.b.2. Activities that use both large and small muscles;

14.2.b.3. Quiet and active play periods;

14.2.b.4. Active and passive learning experiences;

14.2.b.5. Individual and several types of group activities;  
and

14.2.b.6. Teacher-initiated and child-initiated activities;

14.2.c. Provide opportunities for a child to choose from among several possible activities, or choose not to participate in structured activities at certain times of the day;

14.2.d. Provide a variety of social experiences through grouping arrangements, including mixed-age experiences, that take into account each child's level of maturity;

14.2.e. Include routines at regularly scheduled times, such as sleeping, eating, dressing, toileting, hygiene and diapering;

14.2.f. Are planned so that a child has sufficient time to progress at his or her own developmental rate and does not experience a prolonged waiting period between activities or tasks;

14.2.g. Provide a child with the freedom to get a drink of water or go to the toilet as he or she feels the needs, in keeping with the requirements of this rule; and

14.2.h. Respect cultural diversity and incorporate aspects of a child's culture, including his or her language, traditional food and celebrations.

14.3. A center shall ensure that each program follows guidelines for:

14.3.a. Sleeping routines. A center shall:

14.3.a.1. Provide a designated area where a child can sit quietly or lie down to rest;

14.3.a.2. Ensure that a child twenty-four (24) months of age and under is able to nap according to his or her developmental needs;

14.3.a.3. Ensure that the schedule for a child between twenty-five (25) months of age and school-age who is in care for more than four (4) daytime hours includes a regular nap period of at least one (1) hour each day for the child who sleeps, an opportunity for rest and quiet play for the child who is unable to sleep during the nap period, and a regular nap period for the school-age child who needs it; and

14.3.a.4. Ensure that staff members initially place the child twelve (12) months of age and under, or under the age when he or she can turn over independently, on his or her back unless the parent provides a written statement from a licensed health care provider prohibiting the child from being placed in that position for sleep;

14.3.b. Brushing Teeth. A center shall provide appropriate opportunities for the children in care to have supervised practice of brushing teeth on a daily basis; and

14.3.c. ~~Outdoor Activity.~~ Active Play and Movement. The center shall promote children's active play every day by providing the opportunity to engage in moderate to vigorous activities. There shall be a weekly written plan for each group of children, which may be incorporated into the group's lesson or activity plan, that provides:

~~A center shall provide a minimum of one (1) hour of outdoor activity daily when:~~

14.3.c.1. For children, six (6) weeks to six (6) years, at least two (2) structured or staff led activities daily that promote gross motor movement skills; A child is in care for more than four (4) daytime hours; and

14.3.c.2. ~~Weather and circumstances permit and there are no weather or condition advisories indicating to remain indoors~~ No less than one hour of planned outdoor activity daily with opportunities to develop and practice age-appropriate gross motor movement skills, provided:

14.3.c.2.a. Weather and circumstances permit and there are no weather or condition advisories indicating the need to remain indoors;

14.3.c.2.b. Children less than one (1) year of age are taken outside two (2) to three (3) times per day;

14.3.c.2.c. Children older than twelve (12) months are allowed sixty (60) to ninety (90) total minutes of outdoor play daily; and

14.3.c.2.d. When weather or adverse conditions curtail outdoor activity time, the amount of indoor active play is increased so that the total amount of time spent in active play remains the same.

14.3.c.3. A minimum of sixty (60) minutes of moderate to vigorous activity per eight-hour (8) day for toddlers and children up to three (3) years;

14.3.c.4. A minimum of ninety (90) minutes of moderate to vigorous activity per eight-hour (8) day for children three (3) years to school age;

14.3.c.5. Centers operating less than six (6) hours or WV Pre-k classrooms incorporated into the center to prorate the time requirements of this subdivision; and

14.3.c.6. Infants not yet able to crawl, supervised time on their stomachs every day while they are awake.

14.3.d. Restrictive equipment. Infant equipment that restricts movement such as swings, stationary activity centers (exersaucers), infant seats, etc., if used, shall only be used for short periods of time not to exceed fifteen (15) minutes in a four (4) hour period.

14.3.e. Staff participation. Qualified staff shall promote children's active play, and participate in children's active games at times when they can safely do so.

14.4. For ~~children twenty four (24) months of age and under~~ infants, a center shall follow these additional daily program requirements:

14.4.a. Beginning with the pre-admission meeting between the director or designated staff member and the parent, a center shall work with a child's parent to prepare a written schedule that:

14.4.a.1. Respects a child's normal pattern of activities, sleeping and eating;

14.4.a.2. Is consistent with a child's needs and capabilities;

14.4.a.3. Provides a child with opportunities to interact with staff members, participate in program activities, be outdoors daily as appropriate, and be diapered or toileted as needed; and

14.4.a.4. Identifies qualified staff who will primarily care for the child.

14.4.b. A center shall ensure that the schedule is available for reference in the child's program area.

14.4.c. A center shall ensure that qualified staff members:

14.4.c.1. Evaluate and modify the schedule on a frequent and regular basis, according to the child's developmental needs and in consultation with the child's parent; and

14.4.c.2. For each ~~infant-child twelve (12) months of age and under~~, prepare a written daily report with information about a child's activities in the following areas:

14.4.c.2.A. Food intake;

14.4.c.2.B. Sleeping patterns;

14.4.c.2.C. Bowel movements;

14.4.c.2.D. Developmental milestones, such as sitting and crawling; and

14.4.c.2.E. Unusual events.

14.5. Staffing Pattern. A center shall arrange its staffing pattern so that each child has a primary care giver who is a qualified staff member. Staff members shall interact personally with the infant, toddler, and child under school age by:

14.5.a. Holding, rocking and playing whenever possible, including while bathing, dressing and carrying the child;

14.5.b. Encouraging positive communication and language development by making eye-to-eye contact with the child, singing, talking, reacting to the child's communications, naming objects, reading stories and playing musical games;

14.5.c. Paying attention to crying and meeting the immediate needs of the child;

14.5.d. Ensuring that no child is routinely left in a crib or playpen, except for sleep or rest; and

14.5.e. Providing a child who is awake play equipment and opportunities to play freely on a clean, safe floor.

14.6. Night Time Care. When a center provides evening or nighttime care, the center shall:

14.76.a.1. Plan a program that respects the normal sleeping periods, and evening and morning routines of the child;

14.76.a.2b. Establish and post a schedule for the child in consultation with the child's parent that provides for:

14.76.a.2bA.1. Quiet activities before bedtime and opportunities for the older child to complete homework or work on projects or hobbies;

14.76.a.2.Bb.2. Meals and snacks;

14.76.a.2.Cb.3. Routine preparations for bed; and

14.76.a.2.Db.4. Dressing in the morning, when appropriate.

14.6.a.3c. Ensure that no child remains in care for more than eighteen (18) hours in a twenty-four (24) hour period.

14.6.a.4d. Ask the parent to provide for the child's personal use a clean, comfortable, nonflammable or flame retardant sleeping garment and other personal items, such as a comb or brush, and label the child's personal use items; and

14.6.a-5e. Ensure that staff members supervise a child's bath or individual shower, respecting the child's privacy according to the child's developmental needs.

14.7. ~~Active Screen Media.~~ When a center plans an ~~activity that involves active media to use screen media,~~ its use must either be included on the posted daily schedule or incorporated into the group's written lesson or activity plan. the center shall ensure that:

14.7.a. The active media supplements, but does not replace traditional early childhood materials;

14.7.b. A child has a choice of other activities and materials;

14.7.c. Staff members are available to support the activity by discussing the use of the active media with the child;

14.7.d. ~~The computer software chosen is~~ The media is developmentally appropriate and supports creative play and learning; and

14.7.e. ~~No video games or computer software~~ Media with sexual or violent content, profanity or aggressive behavior is not are not used;

14.7.f. Each group limits the use of screen media to not more than seventy five (75) minutes per week for each child between the ages of two (2) years and school age, and for educational or physical activity use only;

14.7.g. Each group limits the use of screen media to not more than seventy five (75) minutes per week for each school age child and for educational or physical activity use; provided the use of computers and screen media for school assigned homework is not included in the seventy five(75)minute time limit; and

14.7.h. Use of screen media is prohibited with children under the age of two (2) years.

14.8. ~~Passive Media.~~ Regarding passive media, a center shall ensure that:

14.8.a. ~~Passive media is not routinely part of the daily schedule;~~

14.8.b. ~~When passive media is used, that staff members are available to support the use of it by discussing what is viewed with the child;~~

14.8.c. ~~When a center allows the child to watch television programs and movies, the contents are designed to benefit the child, viewing time is limited and the child who does not wish to watch has a choice of other activities;~~

14.8.d. ~~No television programs, cartoons or movies with sexual or violent content, profanity or aggressive behavior are viewed; and~~

14.8.e. ~~Television, video or other such electronic media is not used with children 24 months of age and younger.~~

14.98. Special Activity. When a center participates in a special activity, the center shall provide staff who are trained and supervised to enforce safety regulations, provide necessary instructions, and identify and manage environmental and other hazards related to the special activity. Prior to the special activity, the center shall:

14.98.a. Have on file an activity plan that includes, but is not limited to:

14.98.a.1. The qualifications of the supervisor of the special activity;

14.98.a.2. The special qualifications, if any, of any other staff member necessary for adequate supervision of the activity;

14.98.a.3. A supervision plan that includes the number of staff members needed to adequately supervise the activity;

14.98.a.4. The conditions under which a child may participate in the activity, such as the child's age or skills;

14.98.a.5. Any special equipment necessary, such as life jackets, helmets, or other safety gear; and

14.98.a.6. Special safety practices and emergency procedures;

14.98.b. Provide the parent with copy of the activity plan and have written permission dated and signed by the parent for the child's participation in the activity; and

14.98.c. Assign appropriate staff to the activity by:

14.98.c.1. Choosing a staff member for the special activity who has appropriate experience, training or certification in the activity;

14.98.c.2. Having on file at the center verification of the responsible staff member's experience, training or certification; and

14.98.c.3. Ensuring that the responsible staff member is present at the site of the activity.

14.109. Water Activities. When a center plans water activities, the center shall:

14.109.a. Have on file at the center written permission dated and signed by the parent prior to the child's participation in any water activity;

14.109.b. Ensure constant supervision of a child participating in any aspect of any activity involving water;

14.109.c. Ensure adequately prepared staff who are in the water or prepared to enter it at any time and have a system, known to the children and staff members, for checking to ensure that each child is safe when in the water;

14.109.d. Ensure that when a child is participating in a level I or Level II water activity, a staff member is present who has successfully completed training in first aid and CPR, appropriate to the age of the child;

14.109.e. Ensure that when a child is participating in a Level II water activity, the activity is also guarded by an individual who:

14.109.e.1. Is an appropriately certified lifeguard;

14.109.e.2. Has skills in rescue and emergency procedures specific to the aquatic area and activities guarded; and

14.109.e.3. Is trained and supervised to enforce safety regulations, provide necessary instructions, and identify and manage environmental and other hazards related to the aquatic activity; and

14.109.f. Ensure proper equipment and safety further by:

14.109.f.1. Evaluating the child and classifying the child as either a swimmer or a non swimmer, prior to allowing a child to participate in a Level II water activity;

14.109.f.2. Assigning equipment, facilities and activities equivalent to the child's individual abilities and based on a child's classification; and

14.109.f.3. Ensuring that rescue equipment is in full working condition, available and accessible to a child at each water activity site.

14.110. Field Trip. When a center plans a field trip, the center shall:

14.110.a. Have on file a written field trip plan that includes:

14.110.a.1. The names of the children, staff members, and any other participants on the field trip;

14.110.a.2. The departure and return times;

14.110.a.3. The means of travel and routes to be taken;

14.110.a.4. An alternate plan in case of bad weather;

14.110.a.5. The name of a contact person at the center;

14.110.a.6. The name, address, and telephone number, if applicable, of each destination;

14.110.a.7. Relevant safety rules to be followed; and

14.110.a.8. Special emergency procedures;

14.110.b. Obtain written permission from the child's parent prior to the field trip; and

14.110.c. Identify the name or names of the assigned qualified staff member or members responsible for the field trip who shall take with him or her a copy of the written field trip plan, first aid supplies and emergency information for each participating child.

**§78-1-15. Health.**

15.1. Child Immunization Records.

15.1.a. Within thirty (30) days of admitting a child, a center shall have on file a record of a child's immunizations or a plan for completion signed by the child's licensed health care provider.

15.1.b. If center policy allows, exemptions from immunization requirements shall be available for parents who provide written documentation of religious objections to immunization.

15.1.c. Exemption from immunization requirements shall be available for parents who provide a signed statement from the child's licensed health care provider indicating that immunization is contraindicated based on the child's medical condition

15.2. Child Health Assessment.

15.2.a. A center shall have on file no later than thirty (30) days after the admission, the child's health records, including a record of a health assessment signed by the child's licensed health care provider, that includes the following medical and developmental information, and any special required instructions for the center:

15.2.a.1. The child's current height and weight;

15.2.a.2. A description of any allergy, current health problem or condition that may affect the child's adaptation to care, including abnormal results of screening tests, for vision, hearing, tuberculosis, or lead poisoning;

15.2.a.3. Prescribed daily medications and any potential side effects; and

15.2.a.4. The child's health history, including, as applicable, information about a serious illness or significant communicable disease, an injury that required medical attention or hospitalization, a previous surgery, or a history of prematurity-; and

15.2.a.5. A medical plan of care, if the child has a chronic health condition that requires specific attention or has the potential to become a medical emergency.

15.2.b. A center shall provide parents with a West Virginia Health Check periodicity chart for child health exams and shall ensure that a child's health assessment is updated with new or current information at least every two (2) years for the child under the age of six (6) years.

15.2.c. If a child is between six (6) weeks and three (3) months of age, a center shall have on file a statement signed by the child's licensed health care provider permitting the child to enter group care.

15.3. Medical Treatment.

15.3.a. A center shall develop, implement and maintain health policies and procedures that include protocols to follow when medical treatment is required by a child whose parent has on file a signed statement objecting to treatment.

15.3.b. When the child's parent objects to medical treatment on the grounds that it conflicts with the convictions of his or her religion or conscience, the center shall have on file a statement of the objection to treatment signed by the child's parent.

15.4. Child Illness at the Center.

15.4.a. A center shall ensure that staff members observe a child daily and watch for changes that may indicate injury, infestation or illness, and record any observed changes in the child's file. ~~Changes include:~~

15.4.a.1. ~~Behavior or appearance that is unusual for a child,~~

15.4.a.2. ~~A skin rash, itchy skin, or itchy scalp; or~~

15.4.a.3. ~~A complaint of pain or not feeling well.~~

15.4.b. When staff members observe changes in a child that may indicate illness or when a child is ill, staff members shall:

15.4.b.1. Remove the child to a designated quiet area to rest comfortably under supervision;

15.4.b.2. Take the child's temperature and record it in the child's file;

15.4.b.3. Use universal precautions, as required; and

15.4.b.4. Contact the child's parent or other individual authorized by the parent to assume responsibility for the child.

15.4.c. When taking a child's temperature, staff members shall not use a mercury thermometer or the rectal method for any child.

15.4.d. A center shall inform the parent and suggest that the parent consult a licensed health care provider for a child who has a fever:

15.4.e. A center shall exclude a sick child from the center:

15.4.e.1. Immediately when a child has a serious communicable illness;

15.4.e.2. When the illness prevents a child from participating in routine activities;

15.4.e.3. When a child's illness results in a greater need for care than staff members can provide without compromising the health and safety of the other children;

15.4.e.4. When a child appears to have any of the following symptoms, unless a licensed health care provider determines that they do not indicate a communicable disease:

15.4.e.4.A. Fever with stiff neck, lethargy, irritability, or persistent crying;

15.4.e.4.B. Diarrhea in addition to signs of dehydration, such as a decrease in urination as indicated by a reduction in the number of wet diapers, no tears when crying or a decrease in activity, or blood or mucus in the stool;

15.4.e.4.C. Vomiting three (3) or more times, or with signs of dehydration;

15.4.e.4.D. Undiagnosed rash that is accompanied by a behavior change, difficulty in breathing or joint pain, or that is characterized by open sores, blood, red or purple pin-head spots, or bruises not associated with an injury, or lasts more than one (1) day;

15.4.e.4.E. Mouth sores with drooling;

15.4.e.4.F. Infestation, such as scabies or head lice;

15.4.e.4.G. Abdominal pain that is persistent, or intermittent with other signs such as a fever;

15.4.e.4.H. Difficulty in breathing; or

15.4.e.4.I. Lethargy such that the child does not play; and

15.4.e.5. When a child has any of the following diagnosed conditions;

15.4.e.5.A. Diarrhea and blood or mucus in the stool;

15.4.e.5.B. Contagious signs of pertussis, measles, mumps, chicken pox, rubella or diphtheria;

15.4.e.5.C. Streptococcal infection until treated with antibiotics for twenty-four (24) hours;

15.4.e.5.D. Pinkeye with yellow or white discharge;

15.4.e.5.E. Untreated tuberculosis; or

15.4.e.5.F. Other conditions as determined by a licensed health care provider.

15.4.f. When excluding a child to prevent transmission of illness or readmitting a child who has been excluded, the center shall abide by the following guidelines:

15.4.f.1. During the course of an identified outbreak of any communicable illness, the center shall exclude the child if a licensed health care provider determines that the child is contributing to the transmission of the illness;

15.4.f.2. When a child has been diagnosed with a vaccine-preventable communicable disease, a center shall exclude the child who has not been immunized against the disease until a licensed health care provider determines that a risk of disease transmission has passed;

15.4.f.3. When a licensed health care provider excludes a child because of a communicable illness, a center shall readmit the child only after the child's parent provides a ~~signed~~ signed statement from a licensed health care provider that the risk of transmission is no longer present and the child is well enough to participate in center activities; and

15.4.f.4. After receiving a signed statement from a licensed health care provider that the child poses no health risk to the children at the center, the center may permit the child to remain at the center.

15.4.g. Guidelines for handling reportable diseases introduced in a center include that:

15.4.g.1. A center shall report to the local health department the introduction of a diagnosed reportable disease as listed in Appendix 78-1 B of this rule, including, chickenpox, diphtheria, giardia lamblia, hepatitis A, mumps, meningitis, pertussis (whooping cough), rheumatic fever, rubella (German measles), rubeola (measles), salmonella, shigella, and tuberculosis;

15.4.g.2. A center shall inform the parent of each child immediately of the presence of the disease and the need to contact a licensed health care provider for further information; and

15.4.g.3. A center shall complete a serious occurrence report as required under this rule.

15.4.h. Medication Administration. With advice from a licensed health care provider, a center shall develop, implement and maintain health policies and procedures that include the following procedures for the administration of medication:

15.4.h.1. A center shall only administer medication with written permission from the child's parent, and with a prescription or a written order from a licensed health care provider except as provided for in Section 15.4.h.7.;

15.4.h.2. The center shall secure instructions from the child's parent for each medication to be administered. The center may not accept instructions that indicate to administer the medication on an as needed basis unless the order is accompanied by a medical treatment plan written by the child's licensed health care provider which describes the

as needed condition. All medication instruction must be legibly written, signed by the parent, attached to the medication log and shall include:

15.4.h.2.A. The child's first and last name;

15.4.h.2.B. The name of the medication to be given;

15.4.h.2.C. The reason the medication is being given; and

15.4.h.2.D. Directions for the administration of the medication including the specific dosage, specific frequency or time to be given, route to be given and the time of the last dosage administered by the parent.

15.4.h.3. A center may secure a parent's written permission to apply sun screen supplied by the center provided the center gives the parent information, in writing, about the product prior to its application.

15.4.h.4. A center shall store all medication in its original ~~bottle or package~~ packaging and shall place the medication ~~medication other than sun screen and diaper ointment~~ in a locked cabinet or labeled container that is inaccessible to children and can be opened only by key or combination. The container or cabinet shall be away from food, and refrigerated or unrefrigerated according to instructions on the prescription, order or label. Sunscreen, diaper ointment and emergency medication are exempt from being stored in a locked cabinet or container, but shall remain inaccessible to children.

15.4.h.4.A. Refrigerated medication shall be in a container which cannot leak.

15.4.h.4.B. If the container used is plastic, it shall be a hard molded plastic container. Plastic bags are prohibited for storage.

15.4.h.4.C. Medication for staff shall be stored separately from children's medication.

15.4.h.5. A center shall ensure that medication is only administered by designated qualified staff members with who have passed the approved training in medication administration.

15.4.h.6. A center shall ensure that prescription medication is only administered when the prescriptive medicine bottle or package has the original pharmacy label showing the prescription number, name of the medication, date the prescription was filled, the licensed health care provider's name, the child's first and last names, specific, legible directions for administration and storage, and the expiration date.

15.4.h.7. A center shall ensure that non-prescription medication is only administered when the following criteria are met:

15.4.h.7.A. The center administers oral non prescription medication for no more than three (3) consecutive days within a thirty (30) day period without written instruction from a licensed health care provider;

15.4.h.7.B. The center applies non prescription topical products (ointments, creams, or lotions) for no more than five (5) consecutive days within a thirty (30) day period without written instruction from a licensed health care provider. Sunscreens, diaper ointments or lip balms used for preventative purpose are excluded from this requirement;

15.4.h.7.C. The original non prescriptive medicine bottle or package has a label with the child's first and last names written by the parent, specific, legible directions for administration including the appropriate dosage based on weight or age, directions for storage, and verification that the medicine will not expire during the time to be used;

15.4.h.7.D. Medication to reduce fever does not contain aspirin or any product containing aspirin listed as an ingredient such as sodium bicarbonate (Alka-Seltzer®) or bismuth subsalicylate (Pepto-Bismol®);

15.4.h.7.E. Medication for cough, cold or congestion does not contain codeine for teething pain that contains benzocaine is not to be used without instruction from the child's health care provider;

15.4.h.7.F. Any topical containing diphenhydramine hydrochloride (Benydryl®) shall not be applied without written instruction from a licensed health care provider;

15.4.h.7.G. That the medication shall not be administered in a manner inconsistent with the manufacturer's recommendations without written instructions from the child's licensed health care provider;

15.4.h.7.H. The center shall ensure that a staff member applies assists as needed in the application of sunscreen or lip balm for a child up to school age. The sunscreen shall be applied in accordance with the product labeling guidelines; and

15.4.h.7.I. The center shall permit a school age child to apply his or her own sun screen or lip balm under the direct supervision of a staff member.

15.4.h.8. A center shall ensure that before administering medication when the directions are not legible, the parent checks with the child's licensed health care provider or, if applicable, the pharmacy that filled the prescription;

15.4.h.9. When a child no longer needs the medication or its expiration date passes, a center shall return the medication to the parent, and document the date of its return. A center shall not administer medication after its expiration date;

15.4.h.10. A center shall ensure that records of medication administration are individual and kept:

15.4.h.10.A. In a medication log that is cumulative; and

15.4.h.10.B. Completed in ink by the staff member who administers the medication, and includes the child's name, the name of the

medication, the date and time of the administration, the dosage and route of the medication, the child's reaction, if any, and the name of the staff member who administered it.

15.4.h.10.C. Sunscreen and lip balm application are not required to be logged.

15.4.h.11. A center shall ensure when a documentation error is made that a single line is drawn through the error with the staff person correcting the error initialing it.

15.4.h.12. A center shall ensure if and when a medication error is made, the staff member who makes the error:

15.4.h.12.A. Informs the center director and the parent of the child affected by the error;

15.4.h.12.B. Completes a serious occurrence report as required under this rule; and

15.4.h.12.C. Observes the child for any reaction to the error. ~~and, if~~ If the child shows a reaction, contact 911, and in the case of an overdose, contacts the poison control center. If 911 service is not available to the area then emergency services shall be contacted.

15.4.h.13. A center may permit a child to self-administer his or her own medication under the following circumstances:

15.4.h.13.A. With written permission from the child's parent and licensed health care provider and in accordance with procedures established in this rule, a child may self-administer asthma medication, emergency allergy medication or other similar emergency medication;

15.4.h.13.B. With written permission from the child's parent and licensed health care provider, the center may establish procedures to permit the child, under supervision, to self-administer insulin or other injected medication that the child requires; and

15.4.h.13.C. When the child self-administers medication, qualified staff members shall keep a written record of the administration in the medication log.

15.4.h.14. A center shall have a procedure that requires medication logs be reviewed on a daily basis to ensure that medicine is being properly administered and documented.

15.4.h.15. A center shall post the "Seven Rights of Medication Administration" near to the storage of medication.

#### 15.5. Dental Health.

15.5.a. A center shall develop a dental health plan that provides for staff training in oral health concepts and child oral health education, appropriate to the age of the children at the center.

15.5.b. Staff members shall not give a child a bottle, a sipping cup of milk or juice as a pacifier.

15.5.c. For a child twenty-five (25) months and over, a center shall ensure that the child:

15.5.c.1. Has a personally labeled toothbrush with bristles in good condition, that is stored in a sanitary manner so that it does not touch another toothbrush and that its bristles are exposed to the air to dry;

15.5.c.2. Does not share his or her toothbrush with other children; and

15.5.c.3. Uses toothpaste that is dispensed in a sanitary manner.

**§78-1-16. Nutrition and Food.**

16.1. A center shall have a nutrition program that provides children with meals and snacks that are consistent with the United States Department of Agriculture's (USDA) Child and Adult Care Food Program (CACFP), Meal and Snack Patterns (Appendix 78-1-C). Dietary Guidelines for children beginning at age two (2). A center shall provide children with meals and snacks that are consistent with the United States Department of Agriculture's current Dietary Guidelines for Americans (Appendix 78-1-C).

~~16.2. Dietary guidelines for children under 24 months of age:~~

~~16.2.a. At a minimum, meals and snacks the facility provides for infants and toddlers shall contain food in the meal and snack patterns shown in Appendix 78-1-C of this rule. Food shall be appropriate for infants' individual nutritional and developmental stages as determined by written instruction from the parent or health care provider.~~

~~16.2.b. The center shall offer solid foods and fruit juices to infants 6 months of age and younger only upon the recommendation of the parent and the child's licensed health care provider.~~

16.32. Special Dietary Needs. When planning meals and snacks a center shall:

16.32.a. Consider information provided by the parent or a licensed health care provider about a child's special dietary needs, including special needs because of a medical condition, allergy or religious prohibition;

16.32.b. Obtain a written care plan from the parent stating any foods to be avoided, any foods to be substituted and any need for special utensils; and

16.32.b.c. Keep information about the child's special dietary needs in a location that is accessible to staff who prepare and serve food, while protecting a child's right to confidentiality.

~~16.4 Food Groups. A center shall include foods from the four (4) basic food groups: milk, meat/beans, fruits and vegetables, and grains, for the child thirteen (13) months of age and over as follows:~~

~~16.4.a. Breakfast shall include at least one (1) item from three (3) of the food groups;~~

~~16.4.b. Lunch or supper shall include at least one (1) item from each of the four (4) food groups; and~~

~~16.4.c. Snacks shall include at least one (1) item from two (2) of the food groups.~~

16.53. Frequency of Meals. A center shall offer food at intervals no more than three (3) hours apart and ensure that no more than four (4) hours elapse between meals and snacks, unless a child is asleep for any child. A center shall provide meals and snacks according to the following requirements:

16.53.a. A center that is open from morning through afternoon shall serve a morning snack or breakfast, lunch and afternoon snacks;

16.53.b. A center that provides care before seven (7) o'clock in the morning shall serve breakfast; and

16.53.c. A center that provides care to the child whose planned attendance extends until after seven (7) o'clock in the evening shall serve supper;

~~16.6 Quantity for Daily Requirements. A center shall follow the current meal patterns of the USDA Child and Adult Food Program and serve a child:~~

~~16.6.a. Who is in attendance from four (4) hours to seven (7) hours, a quantity of food that will supply a minimum of one third (1/3) of the daily requirements of the current Dietary Guidelines for Americans listed in Appendix 78-1 C of this rule;~~

~~16.6.b. Who is in attendance for eight (8) or more hours, a quantity of food that will supply one third (1/3) to one half (1/2) of the daily requirements of the current Dietary Guidelines for American; and~~

~~16.6.c. Servings of food appropriate to the age of the child, and make additional food available for the child who has eaten the food served and is still hungry.~~

16.74. Requirements for Milk and Juice.

16.74.a. When serving milk, a center shall serve the child only pasteurized, inspected, Grade A approved milk to drink, and shall not use powdered milk except for cooking.

16.74.b. When serving juice, a center shall serve the child only commercially pasteurized, one hundred (100) percent, vitamin C fortified fruit juice to drink.

16.58. Food Service. A center shall serve food according to the following:

16.58.a. A center shall provide a child with age-appropriate and developmentally suitable eating utensils;

16.58.b. Staff members shall encourage a child to eat the food served, but shall not coerce or force feed a child;

16.58.c. Staff members shall eat or participate in meals and snacks with a child twenty-five (25) months of age and over and shall model healthy eating habits; ~~and~~

16.58.d. The meals shall be served in a setting that encourages socialization, where the children and staff members are seated when eating, and staff members provide supervision and model positive eating behaviors and social interactions; ~~;~~

16.5.e. Food shall not be served directly on the table or chair tray; and

16.5.f. The center shall give children time to eat their food without rushing.

16.96. Menus.

16.96.a. A center shall post menus for all food served a minimum of one (1) week in advance for the parent to see.

16.96.b. A center shall follow written menus as planned and write any changes on the posted menus.

16.96.c. A center shall date menus and keep them on file for a minimum of two (2) months.

16.710. Food Safety. A center shall ensure that:

16.710.a. Food preparation areas, service areas, storage areas, and equipment and utensils are clean and in good repair;

16.710.b. An off-site supplier of meals or snacks has a Food Service Permit;

16.710.c. The Bureau for Public Health has approved the method of transporting and distributing the food ~~taken for a child to consume during a field trip~~ not prepared at the center or which is served off-site;

16.710.d. Leftover portions of food that have been served are discarded;

16.710.e. Prior to serving milk to a child, except when its original container is a single service container, staff pours the milk from the original container into a clean, sanitized and labeled bottle or a disposable, sterile bottle liner, or into a sanitized glass or single-service cup and shall not pour the milk back to its original container or store it for later use;

16.710.f. Ice for consumption is made with water from an approved source ~~drinking water;~~ and

16.710.g. Ice used for ~~seeking~~ cooling is not consumed by the child, and water from melted ice used for cooling does not contaminate food to be served.

16.118. Additional Nutrition and Feeding Requirements for a Child Twelve (12) Months of Age and Under.

16.118.a. The center shall feed solid foods and fruit juices to a child four (4) months of age and younger only upon receipt of and in accordance with a written plan of care signed by the child's licensed health care provider.

16.118.b. A center caring for a child twelve (12) months of age and under shall feed the child according to a plan developed in consultation with the parent and may include advice from the child's licensed health care provider. Due to the differences in development and nutritional needs of an infant, a center is not required to provide baby food to an infant not yet eating table food, but must ensure that the food provided by the parent meets nutritional guidelines as found in Appendix 78-1-C. The option to have parents supply the baby food must meet the requirements of sub-section 16.9 of this rule.

16.118.bc. When a child is being breast fed, a center shall ensure that the child's plan makes a provision for the mother to provide sufficient portions of breast milk or an alternative to satisfy the child throughout the day, and a center shall not give commercial formula to the child receiving breast milk without written permission from the mother.

16.118.d. For the child between six (6) months and three (3) years of age a center shall not replace formula or breast milk with water.

16.118.e. Until a child is able to hold a bottle securely, a staff member shall hold the child while bottle feeding. When a child is no longer being held for feeding, the staff shall ensure that seating is age-appropriate and shall not prop bottles or allow the child to carry a bottle while moving about or walking.

16.118.f. For food safety a center shall:

16.11-e-8.f.1. Store perishable food, formula and expressed breast milk in the refrigerator;

16.11-e-8.f.2. Have the parent clearly label each bottle of formula with the child's name, contents and the date received;

16.11-e-8.f.3. Have the parent clearly label each bottle of breast milk with the child's name, date expressed, date frozen if applicable, and date received;

16.11-e-8.f.4. Cap bottles of formula or breast milk during storage;

16.11-e-8.f.5. Ensure each staff person follows the hand washing requirement found in Section 17 of this rule prior to preparing a bottle;

16.11-e-8.f.6. Thaw frozen breast milk in the refrigerator or under cold running water. The center must not refreeze breast milk;

~~16.11-e-8.f.7.~~ Not use a microwave oven to warm a bottle of formula or breast milk;

~~16.11-e-8.f.8.~~ Not give any formula or breast milk that is not labeled to a child;

~~16.11-e-8.f.9.~~ Discard any unused breast milk after each feeding;

~~16.11-e-8.f.10.~~ Clean and sanitize bottles, bottle caps, and nipples by washing in a dishwasher and storing them in a sanitary manner, or by boiling them for five (5) minutes immediately before filling them; and

~~16.11-e8.f.11.~~ Handle baby food in the following manner:

~~16.11-e-8.f.11.A.~~ A center shall not accept previously opened baby food containers;

~~16.11-e8.f.11.B.~~ A center shall remove commercially packaged baby food from its container and serve it in a clean bowl or cup;

~~16.11-e8.f.11.C.~~ A center shall not place solid food in a bottle or feeder apparatus and shall use a spoon to feed solid food in a sanitary manner; and

~~16.11-e8.f.11.D.~~ A center shall discard leftover food that has come into contact with the feeding spoon;

~~16.11-e8.f.12.~~ A center shall handle breast milk and formula in the following manner:

~~16.11-e8.f.12.A.~~ A center shall store breast milk in hard plastic or glass bottles with tight lids only;

~~16.11-e8.f.12.B.~~ A center shall remove breast milk and bottles of formula from the refrigerator immediately before using only;

~~16.11-e8.f.12.C.~~ A center shall discard breast milk or formula when it remains at a temperature higher than forty-one (41) degrees Fahrenheit for more than one (1) hour or within thirty (30) minutes after a child has finished feeding; and

~~16.11-e8.f.12.D.~~ A center shall use fresh refrigerated breast milk within forty-eight (48) hours of receipt, breast milk that has been frozen and properly thawed within twenty-four (24) hours of receipt and frozen breast milk within two (2) weeks of receipt if it is reported that it has been stored in the back of a freezer.

~~16.11-f-8.g.~~ In order to provide sufficient amounts of safe drinking water, the center shall ensure that:

~~16.11-f8.g.1.~~ Drinking water is available to children and staff members and is freely accessible at all times. ~~to a child thirteen (13) months of age and over; and~~

16.11.f8.g.2. A single service drinking cup is discarded after one use, and a non-disposable cup or glass is washed and sanitized after each use.

16.129. A center must offer a nutrition program, but may choose to allow a child to bring meals and snacks to the center if:

16.129.a. The center has written policies that address:

16.129.a.1. Providing parents and staff with nutritional guidelines in this rule;

16.129.a.2. Providing to parents and staff guidelines on the proper preparation and storage of food so that foods do not present a cross-contamination threat;

16.129.a.3. Providing to parents and staff a list of foods the center will not permit, including known food allergens to other children;

16.129.a.4. An explanation to parents of how the center will address the issue if a child does not bring meals or snacks, or if the meals or snacks the child does bring are not within the nutritional guidelines or guidelines provided by the center;

16.129.a.5. That the food prepared from an unapproved source is for consumption by the child and not to be shared with other children or the group.

16.129.b. The center has safe storage and refrigeration of the food as needed. Storage must be approved by the Health Department;

16.129.c. Each child's meal or snack is clearly labeled with the child's first and last names and the date it was brought to the center;

16.129.d. No additional food preparation is required by the center;

16.129.e. The center provides a meal or snack when the parent fails to provide a meal or snack from home;

16.129.f. The center includes children with food allergies in the group during meal or snack time and closely supervises all children under school age during meal or snack time to prevent the cross-contamination of food or accidental ingestion of a food allergen; and

16.129.g. The center has milk available at meal times in accordance with meal patterns described in Appendix 78-1-C of this rule.

#### **§78-1-17. Sanitation.**

17.1. Personal Hygiene. All individuals on the center premises or participating in center activities shall practice good personal hygiene, including:

17.1.a. Hand Washing.

17.1.a.1. Staff members shall wash their hands before starting work; and

17.1.a.2. Staff members and children shall wash their hands with soap and warm, running water for at least twenty (20) seconds:

17.1.a.2.A. When hands are contaminated with body fluids;

17.1.a.2.B. Before preparing, handling or serving food, or setting the table;

17.1.a.2.C. After toileting, handling diapers or assisting a child with toilet use;

17.1.a.2.D. Before and after eating meals or snacks;

17.1.a.2.E. After handling pets or other animals;

17.1.a.2.F. Before giving medication;

17.1.a.2.G. After playing outdoors;

17.1.a.2.H. After handling garbage; and

17.1.a.2.I. After removing gloves used for any purpose.

17.1.b. Universal Precautions. With the exception of breast milk, staff members shall adopt universal precautions when exposed to blood and body fluids that might contain blood; and

17.1.c. Diapering and Toileting. A center shall ensure that diapering and toilet training follow the guidelines in Appendix 78-1-D of this rule.

17.1.c.1. Toilet Training.

17.1.c.1.A. A center shall discuss with the parent and document in the child's record the toilet-training methods to be used with the child being trained.

17.1.c.1.B. Staff members shall not use any form of punishment in connection with toilet training.

17.1.c.1.C. Staff members shall not force a child to sit on a potty or training chair.

17.1.c.2. Toilet Equipment and Fixtures.

17.1.c.2.A. A center shall disinfect the potty or training chairs after each use; and

17.1.c.2.B. A center shall provide toilet fixtures that are sized so that the child can use them without assistance, and provide step stools, or modified toilet seats that are safe and easily disinfected.

17.2. Physical Facilities.

17.2.a. A center shall keep all areas of the premises and all equipment clean and in a neat and orderly condition at all times.

17.2.b. The center shall ensure that floors, walls and ceiling are of easily cleanable material.

17.2.c. The center shall ensure that the floor area immediately adjacent to the diaper changing table has a moisture-resistant, non-absorbent surface extending three (3) feet from the base of the table on all sides, except when one side of the table is against a wall.

17.2.d. The center shall have a hand-washing sink located in the immediate area of the diaper-changing space. Centers licensed prior to the effective date of this rule are not out of compliance with this requirement if the existing diaper-changing space does not include a hand-washing sink in the immediate area. Upon the effective date of this rule, the Department shall not approve an additional diaper-changing space without a sink in the immediate area.

**§78-1-18. Animals.**

18.1. A center shall ensure that animals on the premises show no signs of disease or illness.

18.2. The center shall maintain documentation of current vaccinations on all dogs and cats.

18.3. A center shall not have on the premises ferrets, birds, reptiles, including snakes, lizards and turtles, or any wild or dangerous animals.

18.4. A center shall ensure that a staff member is always present when a child is with an animal.

18.5. A center shall inform the child's parent in advance of the presence of animals at the center.

**§78-1-19. Safety and Emergency Operating Procedures.**

19.1. A center shall develop, implement and maintain attendance policies and procedures to ensure that it has a current and updated written record of the first and last name of each child who is participating in center activities, onsite and offsite, and who is being transported in a vehicle provided by the center.

**19.2. Daily Attendance Sign-In and Sign Out.**

19.2.a. A center shall ensure that the responsible person bringing the child to the center signs the child in as the child arrives and that the responsible person picking up the child signs the child out as the child departs the center.

19.2.b. A center shall require the following sign-in and sign-out information:

19.2.b.1. Arrival time including the date and time;

19.2.b.2. Departure time including the date and time;

19.2.b.3. The name and signature of the responsible person who drops off the child; and

19.2.b.4. The name and signature of the responsible person who picks up the child.

19.2.c. A center shall have an attendance procedure for notifying the parent when a school-age child does not arrive as scheduled.

19.3. Transportation Log.

19.3.a. A center shall provide a passenger log to be kept by the driver of the vehicle, the designated staff member, or the volunteer riding in the vehicle that shall include the first and last names of each child boarding the vehicle. There shall be a notation on the log each time a child boards the vehicle or departs the vehicle.

19.3.b. Immediately upon unloading the last child from a vehicle, or before parking the vehicle, the driver or the designated staff member shall physically search the vehicle to ensure that all children have been unloaded. The transportation log shall then be reviewed either by the driver or the designated staff member to check that the information is correct.

19.3.c. The driver or the designated staff member shall deliver the transportation log to the person responsible for maintaining attendance records.

19.4. Daily Roster.

19.4.a. A center shall prepare a written, daily roster that includes the first and last names of each child in each group of children, the name of the staff member responsible for the group, and the space designated for use by the group both at the center and at off-site locations used during field trips.

19.4.b. Periodically throughout the day, the staff member responsible for each group of children shall check the daily roster to ensure that all children are present or accounted for.

19.4.c. A center shall keep each daily roster in a designated location where it is readily available in case of emergencies and can be used to confirm attendance following an evacuation from the premises or upon returning from a field trip.

19.4.d. A center shall ensure that its attendance procedures include accounting for a child at all times and taking action when a child is lost on or off the premises.

19.5. Emergency File. A center shall develop and maintain an emergency file with information for each enrolled child that is accessible to all staff members, including at off-site activities.

19.6. Emergency Policies, Procedures and Disaster and Plan. A center shall develop, implement and maintain ~~policies and procedures for responding to an emergency, including a plan~~ an emergency and disaster plan which addresses:

19.6.a. ~~For~~ Medical and non medical emergencies, including and ~~for~~ situations that could pose a hazard to staff and children, including, such as a fire, storm, flood, chemical spill, power failure, bomb threat, persons coming onto the premises whose health or behavior may be harmful to a child or staff member or kidnapping;

19.6.b. ~~For~~ evacuation from the center in the event of an emergency that could cause damage to the center or pose a hazard to the staff and children;

19.6.c. ~~For~~ evacuation from a vehicle used to transport children;

19.6.d. ~~That considers~~ the age and physical and mental abilities of the enrolled children; types of emergencies that are likely to affect the area; the requirements of the State Fire Marshal; and advice from the Red Cross or other health and emergency professionals;

19.6.e. ~~For documenting the~~ rReview of ~~it's~~ the emergency plans with new staff during orientation and with all staff at least once a year;

19.6.f. ~~For~~ a The notification of parents of procedures for relocation and reunification during evacuation emergencies and disasters;

19.6.g. ~~For submitting~~ Submission of an emergency and disaster evacuation plan to the Director of the Office of Emergency Services in the county where the center is located or any other designated authority with a procedure to submit any changes to that plan by December 31 of each year;

19.6.h.f. ~~For~~ In the case of a medical emergency, that identifies identification of the staff responsible for implementing the plan. The plan for a medical emergency shall include and includes;

19.6.h.1. The procedures to be followed;

19.6.h.2. The location of a center's first aid kit and other emergency supplies;

19.6.h.3. The location of the child's emergency information;

19.6.h.4. The name, address and telephone number of a health professional or facility available to provide medical consultation to the center;

19.6.h.5. The name, address, telephone number and location of the emergency facility to be used when a center cannot reach the child's parent or licensed health care provider, or when transporting the ill or injured child to the preferred hospital could result in a serious delay in obtaining medical attention;

19.6.hf.6. Identification of a means of transportation that is always available in case of an emergency, and telephone numbers for an ambulance or other transportation that might be required; and

19.6.hf.7. Other emergency telephone numbers as required in this rule; and

19.6.ig. For a non medical emergency that identifies staff members responsible for implementing the plan and includes:

19.6.ig.1. The procedures to be followed;

19.6.ig.2. The location of the center's first aid kit and other emergency supplies;

19.6.ig.3. The location of the child's attendance records and emergency information;

19.6.ig.4. The identification of a safe location within a center where a children and staff members can stay until the threat of danger passes;

19.6.ig.5. A diagram of the routes to be used by the child and staff members to reach the safe location and a copy of the plan for moving to the safe location that the center shall post by the telephone and in each room of the center;

19.6.ig.6. A procedure for notifying the local fire department when a center offers evening or night time care;

19.6.ig.7. A procedure for practicing moving to the safe location within a center at least two (2) times a year;

19.6.i.8. A procedure for practicing relocation with staff members two (2) times per year;

19.6.ig.89. A procedure for maintaining a written record of the dates and times when the practice sessions are conducted; and

19.6.ig.910. A procedure for ensuring that a staff member determines that all of the children attending at the time of the non medical emergency are safe during an emergency or practice.

#### 19.7. Evacuation and Drill Plan.

19.7.a. A center shall have a plan for evacuating the center in an emergency posted by the telephone in each room of the center that identifies staff members responsible for implementing the plan that includes:

19.7.a.1. The procedures to be followed;

19.7.a.2. The location of the child's attendance records and emergency information;

19.7.a.3. A diagram of safe routes by which the child and staff members may exit each area of the center used by the child; and

19.7.a.4. ~~The name and address of a nearby relocation site with a telephone, such as another center, school or public building, and the name and address of a more distant relocation site that the center has arranged to use in temporarily relocating during an emergency or disaster, that can accommodate the children and staff until the center can contact the children's parents and reunification of the children and parents can occur. that is available for a child and staff members to use until the center can contact the child's parent.~~

19.7.b. A center shall conduct a fire drill at least two (2) times a month during its regular hours of operation, keeping a written record of the dates and times when fire drills are conducted.

19.7.c. When a center offers evening or night time care, a center shall also conduct fire drills during the hours of operation of its evening or night time program at least once a month.

19.7.d. A center shall ensure that a staff member is responsible for determining that all of the children attending at the time of the event have been evacuated safely during an emergency evacuation or practice.

#### 19.8. Evacuation from a Vehicle.

19.8.a. A vehicle evacuation plan shall be posted in each vehicle regularly used by the center to transport a child that includes:

19.8.a.1. The procedures to be followed;

19.8.a.2. The location of the vehicle's first aid kit and other emergency supplies;

19.8.a.3. The location of the vehicle's transportation passenger log and the children's emergency information; and

19.8.a.4. The name and address of the emergency medical facilities closest to the vehicle's route.

19.8.b. When it provides transportation according to a regular schedule, a center shall conduct a vehicle evacuation drill at least two (2) times a year.

19.8.c. A center shall maintain a written record of the dates and times when vehicle evacuation drills are conducted.

19.8.d. A center shall ensure that a staff member is responsible for determining that all of the children have been evacuated safely during an emergency evacuation or practice.

#### 19.9. Staff Responsibility Regarding Medical Emergencies and Evacuation.

19.9.a. For a medical emergency at a center, a center shall develop, implement and maintain procedures for ensuring that staff members:

19.9.a.1. Attend to the injured child with first aid or follow appropriate emergency procedures if the child is experiencing an acute condition, including an asthma ~~atta~~attack, seizure, or life-threatening anaphylactic reaction;

19.9.a.2. Notify the parent or other individual designated by the parent to assume responsibility for the child and inform him or her of the child's illness or injury and the center's response; and

19.9.a.3. Complete the required documentation.

19.9.b. For a medical emergency requiring treatment at a medical facility, a center shall provide staff to:

19.9.b.1. Accompany the ill or injured child to the medical facility;

19.9.b.2. Ensure that signed authorization for treatment accompanies the ill or injured child to a medical facility;

19.9.b.3. Notify the parent or other individual designated by the parent to assume responsibility for the child and inform him or her of the child's illness or injury and the center's response;

19.9.b.4. Inform the medical facility that the ill or injured child is being transported for treatment; and

19.9.b.5. Obtain substitute staff, if needed, to provide adequate supervision for the children who remain at the center.

19.9.c. A center shall ensure that staff members are informed of their responsibilities in the event of an evacuation of the premises or a center's vehicle, as required by the center's procedures and notify the Secretary.

19.10. First Aid Kit. A center shall provide a first aid kit for every twenty (20) children that is stored where it is easily accessible to staff members, but out of reach of the children. The location of the first aid kit shall be clearly marked and in view of the staff member. The kit shall be:

19.10.a. Equipped with band aids, a non mercury thermometer, gauze, tape, scissors, tweezers, disposable nonporous gloves, a first aid guide, the telephone number of a poison control center, and pencil and paper. A bottle of clean water shall be stored with or accompany the first aid kit; and

19.10.b. Readily available at all times, including in the outdoor activity area, on all field trips away from the center and in each vehicle provided by the center for the transportation of children.

19.11. Telephone. A center shall provide at least one (1) operable, ~~direct-landline~~ telephone that is in the center space, is not a pay station or locked telephone, and is available during the center's hours of operation, or shall provide at least one (1) activated mobile or cellular telephone that remains on-site at all times. Close to the location of each

landline telephone or, or in case of a center using a mobile phone, in each administrative space and classroom, a center shall post:

19.11.a. The name, address and telephone number of the center;

19.11.b. A list of emergency numbers, including 911, the fire department, police department, ambulance service, the center's medical consultant and a poison control center;

19.11.c. When a center operates at more than one (1) site, the name and telephone number of the center's principal place of business; and

19.11.d. When a center occupies space it does not own, the name and telephone number of the owner of the building.

19.12. Reporting a Serious Occurrence. A center shall:

19.12.a. Immediately inform the parent or parent's authorized designee when a child is involved in a serious occurrence;

19.12.b. Verbally report the occurrence within twenty-four (24) hours or by the next work day to the Secretary, and before the end of the day, ensure that the staff member in charge prepares and signs a serious occurrence report; and

19.12.c. Complete a report of each serious occurrence ensuring that the report is signed by the staff member completing it and by the child's parent. Copies of the report are to be placed in the child's file and in a separate cumulative file maintained by the center.

**§78-1-20. Environmental Safety.**

20.1. A center shall take all necessary precautions to ensure an accident-free and smoke-free environment for the children, staff members and visitors to the center.

20.1.a. Smoking and tobacco product use by anyone is prohibited on the premises and everywhere in the presence of children.

20.1.b. Smoking is prohibited anytime in vehicles operated by the center, even in the absence of children.

20.1.c. All tobacco products, lighters and matches shall be kept out of the children's reach and sight.

20.2. Safety of Premises, Furnishings, Equipment and Supplies. A center shall:

20.2.a. Ensure that the premises, furnishings, equipment and supplies are in good repair and present no hazard to the health and safety of the children;

20.2.b. Only use furnishings, equipment and supplies that meet the standards of the Consumer Product Safety Commission (CPSC) and shall not use any product recalled by the CPSC;

20.2.c. Position indoor and outdoor furnishings, equipment and supplies to:

20.2.c.1. Allow a child freedom to participate in center activities;

20.2.c.2. Permit direct access to emergency exits; and

20.2.c.3. Provide clear sight lines for staff supervision;

20.2.d. Ensure that sleeping equipment, including cribs, playpens, cots and beds are a minimum of twenty-four (24) inches apart from each other on all sides;

20.2.e. Maintain a temperature not less than sixty-eight (68) degrees Fahrenheit at floor level and not higher than eighty-five (85) degrees Fahrenheit, in all rooms occupied by a child;

20.2.f. Ensure sufficient lighting by:

20.2.f.1. Providing a minimum of fifty (50) foot candles of illumination at floor level, in rooms occupied by a child for program activities;

20.2.f.2. Providing at least thirty (30) foot candles of illumination at floor level in areas not occupied by a child;

20.2.f.3. Providing light for supervision when a child is sleeping; and

20.2.f.4. Provide outdoor lighting at all entrances and exits used by a child when a center operates evening or night time programs.

20.3. Potential Hazards of Premises, Furnishings, Equipment and Supplies.

20.3.a. Firearm Prohibition. A center shall prohibit firearms unless carried by a regulatory or law enforcement professional in the line of duty; and shall prohibit projectile weapons, including pellet or BB guns, darts, cap pistols, bows and arrows, slingshots and paint ball guns.

20.3.b. Hazardous Chemical and Toxic Items. A center shall ensure that:

20.3.b.1. Products containing potentially hazardous chemicals, including identified poisons, medications, certain cleaning supplies, and art supplies, not clearly labeled as "nontoxic," are inaccessible to the children in a locked cabinet away from food, and when possible, stored in their original containers and never in containers originally designed for food; and

20.3.b.2. For each product containing potentially hazardous chemicals, a center has on file a material safety data sheet, available at the point of purchase or from the manufacturer.

20.3.c. Lead Paint. A center shall seal or remove lead paint from the premises according to current safety standards and at a time when the children are absent during the entire sealing or removal process. The center shall secure approval from the Health Department prior to implementing a plan to deal with lead paint.

20.3.d. Electrical Equipment.

20.3.d.1. Electrical cords. A center shall ensure that each electrical cord is insulated and in good repair.

20.3.d.2. Extension cords and plug-in strips. A center shall not use an electrical extension cord except on a temporary basis, but if using it shall ensure that the cord is in good repair. A center may use an electrical multiple plug-in strip with a circuit breaker in good repair.

20.3.d.3. Electrical Outlet. A center shall ensure that when an electrical outlet within reach of a child younger than school age is not in use, it is protected by a cover.

20.3.d.4. Electrical Appliance. A center shall not locate an electrical appliance in an activity area used by a child except for a brief period when an adult supervises the use of the electrical appliance for a program.

20.3.e. Microwave Oven. If a center uses a microwave oven, the center shall train staff members in the correct use and potential dangers of the oven and post a warning on or near the oven to check the temperature of food heated in the oven before feeding it to a child.

20.3.f. Heating Devices. A center shall provide a shield to protect the children from a hot pipe or radiator and shall not use unvented fuel fire heaters.

20.3.g. Doors. A center shall ensure that:

20.3.g.1. All doors close properly and fire doors are closed at all times; and

20.3.g.2. All clear glass doors are clearly marked at the children's eye level.

20.3.h. Floors. A center shall firmly anchor all floor coverings.

20.3.i. Barriers and Gates. The center shall ensure that:

20.3.i.1. All temporary walls or items being used as physical barriers are firmly anchored or cannot be moved or tipped by a child so that they pose no threat to the safety of the child; and

20.3.i.2. Stairways to which the child has access have appropriate railings and safety gates or other barriers at the top and bottom.

20.3.j. Strings, Cords and Hanging Items.

20.3.j.1. When a child wears a piece of clothing with a drawstring, a center shall:

20.3.j.1.A. Inform the child's parent of the potential risk of strangulation; and

20.3.j.1.B. Ensure that prior to the child's participation in an activity, staff members remove or secure any drawstring that might pose a risk to the child.

20.3.j.2. Pacifiers. A center shall ensure that a pacifier attached to a string or ribbon that is six (6) inches or more in length, is not placed around a child's neck or affixed to the child's clothing.

20.3.j.3. A center shall ensure that a child under school age does not have access to a string or cord that is six (6) inches or more in length and attached to a fixed object, such as a window shade, or access to other hanging items, such as a tablecloth.

20.4. Outdoor Safety.

20.4.a. Barriers and Exits.

20.4.a.1. A center shall ensure that the outdoor activity area for a child under school age:

20.4.a.1.A. Is enclosed on all sides by a natural barrier or secure fence that is at least four (4) feet high with a bottom edge that is less than three and one-half (3 ½) inches from the ground;

20.4.a.1.B. If it has a fence, the fence has no openings greater than three and one-half (3 ½) inches;

20.4.a.1.C. If it has a natural barrier, the barrier has the strength and density to prevent humans and animals from entering or exiting the playground;

20.4.a.1.D. If it is attached to a building, the barrier or fence provides at least two (2) exits from the play area, including one (1) exit that is at a distance from the building; and

20.4.a.1.E. When it has an exit that does not lead directly indoors, that it is protected by a gate equipped with a closure mechanism that is out of the reach of a small child and prevents the child from leaving the play area, but can be easily opened by an adult.

20.4.a.2. A center may use an unenclosed outdoor activity area for school-aged children if it is determined to be hazard-free by the Secretary.

20.4.b. Surfaces for Play Area. A center shall ensure:

20.4.b.1. That the play area has more than one (1) type of surface, including a surface that is suitable for children's wheeled vehicles and pull toys;

20.4.b.2. ~~That the surface of the play area in an equipment use zone is composed of:~~ complies with the current Consumer Product Safety Commission's publication entitled "Public Playground Safety Handbook", publication # 325, sections 2.4 et seq. and 5.3 et seq. A licensee whose outdoor space was approved prior to the effective date of this rule, who remains in compliance with the previous rule, and who does not undergo renovation or relocation of the outdoor space, has (4)years from the effective date of this rule to comply with the current requirements.

~~20.4.b.2.A. Loose fill, including sand, pea gravel, shredded tires, wood chips or wood mulch, to a depth of at least six (6) inches, increasing with the height of the equipment to twelve (12) inches as recommended by the Consumer Product Safety Commission as specified in Appendix 78-1 E of this rule;~~

~~20.4.b.2.B. A unitary surface, such as rubber tiles or mats, or rubber poured in place; or~~

~~20.4.b.2.C. An appropriate combination of loose fill and unitary surface material;~~

~~20.4.b.3. That hard surface materials, such as asphalt, concrete, bricks, blocks, dirt and grass, are not used in equipment use zones;~~

~~20.4.b.4. That appropriate surface materials are located directly under equipment and extend six (6) feet in all directions from the perimeter of the equipment, except from swings where they extend according to the following:~~

~~20.4.b.4.A. For single axis, traditional swings, through a use zone that is twice the height from the ground to the crossbar, front and back; and~~

~~20.4.b.4.B. For tire swings that rotate, six (6) feet beyond the farthest reach of the tire in all directions; and~~

~~20.4.b.5. That concrete footing are covered by surface material to a depth that is adequate to prevent injury from a fall as recommended by the Consumer Product Safety Commission as specified in Appendix 78-1 E of this rule.~~

20.4.c. Hazards. A center shall ensure that:

20.4.c.1. The play area is well drained and free of debris;

20.4.c.2. The outdoor environment is clear of hazards including pits and abandoned wells, tree roots, appliances and all potential hazards, including such as heat pumps, air conditioning units, and external wiring, meters and telephone boxes, are inaccessible to the child;

20.4.c.3. The child is protected from moving vehicles; and

20.4.c.4. When there is reason to believe that exposure to the soil in the outdoor activity area might harm the child, it has on file

evidence that the soil does not contain hazardous levels of any toxic chemical or substances.

**§78-1-21. Pest Management.**

21.1. A center shall document that it has an integrated pest management program as required by the WV Department of Agriculture.

21.2. A center shall provide for insect and rodent control that does not compromise the safety of children.

**§78-1-22. Transportation.** When providing transportation, a center shall ensure that:

22.1. The vehicle used is currently licensed, inspected, insured, and is equipped with signs and warning lights or alternative warning devices as required by West Virginia Code §17C-12-7a;

22.2. ~~By September 1, 2012, any~~ Any vehicle used for transportation that has a capacity that exceeds ten (10) passengers ~~meets the National Highway Traffic Safety Administration (NHTSA) standards for~~ shall be a school bus or multifunction school activity bus equipped with passenger safety restraints appropriate to the children being transported. ~~Provided, that any vehicle used prior to September 1, 2012 for transportation that has a capacity that exceeds ten (10) passengers and does not meet the NHTSA standards shall follow the recommendation of the NHTSA for preventing rollover;~~

22.3. ~~By July 1, 2008, any center which provides transportation in a vehicle with a capacity that exceeds ten (10) passengers and does not meet the standards for a school bus shall submit a plan to the Secretary for how the center will comply with requirement 22.2. of this subsection;~~

22.43. The driver holds a current driver's license for the type of vehicle being driven;

22.45. The driver or a qualified staff member ensures that each child is in an approved child safety restraint system ~~that meets the federal recommendations of the National Highway Traffic Safety Administration (NHTSA), either a child safety seat or booster seat or seat belt, and is secured with seat belts at a ratio of one child per seat belt appropriate to the age and size of the child;~~

22.56. The vehicle is equipped with emergency supplies, including a first-aid kit, fire extinguisher, and, if only one adult is in the vehicle, a mobile telephone or two-way radio;

22.67. When the center owns the vehicle, identifying information is placed on the outside of the vehicle, which can be read by a pedestrian or other passing vehicle, that includes the name, address and telephone number of the center; and

22.78. When the center owns the vehicle, a weekly safety check is conducted and recorded. The safety check shall include vehicle tire pressure, headlights, windshield wipers, emergency flashers, brake lights, turn signals, first aid kit, gas gauge, oil and other fluids.

**§78-1-23. School-Age Program.**

23.1. Centers which operate school-age programs shall comply with previous sections of this rule except as follows:

23.2. Training.

23.2.a. Prior to working with children, staff in a summer recreation camp or day camp shall have:

23.2.a.1. Current CPR certification appropriate to the age of the children in care;

23.2.a.2. Current child first aid training;

23.2.a.3. Training in child abuse recognition and prevention;

23.2.a.4. Approved training in medication administration if applicable;

23.2.a.5. Training in guidance and discipline, behavior management, and conflict resolution related to the age of children in care; and

23.2.a.6. An additional four (4) hours of instructional training related to camp responsibilities.

23.2.b. Summer recreation camp and day camp staff are not required to maintain a WVTCECE credential.

23.2.c. Summer recreation camps and day camps shall have a plan for training late-hires and substitutes who were unable to attend pre-camp training.

23.3. Staff Responsibilities and Qualifications.

23.3.a. In addition to the qualifications stated in Section 9 of this rule, qualified staff members acting as a person in charge in a summer recreation camp or day camp shall:

23.3.a.1. Be at least 21 years of age;

23.3.a.2. Have at least one (1) season of leadership experience in a summer recreation program; and

23.3.a.3. Have knowledge of the camp administrative practices.

23.3.b. Director

23.3.b.1. When the center operates a school-age program only, the director may substitute the early childhood credit hours described in Section 9 of this rule with credit hours in elementary education;

23.3.b.2. The director of a summer recreation camp shall substitute the early childhood credit hours described in Section 9 of this rule with credit hours in recreation or elementary education;

23.3.c. Qualified staff positions may substitute the early childhood credit hours described in Section 9 of this rule with credit hours in elementary education.

23.3.d. Teen aides used in school-age programs shall be at least 16 years of age.

#### 23.4. Supervision of Children in Groups.

23.4.a. In determining and maintaining the staff:child ratio, the school-age program shall not include any staff member who is performing other duties such as cooking, bookkeeping, or any individual with designated responsibility for a special activity except in an emergency situation when staff may be reassigned to supervise the children.

23.4.b. In a summer recreation camp program, a certified lifeguard employed by the center may be used to meet staff:child ratio provided the program is using a pool that is reserved exclusively for the program and at least one other staff person who is not lifeguarding is present to supervise the group.

23.4.c. An individual school-age child may be permitted to go to a non-public rest room unattended if the restroom is within vision of a supervising staff person.

23.4.d. Two or more school-age children going to the same restroom at the same time must be accompanied to the restroom by staff and be within staff hearing at all times.

#### 23.5. Staff interaction, Guidance and Supervision

23.5.a. The school-age program shall group children according to their developmental levels and skill levels taking into account that the physical, emotional, intellectual, and social development of early middle childhood differs from that of older middle childhood and pre-adolescence.

23.5.b. A center shall ensure that staff members in school-age programs have the skills and training to respond to the needs of the older child and recognize that interactions with the school-age child differ significantly from interactions with the younger child. The staff members shall:

23.5.b.1. Be available and responsive to the child;

23.5.b.2. Engage the child in meaningful conversation about events of importance and topics of interest, encouraging the child to share experiences, ideas and emotions;

23.5.b.3. Listen to the child with attention and respect;

23.5.b.4. Help a child develop problem-solving skills by describing problems and encouraging him or her to evaluate the situation;

23.5.b.5. Facilitate learning by guiding, providing positive reinforcement, encouraging efforts and recognizing accomplishments; and

23.5.b.6. Have developmentally appropriate expectations of a child's social behavior.

23.5.c. At all times, staff members shall provide positive guidance that is appropriate to each child's age, understanding and circumstances. Staff members shall:

23.5.c.1. Teach by example;

23.5.c.2. Recognize and encourage acceptable behavior;

23.5.c.3. Make eye contact with the child whenever possible when speaking to the child;

23.5.c.4. Supervise with kindness, understanding and firmness;

23.5.c.5. Set expectations for behavior, define clear limits, set fair and consistent rules and when appropriate, permit the school-age child to participate in the development of rules and procedures;

23.5.c.6. Help a child develop self control to assume responsibility for his or her own actions;

23.5.c.7. State expectations in the positive; and

23.5.c.8. Visually post expectations so that children are encouraged to regulate their own behaviors.

23.5.d. When unacceptable behavior persists with the school-age child, the qualified staff member in accordance with the child's age and developmental level shall:

23.5.d.1. Talk with the child privately and calmly;

23.5.d.2. Help the child to verbalize the expectation that is not being met;

23.5.d.3. Help the child to verbalize the reason for the expectation;

23.5.d.4. Help the child to verbalize acceptable choices and possible solutions; and

23.5.d.5. Help the child to verbalize possible consequences if the unacceptable behavior continues.

23.5.e. When conflict between children becomes physical, staff shall intervene immediately and use positive problem-solving methods.

23.6. Space. When a center operates a summer recreation camp:

23.6.a. The center shall provide at least ten (10) square feet of useable indoor activity space per child inside or provide a covered permanent structure that has the required activity space;

23.6.b. The center shall submit a plan for the Secretary's approval for outdoor activity space to meet the children's outdoor activities requirement and shall use the outdoor space only after receiving the Secretary's written approval.

23.7. Toilets. A summer recreation camp program that receives written approval from the local health department may use a commercial portable toilet and warm water, soap, paper towels, rinse water and a pit or other method for disposing of waste water.

23.8. Program. Programs for school-age children shall:

23.8.a. Meet the goals of the center as established by the statement of purpose;

23.8.b. Be based on knowledge of child development for the school-age child;

23.8.c. Have a schedule for routines that is posted and is predictable and in accordance with Subsection 14.1 of this rule other than the following:

23.8.c.1. Out-of-school time programs shall reflect the time of day and the number of hours that care is provided before school, after school, and on days when school is closed;

23.8.c.2. Out-of-school time programs shall provide activity that transitions the child from home to school in the morning and from school to home in the evenings;

23.8.c.3. Summer recreation camps shall have a schedule that provides for outdoor and/or off-site activity 80% of the time weather permitting;

23.8.d. Have varied and well-planned activities;

23.8.e. Have a qualified staff person verbally communicate the expectations for each activity;

23.8.f. Have activities which are age appropriate, offer challenges and incorporate skill level progression of the school-age child;

23.8.g. Offer options when it is recognized that the skill level is too difficult for the child;

23.8.h. Engage children in decision making and program activity development;

23.8.i. Offer the opportunity for projects that can be completed independently with only guidance from staff;

23.8.j. Offer group projects, group play and interest group involvement;

23.8.k. Offer interest centers such as art, dramatic play, school work, science, nature, music, reading, construction, physical activity;

23.8.l. Include activities within the community such as field trips, community work projects or volunteer activities;

23.8.m. Include diversity within activities;

23.8.n. Offer activities without bias to gender; and

23.8.o. Encourage the development of life skills.

23.9. A center operating a summer recreation camp may allow for an occasional overnight activity. When offering the overnight activity the summer recreation camp shall:

23.9.a. Have a written plan of the activity and its oversight that is kept in an administrative file;

23.9.b. Provide staff with written instructions on the operation of the activity;

23.9.c. Provide parents with written information and any special instructions for the activity;

23.9.d. Ensure that the child's daily nutritional requirements are met;

23.9.e. Ensure there is safe drinking water available;

23.9.f. Provide a mat, cot or bed for each child;

23.9.g. Not have a child in care for more than 24 hours; and

23.9.h. Ensure that no staff member must remain awake for more than 18 hours and that if children are sleeping at least one staff member is awake at all times.

23.10. Nutrition. A center with an out-of-school time program shall serve a snack to the school-age child arriving after school;

23.11. Emergency procedures. A summer recreation camp and day camp shall comply with Section 19 of this rule regarding emergency procedures except as set forth in this subsection:

23.11.a. The camp shall have a procedure for practicing moving to the safe location within the first two (2) days of camp and mid-way through the summer;

23.11.b. The camp shall teach and implement a system that has staff and children taking account of children in the camp and immediately reporting if a child is missing;

23.11.c. A qualified staff member assigned to each group of children shall be responsible for carrying or having immediately available a first aid kit; and

23.11.d. When a center operates a summer recreation camp program or day camp program at a site where a direct-line telephone is not available then the center shall ensure that staff members have access to a working communication device that will allow contact to emergency personnel.

**§78-1-24. Enforcement Actions.**

The secretary may revoke or make a license provisional, or issue an order of closure to a Child Care Center in accordance with West Virginia Code §§49-2B-11 and -12.

78CSR1

TITLE 78  
LEGISLATIVE RULES  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
DIVISION OF HUMAN SERVICES

SERIES 1  
CHILD CARE CENTER LICENSING

APPENDICES

- 78-1 A: EQUIPMENT AND MATERIALS FOR PROGRAM ACTIVITIES
- 78-1 B: REPORTABLE ILLNESSES
- 78-1 C: NUTRITION - ~~FOOD GROUPS AND MEAL~~ AND SNACK PATTERNS
- 78-1 D: DIAPER CHANGING AND TOILET TRAINING
- ~~78-1 E: OUTDOOR SURFACES~~
- 78-1 FE: STAFF:CHILD RATIO

**APPENDIX 78-1 A: EQUIPMENT AND MATERIALS FOR PROGRAM ACTIVITIES**

<b>TABLE A: EQUIPMENT AND MATERIALS FOR THE CHILD UP TO 6 MONTHS OF AGE</b>	
<b>Type of Materials</b>	<b>Types of Supplies and Equipment</b>
<b>Social and Fantasy</b>	<b>Non-breakable Mirrors:</b> well-secured crib and wall mirrors; <b>Dolls:</b> soft-bodied or rag dolls; <b>Stuffed Toys:</b> washable stuffed toys and play animals; <b>Puppets:</b> simple hand puppets of visual and social interest for holding by adults.
<b>Exploration and Mastery of Skills and Language</b>	<b>Visuals:</b> materials that provide a focus for the child's eyes; <b>Grasping Toys:</b> simple rattles, teething toys, squeeze toys, sturdy cloth toys, disks or keys on a ring, interlocking rings, grasping balls.
<b>Music, Art and Movement</b>	<b>Musical Instruments:</b> bell on a handle, wrist or ankle bells, rattles; <b>Audio-Visual:</b> adult-operated music boxes, tapes or discs with gently rhythmic songs or lullabies.
<b>Gross Motor</b>	<b>Large-Movement:</b> balls to clutch.

<b>TABLE B: EQUIPMENT AND MATERIALS FOR THE CHILD 7 TO 12 MONTHS OF AGE</b>	
<b>Type of Materials</b>	<b>Types of Supplies and Equipment</b>
<b>Social and Fantasy</b>	<b>Non-breakable Mirrors:</b> well-secured wall mirrors, unbreakable hand mirrors; <b>Dolls:</b> soft-bodied or rag dolls; <b>Stuffed Toys:</b> washable stuffed toys and play animals, soft rubber or vinyl animals for grasping and exploring; <b>Puppets:</b> simple hand puppets of visual and social interest for holding by adults; <b>Transportation:</b> simple transportation toys of one piece with wheels or rollers that may make a noise when pushed (for the child who can sit and is mobile).
<b>Exploration and Mastery of Skills and Language</b>	<b>Grasping Toys:</b> teething toys, beads on rings, rubber or plastic pop beads, squeeze-squeak toys, sturdy cloth toys, disks or keys on a ring, interlocking rings, grasping balls; <b>Construction:</b> light-weight blocks for grasping and stacking; <b>Puzzles:</b> simple two- or three-piece fit-together objects used as grasping toys; <b>Skill-Development:</b> pop-up boxes, simple activity boxes or cubes, texture pads, simple nesting cups, stacking ring cones, container to empty and fill; <b>Books:</b> small picture books of cloth or plastic or cardboard to hold; simple picture books for lap reading.
<b>Music, Art and Movement</b>	<b>Art and Crafts:</b> large, nontoxic crayons, large paper taped to a surface; <b>Musical Instruments:</b> bell on a handle, wrist or ankle bells, rattles or materials that make a sound when shaken, banging materials that are simple and light-weight; <b>Audio-Visual Materials:</b> adult-operated tapes or discs with simple rhymes and songs.
<b>Gross Motor</b>	<b>Large-Movement:</b> push and pull toys without rods, such as simple cars on large wheels or rollers; <b>Balls and Sports:</b> balls, including clutch and texture balls, chime, flutter and action balls; <b>Outdoor and Gym:</b> safe swings sized and designed for infants, low soft or padded climbing platforms for the child who crawls.

**TABLE C: EQUIPMENT AND MATERIALS FOR THE CHILD 13 - 24 MONTHS OF AGE**

Type of Materials	Types of Supplies and Equipment
<b>Social and Fantasy</b>	<p><b>Non-breakable Mirrors:</b> well-secured unbreakable wall mirrors, unbreakable full-length and hand mirrors; <b>Dolls:</b> soft-bodied or washable rubber or vinyl baby dolls (no moving eyes or articulated limbs), simple accessories for care giving (feeding, diapering and sleeping), dolls clothes that are simple and removable, and (from about 18 months) small peg or other people figures that can not be swallowed; <b>Stuffed Toys:</b> washable, soft animals with features that are painted, stitched or molded and soft rubber or vinyl animals for exploration and beginning pretend play; <b>Puppets:</b> hand puppets for holding by adults and (from about 18 months) small hand puppets sized to fit the child's hand; <b>Transportation:</b> simple, light-weight vehicles, with large wheels or rollers, that are light-weight, rounded or molded in appearance and may make a noise when pushed, first trains with one or two cars and a simple or no coupling system but no tracks, and (from about 18 months) more detailed vehicles or trains with simple coupling systems such as wood links, blunt hooks or magnets; <b>Role-Play:</b> play telephone, simple housekeeping and work-role equipment, simple doll equipment; <b>Play Scenes:</b> (from about 18 months) small people or animal figures with simple supporting materials such as a vehicle or barn, or unit blocks to make familiar scenes.</p>
<b>Exploration and Mastery of Skills and Language</b>	<p><b>Grasping Toys:</b> (the child may be losing interest in small hand-held manipulatives); <b>Sand and Water:</b> simple floating objects that are easily grasped in one hand, a small shovel and pail, and (from about 18 months) nesting materials for pouring, funnels, colanders, water activity centers and small sand tools; <b>Construction:</b> light blocks made of soft cloth, rubber or rounded plastic, wooden cubes for grasping and stacking (15 - 25 pieces) and (from about 18 months) unit blocks (20 - 40 pieces), large plastic bricks of the press together type; <b>Puzzles:</b> simple pre-puzzles or form boards in familiar shapes (2-3 pieces) and (from about 18 months) fit-in puzzles with very firmly attached knobs (3-5 pieces); <b>Skill-Development:</b> pop-up boxes that operate easily, simple activity boxes or cubes with doors, lids or switches, simple nesting cups and stacking materials, and (from about 18 months) activity boxes with more complex mechanisms such as a turning knob or dial or simple key, simple lock boxes, more complex nesting materials, objects in closed containers that may be opened, stacking materials (4-5 pieces), cylinder blocks, pegboards with a few large pegs, simple matching and lotto materials; <b>Books:</b> picture books made of cloth, plastic or cardboard, simple picture and rhyme book with repetition for lap reading, and (from about 18 months) touch-me or tactile books.</p>
<b>Music, Art and Movement</b>	<p><b>Art and Crafts:</b> a few large, nontoxic crayons and large paper taped to a surface; <b>Musical Instruments:</b> rhythm instruments operated by shaking (bell, rattles) and (from about 18 months) instruments for banging (cymbals, drums); <b>Audio-Visual Materials:</b> adult-operated tapes or discs, music with simple repeating rhythms, rhymes and songs, and (from about 14 months) music to "dance" (bounce) to, and (from about 18 months) simple point-to and finger-play games and songs.</p>
<b>Gross Motor</b>	<p><b>Large-Movement - Push and Pull Toys:</b> push toys with rods with handles on the ends, toys to push along the floor, including simple cars or animals on large wheels or rollers, and (from about 18 months) simple doll carriages and wagons and push and pull toys filled with multiple objects; <b>Balls and Sports:</b> soft, light-weight balls especially balls with interesting audio or visual effects, larger balls including balls the size of beach balls, and (from about 18 months) balls for beginning throwing and kicking; <b>Ride-On Equipment:</b> stable ride-ons propelled by pushing with the feet, ride-ons with storage bins; <b>Outdoor and Gym:</b> climbing platforms that are low, sort or padded, tunnels for climbing through, baby swings made of energy-absorbing materials with seats curved or body shaped and a front closing, and (from about 18 months) low toddler stairs with handrails.</p>

**TABLE D: EQUIPMENT AND MATERIALS FOR THE CHILD 24 - 36 MONTHS OF AGE**

Type of Materials	Types of Supplies and Equipment
<p><b>Social and Fantasy</b></p>	<p><b>Non-breakable Mirrors:</b> well-secured unbreakable wall mirrors, unbreakable hand mirrors; <b>Dolls:</b> soft-bodied or washable rubber or vinyl baby dolls, simple accessories for care giving (feeding, diapering and sleeping), dolls clothes that are simple and removable, small peg or other people figures for fantasy scenes; <b>Stuffed Toys:</b> soft rubber, wood or vinyl animals for exploration and pretend play, including mother and baby animals; <b>Puppets:</b> small hand puppets sized to fit the child's hand and representing familiar human and animal figures and community diversity; <b>Transportation:</b> small cars and vehicles to use with unit blocks; larger vehicles for pushing and fantasy play, large wood trucks to ride on, simple trains with coupling systems but no tracks; <b>Role-Play:</b> dress-up materials, housekeeping equipment, simple doll equipment; <b>Play Scenes:</b> small people or animal figures with simple supporting materials such as a vehicle or barn, or unit blocks to make familiar scenes.</p>
<p><b>Exploration and Mastery of Skills and Language</b></p>	<p><b>Sand and Water:</b> people, animals and vehicles for fantasy play, small containers for pouring, small tools such as a shovel or scoop; <b>Construction:</b> wooden unit blocks, large plastic bricks, large nuts and bolts; <b>Puzzles:</b> 4-5 pieces fit-in puzzles (from 24 months), and (from 30 months) 6-12 pieces fit-in puzzles; <b>Skill-Development:</b> 5-10 pieces to nest or stack, simple lock boxes, hidden-object pop-up boxes, safe pounding/hammering toys, cylinder blocks, shape sorters, matching materials, color or picture dominoes, feel bags or boxes or smell jars; <b>Books:</b> sturdy books with heavy paper or cardboard pages, tactile or touch-me, pop-up or hidden picture and dressing books; <b>Pattern-Making:</b> peg-boards with large pegs, color cubes, magnetic boards with forms; <b>Dressing, Lacing, Stringing:</b> large beads, cards and frames.</p>
<p><b>Music, Art and Movement</b></p>	<p><b>Art and Crafts:</b> large, nontoxic crayons and markers, adjustable easel, large paint brushes, nontoxic paint and finger paint; large paper, colored construction paper, blunt-ended scissors, chalkboard and large chalk; <b>Musical Instruments:</b> rhythm instruments operated by shaking (bell, rattles) or banging (cymbals, drums) and more complex instruments (tambourine, sand blocks, triangle, rhythm sticks); <b>Audio-Visual Materials:</b> adult-operated tapes or discs, music with repeating rhythms for rhythm instruments, music to "dance" (bounce) to, simple point-to and finger-play games and songs, short films and videos of familiar objects and activities.</p>
<p><b>Gross Motor</b></p>	<p><b>Large-Movement - Push and Pull Toys:</b> simple doll carriages and wagons, push toys that look like adult equipment; <b>Balls and Sports:</b> balls of all sizes, especially balls for kicking and throwing; <b>Ride-On Equipment:</b> stable ride-ons propelled by pushing with the feet, bouncing or rocking ride-ons, and (as the child nears 36 months) small tricycles; <b>Outdoor and Gym:</b> tunnels, appropriately sized and safe swings, low climbing structures and slides.</p>

**TABLE E: EQUIPMENT AND MATERIALS FOR THE CHILD 36 -72 MONTHS OF AGE**

Type of Materials	Types of Supplies and Equipment
<b>Social and Fantasy</b>	<p><b>Mirrors:</b> full-length mirrors, unbreakable hand mirrors; <b>Dolls:</b> washable rubber or vinyl baby dolls and (for the child over 60 months), child-proportioned dolls with culturally relevant features and skin tones, accessories for care giving (feeding, diapering and sleeping), dolls clothes that are simple and removable, small peg or other people figures for fantasy scenes; <b>Stuffed Toys:</b> rubber, wood or vinyl animals for pretend play and to provide replicas of real domestic and wild animals for learning; <b>Puppets:</b> small hand or arm or finger puppets sized to fit the child's hand and representing familiar human and animal figures and community diversity, simple puppet theater; <b>Transportation:</b> cars and vehicles to use with unit blocks; larger vehicles with simple working parts for pushing and fantasy play, large wood trucks to ride on, small trains with magnetic or hook connections and simple wood tracks; <b>Role-Play:</b> detailed and culturally-relevant dress-up materials and props, housekeeping equipment, doll equipment; <b>Play Scenes:</b> small people or animal figures with simple supporting materials such as a vehicle or road sign or barn, to use with blocks or other materials to make familiar scenes.</p>
<b>Exploration and Mastery of Skills and Language</b>	<p><b>Sand and Water:</b> people, animals and vehicles for fantasy play, small containers for pouring or measuring, large and small sand tools, and (after 48 months) sand molds and a water pump; <b>Construction:</b> wooden unit blocks, large hollow blocks, plastic bricks, and (from 48 months) most types of interlocking blocks, except metal or very small blocks; <b>Puzzles:</b> (at 36 months) fit-in or framed - puzzles up to 30 pieces; (at 48 months), 20-30 pieces; (at 60 months) up to 50 pieces; simple jig-saw puzzles - 10-25 pieces; number and letter puzzles, puzzle clocks; <b>Skill-Development:</b> materials for matching and sorting and ordering, geometric concept materials, number materials that are simple and concrete, measuring materials, simple mechanical devices such as gears and levers, science materials, natural materials to sort, plants and animals to care for, printmaking materials, beginning computer software; <b>Books:</b> picture books with simple stories and rhymes, complex pop-up books, age-appropriate stories; <b>Pattern-Making:</b> peg-boards with smaller pegs, color cubes, magnetic boards with forms, and (from 48 months) a variety of beads for stringing, mosaic books, felt boards, and (by 60 months) block printing materials; <b>Dressing, Lacing, Stringing:</b> cards and frames for lacing and sewing and (from 60 months) beginning weaving materials; <b>Games:</b> dominoes based on color or picture, simple matching and lotto games, bingo, and (from 48 months) simple card games and games requiring fine motor coordination, first board games based on chance not strategy, and (from 60 months) dominoes based on number and bingo or lotto based on letter or number matching.</p>
<b>Music, Art and Movement</b>	<p><b>Art and Crafts:</b> large, nontoxic crayons and markers in many colors, adjustable easel, paint brushes of various sizes, nontoxic paint and finger paint; large paper, colored construction paper, easy-to-use-round-ended scissors, chalkboard and large chalk, paste and nontoxic glue, collage materials, clay and dough and tools, and (from 48 months) workbench and hammer, and (from 60 months) smaller crayons and markers, watercolor paints and simple sewing forms with blunt needles; <b>Musical Instruments:</b> all rhythm instruments, blowing instruments (for one-child use only) <b>Audio-Visual Materials:</b> live or recorded music for singing, movement or use with rhythm instruments, adult-operated tapes or discs with songs, rhymes and stories for listening, short films and videos.</p>
<b>Gross Motor</b>	<p><b>Large-Movement - Push and Pull Toys:</b> small wagons and wheelbarrows, push toys that look like adult equipment, and (from 60 months) full-sized wagons and sweepers that really work; <b>Balls and Sports:</b> balls of all sizes, especially balls for kicking and throwing, and (from 48 months) lightweight softballs and bats, and (from 60 months) jump rope and a lightweight flying disc; <b>Ride-On Equipment:</b> tricycles sized to the child, three and four-wheeled pedal toys, vehicles with a steering mechanism, full size rocking or bouncing "horse," ride-ons that several children can use together, and (from 48 months) low-slung tricycles; <b>Outdoor and Gym:</b> stationary outdoor climbing equipment, appropriately sized and safe swings, and (from 48 months) slides with side rails and ladders and ropes or hanging bars and rings on a swing or climbing equipment and outdoor building materials.</p>

<b>TABLE F: EQUIPMENT AND MATERIALS FOR THE CHILD 6 -8 YEARS OF AGE</b>	
<b>Type of Materials</b>	<b>Types of Supplies and Equipment</b>
<b>Social and Fantasy</b>	<b>Mirrors:</b> mirrors that adults would use, unbreakable hand mirrors; <b>Dolls:</b> washable rubber or vinyl baby dolls with culturally relevant features and skin tones and accessories for care giving (feeding, diapering and sleeping), small peg or other people figures for fantasy scenes; <b>Stuffed Toys:</b> realistic rubber, wood or vinyl animals to incorporate into scenes and models or show characteristics for learning; <b>Puppets:</b> puppets that represent familiar and fantasy figures for acting out stories, simple puppet theater; <b>Transportation:</b> generic small models of cars and vehicles, construction or workbench materials to make models of forms of transportation; <b>Role-Play:</b> materials for creating and practicing real-life activities and letter-creating materials; <b>Play Scenes:</b> small people or animal figures with supporting materials to create fantasy scenes or models related to curriculum themes.
<b>Exploration and Mastery of Skills and Language</b>	<b>Construction:</b> large number of varied materials for detailed construction and for creating models (including metal parts and nuts and bolts); <b>Puzzles:</b> three-dimensional puzzles, and jig-saw puzzles with 50 to 100 pieces; <b>Skill-Development:</b> materials for making books, math manipulatives and fraction and geometrical materials, measuring materials, science materials, natural materials to examine and classify, plants and animals to study and care for, computer programs for language arts and books at a wide variety of difficulty levels for children to read, story books for reading aloud, books made by the children; <b>Books:</b> picture books with simple stories and rhymes, complex pop-up books, age-appropriate stories; <b>Pattern-Making:</b> mosaic tiles, geometric puzzles, art and craft materials for creating permanent designs; <b>Dressing, Lacing, Stringing:</b> bead stringing, braiding, weaving, spool-knitting and sewing materials; <b>Games:</b> simple card and board games, games based on words, reading and spelling, memory, and numbers and counting (dominoes, Pachisi) and beginning strategy games (checker, Chinese checkers).
<b>Music, Art and Movement</b>	<b>Art and Crafts:</b> a large variety of materials - crayons, markers, colored pencils, art chalks and pastels - in many colors, paint brushes of various sizes, a variety of paints including water colors, a variety of art papers for drawing and tracing and painting, regular scissors, paste and nontoxic glue, collage materials, clay that hardens, tools, more complex printing equipment, craft materials - simple looms, leather for sewing and braiding, papier-mache, plaster of paris, beads for jewelry- and a workbench with tools and wood for projects; <b>Musical Instruments:</b> a wide range of real instruments <b>Audio-Visual Materials:</b> live or recorded music for singing, movement or use with rhythm instruments, adult-operated tapes or discs with songs, rhymes and stories for listening or for the child's independent use.
<b>Gross Motor</b>	<b>Balls and Sports:</b> youth or standard-size balls and equipment for beginning team play, materials for target activities; <b>Ride-On Equipment:</b> (riding bicycles is no longer considered a center activity); <b>Outdoor and Gym:</b> complex climbing structures including ropes, ladders, hanging bars and rings.

Source: Adapted from Martha B. Bronson, *The Right Stuff for Children Birth to 8: Selecting Play Materials to Support Development* (Washington, D.C.: National Association for the Education of Young Children, 1995.)

APPENDIX 78-1 B: REPORTABLE ILLNESSES \*

Reporting of the following communicable diseases\* is required by State Law (West Virginia Code 16-3-1 and Division of Health Rule, "Reportable Diseases, Events and Conditions", 64CDR7. This list is updated periodically by the Bureau for Public Health.

AIDS (within 30 days)  
Amebiasis (*Entamoeba histolytica*)  
Anthrax (*Bacillus anthracis*)  
Botulism (*Clostridium botulinum*) \*\*  
Brucellosis (*Brucella abortus*, *B. melitensis*, *B. suis*, *B. canis*)\*\*  
Campylobacteriosis (*Campylobacter jejuni*, *C. coli*)  
Chancroid  
Chickenpox (*Varicella*) - Numerical totals only  
*Chlamydia trachomatis*  
Cholera (*Vibrio cholerae*)  
Cryptosporidiosis (*Cryptosporidium parvum*)  
Cyclospora infection  
Dengue Fever  
Diphtheria (*Corynebacterium diphtheriae*)\*\*  
E. coli O 157:H7 Disease  
Encephalitis, arboviral  
    Eastern Equine Encephalitis  
    LaCrosse Encephalitis (California Group)  
    St. Louis Encephalitis  
    West Nile Virus  
Encephalitis, Other primary and unspecified  
Food borne Disease  
Giardiasis (*Giardia lamblia*)  
Gonococcal Disease - Drug-resistant disease, Neonatal conjunctivitis, or Pelvic Inflammatory Disease (within 24 hours)  
Gonococcal Disease - All other  
*Haemophilus Influenzae*, Invasive Disease\*\*  
Hantavirus Disease\*\*  
Hemolytic Uremic Syndrome, postdiarrheal  
Hepatitis A, acute\*\*  
Hepatitis B, acute or perinatal\*\*  
Hepatitis C/other non-A or non-B, acute\*\*  
Hepatitis Delta\*\*  
Herpes, Genital  
HIV (within 30 days)  
Influenza-Like Illness - Numerical totals only  
Leptospirosis\*\*  
Listeriosis (*Listeria monocytogenes*)  
Lyme Disease (*Borrelia burgdorferi*)\*\*  
Malaria\*\*  
Meningitis, Other Bacterial - organisms not otherwise listed\*\*  
Meningitis, Viral or Aseptic  
Mumps  
Outbreaks, suspect or confirmed  
Pertussis (Whooping Cough) (*Bordetella pertussis*)\*\*  
Plague (*Yersinia pestis*)  
Poliomyelitis\*\*  
Psittacosis (*Chlamydia psittaci*)  
Rabies, human\*\*  
Rheumatic Fever  
Rocky Mountain Spotted Fever\*\*  
Rubella Congenital Syndrome

Rubella (German measles)\*\*  
Rubeola (Measles)\*\*  
Salmonellosis (except Typhoid Fever - listed separately)  
Shigellosis (*Shigella dysenteriae*, *S. boydii*, *S. flexneri*, *S. sonnei*)  
Streptococcal Disease, Group A Invasive and/or Streptococcal Toxic Shock Syndrome (*S. pyogenes*)\*\*  
Streptococcus pneumoniae, drug-resistant invasive disease - include antibiotic susceptibility patterns\*\*  
Syphilis - primary, secondary, early latent, or congenital (within 24 hours)  
Syphilis - late latent, late symptomatic, or neurosyphilis  
Tetanus (*Clostridium tetani*)\*\*  
Trichinosis\*\*  
Tuberculosis - include antibiotic susceptibility patterns  
Tularemia (*Francisella tularensis*)  
Typhoid Fever (*Salmonella typhi*)\*\*  
Waterborne Disease  
Yellow Fever  
Unexplained or ill-defined illness, condition, or health occurrence of potential public health significance  
\*This is a general information list. The official list can be found in the reportable disease rule.  
\*\*A supplemental CDC or WVBPH report form is required in addition to the general case report

STDs, HIV/AIDS, and tuberculosis are reported on special forms. Other diseases are submitted on the general "Confidential Reportable Disease Case Report." All report forms (general, supplemental, STD, Tuberculosis, and HIV/AIDS) can be obtained from your local health department. For questions or disease reporting or for epidemiologic consultation, call your local health department or the WV Bureau for Public Health, Division of surveillance and Disease Control: HIV/AIDS Surveillance 1-800-423-1271; Immunization Program 1-800-642-3634; STD Program 1-800-642-8244; Tuberculosis Program 1-800-330-8126; all other diseases 1-800-423-1271 or 304-558-5358. The website address is: [www.wvdhhr.org/bph](http://www.wvdhhr.org/bph).

For emergency contact information after hours, call 1-304-558-4117.

October, 2000

**APPENDIX 78-1 C: NUTRITION -- MEAL AND SNACK PATTERNS**

When planning meals and snacks, child care centers shall follow the meal and snack patterns developed for the United State Department of Agriculture's (USDA) Child and Adult Care Food Program (CACFP). The tables shown are current at the effective date of this rule; please refer to the following web site for current meal and snack patterns: [http://www.fns.usda.gov/cnd/care/ProgramBasics/Meals/Meal\\_Patterns.htm](http://www.fns.usda.gov/cnd/care/ProgramBasics/Meals/Meal_Patterns.htm)

**A: MEAL PATTERNS FOR THE CHILD UP TO 12 MONTHS OF AGE**

<u>Infant Meal Pattern</u> <u>Breakfast</u>		
<u>Birth through</u> <u>3 Months</u>	<u>4 through</u> <u>7 Months</u>	<u>8 through</u> <u>11 Months</u>
<u>4-6 fluid ounces of formula<sup>1</sup> or breastmilk<sup>2,3</sup></u>	<u>4-8 ounces of formula<sup>1</sup> or breastmilk<sup>2,3</sup></u>  <u>0-3 tablespoons of infant cereal<sup>1-4</sup></u>	<u>6-8 ounces of formula<sup>1</sup> or breastmilk<sup>2,3</sup>; and</u>  <u>2-4 tablespoons of infant cereal<sup>1</sup>; and</u>  <u>1-4 tablespoons of fruit or vegetable or both</u>
<p><sup>1</sup>Infant formula and dry infant cereal must be iron-fortified.</p> <p><sup>2</sup>Breastmilk or formula, or portions of both, may be served; however it is recommended that breastmilk be served in place of formula from birth through 11 months.</p> <p><sup>3</sup>For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk, with additional breastmilk offered if the infant is still hungry.</p> <p><sup>4</sup>A serving of this component is required when the infant is developmentally ready to accept it.</p>		

Infant Meal Pattern  
Lunch or Supper

Birth through 3 Months	4 through 7 Months	8 through 11 Months
<p><u>4-6 fluid ounces of formula<sup>1</sup> or breastmilk<sup>2,3</sup></u></p>	<p><u>4-8 ounces of formula<sup>1</sup> or breastmilk<sup>2,3</sup></u></p> <p><u>0-3 tablespoons of infant cereal<sup>1,4</sup>; and</u></p> <p><u>0-3 tablespoons of fruit or vegetable or both<sup>4</sup></u></p>	<p><u>6-8 ounces of formula<sup>1</sup> or breastmilk<sup>2,3</sup>; and</u></p> <p><u>2-4 tablespoons of infant cereal<sup>1</sup>; and/or</u></p> <p><u>1-4 tablespoons of meat, fish, poultry, egg yolk, cooked dry beans or peas; or</u></p> <p><u>¼-2 ounces of cheese; or</u></p> <p><u>1-4 ounces (volume) of cottage cheese; or</u></p> <p><u>1-4 ounces (weight) of cheese food or cheese spread; and</u></p> <p><u>1-4 tablespoons of fruit or vegetable or both.</u></p>

<sup>1</sup>Infant formula and dry infant cereal must be iron-fortified.

<sup>2</sup>Breastmilk or formula, or portions of both, may be served; however it is recommended that breastmilk be served in place of formula from birth through 11 months.

<sup>3</sup>For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk, with additional breastmilk offered if the infant is still hungry.

<sup>4</sup>A serving of this component is required when the infant is developmentally ready to accept it.

<u>Infant Meal Pattern</u> <u>Snack</u>		
<u>Birth through</u> <u>3 Months</u>	<u>4 through</u> <u>7 Months</u>	<u>8 through</u> <u>11 Months</u>
<u>4-6 fluid ounces of</u> <u>formula<sup>1</sup> or</u> <u>breastmilk<sup>2,3</sup></u>	<u>4-6 ounces of</u> <u>formula<sup>1</sup> or</u> <u>breastmilk<sup>2,3</sup></u>	<u>2-4 ounces of formula<sup>1</sup> or</u> <u>breastmilk<sup>2,3</sup> or fruit juice<sup>5</sup>; and</u>  <u>0-1/2 bread<sup>4,6</sup> or</u>  <u>0-2 crackers<sup>4,6</sup></u>
<p><sup>1</sup>Infant formula and dry infant cereal must be iron-fortified.</p> <p><sup>2</sup>Breastmilk or formula, or portions of both, may be served; however it is recommended that breastmilk be served in place of formula from birth through 11 months.</p> <p><sup>3</sup>For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk, with additional breastmilk offered if the infant is still hungry.</p> <p><sup>4</sup>A serving of this component is required when the infant is developmentally ready to accept it.</p> <p><sup>5</sup>Fruit juice must be full-strength.</p> <p><sup>6</sup>A serving of this component must be made from whole-grain or enriched meal or flour.</p>		

<u>Child Meal Pattern</u> <u>Breakfast</u>			
<b>Select All Three components for a Reimbursable Meal</b>			
<u>Food Components</u>	<u>Ages 1-2</u>	<u>Ages 3-5</u>	<u>Ages 6-12<sup>1</sup></u>
<u>1 milk</u>			
<u>Fluid milk</u>	<u>½ cup</u>	<u>½ cup</u>	<u>1 cup</u>
<u>1 fruit/vegetable</u>			
<u>Juice,<sup>2</sup> fruit and/or vegetable</u>	<u>¼ cup</u>	<u>¼ cup</u>	<u>¼ cup</u>
<u>1 grains/bread<sup>3</sup></u>			
<u>Bread or</u>	<u>½ slice</u>	<u>½ slice</u>	<u>1 slice</u>
<u>Cornbread or biscuit or roll or muffin or</u>	<u>½ serving</u>	<u>½ serving</u>	<u>1 serving</u>
<u>Cold dry cereal or</u>	<u>¼ cup</u>	<u>¼ cup</u>	<u>¼ cup</u>
<u>Hot cooked cereal or</u>	<u>¼ cup</u>	<u>¼ cup</u>	<u>¼ cup</u>
<u>Pasta or noodles or grains</u>	<u>¼ cup</u>	<u>¼ cup</u>	<u>¼ cup</u>
<p><sup>1</sup>Children age 12 and older may be served larger portions based on their greater food needs. They may not be served less than the minimum quantities listed in this column.</p> <p><sup>2</sup>Fruit or vegetable juice must be full-strength.</p> <p><sup>3</sup>Breads and grains must be made from whole-grain or enriched meal or flour. Cereal must be whole grain or enriched or fortified.</p>			

**Child Meal Pattern**  
**Lunch or Supper**

<u>Food Components</u>	<u>Ages 1-2</u>	<u>Ages 3-5</u>	<u>Ages 6-12<sup>1</sup></u>
<u>1 milk</u>			
<u>Fluid milk</u>	<u>½ cup</u>	<u>½ cup</u>	<u>1 cup</u>
<u>2 fruits/vegetables</u>			
<u>Juice,<sup>2</sup> fruit and/or vegetable</u>	<u>¼ cup</u>	<u>¼ cup</u>	<u>¼ cup</u>
<u>1 grains/bread<sup>3</sup></u>			
<u>Bread or</u>	<u>½ slice</u>	<u>½ slice</u>	<u>1 slice</u>
<u>Cornbread or biscuit or roll or muffin or</u>	<u>½ serving</u>	<u>½ serving</u>	<u>1 serving</u>
<u>Cold dry cereal or</u>	<u>¼ cup</u>	<u>¼ cup</u>	<u>¼ cup</u>
<u>Hot cooked cereal or</u>	<u>¼ cup</u>	<u>¼ cup</u>	<u>¼ cup</u>
<u>Pasta or noodles or grains</u>	<u>¼ cup</u>	<u>¼ cup</u>	<u>¼ cup</u>
<u>1 meat/meat alternate</u>			
<u>Meat or poultry or fish<sup>4</sup> or</u>	<u>1 ounce</u>	<u>1½ ounces</u>	<u>2 ounces</u>
<u>Alternate protein product or</u>	<u>1 ounce</u>	<u>1½ ounces</u>	<u>2 ounces</u>
<u>Cheese or</u>	<u>1 ounce</u>	<u>1½ ounces</u>	<u>2 ounces</u>
<u>Egg or</u>	<u>½ egg</u>	<u>½ egg</u>	<u>1 egg</u>
<u>Cooked dry beans or peas or</u>	<u>¼ cup</u>	<u>¼ cup</u>	<u>¼ cup</u>
<u>Peanut or other nut or seed butters or</u>	<u>2 Tbsp.</u>	<u>2 Tbsp.</u>	<u>4 Tbsp.</u>
<u>Nuts and/or seeds<sup>5</sup> or</u>	<u>¼ ounce</u>	<u>¼ ounces</u>	<u>1 ounce</u>
<u>Yogurt<sup>6</sup></u>	<u>4 ounces</u>	<u>6 ounces</u>	<u>8 ounces</u>

<sup>1</sup>Children age 12 and older may be served larger portions based on their greater food needs. They may not be served less than the minimum quantities listed in this column.

<sup>2</sup>Fruit or vegetable juice must be full-strength.

<sup>3</sup>Breads and grains must be made from whole-grain or enriched meal or flour. Cereal must be whole grain or enriched or fortified.

<sup>4</sup>A serving consists of the edible portion of cooked lean meat or poultry or fish.

<sup>5</sup>Nuts and seeds may meet only one-half of the total meat/meat alternate serving and must be combined with another meat/meat alternate to fulfill the lunch or supper requirement.

<sup>6</sup>Yogurt may be plain or flavored, unsweetened or sweetened.

**Child Meal Pattern**  
**Snack**

**Select Two of the Four Components for a Reimbursable Snack**

<u>Food Components</u>	<u>Ages 1-2</u>	<u>Ages 3-5</u>	<u>Ages 6-12<sup>1</sup></u>
<u>1 milk</u> Fluid milk	<u>½ cup</u>	<u>½ cup</u>	<u>1 cup</u>
<u>2 fruits/vegetables</u> Juice, <sup>2</sup> fruit and/or vegetable	<u>½ cup</u>	<u>½ cup</u>	<u>½ cup</u>
<u>1 grains/bread<sup>3</sup></u> Bread or	<u>½ slice</u>	<u>½ slice</u>	<u>1 slice</u>
Cornbread or biscuit or roll or muffin or	<u>½ serving</u>	<u>½ serving</u>	<u>1 serving</u>
Cold dry cereal or	<u>½ cup</u>	<u>½ cup</u>	<u>½ cup</u>
Hot cooked cereal or	<u>½ cup</u>	<u>½ cup</u>	<u>½ cup</u>
Pasta or noodles or grains	<u>½ cup</u>	<u>½ cup</u>	<u>½ cup</u>
<u>1 meat/meat alternate</u> Meat or poultry or fish <sup>4</sup> or	<u>½ ounce</u>	<u>½ ounce</u>	<u>1 ounce</u>
Alternate protein product or	<u>½ ounce</u>	<u>½ ounce</u>	<u>1 ounce</u>
Cheese or	<u>½ ounce</u>	<u>½ ounce</u>	<u>1 ounce</u>
Egg or	<u>½ egg</u>	<u>½ egg</u>	<u>½ egg</u>
Cooked dry beans or peas or	<u>½ cup</u>	<u>½ cup</u>	<u>½ cup</u>
Peanut or other nut or seed butters or	<u>1 Tbsp.</u>	<u>1 Tbsp.</u>	<u>2 Tbsp.</u>
Nuts and/or seeds <sup>5</sup> or	<u>½ ounce</u>	<u>½ ounces</u>	<u>1 ounce</u>
Yogurt <sup>6</sup>	<u>2 ounces</u>	<u>2 ounces</u>	<u>4 ounces</u>

<sup>1</sup>Children age 12 and older may be served larger portions based on their greater food needs. They may not be served less than the minimum quantities listed in this column.

<sup>2</sup>Fruit or vegetable juice must be full-strength.

<sup>3</sup>Breads and grains must be made from whole-grain or enriched meal or flour. Cereal must be whole grain or enriched or fortified.

<sup>4</sup>A serving consists of the edible portion of cooked lean meat or poultry or fish.

<sup>5</sup>Nuts and seeds may meet only one-half of the total meat/meat alternate serving and must be combined with another meat/meat alternate to fulfill the lunch or supper requirement.

<sup>6</sup>Yogurt may be plain or flavored, unsweetened or sweetened.

When planning meals and snacks, centers can be guided by the following meal patterns that are consistent with the United State Department of Agriculture's Dietary Guidelines for Americans and were developed for the Child and Adult Food program.

**A. MEAL PATTERNS FOR THE CHILD UP TO 12 MONTHS OF AGE**

Age	Breakfast	Lunch or supper	Supplement
Birth through 3 months	4-6 fl.oz. Formula <sup>1</sup> or Breast milk <sup>2,3</sup>	4-6 fl.oz. Formula <sup>1</sup> or Breast milk <sup>2,3,6</sup>	4-6 fl.oz. Formula <sup>1</sup> or Breast milk <sup>2,3</sup>
4 through 7 months	4-6 fo.oz. Formula <sup>1</sup> or Breast milk <sup>2,3</sup>  0-3 Tbsp. Infant Cereal <sup>1,4</sup>	4-6 fl.oz. Formula <sup>1</sup> or Breast milk <sup>2,3</sup>  0-3 Tbsp. Infant Cereal <sup>1,4</sup>  0-3 Tbsp. Fruit and/or Vegetable	4-6 fl.oz. Formula <sup>1</sup> or Breast milk <sup>2,3</sup>
8 through 11 months	6-8 fl.oz. Formula <sup>1</sup> or Breast milk <sup>2,3</sup>  2-4 Tbsp. Infant Cereal <sup>4</sup>  1-4 Tbsp. Fruit and/or Vegetable	6-8 fl.oz. Formula <sup>1</sup> or Breast milk <sup>2,3</sup>  2-4 Tbsp. Infant Cereal <sup>1,4</sup> and/or  1-4 Tbsp. Meat, fish, poultry, egg yolk, cooked dry beans or peas or 1/2-2 oz. cheese, or 1-4 oz. cottage cheese, cheese food or cheese spread, and 1-4 Tbsp. Fruit and/or Vegetable	2-4 fl.oz. Formula <sup>1</sup> , Breast milk <sup>2,3</sup> , or fruit juice <sup>5</sup>  1/2 Bread <sup>4,6</sup> or  0-2 crackers <sup>4,6</sup>

<sup>1</sup>Infant formula and dry infant cereal must be iron fortified.

<sup>2</sup>It is recommended that breast milk be served in place of formula from birth through 11 months.

<sup>3</sup>For some breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk with additional breastmilk offered if the infant is still hungry.

<sup>4</sup>A serving of this component shall be optional.

<sup>5</sup>Fruit juice shall be full strength.

<sup>6</sup>Bread and bread alternates shall be made from whole grain or enriched meal or flour.

**B. MEAL PATTERNS FOR THE CHILD BETWEEN 1 YEAR AND 12 YEARS OF AGE**

	Age 1 and 2	3 through 5 years	6 through 12 years
<b>BREAKFAST</b>			
Milk, fluid	1/2 cup	1/2 cup	1 cup
Juice or fruit or vegetable	1/4 cup	1/2 cup	1/2 cup
Bread and/or cereal, enriched or whole grain			
— Bread or	1/2 slice	1/2 slice	1 slice
— Cereal: Cold dry or	1/4 cup <sup>2</sup>	1/3 cup <sup>2</sup>	1/2 cup <sup>3</sup>
— Hot cooked	1/4 cup	1/4 cup	1/2 cup

**MIDMORNING OR MIDAFTERNOON SNACK (SUPPLEMENT)**

(Select 2 of these 4 components)

Milk, fluid	1/2 cup	1/2 cup	1 cup
Meat and meat alternate or	1/2 oz.	1/2 oz.	1 oz.
— yogurt, plain or sweetened	2 oz. or	2 oz. or	4 oz. or
— and flavored	1/2 cup	1/2 cup	1/2 cup
— eggs (large)	1/2 egg	1/2 egg	1/2 egg
Juice or fruit or vegetable	1/2 cup	1/2 cup	1/2 cup
Bread and/or cereal, enriched or whole grain			
— Bread or	1/2 slice	1/2 slice	1 slice
— Cereal: Cold dry or	1/4 cup <sup>2</sup>	1/3 cup <sup>2</sup>	1/2 cup <sup>3</sup>
— Hot Cooked	1/4 cup	1/4 cup	1/2 cup

**LUNCH OR SUPPER**

Milk, fluid	1/2 cup	1/2 cup	1 cup
Meat or meat alternate Meat, poultry, or fish,			
— cooked (lean meat with bone)	1 oz.	1 1/2 oz.	2 oz.
— Cheese	1 oz.	1 1/2 oz.	2 oz.
— Eggs (large)	1/2 egg	1/2 egg	1 egg
— Cooked dry beans and peas	1/4 cup	3/8 cup	1/2 cup
— Peanut Butter, soy nut, or	1 Tbsp.	3 Tbsp.	4 Tbsp.
— other nut seed butter			
— Peanuts, soy nuts, or tree	1/2 oz.	1/2 oz.	1 oz.
— nuts or seeds	(50%)	(50%)	(50%)
— Yogurt	4 oz.	6 oz.	8 oz.
Vegetable and/or fruit (two or more)	1/4 cup	1/2 cup	1/2 cup
Bread or alternate,	1/2 slice	1/2 slice	1 slice
— enriched or whole grain	1/4 cup	1/4 cup	1/2 cup

<sup>1</sup> 1/4 cup (volume) or 1/3 ounce (weight), whichever is less

<sup>2</sup> 1/3 cup (volume) or 1/3 ounce (weight), whichever is less

<sup>3</sup> 3/4 cup (volume) or 1 ounce (weight), whichever is less

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Source: the Child and Adult Care Food Program

APPENDIX 78-1 D - DIAPER CHANGING AND TOILET TRAINING

§64-21-9. Diaper Changing and Toilet Training.

9.1. Children shall be diapered or have soiled underwear changed in an established diaper changing area. The changing area shall not be located in food preparation areas.

9.2. Staff shall change children diapers or soiled underwear on a clean, safe, impervious, nonabsorbent surface that is used for no other purpose.

9.3. Staff shall clean the child's perineal (urinary and anal) area with disposable wipes.

9.4. After removing a soiled diaper and before putting a fresh diaper on a child, staff members shall wipe their own hands with a pre-moistened towelette or a damp paper towel.

9.5. Both the child's and the staff member's hands shall be thoroughly washed after each diaper change. If disposable gloves are used, they must be discarded immediately and hands washed.

9.6. Changing tables and surfaces shall be cleaned and disinfected after each use by cleaning to remove visible soil, followed by wiping with an approved disinfectant solution, whether or not disposable, nonabsorbent paper is used. If disposable paper is used, it shall be discarded immediately after each diapering.

9.7. Soiled cloth diapers and/or soiled training pants shall be stored in a labeled container with a tight-fitting lid provided by a commercial diaper service or in a sealed plastic bag that is sent home with the child at the end of the day. If diapers are laundered by a commercial diaper service, the service shall be accredited by the Diaper Service Accreditation Council. Feces from soiled cloth diapers or training pants shall be disposed of by dumping in a toilet.

9.8. Soiled disposable diapers shall be stored in conveniently located, washable, plastic-lined, tightly covered waste containers. Each container shall be labeled and kept clean and free of buildup of soil or odor.

9.9. Toilet training chairs, if used, shall be of easily cleanable construction and after each use shall be emptied into a toilet, and thoroughly cleaned and sanitized in a utility sink.

9.10. Hand washing sinks shall not be used for rinsing soiled diapers or clothing or for cleaning toilet training equipment.

Source: Division of Health rule, "Child Care Centers," 64CSR21, §64-21-9. (1997)

**APPENDIX 78-1 E. OUTDOOR SURFACES**

The following chart indicates the relationship between specific depths of surface materials and the critical height of play equipment that is the height below which a life threatening head injury would not be expected to occur after a fall from the equipment. For example, six (6) inches of uncompressed wood chips is sufficient for equipment that has a critical height of seven (7) feet, but six (6) inches of medium pea gravel or fine or coarse sand is only sufficient for equipment that has a critical height of five (5) feet.

**TABLE 1 — CRITICAL HEIGHTS (in feet) OF TESTED MATERIALS**

MATERIAL	UNCOMPRESSED DEPTH			COMPRESSED DEPTH
	6 inch depth	9 inch depth	12 inch depth	9 inch depth
Wood chips*	7-foot fall	10-foot fall	11-foot fall	10-foot fall
Double Shredded Bark Mulch	6-foot fall	10-foot fall	11-foot fall	7-foot fall
Engineered Wood Fibers **	6-foot fall	7-foot fall	>12-foot fall	6-foot fall
Fine Sand	5-foot fall	5-foot fall	9-foot fall	5-foot fall
Coarse Sand	5-foot fall	5-foot fall	6-foot fall	4-foot fall
Fine Pea Gravel	6-foot fall	7-foot fall	10-foot fall	6-foot fall
Medium Pea Gravel	5-foot fall	5-foot fall	6-foot fall	5-foot fall
Shredded Tires***	10-12-foot fall	N/A	N/A	N/A

\* — This product was referred to as Wood Mulch in previous versions of this handbook. The term Wood Chips more accurately describes the product.

\*\* — This product was referred to as Uniform Wood Chips in previous versions of this handbook. In the playground industry, the product is more commonly known as Engineered Wood Fibers.

\*\*\* — This data is from test conducted by independent testing laboratories on a 6 inch depth of uncompressed shredded tire samples produced by four manufacturers. The test reported critical heights that varied from 10 feet to greater than 12 feet. It is recommended that persons seeking to install shredded tires as a protective surface request test data from the supplier showing the critical height of the material when it was tested in accordance with ASTM F1 292.

Source: Adapted from the Consumer Product Safety Commission Handbook for Public Playground Safety (Publication No. 325)

**APPENDIX 78-1 FE: STAFF/CHILD RATIO**

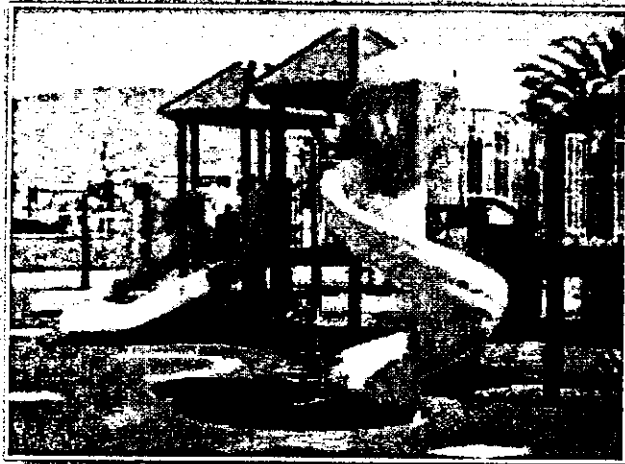
Table A: Staff/Child Ratio for Single-Age Groups

AGE OF CHILDREN	MAXIMUM NUMBER OF CHILDREN TO BE CARED FOR BY ONE QUALIFIED STAFF MEMBER	MAXIMUM NUMBER OF CHILDREN IN A GROUP
6 weeks - 1 year (6 weeks - 12 months)	4	8
1 year - 2 years (13 months - 24 months)	4	12
2 years (25 - 35 months)	8	16
3 years (36 - 47 months)	10	20
4 years (48 - 59 months)	12	24
5 years - school-age (60 months - school-age)	12	24
School-age	16	32

Table B: Staff/Child Ratio While Children Are Participating in Water Activities - Single-Age Groups

AGE OF CHILDREN	MAXIMUM NUMBER OF CHILDREN	NUMBER OF QUALIFIED STAFF MEMBERS
12 months and under	1	1
13 months - 24 months	2	1
25 - 59 months	4	1
60 months and over	8	1

# Public Playground Safety Handbook



**U.S. Consumer Product Safety Commission**  
*Saving Lives and Keeping Families Safe*

- Watching and stopping dangerous horseplay, such as children throwing protective surfacing materials, jumping from heights, etc.
- Watching for and stopping children from wandering away from the play area.
- Swinging dual exercise rings and trapeze bars – These are rings and trapeze bars on long chains that are generally considered to be items of athletic equipment and are not recommended for public playgrounds. *NOTE: The recommendation against the use of exercise rings does not apply to overhead hanging rings such as those used in a ring trek or ring ladder (see Figure 7).*

## 2.3 Selecting Equipment

When selecting playground equipment, it is important to know the age range of the children who will be using the playground. Children at different ages and stages of development have different needs and abilities. Playgrounds should be designed to stimulate children and encourage them to develop new skills, but should be in scale with their sizes, abilities, and developmental levels. Consideration should also be given to providing play equipment that is accessible to children with disabilities and encourages integration within the playground.

Table 1 shows the appropriate age range for various pieces of playground equipment. This is not an all-comprehensive list and, therefore, should not limit inclusion of current or newly designed equipment that is not specifically mentioned. For equipment listed in more than one group, there may be some modifications or restrictions based on age, so consult the specific recommendations in §5.3.

### 2.3.1 Equipment not recommended

Some playground equipment is not recommended for use on public playgrounds, including:

- Trampolines
- Swinging gates
- Giant strides
- Climbing ropes that are not secured at both ends.
- Heavy metal swings (e.g., animal figures) – These are not recommended because their heavy rigid metal framework presents a risk of impact injury.
- Multiple occupancy swings – With the exception of tire swings, swings that are intended for more than one user are not recommended because their greater mass, as compared to single occupancy swings, presents a risk of impact injury.
- Rope swings – Free-swinging ropes that may fray or otherwise form a loop are not recommended because they present a potential strangulation hazard.



## 2.4 Surfacing

The surfacing under and around playground equipment is one of the most important factors in reducing the likelihood of life-threatening head injuries. A fall onto a shock absorbing surface is less likely to cause a

serious head injury than a fall onto a hard surface. However, some injuries from falls, including broken limbs, may occur no matter what playground surfacing material is used.

The most widely used test method for evaluating the shock absorbing properties of a playground surfacing material is to drop an instrumented metal headform onto a sample of the material and record the acceleration/time pulse during the impact. Field and laboratory test methods are described in ASTM F1292 *Standard Specification for Impact Attenuation of Surface Systems Under and Around Playground Equipment*.

Testing using the methods described in ASTM F1292 will provide a “critical height” rating of the surface. This height can be considered as an approximation of the fall height below which a life-threatening head injury would not be expected to occur. Manufacturers and installers of playground protective surfacing should provide the critical height rating of their materials. This rating should be greater than or equal to the fall height of the highest piece of equipment on the playground. The fall height of a piece of equipment is the distance between the highest designated play surface on a piece of equipment and the protective surface beneath it. Details for determining the highest designated play surface and fall height on some types of equipment are included in §5 Parts of the Playground.

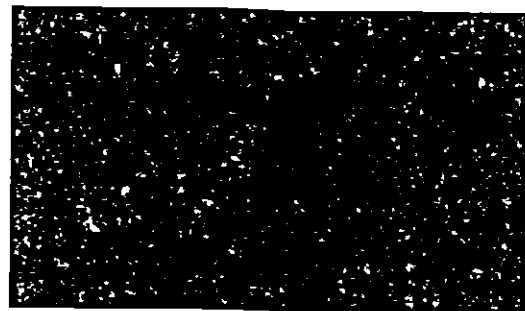
### 2.4.1 Equipment not covered by protective surfacing recommendations

The recommendations for protective surfacing do not apply to equipment that requires a child to be standing or sitting at ground level. Examples of such equipment are:



### Appropriate Surfacing

- Any material tested to ASTM F1292, including unitary surfaces, engineered wood fiber, etc.
- Pea gravel
- Sand
- Shredded/recycled rubber mulch
- Wood mulch (not CCA-treated)
- Wood chips



### Inappropriate Surfacing

- Asphalt
- Carpet not tested to ASTM F1292
- Concrete
- Dirt
- Grass
- CCA treated wood mulch

- Sand boxes
- Activity walls at ground level
- Play houses
- Any other equipment that children use when their feet remain in contact with the ground surface

## 2.4.2 Selecting a surfacing material

There are two options available for surfacing public playgrounds: unitary and loose-fill materials. A playground should never be installed without protective surfacing of some type. Concrete, asphalt, or other hard surfaces should never be directly under playground equipment. Grass and dirt are not considered protective surfacing because wear and environmental factors can reduce their shock absorbing effectiveness. Carpeting and mats are also not appropriate unless they are tested to and comply with ASTM F1292. Loose-fill should be avoided for playgrounds intended for toddlers.

### 2.4.2.1 Unitary surfacing materials

Unitary materials are generally rubber mats and tiles or a combination of energy-absorbing materials held in place by a

binder that may be poured in place at the playground site and then cured to form a unitary shock absorbing surface. Unitary materials are available from a number of different manufacturers, many of whom have a range of materials with differing shock absorbing properties. New surfacing materials, such as bonded wood fiber and combinations of loose-fill and unitary, are being developed that may also be tested to ASTM F1292 and fall into the unitary materials category. When deciding on the best surfacing materials keep in mind that some dark colored surfacing materials exposed to the intense sun have caused blistering on bare feet. Check with the manufacturer if light colored materials are available or provide shading to reduce direct sun exposure.

Persons wishing to install a unitary material as a playground surface should request ASTM F1292 test data from the manufacturer identifying the critical height rating of the desired surface. In addition, site requirements should be obtained from the manufacturer because some unitary materials require installation over a hard surface while others do not. Manufacturer's instructions should be followed closely, as some unitary systems require professional installation. Testing should be conducted in accordance with the ASTM F1292 standard.

### 2.4.2.2 Loose-fill surfacing materials

Engineered wood fiber (EWF) is a wood product that may look similar in appearance to landscaping mulch, but EWF products are designed specifically for use as a playground safety surface under and around playground equipment. EWF products should meet the specifications in ASTM F2075: *Standard Specification for Engineered Wood Fiber* and be tested to and comply with ASTM F1292.

There are also rubber mulch products that are designed specifically for use as playground surfacing. Make sure they have been tested to and comply with ASTM F1292.

When installing these products, tips 1-9 listed below should be followed. Each manufacturer of engineered wood fiber and rubber mulch should provide maintenance requirements for and test data on:

- Critical height based on ASTM F1292 impact attenuation testing.
- Minimum fill-depth data.
- Toxicity.
- ADA/ABA accessibility guidelines for firmness and stability based on ASTM F1951.

Other loose-fill materials are generally landscaping-type materials that can be layered to a certain depth and resist compacting. Some examples include wood mulch, wood chips, sand, pea gravel, and shredded/recycled rubber mulch.

Important tips when considering loose-fill materials:

1. Loose-fill materials will compress at least 25% over time due to use and weathering. This must be considered when planning the playground. For example, if the playground will require 9 inches of wood chips, then the initial fill level should be 12 inches. See Table 2 below.
2. Loose-fill surfacing requires frequent maintenance to ensure surfacing levels never drop below the minimum depth. Areas under swings and at slide exits are more susceptible to displacement; special attention must be paid to maintenance in these areas. Additionally, wear mats can be installed in these areas to reduce displacement.
3. The perimeter of the playground should provide a method of containing the loose-fill materials.
4. Consider marking equipment supports with a minimum fill level to aid in maintaining the original depth of material.

5. Good drainage is essential to maintaining loose-fill surfacing. Standing water with surfacing material reduces effectiveness and leads to material compaction and decomposition.
6. Critical height may be reduced during winter in areas where the ground freezes.
7. Never use less than 9 inches of loose-fill material except for shredded/recycled rubber (6 inches recommended). Shallower depths are too easily displaced and compacted.
8. Some loose-fill materials may not meet ADA/ABA accessibility guidelines. For more information, contact the Access Board (see §1.6) or refer to ASTM F1951.
9. Wood mulch containing chromated copper arsenate (CCA)-treated wood products should not be used; mulch where the CCA-content is unknown should be avoided (see §2.5.5.1).

Table 2 shows the minimum required depths of loose-fill material needed based on material type and fall height. The depths shown assume the materials have been compressed due to use and weathering and are properly maintained to the given level.

### 2.4.2.3 Installing loose-fill over hard surface

CPSC staff strongly recommends against installing playgrounds over hard surfaces, such as asphalt, concrete, or hard packed earth, unless the installation adds the following layers of protection. Immediately over the hard surface there should be a 3- to 6-inch base layer of loose-fill (e.g., gravel for drainage). The next layer should be a Geotextile cloth. On top of that should be a loose-fill layer meeting the specifications addressed in §2.4.2.2 and Table 2. Embedded in the loose-fill layer should be impact attenuating mats under high traffic areas, such as under swings, at slide exits, and other places where displacement is likely. Figure 1 provides a visual representation of this information. Older playgrounds that still exist on hard surfacing should be modified to provide appropriate surfacing.

## 2.5 Equipment Materials

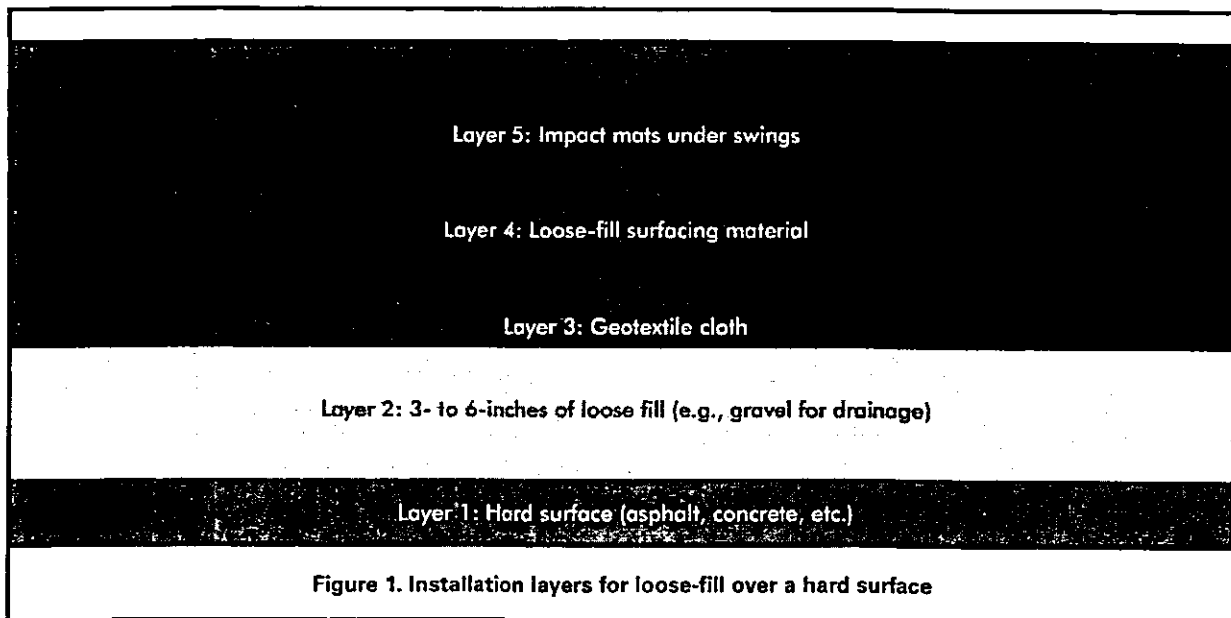
### 2.5.1 Durability and finish

- Use equipment that is manufactured and constructed only of materials that have a demonstrated record of durability in a playground or similar setting.

**Table 2. Minimum compressed loose-fill surfacing depths**

Inches	Of	(Loose-Fill Material)	Protects to	Fall Height (feet)
6*		Shredded/recycled rubber		10
9		Sand		4
9		Pea Gravel		5
9		Wood mulch (non-CCA)		7
9		Wood chips		10

\* Shredded/recycled rubber loose-fill surfacing does not compress in the same manner as other loose-fill materials. However, care should be taken to maintain a constant depth as displacement may still occur.



- Finishes, treatments, and preservatives should be selected carefully so that they do not present a health hazard to users.
  - All fasteners, connectors, and covering devices that are exposed to the user should be smooth and should not be likely to cause laceration, penetration, or present a clothing entanglement hazard (see also §3.2 and Appendix B).
- 2.5.2 Hardware**
- When installed and maintained in accordance with the manufacturer's instructions:
- All fasteners, connectors, and covering devices should not loosen or be removable without the use of tools.
  - Lock washers, self-locking nuts, or other locking means should be provided for all nuts and bolts to protect them from detachment.
  - Hardware in moving joints should also be secured against unintentional or unauthorized loosening.

### 5.2.2 Rungs and other hand gripping components

Unlike steps of stairways and step ladders that are primarily for foot support, rungs can be used for both foot and hand support.

- Rungs with round shapes are easiest for children to grip.
- All hand grips should be secured in a manner that prevents them from turning.
- Toddlers:
  - Handrails or other means of hand support should have a diameter or maximum cross-section between 0.60 and 1.20 inches.
  - A diameter or maximum cross-section of 0.90 inches is preferred to achieve maximal grip strength and benefit the weakest children.
- Preschool- and school-age:
  - Rungs, handrails, climbing bars, or other means of hand support intended for holding should have a diameter or maximum cross-section between 0.95 and 1.55 inches.
  - A diameter or maximum cross-section of 1.25 inches is preferred to achieve maximal grip strength and benefit the weakest children.

### 5.2.3 Handrails

Handrails on stairways and step ladders are intended to provide hand support and to steady the user. Continuous handrails extending over the full length of the access should be provided on both sides of all stairways and step ladders, regardless of the height of the access. Rung ladders do not require handrails since rungs or side supports provide hand support on these more steeply inclined accesses.

#### 5.2.3.1 Handrail height

Handrails should be available for use at the appropriate height, beginning with the first step. The vertical distance between the top front edge of a step or ramp surface and the top surface of the handrail above it should be as follows:

- Toddlers: between 15 and 20 inches.
- Preschool-age: between 22 and 26 inches.
- School-age: between 22 and 38 inches.

### 5.2.4 Transition from access to platform

Handrails or handholds are recommended at all transition points (the point where the child must move from the access component to the play structure platform).

- The handhold should provide support from the access component until the child has fully achieved the desired posture on the platform.
- Any opening between a handrail and an adjacent vertical structure (e.g., vertical support post for a platform or vertical slat of a protective barrier) should not pose an entrapment hazard.
- Access methods that do not have handrails, such as rung ladders, flexible climbers, arch climbers, and tire climbers, should provide hand supports for the transition between the top of the access and the platform.

## 5.3 Major Types of Playground Equipment

### 5.3.1 Balance beams

- Balance beams should be no higher than:
  - Toddlers: not recommended.
  - Preschool-age: 12 inches.
  - School-age: 16 inches.

#### 5.3.1.1 Fall height

The fall height of a balance beam is the distance between the top of the walking surface and the protective surfacing beneath it.

### 5.3.2 Climbing and upper body equipment

Climbing equipment is generally designed to present a greater degree of physical challenge than other equipment on public playgrounds. This type of equipment requires the use of the hands to navigate up or across the equipment. "Climbers" refers to a wide variety of equipment, such as but not limited to:

- Arch climbers
- Dome climbers
- Flexible climbers (usually chain or net)
- Parallel bars
- Sliding poles



Simple Arch Climber



Geodesic Dome Climber



Overhead Horizontal Ladder



Overhead Loop Ladder

Figure 7. Examples of climbers

- Spiral climbers
- Upper body equipment (horizontal overhead ladders, overhead rings, track ride).

School-age children tend to use climbing and upper body equipment more frequently and more proficiently than preschool children. Young preschool children may have difficulty using some climbers because they have not yet developed some of the physical skills necessary for certain climbing activities (balance, coordination, and upper body strength). Older preschool children (i.e., 4- and 5-year-olds) are beginning to use flexible climbers, arch climbers, and upper body devices.

### 5.3.2.1 Design considerations

#### 5.3.2.1.1 Layout of climbing components

When climbing components are part of a composite structure, their level of challenge and method of use should be compatible with the traffic flow from nearby components. Upper body devices should be placed so that the swinging movement generated by children on this equipment cannot interfere with the movement of children on adjacent structures, particularly children descending on slides. The design of adjacent play structures should not facilitate climbing to the top support bars of upper body equipment.

#### 5.3.2.1.2 Fall Height

Climbers:

- Unless otherwise specified in this section, the fall height for climbers is the distance between the highest part of the climbing component and the protective surfacing beneath it.
- If the climber is part of a composite structure, the fall height is the distance between the highest part of the climber intended for foot support and the protective surfacing beneath it.
  - Toddlers: The maximum fall height for free standing and composite climbing structures should be 32 inches.

Upper Body Equipment:

- The fall height of upper body equipment is the distance between the highest part of the equipment and the protective surface below.

#### 5.3.2.1.3 Climbing rungs

Some of the access methods discussed in §5.2 are also considered climbing devices; therefore, the recommendations for the size of climbing rungs are similar.

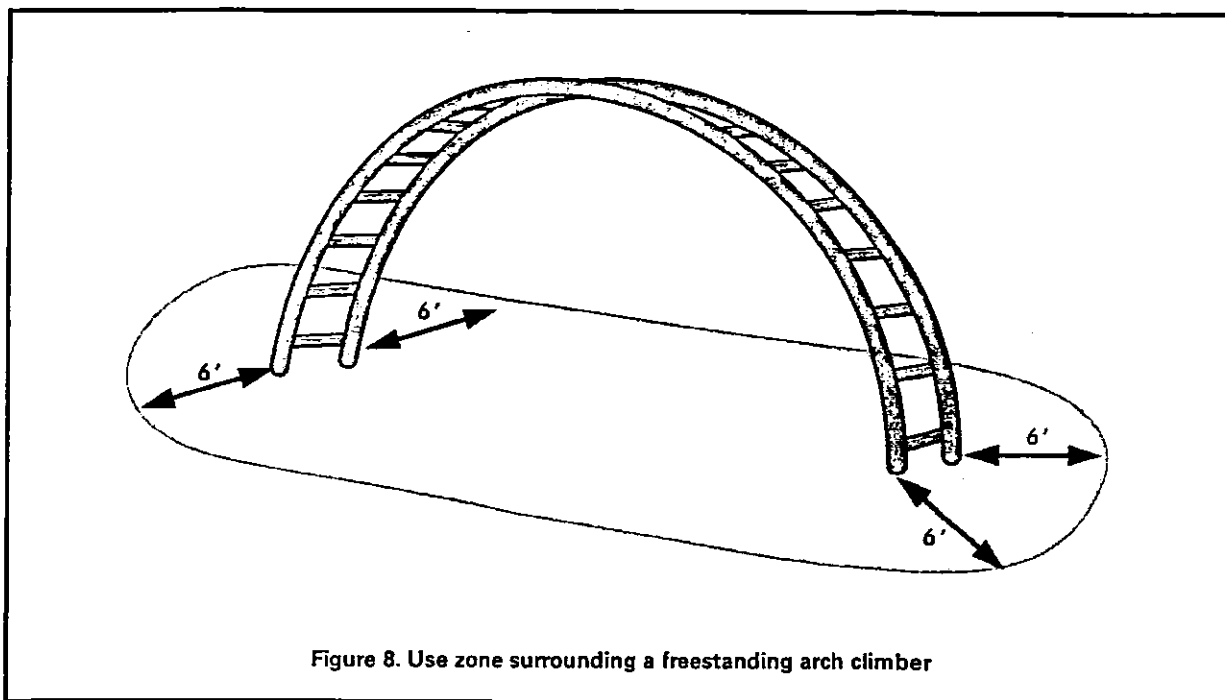


Figure 8. Use zone surrounding a freestanding arch climber

- Rungs should be generally round.
- All rungs should be secured in a manner that prevents them from turning.
- Climbing rungs should follow the same diameter recommendations as in §5.2.2.

#### 5.3.2.1.4 Use zone

- The use zone should extend a minimum of 6 feet in all directions from the perimeter of the stand alone climber. See Figure 8.
- The use zone of a climber may overlap with neighboring equipment if the other piece of equipment allows overlapping use zones and
  - There is at least 6 feet between equipment when adjacent designated play surfaces are no more than 30 inches high; or
  - There is at least 9 feet between equipment when adjacent designated play surfaces are more than 30 inches high.

#### 5.3.2.1.5 Other considerations

- Climbers should not have climbing bars or other rigid structural components in the interior of the climber onto

which a child may fall from a height of greater than 18 inches. See Figure 9 for an example of a climber that **DOES NOT** follow this consideration.

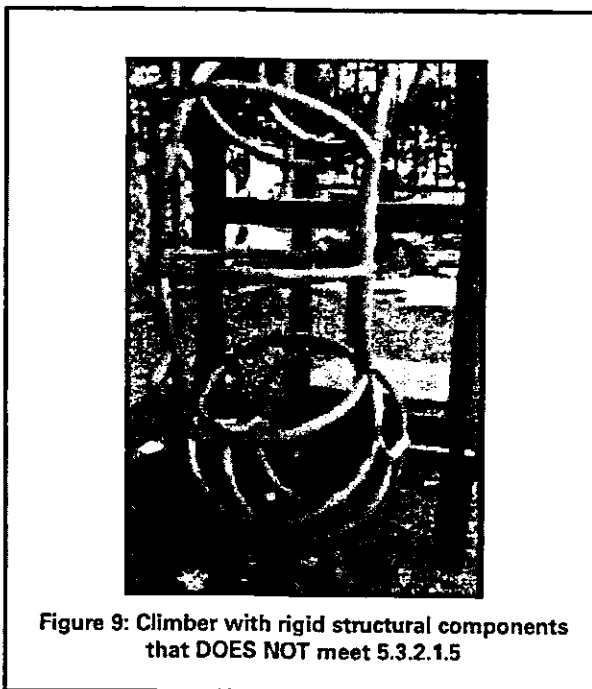


Figure 9: Climber with rigid structural components that **DOES NOT** meet 5.3.2.1.5

### 5.3.2.2 Arch climbers

Arch climbers consist of rungs attached to convex side supports. They may be free standing (Figure 10) or be provided as a more challenging means of access to other equipment (Figure 11).

- Arch climbers should not be used as the sole means of access to other equipment for preschoolers.
- Free standing arch climbers are not recommended for toddlers or preschool-age children.
- The rung diameter and spacing of rungs on arch climbers should follow the recommendations for rung ladders in Table 6.

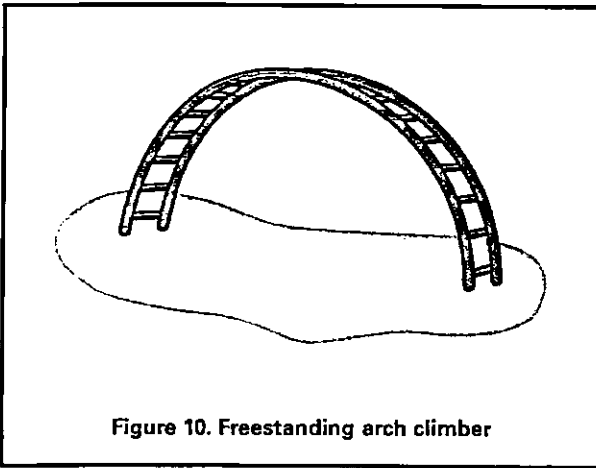


Figure 10. Freestanding arch climber

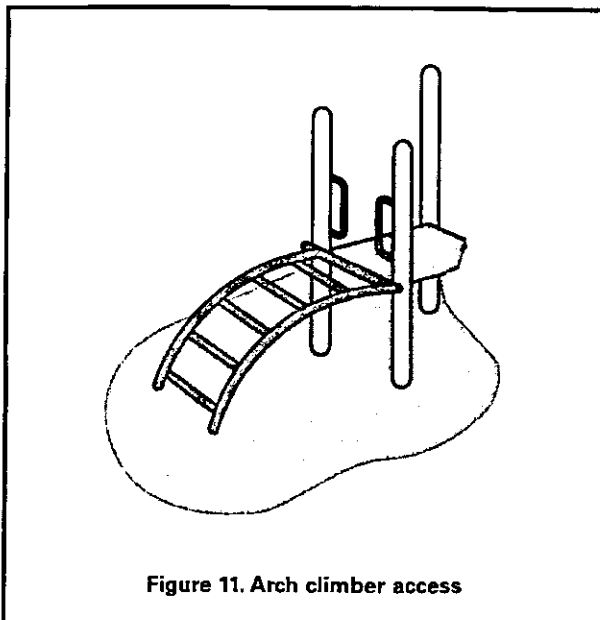


Figure 11. Arch climber access

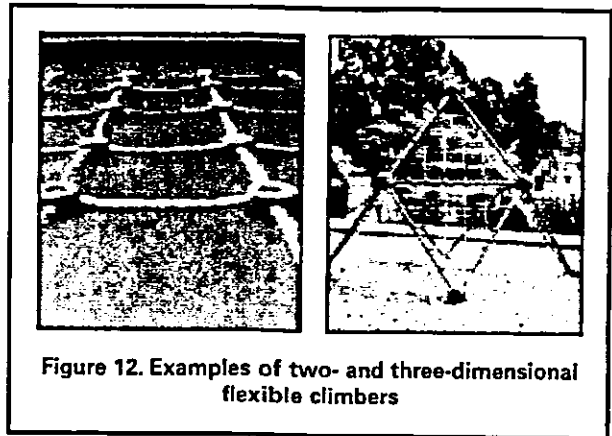


Figure 12. Examples of two- and three-dimensional flexible climbers

### 5.3.2.3 Flexible climbers

Flexible climbers use a grid of ropes, chains, cables, or tires for climbing. Since the flexible parts do not provide a steady means of support, flexible climbers require more advanced balance abilities than rigid climbers.

Rope, chain, and cable generally form a net-like structure that may be either two or three dimensional. See Figure 12. Tire climbers may have the tires secured tread-to-tread to form a sloping grid, or the tires may be suspended individually by chains or other means.

- Flexible climbers that provide access to platforms should be securely anchored at both ends.
- When connected to the ground, the anchoring devices should be installed below ground level and beneath the base of the protective surfacing material.
- Connections between ropes, cables, chains, or between tires should be securely fixed.
- Flexible climbers are not recommended as the sole means of access to equipment intended for toddlers and preschool-age children.
- Free-standing flexible climbers are not recommended on playgrounds intended for toddlers and preschool children.
- Spacing between the horizontal and vertical components of a climbing grid should not form entrapment hazards.
- The perimeter of any opening in a net structure should be less than 17 inches or greater than 28 inches (see Figure 13).

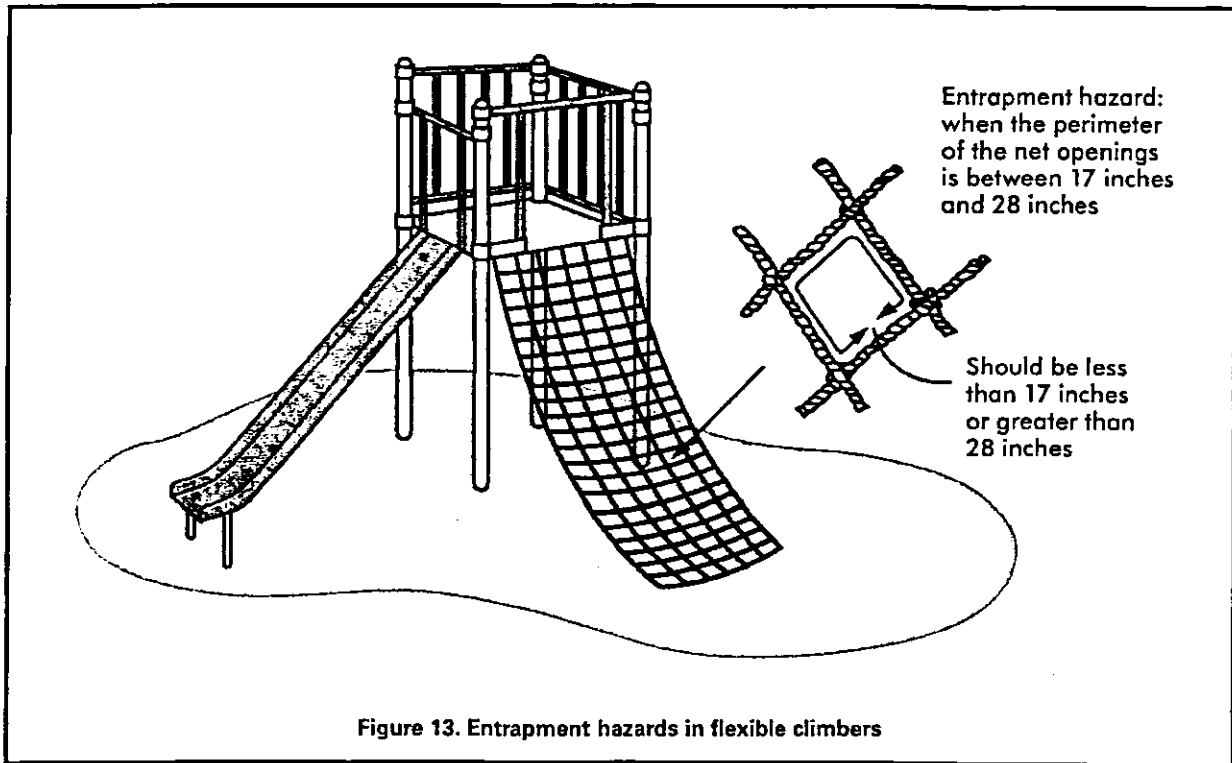


Figure 13. Entrapment hazards in flexible climbers

#### 5.3.2.4 Horizontal (overhead) ladders

Horizontal (overhead) ladders are a type of climber designed to build upper body strength. They are designed to allow children to move across the ladder from end to end using only their hands.

Four-year-olds are generally the youngest children able to use upper body devices like these; therefore, horizontal ladders should not be used on playgrounds intended for toddlers and 3-year-olds. The recommendations below are designed to accommodate children ages 4 through 12 years.

- The first handhold on either end of upper body equipment should not be placed directly above the platform or climbing rung used for mount or dismount. This minimizes the risk of children impacting rigid access structures if they fall from the first handhold during mount or dismount.
- The horizontal distance out to the first handhold should be:
  - No greater than 10 inches but not directly above the platform when access is from a platform.
  - At least 8 inches but no greater than 10 inches when access is from climbing rungs.
- The space between adjacent rungs of overhead ladders should be greater than 9 inches to prevent entrapment.
- Horizontal ladders intended for preschool-age children should have rungs that are parallel to one another and evenly spaced.
- The maximum height of a horizontal ladder (i.e., measured from the center of the grasping device to the top of the protective surfacing below) should be:
  - Preschool-age (4 and 5 years): no more than 60 inches.
  - School-age: no more than 84 inches.
- The center-to-center spacing of horizontal ladder rungs should be as follows:
  - Preschool-age (4 and 5 years): no more than 12 inches.
  - School-age: no more than 15 inches.
- The maximum height of the take-off/landing platform above the protective surfacing should be:
  - Preschool-age (4 and 5 years): no more than 18 inches.
  - School-age: no more than 36 inches.

### 5.3.2.5 Overhead rings

Overhead rings are similar to horizontal ladders in terms of the complexity of use. Therefore, overhead rings should not be used on playgrounds intended for toddlers and 3-year-olds. The recommendations below are designed to accommodate children 4 through 12 years of age.

Overhead rings differ from horizontal ladders because, during use, the gripped ring swings through an arc and reduces the distance to the gripping surface of the next ring; therefore, the spacing distance recommendations for horizontal ladders do not apply.

- The first handhold on either end of upper body equipment should not be placed directly above the platform or climbing rung used for mount or dismount. This minimizes the risk of children hitting rigid access structures if they fall from the first handhold during mount or dismount.
- The horizontal distance out to the first handhold should be:
  - No greater than 10 inches but not directly above the platform when access is from a platform.
  - At least 8 inches but no greater than 10 inches when access is from climbing rungs.
- The maximum height of overhead rings measured from the center of the grasping device to the protective surfacing should be:
  - Preschool-age (4 and 5 years): 60 inches.
  - School-age: 84 inches.
- If overhead swinging rings are suspended by chains, the maximum length of the chains should be 7 inches.
- The maximum height of the take-off/landing platform above the protective surfacing should be:
  - Preschool-age (4 and 5 years): no more than 18 inches.
  - School-age: no more than 36 inches.

### 5.3.2.6 Sliding poles

Vertical sliding poles are more challenging than some other types of climbing equipment. They require upper body strength and coordination to successfully slide down the pole. Unlike other egress methods, there is no reverse or stop, so a child cannot change his or her mind. Children who start a sliding pole must have the strength to slide the whole way or they will fall.

- Sliding poles are not recommended for toddlers or preschool-age children since they generally don't have the upper body and/or hand strength to slide.

- Sliding poles should be continuous with no protruding welds or seams along the sliding surface.
- The pole should not change direction along the sliding portion.
- The horizontal distance between a sliding pole and any structure used for access to the sliding pole should be between 18 inches and 20 inches.
- The pole should extend at least 60 inches above the level of the platform or structure used for access to the sliding pole.
- The diameter of sliding poles should be no greater than 1.9 inches.
- Sliding poles and their access structures should be located so that traffic from other events will not interfere with the users during descent.
- Upper access should be on one level only.
- The upper access area through the guardrail or barrier should be 15 inches wide at most.

#### 5.3.2.6.1 Fall height

- For sliding poles accessed from platforms, the fall height is the distance between the platform and the protective surfacing beneath it.
- For sliding poles not accessed from platforms, the fall height is the distance between a point 60 inches below the highest point of the pole and the protective surfacing beneath it.
- The top of the sliding pole's support structure should not be a designated play surface.

### 5.3.2.7 Track rides

Track rides are a form of upper body equipment where the child holds on to a handle or other device that slides along a track above his or her head. The child then lifts his or her feet and is carried along the length of the track. Track rides require significant upper body strength and the judgment to know when it is safe to let go. These are skills not developed until children are at least school-age; therefore, CPSC staff recommends:

- Track rides should not be used on playgrounds for toddlers and preschool-age children.
- Track rides should not have any obstacles along the path of the ride, including anything that would interfere in the take-off or landing areas.

- Two track rides next to each other should be at least 4 feet apart.
- The handle should be between 64 inches and 78 inches from the surfacing and follow the gripping recommendations in §5.2.2.
- Nothing should ever be tied or attached to any moving part of a track ride.
- Rolling parts should be enclosed to prevent crush hazards.

#### 5.3.2.7.1 Fall height

- The fall height of track ride equipment is the distance between the maximum height of the equipment and the protective surface beneath it.
- Equipment support posts with no designated play surfaces are exempt from this requirement.

### 5.3.3 Log rolls

Log rolls help older children master balance skills and increase strength. Children must balance on top of the log as they spin it with their feet. See Figure 14.

- Log rolls are not recommended for toddlers and preschool-age children. These children generally do not possess the balance, coordination, and strength to use a log roll safely.
- Log rolls should have handholds to assist with balance.
- The handholds should follow the guidelines in §5.2.2.
- The highest point of the rolling log should be a maximum of 18 inches above the protective surface below.
- When not part of a composite structure, the use zone may overlap with neighboring equipment if the other piece of equipment allows overlapping use zones (see §5.3.9) and
  - There is at least 6 feet between equipment when adjacent designated play surfaces are no more than 30 inches high; or
  - There is at least 9 feet between equipment when adjacent designated play surfaces are more than 30 inches high.

#### 5.3.3.1.1 Fall height

The fall height of a log roll is the distance between the highest portion of the rolling log and the protective surfacing beneath it.

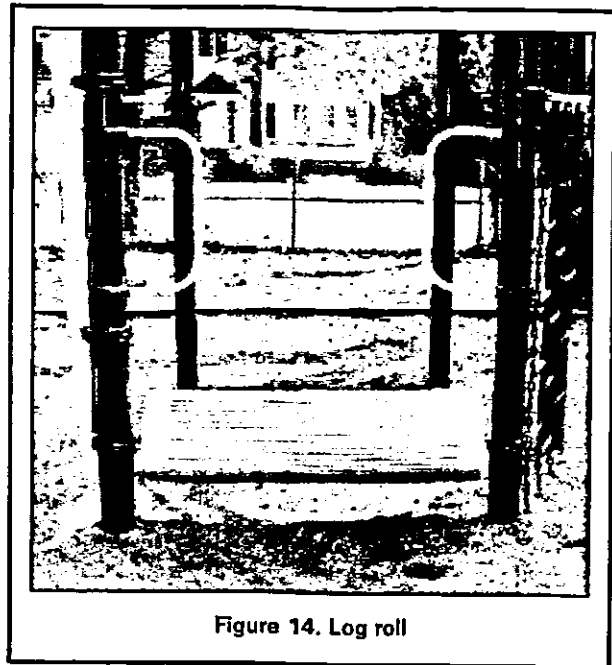


Figure 14. Log roll

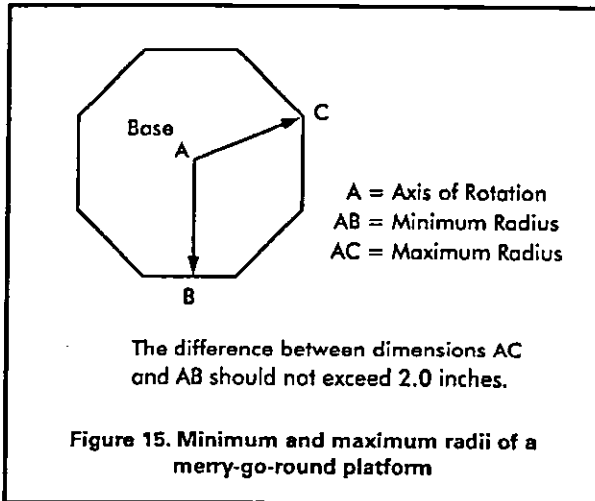
### 5.3.4 Merry-go-rounds

Merry-go-rounds are the most common rotating equipment found on public playgrounds. Children usually sit or stand on the platform while other children or adults push the merry-go-round to make it rotate. In addition, children often get on and off the merry-go-round while it is in motion. Merry-go-rounds may present a physical hazard to preschool-age children who have little or no control over such products once they are in motion. Therefore, children in this age group should always be supervised when using merry-go-rounds.

The following recommendations apply when the merry-go-round is at least 20 inches in diameter.

- Merry-go-rounds should not be used on playgrounds intended for toddlers.
- The standing/sitting surface of the platform should have a maximum height of:
  - Preschool: 14 inches above the protective surface.
  - School-age: 18 inches above the protective surface.
- The rotating platform should be continuous and approximately circular.
- The surface of the platform should not have any openings between the axis and the periphery that permit a rod having a diameter of 5/16 inch to penetrate completely through the surface.

- The difference between the minimum and maximum radii of a non-circular platform should not exceed 2.0 inches (Figure 15).



- The underside of the perimeter of the platform should be no less than 9 inches above the level of the protective surfacing beneath it.
- There should not be any accessible shearing or crushing mechanisms in the undercarriage of the equipment.
- Children should be provided with a secure means of holding on. Where handgrips are provided, they should conform to the general recommendations for hand gripping components in §5.2.2.
- No components of the apparatus, including handgrips, should extend beyond the perimeter of the platform.
- The rotating platform of a merry-go-round should not have any sharp edges.
- A means should be provided to limit the peripheral speed of rotation to a maximum of 13 ft/sec.
- Merry-go-round platforms should not have any up and down (oscillatory) motion.

#### 5.3.4.1 Use zone

- The use zone should extend a minimum of 6 feet beyond the perimeter of the platform.
- The use zone may not overlap other use zones, unless the rotating equipment is less than 20 inches in diameter and the adjacent equipment allows overlap.

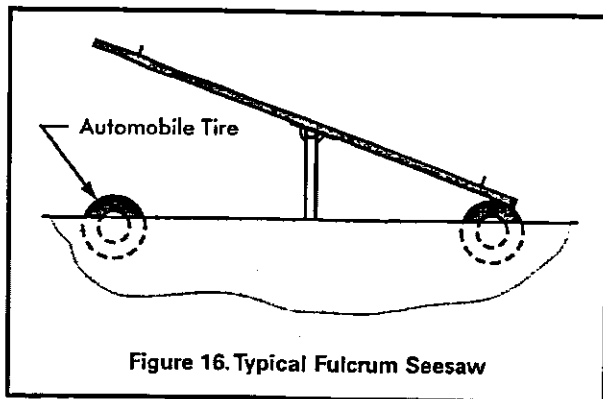
#### 5.3.4.2 Fall height

The fall height for a merry-go-round is the distance between the perimeter of the platform where a child could sit or stand and the protective surfacing beneath it.

#### 5.3.5 Seesaws

##### 5.3.5.1 Fulcrum seesaws

The typical seesaw (also known as a "teeter totter") consists of a board or pole with a seat at each end supported at the center by a fulcrum. See Figure 16. Because of the complex way children are required to cooperate and combine their actions, fulcrum seesaws are not recommended for toddlers or preschool-age children.



- The fulcrum should not present a crush hazard.
- Partial car tires, or some other shock-absorbing material, should be embedded in the ground underneath the seats, or secured on the underside of the seats. This will help prevent limbs from being crushed between the seat and the ground, as well as cushion the impact.
- The maximum attainable angle between a line connecting the seats and the horizontal is 25°.
- There should not be any footrests.

##### 5.3.5.2 Spring-centered seesaws

Preschool-age children are capable of using spring-centered seesaws because the centering device prevents abrupt contact with the ground if one child dismounts suddenly. Spring-centered seesaws also have the advantage of not requiring two children to coordinate their actions in order to play safely. Spring-centered seesaws should follow the recommendations for spring rockers including the use of footrests (§5.3.7).

### 5.3.5.3 Use zone for fulcrum and spring-centered seesaws

- The use zone should extend a minimum of 6 feet from each outside edge of the seesaw.
- The use zone may overlap with neighboring equipment if the other piece of equipment allows overlapping use zones and
  - There is at least 6 feet between equipment when adjacent designated play surfaces are no more than 30 inches high; or
  - There is at least 9 feet between equipment when adjacent designated play surfaces are more than 30 inches high.

### 5.3.5.4 Handholds

- Handholds should be provided at each seating position for gripping with both hands and should not turn when grasped.
- Handholds should not protrude beyond the sides of the seat.

### 5.3.5.5 Fall height

The fall height for a seesaw is the distance between the highest point any part of the seesaw can reach and the protective surfacing beneath it.

### 5.3.6 Slides

Children can be expected to descend slide chutes in many different positions, rather than always sitting and facing forward as they slide. These other positions should be discouraged at all times to minimize injuries.



Slides may provide a straight, wavy, or spiral descent either by means of a tube or an open slide chute. They may be either free-standing (Figure 17), part of a composite structure, or built on the grade of a natural or man-made slope (embankment slide). Regardless of the type of slide, avoid using bare metals on the platforms, chutes, and steps. When exposed to direct sunlight the bare metal may reach temperatures high enough to cause serious contact burn injuries in a matter of seconds. Provide shade for bare metal slides or use other materials that may reduce the surface temperature such as, but not limited to, plastic or coated metal.

#### 5.3.6.1 Slide access

Access to a stand-alone slide generally is by means of a ladder with rungs, steps, or a stairway with steps. Slides may also be part of a composite play structure, so children will gain access from other parts of the structure. Embankment slides use the ground for access.

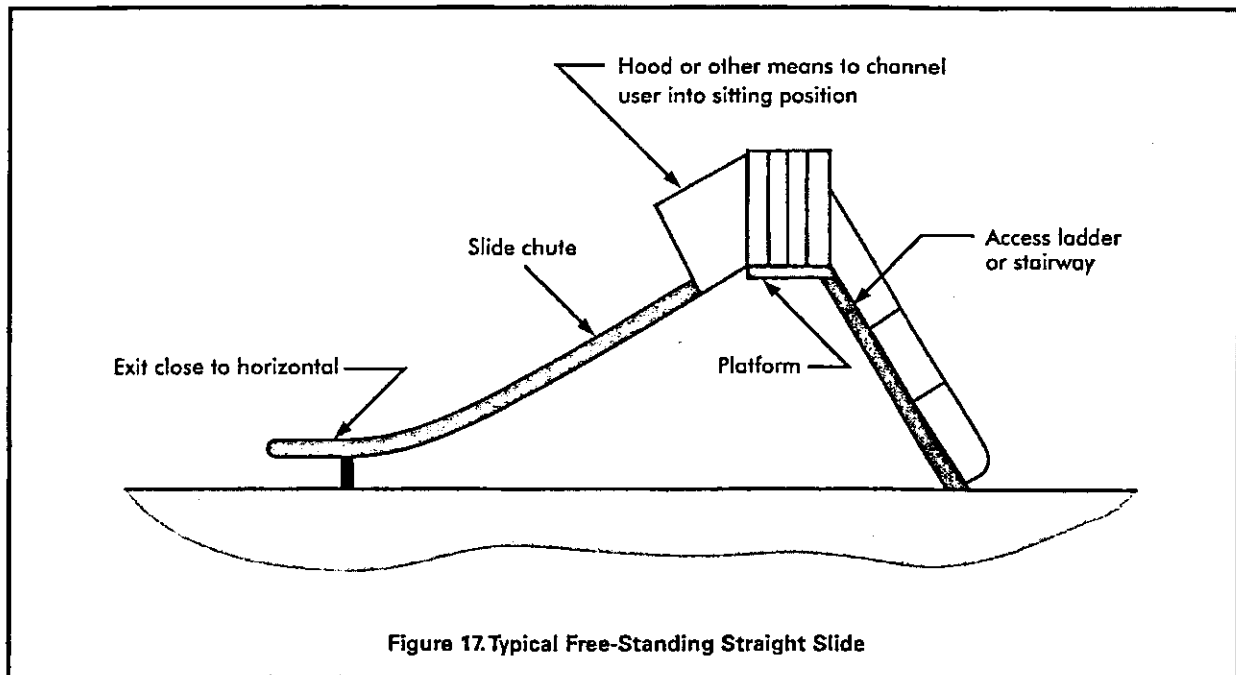


Figure 17. Typical Free-Standing Straight Slide

### 5.3.6.2 Slide platform

All slides should be provided with a platform with sufficient length to facilitate the transition from standing to sitting at the top of the inclined sliding surface. Embankment slides are exempt from platform requirements because they are on ground level; however, they should not have any spaces or gaps as noted below.

The platform should:

- Be at least 19 inches deep for toddlers.
- Be at least 14 inches deep for preschool-age and school-age children.
- Be horizontal.
- Be at least as wide as the slide chute.
- Be surrounded by guardrails or barriers.
- Conform to the same recommendations as general platforms given in §5.1.1.
- Not have any spaces or gaps that could trap strings, clothing, body parts, etc. between the platform and the start of the slide chute.
- Provide handholds to facilitate the transition from standing to sitting and decrease the risk of falls (except tube slides where the tube perimeter provides hand support). These should extend high enough to provide hand support for the largest child in a standing position, and low enough to provide hand support for the smallest child in a sitting position.
- Provide a means to channel a user into a sitting position at the entrance to the chute, such as a guardrail, hood, or other device that discourages climbing.

### 5.3.6.3 Slide chutes

#### 5.3.6.3.1 Embankment slides

- The slide chute of an embankment slide should have a maximum height of 12 inches above the underlying ground surface. This design basically eliminates the hazard of falls from elevated heights.
- Embankment slides should follow all of the recommendations given for straight slides where applicable (e.g., side height, slope, use zone at exit, etc.).
- There should be some means provided at the slide chute entrance to minimize the use of embankment slides by children on skates, skateboards, or bicycles.

#### 5.3.6.3.2 Roller slides

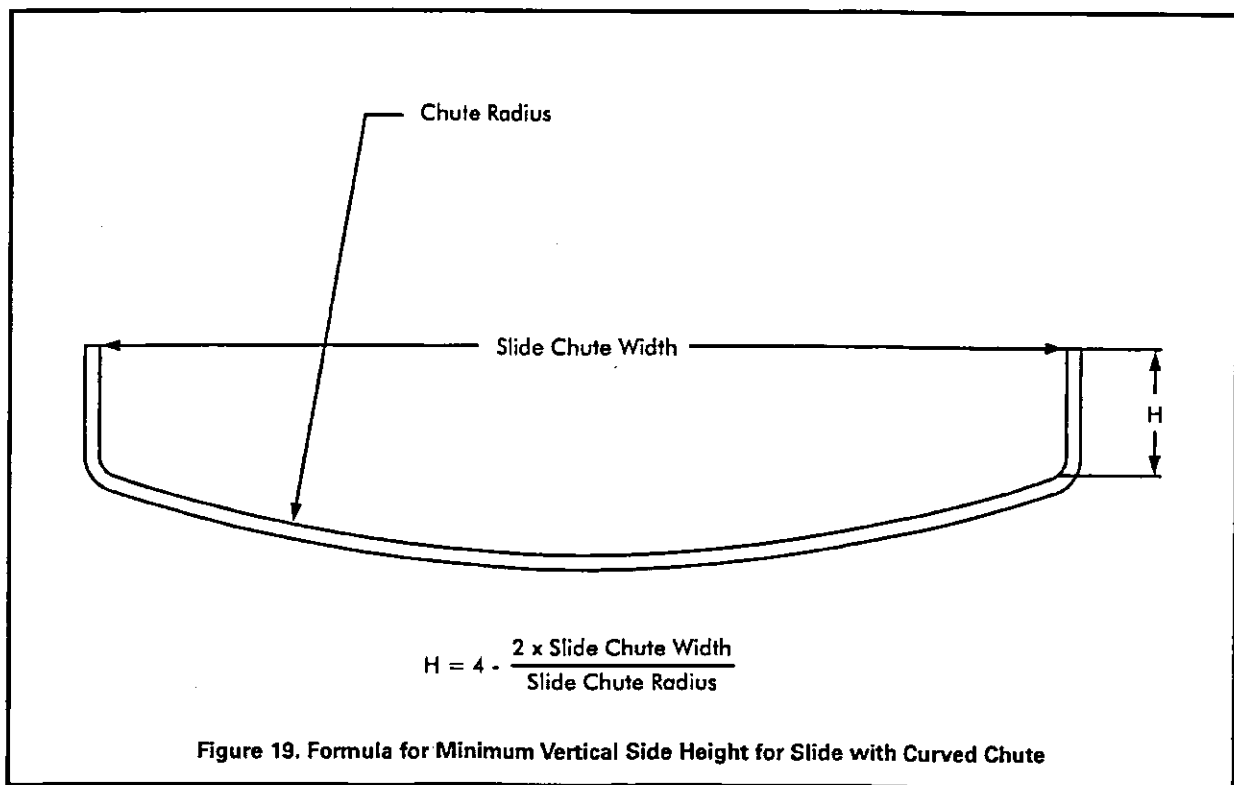
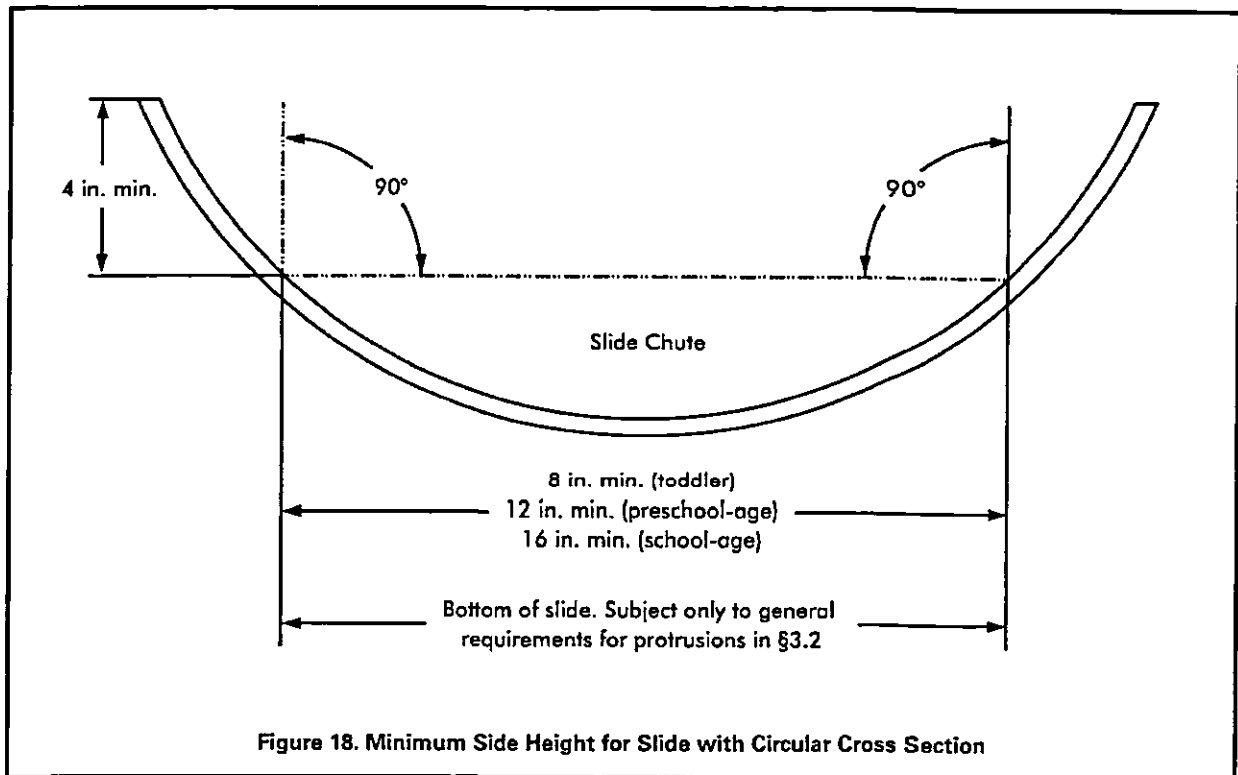
- Roller slides should meet applicable recommendations for other slides (e.g., side height, slope, use zone at exit, etc.).
- The space between adjacent rollers and between the ends of the rollers and the stationary structure should be less than 3/16 inch.
- Frequent inspections are recommended to insure that there are no missing rollers or broken bearings and that the rollers roll.

#### 5.3.6.3.3 Spiral slides

- Spiral slides should follow the recommendations for straight slides where applicable (e.g., side height, slope, use zone at exit, etc.).
- Special attention should be given to design features which may present problems unique to spiral slides, such as lateral discharge of the user.
- Toddlers and preschool-age children have less ability to maintain balance and postural control, so only short spiral slides (one 360° turn or less) are recommended for these age groups.

#### 5.3.6.3.4 Straight slides

- Flat open chutes should have sides at least 4 inches high extending along both sides of the chute for the entire length of the inclined sliding surface.
- The sides should be an integral part of the chute, without any gaps between the sides and the sliding surface. (This does not apply to roller slides).
- Slides may have an open chute with a circular, semicircular or curved cross section provided that:
  - A. The vertical height of the sides is no less than 4 inches when measured at right angles to a horizontal line that is 8 inches long when the slide is intended for toddlers, 12 inches long when the slide is intended for preschool-age children, and 16 inches long when the slide is intended for school-age children (Figure 18); or
  - B. For any age group, the vertical height of the sides is no less than 4 inches minus two times the width of the slide chute divided by the radius of the slide chute curvature (Figure 19).



- For toddlers:
  - The average incline of a slide chute should be no more than  $24^\circ$  (that is, the height to horizontal length ratio shown in Figure 20 does not exceed 0.445).
  - No section of the slide chute should have a slope greater than  $30^\circ$ .
  - The slide chute should be between 8 and 12 inches wide.
- For preschool- and school-age children:
  - The average incline of a slide chute should be no more than  $30^\circ$  (that is, the height to horizontal length ratio shown in Figure 20 does not exceed 0.577).
  - No section of the slide chute should have a slope greater than  $50^\circ$ .

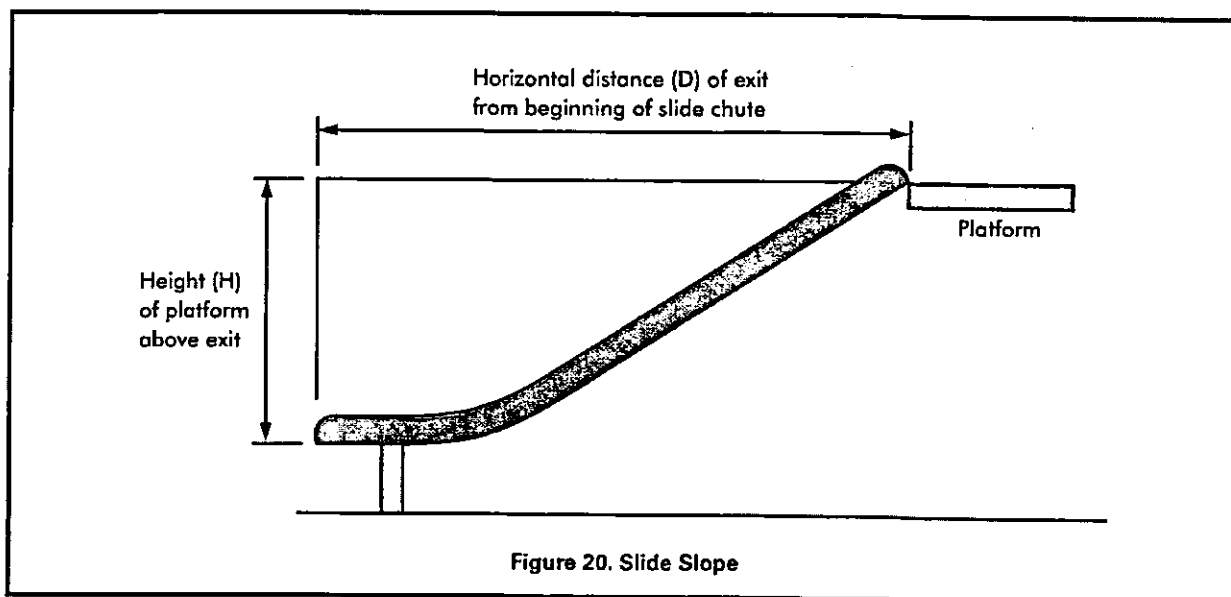
#### 5.3.6.3.5 Tube slides

- Tube slides should meet all the applicable recommendations for other slides (e.g., side height, slope, use zone at exit, etc.).
- Means, such as barriers or textured surfaces, should be provided to prevent sliding or climbing on the top (outside) of the tube.
- The minimum internal diameter of the tube should be no less than 23 inches.
- Supervisors should be aware of children using tube slides since the children are not always visible.

#### 5.3.6.4 Chute exit region

All slides should have an exit region to help children maintain their balance and facilitate a smooth transition from sitting to standing when exiting. The chute exit region should:

- Be between  $0$  and  $-4^\circ$  as measured from a plane parallel to the ground.
- Have edges that are rounded or curved to prevent lacerations or other injuries that could result from impact with a sharp or straight edge.
- For toddlers the chute exit region should:
  - Be between 7 and 10 inches long if any portion of the chute exceeds a  $24^\circ$  slope.
  - Be no more than 6 inches above the protective surfacing.
  - Have a transition from the sliding portion to the exit region with a radius of curvature of at least 18 inches.
- For preschool- and school-age the chute exit region should:
  - Be at least 11 inches long.
  - Be no more than 11 inches above the protective surfacing if the slide is no greater than 4 feet high.
  - Be at least 7 inches but not more than 15 inches above the protective surfacing if the slide is over 4 feet high.



### 5.3.6.5 Slide use zone

#### Toddlers:

- In a limited access environment
  - The use zone should be at least 3 feet around the perimeter of the slide.
  - The area at the end of the slide should not overlap with the use zone for any other equipment.
- In public areas with unlimited access
  - For a stand-alone slide, the use zone should be at least 6 feet around the perimeter.
  - For slides that are part of a composite structure, the minimum use zone between the access components and the side of the slide chute should be 3 feet.
  - The use zone at the end of the slide should be at least 6 feet from the end of the slide and not overlap with the use zone for any other equipment.

#### Preschool- and school-age (see Figure 21):

- The use zone in front of the access and to the sides of a slide should extend a minimum of 6 feet from the perimeter of the equipment. This recommendation does not apply to embankment slides or slides that are part of a composite structure (see §5.3.9).
- The use zone in front of the exit of a slide should never overlap the use zone of any other equipment; however, two or more slide use zones may overlap if their sliding paths are parallel.
- For slides less than or equal to 6 feet high, the use zone in front of the exit should be at least 6 feet.
- For slides greater than 6 feet high, the use zone in front of the exit should be at least as long as the slide is high up to a maximum of 8 feet.

### 5.3.6.6 Fall height

The fall height for slides is the distance between the transition platform and the protective surfacing beneath it.

### 5.3.6.7 Entanglement hazard

Children have suffered serious injuries and died by getting parts of their clothing tangled on protrusions or gaps on slides.

To reduce the chance of clothing entanglement:

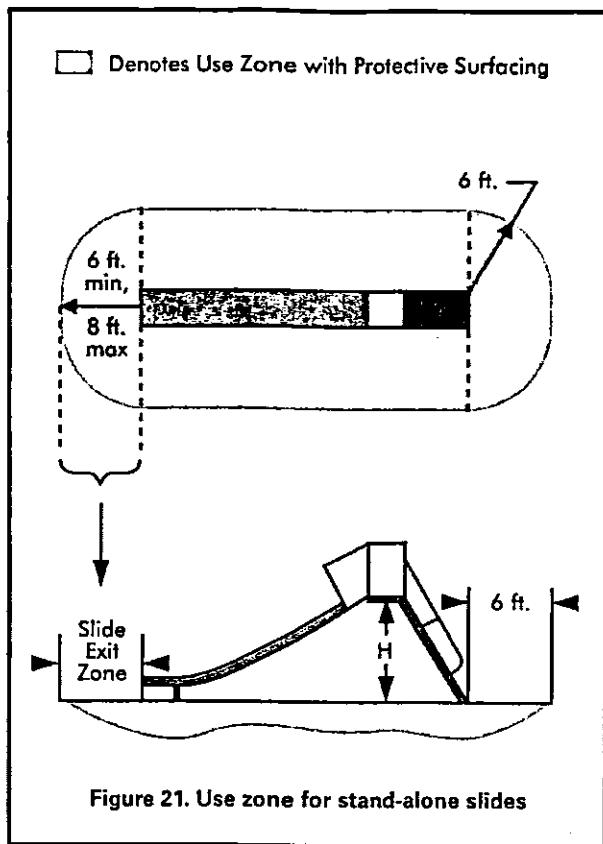


Figure 21. Use zone for stand-alone slides

- Projections up to 3 inches in diameter should not stick up more than 1/8 inch from the slide.
- There should be no gaps at the tops of slides where the slide chute connects with the platform that can entangle clothing or strings.
- See Appendix B for full recommendations and details of the protrusion test procedure.

### 5.3.6.8 Other sliding equipment

Equipment where it is foreseeable that a primary use of the component is sliding should follow the same guidelines for entanglement that are in 5.3.6.7.

### 5.3.7 Spring rockers

Toddlers and preschool-age children enjoy the bouncing and rocking activities presented by spring rockers, and they are the primary users of rocking equipment. See Figure 22. Older children may not find it challenging enough.

- Seat design should not allow the rocker to be used by more than the intended number of users.

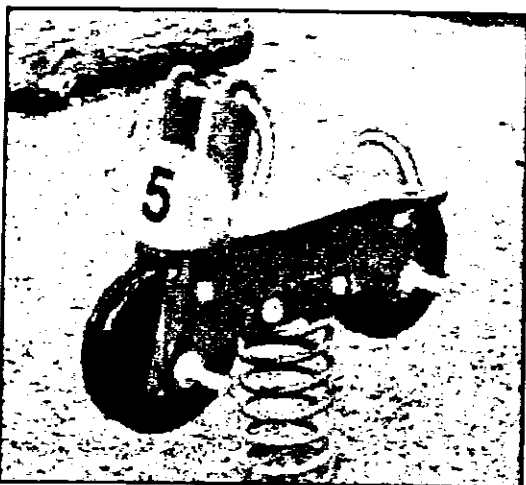


Figure 22. Example of spring rocker

- For toddlers:
  - The seat should be between 12 and 16 inches high.
  - Spring rockers with opposing seats intended for more than one child should have at least 37 inches between the seat centers.
- For preschoolers:
  - The seat should be between 14 and 28 inches high.
- Each seating position should be equipped with handgrips and footrests. The diameter of handgrips should follow the recommendations for hand gripping components in §5.2.2.
- The springs of rocking equipment should minimize the possibility of children crushing their hands or their feet between coils or between the spring and a part of the rocker.
- The use zone should extend a minimum of 6 feet from the "at rest" perimeter of the equipment.
- The use zone may overlap with neighboring equipment if the other piece of equipment allows overlapping use zones and
  - There is at least 6 feet between equipment when adjacent designated play surfaces are no more than 30 inches high; or

- There is at least 9 feet between equipment when adjacent designated play surfaces are more than 30 inches high; and
- The spring rocker is designed to be used from a seated position.

#### 5.3.7.1 Fall height

The fall height of spring rockers is the distance between either (1) the highest designated playing surface or (2) the seat, whichever is higher, and the protective surfacing beneath it.

#### 5.3.8 Swings

Children of all ages generally enjoy the sensations created while swinging. Mostly they sit on the swings; however, it is common to see children jumping off swings. Younger children also tend to swing on their stomachs, and older children may stand on the seats. To prevent injuries, these behaviors should be discouraged.

Swings may be divided into two distinct types:

- Single axis: Sometimes called a to-fro swing. A single-axis swing is intended to swing back and forth in a single plane and generally consists of a seat supported by at least two suspending members, each of which is connected to a separate pivot on an overhead structure.
- Multi-axis: A multi-axis swing consists of a seat (generally a tire) suspended from a single pivot that permits it to swing in any direction.

#### 5.3.8.1 General swing recommendations

- Hardware used to secure the suspending elements to the swing seat and to the supporting structure should not be removable without the use of tools.
- S-hooks are often part of a swing's suspension system, either attaching the suspending elements to the overhead support bar or to the swing seat. Open S-hooks can catch a child's clothing and present a strangulation hazard. S-hooks should be pinched closed. An S-hook is considered closed if there is no gap or space greater than 0.04 inches (about the thickness of a dime).
- Swings should be suspended from support structures that discourage climbing.
- A-frame support structures should not have horizontal cross-bars.

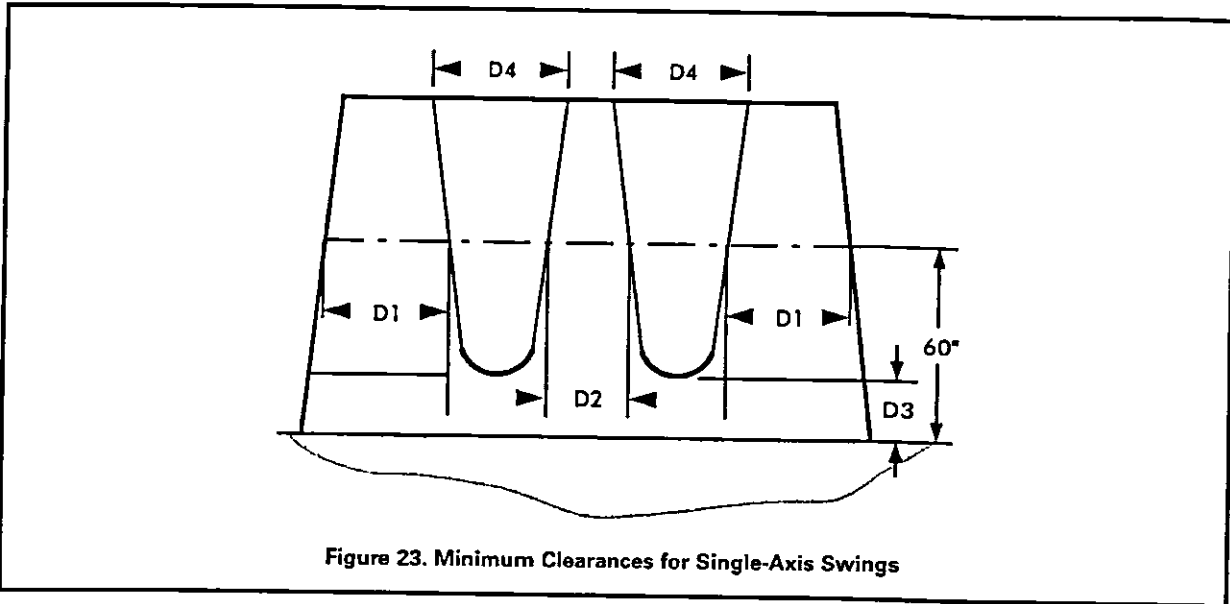


Figure 23. Minimum Clearances for Single-Axis Swings

Table 7. Minimum clearance dimensions for swings

Reason	Dimension	Toddler Full bucket	Preschool-age Belt	School-age Belt
Minimizes collisions between a swing and the supporting structure	D1	20 inches	30 inches	30 inches
Minimizes collisions between swings	D2	20 inches	24 inches	24 inches
Allows access	D3	24 inches	12 inches	12 inches
Reduces side-to-side motion	D4	20 inches	20 inches	20 inches

- Fiber ropes are not recommended as a means of suspending swings since they may degrade over time.
- Swing structures should be located away from other equipment or activities to help prevent young children from inadvertently running into the path of moving swings. Additional protection can be provided by means of a low blockade such as a fence or hedge around the perimeter of the swing area. The blockade should not be an obstacle within the use zone of a swing structure or hamper supervision by blocking visibility.

#### 5.3.8.2 Fall height

The fall height for swings is the vertical distance between the pivot point and the protective surfacing beneath it.

#### 5.3.8.3 Single-axis swings

##### 5.3.8.3.1 Belt seats used without adult assistance

- The use zone to the front and rear of single-axis swings should never overlap the use zone of another piece of equipment.
- To minimize the likelihood of children being struck by a moving swing, it is recommended that no more than two single-axis swings be hung in each bay of the supporting structure.

- Swings should not be attached to composite structures.
- Swing seats should be designed to accommodate no more than one user at any time.
- Lightweight rubber or plastic swing seats are recommended to help reduce the severity of impact injuries. Wood or metal swing seats should be avoided.
- Edges of seats should have smoothly finished or rounded edges and should conform to the protrusion recommendations in 5.3.8.5.
- If loose-fill material is used as a protective surfacing, the height recommendations should be determined after the material has been compressed.

#### 5.3.8.3.2 Full bucket seat swings

Full bucket seat swings are similar to single-axis swings since they move in a to-and-fro direction. However, full bucket seat swings are intended for children under 4 years of age to use with adult assistance.

- The seats and suspension systems of these swings, including the related hardware, should follow all of the criteria for conventional single axis swings.
- Full bucket seats are recommended to provide support on all sides of a child and between the legs of the occupant (see Figure 24).

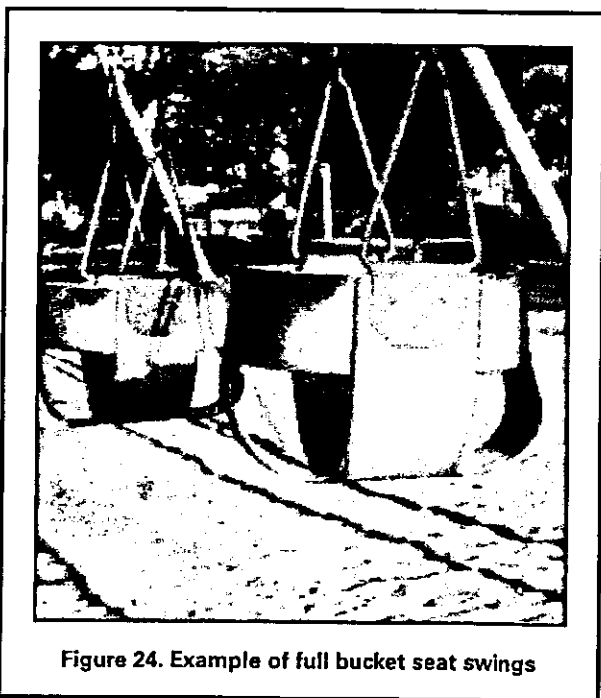


Figure 24. Example of full bucket seat swings

- The full bucket seat materials should not present a strangulation hazard, such as might be presented with a rope or chain used as part of the seat.
- Openings in swing seats should conform to the entrapment criteria in §3.3.
- Full bucket seat swings should be suspended from structures that are separate from those for other swings, or at least suspended from a separate bay of the same structure.
- Full bucket seat swings should not allow the child to enter and exit alone.
- Pivot points should be more than 47 inches but no more than 96 inches above the protective surfacing.

#### 5.3.8.3.3 Use zone for single-axis swings – belt and full bucket

The use zone in front of and behind the swing should be greater than to the sides of such a swing since children may deliberately attempt to exit from a single-axis swing while it is in motion. See Figure 25.

- The use zone for a belt swing should extend to the front and rear of a single-axis swing a minimum distance of twice the vertical distance from the pivot point and the top of the protective surface beneath it.
- The use zone for a full bucket swing should extend to the front and rear a minimum of twice the vertical distance from the top of the occupant's sitting surface to the pivot point.
- The use zone in front of and behind swings should never overlap with any other use zone.
- The use zone to the sides of a single-axis swing should extend a minimum of 6 feet from the perimeter of the swing. This 6-foot zone may overlap that of an adjacent swing structure or other playground equipment structure.

#### 5.3.8.4 Multi-axis (tire) swings

Tire swings are usually suspended in a horizontal orientation using three suspension chains or cables connected to a single swivel mechanism that permits both rotation and swinging motion in any axis.

- A multi-axis tire swing should not be suspended from a structure having other swings in the same bay.
- Attaching multi-axis swings to composite structures is not recommended.

- To minimize the hazard of impact, heavy truck tires should be avoided. Further, if steel-belted radials are used, they should be closely examined to ensure that there are no exposed steel belts or wires that could be a potential protrusion or laceration hazard. Plastic materials can be used as an alternative to simulate actual automobile tires. Drainage holes should be provided in the underside of the tire.
- Pay special attention to maintenance of the hanger mechanism because the likelihood of failure is higher for tire swings due to the added stress of rotational movement and multiple occupants.
- The hanger mechanisms for multi-axis tire swings should not have any accessible crush points.
- The minimum clearance between the seating surface of a tire swing and the uprights of the supporting structure should be 30 inches when the tire is in a position closest to the support structure (Figure 26).
- The minimum clearance between the bottom of the seat and the protective surface should not be less than 12 inches.

5.3.8.4.1 Multi-axis swing use zones

- The use zone should extend in any direction from a point directly beneath the pivot point for a minimum distance of 6 feet plus the length of the suspending members (see Figure 27). This use zone should never overlap the use zone of any other equipment.

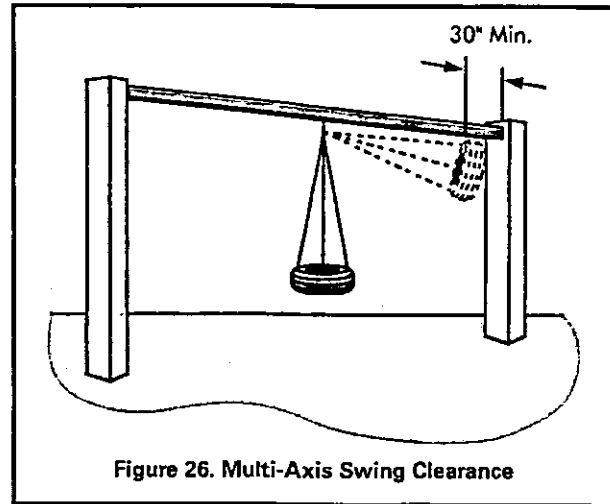


Figure 26. Multi-Axis Swing Clearance

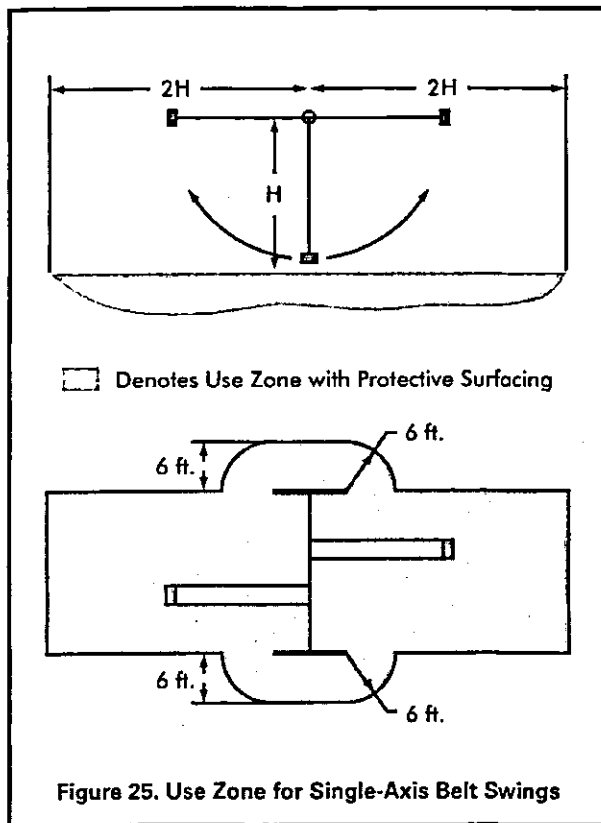


Figure 25. Use Zone for Single-Axis Belt Swings

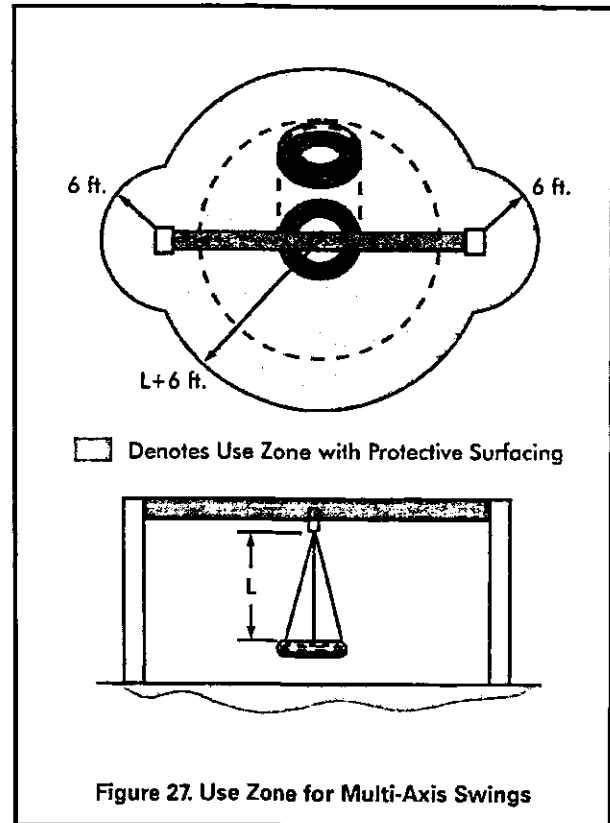


Figure 27. Use Zone for Multi-Axis Swings

- The use zone should extend a minimum of 6 feet from the perimeter of the supporting structure. This 6-foot zone may overlap that of an adjacent swing structure or other playground equipment structure.

#### 5.3.8.5 Protrusions on suspended members of swing assemblies

Protrusions on swings are extremely hazardous because of the potential for impact incidents. Nothing, including bolts or other parts, on the front, back, or underside of a swing should stick out more than  $1/8$  of an inch. See test procedures in Appendix B.

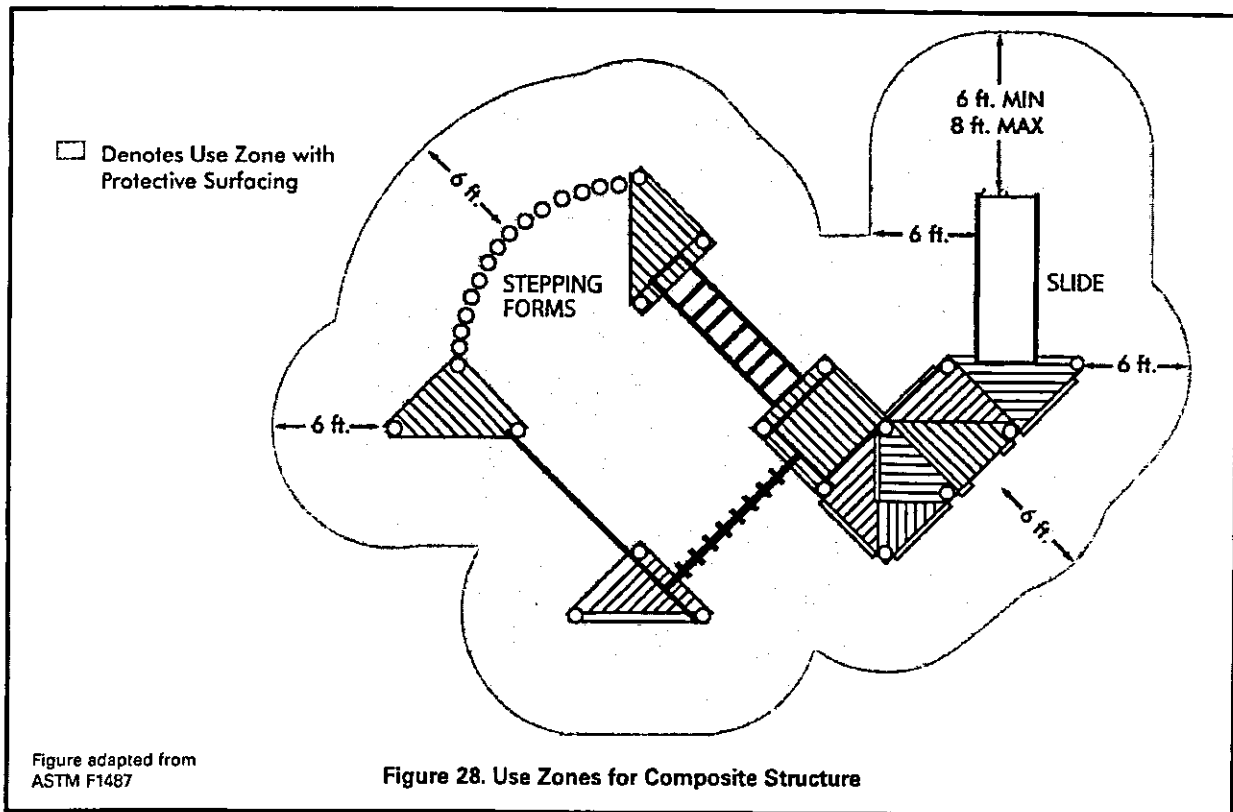
#### 5.3.9 Fall height and use zones for composite structure

When two or more complementary play components are linked together in a composite structure (e.g., combination climber, slide, and horizontal ladder), the use zone should extend a minimum of 6 feet from the external perimeter of the structure (see Figure 28). Where slides are attached to a platform higher than 6 feet from the protective surfacing, the use zone may need to extend further in front of the slide (see §5.3.6.5).

#### 5.3.10 Fall height and use zones not specified elsewhere

Most playground equipment belongs in one of the categories listed above. If it does not, the following general recommendations should be applied:

- The fall height of a piece of playground equipment is the distance between the highest designated playing surface and the protective surface beneath it.
- The use zone should extend a minimum of 6 feet in all directions from the perimeter of the equipment.
- The use zones of two stationary pieces of playground equipment that are positioned adjacent to one another may overlap if the adjacent designated play surfaces of each structure are no more than 30 inches above the protective surface and the equipment is at least 6 feet apart.
- If adjacent designated play surfaces on either structure exceed a height of 30 inches, the minimum distance between the structures should be 9 feet.
- Use zones should be free of obstacles.





# Federal Register

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Tuesday,  
December 28, 2010

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Part III

## Consumer Product Safety Commission

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16 CFR Parts 1219, 1220, 1500, et al.  
Full-Size Baby Cribs and Non-Full-Size  
Baby Cribs: Safety Standards; Revocation  
of Requirements; Third Party Testing for  
Certain Children's Products; Final Rules

**CONSUMER PRODUCT SAFETY COMMISSION****16 CFR Parts 1219, 1220, and 1500****Safety Standards for Full-Size Baby Cribs and Non-Full-Size Baby Cribs; Final Rule**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final rule.

**SUMMARY:** Section 104(b) of the Consumer Product Safety Improvement Act of 2008 ("CPSIA") requires the United States Consumer Product Safety Commission ("CPSC," "Commission," 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 issuing safety standards for full-size and non-full-size baby cribs in response to the direction under section 104(b) of the CPSIA.<sup>1</sup> Section 104(c) of the CPSIA specifies that the crib standards will cover used as well as new cribs. The crib standards will apply to anyone who manufactures, distributes, or contracts to sell a crib; to child care facilities, family child care homes, and others holding themselves out to be knowledgeable about cribs; to anyone who leases, sublets, or otherwise places a crib in the stream of commerce; and to owners and operators of places of public accommodation affecting commerce.

**DATES: Effective Date:** The rule will become effective on June 28, 2011. The incorporation by reference of the publications listed in this rule is approved by the Director of the Federal Register as of June 28, 2011.

**Compliance Dates:** Compliance with this rule with respect to the offer or provision for use of cribs by child care facilities, family child care homes, and places of public accommodation affecting commerce is required starting on December 28, 2012. For all other entities subject to the rule, compliance with this rule is required starting on June 28, 2011.

<sup>1</sup> The Commission voted 5-0 to approve publication of this final rule. Chairman Inez M. Tenenbaum, Commissioner Thomas H. Moore, Commissioner Robert S. Adler, and Commissioner Anne M. Northup filed statements concerning this action which may be viewed on the Commission's Web site at <http://www.cpsc.gov/pr/statements.html> or obtained from the Commission's Office of the Secretary.

**FOR FURTHER INFORMATION CONTACT:** Christopher Melchert, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7588; [cmelchert@cpsc.gov](mailto:cmelchert@cpsc.gov).

**SUPPLEMENTARY INFORMATION:****A. Background and Statutory Authority****1. Section 104(b) of the Consumer Product Safety Improvement Act**

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 or toddler products. The law requires that these standards are to be "substantially the same as" applicable voluntary standards or more stringent than the voluntary standards if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. The Commission is issuing safety standards for full-size and non-full-size cribs that are substantially the same as voluntary standards developed by ASTM International (formerly known as the American Society for Testing and Materials). The standard for full-size cribs is substantially the same as a voluntary standard developed by ASTM, ASTM F 1169-10, *Standard Consumer Safety Specification for Full-Size Baby Cribs*, but with two modifications that strengthen the standard. The standard for non-full-size cribs is substantially the same as ASTM F 406-10a, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards*, but with four modifications that strengthen the standard.

**2. Section 104(c) of the CPSIA and the Proposed Rule**

The crib standards are different from standards for the other durable infant or toddler products that section 104 of the CPSIA directs the Commission to issue. Section 104(c)(1) of the CPSIA makes it a prohibited act under section 19(a)(1) of the Consumer Product Safety Act ("CPSA") for any person to whom section 104(c) of the CPSIA applies to "manufacture, sell, contract to sell or resell, lease, sublet, offer, provide for use, or otherwise place in the stream of commerce a crib that is not in compliance with a standard promulgated under subsection (b) [of the CPSIA]." Section 104(c)(3) of the CPSIA defines "crib" as including new and used cribs, full-size and non-full-size cribs, portable cribs, and crib pens.

Section 104(c)(2) of the CPSIA states that the section applies to any person that:

- (A) manufactures, distributes in commerce, or contracts to sell cribs;
- (B) based on the person's occupation, holds itself out as having knowledge or 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 public accommodation affecting commerce (as defined in section 4 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2203) applied without regard to the phrase "not owned by the Federal Government").

**Section 104(c)(2) of the CPSIA.**

Thus, the crib standards apply to owners and operators of child care facilities, family child care homes, and places of public accommodation such as hotels and motels, as well as to manufacturers, distributors, and retailers of cribs. Other durable infant or toddler product standards issued under section 104 of the CPSIA apply to products manufactured or imported on or after the effective date of the standard. However, under section 104(c) of the CPSIA, after the applicable date of compliance, it will be unlawful for any of the entities identified in section 104(c)(2) of the CPSIA to sell, lease, or otherwise distribute or provide a crib for use that does not meet the new CPSC crib standards, regardless of the date on which the crib was manufactured.

In the *Federal Register* of July 23, 2010 (75 FR 43308), the Commission published a proposed rule that would establish standards for full-size and non-full-size cribs. The proposed rule would incorporate by reference the following ASTM standards with some modifications: ASTM F 1169-10, *Standard Consumer Safety Specification for Full-Size Baby Cribs*, and ASTM F 406-10, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards*.

**3. Previous Commission Crib Standards (16 CFR Parts 1508 and 1509)**

The Commission first issued mandatory regulations for full-size cribs in 1973 (amended in 1982), which were codified at 16 CFR part 1508 under the Federal Hazardous Substances Act ("FHSA"). In 1976, the Commission issued similar regulations for non-full-size cribs (also amended in 1982), which were codified at 16 CFR part 1509. The requirements of 16 CFR parts 1508 and 1509 have been included in ASTM F 1169-10 and F 406-10a, respectively. However, the recordkeeping requirements in the

ASTM standards are expanded from the 3-year retention period that was required in 16 CFR parts 1508 and 1509 to a 6-year retention period, which is consistent with the consumer registration provision in section 104(d) of the CPSIA.

Elsewhere in this issue of the **Federal Register**, we are revoking the CPSC regulations for full-size and non-full-size cribs at 16 CFR parts 1508 and 1509. The new crib standards in this final rule, which incorporate the applicable ASTM standards, include the requirements of 16 CFR parts 1508 and 1509. Revoking 16 CFR parts 1508 and 1509 will allow all the crib-related requirements to be together and will avoid confusion about which requirements apply to cribs.

#### 4. Previous Commission Activities Concerning Cribs

As detailed in the preamble to the proposed rule (75 FR at 43309), we have taken numerous regulatory and nonregulatory actions concerning crib hazards. In 1996, the Commission published an advance notice of proposed rulemaking ("ANPR") under the FHSA to address the hazard of crib slat disengagement, 61 FR 65996 (Dec. 16, 1996). When the Commission proposed the new crib standards under section 104 of the CPSIA, it published a notice terminating the rulemaking it had begun with the 1996 ANPR because the slat disengagement hazard is addressed by the new standards that the Commission is issuing. 75 FR 43107 (July 23, 2010).

The Commission's Office of Compliance has been involved with numerous investigations and recalls of cribs. Since 2007, the CPSC has issued 46 recalls of more than 11 million cribs. All but seven of these recalls were for product defects that created a substantial product hazard, and not for violations of the federal crib regulations.

Other previous actions include: (1) An ANPR that the Commission published in the **Federal Register** on November 25, 2008 (73 FR 71570) in preparation for this rulemaking, which discussed options to address the hazards that CPSC staff had identified in the reported crib incidents and recalls; and (2) a public roundtable meeting concerning crib safety that CPSC staff held on April 22, 2009. Information about the crib roundtable and the presentations made by CPSC staff and others are on the Commission's Web site at <http://www.cpsc.gov/info/cribs/infantsleep.html>.

## B. The Products and Their Market

### 1. Definitions Under the CPSIA and the Crib Standards

The Commission's previous crib standards in 16 CFR 1508 and 1509 contained definitions of "full-size crib" and "non-full-size crib." According to 16 CFR parts 1508 and 1509, what principally distinguishes full-size cribs from non-full-size cribs are the interior dimensions of the crib. Also, according to these standards, a full-size crib is intended for use in the home, and a non-full-size crib is intended for use "in or around the home, for travel and other purposes." A full-size crib has interior dimensions of  $28 \pm \frac{5}{8}$  inches ( $71 \pm 1.6$  centimeters) in width by  $52\frac{3}{8} \pm \frac{5}{8}$  inches ( $133 \pm 1.6$  centimeters) in length. A non-full-size crib may be either smaller or larger than these dimensions. Full-size and non-full-size cribs also differ in the height of the crib side or rail. Non-full-size cribs include oversized, specialty, undersized, and portable cribs. However, any products with mesh/net/screen siding, non-rigidly constructed cribs, cradles, car beds, baby baskets, and bassinets are excluded from the non-full-size crib requirements of 16 CFR part 1509.

Essentially, these definitions are carried over to the new crib standards with some important differences due to section 104(c) of the CPSIA. Because section 104(c) of the CPSIA explicitly includes used cribs in the definition of "crib," the definitions of full-size and non-full-size crib in the CPSC standards also include used cribs. The definition of "full-size crib" in part 1508 was limited to cribs "intended for use in the home." However, section 104(c) of the CPSIA explicitly includes full-size and non-full-size cribs in child care facilities (including family child care homes) and cribs in places of public accommodation affecting commerce. The CPSIA defines a "place of public accommodation affecting commerce" with reference to the Federal Fire Prevention and Control Act of 1974 (but without the phrase that excludes establishments owned by the Federal Government). Thus, the CPSIA defines "places of public accommodation" as:

any inn, hotel, or other establishment \* \* \* that provides lodging to transient guests, except that such term does not include an establishment treated as an apartment building for purposes of any State or local law or regulation or an establishment located within a building that contains not more than 5 rooms for rent or hire and that is actually occupied as a residence by the proprietor of such establishment.

15 U.S.C. 2203(7).

Therefore, the definitions of full-size and non-full-size crib in the CPSC standards include new and used cribs, cribs in child care facilities, family child care homes, and cribs in places of public accommodation.

### 2. Full-Size Cribs

A full-size crib has specific interior dimensions of  $28 \pm \frac{5}{8}$  inches ( $71 \pm 1.6$  centimeters) in width and  $52\frac{3}{8} \pm \frac{5}{8}$  inches ( $133 \pm 1.6$  centimeters) in length and is designed to provide sleeping accommodations for an infant.

CPSC staff estimates that there are currently 68 manufacturers or importers supplying full-size cribs to the U.S. market. Ten of these firms are domestic importers (15 percent); 42 are domestic manufacturers (62 percent); 7 are foreign manufacturers (10 percent); and 2 are foreign importers (3 percent). Insufficient information was available about the remaining firms to categorize them.

Based on information from a 2005 survey conducted by the American Baby Group, CPSC staff estimates annual sales of new cribs to be about 2.4 million, of which approximately 2.1 million are full-size cribs. (This number could be an underestimate if new mothers buy more than one crib.) CPSC staff estimates that there are currently approximately 591 models of full-size cribs compared to approximately 81 models of non-full-size cribs. Thus, approximately 88 percent of crib models are full-size cribs.

### 3. Non-Full-Size Cribs

A non-full-size crib may be either smaller or larger than a full-size crib, or shaped differently than the usual rectangular crib. The category of non-full-size cribs includes oversized, specialty, undersized, and portable cribs, but does not include any product with mesh/net/screen siding, non-rigidly constructed cribs, cradles, car beds, baby baskets, or bassinets. The CPSC standard for non-full-size cribs does not apply to play yards, which are mesh or fabric-sided products.

CPSC staff estimates that there currently are at least 17 manufacturers or importers supplying non-full-size cribs to the U.S. market. Five of these firms are domestic importers and 10 are domestic manufacturers. Insufficient information is available to determine whether the remaining firms are manufacturers or importers. CPSC staff estimates that there are approximately 2.4 million cribs sold to households annually. Of these, approximately 293,000 are non-full-size cribs.

#### 4. Retailers, Child Care Facilities, and Places of Public Accommodation

CPSC staff is unable to estimate the number of retailers that may sell or provide cribs. We can estimate, however, that there are approximately 24,985 retail firms in the United States (at least 5,292 of which sell used products). The number of retailers that sell or provide cribs would be some subset of that number.

CPSC staff estimates that there are approximately 59,555 firms supplying child care services. We received comments from child care organizations about the cribs they use. According to these comments, the average child care center has between 4 and 45 cribs, so, assuming that the number of firms supplying child care services is the same as child care centers discussed in the comments, child care centers could have roughly 774,180 cribs total. We estimate that there are approximately 43,303 firms providing public accommodation. We did not receive any comments from such firms and cannot estimate how many cribs may be in use in places of public accommodation.

#### C. Incident Data

The preamble to the proposed rule (74 FR at 43310 through 43311) provided detailed information concerning incident data based on information from the CPSC's Early Warning System ("EWS"), a pilot project to monitor incident reports related to cribs and other infant sleep products. We summarize important aspects of the incident data in this section, but refer interested parties to the preamble to the proposed rule for more complete details. Data from EWS is not meant to provide an estimate of all crib-related incidents that have occurred during any particular time period. We used the EWS data for this rulemaking because, due to the larger number of follow-up investigations assigned from EWS incident reports, the EWS incidents provided the best illustration of the hazard patterns associated with incidents involving cribs.

Between November 1, 2007 and April 11, 2010, the Commission received reports through EWS of 3,584 incidents related to cribs. The year of the incident associated with these reports ranged from 1986 through 2010. However, very few crib-related incidents that occurred before 2007 are reflected in the EWS.

Of the 3,584 incidents reported through the EWS, CPSC staff identified 2,395 incidents as clearly involving full-size cribs; 64 incidents as clearly involving non-full-size cribs; and 1,125 incidents as lacking sufficient data for

CPSC staff to determine whether they involved full-size or non-full-size cribs. The prevalent hazards reported in these incidents are common to all cribs, regardless of size. Given the predominance of incident reports identified as involving full-size cribs, the 1,125 incidents in which the size of the crib could not be determined are grouped with the category of full-size cribs.

#### 1. Full-Size Cribs (Includes Cribs of Undetermined Size)

This section discusses incident data in the 3,520 reports from the EWS involving full-size cribs and cribs of an undetermined size. Of these 3,520 incident reports, there were 147 fatalities, 1,675 nonfatal injuries, and 1,698 noninjury incidents. (The noninjury incidents range from those that potentially could have resulted in injuries or fatalities to general complaints or comments from consumers). Because reporting is ongoing, the number of reported fatalities, nonfatal injuries, and non-injury incidents presented here may change in the future.

##### a. Fatalities

Between November 1, 2007 and April 11, 2010, a total of 147 fatalities associated with full-size (and undetermined size) cribs were reported to the Commission. A majority of the deaths (107 out of 147, or almost 73 percent) were not related to any structural failure or design flaw of the crib. There were 35 fatalities attributable to structural problems of the crib. Nearly all (34 of the 35) were due to head/neck/body entrapments. More than half of these (18 out of 35) were related to drop-side failures. Almost all of the crib failures—whether they occurred due to detachments, disengagements, or breakages—created openings in which the infant became entrapped.

##### b. Nonfatal Injuries

Of the 3,520 incident reports involving full-size (and undetermined size) cribs, 1,675 reported a crib-related injury. The vast majority (97 percent) of these injuries were not serious enough to require hospitalization. Approximately half of those that did require hospitalization involved limb or skull fractures and other head injuries resulting from falls from cribs. Most of the remaining injuries resulted from children getting their limbs caught between crib slats, falling inside the crib and hitting the crib structure, or getting stuck in gaps created by structural failures.

##### c. Hazard Pattern Identification

CPSC staff considered all 3,520 incidents (includes fatalities, nonfatalities, and non-injury incidents) involving full-size cribs (including cribs of undetermined size) to identify hazard patterns related to these incidents. CPSC staff grouped these incidents into four broad categories: (1) Product-related; (2) non-product-related; (3) recall-related; and (4) miscellaneous. More detail is provided in the Epidemiology staff's memorandum that was part of the CPSC staff's briefing package for the proposed rule, available on the CPSC Web site at: <http://www.cpsc.gov/library/foia/foia10/brief/104cribs.pdf>.

Approximately 82 percent of the 3,520 incidents reported some sort of failure or defect in the product itself. In order of frequency, the hazard patterns reported included:

- Falls from cribs (approximately 23 percent of the 3,520 incidents);
- Crib drop-side-related problems (approximately 22 percent of the incidents and about 12 percent of all reported fatalities);
- Infants getting their limbs caught between the crib slats (approximately 12 percent of the incidents);
- Wood-related issues, such as slat breakages and detachments (approximately 12 percent of the incidents);
- Mattress support-related problems (approximately 5 percent of the incidents);
- Mattress fit problems (approximately 3 percent of the incidents);
- Paint-related issues (approximately 2 percent of the EWS incidents); and
- Miscellaneous problems with the crib structure (approximately 3 percent of incidents), including non-drop-side or drop gate failures, sharp catch-points, stability and/or other structural issues.

#### 2. Non-Full-Size Cribs

This category includes portable cribs and other cribs that are either smaller or larger than the dimensions specified for full-size cribs. For its review of incident data, CPSC staff included in the category of non-full-size cribs only those cribs that it could positively identify as non-full-size cribs. CPSC staff is aware of 64 incidents related to non-full-size cribs that have been reported between November 1, 2007 and April 11, 2010. Among these incidents, there were 6 fatalities, 28 injuries, and 30 noninjury incidents. Because reporting is ongoing, the number of reported fatalities, nonfatal injuries, and noninjury incidents presented here may change in the future.

#### a. Fatalities

Of the six fatalities, three were attributed to the presence of a cushion/pillow in the sleep area. One fatality was due to the prone positioning of the infant on the sleep surface. One fatality resulted from the infant getting entrapped in a gap opened up by loose/missing screws. Very little information was available on the circumstances of the last fatality.

#### b. Nonfatal Injuries

Among the 28 nonfatal injuries reported, only 2 required any hospitalization. Most of the remaining injuries, which include fractures, bruises, and lacerations, resulted from children falling and hitting the crib structure while in the crib, falling or climbing out of the crib, and children getting their limbs caught in the crib slats.

#### c. Hazard Pattern Identification

CPSC staff considered all 64 incidents (including fatalities, nonfatalities, and non-injury incidents) involving non-full-size cribs to identify hazard patterns related to these incidents. The hazard patterns are similar to those among full-size cribs. In 72 percent of the incidents, product-related issues were reported. These primarily involved falls from cribs, limbs becoming caught between slats, issues related to drop-sides and non-drop-sides (such as detachments and operation/hardware issues), and wood-related issues (including three slat detachments). This category includes one fatality, which was related to non-drop-side hardware.

#### D. Voluntary and International Standards

As discussed in the preamble to the proposed rule (75 FR at 43311 through 43312), CPSC staff reviewed requirements of existing voluntary and international standards related to cribs. The primary standards currently in effect are the ASTM standards for full-size and non-full-size cribs, a Canadian standard, and a European standard. Underwriters Laboratories, Inc. ("UL") has a crib standard, UL 2275. However, the UL standard was not followed by crib manufacturers and is no longer an active standard.

##### 1. The ASTM Standards

ASTM first published its voluntary standard for full-size cribs, ASTM F 1169, *Standard Specification for Full-Size Baby Crib*, in 1988, and has revised it periodically since then. In 2009, ASTM revised the standard significantly, including a limitation on movable sides that effectively eliminates

the traditional drop-side design in which the front side of the crib can be raised and lowered. On June 1, 2010, ASTM approved the current version of its full-size crib standard with a slight change to the name, ASTM F 1169-10, *Standard Consumer Safety Specification for Full-Size Baby Cribs*.

In 1997, ASTM first published a standard for non-full-size cribs, ASTM F 1822, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs*. In June 2002, in order to group products with similar uses, ASTM combined its non-full-size crib standard, ASTM F 1822-97, with its play yard standard (F 406-99, *Standard Consumer Safety Specification for Play Yards*) to create ASTM F 406-02, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards*. ASTM revised ASTM F 406 several times subsequently. On June 1, 2010, ASTM approved the version of its non-full-size crib standard, ASTM F 406-10, upon which the CPSC's proposed standard was based. After we published our proposed rule in the *Federal Register* on July 23, 2010, ASTM revised its non-full-size crib standard again and approved ASTM F 406-10a on October 15, 2010. ASTM F 406-10a includes many of the changes which the proposed rule would have made to ASTM F 406-10, rearranges the order of some provisions, and contains some other editorial changes. Consequently, the final rule's non-full-size cribs standard is based on ASTM F 406-10a. We discuss differences between the proposed rule and ASTM F 406-10a in section F of this preamble.

##### 2. International Standards

Several performance requirements in the crib standards derive from, or are similar to, requirements in Health Canada's crib standard, SOR/86-969, and the European standard, EN 716. These include the cyclic side (shake) test and the mattress support system vertical impact test from the Canadian standard, and the slat/spindle strength test from EN 716 requirements. (For more details on how the crib standards are based upon or are more stringent than certain international standards, we refer interested parties to the preamble to the proposed rule (75 FR at 43312).)

#### E. Response to Comments on the Proposed Rule

In the *Federal Register* of July 23, 2010 (75 FR 43308), the Commission published a proposed rule that would establish standards for full-size and non-full-size cribs. We received over 50 comments. These included comments from child care organizations, the

Juvenile Products Manufacturers Association ("JPMA"), public interest groups, and individual consumers. The comments and the CPSC's responses are discussed below in section E.1 through E.31 of this document. To make it easier to identify comments and our responses, the word "Comment," in parentheses, will appear before the comment's description, and the word "Response," in parentheses, will appear before our response. We also have numbered each comment to help distinguish between different comments. The number assigned to each comment is purely for organizational purposes and does not signify the comment's value, importance, or the order in which it was received.

##### 1. Misplaced Focus on Drop-Sides

(*Comment 1*)—One commenter stated that focusing on drop-side cribs was misplaced. Rather, she suggested, new crib standards should focus on the structure and hardware of cribs.

(*Response 1*)—The CPSC agrees that the safety of the drop-side is just one issue and other issues, especially cribs' structural integrity and hardware, are crucial to crib safety. Although the prohibition of traditional drop-side cribs has received a great deal of attention, the CPSC's new crib standards have numerous provisions, particularly concerning crib hardware, which will improve the safety of cribs. See the discussion of the standards' requirements in section G of this preamble.

##### 2. Applicability of Standards to Cribs in Child Care Centers

(*Comment 2*)—Several commenters associated with child care organizations or child care centers said that the crib standards should not apply to cribs in child care centers. They gave reasons such as: Caregivers are present at all times when babies are in cribs at child care centers; cribs in child care centers are specialty cribs that do not have the same safety issues as home cribs; and state licensing and safety requirements safeguard babies in cribs in child care centers. Some commenters stated that the crib standards are unique because, unlike other standards that hold product manufacturers or distributors responsible, the crib standards hold child care centers (which are consumers buying the cribs from these manufacturers and distributors) responsible.

(*Response 2*)—Section 104(c)(1) of the CPSIA states that it "shall be a violation of section 19(a)(1) of the Consumer Product Safety Act for any person to which this subsection applies to

manufacture, sell, contract to sell or resell, lease, sublet, offer, provide for use, or otherwise place in the stream of commerce a crib that is not in compliance with a standard promulgated under" section 104(b) of the CPSIA. Section 104(c)(2) of the CPSIA identifies various entities that are subject to section 104(c) of the CPSIA, and it expressly mentions persons who "based on the person's occupation, holds itself out as having knowledge or skill peculiar to cribs, including child care facilities and family child care homes." The fact that a child care center may be subject to state regulation and licensing, or that caregivers at such facilities may be required to supervise babies in cribs, does not alter the applicability of section 104(c) of the CPSIA to child care facilities and family child care homes.

As for the commenter's claim that cribs in child care centers are different from those used in homes, the information that the CPSC has indicated that cribs used in child care centers are often substantially the same as cribs used in homes. CPSC staff has reports of incidents involving cribs in child care centers; the hazard scenarios associated with these incidents are the same as those for incidents that occur in homes.

### 3. Waiving Requirements for Child Care Centers

(Comment 3)—One commenter suggested waiving any requirement to replace cribs in child care and Head Start programs that comply with state licensing or national accreditation requirements, which mandate that all sleeping infants be within sight or sound of a caregiver at all times; and another commenter suggested a waiver of enforcement for cribs that are used in child care programs that comply with state licensing standards that require sleeping infants to be within sight and sound of a caregiver at all times. Some commenters asked that older cribs in child care centers be exempted from the rule (or allowed an enforcement waiver), as long as the cribs had not been recalled, thus shifting the burden of replacement from child care centers to manufacturers.

(Response 3)—We do not have the authority to exempt or waive requirements for cribs in child care centers or to allow older cribs to be replaced through recalls alone. As discussed in response to comments concerning the effective date at section G.10 of this document, we do have discretion to provide additional time for child care centers to come into compliance with the standards.

### 4. Crib-Related Incidents in Child Care Centers

(Comment 4)—One commenter recognized that there have been injuries and fatalities associated with drop-side cribs, but stated that banning drop-side cribs in child care settings would not address this threat to young children. The commenter stated that, because of the safety checks on cribs and monitoring of sleeping children in child care centers, issues with drop-side cribs do not occur in such programs as they might in other settings.

(Response 4)—As stated in our response to comment 2 in section E.2 of this document, section 104(c) of the CPSIA expressly mentions child care facilities and family child care homes as entities subject to the crib standards. The statute does not authorize us to consider safety checks, or the monitoring of sleeping children in child care facilities, or the rate at which safety issues might arise, or to exempt child care facilities for such reasons.

Additionally, our review of the incident data reported to the CPSC from November 1, 2007 through April 11, 2010, shows that at least two reports of incidents in child care facilities were received. Each report involved the structural failure of multiple drop-side cribs. Although no injuries were reported in these incidents, they presented the potential for serious injury or fatality.

(Comment 5)—Some comments noted that sleeping infants are not left unsupervised in drop-side or other types of cribs in child care centers and noted further that children in child care centers are in cribs only when they are sleeping.

(Response 5)—The CPSC has received at least 11 reports of injuries involving cribs in child care facilities, in which the injured infant was treated in a hospital emergency department. These injuries, usually due to a fall from a crib or an impact with the crib, were sustained while the infant was being taken care of at a child care facility. Clearly, the infants were not sleeping if the injuries were due to infants falling or impacting the crib.

### 5. Commercial vs. Noncommercial Cribs

(Comment 6)—Several commenters suggested that the crib standards should distinguish between "commercial" and "noncommercial" cribs. One commenter asked if there should be different crib standards for child care providers or other nonfamily situations, where cribs sustain more use, similar to the distinction between home and public playground equipment (the CPSC has

separate guidelines for home and public playground equipment).

(Response 6)—Section 104 of the CPSIA does not make a distinction between commercial and noncommercial cribs but, rather, requires that all cribs within the scope of section 104(c) of the CPSIA—which explicitly includes cribs provided for use in child care centers and places of public accommodation—meet the crib standards promulgated by the Commission under section 104(b) of the CPSIA. Although ASTM has a voluntary standard applicable to "commercial cribs" (ASTM F 2710-08), section 104 of the CPSIA does not make such a delineation. Furthermore, ASTM's commercial crib standard requires commercial cribs to comply with either ASTM F 406 or ASTM F 1169, and this final rule adopts, with some modifications, both ASTM F 406 and ASTM F 1169. In its crib rulemaking, the Commission is following the specific statutory direction and definitions in the CPSIA. In contrast, when developing guidelines for public and home playgrounds, the Commission was not responding to a statutory mandate, and thus, it had the discretion to distinguish between public and home playground equipment.

### 6. Mesh/Nonrigid Full-Size Cribs

(Comment 7)—One commenter suggested that the full-size crib standard should apply to rigid cribs only, and not be applicable to full-size cribs that have sides or ends made from mesh, fabric, or another nonrigid material. The commenter referred to the scope of the proposed non-full-size crib standard, which is limited to rigid products only.

(Response 7)—We are not aware of any full-size mesh/fabric cribs currently being sold. In contrast, there are numerous non-full-size mesh/fabric cribs (*i.e.*, play yards) currently on the market. The CPSC agrees that for non-full-size products, different requirements for rigid versus mesh products are necessary because the construction differences may make it impossible to test both the same way. The ASTM standard for non-full-size cribs includes both rigid and mesh/fabric non-full-size cribs. Although there are requirements in the ASTM standard specifically intended for mesh/fabric products, the scope of the CPSC's standard for non-full-size cribs is limited to rigid products because section 104 of the CPSIA explicitly lists cribs and play yards as separate categories of products. Therefore, we plan to develop a separate standard for mesh/fabric non-full-size cribs (*i.e.*, play yards). Currently, there is no voluntary

standard or proposed regulation specifically for mesh/fabric *full-size* cribs. However, the CPSC's standard for full-size cribs contains general, labeling, and some performance requirements that would be applicable to any full-size crib, whether it has rigid or mesh/fabric sides. Thus, excluding these products from the scope of the CPSC's full-size crib standard, as suggested by the commenter, would leave such cribs unregulated. Absent a voluntary standard that covers mesh/fabric full-size cribs, it is not advisable to exclude these products from the scope of a full-size crib regulation.

#### 7. Play Yards

(*Comment 8*)—Some commenters were concerned that the rule might result in child care centers or consumers using play yards instead of cribs. These commenters implied that play yards are not as safe as cribs for sleeping infants. One commenter, who is child care provider, stated that she uses only play yards, not cribs.

(*Response 8*)—The final rule does not address any safety aspects of play yards. Play yards are a separate product category under section 104 of the CPSIA, and we intend to develop a separate standard for play yards in the future.

(*Comment 9*)—Two commenters expressed concern about using play yards as an alternative to cribs in day care centers as a way of mitigating costs to child care providers. Both felt that this alternative might be perceived as advocating the use of play yards, which they felt would decrease the safety and quality of care. Some commenters noted that play yards are not an option for some child care centers due to state licensing laws.

(*Response 9*)—Although the CPSC does not advocate the use of play yards instead of cribs in child care environments, issues regarding the possible use of play yards or other products (in place of cribs) and state laws are outside the scope of this rulemaking. This final rule establishes standards for full-size and non-full-size cribs.

#### 8. Economic Impact of CPSC's Crib Standards on Child Care Centers

(*Comment 10*)—Several commenters expressed concern that the proposed rule, if finalized, would place a large financial burden on child care centers, particularly given the tight budgets and lethargic economy. One commenter estimated that the total one-time cost to day care centers to replace their cribs could be as much as \$600 million, with an additional \$2.5 million required for

disassembly, disposal, and assembly. The same commenter noted that the preamble to the proposed rule concluded that "the proposed changes to the voluntary standard should not significantly affect replacement costs" (75 FR at 43319). Generally, commenters objected to purchasing new cribs to replace recently-purchased cribs that had no safety issues. Several commenters were concerned that some child care centers might be driven out of business.

(*Response 10*)—We recognize the potentially large impact the crib standards could have on child care providers. The Regulatory Flexibility Act discussion in the preamble to the proposed rule invited comment on the market for cribs and the amount of time manufacturers would need to meet current market demand and additional demand created by child care centers and other places where cribs are provided for use (75 FR at 43316). It also discussed the possible impact on small child care centers and stated that the impact "could be significant on some small child care centers if they had to replace their cribs all at once" and that some might decide to replace their non-full-size cribs with play yards (*Id.* at 43318). The initial regulatory flexibility analysis in the briefing package for the proposed rule assumed that most, if not all, child care centers use smaller, non-full-size cribs; thus, staff did not expect a significant impact associated with full-size cribs. (See Tabs F and G of the staff's briefing package on the proposed rule at: <http://www.cpsc.gov/library/foia/foia10/brief/10cribs.pdf>). In the initial regulatory flexibility analyses, all of the effects on child care centers were considered in the analysis for non-full-size cribs.

We have modified our Regulatory Flexibility Act discussion in the final rule. CPSC staff's analysis using data provided by the Early Care and Education Consortium (ECEC), the National Association for Family Child Care (NAFCC), and the National Head Start Association (NHSA), yields one-time replacement costs of approximately \$387 million. The discussion also has been modified to take into account specifically the possibility that child care centers might go out of business, as well as the impact of the final rule on families using child care.

(*Comment 11*)—Several commenters expressed concern about the ability of child care providers to pass on costs to their clients to reduce the economic impact of the final rule. These commenters stated that they felt the analysis in the preamble to the proposal did not appreciate child care centers'

limited ability to pass on such costs. The commenters noted that most of their clients are struggling already to pay for child care. (The price range for child care cited by one commenter was from \$4,550 to more than \$18,000 per year.) The commenters added that most child care centers only have a few customers, so their ability to raise large sums of money by increasing the cost to clients to defray the cost of replacement cribs is limited.

(*Response 11*)—The Regulatory Flexibility Act discussion in the preamble to the proposed rule did not suggest that all cost increases associated with the proposed rule would be passed on to consumers, only that some portion of those costs might be passed on, thereby mitigating the impact of the proposed rule on small child care centers (see 75 FR at 43318). We recognize that the economic impact on any given entity may vary, depending on a variety of factors, such as the size of the affected entity, the presence or absence of competitors that may affect an entity's ability to raise prices or pass along costs to its customers, and the types of cribs purchased and an affected entity's ability to comply with the standards.

(*Comment 12*)—One commenter stated that, despite the high quality of the cribs used at its child care center and a lack of incidents there, the child care center had been informed that its cribs do not meet the proposed standard. The commenter expressed concern that "the standards could be eliminating a company that produces extremely high quality materials and is very safety conscious."

(*Response 12*)—The final rule may have the effect of eliminating particular crib models from the marketplace. However, these crib models likely will be replaced by modified versions that comply with the new standards. The final rule is unlikely to drive many manufacturers out of business, particularly those with otherwise high quality cribs that may require only minimal design modifications to come into compliance with the new standards. This is especially the case with manufacturers that supply many products other than just cribs to the market, including the company mentioned in the comment.

#### 9. Fixing or Retrofitting Cribs

(*Comment 13*)—Three commenters (all of whom were child care providers) requested that the CPSC provide methods of checking whether their current cribs would meet the new standards. They also requested that the final rule include descriptions of how to

fix cribs that fail a particular requirement (*i.e.*, retrofit), as a way to limit the number of new cribs that must be purchased. These comments mentioned retrofits to handle drop-side cribs in particular.

(*Response 13*)—Section 104(c) of the CPSIA requires child care centers to provide cribs that comply with the new crib standards once they are in effect. The standards not only prohibit traditional drop-sides, but they also have complex requirements, such as those for hardware, that make it difficult to determine whether an existing crib would meet the new standards without testing that individual crib. Because the crib would be destroyed in the process of testing, it is impossible to test each crib. Therefore, we cannot provide methods to check existing cribs for compliance with the CPSC's new crib standards. We also note that retrofits that would be appropriate for a recall might not be sufficient to meet the requirements of the new standards. For example, manufacturers have offered immobilizers in the past to address drop-side hazards on recalled cribs. This retrofit would not be sufficient to meet the crib standards. An immobilizer merely covers up part of the drop-side hardware and makes the drop-side unusable while in place, but it would not prevent a user from removing the retrofit and using the drop-side again.

#### 10. Effective Date/Enforcement Policy

(*Comment 14*)—Most commenters supported the proposed six-month effective date for manufacturers and distributors of cribs, except one commenter requested (without providing any explanation or support) one to two years for manufacturers and distributors of non-full-size cribs. Many commenters, however, requested a longer effective date for child care centers to allow them to spread the costs of compliance over a longer period of time and to ensure that there are a sufficient number of compliant cribs available for purchase. Most of these commenters suggested an additional six months for cribs in child care centers, and two commenters suggested a five-year effective date for child care centers.

(*Response 14*)—We recognize that complying with the new crib standards may place a significant financial burden on child care centers. Nevertheless, section 104(c) of the CPSIA requires that child care centers provide cribs for use that meet the CPSC's new crib standards when these standards are in effect. The Commission recognizes that child care facilities face unique circumstances. Collectively, child care centers purchase and provide for use hundreds of

thousands of cribs. Having a sufficient number of cribs is essential to their business because, if they provide care for infants, they cannot operate without providing cribs for their customers' use.

Based on a 2005 U.S. Department of Education's National Household Education Surveys Program ("NHES") Early Childhood Program Survey, approximately 774,000 children under the age of one year old are in nonparental, nonrelative child care arrangements each week. We understand from commenters that the typical life cycle of a crib used in a child care center is 10 years. Thus, we estimate that, in any given year, child care providers replace approximately 77,000 cribs. Assuming that one crib must be provided for each child under the age of one, at least 700,000 cribs—ten times more than the annual average—would be needed to replace noncompliant cribs when the new standards take effect. This demand would be added to the demand of private households for new compliant cribs and any cribs replaced by the 53,000 places of public accommodation covered by section 104 of the CPSIA.

The Commission has the discretion to set the effective date for the crib standards, and could set an effective date longer than six months for all entities that are subject to the standards, or could provide a longer period just for child care centers to comply with the new crib standards. Balancing all of the concerns expressed by the commenters, the final rule provides an additional 18 months for child care facilities, family child care homes, and places of public accommodation to comply with the new standards.

(*Comment 15*)—One commenter suggested that we establish an enforcement policy that would allow "a practical phased effective date for hospitality and commercial facilities" (the latter being interpreted by the commenter as including child care providers) and distinguish between commercial- and noncommercial-use products.

(*Response 15*)—Section 104(c) of the CPSIA does not distinguish between commercial and noncommercial cribs and does require cribs in child care centers and places of public accommodation to comply with the new crib regulations. As discussed in the previous response, the Commission has discretion to set effective and compliance dates for the new standards.

Although the Commission received numerous comments from child care centers concerning their difficulties with meeting the new crib standards within six months, we did not receive

any comments from hotels or similar places of public accommodation indicating the need for additional time to obtain complying cribs for such establishments. We did receive one comment from JPMA requesting additional time for "hospitality and commercial facilities," noting that the need for these entities to "dispose of their inventories of non-compliant product and repurchase all new replacement products \* \* \* will place a tremendous financial burden on those facilities, requiring an enormous capital investment as a result of the wholesale changes to inventory." Although child care commenters provided detailed information about the number of cribs in child care centers, the normal rate of replacement, and the anticipated costs of complying with the new crib standards, we did not receive such information concerning places of public accommodation. However, places of public accommodation are similarly situated to child care centers in that they must purchase cribs and then provide them for their customers to use and will likely face the same difficulties as child care centers in complying with the new crib standard in a short period of time. Therefore, the Commission is providing a longer compliance period for places of public accommodation as well as child care centers.

#### 11. Effect on Places of Public Accommodation

(*Comment 16*)—Two commenters, neither of which were places of public accommodation nor did they represent places of public accommodation, expressed concern about the potential cost impact on places of public accommodation.

(*Response 16*)—The CPSC believes that while some providers of public accommodation may provide a few cribs for use by customers, the number of non-full-size cribs at any one establishment is likely to be low. Firms may opt to reduce the impact of the rule by ceasing to provide cribs to their customers, not replacing all of their cribs, or providing play yards instead. Therefore, it is unlikely that the crib standards will have a significant impact on a substantial number of firms providing public accommodation. However, we have to expect that some portion of the more than 53,000 places of public accommodation covered by the Act that provide cribs for their customers will replace their cribs to be in compliance with this rule. There could be as many as 160,000 cribs that might need to be replaced. As explained in the previous response, places of public accommodation and child care

centers are similarly situated in some respects, and therefore, the Commission is providing a longer compliance period for places of public accommodation as well as child care facilities, and family child care homes.

#### 12. Expiration Date/Definition of Useful Life of Crib

(*Comment 17*)—One commenter asked whether cribs should have an expiration date, given that many of the identified hazards appear to result from prolonged use. The same commenter asked how one would define the useful life of a crib. For example, would it be defined in terms of the product's age in years, or, how often it had been used? The commenter also asked how the disassembly and reassembly of a crib would be considered, and what effect this would have on the crib's components and hardware.

(*Response 17*)—It would be extremely difficult to include a definition of useful life or to require that manufacturers provide an expiration date for cribs. As recognized by the commenter, the condition of a crib, including the security of components and hardware, can be affected by use. Moreover, each family uses a crib differently, depending on the activity level of each child, the length of time each child uses the crib, and the frequency of disassembling and reassembling the crib. Manufacturing differences and variations in materials among cribs, also might affect a crib's useful life. Thus, even keeping the use conditions identical, two different cribs likely will show wear and tear at varied rates.

#### 13. Crib Mattress Standards/Regulations

(*Comment 18*)—Some commenters expressed satisfaction that ASTM has begun developing a separate safety standard for mattress fit, and they stated their expectation that the CPSC would mandate the voluntary ASTM standard when it is finalized. One comment, submitted on behalf of several organizations and individuals, expressed concern about health and environmental risks that the commenters believed could be associated with the use of certain flame retardants or other potentially harmful chemical agents in the manufacture of crib mattresses. It suggested that the CPSC "ensure that a standard or regulation for crib mattresses address both health and environmental risks that potential hazardous chemicals could pose to infants."

(*Response 18*)—We already have regulations pertaining to the flammability of mattresses, mattress pads, and mattress sets (see 16 CFR

parts 1632 and 1633). Issues regarding flame retardants and other chemicals that may be applied to mattresses are beyond the scope of this rulemaking.

#### 14. International Standards

(*Comment 19*)—One commenter suggested that the CPSC use international standards, or the relevant parts of them, as a basis for our regulation. These include the relevant international standards or technical regulations, such as the Health Canada, EN (European Nation), or ISO (International Standards Organization) crib standards.

(*Response 19*)—CPSC staff has reviewed, compared, and considered a variety of crib standards/regulations, including the three identified by the commenter. In addition, CPSC staff reviewed the Australian/New Zealand crib standard and three voluntary standards, one published by Underwriters Laboratories (which is no longer an active standard), and the two ASTM standards. The CPSIA specifically requires the Commission to promulgate a safety standard that is substantially the same as, or more stringent than, any voluntary standards. The Commission chose the appropriate ASTM voluntary standards for cribs to be the basis for the CPSC's crib regulations.

CPSC staff's review of the international standards or regulations identified vast differences. Thus, assuming that the commenter sought internationally harmonized requirements, even if we were to adopt an international standard or regulation, the differences in the international standards and regulations would not have resulted in harmonization across multiple jurisdictions. The ASTM voluntary standard recently adopted one requirement (the slat/spindle strength requirement) that was based on a similar requirement in the EN standard and two requirements (the cycle test and the mattress support impact test) that are almost identical to ones found in the Health Canada regulation. Other requirements in the ASTM standards are equivalent to requirements in some of the other international regulations.

Regardless, section 104(b) of the CPSIA requires us to promulgate regulations that are substantially the same as voluntary standards or more stringent than such voluntary standards if we determine that the more stringent standards would further reduce the risk of injury associated with durable nursery products. Section 104(b) of the CPSIA does not mention international harmonization of standards. We believe that the ASTM standards, with the

specified modifications, are the most encompassing and robust crib standards and are thus "more stringent" than the ASTM standards alone.

#### 15. Concern About Continually Replacing Cribs

(*Comment 20*)—Some commenters, consisting of child care centers, expressed concern that they would need to replace their stock of cribs every time that ASTM changes its full-size or non-full-size crib standards.

(*Response 20*)—Neither the CPSIA nor the CPSC's crib standards would require replacement of cribs whenever ASTM revises F 406 or F 1169. The CPSIA does require that all cribs that are manufactured, offered for sale, provided for use, or otherwise placed in the stream of commerce meet the crib standards issued by the CPSC. The CPSC's proposed crib standards reference ASTM F 406-10a and ASTM F 1169-10; however, the federal standards do not change automatically whenever ASTM revises its voluntary standards. Rather, to change the federal crib standards, we would need to engage in notice and comment rulemaking procedures and refer to a subsequent version of the ASTM standards.

#### 16. Continued Use of Cribs by Consumers

(*Comment 21*)—One commenter suggested that we include in an Enforcement Policy a clarification that consumers can continue to use cribs that conform to ASTM standards in effect in 2010.

(*Response 21*)—We intend to distribute information and education materials in connection with issuance of the crib standards and will consider such a clarification as part of those materials. Nothing in the CPSIA, or in the crib standards, requires consumers to replace their cribs with cribs that comply with the new crib standards. The CPSIA requires action by those who manufacture, sell, lease, or otherwise distribute cribs in commerce, and by child care centers and places of public accommodation.

#### 17. Miscellaneous Clarifications About Use of Certain Cribs/Play Yards

(*Comment 22*)—A few commenters asked for clarification or made incorrect interpretations of the proposed rule or the CPSIA. These comments mostly dealt with the requirements as they would apply to child care centers. One commenter asked if she would no longer be able to use wooden cribs or play yards. Another commenter incorrectly understood that consumers would be

required to replace their cribs, and she objected to this.

(Response 22)—The CPSIA and the crib standards do not dictate the kind of sleeping environment—full-size crib, non-full-size crib, or play yard—that a child care center must provide. Further, the crib standards do not dictate the type of material from which a crib must be made (e.g., wooden, metal, or plastic). The CPSIA does require that any rigid crib, whatever it is made of, comply with either the full-size or non-full-size crib standard. Finally, nothing in the CPSIA, or in CPSC's crib standards, would require consumers to replace their cribs with cribs that comply with the new crib standards.

#### 18. Testing by Firewalled Labs

(Comment 23)—Several consumer groups suggested that the Commission not accept any “firewalled labs” to do testing for compliance with the crib standards because cribs “should meet the highest safety standards.”

(Response 23)—Section 102(a)(2) of the CPSIA generally requires that manufacturers and private labelers of children's products (such as cribs) that are subject to a children's product safety rule submit samples of their products for testing by a third party for compliance to applicable children's product safety rules. Section 102(f)(2)(D) of the CPSIA allows the Commission to accredit a third party conformity assessment body (often referred to as a “testing laboratory” or “lab”) that is owned, managed, or controlled by a manufacturer or private labeler as a third party testing lab if it meets certain requirements. Such testing labs are known as “firewalled” labs. If a firewalled lab meets the necessary requirements, its testing should be equivalent to testing conducted by any other third party testing lab. Thus, section 102 of the CPSIA does not prohibit the use of firewalled labs.

#### 19. Formaldehyde Standards for Wood Products Act

(Comment 24)—One commenter stated that composite woods used in cribs should comply with the Formaldehyde Standards for Wood Products Act (Pub. L. 111–199) and that the CPSC should require that all cribs using composite wood be tested for compliance to these standards.

(Response 24)—The Formaldehyde Standards for Wood Products Act was enacted on July 7, 2010. It amends the Toxic Substances Control Act and establishes formaldehyde emission standards for hardwood, plywood, medium density fiberboard, and particle board that is sold, supplied, offered for

sale, or manufactured in the United States. (The Act provides numerous exemptions from these standards.) The standards are to be administered by the U.S. Environmental Protection Agency (EPA). The law makes no specific mention of cribs. However, it appears that if cribs are made of the types of wood subject to this law, the formaldehyde emission standards would apply to them. If manufacturers have questions about the applicability of the emission standards to their cribs, they should contact the EPA.

#### 20. Soft Bedding

(Comment 25)—One commenter supported the proposed crib standards and suggested that the Commission also look into regulating soft infant bedding products, such as bumper pads.

(Response 25)—As noted in the staff's briefing package that accompanied the proposed rule, extra bedding in cribs accounted for the majority of infant deaths in cribs or other sleeping products, but there are no performance requirements for cribs that can address this issue. (See page 12 of CPSC staff's briefing package for the proposed rule at: <http://www.cpsc.gov/library/foia/foia10/brief/104cribs.pdf>.) Education and information may be a more appropriate way to address the hazards associated with extra bedding. For instance, the recently released CPSC video on safe sleeping, (<http://www.cpsc.gov/cpsc/pub/prerel/prhtml11/11021.html>), is an example of an educational tool designed to bring more awareness to new parents of the dangers of extra or soft bedding.

#### 21. Slat Strength Test Changes for Folding Crib Sides

(Comment 26)—One commenter noted that the spindle/slat testing procedure does not consider testing crib sides that fold either for access to the occupant or for storage and transport and that, as written in the proposed standard, the test method does not specify testing procedures for such segmented sides. The commenter suggested adding the following language for the full-size and non-full-size crib standards: “For cribs incorporating folding or moveable sides for purposes of easier access to the occupant, storage and/or transport, each side segment (portion of side separated by hinges for folding) shall be tested separately as described above.”

(Response 26)—CPSC staff worked in cooperation with the ASTM task group, which created the language suggested by the commenter, to address this issue. Although the defined testing requirements in the proposed rule

would work adequately for a crib side with no moving segments, it would not define clearly testing procedures for segmented sides. The intent of the slat strength test is to verify that the crib slats can withstand 80 lbf. If a crib side includes a hinge or other folding mechanism, the force applied to the slat could be transferred to the hinge and unintentionally test the structural integrity of the hinge and/or hinge attachment. We have not received reports of any incidents regarding crib sides with hinges or other folding mechanisms. The final rule includes new provisions in both the full-size and non-full-size crib standards, based on the language provided by the commenter, to clarify the spindle/slat testing procedure for cribs with folding or movable sides.

#### 22. Definition of Folding vs. Movable Sides

(Comment 27)—One commenter asked about the difference between movable sides and folding sides as defined in the voluntary full-size crib standard, ASTM F 1169–10.

(Response 27)—ASTM F 1169–10 defines a folding side as a side or part of a side that folds or pivots in order to provide easier access to an occupant. An example of this is a crib with a drop-gate design, where the top portion of one side folds over by use of a hinge or hinges. A movable side is also a side that is used to provide easier access to an occupant and is any design other than a folding side.

#### 23. Rocking Crib Test Procedure

(Comment 28)—One commenter asked how we plan to apply the proposed crib standard to cribs that are built with rockers, a design that is not addressed explicitly by ASTM F 1169–10. The commenter noted that such a product could be a “super-sized” cradle or rocking bassinnet, whose interior dimensions meet that of a full-size crib, or perhaps a glider-style crib. The commenter stated that it would make sense for the crib to be arrested during testing so that the crib does not rock, but the commenter felt that this was not clear in the proposed rule.

(Response 28)—We find that the current language in the standard is sufficient and clearly states that, for each dynamic test requirement, the crib must be mounted rigidly prohibiting or arresting any movement of the crib during all phases of the test procedure. Furthermore, it would be intuitive for test laboratories that a rocking crib must be secured to arrest any motion in the vertical or horizontal direction. Manufacturers and test labs have been

manufacturing and testing non-full-size rocking cribs for some time now, and we are not aware of any clarity requested or needed for testing existing non-full-size rocking cribs or potentially newly-designed full-size rocking cribs.

#### 24. ASTM Provision Concerning Retightening Screws and Bolts

(Comment 29)—Numerous commenters supported the proposed rule's exclusion of the provision in ASTM F 1169-10 concerning retightening of screws between tests, noting that it will enhance crib safety. One commenter, however, disagreed with exclusion of the hardware retightening provision. The commenter stated that the dynamic tests, namely the shake test, vertical mattress support impact test, and the crib side rail impact test are designed to simulate and accelerate the use and abuse of the crib. The commenter noted that, "absent test data to support a contrary position, tightening of the screws is consistent with the ASTM requirements and CPSC's own historic test practices." One commenter stated that CPSC staff has not had the time to evaluate the efficacy of not removing the retightening allowance.

(Response 29)—We strongly disagree with the commenter opposing exclusion of the hardware retightening provision. It is true that the purpose of accelerated life cycle tests is to accelerate the degradation rate of a product under known use conditions. However, the accelerated tests that are required in both the full-size and non-full-size crib standards are not overly stringent. The combination of the shake test (to simulate a child standing and shaking the top of a side rail), the vertical mattress support impact test (child jumping), the crib side rail impact test (child climbing outside of rail), and the slat/spindle strength test (child and/or sibling falling against or kicking slats) comprise a laboratory simulation of a lifetime of use. The shake test parameters are based on a lifetime of use of only 18 months, or use by just one child. The majority of cribs are used for two and three children, and some are in use for 15 years or longer. Furthermore, the accelerated life cycle tests include test parameters for foreseeable use of the product. Foreseeable use includes a child shaking the side rails, jumping on the mattress, climbing on the outside of the side rails, or falling or kicking the crib slats.

As for the commenter's statement that CPSC staff has not had the time to evaluate the efficacy of not removing the retightening allowance, we disagree. First, we conducted initial tests to verify

the effects of the vertical mattress support impact and crib side rail impact tests on fasteners loosened during the cyclic side shake test. We intentionally backed out fasteners one-quarter and one-half turn, chosen at random on three full-size and two non-full-size cribs, prior to mattress support and side impact testing. In summary, the side rail impact test severely affected fasteners that lost their seated preload, approximately one-half turn and greater. Fasteners that were loosened less than one-half turn maintained sufficient preload to withstand the side impact test vibrations applied to the lower rail. If the fasteners that loosened after the crib side impact test had been retightened beforehand, a potentially dangerous condition, such as a hazardous gap created by loosened hardware, would have gone unnoticed.

Second, we recently had the opportunity to evaluate each proposed performance requirement by participating in the testing of a full-size crib according to the full-size crib standard. Test results showed that the forces exerted on the crib sides during the shake test are not significantly detrimental to loosening hardware. After completion of the shake test on the test crib, two fasteners were noted to have backed out, one about one-eighth of a turn, and one close to one-half a turn. Neither fastener backed out enough to be considered noncompliant with the test requirement. In addition, these two fasteners did not back off any further after the mattress support and crib side impact testing. However, after the crib side impact test, another fastener, a wing nut securing the mattress support, backed off several turns, creating about a three millimeter separation, which is noncompliant with the requirement. Therefore, the crib ultimately failed due to a primary component attached by a screw that separated more than one millimeter. It is important to note that the assembly envelope around the wing nuts was confined severely by the proximity of the mattress support frame to the side slats. This made it difficult to ensure that adequate torque was applied during crib assembly. Results such as these reemphasize the importance of not allowing retightening of fasteners during testing, because it is foreseeable that a consumer will have similar difficulty tightening a fastener in a confined space.

It is also important to note that ASTM F 1196-10 and F 406-10a include a new hardware and fasteners requirement, which requires that crib hardware include a locking device or method for impeding loosening. This will reduce

further the need for the retightening allowance, especially with crib designs that utilize fasteners that are difficult to access.

In summary, we strongly disagree with the request to allow retightening of fasteners. The majority of crib side rail corners are attached with one screw. Loosening just one screw can result in subsequent detachment of the side rail corner, creating a hazardous gap. There have been at least 10 fatalities where loose screws have contributed to the death of a child. After drop-sides, loose screws are the second highest cause of fatalities associated with the structural integrity of cribs. It is important that fasteners remain secure during the useful life of the crib.

#### 25. Captive Hardware

(Comment 30)—Some commenters suggested that the hardware used for assembly remain captive in the key structural components when a crib is disassembled to reduce the chance of losing the hardware and of owners subsequently substituting inappropriate hardware for the hardware that was provided originally with the crib.

(Response 30)—Captive hardware typically includes a threaded insert with a captive screw on the mating component. A few of the advantages of captive hardware include: Prevention of lost hardware, accurate and repeatable assembly of primary structural components, and ease of assembly. Crib designs using captive hardware, especially for primary components, such as side rails, could minimize the chance of screws loosening, allowing components to detach and create an entrapment hazard. In addition, captive hardware could: (1) Make assembly of cribs easier; (2) minimize the chance of a consumer replacing a lost screw with an incorrect or improper substitute; and (3) reduce the chance of a consumer misassembling the crib.

Although, there appear to be many advantages to using captive hardware on cribs, there are several disadvantages as well. First, if a captive screw ever becomes damaged or is inadvertently bent or pulled from an external force while in the disassembled state, it may be difficult or impossible to reassemble the crib component with the damaged screw or to remove and reinstall a replacement captive screw. Second, requiring captive hardware to attach a mattress support could result in more complicated designs or extra hardware because one main component of a full-size crib, the mattress support, typically is designed to be installed in different positions (levels).

Although the advantages of using captive hardware may seem to outweigh the disadvantages, we conclude that it is premature to mandate the use of captive hardware. We encourage manufacturers and ASTM to investigate the use of captive hardware systems on cribs and note that some manufacturers already are employing or considering using such designs.

#### 26. Test Mattress for Non-Full-Size Crib Mattress Support Test

(Comment 31)—One commenter expressed concern about the requirement for non-full-size cribs to conduct the mattress support testing (dynamic impact) with a specific test mattress for each product, as opposed to conducting this test with the mattress supplied with each crib. The commenter was concerned that testing with such a mattress may be less stringent than testing with the mattress supplied with the product. The commenter also was concerned that the provision could require test labs to have multiple test mattresses to suit all different dimensions of non-full-size cribs. This, the commenter stated, could increase the time and costs of testing.

The commenter recommended using the mattress supplied with the product in the dynamic testing. Alternatively, the commenter suggested: (1) stating in the final rule that a test mattress be large enough to accommodate the impactor to be used in the test, provided the test mattress does not shift in any way during testing or (2) specifying a smaller test mattress that would accommodate all non-full-size cribs currently for sale in commerce, with such dimensions as 18" x 18" x 3."

(Response 31)—In some instances, it may be true that testing non-full-size cribs with a thicker test mattress may be less stringent than testing with the mattress supplied with the product. However, we feel it is more important to use a standard size test mattress for test repeatability between testing facilities. Crib mattresses, especially mattresses provided with non-full-size cribs, are typically entry-level price point mattresses. Foam and mattress stitch variability is inherently high throughout the mattress industry. Furthermore, the mattress thickness, foam density, and other mattress characteristics determine the amount of energy that is transferred to the mattress support system. If a standard test mattress is not required, it is foreseeable that the same non-full-size crib with a supplied one-inch mattress may pass at one test laboratory, but fail at another, due solely to the inherent variability in the mattress manufacturing process.

As for the commenter's concern regarding the potential delay in specifying and ordering a test mattress to correctly fit the non-full-size crib being tested, this issue could be addressed easily if the manufacturer includes a test mattress in the crib's bill of materials at the design stage. This will ensure that all crib components, including the test mattress, are procured at the same time. Thereafter, the test mattress will be available for testing, when needed, eliminating any additional testing delays or increased costs by the test laboratories.

As for the commenter's concern regarding the use of a test mattress just large enough to accommodate the impactor used during the mattress impact test, in general, using any test mattress that is smaller than the interior surface area of the crib will be more stringent than using a mattress equivalent to the crib's interior surface area. A smaller test mattress will transfer more energy into the mattress support system. Specifically, using the 18 inches x 18 inches x 3 inches mattress pad as an example, the impact head, about 8 inches across, when positioned 2 inches from the sides in a corner will hit the test mattress such that it overlaps the midplane or geometric center of the test mattress. Therefore, the test mattress foam will sustain more damage than a larger mattress. Unless replaced for each test, it will soften, thereby transmitting more energy into the mattress support structure. CPSC staff believes that using an undersized mattress will mean less repeatability from lab to lab and different force distributions experienced on each crib.

Once a crib mattress standard is developed, which would diminish the variability currently inherent in the mattress manufacturing process, testing non-full-size cribs with their supplied mattresses may be more workable. However, for the present, we feel that it is more important to ensure repeatability between test laboratories by requiring the same vertical mattress impact test for both full-size and non-full-size cribs.

#### 27. Replacement Mattresses in Non-Full-Size Cribs

(Comment 32)—Several commenters argued for modifying the warning on non-full size cribs, which states, in part: "Use ONLY mattress/pad provided by manufacturer \* \* \*" and instead use language that does not specify the manufacturer of the replacement mattress, because some manufacturers make mattresses for other manufacturers' products. One

commenter supported an immediate change in the language in the warning, and other commenters supported a language change only after a separate mattress standard has been developed.

(Response 32)—The non-full-size crib standard requires all non-full-size cribs to be sold with their own mattress. These comments only relate to a warning label about replacement mattresses, and do not suggest changing the requirement for the mattress supplied with the non-full-size crib. We agree that replacement mattresses made by manufacturers other than the supplier of the non-full-size crib can achieve a satisfactory fit, because there are many common sizes among non-full-size cribs. Furthermore, we agree that, without alternatives, consumers may resort to homemade bedding surfaces when they need to replace a mattress. Pads that are "designed for" a given crib will simulate all dimensions (edge contours, overall area, density, and thickness) of the original mattress supplied by the manufacturer. A mattress with the dimensions necessary for eliminating hazardous gaps in the crib can be manufactured satisfactorily by anyone, not just the original manufacturer. We believe it would be better to address this issue after a mattress standard has been created.

(Comment 33)—A commenter stated that, "If the CPSC mandates that consumers 'use only the mattress/pad provided by the manufacturer' then retailers will be inclined to stop offering alternative mattresses/pads."

(Response 33)—The final rule does not mandate what mattress a consumer can use, and it does not prohibit the sale of replacement mattress pads. The standard simply requires a warning label on the product. The label mentioned by the commenter has been part of the ASTM standard for non-full-size cribs since 1997, and JPMA-certified non-full-size cribs have displayed that warning since that time. The commenter does not provide any data or evidence to support the contention that retailers will stop offering alternative mattresses/pads. Consequently, we will wait to revise this warning label until after a mattress standard has been created, as suggested by other commenters.

#### 28. Misassembly

(Comment 34)—Several commenters suggested that products should be designed so that the consumer-assembled parts cannot be misassembled. They suggested that all parts of a crib should fit only in the correct orientation, and that if

misassembled, the crib would be unusable.

(Response 33)—This suggestion originates from reports of fatal incidents, wherein a crib side was installed upside-down. We have considered such a requirement for the standard, but it would be difficult to implement. Any part of a product can be misassembled, and there are also certain parts of cribs that can be safely used in any orientation. Manufacturers could resort to more preassembly of crib components to meet this commenter's suggestion, but due to the size of an assembled crib and its components, any preassembly would likely be very limited in nature and thus would not solve the problem.

The requirement to make a crib unusable when a part is misassembled is not feasible because consumer modifications and misassemblies could be clever and forceful. Questions to consider include: Can the potential misassembly involve consumer use of hand tools and off-the-shelf fasteners? What if the misassembled part is redrilled to make it fit? How can a manufacturer make a part unusable if misassembled, when the test lab is allowed to ignore the manufacturer's instructions?

It would be difficult, perhaps impossible, to devise a reliable method for testing such a requirement. The testing permutations needed to prove the utility of some parts in all possible configurations would increase the number of tests that would have to be performed, because each part would have to be tested in every possible position. Although we agree that the principle of making parts oriented in only one direction is sound, the testing needed to prove the inability to use the part makes testing the requirement impractical. The requirement in the standard to clearly mark the manufacturer's recommended installation orientation addresses the problem and highlights the design principle for manufacturers.

#### 29. Utility of Drop-Side Cribs

(Comment 35)—One commenter claimed that drop-side cribs are necessary for some caregivers because some caregivers are shorter. The commenter also suggested that professional child care environments should be allowed to use drop-side cribs because infants are supervised constantly when they are in the crib, and the cribs are checked routinely for safety.

(Response 35)—Although we agree that people who are shorter in stature may have more difficulty when placing

infants into cribs than people who are taller, the standard does not prevent crib designers from making cribs that have sides that lower in some manner to help access the crib interior. Cribs with a gate that swings downward on a piano hinge commonly are available and meet the requirements of the standard. Other designs that raise and lower the side of the crib are possible. These alternative designs provide the same convenience as traditional drop-side cribs.

As for the commenter's argument regarding supervision of infants in professional care environments, we agree that professional child care environments generally have a higher level of supervision than the average residential child care environment. However, cribs are designed with the idea that children can be left in them unsupervised. With respect to routine safety checks, CPSC staff does not recommend relying on human behavior for safety, when a design change is available that can eliminate a hazard. Within the field of prevention science, behavioral solutions are always the last choice when designing for safety, because humans are fallible.

#### 30. Fall Hazards

(Comment 36)—A few commenters expressed concern about hazards associated with falls from cribs. These commenters agreed that it is not appropriate to lower the age recommendation or increase the crib side heights. However, the commenters urged the Commission to research these issues and develop innovative solutions, including thorough public education efforts, to limit hazards when children climb out of cribs. Another commenter recommended that the CPSC and ASTM consider setting a maximum crib height, as measured from the top rail to the floor.

(Response 36)—We acknowledge that injuries resulting from crib-related falls rank high in terms of the number of incidents. The new crib standards contain labeling requirements, but not any design or performance requirements, to address this hazard. When discussing height, some distinctions must be made. The side height of a crib is the height from the top of the mattress support (for full-size cribs) in its lowest position, to the lowest part of the top rail. This dimension has a minimum that is set by each crib standard. For instance, it is 26 inches for full-size cribs. This minimum height is required to help prevent children from climbing out of the crib. One also can measure the crib height, which is measured from the floor to the lowest part of the top rail. Neither the

CPSC nor ASTM set a requirement for this measurement (which is the measurement to which the commenter refers).

Setting a maximum crib height will not reduce the number of incidents of children climbing and falling out of cribs (because that is dictated by the side height). Therefore, a maximum crib height will not prevent injuries. A maximum crib height could reduce, perhaps, the severity or number of injuries. Side height requirements for full-size cribs specify a minimum of 26 inches between the top of the mattress support in its lowest position, and the top of the lowest rail. Thus, even if the mattress support was on the floor, the minimum fall distance would be 26 inches, which still can result in an injury. No maximum crib height will eliminate injuries from falls, and setting an arbitrary number above 26 inches as a maximum height would be design restrictive.

Many non-drop-side cribs have lower overall heights than the average traditional drop-side crib. We took measurements of 48 drop-side cribs and 15 non-drop-side cribs and found the following:

Crib type	Crib height
Drop-side cribs .....	33" to 43".
Non-drop-side cribs ...	32" to 39.75".

Based on this sample, non-drop-side crib heights do not appear to be higher, but are at, or below, traditional drop-side crib heights. A shorter crib height would require fewer construction materials and could result in lower crib weight (which could reduce associated shipping costs). Thus, crib manufacturers may be inclined to offer cribs with shorter heights. We believe that the availability of cribs with shorter heights may increase, because the clearance formerly needed under the crib for the operation of drop-sides no longer would be necessary.

#### 31. Crib Side Heights

(Comment 37)—A commenter claimed that crib manufacturers now are using the bare minimum side heights and that, when drop-sides were allowed, many manufacturers exceeded the minimum side height, thereby preventing some falls. The commenter did not include data to support this assertion that crib manufacturers are reducing the side height now that they are no longer making drop-side cribs.

(Response 37)—Measurements of various cribs taken by CPSC staff show that there are some drop-side cribs and some non-drop-side cribs that just meet the minimum side height requirement

and there are some drop-side cribs and non-drop-side cribs that have greater-than-minimum side heights.

The minimum side height requirement in the crib standard was developed with an intended user in mind (a child under the height of 35 inches). Even so, there always will be a certain population of children who will be capable of climbing out of a crib, even cribs with a side height greater than what is required by the crib standards. If the overall average side height of cribs decreased to the minimum side height required in the standard, and inadvertently resulted in a higher frequency of children climbing out, CPSC staff believes that the likelihood of serious injury is lessened by the reduction in the overall fall height due to shorter crib heights (based on the sample of cribs examined by CPSC staff).

#### F. Changes to Proposed Rule

##### 1. Full-Size Crib Standard

The Commission proposed incorporating ASTM F 1169-10 with one modification: Excluding the provision, section 6.12, that requires retightening of screws and bolts between the crib side latch test and the mattress support vertical impact test. Like the proposal, the final rule incorporates by reference ASTM F 1169-10 with the modification to exclude the hardware retightening provision. The final rule makes one additional modification to ASTM F 1169-10, modifying the spindle/slat testing provision in 7.7.1 of the ASTM standard in order to clarify how to test a crib with folding or movable sides. The final rule adds a sentence to the end of section 7.7.1 of ASTM F 1169-10, which states: "For cribs incorporating folding or moveable sides for purposes of easier access to the occupant, storage, and/or transport, each side segment (portion of side separated by hinges for folding) shall be tested separately." This change responds to a comment that the CPSC received on the proposed rule (*see* section E of the preamble for discussion of the comment and further explanation of the need for this change). Also, ASTM recently voted to approve adding this language when it next revises ASTM F 1169.

##### 2. Non-Full-Size Crib Standard

The Commission proposed incorporating ASTM F 406-10 with several modifications to address non-full-size cribs. The proposed rule would make four modifications and two editorial changes to ASTM F 406-10. Most proposed changes were intended

to make the non-full-size crib standard more consistent with the full-size crib standard. The proposed modifications were: (1) Replacing the mattress support performance requirement in ASTM F 406-10 with the requirement that is in the ASTM full-size crib standard; (2) changing the side impact test in ASTM F 406-10 to make it identical to the requirements in the ASTM full-size crib standard; (3) adding a requirement for movable side latches that is similar to a provision in previous versions of the ASTM F 406 standard; and (4) specifying the order for conducting structural tests, as in the full-size crib standard. The proposed editorial changes were: (1) Excluding provisions in ASTM F 406-10 that cover only play yards; and (2) moving the recordkeeping provision from the appendix of ASTM F 406-10 to the general requirements section. *See* 75 FR 43308 (July 23, 2010).

The final rule incorporates ASTM F 406-10a by reference, with certain modifications. This subsequent version of the ASTM non-full-size crib standard, approved on October 15, 2010, and published in November 2010, includes most of the changes that were in the proposed rule. Specifically, ASTM F 406-10a contains the recordkeeping provision in the general requirements section (now in section 5.20); the mattress support impact performance requirement (now included in sections 6.14, and 8.7); proposed changes to the side impact test (now included in sections 6.16, and 8.9); the provision for movable side latch testing (now included in section 6.13.1); and the order of testing (now in section 6.8). Some provisions in ASTM F 406-10a are worded slightly differently than the language in the proposed rule. These differences in wording are editorial. The proposed modifications that are not adopted in ASTM F 406-10a are those that excluded provisions specifically related to play yards. Thus, the final rule continues to exclude these play yard-specific provisions.

In addition to the differences between ASTM F 406-10 and F 406-10a discussed in the preceding paragraph, there are a few other differences between the two versions (which therefore result in differences between the CPSC's proposed non-full-size crib standard and the final standard). Most differences between the two versions are editorial; for example, the revised standard rearranges the order of some sections and makes minor wording changes to make the language more consistent with the full-size crib standard (ASTM F 1169-10). The CPSC has reviewed these changes and concludes that only one change is a

substantive change that would reduce safety. ASTM F 406-10a adds the provision that was (and continues to be) in the ASTM standard for full-size cribs, which requires the retightening of screws and bolts between tests. The CPSC's final rule for non-full-size cribs excludes this provision, just as the CPSC's final rule for full-size cribs does.

The final rule for non-full-size cribs also adds language concerning testing of cribs with folding sides as in the final rule for full-size cribs. The final rule for non-full-size cribs includes one other modification that was not in the proposal. This change modifies the language for a warning label that cautions against placing netting or other covers over the product. The current wording in ASTM F 406-10a mentions only "play yards." The final rule substitutes the word "product" for "play yard," thus making the warning label also applicable to non-full-size cribs. The Commission did not receive any comments on this labeling issue. However, it is related to the effort in the CPSC's proposed and final non-full-size crib standards to exclude provisions that relate only to play yards. Recently, ASTM approved these two changes (concerning folding cribs and the warning label regarding netting and covers) for its next version of ASTM F 406, but they are not in ASTM F 406-10a.

##### 3. Effective Date

The Commission proposed a 6-month effective date (as measured from the date of publication of a final rule in the **Federal Register**). The final rule maintains the 6-month effective date but establishes two compliance dates: 6 months for all entities subject to the rule, except for child care facilities, family child care homes, and places of public accommodation which have a 24-month compliance date. As discussed in sections E.8 and 10 of this preamble, the Commission received several comments from child care providers describing the impact that the crib standards could have on them, and the Commission believes that places of public accommodation face similar issues. The final rule provides a longer compliance period for these entities to allow them additional time to purchase compliant cribs and to absorb the costs of meeting the standards.

##### 4. References in 16 CFR 1500.18

When the Commission proposed the crib standards, it also proposed revising 16 CFR 1500.18(a)(13) and (14), which state that full-size cribs that do not comply with 16 CFR part 1508 and non-full-size cribs that do not comply with

16 CFR part 1509 are banned hazardous substances under the FHSA. We proposed to replace the references to 16 CFR parts 1508 and 1509 with references to the CPSC's new crib standards which will be codified at 16 CFR parts 1219 and 1220. As noted earlier in this preamble, elsewhere in this issue of the **Federal Register**, we are revoking the crib regulations that the Commission previously issued under the FHSA and are codified at 16 CFR parts 1508 and 1509. Given that section 104(b) of the CPSIA changed the regulation of cribs (and other durable infant or toddler products) from the FHSA to the CPSA, we have determined that it will reduce confusion to remove the provisions in 16 CFR 1500.18(a)(13) and (14) altogether rather than changing the references. This is consistent with the revocation of 16 CFR parts 1508 and 1509.

### G. Assessment of Voluntary Standards ASTM F 1169-10 and ASTM F 406-10a and Description of the Final Rule

#### 1. Section 104(b) of the CPSIA: Consultation and CPSC Staff Review

Section 104(b) of the CPSIA requires the Commission to assess the effectiveness of the voluntary standard in consultation with representatives of consumer groups, juvenile product manufacturers, and other experts. This consultation process for the full-size and non-full-size crib standards has involved: An ANPR, a public crib roundtable, and in-depth involvement with ASTM. CPSC staff's consultations with ASTM are ongoing.

#### 2. Description of the Final Standard for Full-Size Cribs, Including Changes to the Requirements of ASTM F 1169-10

The Commission believes that the provisions of ASTM F 1169-10 are effective to reduce the risk of injury associated with full-size cribs. The modifications to ASTM F 1169-10 strengthen the ASTM standard. The final rule incorporates by reference ASTM F 1169-10 with two modifications:

- Exclusion of the provision in the voluntary standard concerning retightening of screws and bolts between the crib side latch test and the mattress support vertical impact test; and
- Addition of language to the voluntary standard clarifying how to conduct the slat/spindle strength test on a crib with folding or movable sides.

#### a. Scope, Compliance Dates, and Definitions (§ 1219.1)

Like the proposal, the final rule states that this part establishes a consumer

product safety standard for new and used full-size cribs. In accordance with section 104(c) of the CPSIA, this section states that the standard applies to the manufacture, sale, contract for sale or resale, lease, sublet, offer, provision for use, or other placement in the stream of commerce of a new or used full-size crib. This section provides a compliance date of 6 months (as measured from the date of publication of this final rule in the **Federal Register**) for all entities subject to the rule, except for child care facilities, family child care homes, and places of public accommodation which will have 24 months (as measured from the date of publication of this final rule in the **Federal Register**) to provide cribs for use that comply with the standard. As discussed in section H of this preamble, due to the number of compliant cribs that child care centers and places of public accommodation will need to provide for use, the final rule provides an additional 18 months for them to meet the full-size crib standard.

Section 1219.1(c) defines full-size baby crib as defined in ASTM F 1169-10 as a bed, with certain interior dimensions, that is designed to provide sleeping accommodations for an infant. In accordance with section 104(c) of the CPSIA, the definition includes cribs in child care facilities and places of public accommodation affecting commerce. This section also provides the definition of "place of public accommodation affecting commerce" specified in section 104(c) of the CPSIA.

#### b. Requirements for Full-Size Cribs (§ 1219.2)

**Incorporation by reference.** Like the proposal, the final rule incorporates by reference ASTM F 1169-10, *Standard Consumer Safety Specification for Full-Size Baby Cribs*. The final rule requires compliance with the requirements of ASTM F 1169-10, with two modifications.

**Modifications to the ASTM standard.** The final rule for full-size cribs excludes the provision in section 6.12 of the ASTM standard that requires retightening of screws and bolts between the crib side latch test and the mattress support vertical impact test (§ 1219.2(b)(1) of the CPSC's standard). This is identical to the proposed rule. As discussed in the preamble to the proposal (75 FR at 43314 through 43315), exclusion of this retightening provision strengthens the standard. Conducting the tests without retightening the hardware better represents the real use of a crib. Retightening fasteners would sever the chain of accumulated conditioning

effects that the crib undergoes during the sequence of tests. Most of the comments that the CPSC received concerning this issue supported the CPSC's exclusion of this provision. Further discussion of the rationale for excluding the hardware retightening provision is provided in section E.24 of this preamble.

The final rule adds one provision for full-size cribs that was not contained in the proposed rule. The final rule adds a sentence to section 7.7.1 of ASTM F 1169-10 to clarify how to conduct the spindle/slat static force test with a crib that has folding or movable sides (§ 1219.2(b)(2) of the CPSC's standard). The slat strength test is intended to verify that cribs slats can withstand 80 lbf. Without the clarification, conducting the test on a crib that has a hinge or other folding mechanism could result in testing the structural integrity of the hinge rather than the strength of the slats. Thus, the final rule adds the following sentence: "For cribs incorporating foldable or moveable sides for purposes of easier access to the occupant, storage, and/or transport, each side segment (portion of side separated by hinges for folding) shall be tested separately." The addition of this language strengthens the ASTM standard, because it eliminates an ambiguity about testing this type of crib.

**Requirements of ASTM F 1169-10.** The final rule incorporates the other requirements of ASTM F 1169-10 without change. These requirements establish a comprehensive standard for the safety of full-size cribs. ASTM F 1169-10 includes definitions; general requirements; performance requirements; specific test methods; and requirements for marking, labeling, and instructional literature. The key provisions of both ASTM standards are outlined in section G.4. of this preamble.

#### 3. Description of the Final Standard for Non-Full-Size Cribs, Including Changes to the Requirements of ASTM F 406-10a

The Commission believes that the provisions of ASTM F 406-10a, with the specified modifications, are effective to reduce the risk of injury associated with non-full-size cribs. The final rule incorporates a version of ASTM F 406 that ASTM approved after the Commission had published its proposed rule and includes most of the modifications that the Commission proposed. These changes make ASTM F 406-10a more consistent with the ASTM standard for full-size cribs, rendering the standard more protective than the previous version. The modifications in the CPSC's final rule

further strengthen the standard. The final rule incorporates by reference ASTM F 406–10a with four modifications that:

- Exclude the hardware retightening provision;
- Add language clarifying how to conduct the slat/spindle test on cribs with folding or movable sides;
- Revise a warning concerning netting or other covers so that it includes non-full-size cribs; and
- Exclude provisions that apply only to play yards.

#### a. Scope, Compliance Dates, and Definitions (§ 1220.1)

Like the proposal, the final rule states that this part establishes a consumer product safety standard for new and used non-full-size cribs. In accordance with section 104(c) of the CPSIA, this section states that the standard applies to the manufacture, sale, contract for sale or resale, lease, sublet, offer, provision for use, or other placement in the stream of commerce of a new or used non-full-size crib. This section provides a compliance date of 6 months for all entities subject to the rule (as measured from the date of publication of this final rule in the *Federal Register*), except for child care facilities, family child care homes, and places of public accommodation which will have 24 months (as measured from the date of publication of this final rule in the *Federal Register*) to provide cribs that comply with the standard. As discussed in section H of this preamble, due to the number of compliant cribs that these entities will need to provide for use, the final rule provides an additional 18 months for them to meet the non-full-size crib standard.

Section 1220.1(c) defines non-full-size baby crib as defined in ASTM F 406–10a and explicitly excludes play yards. (A play yard is defined 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.”) A non-full-size crib is essentially a crib that has dimensions other than those of a full-size crib, as defined in the full-size crib standard. In accordance with section 104(c) of the CPSIA, the definition includes cribs in child care facilities and places of public accommodation affecting commerce. This section provides the definition of “place of public accommodation affecting commerce” specified in section 104(c) of the CPSIA. It also provides definitions of terms relevant to the definition of non-full-size crib, such as “portable crib” and “play yard.”

#### b. Requirements for Non-Full-Size Cribs (§ 1220.2)

*Incorporation by reference.* The final rule incorporates by reference ASTM F 406–10a, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards*. The final rule requires compliance with the requirements of ASTM F 406–10a, with four modifications.

*Modifications to the ASTM standard.* The final rule for non-full-size cribs excludes the provision in section 6.10 in the ASTM standard that requires retightening of screws and bolts between the crib side latch test and the mattress support vertical impact test (§ 1220.2(b)(3) of the CPSC standard). This exclusion was not in the proposed rule for the non-full-size crib standard because the proposal referenced ASTM F 406–10, which did not contain the hardware retightening provision. Excluding this provision is consistent with the CPSC’s standard for full-size cribs. The same reasons for that exclusion (see part E.24 of this preamble) apply with regard to non-full-size cribs.

The second modification to ASTM F 406–10a adds a sentence to clarify the testing of cribs with folding or movable sides. This modification was not in the proposed rule, but responds to comments on the proposal and is identical to the change in the full-size crib standard. This provision adds a sentence to section 8.10.1 of ASTM F 406–10a to clarify how to conduct the spindle/slat static force test with a crib that has folding or movable sides (§ 1220.2(b)(5) of the CPSC’s standard). Addition of this language strengthens the ASTM standard because it eliminates an ambiguity about testing this type of crib.

The third modification to ASTM F 406–10a revises a warning in section 9.4.2.6 of the ASTM standard that cautions against using netting or other covers (§ 1220.2(b)(12) of the CPSC’s standard). The modification replaces the words “play yard” with the word “product” because the hazard posed by such covers exists for non-full-size cribs as well as play yards.

The final modifications to ASTM F 406–10a remove the provisions that relate only to play yards (§ 1220.2(b)(1), (2), (4), and (6) through (11) of the CPSC standard). Section 104(c) of the CPSIA distinguishes cribs (both full-size and non-full-size) from other durable infant or toddler products. This different treatment of cribs necessitates that the CPSC establish separate standards for non-full-size cribs and for play yards. In the future, we intend to issue a standard

for play yards under section 104(b) of the CPSIA.

*Requirements of ASTM F 406–10a.* The final rule incorporates the other requirements of ASTM F 406–10a without change. The requirements establish a comprehensive standard for the safety of non-full-size cribs. Like the ASTM standard for full-size cribs, ASTM F 406–10a includes definitions; general requirements; performance requirements; specific test methods; and requirements for marking, labeling, and instructional literature. These requirements are essentially the same as the requirements ASTM F 1169–10 establishes for full-size cribs. The key requirements of both ASTM standards are outlined in the following section of this preamble.

#### 4. Principal Requirements of Both ASTM Crib Standards

Both the full-size and non-full-size crib standards incorporate by reference the relevant ASTM crib standards, with certain modifications explained above. The principal requirements are the same in both ASTM standards. These are:

- Dynamic impact testing of the mattress support system—intended to address incidents involving collapse or failure of mattress support systems. The 2010 standards updated the tests to address fatigue of mattress support brackets, support hardware, and mattress support due to children jumping in cribs.
- Impact testing of side rails and slat strength/integrity testing—intended to prevent slats and spindles from breaking and/or detaching during use. The requirements were made more stringent for the 2010 standards. The modification was intended to prevent entrapments by reducing the likelihood of slat/spindle breakage and the gaps that accompany them.
- Mattress support system testing—intended to ensure that the mattress support does not become detached from the frame, potentially resulting in a fall.
- Latching mechanism tests—intended to ensure that latching and locking mechanisms work as intended, preventing unintended folding while in use. Also requires that they be used with drop gates and movable sides.
- Crib side configurations—intended, in part, to limit movable (drop) sides. Addresses the numerous incidents related to drop-side failures.
- Label requirements—the required warnings were reordered in the 2010 full-size crib standard to emphasize fall hazards.
- Openings requirement for mattress support systems—a new requirement for the full-size crib 2010 standard that

addresses gaps in the mattress support system to minimize the possibility of entrapment.

- Requirements for wood screws and other fasteners—a new requirement for the 2010 standards that addresses hazards that exist when wood screws are the primary method of attachment. Also includes other fastener requirements to address incidents related to loose hardware and poor structural integrity.

- Cyclic testing—a new requirement for the 2010 standards that addresses incidents involving failures of non-drop-side hardware and poor structural integrity. This requirement was taken from the Canadian standard and simulates long-term shaking of the product by a child.

- Misassembly issues—a new requirement for the 2010 standards where it must either be impossible to misassemble key elements or those elements must have markings that make it obvious when they have been misassembled.

- Test requirement for accessories—a new requirement for the 2010 standards that is intended to address any cribs that may now, or in the future, include accessories, such as bassinets or changing tables.

- Crib interior dimensions—a new requirement for the 2010 standards that is taken directly from the CPSC's mandatory regulation and is intended to ensure that all full-size cribs have the same interior dimensions.

- Component spacing—a new requirement for the 2010 standards that is taken directly from the CPSC's mandatory regulation and is intended to prevent child entrapment between both uniformly and non-uniformly-spaced components, such as slats.

#### 5. *The Final Crib Standards Address the Principal Hazards Related to Cribs*

This section summarizes how the standards for full-size and non-full-size cribs address the principal crib-related hazards that the CPSC has identified through its review of incidents involving cribs.

The crib standards address structural failures of cribs that are related to drop-side failures through a requirement that the sides of a crib be fixed in place and have no movable sections less than 20 inches from the top of the mattress support (effectively eliminating drop sides). The standards address problems with non-drop-side hardware and poor structural integrity through requirements for screw fasteners, locking components, and the cyclic side (shake) test. Loosening of wood screws and other fasteners also has led to crib

incidents. The standards address these hazards through the wood screw requirements of 16 CFR parts 1508 and 1509 (which are now in ASTM F 1169–10 and ASTM F 406–10a), restricting the use of wood screws as primary fasteners; prohibiting use of wood screws in structural elements that a consumer would need to assemble; and imposing stricter requirements for the use of threaded metal inserts and other metal-threaded fasteners. Problems with the structural integrity of cribs and hardware issues (such as loosened joints, detached sides and overall poor structural integrity) are addressed by the cyclic side (shake) test, which simulates a child's lifetime shaking of the crib. The test applies a cyclic force (9,000 vertical and then 9,000 horizontal load cycles using 27 lbf) at the midpoint of each top rail, end, and side of the crib. To address mattress-related issues (such as, entrapments between a mattress support and a crib structure, and mattress support structural failures), the crib standards include a mattress impact cyclic test that consists of dropping a 45-pound mass (20 kg) repeatedly every 4 seconds onto a polyurethane foam test mattress covered in vinyl and supported by the mattress support system. The crib standards address crib slat disengagement (which can result in entrapment) by specifying that any crib side with slats must be tested (previously the number of sides was not specified and manufacturers could test just one side). The crib standards address broken or dislocated slats, which can cause a gap of approximately 5 inches, by making the slat/spindle strength test more stringent, requiring a set number of slats to withstand an 80-pound load. The crib standards address misassembly issues by including a requirement which states: "Crib designs shall only allow assembly of key structural elements in the manufacturer's recommended use position or have markings that indicate their proper orientation. The markings must be conspicuous in the misassembled state."

#### H. Effective Date

The Administrative Procedure Act ("APA") generally requires that the effective date of a rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). The Commission proposed that the standard would become effective six months after publication of a final rule. The Commission invited comments regarding the sufficiency of a 6-month effective date for the crib standards, which are discussed in section E.10 of this preamble.

Based on review of the comments, the final rule provides a 6-month effective date (as measured from the date of publication of this final rule in the **Federal Register**) with two compliance dates: a 6-month compliance date for all entities subject to the rule, except for child care facilities, family child care homes, and places of public accommodation, which have 24 months (as measured from the date of publication of this final rule in the **Federal Register**) to provide cribs that comply with the standards. This approach alleviates concerns that there may not be a sufficient supply of cribs that meet the new standards for these entities to provide compliant cribs within a 6-month effective date. Providing this additional period of time for these entities addresses their concerns about the costs of compliance by allowing additional time for them to locate funding and to absorb the costs of the rule. This approach still requires manufacturers and retailers (as well as other entities selling, leasing or otherwise providing cribs) to supply compliant cribs within 6 months just as the Commission had proposed. Providing tiered compliance dates should allow for an orderly process of supply, so that cribs are first manufactured and made available for sale before child care facilities, family child care homes, and places of public accommodation, which must purchase compliant cribs, are required to comply with the standards. This approach also will not delay the availability of cribs in stores for individual consumers to purchase, which would have been the case if the rule established a longer uniform effective date to accommodate the impact on child care facilities, family child care homes, and places of public accommodation. By setting a compliance date of 24 months from the date of publication of this final rule in the **Federal Register**, the Commission intends that any such entity that comes into being after the compliance date must comply with this rule when it begins operating.

An additional reason underlies the Commission's decision to create a separate compliance date for child care facilities, family child care homes, and places of public accommodation. It is unprecedented for the Commission to promulgate a rule containing a mandatory standard that not only sets product performance requirements but also places responsibility for compliance with the rule, in part, on users or providers of the product in an occupational setting. We are required to do so in this case, however, because

Congress singled out cribs for special treatment in the CPSIA.

Even though certain of the other durable infant products on which we will be promulgating mandatory standards may also be found in child care or other settings covered by section 104 of the CPSIA, it is only cribs failing to meet the mandatory standard that are required to be replaced by certain statutorily defined users and providers by a date to be determined by the Commission.

Of course, manufacturers of products are accustomed to meeting performance standards. Our understanding is that most crib manufacturers have been following this rulemaking and the attendant ASTM voluntary standards proceedings very closely, if not participating in them directly. Their numbers, though, are relatively few. In comparison, there are an estimated 59,000 child care and family home care providers and an estimated 53,000 public accommodations covered by this rule, many of whom may be wholly unaware of its consequences.

During this rulemaking, the issues that have been raised as part of the record by child care providers apply, in our view, to all users or providers of cribs described in sections 104(c)(2)(B) and (D) of the CPSIA. While we had no comments from operators of public accommodations, they likely will face the same difficulties as child care providers in complying in a timely manner with the new crib standard.

For instance, the number of complying cribs that will have to be manufactured to meet the new standard, just for those cribs needed in the child care setting, is, in our estimation, at least ten times more than those facilities usually buy in one year (cribs, on average, are normally on a 10-year replacement cycle). This surge in demand is in addition to the cribs that will, upon this rule becoming effective, need to be replaced by owners or operators of public accommodations, who would have otherwise not necessarily done so during that period. Whether enough complying cribs can be made in just one year's time to meet this increased need, on top of the normal annual number of cribs required by parents, is uncertain. All crib users and providers will be buying from the same finite pool of new complying cribs, but certain of those purchasers will be doing so pursuant to the added responsibilities placed upon them by this rule, as required by the CPSIA. The expense of replacing all of their non-complying cribs will weigh more heavily on the less affluent providers,

whether they are child care facilities or public accommodation facilities.

Given these realities, and the Commission's strong desire to ensure implementation of the rule is consistent with the statute's goal of providing safer sleep environments for those children using cribs, the Commission believes it is prudent to take all reasonable steps to try to provide adequate time for there to be a sufficient supply of complying cribs to meet demand, and for child care facilities, family child care homes, and places of public accommodation to obtain complying cribs before the penalties that could be imposed on them for failure to do so become effective. Therefore, the Commission is establishing a compliance date for those persons of 24 months (as measured from the date of publication of this final rule in the *Federal Register*) for them to provide compliant cribs. This gives affected persons an additional 18 months beyond the effective date that was suggested in the proposed rule to replace their noncomplying cribs. The Commission will also use this time to attempt to educate all those individuals and entities affected of their responsibilities under the law so they can plan for the replacement of their cribs in an orderly and timely fashion.

The Commission strongly encourages all child care facilities, family child care homes and public accommodation facilities to begin replacing their cribs with compliant cribs as quickly as the market allows, starting with the oldest ones first, as our experience has shown that the longer cribs are used, the more hazards they present to the children placed in them. Every day that a child is in an unsafe crib, or any unsafe sleep environment for that matter, puts that child at risk of serious injury or death. Every person who provides cribs in a child care setting or as part of the furnishings in a public accommodation has a responsibility to provide the safest possible environment for the children using those cribs.

#### I. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") generally requires that agencies review proposed rules for their potential economic impact on small entities, including small businesses, and prepare an initial regulatory flexibility analysis. 5 U.S.C. 603. The RFA further requires that agencies consider comments they receive on the initial regulatory flexibility analysis and prepare a final regulatory flexibility analysis describing the impact of the final rule on small entities and identifying alternatives that could reduce that impact. *Id.* 604. This section summarizes the staff's final

regulatory flexibility analyses for the full-size and non-full-size crib standards, which is provided at Tabs A and B of the staff's briefing package.

#### 1. Full-Size Cribs

##### a. The Market for Full-Size Cribs

As mentioned in section B.2 of this preamble, CPSC staff estimates that there are currently 68 manufacturers or importers supplying full-size cribs to the U.S. market. Of those that could be categorized, 10 are domestic importers; 42 are domestic manufacturers; 7 are foreign manufacturers; and 2 are foreign importers. CPSC staff estimates annual sales of new cribs to be about 2.4 million (could be an underestimate if new mothers buy more than one crib). CPSC staff estimates that there are currently approximately 591 models of full-size cribs compared to approximately 81 models of non-full-size cribs. Thus, approximately 88 percent of crib models are full-size cribs. Applying this percentage to the number of cribs sold annually results in a rough estimate of 2.1 million full-size cribs sold each year.

JPMA, the major U.S. trade association representing juvenile product manufacturers and importers, runs a voluntary certification program for several juvenile products. Approximately 30 firms (44 percent) supply full-size cribs to the U.S. market that have been certified by JPMA as compliant with the ASTM voluntary standard F 1169-09. Additionally, 15 firms claim compliance, although their products have not been certified by JPMA. The regulatory flexibility analysis assumes that the 45 firms that provide cribs that are certified to, or claim to be compliant with, earlier ASTM standards, will remain compliant with ASTM standard F 1169-10.

As noted previously, section 104 of the CPSIA operates such that when the Commission's crib standards take effect, they will apply to retailers of both new and used full-size cribs and to child care facilities and places of public accommodation, such as hotels, which provide full-size cribs to their patrons. Based on public comments received from child care centers in response to the proposed rule, it appears that child care centers typically use a mix of full-size and non-full-size cribs, but primarily non-full-size cribs. However, CPSC staff still assumes that places of public accommodation tend to provide non-full-size cribs to their customers, as opposed to the more unwieldy full-size cribs. The number of firms that may be selling or providing full-size cribs is unknown, but may be drawn from

approximately 24,985 retail firms (at least 5,292 of which sell used products); 59,555 firms supplying child care services; and 53,021 locations offering public accommodations to the public that may be supplying new or used full-size cribs.

#### b. Impact on Small Businesses

There are approximately 68 firms currently known to be producing or selling full-size cribs in the United States. Based on Small Business Administration (SBA) guidelines, which consider a manufacturer to be small if it has 500 or fewer employees and an importer to be small if it has 100 or fewer employees, 48 of these firms (36 domestic manufacturers, 10 domestic importers, and 2 firms with unknown sources of supply) are small. There are probably additional unknown small manufacturers and importers operating in the U.S. market.

According to SBA guidelines, retailers and service providers, such as child care centers and places of public accommodation, are considered small if they have \$7 million or less in annual receipts. Approximately 93 percent of all retailers have receipts of less than \$5 million, with an additional 3 percent having receipts between \$5 million and \$9.99 million. Excluding firms with receipts of between \$5 million and \$7 million, yields an estimated 23,236 small retail firms. Some portion of these retail firms would be affected by the final rule because only a small percentage of these small firms actually sell full-size cribs. Thus, the number of small retail firms affected will be far fewer than 23,236. Among child care service providers, approximately 98 percent have receipts of less than \$5 million, with an additional 0.9 percent having receipts between \$5 million and \$9.99 million. This suggests that roughly 58,364 small child care firms (of 59,555) could be affected.

#### i. Small Manufacturers

The impact of the standard for full-size cribs on small manufacturers will differ based on whether their products comply with ASTM standard F 1169-10. Of the 36 small domestic manufacturers, 24 produce cribs that are certified by JPMA or that they claim are in compliance with the voluntary standard. The impact on the 24 compliant firms is not expected to be significant. It seems unlikely that any of these products will require modification to meet the CPSC standard. Should any modifications be necessary, the modification would likely be minor (such as more effective screws or screw combinations).

The CPSC standard could have a significant impact on one or more of the 12 firms that are not compliant with the voluntary standard, because their products might require substantial modifications. The costs associated with these modifications could include costs for product design, development and marketing staff time, and product testing. There may also be increased production costs, particularly if additional materials are required. The actual cost of such an effort is unknown, but could be significant, especially for the two firms that rely primarily or entirely on the production and sale of full-size cribs and related products, such as accompanying furniture and bedding, and for a third firm that produces only one other product. However, the impact of these costs may be diminished if they are treated as new product expenses that can be amortized.

The scenario described above assumes that only those firms that produce cribs that are certified by JPMA or that claim ASTM compliance will pass the voluntary standard's requirements. This is not necessarily the case. CPSC staff has identified many cases in which products that are not certified by JPMA actually are compliant with the relevant ASTM standard. To the extent that this is true, the impact of the CPSC standard will be less significant than described.

#### ii. Small Importers

While 4 of the 10 small importers are not compliant with the voluntary standard, all would need to find an alternate source of full-size cribs if their existing supplier does not come into compliance with the new requirements of the CPSC standard. The cost to importers may increase, and they, in turn, may pass on some of those increased costs to their customers. Some importers may respond to the rule by ceasing to import cribs that do not comply. However, the impact of such a decision may be lessened by replacing the noncompliant crib(s) with complying products or other juvenile products. Deciding to import an alternative product would be a reasonable and realistic way to offset any lost revenue, given that most small importers import a variety of products.

#### iii. Small Retailers and Child Care Centers

The CPSIA requires that all full-size cribs sold (or leased) by retailers or provided by child care centers to their customers comply with the CPSC's full-size crib rule. This means that retailers, most of whom are small, will need to verify that any full-size cribs in their inventory (that they intend to sell or

lease after the effective date), and any that they purchase in the future, comply with the regulation prior to offering the cribs for sale. CPSC staff believes that most retailers, particularly small retailers, do not keep large inventories of cribs. With an effective date six months after publication of the final rule, retailers of new products should have sufficient notification and time to make this adjustment with little difficulty. The situation for retailers of used cribs is more complicated, however, because they may not always be able to determine whether the full-size cribs they receive comply with the new CPSC standard. For these affected retailers, it may be simpler to discontinue the sale of used full-size cribs. If cribs represent a small portion of the products they sell, then the impact of the rule on these firms may be limited.

Child care centers, family child care homes, and places of public accommodation must provide compliant cribs for their customers. The rule provides a 6-month effective date with an additional 18-month compliance period for these entities to meet the standards. This longer period to comply gives them additional time to purchase and replace their cribs that do not comply with the final rule. Without a longer period for compliance, the impact on these entities would be greater, particularly for those that would have to replace all of their cribs at once.

Based on data provided by the comments, it appears that the average child care center has between 4 and 45 cribs, fewer than half of which are likely to be full-size. Each crib costs approximately \$500. Therefore, if 25 percent of the cribs that must be replaced are full-size cribs, then replacement for an individual child care center could run from \$500 to as high as \$5,500. The total one-time cost to child care centers, the majority of which are small, of replacing all of their full-size cribs is estimated to be approximately \$97 million nationwide. Providing child care centers, family child care homes, and places of public accommodation with 24 months to comply with the new crib standards will reduce the impact on these entities.

There are additional considerations concerning the one-time costs child care providers face. Some costs may be passed on to customers through small increases in the rates child care providers charge. Child care providers would recoup these costs over an extended period, while the initial outlay for new cribs would be much more immediate. Additionally, as several commenters noted, child care centers

are limited in how much of the costs can be passed on to their customers. For example, one commenter stated that approximately 35 percent of the children in their care—more than 150,000—receive some form of state subsidy, and another provider stated that approximately one-third of the children in their care receive some subsidy. Raising rates above what customers can bear has the potential to deprive families of child care or force them into alternative child care arrangements that may not be subject to the final rule. The latter possibility has the potential for safety risks in excess of those that currently exist in child care centers.

Some centers could opt to replace their full-size cribs with play yards, which are less expensive to purchase (typically \$100–\$200) than full-size cribs, thereby spreading replacement costs over a longer period. While this would reduce the impact of the final rule, the alternative of providing play yards may be limited due to state licensing laws. The CPSC does not advocate the use of play yards over cribs, but acknowledges that the choice of play yards instead of cribs may be an option for some child care providers.

#### iv. Alternatives

Under section 104 of the CPSIA, one alternative that could reduce the impact on small entities would be to make the voluntary standard mandatory without any modifications. Adopting the current full-size crib voluntary standard without any changes potentially could reduce costs for 12 of the 36 small manufacturers and 4 of the 10 small importers that are not compliant already with the voluntary standard. However, these firms still will require substantial product changes in order to meet the voluntary standard. Because the CPSC's changes add little to the overall burden of the rule, adopting the voluntary standard without any changes will not offset significantly the burden that is expected for these firms.

Another way to reduce the impact on small firms would be to allow more time for such entities to comply with the final rule by providing a longer effective date for all entities. This would allow additional time for small manufacturers and small importers of non-compliant cribs. It could also alleviate inventory issues for small retailers.

A third alternative that could reduce the impact on small firms would be to provide an even longer compliance period for child care centers, family child care homes, and places of public accommodation. Although this would reduce the impact on the smaller of

these entities, it would not have any impact on small manufacturers or importers.

#### 2. Non-Full-Size Cribs

##### a. The Market for Non-Full-Size Cribs

CPSC staff estimates that there are currently at least 17 manufacturers or importers supplying non-full-size cribs to the U.S. market. Five of these firms are domestic importers and 10 are domestic manufacturers. Insufficient information is available to determine whether the remaining firms are manufacturers or importers.

Five firms supply non-full-size cribs to the U.S. market that have been JPMA-certified as compliant with the ASTM voluntary standard. Additionally, two firms claim compliance, although their products have not been certified by JPMA. Therefore, including the firms that claim compliance with the ASTM standard, five manufacturers and one importer have products that are ASTM compliant. Additionally, one of the firms with an unknown source of supply also claims compliance with the ASTM standard. This analysis assumes that firms that are certified or claim to be compliant with earlier ASTM standards will remain compliant with ASTM standard F 406–10a.

As explained in the analysis concerning full-size cribs (section I.1.b. of this preamble), CPSC staff estimates annual sales to households to be about 2.4 million cribs. CPSC staff estimates that there are approximately 81 non-full-size crib models currently being supplied (versus 591 full-size crib models). Therefore, approximately 12 percent of the crib models on the U.S. market are non-full-sized. Applying this to the number of cribs sold annually yields a rough estimate of 293,000 non-full-size cribs sold each year.

As previously noted, section 104 of the CPSIA explicitly makes the crib standards applicable to retailers of both new and used non-full-size cribs and to child care facilities and places of public accommodation, such as hotels that supply non-full-size cribs to their patrons. Based on comments received from child care centers in response to the proposed rule, it appears that child care centers typically use a mix of full-size and non-full-size cribs, with a bias in favor of non-full-size cribs. CPSC staff still assumes that places of public accommodation tend to provide their customers with non-full-size cribs as opposed to full-size cribs. The number of firms that may be selling or providing non-full-size cribs is unknown, but may be drawn from the approximately 24,985 retail firms (at least 5,292 of

which sell used products), the 59,555 firms supplying child care services, and the 53,021 locations providing public accommodations. Each of these groups may be supplying new or used non-full-size cribs to the public.

##### b. Impact on Small Businesses

There are approximately 17 firms currently known to be producing or selling non-full-size cribs in the United States. Based on the SBA's guidelines, which consider a manufacturer to be small if it has 500 or fewer employees and an importer to be small if it has 100 or fewer employees, 14 suppliers are small firms (9 domestic manufacturers and 5 importers). The size of the remaining firms—two with unknown supply sources and one domestic manufacturer—could not be determined. There are probably additional unknown small manufacturers and importers operating in the U.S. market.

As explained in the analysis of the impact of the full-size crib standard, CPSC staff estimates that 23,236 retail firms would be considered small according to SBA's guidelines. Not all of these small firms sell non-full-size cribs. Thus, the number of small retail firms affected will be fewer than 23,236. CPSC staff estimates that using SBA's guidelines, there are approximately 58,364 small child care firms (of 59,555) and 42,437 small hotel firms (of 53,021 locations providing public accommodations) that could be affected by the crib standards.

##### i. Small Manufacturers

The impact of the CPSC's non-full-size crib standard on small manufacturers will differ based on whether their products are expected to be compliant with ASTM standard F 406–10. Of the nine small domestic manufacturers, five are in compliance with the voluntary standard. The impact on the five compliant firms is not expected to be significant. It seems unlikely that any of these products will require modification to meet the final standard. Should any modifications be necessary, they would be most likely minor (such as more effective screws or screw combinations).

The CPSC's final standard for non-full-size cribs could have a significant impact on one or more of the four firms that are not compliant with the voluntary standard, because their products might require substantial modifications. The costs associated with these modifications could include product design, development and marketing staff time, and product testing. There may also be increased

production costs, particularly if additional materials are required. The actual cost of such an effort is unknown, but could be significant, especially for the one firm that relies on the production and sale of non-full-size cribs and related products, such as accompanying furniture and bedding. However, the impact of these costs may be diminished if they are treated as new product expenses that can be amortized.

The scenario described above assumes that only those firms that produce cribs certified by JPMA or claim ASTM compliance will pass the requirements of ASTM F 406-10a. This is not necessarily the case. CPSC staff has identified many cases in which products not certified by JPMA actually are compliant with the relevant ASTM standard. To the extent that this is true, the impact of the final rule will be less significant than described.

#### ii. Small Importers

Although four of the five small importers are not compliant with the voluntary standard, all would need to find an alternate source of non-full-size cribs if their existing supplier does not come into compliance with the new requirements of the final standard. The cost to importers may increase and they, in turn, may pass on some of those increased costs to their customers. Some importers may address the rule requirements by ceasing to import cribs that do not comply with the new standard. However, the impact of such a decision may be diminished by replacing the noncompliant cribs with complying products or other juvenile products. Deciding to import an alternative product would be a reasonable and realistic way to offset any lost revenue, given that most small importers import a variety of products.

#### iii. Small Retailers and Child Care Centers

The CPSIA requires that all cribs sold (or leased) by retailers or provided by child care centers to their customers comply with the CPSC's new crib standards. Thus, retailers will need to verify that any non-full-size cribs in their inventory (that they intend to sell or lease after the effective date), and that any they purchase in the future, comply with the regulation prior to offering the cribs for sale. CPSC staff believes that most retailers, particularly small retailers, do not keep large inventories of cribs. With an effective date six months after publication of the rule, retailers of new products should have sufficient notification and time to make this adjustment with little difficulty. Retailers of used cribs may have

difficulty determining whether the cribs they receive comply with the new CPSC standard, and therefore, may discontinue the sale of used non-full-size cribs. If cribs represent a small portion of the products they sell, then the impact of the rule on these firms may be limited.

Child care centers, family child care homes, and places of public accommodation must provide compliant non-full-size cribs for their customers. The rule provides a 6-month effective date (as measured from the date of publication of this final rule in the *Federal Register*) with an additional 18 months compliance period for these entities to meet the standards. This longer period of time to comply with the standards could reduce the impact on small firms. Based on data provided through public comments, it appears that the average child care center has between 4 and 45 cribs, more than half of which are likely to be non-full-size. Each crib costs approximately \$500. Therefore, if 75 percent of the cribs that must be replaced are non-full-size cribs, then replacement for an individual child care center could run from \$1,500 to as high as \$16,500. The total one-time cost to child care centers, the majority of which are small, of replacing all of their non-full-size cribs is estimated to be approximately \$290 million nationwide. Providing child care centers, family child care homes, and places of public accommodation with 24 months (as measured from the date of publication of this final rule in the *Federal Register*) to comply with the new crib standards will reduce the impact on them. According to 2007 U.S. Census data, there are 53,021 establishments providing public accommodations. Assuming that all of these establishments provide an average of about three non-full-size cribs for use by their clientele, as many as 160,000 cribs might need to be replaced at a cost of about \$500 per crib, or approximately \$80 million. This may be an overestimate as not all places of public accommodation provide cribs to their customers, but some portion of those that do will replace those cribs when the rule becomes effective.

As discussed in the analysis of the full-size crib standard, there are additional considerations concerning the one-time costs for child care providers. Some costs may be passed on to customers through small increases in the rates child care providers charge (although the expenditure for new cribs would be far more immediate). Child care centers may have limited ability to pass these costs on to their customers, particularly in light of the number of

children in child care who received some form of state subsidy. Although some child care centers could replace their non-full-size cribs with less expensive play yards (typically \$100-\$200), this alternative may not be available to some child care centers if state licensing laws require use of cribs rather than play yards.

Some hotels may provide a few non-full-size cribs for their customers. The number of cribs at any one establishment is likely to be low, especially because of the likelihood that parents traveling with young children will bring along sleep products, such as play yards or portable cribs, for their children. As with child care centers, this is a one-time cost for firms that, over time, likely can be passed on to customers. Firms, particularly smaller ones, may opt to reduce the replacement costs by ceasing to provide cribs to their customers, replacing only some cribs, or providing play yards instead of non-full-size cribs. Therefore, it is unlikely that the rule will have a significant impact on a substantial number of firms that provide these cribs in places of public accommodation. The Commission believes that because places of public accommodation, like child care centers, will need to purchase compliant cribs to provide to their customers, the rule establishes a 24 month compliance date (as measured from the date of publication of this final rule in the *Federal Register*) for them to provide compliant cribs as well.

#### iv. Alternatives

The same alternatives for reducing the impact of the full-size crib standard also apply to reducing the impact of the non-full-size crib standard. One alternative is to make the voluntary standard mandatory with no modifications. Adopting the current voluntary standard without any changes potentially could reduce costs for four of the nine small manufacturers and four of the five small importers who are not already compliant with the voluntary standard. However, these firms still will require substantial product changes in order to meet the voluntary standard. Since the changes add little to the overall burden of the rule on small manufacturers, adopting the voluntary standard with no changes will not offset significantly the burden that is expected for these firms. Adopting the voluntary standard with no modifications could reduce the impact on small retailers and some child care providers.

Another alternative that could reduce the impact on small firms would be to allow more time for such entities to comply with the final rule by providing

a longer effective date for all entities that are subject to the rule. This would allow additional time for small manufacturers and small importers of non-compliant cribs. It could also alleviate inventory issues for small retailers. A third alternative that could reduce the impact on small firms would be to provide an even longer compliance period for child care centers, family child care homes, and places of public accommodation. Although this would reduce the impact on the smaller of these entities, it would not have any impact on small manufacturers or importers.

#### J. Environmental Considerations

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

#### K. Paperwork Reduction Act

This rule contains information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Therefore, the preamble to the proposed rule (75 FR at 43319 through 43321) discussed the information collection burden of the proposed rule and specifically requested comments on the accuracy of our estimates. We did not receive any comments concerning the information collection burden of the proposal, and the final rule does not make any changes to that burden. We have applied to the U.S. Office of Management and Budget (OMB) for a control number for this information collection, and we will publish a notice in the *Federal Register* providing the number when the agency receives approval from OMB.

#### L. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a "consumer product safety standard under [the CPSA]" is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the State requirement is identical to the federal standard. (Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances.) 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.

#### M. 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, be certified as complying with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program or, for children's products, on tests on a sufficient number of samples by a third party conformity assessment body accredited by the Commission to test according to the applicable requirements. Section 104(b)(1)(B) of the CPSIA refers to standards issued under that section as "consumer product safety standards." By the same reasoning, 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 full-size cribs and non-full-size cribs are children's products, they must be tested by a third party conformity assessment body whose accreditation has been accepted by the Commission. Elsewhere in this issue of the *Federal Register*, we have issued a notice of requirements to explain how laboratories can become accredited as third party conformity assessment bodies to test to the new crib standards. The Commission previously issued a notice of requirements for accreditation to test to the existing crib standards (16 CFR parts 1508 and 1509) in the *Federal Register* of October 22, 2008 (73 FR 62965). (Baby cribs also must comply with all other applicable CPSC requirements, such as the lead content requirements of section 101 of the CPSIA, the phthalate content requirements in section 108 of the CPSIA, the tracking label requirement in section 14(a)(5) of the CPSA, and the consumer registration form requirements in section 104 of the CPSIA).

#### List of Subjects

##### 16 CFR Part 1219

Consumer protection, Incorporation by reference, Imports, Infants and

children, Labeling, Law enforcement, Reporting and recordkeeping, Toys.

##### 16 CFR Part 1220

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

##### 16 CFR Part 1500

Consumer protection, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, Reporting and recordkeeping, Toys.

■ Therefore, the Commission amends Title 16 CFR chapter II as follows:

■ 1. Add part 1219 to read as follows:

#### PART 1219—SAFETY STANDARD FOR FULL-SIZE BABY CRIBS

Sec.

1219.1 Scope, compliance dates, and definitions.

1219.2 Requirements for full-size baby cribs.

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

##### § 1219.1 Scope, compliance dates, and definitions.

(a) *Scope.* This part establishes a consumer product safety standard for new and used full-size baby cribs.

(b) *Compliance dates.* (1) Except as provided in paragraph (b)(2) of this section, compliance with this part 1219 shall be required on June 28, 2011, and applies to the manufacture, sale, contract for sale or resale, lease, sublet, offer, provision for use, or other placement in the stream of commerce of a new or used full-size baby crib on or after that date.

(2) Child care facilities, family child care homes, and places of public accommodation affecting commerce shall be required to comply with this part on December 28, 2012, but this provision applies only to the offer or provision for use of cribs by child care facilities, family child care homes, and places of public accommodation affecting commerce and not the sale, resale, or other placement in the stream of commerce of cribs by these entities.

(c) *Definitions.* (1) *Full-size baby crib* means a bed that is:

(i) Designed to provide sleeping accommodations for an infant;

(ii) Intended for use in the home, in a child care facility, a family child care home, or place of public accommodation affecting commerce; and

(iii) Within a range of  $\pm 5.1$  cm ( $\pm 2$  in.) of the following interior dimensions: The interior dimensions shall be  $71 \pm 1.6$  cm ( $28 \pm \frac{5}{16}$  in.) wide

as measured between the innermost surfaces of the crib sides and  $133 \pm 1.6$  cm ( $52\frac{3}{8} \pm \frac{5}{8}$  in.) long as measured between the innermost surfaces of the crib end panels, slats, rods, or spindles. Both measurements are to be made at the level of the mattress support spring in each of its adjustable positions and no more than 5 cm (2 in.) from the crib corner posts or from the first spindle to the corresponding point of the first spindle at the other end of the crib. If a crib has contoured or decorative spindles, in either or both of the sides or ends, the measurement shall be determined from the largest diameter of the first turned spindle within a range of 10 cm (4 in.) above the mattress support spring in each of its adjustable positions, to a corresponding point on the first spindle or innermost surface of the opposite side of the crib.

(2) *Place of public accommodation affecting commerce* means any inn, hotel, or other establishment that provides lodging to transient guests, except that such term does not include an establishment treated as an apartment building for purposes of any State or local law or regulation or an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied as a residence by the proprietor of such establishment.

#### § 1219.2 Requirements for full-size baby cribs.

(a) Except as provided in paragraph (b) of this section, each full-size baby crib shall comply with all applicable provisions of ASTM F 1169-10, Standard Consumer Safety Specification for Full-Size Baby Cribs, approved June 1, 2010. 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; telephone 610-832-9585; <http://www.astm.org>. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [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 1169-10 standard with the following additions or exclusions:

(1) Do not comply with section 6.12 of ASTM F 1169-10.

(2) Instead of complying with section 7.7.1 of ASTM F 1169-10, comply with the following:

(i) The spindle/slat static force test shall be performed with the spindle/slat assemblies removed from the crib and rigidly supported within 3 in. of each end of the upper and lower horizontal rails in a manner that shall not interfere with a spindle/slat deflecting under the applied force. For cribs incorporating foldable or moveable sides for purposes of easier access to the occupant, storage and/or transport, each side segment (portion of side separated by hinges for folding) shall be tested separately.

(ii) [Reserved]

■ 2. Add part 1220 to read as follows:

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

Sec.

1220.1 Scope, compliance dates, and definitions.

1220.2 Requirements for non-full-size baby cribs.

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

##### § 1220.1 Scope, compliance dates, and definitions.

(a) *Scope.* This part establishes a consumer product safety standard for new and used non-full-size baby cribs.

(b) *Compliance dates.* (1) Except as provided in paragraph (b)(2) of this section, compliance with this part 1220 shall be required on June 28, 2011, and applies to the manufacture, sale, contract for sale or resale, lease, sublet, offer, provision for use, or other placement in the stream of commerce of a new or used non-full-size baby crib on or after that date.

(2) Child care facilities, family child care homes, and places of public accommodation affecting commerce shall be required to comply with this part on December 28, 2012, but this provision applies only to the offer or provision for use of cribs by child care facilities, family child care homes, and places of public accommodation affecting commerce and not the sale, resale, or other placement in the stream of commerce of cribs by these entities.

(c) *Definitions.* (1) *Non-full-size baby crib* means 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 ( $49\frac{3}{4}$  in.), or, an

interior width dimension either greater than 77.7 cm (30 $\frac{3}{8}$  in.) or smaller than 64.3 cm (25 $\frac{3}{8}$  in.), or both;

(iv) Includes, but is not limited to, the following:

(A) *Portable crib*—a non-full-size baby crib designed so that it may be folded or collapsed, without disassembly, to occupy a volume substantially less than the volume it occupies when it is used.

(B) *Crib pen*—a non-full-size baby crib with rigid sides the legs of which may be removed or adjusted to provide a play pen or play yard for a child.

(C) *Specialty crib*—an unconventionally shaped (circular, hexagonal, etc.) non-full-size baby crib incorporating a special mattress or other unconventional components.

(D) *Undersize crib*—a non-full-size baby crib with an interior length dimension smaller than 126.3 cm ( $49\frac{3}{4}$  in.), or an interior width dimension smaller than 64.3 cm (25 $\frac{3}{8}$  in.), or both.

(E) *Oversize crib*—a non-full-size baby crib with an interior length dimension greater than 139.7 cm (55 in.), or an interior width dimension greater than 77.7 cm (30 $\frac{3}{8}$  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).

(2) *Play yard* means 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.

(3) *Place of public accommodation affecting commerce* means any inn, hotel, or other establishment that provides lodging to transient guests, except that such term does not include an establishment treated as an apartment building for purposes of any State or local law or regulation or an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied as a residence by the proprietor of such establishment.

##### § 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 F 406-10a, Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards, approved October 15, 2010. 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, PO Box 0700,

West Conshohocken, PA 19428; telephone 610-832-9585; <http://www.astm.org>. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [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 406-10a standard with the following additions or exclusions:

(1) Do not comply with sections 5.6.2 through 5.6.2.4 of ASTM F 406-10a.

(2) Do not comply with section 5.16.2 of ASTM F 406-10a.

(3) Do not comply with section 6.10 of ASTM F 406-10a.

(4) Do not comply with section 7, *Performance Requirements for Mesh/Fabric Products*, of ASTM F 406-10a.

(5) Instead of complying with section 8.10.1 of ASTM F 406-10a, comply with the following:

(i) The spindle/slat static force test shall be performed with the spindle/slat assemblies removed from the crib and rigidly supported within 3 in. of each end of the upper and lower horizontal rails in a manner that shall not interfere with a spindle/slat deflecting under the applied force. For cribs incorporating foldable or moveable sides for purposes of easier access to the occupant, storage and/or transport, each side segment (portion of side separated by hinges for folding) shall be tested separately.

(ii) [Reserved]

(6) Do not comply with sections 8.11 through 8.11.2.4 of ASTM F 406-10a.

(7) Do not comply with sections 8.12 through 8.12.2.2 of ASTM F 406-10a.

(8) Do not comply with section 8.14 through 8.14.2 of ASTM F 406-10a.

(9) Do not comply with sections 8.15 through 8.15.3.3 of ASTM F 406-10a.

(10) Do not comply with sections 8.16 through 8.16.3 of ASTM F 406-10a.

(11) Do not comply with section 9.3.2 through 9.3.2.4 of ASTM F 406-10a.

(12) Instead of complying with section 9.4.2.6 of ASTM F 406-10a, comply with the following warning requirement:

(i) Child can become entrapped and die when improvised netting or covers are placed on top of product. Never add such items to confine child in product.

(ii) [Reserved].

#### PART 1500 [AMENDED]

■ 3. The authority citation for part 1500 is revised to read as follows:

**Authority:** 15 U.S.C. 1261-1278, 122 Stat. 3016; the Consumer Product Safety Improvement Act of 2008, Pub. L. 110-314, § 104, 122 Stat. 3016 (August 14, 2008).

■ 4. In § 1500.18 remove paragraphs (a)(13) and (14).

Dated: December 17, 2010.

**Todd A. Stevenson,**

*Secretary, U.S. Consumer Product Safety Commission.*

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#### CONSUMER PRODUCT SAFETY COMMISSION

##### 16 CFR Parts 1508 and 1509

##### Revocation of Requirements for Full-Size Baby Cribs and Non-Full-Size Baby Cribs

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final rule.

**SUMMARY:** Section 104(b) of the Consumer Product Safety Improvement Act of 2008 ("CPSIA") requires the U.S. Consumer Product Safety Commission ("CPSC" or "Commission") 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 issuing this rule to revoke its existing regulations pertaining to full-size and non-full-size cribs because, elsewhere in this issue of the *Federal Register*, the Commission is issuing consumer product safety standards for cribs that will further reduce the risk of injury associated with these products under section 104 of the CPSIA. The new consumer product safety standards for cribs will include the requirements that have been in 16 CFR parts 1508 and 1509 for full-size and non-full-size cribs. To eliminate duplication, the Commission is removing 16 CFR parts 1508 and 1509 entirely.

**DATES:** Effective June 28, 2011.

**FOR FURTHER INFORMATION CONTACT:** Christopher Melchert, Division of Regulatory Enforcement, Office of Compliance, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7588; [cmelchert@cpsc.gov](mailto:cmelchert@cpsc.gov).

**SUPPLEMENTARY INFORMATION:**

##### A. What regulations is the CPSC revoking?

The CPSC first published the full-size crib regulation, 16 CFR part 1508, in 1973 (38 FR 32129 (Nov. 21, 1973)) and amended it in 1982. The CPSC published the regulation for non-full-size cribs, 16 CFR part 1509, in 1976 (41 FR 6240 (Feb. 12, 1976)), and amended it in 1982. Both standards contain requirements pertaining to dimensions, spacing of components, hardware, construction and finishing, assembly instructions, cutouts, identifying marks, warning statements, and compliance declarations. In addition, 16 CFR part 1509 contains a requirement regarding mattresses.

##### B. Why is the CPSC revoking the regulations pertaining to cribs?

The Consumer Product Safety Improvement Act of 2008, Public Law 110-314 ("CPSIA"), was enacted on August 14, 2008. Section 104(b) of the CPSIA requires the Commission 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. Elsewhere in this issue of the *Federal Register*, the Commission is issuing safety standards for full-size and non-full-size cribs under the authority of section 104 of the CPSIA. These new standards adopt the voluntary standards developed by ASTM International (formerly known as the American Society for Testing and Materials), which are more stringent in some respects than the current applicable standards, and include ASTM F 1169-10, "*Standard Consumer Safety Specification for Full-Size Baby Cribs*," and ASTM F 406-10a, "*Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards*."

The crib standards that the CPSC is publishing elsewhere in this issue of the *Federal Register* incorporate all of the requirements currently found in 16 CFR parts 1508 and 1509. Consequently, the requirements found in 16 CFR parts 1508 and 1509 have become redundant. The Commission, therefore, is revoking 16 CFR parts 1508 and 1509 in their entirety.

The Commission emphasizes that the revocation of 16 CFR parts 1508 and 1509 would have no substantive effect on crib safety. The requirements from 16 CFR parts 1508 and 1509 still apply to full-size and non-full-size cribs, but are



# Federal Register

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Tuesday,  
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Part III

## Consumer Product Safety Commission

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16 CFR Parts 1219, 1220, 1500, et al.  
Full-Size Baby Cribs and Non-Full-Size  
Baby Cribs: Safety Standards; Revocation  
of Requirements; Third Party Testing for  
Certain Children's Products; Final Rules

**CONSUMER PRODUCT SAFETY COMMISSION**

**16 CFR Parts 1219, 1220, and 1500**

**Safety Standards for Full-Size Baby Cribs and Non-Full-Size Baby Cribs; Final Rule**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final rule.

**SUMMARY:** Section 104(b) of the Consumer Product Safety Improvement Act of 2008 ("CPSIA") requires the United States Consumer Product Safety Commission ("CPSC," "Commission," 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 issuing safety standards for full-size and non-full-size baby cribs in response to the direction under section 104(b) of the CPSIA.<sup>1</sup> Section 104(c) of the CPSIA specifies that the crib standards will cover used as well as new cribs. The crib standards will apply to anyone who manufactures, distributes, or contracts to sell a crib; to child care facilities, family child care homes, and others holding themselves out to be knowledgeable about cribs; to anyone who leases, sublets, or otherwise places a crib in the stream of commerce; and to owners and operators of places of public accommodation affecting commerce.

**DATES: Effective Date:** The rule will become effective on June 28, 2011. The incorporation by reference of the publications listed in this rule is approved by the Director of the Federal Register as of June 28, 2011.

**Compliance Dates:** Compliance with this rule with respect to the offer or provision for use of cribs by child care facilities, family child care homes, and places of public accommodation affecting commerce is required starting on December 28, 2012. For all other entities subject to the rule, compliance with this rule is required starting on June 28, 2011.

<sup>1</sup> The Commission voted 5-0 to approve publication of this final rule. Chairman Inez M. Tenenbaum, Commissioner Thomas H. Moore, Commissioner Robert S. Adler, and Commissioner Anne M. Northup filed statements concerning this action which may be viewed on the Commission's Web site at <http://www.cpsc.gov/pr/statements.html> or obtained from the Commission's Office of the Secretary.

**FOR FURTHER INFORMATION CONTACT:** Christopher Melchert, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7588; [cmelchert@cpsc.gov](mailto:cmelchert@cpsc.gov).

**SUPPLEMENTARY INFORMATION:**

**A. Background and Statutory Authority**

**1. Section 104(b) of the Consumer Product Safety Improvement Act**

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 or toddler products. The law requires that these standards are to be "substantially the same as" applicable voluntary standards or more stringent than the voluntary standards if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. The Commission is issuing safety standards for full-size and non-full-size cribs that are substantially the same as voluntary standards developed by ASTM International (formerly known as the American Society for Testing and Materials). The standard for full-size cribs is substantially the same as a voluntary standard developed by ASTM, ASTM F 1169-10, *Standard Consumer Safety Specification for Full-Size Baby Cribs*, but with two modifications that strengthen the standard. The standard for non-full-size cribs is substantially the same as ASTM F 406-10a, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards*, but with four modifications that strengthen the standard.

**2. Section 104(c) of the CPSIA and the Proposed Rule**

The crib standards are different from standards for the other durable infant or toddler products that section 104 of the CPSIA directs the Commission to issue. Section 104(c)(1) of the CPSIA makes it a prohibited act under section 19(a)(1) of the Consumer Product Safety Act ("CPSA") for any person to whom section 104(c) of the CPSIA applies to "manufacture, sell, contract to sell or resell, lease, sublet, offer, provide for use, or otherwise place in the stream of commerce a crib that is not in compliance with a standard promulgated under subsection (b) [of the CPSIA]." Section 104(c)(3) of the CPSIA defines "crib" as including new and used cribs, full-size and non-full-size cribs, portable cribs, and crib pens.

Section 104(c)(2) of the CPSIA states that the section applies to any person that:

(A) manufactures, distributes in commerce, or contracts to sell cribs;

(B) based on the person's occupation, holds itself out as having knowledge or 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 public accommodation affecting commerce (as defined in section 4 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2203) applied without regard to the phrase "not owned by the Federal Government").

Section 104(c)(2) of the CPSIA.

Thus, the crib standards apply to owners and operators of child care facilities, family child care homes, and places of public accommodation such as hotels and motels, as well as to manufacturers, distributors, and retailers of cribs. Other durable infant or toddler product standards issued under section 104 of the CPSIA apply to products manufactured or imported on or after the effective date of the standard. However, under section 104(c) of the CPSIA, after the applicable date of compliance, it will be unlawful for any of the entities identified in section 104(c)(2) of the CPSIA to sell, lease, or otherwise distribute or provide a crib for use that does not meet the new CPSC crib standards, regardless of the date on which the crib was manufactured.

In the *Federal Register* of July 23, 2010 (75 FR 43308), the Commission published a proposed rule that would establish standards for full-size and non-full-size cribs. The proposed rule would incorporate by reference the following ASTM standards with some modifications: ASTM F 1169-10, *Standard Consumer Safety Specification for Full-Size Baby Cribs*, and ASTM F 406-10, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards*.

**3. Previous Commission Crib Standards (16 CFR Parts 1508 and 1509)**

The Commission first issued mandatory regulations for full-size cribs in 1973 (amended in 1982), which were codified at 16 CFR part 1508 under the Federal Hazardous Substances Act ("FHSA"). In 1976, the Commission issued similar regulations for non-full-size cribs (also amended in 1982), which were codified at 16 CFR part 1509. The requirements of 16 CFR parts 1508 and 1509 have been included in ASTM F 1169-10 and F 406-10a, respectively. However, the recordkeeping requirements in the

ASTM standards are expanded from the 3-year retention period that was required in 16 CFR parts 1508 and 1509 to a 6-year retention period, which is consistent with the consumer registration provision in section 104(d) of the CPSIA.

Elsewhere in this issue of the **Federal Register**, we are revoking the CPSC regulations for full-size and non-full-size cribs at 16 CFR parts 1508 and 1509. The new crib standards in this final rule, which incorporate the applicable ASTM standards, include the requirements of 16 CFR parts 1508 and 1509. Revoking 16 CFR parts 1508 and 1509 will allow all the crib-related requirements to be together and will avoid confusion about which requirements apply to cribs.

#### 4. Previous Commission Activities Concerning Cribs

As detailed in the preamble to the proposed rule (75 FR at 43309), we have taken numerous regulatory and nonregulatory actions concerning crib hazards. In 1996, the Commission published an advance notice of proposed rulemaking ("ANPR") under the FHSA to address the hazard of crib slat disengagement, 61 FR 65996 (Dec. 16, 1996). When the Commission proposed the new crib standards under section 104 of the CPSIA, it published a notice terminating the rulemaking it had begun with the 1996 ANPR because the slat disengagement hazard is addressed by the new standards that the Commission is issuing. 75 FR 43107 (July 23, 2010).

The Commission's Office of Compliance has been involved with numerous investigations and recalls of cribs. Since 2007, the CPSC has issued 46 recalls of more than 11 million cribs. All but seven of these recalls were for product defects that created a substantial product hazard, and not for violations of the federal crib regulations.

Other previous actions include: (1) An ANPR that the Commission published in the **Federal Register** on November 25, 2008 (73 FR 71570) in preparation for this rulemaking, which discussed options to address the hazards that CPSC staff had identified in the reported crib incidents and recalls; and (2) a public roundtable meeting concerning crib safety that CPSC staff held on April 22, 2009. Information about the crib roundtable and the presentations made by CPSC staff and others are on the Commission's Web site at <http://www.cpsc.gov/info/cribs/infantsleep.html>.

## B. The Products and Their Market

### 1. Definitions Under the CPSIA and the Crib Standards

The Commission's previous crib standards in 16 CFR 1508 and 1509 contained definitions of "full-size crib" and "non-full-size crib." According to 16 CFR parts 1508 and 1509, what principally distinguishes full-size cribs from non-full-size cribs are the interior dimensions of the crib. Also, according to these standards, a full-size crib is intended for use in the home, and a non-full-size crib is intended for use "in or around the home, for travel and other purposes." A full-size crib has interior dimensions of  $28 \pm \frac{5}{8}$  inches ( $71 \pm 1.6$  centimeters) in width by  $52\frac{3}{8} \pm \frac{5}{8}$  inches ( $133 \pm 1.6$  centimeters) in length. A non-full-size crib may be either smaller or larger than these dimensions. Full-size and non-full-size cribs also differ in the height of the crib side or rail. Non-full-size cribs include oversized, specialty, undersized, and portable cribs. However, any products with mesh/net/screen siding, non-rigidly constructed cribs, cradles, car beds, baby baskets, and bassinets are excluded from the non-full-size crib requirements of 16 CFR part 1509.

Essentially, these definitions are carried over to the new crib standards with some important differences due to section 104(c) of the CPSIA. Because section 104(c) of the CPSIA explicitly includes used cribs in the definition of "crib," the definitions of full-size and non-full-size crib in the CPSC standards also include used cribs. The definition of "full-size crib" in part 1508 was limited to cribs "intended for use in the home." However, section 104(c) of the CPSIA explicitly includes full-size and non-full-size cribs in child care facilities (including family child care homes) and cribs in places of public accommodation affecting commerce. The CPSIA defines a "place of public accommodation affecting commerce" with reference to the Federal Fire Prevention and Control Act of 1974 (but without the phrase that excludes establishments owned by the Federal Government). Thus, the CPSIA defines "places of public accommodation" as:

any inn, hotel, or other establishment \* \* \* that provides lodging to transient guests, except that such term does not include an establishment treated as an apartment building for purposes of any State or local law or regulation or an establishment located within a building that contains not more than 5 rooms for rent or hire and that is actually occupied as a residence by the proprietor of such establishment.

15 U.S.C. 2203(7).

Therefore, the definitions of full-size and non-full-size crib in the CPSC standards include new and used cribs, cribs in child care facilities, family child care homes, and cribs in places of public accommodation.

### 2. Full-Size Cribs

A full-size crib has specific interior dimensions of  $28 \pm \frac{5}{8}$  inches ( $71 \pm 1.6$  centimeters) in width and  $52\frac{3}{8} \pm \frac{5}{8}$  inches ( $133 \pm 1.6$  centimeters) in length and is designed to provide sleeping accommodations for an infant.

CPSC staff estimates that there are currently 68 manufacturers or importers supplying full-size cribs to the U.S. market. Ten of these firms are domestic importers (15 percent); 42 are domestic manufacturers (62 percent); 7 are foreign manufacturers (10 percent); and 2 are foreign importers (3 percent). Insufficient information was available about the remaining firms to categorize them.

Based on information from a 2005 survey conducted by the American Baby Group, CPSC staff estimates annual sales of new cribs to be about 2.4 million, of which approximately 2.1 million are full-size cribs. (This number could be an underestimate if new mothers buy more than one crib.) CPSC staff estimates that there are currently approximately 591 models of full-size cribs compared to approximately 81 models of non-full-size cribs. Thus, approximately 88 percent of crib models are full-size cribs.

### 3. Non-Full-Size Cribs

A non-full-size crib may be either smaller or larger than a full-size crib, or shaped differently than the usual rectangular crib. The category of non-full-size cribs includes oversized, specialty, undersized, and portable cribs, but does not include any product with mesh/net/screen siding, non-rigidly constructed cribs, cradles, car beds, baby baskets, or bassinets. The CPSC standard for non-full-size cribs does not apply to play yards, which are mesh or fabric-sided products.

CPSC staff estimates that there currently are at least 17 manufacturers or importers supplying non-full-size cribs to the U.S. market. Five of these firms are domestic importers and 10 are domestic manufacturers. Insufficient information is available to determine whether the remaining firms are manufacturers or importers. CPSC staff estimates that there are approximately 2.4 million cribs sold to households annually. Of these, approximately 293,000 are non-full-size cribs.

#### 4. Retailers, Child Care Facilities, and Places of Public Accommodation

CPSC staff is unable to estimate the number of retailers that may sell or provide cribs. We can estimate, however, that there are approximately 24,985 retail firms in the United States (at least 5,292 of which sell used products). The number of retailers that sell or provide cribs would be some subset of that number.

CPSC staff estimates that there are approximately 59,555 firms supplying child care services. We received comments from child care organizations about the cribs they use. According to these comments, the average child care center has between 4 and 45 cribs, so, assuming that the number of firms supplying child care services is the same as child care centers discussed in the comments, child care centers could have roughly 774,180 cribs total. We estimate that there are approximately 43,303 firms providing public accommodation. We did not receive any comments from such firms and cannot estimate how many cribs may be in use in places of public accommodation.

#### C. Incident Data

The preamble to the proposed rule (74 FR at 43310 through 43311) provided detailed information concerning incident data based on information from the CPSC's Early Warning System ("EWS"), a pilot project to monitor incident reports related to cribs and other infant sleep products. We summarize important aspects of the incident data in this section, but refer interested parties to the preamble to the proposed rule for more complete details. Data from EWS is not meant to provide an estimate of all crib-related incidents that have occurred during any particular time period. We used the EWS data for this rulemaking because, due to the larger number of follow-up investigations assigned from EWS incident reports, the EWS incidents provided the best illustration of the hazard patterns associated with incidents involving cribs.

Between November 1, 2007 and April 11, 2010, the Commission received reports through EWS of 3,584 incidents related to cribs. The year of the incident associated with these reports ranged from 1986 through 2010. However, very few crib-related incidents that occurred before 2007 are reflected in the EWS.

Of the 3,584 incidents reported through the EWS, CPSC staff identified 2,395 incidents as clearly involving full-size cribs; 64 incidents as clearly involving non-full-size cribs; and 1,125 incidents as lacking sufficient data for

CPSC staff to determine whether they involved full-size or non-full-size cribs. The prevalent hazards reported in these incidents are common to all cribs, regardless of size. Given the predominance of incident reports identified as involving full-size cribs, the 1,125 incidents in which the size of the crib could not be determined are grouped with the category of full-size cribs.

#### 1. Full-Size Cribs (Includes Cribs of Undetermined Size)

This section discusses incident data in the 3,520 reports from the EWS involving full-size cribs and cribs of an undetermined size. Of these 3,520 incident reports, there were 147 fatalities, 1,675 nonfatal injuries, and 1,698 noninjury incidents. (The noninjury incidents range from those that potentially could have resulted in injuries or fatalities to general complaints or comments from consumers). Because reporting is ongoing, the number of reported fatalities, nonfatal injuries, and noninjury incidents presented here may change in the future.

##### a. Fatalities

Between November 1, 2007 and April 11, 2010, a total of 147 fatalities associated with full-size (and undetermined size) cribs were reported to the Commission. A majority of the deaths (107 out of 147, or almost 73 percent) were not related to any structural failure or design flaw of the crib. There were 35 fatalities attributable to structural problems of the crib. Nearly all (34 of the 35) were due to head/neck/body entrapments. More than half of these (18 out of 35) were related to drop-side failures. Almost all of the crib failures—whether they occurred due to detachments, disengagements, or breakages—created openings in which the infant became entrapped.

##### b. Nonfatal Injuries

Of the 3,520 incident reports involving full-size (and undetermined size) cribs, 1,675 reported a crib-related injury. The vast majority (97 percent) of these injuries were not serious enough to require hospitalization. Approximately half of those that did require hospitalization involved limb or skull fractures and other head injuries resulting from falls from cribs. Most of the remaining injuries resulted from children getting their limbs caught between crib slats, falling inside the crib and hitting the crib structure, or getting stuck in gaps created by structural failures.

##### c. Hazard Pattern Identification

CPSC staff considered all 3,520 incidents (includes fatalities, nonfatalities, and non-injury incidents) involving full-size cribs (including cribs of undetermined size) to identify hazard patterns related to these incidents. CPSC staff grouped these incidents into four broad categories: (1) Product-related; (2) non-product-related; (3) recall-related; and (4) miscellaneous. More detail is provided in the Epidemiology staff's memorandum that was part of the CPSC staff's briefing package for the proposed rule, available on the CPSC Web site at: <http://www.cpsc.gov/library/foia/foia10/brief/104cribs.pdf>.

Approximately 82 percent of the 3,520 incidents reported some sort of failure or defect in the product itself. In order of frequency, the hazard patterns reported included:

- Falls from cribs (approximately 23 percent of the 3,520 incidents);
- Crib drop-side-related problems (approximately 22 percent of the incidents and about 12 percent of all reported fatalities);
- Infants getting their limbs caught between the crib slats (approximately 12 percent of the incidents);
- Wood-related issues, such as slat breakages and detachments (approximately 12 percent of the incidents);
- Mattress support-related problems (approximately 5 percent of the incidents);
- Mattress fit problems (approximately 3 percent of the incidents);
- Paint-related issues (approximately 2 percent of the EWS incidents); and
- Miscellaneous problems with the crib structure (approximately 3 percent of incidents), including non-drop-side or drop gate failures, sharp catch-points, stability and/or other structural issues.

#### 2. Non-Full-Size Cribs

This category includes portable cribs and other cribs that are either smaller or larger than the dimensions specified for full-size cribs. For its review of incident data, CPSC staff included in the category of non-full-size cribs only those cribs that it could positively identify as non-full-size cribs. CPSC staff is aware of 64 incidents related to non-full-size cribs that have been reported between November 1, 2007 and April 11, 2010. Among these incidents, there were 6 fatalities, 28 injuries, and 30 noninjury incidents. Because reporting is ongoing, the number of reported fatalities, nonfatal injuries, and noninjury incidents presented here may change in the future.

#### a. Fatalities

Of the six fatalities, three were attributed to the presence of a cushion/pillow in the sleep area. One fatality was due to the prone positioning of the infant on the sleep surface. One fatality resulted from the infant getting entrapped in a gap opened up by loose/missing screws. Very little information was available on the circumstances of the last fatality.

#### b. Nonfatal Injuries

Among the 28 nonfatal injuries reported, only 2 required any hospitalization. Most of the remaining injuries, which include fractures, bruises, and lacerations, resulted from children falling and hitting the crib structure while in the crib, falling or climbing out of the crib, and children getting their limbs caught in the crib slats.

#### c. Hazard Pattern Identification

CPSC staff considered all 64 incidents (including fatalities, nonfatalities, and non-injury incidents) involving non-full-size cribs to identify hazard patterns related to these incidents. The hazard patterns are similar to those among full-size cribs. In 72 percent of the incidents, product-related issues were reported. These primarily involved falls from cribs, limbs becoming caught between slats, issues related to drop-sides and non-drop-sides (such as detachments and operation/hardware issues), and wood-related issues (including three slat detachments). This category includes one fatality, which was related to non-drop-side hardware.

#### D. Voluntary and International Standards

As discussed in the preamble to the proposed rule (75 FR at 43311 through 43312), CPSC staff reviewed requirements of existing voluntary and international standards related to cribs. The primary standards currently in effect are the ASTM standards for full-size and non-full-size cribs, a Canadian standard, and a European standard. Underwriters Laboratories, Inc. ("UL") has a crib standard, UL 2275. However, the UL standard was not followed by crib manufacturers and is no longer an active standard.

##### 1. The ASTM Standards

ASTM first published its voluntary standard for full-size cribs, ASTM F 1169, *Standard Specification for Full-Size Baby Crib*, in 1988, and has revised it periodically since then. In 2009, ASTM revised the standard significantly, including a limitation on movable sides that effectively eliminates

the traditional drop-side design in which the front side of the crib can be raised and lowered. On June 1, 2010, ASTM approved the current version of its full-size crib standard with a slight change to the name, ASTM F 1169-10, *Standard Consumer Safety Specification for Full-Size Baby Cribs*.

In 1997, ASTM first published a standard for non-full-size cribs, ASTM F 1822, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs*. In June 2002, in order to group products with similar uses, ASTM combined its non-full-size crib standard, ASTM F 1822-97, with its play yard standard (F 406-99, *Standard Consumer Safety Specification for Play Yards*) to create ASTM F 406-02, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards*. ASTM revised ASTM F 406 several times subsequently. On June 1, 2010, ASTM approved the version of its non-full-size crib standard, ASTM F 406-10, upon which the CPSC's proposed standard was based. After we published our proposed rule in the *Federal Register* on July 23, 2010, ASTM revised its non-full-size crib standard again and approved ASTM F 406-10a on October 15, 2010. ASTM F 406-10a includes many of the changes which the proposed rule would have made to ASTM F 406-10, rearranges the order of some provisions, and contains some other editorial changes. Consequently, the final rule's non-full-size cribs standard is based on ASTM F 406-10a. We discuss differences between the proposed rule and ASTM F 406-10a in section F of this preamble.

##### 2. International Standards

Several performance requirements in the crib standards derive from, or are similar to, requirements in Health Canada's crib standard, SOR/86-969, and the European standard, EN 716. These include the cyclic side (shake) test and the mattress support system vertical impact test from the Canadian standard, and the slat/spindle strength test from EN 716 requirements. (For more details on how the crib standards are based upon or are more stringent than certain international standards, we refer interested parties to the preamble to the proposed rule (75 FR at 43312).)

#### E. Response to Comments on the Proposed Rule

In the *Federal Register* of July 23, 2010 (75 FR 43308), the Commission published a proposed rule that would establish standards for full-size and non-full-size cribs. We received over 50 comments. These included comments from child care organizations, the

Juvenile Products Manufacturers Association ("JPMA"), public interest groups, and individual consumers. The comments and the CPSC's responses are discussed below in section E.1 through E.31 of this document. To make it easier to identify comments and our responses, the word "Comment," in parentheses, will appear before the comment's description, and the word "Response," in parentheses, will appear before our response. We also have numbered each comment to help distinguish between different comments. The number assigned to each comment is purely for organizational purposes and does not signify the comment's value, importance, or the order in which it was received.

##### 1. Misplaced Focus on Drop-Sides

(*Comment 1*)—One commenter stated that focusing on drop-side cribs was misplaced. Rather, she suggested, new crib standards should focus on the structure and hardware of cribs.

(*Response 1*)—The CPSC agrees that the safety of the drop-side is just one issue and other issues, especially cribs' structural integrity and hardware, are crucial to crib safety. Although the prohibition of traditional drop-side cribs has received a great deal of attention, the CPSC's new crib standards have numerous provisions, particularly concerning crib hardware, which will improve the safety of cribs. See the discussion of the standards' requirements in section G of this preamble.

##### 2. Applicability of Standards to Cribs in Child Care Centers

(*Comment 2*)—Several commenters associated with child care organizations or child care centers said that the crib standards should not apply to cribs in child care centers. They gave reasons such as: Caregivers are present at all times when babies are in cribs at child care centers; cribs in child care centers are specialty cribs that do not have the same safety issues as home cribs; and state licensing and safety requirements safeguard babies in cribs in child care centers. Some commenters stated that the crib standards are unique because, unlike other standards that hold product manufacturers or distributors responsible, the crib standards hold child care centers (which are consumers buying the cribs from these manufacturers and distributors) responsible.

(*Response 2*)—Section 104(c)(1) of the CPSIA states that it "shall be a violation of section 19(a)(1) of the Consumer Product Safety Act for any person to which this subsection applies to

manufacture, sell, contract to sell or resell, lease, sublet, offer, provide for use, or otherwise place in the stream of commerce a crib that is not in compliance with a standard promulgated under" section 104(b) of the CPSIA. Section 104(c)(2) of the CPSIA identifies various entities that are subject to section 104(c) of the CPSIA, and it expressly mentions persons who "based on the person's occupation, holds itself out as having knowledge or skill peculiar to cribs, including child care facilities and family child care homes." The fact that a child care center may be subject to state regulation and licensing, or that caregivers at such facilities may be required to supervise babies in cribs, does not alter the applicability of section 104(c) of the CPSIA to child care facilities and family child care homes.

As for the commenter's claim that cribs in child care centers are different from those used in homes, the information that the CPSC has indicates that cribs used in child care centers are often substantially the same as cribs used in homes. CPSC staff has reports of incidents involving cribs in child care centers; the hazard scenarios associated with these incidents are the same as those for incidents that occur in homes.

### 3. Waiving Requirements for Child Care Centers

(*Comment 3*)—One commenter suggested waiving any requirement to replace cribs in child care and Head Start programs that comply with state licensing or national accreditation requirements, which mandate that all sleeping infants be within sight or sound of a caregiver at all times; and another commenter suggested a waiver of enforcement for cribs that are used in child care programs that comply with state licensing standards that require sleeping infants to be within sight and sound of a caregiver at all times. Some commenters asked that older cribs in child care centers be exempted from the rule (or allowed an enforcement waiver), as long as the cribs had not been recalled, thus shifting the burden of replacement from child care centers to manufacturers.

(*Response 3*)—We do not have the authority to exempt or waive requirements for cribs in child care centers or to allow older cribs to be replaced through recalls alone. As discussed in response to comments concerning the effective date at section G.10 of this document, we do have discretion to provide additional time for child care centers to come into compliance with the standards.

### 4. Crib-Related Incidents in Child Care Centers

(*Comment 4*)—One commenter recognized that there have been injuries and fatalities associated with drop-side cribs, but stated that banning drop-side cribs in child care settings would not address this threat to young children. The commenter stated that, because of the safety checks on cribs and monitoring of sleeping children in child care centers, issues with drop-side cribs do not occur in such programs as they might in other settings.

(*Response 4*)—As stated in our response to comment 2 in section E.2 of this document, section 104(c) of the CPSIA expressly mentions child care facilities and family child care homes as entities subject to the crib standards. The statute does not authorize us to consider safety checks, or the monitoring of sleeping children in child care facilities, or the rate at which safety issues might arise, or to exempt child care facilities for such reasons.

Additionally, our review of the incident data reported to the CPSC from November 1, 2007 through April 11, 2010, shows that at least two reports of incidents in child care facilities were received. Each report involved the structural failure of multiple drop-side cribs. Although no injuries were reported in these incidents, they presented the potential for serious injury or fatality.

(*Comment 5*)—Some comments noted that sleeping infants are not left unsupervised in drop-side or other types of cribs in child care centers and noted further that children in child care centers are in cribs only when they are sleeping.

(*Response 5*)—The CPSC has received at least 11 reports of injuries involving cribs in child care facilities, in which the injured infant was treated in a hospital emergency department. These injuries, usually due to a fall from a crib or an impact with the crib, were sustained while the infant was being taken care of at a child care facility. Clearly, the infants were not sleeping if the injuries were due to infants falling or impacting the crib.

### 5. Commercial vs. Noncommercial Cribs

(*Comment 6*)—Several commenters suggested that the crib standards should distinguish between "commercial" and "noncommercial" cribs. One commenter asked if there should be different crib standards for child care providers or other nonfamily situations, where cribs sustain more use, similar to the distinction between home and public playground equipment (the CPSC has

separate guidelines for home and public playground equipment).

(*Response 6*)—Section 104 of the CPSIA does not make a distinction between commercial and noncommercial cribs but, rather, requires that all cribs within the scope of section 104(c) of the CPSIA—which explicitly includes cribs provided for use in child care centers and places of public accommodation—meet the crib standards promulgated by the Commission under section 104(b) of the CPSIA. Although ASTM has a voluntary standard applicable to "commercial cribs" (ASTM F 2710–08), section 104 of the CPSIA does not make such a delineation. Furthermore, ASTM's commercial crib standard requires commercial cribs to comply with either ASTM F 406 or ASTM F 1169, and this final rule adopts, with some modifications, both ASTM F 406 and ASTM F 1169. In its crib rulemaking, the Commission is following the specific statutory direction and definitions in the CPSIA. In contrast, when developing guidelines for public and home playgrounds, the Commission was not responding to a statutory mandate, and thus, it had the discretion to distinguish between public and home playground equipment.

### 6. Mesh/Nonrigid Full-Size Cribs

(*Comment 7*)—One commenter suggested that the full-size crib standard should apply to rigid cribs only, and not be applicable to full-size cribs that have sides or ends made from mesh, fabric, or another nonrigid material. The commenter referred to the scope of the proposed non-full-size crib standard, which is limited to rigid products only.

(*Response 7*)—We are not aware of any full-size mesh/fabric cribs currently being sold. In contrast, there are numerous non-full-size mesh/fabric cribs (*i.e.*, play yards) currently on the market. The CPSC agrees that for non-full-size products, different requirements for rigid versus mesh products are necessary because the construction differences may make it impossible to test both the same way. The ASTM standard for non-full-size cribs includes both rigid and mesh/fabric non-full-size cribs. Although there are requirements in the ASTM standard specifically intended for mesh/fabric products, the scope of the CPSC's standard for non-full-size cribs is limited to rigid products because section 104 of the CPSIA explicitly lists cribs and play yards as separate categories of products. Therefore, we plan to develop a separate standard for mesh/fabric non-full-size cribs (*i.e.*, play yards). Currently, there is no voluntary

standard or proposed regulation specifically for mesh/fabric *full-size* cribs. However, the CPSC's standard for full-size cribs contains general, labeling, and some performance requirements that would be applicable to any full-size crib, whether it has rigid or mesh/fabric sides. Thus, excluding these products from the scope of the CPSC's full-size crib standard, as suggested by the commenter, would leave such cribs unregulated. Absent a voluntary standard that covers mesh/fabric full-size cribs, it is not advisable to exclude these products from the scope of a full-size crib regulation.

### 7. Play Yards

*(Comment 8)*—Some commenters were concerned that the rule might result in child care centers or consumers using play yards instead of cribs. These commenters implied that play yards are not as safe as cribs for sleeping infants. One commenter, who is child care provider, stated that she uses only play yards, not cribs.

*(Response 8)*—The final rule does not address any safety aspects of play yards. Play yards are a separate product category under section 104 of the CPSIA, and we intend to develop a separate standard for play yards in the future.

*(Comment 9)*—Two commenters expressed concern about using play yards as an alternative to cribs in day care centers as a way of mitigating costs to child care providers. Both felt that this alternative might be perceived as advocating the use of play yards, which they felt would decrease the safety and quality of care. Some commenters noted that play yards are not an option for some child care centers due to state licensing laws.

*(Response 9)*—Although the CPSC does not advocate the use of play yards instead of cribs in child care environments, issues regarding the possible use of play yards or other products (in place of cribs) and state laws are outside the scope of this rulemaking. This final rule establishes standards for full-size and non-full-size cribs.

### 8. Economic Impact of CPSC's Crib Standards on Child Care Centers

*(Comment 10)*—Several commenters expressed concern that the proposed rule, if finalized, would place a large financial burden on child care centers, particularly given the tight budgets and lethargic economy. One commenter estimated that the total one-time cost to day care centers to replace their cribs could be as much as \$600 million, with an additional \$2.5 million required for

disassembly, disposal, and assembly. The same commenter noted that the preamble to the proposed rule concluded that "the proposed changes to the voluntary standard should not significantly affect replacement costs" (75 FR at 43319). Generally, commenters objected to purchasing new cribs to replace recently-purchased cribs that had no safety issues. Several commenters were concerned that some child care centers might be driven out of business.

*(Response 10)*—We recognize the potentially large impact the crib standards could have on child care providers. The Regulatory Flexibility Act discussion in the preamble to the proposed rule invited comment on the market for cribs and the amount of time manufacturers would need to meet current market demand and additional demand created by child care centers and other places where cribs are provided for use (75 FR at 43316). It also discussed the possible impact on small child care centers and stated that the impact "could be significant on some small child care centers if they had to replace their cribs all at once" and that some might decide to replace their non-full-size cribs with play yards (*Id.* at 43318). The initial regulatory flexibility analysis in the briefing package for the proposed rule assumed that most, if not all, child care centers use smaller, non-full-size cribs; thus, staff did not expect a significant impact associated with full-size cribs. (See Tabs F and G of the staff's briefing package on the proposed rule at: <http://www.cpsc.gov/library/foia/foia10/brief/104cribs.pdf>). In the initial regulatory flexibility analyses, all of the effects on child care centers were considered in the analysis for non-full-size cribs.

We have modified our Regulatory Flexibility Act discussion in the final rule. CPSC staff's analysis using data provided by the Early Care and Education Consortium (ECEC), the National Association for Family Child Care (NAFCC), and the National Head Start Association (NHSA), yields one-time replacement costs of approximately \$387 million. The discussion also has been modified to take into account specifically the possibility that child care centers might go out of business, as well as the impact of the final rule on families using child care.

*(Comment 11)*—Several commenters expressed concern about the ability of child care providers to pass on costs to their clients to reduce the economic impact of the final rule. These commenters stated that they felt the analysis in the preamble to the proposal did not appreciate child care centers'

limited ability to pass on such costs. The commenters noted that most of their clients are struggling already to pay for child care. (The price range for child care cited by one commenter was from \$4,550 to more than \$18,000 per year.) The commenters added that most child care centers only have a few customers, so their ability to raise large sums of money by increasing the cost to clients to defray the cost of replacement cribs is limited.

*(Response 11)*—The Regulatory Flexibility Act discussion in the preamble to the proposed rule did not suggest that all cost increases associated with the proposed rule would be passed on to consumers, only that some portion of those costs might be passed on, thereby mitigating the impact of the proposed rule on small child care centers (see 75 FR at 43318). We recognize that the economic impact on any given entity may vary, depending on a variety of factors, such as the size of the affected entity, the presence or absence of competitors that may affect an entity's ability to raise prices or pass along costs to its customers, and the types of cribs purchased and an affected entity's ability to comply with the standards.

*(Comment 12)*—One commenter stated that, despite the high quality of the cribs used at its child care center and a lack of incidents there, the child care center had been informed that its cribs do not meet the proposed standard. The commenter expressed concern that "the standards could be eliminating a company that produces extremely high quality materials and is very safety conscious."

*(Response 12)*—The final rule may have the effect of eliminating particular crib models from the marketplace. However, these crib models likely will be replaced by modified versions that comply with the new standards. The final rule is unlikely to drive many manufacturers out of business, particularly those with otherwise high quality cribs that may require only minimal design modifications to come into compliance with the new standards. This is especially the case with manufacturers that supply many products other than just cribs to the market, including the company mentioned in the comment.

### 9. Fixing or Retrofitting Cribs

*(Comment 13)*—Three commenters (all of whom were child care providers) requested that the CPSC provide methods of checking whether their current cribs would meet the new standards. They also requested that the final rule include descriptions of how to

fix cribs that fail a particular requirement (*i.e.*, retrofit), as a way to limit the number of new cribs that must be purchased. These comments mentioned retrofits to handle drop-side cribs in particular.

*(Response 13)*—Section 104(c) of the CPSIA requires child care centers to provide cribs that comply with the new crib standards once they are in effect. The standards not only prohibit traditional drop-sides, but they also have complex requirements, such as those for hardware, that make it difficult to determine whether an existing crib would meet the new standards without testing that individual crib. Because the crib would be destroyed in the process of testing, it is impossible to test each crib. Therefore, we cannot provide methods to check existing cribs for compliance with the CPSC's new crib standards. We also note that retrofits that would be appropriate for a recall might not be sufficient to meet the requirements of the new standards. For example, manufacturers have offered immobilizers in the past to address drop-side hazards on recalled cribs. This retrofit would not be sufficient to meet the crib standards. An immobilizer merely covers up part of the drop-side hardware and makes the drop-side unusable while in place, but it would not prevent a user from removing the retrofit and using the drop-side again.

#### 10. Effective Date/Enforcement Policy

*(Comment 14)*—Most commenters supported the proposed six-month effective date for manufacturers and distributors of cribs, except one commenter requested (without providing any explanation or support) one to two years for manufacturers and distributors of non-full-size cribs. Many commenters, however, requested a longer effective date for child care centers to allow them to spread the costs of compliance over a longer period of time and to ensure that there are a sufficient number of compliant cribs available for purchase. Most of these commenters suggested an additional six months for cribs in child care centers, and two commenters suggested a five-year effective date for child care centers.

*(Response 14)*—We recognize that complying with the new crib standards may place a significant financial burden on child care centers. Nevertheless, section 104(c) of the CPSIA requires that child care centers provide cribs for use that meet the CPSC's new crib standards when these standards are in effect. The Commission recognizes that child care facilities face unique circumstances. Collectively, child care centers purchase and provide for use hundreds of

thousands of cribs. Having a sufficient number of cribs is essential to their business because, if they provide care for infants, they cannot operate without providing cribs for their customers' use.

Based on a 2005 U.S. Department of Education's National Household Education Surveys Program ("NHES") Early Childhood Program Survey, approximately 774,000 children under the age of one year old are in nonparental, nonrelative child care arrangements each week. We understand from commenters that the typical life cycle of a crib used in a child care center is 10 years. Thus, we estimate that, in any given year, child care providers replace approximately 77,000 cribs. Assuming that one crib must be provided for each child under the age of one, at least 700,000 cribs—ten times more than the annual average—would be needed to replace noncompliant cribs when the new standards take effect. This demand would be added to the demand of private households for new compliant cribs and any cribs replaced by the 53,000 places of public accommodation covered by section 104 of the CPSIA.

The Commission has the discretion to set the effective date for the crib standards, and could set an effective date longer than six months for all entities that are subject to the standards, or could provide a longer period just for child care centers to comply with the new crib standards. Balancing all of the concerns expressed by the commenters, the final rule provides an additional 18 months for child care facilities, family child care homes, and places of public accommodation to comply with the new standards.

*(Comment 15)*—One commenter suggested that we establish an enforcement policy that would allow "a practical phased effective date for hospitality and commercial facilities" (the latter being interpreted by the commenter as including child care providers) and distinguish between commercial- and noncommercial-use products.

*(Response 15)*—Section 104(c) of the CPSIA does not distinguish between commercial and noncommercial cribs and does require cribs in child care centers and places of public accommodation to comply with the new crib regulations. As discussed in the previous response, the Commission has discretion to set effective and compliance dates for the new standards.

Although the Commission received numerous comments from child care centers concerning their difficulties with meeting the new crib standards within six months, we did not receive

any comments from hotels or similar places of public accommodation indicating the need for additional time to obtain complying cribs for such establishments. We did receive one comment from JPMA requesting additional time for "hospitality and commercial facilities," noting that the need for these entities to "dispose of their inventories of non-compliant product and repurchase all new replacement products \* \* \* will place a tremendous financial burden on those facilities, requiring an enormous capital investment as a result of the wholesale changes to inventory." Although child care commenters provided detailed information about the number of cribs in child care centers, the normal rate of replacement, and the anticipated costs of complying with the new crib standards, we did not receive such information concerning places of public accommodation. However, places of public accommodation are similarly situated to child care centers in that they must purchase cribs and then provide them for their customers to use and will likely face the same difficulties as child care centers in complying with the new crib standard in a short period of time. Therefore, the Commission is providing a longer compliance period for places of public accommodation as well as child care centers.

#### 11. Effect on Places of Public Accommodation

*(Comment 16)*—Two commenters, neither of which were places of public accommodation nor did they represent places of public accommodation, expressed concern about the potential cost impact on places of public accommodation.

*(Response 16)*—The CPSC believes that while some providers of public accommodation may provide a few cribs for use by customers, the number of non-full-size cribs at any one establishment is likely to be low. Firms may opt to reduce the impact of the rule by ceasing to provide cribs to their customers, not replacing all of their cribs, or providing play yards instead. Therefore, it is unlikely that the crib standards will have a significant impact on a substantial number of firms providing public accommodation. However, we have to expect that some portion of the more than 53,000 places of public accommodation covered by the Act that provide cribs for their customers will replace their cribs to be in compliance with this rule. There could be as many as 160,000 cribs that might need to be replaced. As explained in the previous response, places of public accommodation and child care

centers are similarly situated in some respects, and therefore, the Commission is providing a longer compliance period for places of public accommodation as well as child care facilities, and family child care homes.

#### 12. Expiration Date/Definition of Useful Life of Crib

(*Comment 17*)—One commenter asked whether cribs should have an expiration date, given that many of the identified hazards appear to result from prolonged use. The same commenter asked how one would define the useful life of a crib. For example, would it be defined in terms of the product's age in years, or, how often it had been used? The commenter also asked how the disassembly and reassembly of a crib would be considered, and what effect this would have on the crib's components and hardware.

(*Response 17*)—It would be extremely difficult to include a definition of useful life or to require that manufacturers provide an expiration date for cribs. As recognized by the commenter, the condition of a crib, including the security of components and hardware, can be affected by use. Moreover, each family uses a crib differently, depending on the activity level of each child, the length of time each child uses the crib, and the frequency of disassembling and reassembling the crib. Manufacturing differences and variations in materials among cribs, also might affect a crib's useful life. Thus, even keeping the use conditions identical, two different cribs likely will show wear and tear at varied rates.

#### 13. Crib Mattress Standards/Regulations

(*Comment 18*)—Some commenters expressed satisfaction that ASTM has begun developing a separate safety standard for mattress fit, and they stated their expectation that the CPSC would mandate the voluntary ASTM standard when it is finalized. One comment, submitted on behalf of several organizations and individuals, expressed concern about health and environmental risks that the commenters believed could be associated with the use of certain flame retardants or other potentially harmful chemical agents in the manufacture of crib mattresses. It suggested that the CPSC "ensure that a standard or regulation for crib mattresses address both health and environmental risks that potential hazardous chemicals could pose to infants."

(*Response 18*)—We already have regulations pertaining to the flammability of mattresses, mattress pads, and mattress sets (see 16 CFR

parts 1632 and 1633). Issues regarding flame retardants and other chemicals that may be applied to mattresses are beyond the scope of this rulemaking.

#### 14. International Standards

(*Comment 19*)—One commenter suggested that the CPSC use international standards, or the relevant parts of them, as a basis for our regulation. These include the relevant international standards or technical regulations, such as the Health Canada, EN (European Nation), or ISO (International Standards Organization) crib standards.

(*Response 19*)—CPSC staff has reviewed, compared, and considered a variety of crib standards/regulations, including the three identified by the commenter. In addition, CPSC staff reviewed the Australian/New Zealand crib standard and three voluntary standards, one published by Underwriters Laboratories (which is no longer an active standard), and the two ASTM standards. The CPSIA specifically requires the Commission to promulgate a safety standard that is substantially the same as, or more stringent than, any voluntary standards. The Commission chose the appropriate ASTM voluntary standards for cribs to be the basis for the CPSC's crib regulations.

CPSC staff's review of the international standards or regulations identified vast differences. Thus, assuming that the commenter sought internationally harmonized requirements, even if we were to adopt an international standard or regulation, the differences in the international standards and regulations would not have resulted in harmonization across multiple jurisdictions. The ASTM voluntary standard recently adopted one requirement (the slat/spindle strength requirement) that was based on a similar requirement in the EN standard and two requirements (the cycle test and the mattress support impact test) that are almost identical to ones found in the Health Canada regulation. Other requirements in the ASTM standards are equivalent to requirements in some of the other international regulations.

Regardless, section 104(b) of the CPSIA requires us to promulgate regulations that are substantially the same as voluntary standards or more stringent than such voluntary standards if we determine that the more stringent standards would further reduce the risk of injury associated with durable nursery products. Section 104(b) of the CPSIA does not mention international harmonization of standards. We believe that the ASTM standards, with the

specified modifications, are the most encompassing and robust crib standards and are thus "more stringent" than the ASTM standards alone.

#### 15. Concern About Continually Replacing Cribs

(*Comment 20*)—Some commenters, consisting of child care centers, expressed concern that they would need to replace their stock of cribs every time that ASTM changes its full-size or non-full-size crib standards.

(*Response 20*)—Neither the CPSIA nor the CPSC's crib standards would require replacement of cribs whenever ASTM revises F 406 or F 1169. The CPSIA does require that all cribs that are manufactured, offered for sale, provided for use, or otherwise placed in the stream of commerce meet the crib standards issued by the CPSC. The CPSC's proposed crib standards reference ASTM F 406-10a and ASTM F 1169-10; however, the federal standards do not change automatically whenever ASTM revises its voluntary standards. Rather, to change the federal crib standards, we would need to engage in notice and comment rulemaking procedures and refer to a subsequent version of the ASTM standards.

#### 16. Continued Use of Cribs by Consumers

(*Comment 21*)—One commenter suggested that we include in an Enforcement Policy a clarification that consumers can continue to use cribs that conform to ASTM standards in effect in 2010.

(*Response 21*)—We intend to distribute information and education materials in connection with issuance of the crib standards and will consider such a clarification as part of those materials. Nothing in the CPSIA, or in the crib standards, requires consumers to replace their cribs with cribs that comply with the new crib standards. The CPSIA requires action by those who manufacture, sell, lease, or otherwise distribute cribs in commerce, and by child care centers and places of public accommodation.

#### 17. Miscellaneous Clarifications About Use of Certain Cribs/Play Yards

(*Comment 22*)—A few commenters asked for clarification or made incorrect interpretations of the proposed rule or the CPSIA. These comments mostly dealt with the requirements as they would apply to child care centers. One commenter asked if she would no longer be able to use wooden cribs or play yards. Another commenter incorrectly understood that consumers would be

required to replace their cribs, and she objected to this.

(*Response 22*)—The CPSIA and the crib standards do not dictate the kind of sleeping environment—full-size crib, non-full-size crib, or play yard—that a child care center must provide. Further, the crib standards do not dictate the type of material from which a crib must be made (e.g., wooden, metal, or plastic). The CPSIA does require that any rigid crib, whatever it is made of, comply with either the full-size or non-full-size crib standard. Finally, nothing in the CPSIA, or in CPSC's crib standards, would require consumers to replace their cribs with cribs that comply with the new crib standards.

#### 18. Testing by Firewalled Labs

(*Comment 23*)—Several consumer groups suggested that the Commission not accept any “firewalled labs” to do testing for compliance with the crib standards because cribs “should meet the highest safety standards.”

(*Response 23*)—Section 102(a)(2) of the CPSIA generally requires that manufacturers and private labelers of children's products (such as cribs) that are subject to a children's product safety rule submit samples of their products for testing by a third party for compliance to applicable children's product safety rules. Section 102(f)(2)(D) of the CPSIA allows the Commission to accredit a third party conformity assessment body (often referred to as a “testing laboratory” or “lab”) that is owned, managed, or controlled by a manufacturer or private labeler as a third party testing lab if it meets certain requirements. Such testing labs are known as “firewalled” labs. If a firewalled lab meets the necessary requirements, its testing should be equivalent to testing conducted by any other third party testing lab. Thus, section 102 of the CPSIA does not prohibit the use of firewalled labs.

#### 19. Formaldehyde Standards for Wood Products Act

(*Comment 24*)—One commenter stated that composite woods used in cribs should comply with the Formaldehyde Standards for Wood Products Act (Pub. L. 111–199) and that the CPSC should require that all cribs using composite wood be tested for compliance to these standards.

(*Response 24*)—The Formaldehyde Standards for Wood Products Act was enacted on July 7, 2010. It amends the Toxic Substances Control Act and establishes formaldehyde emission standards for hardwood, plywood, medium density fiberboard, and particle board that is sold, supplied, offered for

sale, or manufactured in the United States. (The Act provides numerous exemptions from these standards.) The standards are to be administered by the U.S. Environmental Protection Agency (EPA). The law makes no specific mention of cribs. However, it appears that if cribs are made of the types of wood subject to this law, the formaldehyde emission standards would apply to them. If manufacturers have questions about the applicability of the emission standards to their cribs, they should contact the EPA.

#### 20. Soft Bedding

(*Comment 25*)—One commenter supported the proposed crib standards and suggested that the Commission also look into regulating soft infant bedding products, such as bumper pads.

(*Response 25*)—As noted in the staff's briefing package that accompanied the proposed rule, extra bedding in cribs accounted for the majority of infant deaths in cribs or other sleeping products, but there are no performance requirements for cribs that can address this issue. (See page 12 of CPSC staff's briefing package for the proposed rule at: <http://www.cpsc.gov/library/foia/foia10/brief/104cribs.pdf>.) Education and information may be a more appropriate way to address the hazards associated with extra bedding. For instance, the recently released CPSC video on safe sleeping, (<http://www.cpsc.gov/cpsc/pub/prerel/prhtml11/11021.html>), is an example of an educational tool designed to bring more awareness to new parents of the dangers of extra or soft bedding.

#### 21. Slat Strength Test Changes for Folding Crib Sides

(*Comment 26*)—One commenter noted that the spindle/slat testing procedure does not consider testing crib sides that fold either for access to the occupant or for storage and transport and that, as written in the proposed standard, the test method does not specify testing procedures for such segmented sides. The commenter suggested adding the following language for the full-size and non-full-size crib standards: “For cribs incorporating folding or moveable sides for purposes of easier access to the occupant, storage and/or transport, each side segment (portion of side separated by hinges for folding) shall be tested separately as described above.”

(*Response 26*)—CPSC staff worked in cooperation with the ASTM task group, which created the language suggested by the commenter, to address this issue. Although the defined testing requirements in the proposed rule

would work adequately for a crib side with no moving segments, it would not define clearly testing procedures for segmented sides. The intent of the slat strength test is to verify that the crib slats can withstand 80 lbf. If a crib side includes a hinge or other folding mechanism, the force applied to the slat could be transferred to the hinge and unintentionally test the structural integrity of the hinge and/or hinge attachment. We have not received reports of any incidents regarding crib sides with hinges or other folding mechanisms. The final rule includes new provisions in both the full-size and non-full-size crib standards, based on the language provided by the commenter, to clarify the spindle/slat testing procedure for cribs with folding or movable sides.

#### 22. Definition of Folding vs. Movable Sides

(*Comment 27*)—One commenter asked about the difference between movable sides and folding sides as defined in the voluntary full-size crib standard, ASTM F 1169–10.

(*Response 27*)—ASTM F 1169–10 defines a folding side as a side or part of a side that folds or pivots in order to provide easier access to an occupant. An example of this is a crib with a drop-gate design, where the top portion of one side folds over by use of a hinge or hinges. A movable side is also a side that is used to provide easier access to an occupant and is any design other than a folding side.

#### 23. Rocking Crib Test Procedure

(*Comment 28*)—One commenter asked how we plan to apply the proposed crib standard to cribs that are built with rockers, a design that is not addressed explicitly by ASTM F 1169–10. The commenter noted that such a product could be a “super-sized” cradle or rocking bassinet, whose interior dimensions meet that of a full-size crib, or perhaps a glider-style crib. The commenter stated that it would make sense for the crib to be arrested during testing so that the crib does not rock, but the commenter felt that this was not clear in the proposed rule.

(*Response 28*)—We find that the current language in the standard is sufficient and clearly states that, for each dynamic test requirement, the crib must be mounted rigidly prohibiting or arresting any movement of the crib during all phases of the test procedure. Furthermore, it would be intuitive for test laboratories that a rocking crib must be secured to arrest any motion in the vertical or horizontal direction. Manufacturers and test labs have been

manufacturing and testing non-full-size rocking cribs for some time now, and we are not aware of any clarity requested or needed for testing existing non-full-size rocking cribs or potentially newly-designed full-size rocking cribs.

#### 24. ASTM Provision Concerning Retightening Screws and Bolts

(Comment 29)—Numerous commenters supported the proposed rule's exclusion of the provision in ASTM F 1169–10 concerning retightening of screws between tests, noting that it will enhance crib safety. One commenter, however, disagreed with exclusion of the hardware retightening provision. The commenter stated that the dynamic tests, namely the shake test, vertical mattress support impact test, and the crib side rail impact test are designed to simulate and accelerate the use and abuse of the crib. The commenter noted that, "absent test data to support a contrary position, tightening of the screws is consistent with the ASTM requirements and CPSC's own historic test practices." One commenter stated that CPSC staff has not had the time to evaluate the efficacy of not removing the retightening allowance.

(Response 29)—We strongly disagree with the commenter opposing exclusion of the hardware retightening provision. It is true that the purpose of accelerated life cycle tests is to accelerate the degradation rate of a product under known use conditions. However, the accelerated tests that are required in both the full-size and non-full-size crib standards are not overly stringent. The combination of the shake test (to simulate a child standing and shaking the top of a side rail), the vertical mattress support impact test (child jumping), the crib side rail impact test (child climbing outside of rail), and the slat/spindle strength test (child and/or sibling falling against or kicking slats) comprise a laboratory simulation of a lifetime of use. The shake test parameters are based on a lifetime of use of only 18 months, or use by just one child. The majority of cribs are used for two and three children, and some are in use for 15 years or longer. Furthermore, the accelerated life cycle tests include test parameters for foreseeable use of the product. Foreseeable use includes a child shaking the side rails, jumping on the mattress, climbing on the outside of the side rails, or falling or kicking the crib slats.

As for the commenter's statement that CPSC staff has not had the time to evaluate the efficacy of not removing the retightening allowance, we disagree. First, we conducted initial tests to verify

the effects of the vertical mattress support impact and crib side rail impact tests on fasteners loosened during the cyclic side shake test. We intentionally backed out fasteners one-quarter and one-half turn, chosen at random on three full-size and two non-full-size cribs, prior to mattress support and side impact testing. In summary, the side rail impact test severely affected fasteners that lost their seated preload, approximately one-half turn and greater. Fasteners that were loosened less than one-half turn maintained sufficient preload to withstand the side impact test vibrations applied to the lower rail. If the fasteners that loosened after the crib side impact test had been retightened beforehand, a potentially dangerous condition, such as a hazardous gap created by loosened hardware, would have gone unnoticed.

Second, we recently had the opportunity to evaluate each proposed performance requirement by participating in the testing of a full-size crib according to the full-size crib standard. Test results showed that the forces exerted on the crib sides during the shake test are not significantly detrimental to loosening hardware. After completion of the shake test on the test crib, two fasteners were noted to have backed out, one about one-eighth of a turn, and one close to one-half a turn. Neither fastener backed out enough to be considered noncompliant with the test requirement. In addition, these two fasteners did not back off any further after the mattress support and crib side impact testing. However, after the crib side impact test, another fastener, a wing nut securing the mattress support, backed off several turns, creating about a three millimeter separation, which is noncompliant with the requirement. Therefore, the crib ultimately failed due to a primary component attached by a screw that separated more than one millimeter. It is important to note that the assembly envelope around the wing nuts was confined severely by the proximity of the mattress support frame to the side slats. This made it difficult to ensure that adequate torque was applied during crib assembly. Results such as these reemphasize the importance of not allowing retightening of fasteners during testing, because it is foreseeable that a consumer will have similar difficulty tightening a fastener in a confined space.

It is also important to note that ASTM F 1196–10 and F 406–10a include a new hardware and fasteners requirement, which requires that crib hardware include a locking device or method for impeding loosening. This will reduce

further the need for the retightening allowance, especially with crib designs that utilize fasteners that are difficult to access.

In summary, we strongly disagree with the request to allow retightening of fasteners. The majority of crib side rail corners are attached with one screw. Loosening just one screw can result in subsequent detachment of the side rail corner, creating a hazardous gap. There have been at least 10 fatalities where loose screws have contributed to the death of a child. After drop-sides, loose screws are the second highest cause of fatalities associated with the structural integrity of cribs. It is important that fasteners remain secure during the useful life of the crib.

#### 25. Captive Hardware

(Comment 30)—Some commenters suggested that the hardware used for assembly remain captive in the key structural components when a crib is disassembled to reduce the chance of losing the hardware and of owners subsequently substituting inappropriate hardware for the hardware that was provided originally with the crib.

(Response 30)—Captive hardware typically includes a threaded insert with a captive screw on the mating component. A few of the advantages of captive hardware include: Prevention of lost hardware, accurate and repeatable assembly of primary structural components, and ease of assembly. Crib designs using captive hardware, especially for primary components, such as side rails, could minimize the chance of screws loosening, allowing components to detach and create an entrapment hazard. In addition, captive hardware could: (1) Make assembly of cribs easier; (2) minimize the chance of a consumer replacing a lost screw with an incorrect or improper substitute; and (3) reduce the chance of a consumer misassembling the crib.

Although, there appear to be many advantages to using captive hardware on cribs, there are several disadvantages as well. First, if a captive screw ever becomes damaged or is inadvertently bent or pulled from an external force while in the disassembled state, it may be difficult or impossible to reassemble the crib component with the damaged screw or to remove and reinstall a replacement captive screw. Second, requiring captive hardware to attach a mattress support could result in more complicated designs or extra hardware because one main component of a full-size crib, the mattress support, typically is designed to be installed in different positions (levels).

Although the advantages of using captive hardware may seem to outweigh the disadvantages, we conclude that it is premature to mandate the use of captive hardware. We encourage manufacturers and ASTM to investigate the use of captive hardware systems on cribs and note that some manufacturers already are employing or considering using such designs.

#### 26. Test Mattress for Non-Full-Size Crib Mattress Support Test

(Comment 31)—One commenter expressed concern about the requirement for non-full-size cribs to conduct the mattress support testing (dynamic impact) with a specific test mattress for each product, as opposed to conducting this test with the mattress supplied with each crib. The commenter was concerned that testing with such a mattress may be less stringent than testing with the mattress supplied with the product. The commenter also was concerned that the provision could require test labs to have multiple test mattresses to suit all different dimensions of non-full-size cribs. This, the commenter stated, could increase the time and costs of testing.

The commenter recommended using the mattress supplied with the product in the dynamic testing. Alternatively, the commenter suggested: (1) stating in the final rule that a test mattress be large enough to accommodate the impactor to be used in the test, provided the test mattress does not shift in any way during testing or (2) specifying a smaller test mattress that would accommodate all non-full-size cribs currently for sale in commerce, with such dimensions as 18" x 18" x 3."

(Response 31)—In some instances, it may be true that testing non-full-size cribs with a thicker test mattress may be less stringent than testing with the mattress supplied with the product. However, we feel it is more important to use a standard size test mattress for test repeatability between testing facilities. Crib mattresses, especially mattresses provided with non-full-size cribs, are typically entry-level price point mattresses. Foam and mattress stitch variability is inherently high throughout the mattress industry. Furthermore, the mattress thickness, foam density, and other mattress characteristics determine the amount of energy that is transferred to the mattress support system. If a standard test mattress is not required, it is foreseeable that the same non-full-size crib with a supplied one-inch mattress may pass at one test laboratory, but fail at another, due solely to the inherent variability in the mattress manufacturing process.

As for the commenter's concern regarding the potential delay in specifying and ordering a test mattress to correctly fit the non-full-size crib being tested, this issue could be addressed easily if the manufacturer includes a test mattress in the crib's bill of materials at the design stage. This will ensure that all crib components, including the test mattress, are procured at the same time. Thereafter, the test mattress will be available for testing, when needed, eliminating any additional testing delays or increased costs by the test laboratories.

As for the commenter's concern regarding the use of a test mattress just large enough to accommodate the impactor used during the mattress impact test, in general, using any test mattress that is smaller than the interior surface area of the crib will be more stringent than using a mattress equivalent to the crib's interior surface area. A smaller test mattress will transfer more energy into the mattress support system. Specifically, using the 18 inches x 18 inches x 3 inches mattress pad as an example, the impact head, about 8 inches across, when positioned 2 inches from the sides in a corner will hit the test mattress such that it overlaps the midplane or geometric center of the test mattress. Therefore, the test mattress foam will sustain more damage than a larger mattress. Unless replaced for each test, it will soften, thereby transmitting more energy into the mattress support structure. CPSC staff believes that using an undersized mattress will mean less repeatability from lab to lab and different force distributions experienced on each crib.

Once a crib mattress standard is developed, which would diminish the variability currently inherent in the mattress manufacturing process, testing non-full-size cribs with their supplied mattresses may be more workable. However, for the present, we feel that it is more important to ensure repeatability between test laboratories by requiring the same vertical mattress impact test for both full-size and non-full-size cribs.

#### 27. Replacement Mattresses in Non-Full-Size Cribs

(Comment 32)—Several commenters argued for modifying the warning on non-full size cribs, which states, in part: "Use ONLY mattress/pad provided by manufacturer \* \* \*" and instead use language that does not specify the manufacturer of the replacement mattress, because some manufacturers make mattresses for other manufacturers' products. One

commenter supported an immediate change in the language in the warning, and other commenters supported a language change only after a separate mattress standard has been developed.

(Response 32)—The non-full-size crib standard requires all non-full-size cribs to be sold with their own mattress. These comments only relate to a warning label about replacement mattresses, and do not suggest changing the requirement for the mattress supplied with the non-full-size crib. We agree that replacement mattresses made by manufacturers other than the supplier of the non-full-size crib can achieve a satisfactory fit, because there are many common sizes among non-full-size cribs. Furthermore, we agree that, without alternatives, consumers may resort to homemade bedding surfaces when they need to replace a mattress. Pads that are "designed for" a given crib will simulate all dimensions (edge contours, overall area, density, and thickness) of the original mattress supplied by the manufacturer. A mattress with the dimensions necessary for eliminating hazardous gaps in the crib can be manufactured satisfactorily by anyone, not just the original manufacturer. We believe it would be better to address this issue after a mattress standard has been created.

(Comment 33)—A commenter stated that, "If the CPSC mandates that consumers 'use only the mattress/pad provided by the manufacturer' then retailers will be inclined to stop offering alternative mattresses/pads."

(Response 33)—The final rule does not mandate what mattress a consumer can use, and it does not prohibit the sale of replacement mattress pads. The standard simply requires a warning label on the product. The label mentioned by the commenter has been part of the ASTM standard for non-full-size cribs since 1997, and JPMA-certified non-full-size cribs have displayed that warning since that time. The commenter does not provide any data or evidence to support the contention that retailers will stop offering alternative mattresses/pads. Consequently, we will wait to revise this warning label until after a mattress standard has been created, as suggested by other commenters.

#### 28. Misassembly

(Comment 34)—Several commenters suggested that products should be designed so that the consumer-assembled parts cannot be misassembled. They suggested that all parts of a crib should fit only in the correct orientation, and that if

misassembled, the crib would be unusable.

(Response 33)—This suggestion originates from reports of fatal incidents, wherein a crib side was installed upside-down. We have considered such a requirement for the standard, but it would be difficult to implement. Any part of a product can be misassembled, and there are also certain parts of cribs that can be safely used in any orientation. Manufacturers could resort to more preassembly of crib components to meet this commenter's suggestion, but due to the size of an assembled crib and its components, any preassembly would likely be very limited in nature and thus would not solve the problem.

The requirement to make a crib unusable when a part is misassembled is not feasible because consumer modifications and misassemblies could be clever and forceful. Questions to consider include: Can the potential misassembly involve consumer use of hand tools and off-the-shelf fasteners? What if the misassembled part is redrilled to make it fit? How can a manufacturer make a part unusable if misassembled, when the test lab is allowed to ignore the manufacturer's instructions?

It would be difficult, perhaps impossible, to devise a reliable method for testing such a requirement. The testing permutations needed to prove the utility of some parts in all possible configurations would increase the number of tests that would have to be performed, because each part would have to be tested in every possible position. Although we agree that the principle of making parts oriented in only one direction is sound, the testing needed to prove the inability to use the part makes testing the requirement impractical. The requirement in the standard to clearly mark the manufacturer's recommended installation orientation addresses the problem and highlights the design principle for manufacturers.

#### 29. Utility of Drop-Side Cribs

(Comment 35)—One commenter claimed that drop-side cribs are necessary for some caregivers because some caregivers are shorter. The commenter also suggested that professional child care environments should be allowed to use drop-side cribs because infants are supervised constantly when they are in the crib, and the cribs are checked routinely for safety.

(Response 35)—Although we agree that people who are shorter in stature may have more difficulty when placing

infants into cribs than people who are taller, the standard does not prevent crib designers from making cribs that have sides that lower in some manner to help access the crib interior. Cribs with a gate that swings downward on a piano hinge commonly are available and meet the requirements of the standard. Other designs that raise and lower the side of the crib are possible. These alternative designs provide the same convenience as traditional drop-side cribs.

As for the commenter's argument regarding supervision of infants in professional care environments, we agree that professional child care environments generally have a higher level of supervision than the average residential child care environment. However, cribs are designed with the idea that children can be left in them unsupervised. With respect to routine safety checks, CPSC staff does not recommend relying on human behavior for safety, when a design change is available that can eliminate a hazard. Within the field of prevention science, behavioral solutions are always the last choice when designing for safety, because humans are fallible.

#### 30. Fall Hazards

(Comment 36)—A few commenters expressed concern about hazards associated with falls from cribs. These commenters agreed that it is not appropriate to lower the age recommendation or increase the crib side heights. However, the commenters urged the Commission to research these issues and develop innovative solutions, including thorough public education efforts, to limit hazards when children climb out of cribs. Another commenter recommended that the CPSC and ASTM consider setting a maximum crib height, as measured from the top rail to the floor.

(Response 36)—We acknowledge that injuries resulting from crib-related falls rank high in terms of the number of incidents. The new crib standards contain labeling requirements, but not any design or performance requirements, to address this hazard. When discussing height, some distinctions must be made. The side height of a crib is the height from the top of the mattress support (for full-size cribs) in its lowest position, to the lowest part of the top rail. This dimension has a minimum that is set by each crib standard. For instance, it is 26 inches for full-size cribs. This minimum height is required to help prevent children from climbing out of the crib. One also can measure the crib height, which is measured from the floor to the lowest part of the top rail. Neither the

CPSC nor ASTM set a requirement for this measurement (which is the measurement to which the commenter refers).

Setting a maximum crib height will not reduce the number of incidents of children climbing and falling out of cribs (because that is dictated by the side height). Therefore, a maximum crib height will not prevent injuries. A maximum crib height could reduce, perhaps, the severity or number of injuries. Side height requirements for full-size cribs specify a minimum of 26 inches between the top of the mattress support in its lowest position, and the top of the lowest rail. Thus, even if the mattress support was on the floor, the minimum fall distance would be 26 inches, which still can result in an injury. No maximum crib height will eliminate injuries from falls, and setting an arbitrary number above 26 inches as a maximum height would be design restrictive.

Many non-drop-side cribs have lower overall heights than the average traditional drop-side crib. We took measurements of 48 drop-side cribs and 15 non-drop-side cribs and found the following:

Crib type	Crib height
Drop-side cribs .....	33" to 43".
Non-drop-side cribs ...	32" to 39.75".

Based on this sample, non-drop-side crib heights do not appear to be higher, but are at, or below, traditional drop-side crib heights. A shorter crib height would require fewer construction materials and could result in lower crib weight (which could reduce associated shipping costs). Thus, crib manufacturers may be inclined to offer cribs with shorter heights. We believe that the availability of cribs with shorter heights may increase, because the clearance formerly needed under the crib for the operation of drop-sides no longer would be necessary.

#### 31. Crib Side Heights

(Comment 37)—A commenter claimed that crib manufacturers now are using the bare minimum side heights and that, when drop-sides were allowed, many manufacturers exceeded the minimum side height, thereby preventing some falls. The commenter did not include data to support this assertion that crib manufacturers are reducing the side height now that they are no longer making drop-side cribs.

(Response 37)—Measurements of various cribs taken by CPSC staff show that there are some drop-side cribs and some non-drop-side cribs that just meet the minimum side height requirement

and there are some drop-side cribs and non-drop-side cribs that have greater-than-minimum side heights.

The minimum side height requirement in the crib standard was developed with an intended user in mind (a child under the height of 35 inches). Even so, there always will be a certain population of children who will be capable of climbing out of a crib, even cribs with a side height greater than what is required by the crib standards. If the overall average side height of cribs decreased to the minimum side height required in the standard, and inadvertently resulted in a higher frequency of children climbing out, CPSC staff believes that the likelihood of serious injury is lessened by the reduction in the overall fall height due to shorter crib heights (based on the sample of cribs examined by CPSC staff).

#### F. Changes to Proposed Rule

##### 1. Full-Size Crib Standard

The Commission proposed incorporating ASTM F 1169-10 with one modification: Excluding the provision, section 6.12, that requires retightening of screws and bolts between the crib side latch test and the mattress support vertical impact test. Like the proposal, the final rule incorporates by reference ASTM F 1169-10 with the modification to exclude the hardware retightening provision. The final rule makes one additional modification to ASTM F 1169-10, modifying the spindle/slat testing provision in 7.7.1 of the ASTM standard in order to clarify how to test a crib with folding or movable sides. The final rule adds a sentence to the end of section 7.7.1 of ASTM F 1169-10, which states: "For cribs incorporating folding or moveable sides for purposes of easier access to the occupant, storage, and/or transport, each side segment (portion of side separated by hinges for folding) shall be tested separately." This change responds to a comment that the CPSC received on the proposed rule (*see* section E of the preamble for discussion of the comment and further explanation of the need for this change). Also, ASTM recently voted to approve adding this language when it next revises ASTM F 1169.

##### 2. Non-Full-Size Crib Standard

The Commission proposed incorporating ASTM F 406-10 with several modifications to address non-full-size cribs. The proposed rule would make four modifications and two editorial changes to ASTM F 406-10. Most proposed changes were intended

to make the non-full-size crib standard more consistent with the full-size crib standard. The proposed modifications were: (1) Replacing the mattress support performance requirement in ASTM F 406-10 with the requirement that is in the ASTM full-size crib standard; (2) changing the side impact test in ASTM F 406-10 to make it identical to the requirements in the ASTM full-size crib standard; (3) adding a requirement for movable side latches that is similar to a provision in previous versions of the ASTM F 406 standard; and (4) specifying the order for conducting structural tests, as in the full-size crib standard. The proposed editorial changes were: (1) Excluding provisions in ASTM F 406-10 that cover only play yards; and (2) moving the recordkeeping provision from the appendix of ASTM F 406-10 to the general requirements section. *See* 75 FR 43308 (July 23, 2010).

The final rule incorporates ASTM F 406-10a by reference, with certain modifications. This subsequent version of the ASTM non-full-size crib standard, approved on October 15, 2010, and published in November 2010, includes most of the changes that were in the proposed rule. Specifically, ASTM F 406-10a contains the recordkeeping provision in the general requirements section (now in section 5.20); the mattress support impact performance requirement (now included in sections 6.14, and 8.7); proposed changes to the side impact test (now included in sections 6.16, and 8.9); the provision for movable side latch testing (now included in section 6.13.1); and the order of testing (now in section 6.8). Some provisions in ASTM F 406-10a are worded slightly differently than the language in the proposed rule. These differences in wording are editorial. The proposed modifications that are not adopted in ASTM F 406-10a are those that excluded provisions specifically related to play yards. Thus, the final rule continues to exclude these play yard-specific provisions.

In addition to the differences between ASTM F 406-10 and F 406-10a discussed in the preceding paragraph, there are a few other differences between the two versions (which therefore result in differences between the CPSC's proposed non-full-size crib standard and the final standard). Most differences between the two versions are editorial; for example, the revised standard rearranges the order of some sections and makes minor wording changes to make the language more consistent with the full-size crib standard (ASTM F 1169-10). The CPSC has reviewed these changes and concludes that only one change is a

substantive change that would reduce safety. ASTM F 406-10a adds the provision that was (and continues to be) in the ASTM standard for full-size cribs, which requires the retightening of screws and bolts between tests. The CPSC's final rule for non-full-size cribs excludes this provision, just as the CPSC's final rule for full-size cribs does.

The final rule for non-full-size cribs also adds language concerning testing of cribs with folding sides as in the final rule for full-size cribs. The final rule for non-full-size cribs includes one other modification that was not in the proposal. This change modifies the language for a warning label that cautions against placing netting or other covers over the product. The current wording in ASTM F 406-10a mentions only "play yards." The final rule substitutes the word "product" for "play yard," thus making the warning label also applicable to non-full-size cribs. The Commission did not receive any comments on this labeling issue. However, it is related to the effort in the CPSC's proposed and final non-full-size crib standards to exclude provisions that relate only to play yards. Recently, ASTM approved these two changes (concerning folding cribs and the warning label regarding netting and covers) for its next version of ASTM F 406, but they are not in ASTM F 406-10a.

##### 3. Effective Date

The Commission proposed a 6-month effective date (as measured from the date of publication of a final rule in the *Federal Register*). The final rule maintains the 6-month effective date but establishes two compliance dates: 6 months for all entities subject to the rule, except for child care facilities, family child care homes, and places of public accommodation which have a 24-month compliance date. As discussed in sections E.8 and 10 of this preamble, the Commission received several comments from child care providers describing the impact that the crib standards could have on them, and the Commission believes that places of public accommodation face similar issues. The final rule provides a longer compliance period for these entities to allow them additional time to purchase compliant cribs and to absorb the costs of meeting the standards.

##### 4. References in 16 CFR 1500.18

When the Commission proposed the crib standards, it also proposed revising 16 CFR 1500.18(a)(13) and (14), which state that full-size cribs that do not comply with 16 CFR part 1508 and non-full-size cribs that do not comply with

16 CFR part 1509 are banned hazardous substances under the FHSA. We proposed to replace the references to 16 CFR parts 1508 and 1509 with references to the CPSC's new crib standards which will be codified at 16 CFR parts 1219 and 1220. As noted earlier in this preamble, elsewhere in this issue of the *Federal Register*, we are revoking the crib regulations that the Commission previously issued under the FHSA and are codified at 16 CFR parts 1508 and 1509. Given that section 104(b) of the CPSIA changed the regulation of cribs (and other durable infant or toddler products) from the FHSA to the CPSC, we have determined that it will reduce confusion to remove the provisions in 16 CFR 1500.18(a)(13) and (14) altogether rather than changing the references. This is consistent with the revocation of 16 CFR parts 1508 and 1509.

### G. Assessment of Voluntary Standards ASTM F 1169-10 and ASTM F 406-10a and Description of the Final Rule

#### 1. Section 104(b) of the CPSIA: Consultation and CPSC Staff Review

Section 104(b) of the CPSIA requires the Commission to assess the effectiveness of the voluntary standard in consultation with representatives of consumer groups, juvenile product manufacturers, and other experts. This consultation process for the full-size and non-full-size crib standards has involved: An ANPR, a public crib roundtable, and in-depth involvement with ASTM. CPSC staff's consultations with ASTM are ongoing.

#### 2. Description of the Final Standard for Full-Size Cribs, Including Changes to the Requirements of ASTM F 1169-10

The Commission believes that the provisions of ASTM F 1169-10 are effective to reduce the risk of injury associated with full-size cribs. The modifications to ASTM F 1169-10 strengthen the ASTM standard. The final rule incorporates by reference ASTM F 1169-10 with two modifications:

- Exclusion of the provision in the voluntary standard concerning retightening of screws and bolts between the crib side latch test and the mattress support vertical impact test; and
- Addition of language to the voluntary standard clarifying how to conduct the slat/spindle strength test on a crib with folding or movable sides.

#### a. Scope, Compliance Dates, and Definitions (§ 1219.1)

Like the proposal, the final rule states that this part establishes a consumer

product safety standard for new and used full-size cribs. In accordance with section 104(c) of the CPSIA, this section states that the standard applies to the manufacture, sale, contract for sale or resale, lease, sublet, offer, provision for use, or other placement in the stream of commerce of a new or used full-size crib. This section provides a compliance date of 6 months (as measured from the date of publication of this final rule in the *Federal Register*) for all entities subject to the rule, except for child care facilities, family child care homes, and places of public accommodation which will have 24 months (as measured from the date of publication of this final rule in the *Federal Register*) to provide cribs for use that comply with the standard. As discussed in section H of this preamble, due to the number of compliant cribs that child care centers and places of public accommodation will need to provide for use, the final rule provides an additional 18 months for them to meet the full-size crib standard.

Section 1219.1(c) defines full-size baby crib as defined in ASTM F 1169-10 as a bed, with certain interior dimensions, that is designed to provide sleeping accommodations for an infant. In accordance with section 104(c) of the CPSIA, the definition includes cribs in child care facilities and places of public accommodation affecting commerce. This section also provides the definition of "place of public accommodation affecting commerce" specified in section 104(c) of the CPSIA.

#### b. Requirements for Full-Size Cribs (§ 1219.2)

**Incorporation by reference.** Like the proposal, the final rule incorporates by reference ASTM F 1169-10, *Standard Consumer Safety Specification for Full-Size Baby Cribs*. The final rule requires compliance with the requirements of ASTM F 1169-10, with two modifications.

**Modifications to the ASTM standard.** The final rule for full-size cribs excludes the provision in section 6.12 of the ASTM standard that requires retightening of screws and bolts between the crib side latch test and the mattress support vertical impact test (§ 1219.2(b)(1) of the CPSC's standard). This is identical to the proposed rule. As discussed in the preamble to the proposal (75 FR at 43314 through 43315), exclusion of this retightening provision strengthens the standard. Conducting the tests without retightening the hardware better represents the real use of a crib. Retightening fasteners would sever the chain of accumulated conditioning

effects that the crib undergoes during the sequence of tests. Most of the comments that the CPSC received concerning this issue supported the CPSC's exclusion of this provision. Further discussion of the rationale for excluding the hardware retightening provision is provided in section E.24 of this preamble.

The final rule adds one provision for full-size cribs that was not contained in the proposed rule. The final rule adds a sentence to section 7.7.1 of ASTM F 1169-10 to clarify how to conduct the spindle/slat static force test with a crib that has folding or movable sides (§ 1219.2(b)(2) of the CPSC's standard). The slat strength test is intended to verify that cribs slats can withstand 80 lbf. Without the clarification, conducting the test on a crib that has a hinge or other folding mechanism could result in testing the structural integrity of the hinge rather than the strength of the slats. Thus, the final rule adds the following sentence: "For cribs incorporating foldable or moveable sides for purposes of easier access to the occupant, storage, and/or transport, each side segment (portion of side separated by hinges for folding) shall be tested separately." The addition of this language strengthens the ASTM standard, because it eliminates an ambiguity about testing this type of crib.

**Requirements of ASTM F 1169-10.** The final rule incorporates the other requirements of ASTM F 1169-10 without change. These requirements establish a comprehensive standard for the safety of full-size cribs. ASTM F 1169-10 includes definitions; general requirements; performance requirements; specific test methods; and requirements for marking, labeling, and instructional literature. The key provisions of both ASTM standards are outlined in section G.4. of this preamble.

#### 3. Description of the Final Standard for Non-Full-Size Cribs, Including Changes to the Requirements of ASTM F 406-10a

The Commission believes that the provisions of ASTM F 406-10a, with the specified modifications, are effective to reduce the risk of injury associated with non-full-size cribs. The final rule incorporates a version of ASTM F 406 that ASTM approved after the Commission had published its proposed rule and includes most of the modifications that the Commission proposed. These changes make ASTM F 406-10a more consistent with the ASTM standard for full-size cribs, rendering the standard more protective than the previous version. The modifications in the CPSC's final rule

further strengthen the standard. The final rule incorporates by reference ASTM F 406–10a with four modifications that:

- Exclude the hardware retightening provision;
- Add language clarifying how to conduct the slat/spindle test on cribs with folding or movable sides;
- Revise a warning concerning netting or other covers so that it includes non-full-size cribs; and
- Exclude provisions that apply only to play yards.

#### a. Scope, Compliance Dates, and Definitions (§ 1220.1)

Like the proposal, the final rule states that this part establishes a consumer product safety standard for new and used non-full-size cribs. In accordance with section 104(c) of the CPSIA, this section states that the standard applies to the manufacture, sale, contract for sale or resale, lease, sublet, offer, provision for use, or other placement in the stream of commerce of a new or used non-full-size crib. This section provides a compliance date of 6 months for all entities subject to the rule (as measured from the date of publication of this final rule in the **Federal Register**), except for child care facilities, family child care homes, and places of public accommodation which will have 24 months (as measured from the date of publication of this final rule in the **Federal Register**) to provide cribs that comply with the standard. As discussed in section H of this preamble, due to the number of compliant cribs that these entities will need to provide for use, the final rule provides an additional 18 months for them to meet the non-full-size crib standard.

Section 1220.1(c) defines non-full-size baby crib as defined in ASTM F 406–10a and explicitly excludes play yards. (A play yard is defined 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.”) A non-full-size crib is essentially a crib that has dimensions other than those of a full-size crib, as defined in the full-size crib standard. In accordance with section 104(c) of the CPSIA, the definition includes cribs in child care facilities and places of public accommodation affecting commerce. This section provides the definition of “place of public accommodation affecting commerce” specified in section 104(c) of the CPSIA. It also provides definitions of terms relevant to the definition of non-full-size crib, such as “portable crib” and “play yard.”

#### b. Requirements for Non-Full-Size Cribs (§ 1220.2)

*Incorporation by reference.* The final rule incorporates by reference ASTM F 406–10a, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards*. The final rule requires compliance with the requirements of ASTM F 406–10a, with four modifications.

*Modifications to the ASTM standard.* The final rule for non-full-size cribs excludes the provision in section 6.10 in the ASTM standard that requires retightening of screws and bolts between the crib side latch test and the mattress support vertical impact test (§ 1220.2(b)(3) of the CPSC standard). This exclusion was not in the proposed rule for the non-full-size crib standard because the proposal referenced ASTM F 406–10, which did not contain the hardware retightening provision. Excluding this provision is consistent with the CPSC’s standard for full-size cribs. The same reasons for that exclusion (see part E.24 of this preamble) apply with regard to non-full-size cribs.

The second modification to ASTM F 406–10a adds a sentence to clarify the testing of cribs with folding or movable sides. This modification was not in the proposed rule, but responds to comments on the proposal and is identical to the change in the full-size crib standard. This provision adds a sentence to section 8.10.1 of ASTM F 406–10a to clarify how to conduct the spindle/slat static force test with a crib that has folding or movable sides (§ 1220.2(b)(5) of the CPSC’s standard). Addition of this language strengthens the ASTM standard because it eliminates an ambiguity about testing this type of crib.

The third modification to ASTM F 406–10a revises a warning in section 9.4.2.6 of the ASTM standard that cautions against using netting or other covers (§ 1220.2(b)(12) of the CPSC’s standard). The modification replaces the words “play yard” with the word “product” because the hazard posed by such covers exists for non-full-size cribs as well as play yards.

The final modifications to ASTM F 406–10a remove the provisions that relate only to play yards (§ 1220.2(b)(1), (2), (4), and (6) through (11) of the CPSC standard). Section 104(c) of the CPSIA distinguishes cribs (both full-size and non-full-size) from other durable infant or toddler products. This different treatment of cribs necessitates that the CPSC establish separate standards for non-full-size cribs and for play yards. In the future, we intend to issue a standard

for play yards under section 104(b) of the CPSIA.

*Requirements of ASTM F 406–10a.* The final rule incorporates the other requirements of ASTM F 406–10a without change. The requirements establish a comprehensive standard for the safety of non-full-size cribs. Like the ASTM standard for full-size cribs, ASTM F 406–10a includes definitions; general requirements; performance requirements; specific test methods; and requirements for marking, labeling, and instructional literature. These requirements are essentially the same as the requirements ASTM F 1169–10 establishes for full-size cribs. The key requirements of both ASTM standards are outlined in the following section of this preamble.

#### 4. Principal Requirements of Both ASTM Crib Standards

Both the full-size and non-full-size crib standards incorporate by reference the relevant ASTM crib standards, with certain modifications explained above. The principal requirements are the same in both ASTM standards. These are:

- Dynamic impact testing of the mattress support system—intended to address incidents involving collapse or failure of mattress support systems. The 2010 standards updated the tests to address fatigue of mattress support brackets, support hardware, and mattress support due to children jumping in cribs.
- Impact testing of side rails and slat strength/integrity testing—intended to prevent slats and spindles from breaking and/or detaching during use. The requirements were made more stringent for the 2010 standards. The modification was intended to prevent entrapments by reducing the likelihood of slat/spindle breakage and the gaps that accompany them.
- Mattress support system testing—intended to ensure that the mattress support does not become detached from the frame, potentially resulting in a fall.
- Latching mechanism tests—intended to ensure that latching and locking mechanisms work as intended, preventing unintended folding while in use. Also requires that they be used with drop gates and movable sides.
- Crib side configurations—intended, in part, to limit movable (drop) sides. Addresses the numerous incidents related to drop-side failures.
- Label requirements—the required warnings were reordered in the 2010 full-size crib standard to emphasize fall hazards.
- Openings requirement for mattress support systems—a new requirement for the full-size crib 2010 standard that

addresses gaps in the mattress support system to minimize the possibility of entrapment.

- Requirements for wood screws and other fasteners—a new requirement for the 2010 standards that addresses hazards that exist when wood screws are the primary method of attachment. Also includes other fastener requirements to address incidents related to loose hardware and poor structural integrity.

- Cyclic testing—a new requirement for the 2010 standards that addresses incidents involving failures of non-drop-side hardware and poor structural integrity. This requirement was taken from the Canadian standard and simulates long-term shaking of the product by a child.

- Misassembly issues—a new requirement for the 2010 standards where it must either be impossible to misassemble key elements or those elements must have markings that make it obvious when they have been misassembled.

- Test requirement for accessories—a new requirement for the 2010 standards that is intended to address any cribs that may now, or in the future, include accessories, such as bassinets or changing tables.

- Crib interior dimensions—a new requirement for the 2010 standards that is taken directly from the CPSC's mandatory regulation and is intended to ensure that all full-size cribs have the same interior dimensions.

- Component spacing—a new requirement for the 2010 standards that is taken directly from the CPSC's mandatory regulation and is intended to prevent child entrapment between both uniformly and non-uniformly-spaced components, such as slats.

##### 5. The Final Crib Standards Address the Principal Hazards Related to Cribs

This section summarizes how the standards for full-size and non-full-size cribs address the principal crib-related hazards that the CPSC has identified through its review of incidents involving cribs.

The crib standards address structural failures of cribs that are related to drop-side failures through a requirement that the sides of a crib be fixed in place and have no movable sections less than 20 inches from the top of the mattress support (effectively eliminating drop sides). The standards address problems with non-drop-side hardware and poor structural integrity through requirements for screw fasteners, locking components, and the cyclic side (shake) test. Loosening of wood screws and other fasteners also has led to crib

incidents. The standards address these hazards through the wood screw requirements of 16 CFR parts 1508 and 1509 (which are now in ASTM F 1169-10 and ASTM F 406-10a), restricting the use of wood screws as primary fasteners; prohibiting use of wood screws in structural elements that a consumer would need to assemble; and imposing stricter requirements for the use of threaded metal inserts and other metal-threaded fasteners. Problems with the structural integrity of cribs and hardware issues (such as loosened joints, detached sides and overall poor structural integrity) are addressed by the cyclic side (shake) test, which simulates a child's lifetime shaking of the crib. The test applies a cyclic force (9,000 vertical and then 9,000 horizontal load cycles using 27 lbf) at the midpoint of each top rail, end, and side of the crib. To address mattress-related issues (such as, entrapments between a mattress support and a crib structure, and mattress support structural failures), the crib standards include a mattress impact cyclic test that consists of dropping a 45-pound mass (20 kg) repeatedly every 4 seconds onto a polyurethane foam test mattress covered in vinyl and supported by the mattress support system. The crib standards address crib slat disengagement (which can result in entrapment) by specifying that any crib side with slats must be tested (previously the number of sides was not specified and manufacturers could test just one side). The crib standards address broken or dislocated slats, which can cause a gap of approximately 5 inches, by making the slat/spindle strength test more stringent, requiring a set number of slats to withstand an 80-pound load. The crib standards address misassembly issues by including a requirement which states: "Crib designs shall only allow assembly of key structural elements in the manufacturer's recommended use position or have markings that indicate their proper orientation. The markings must be conspicuous in the misassembled state."

##### H. Effective Date

The Administrative Procedure Act ("APA") generally requires that the effective date of a rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). The Commission proposed that the standard would become effective six months after publication of a final rule. The Commission invited comments regarding the sufficiency of a 6-month effective date for the crib standards, which are discussed in section E.10 of this preamble.

Based on review of the comments, the final rule provides a 6-month effective date (as measured from the date of publication of this final rule in the **Federal Register**) with two compliance dates: a 6-month compliance date for all entities subject to the rule, except for child care facilities, family child care homes, and places of public accommodation, which have 24 months (as measured from the date of publication of this final rule in the **Federal Register**) to provide cribs that comply with the standards. This approach alleviates concerns that there may not be a sufficient supply of cribs that meet the new standards for these entities to provide compliant cribs within a 6-month effective date. Providing this additional period of time for these entities addresses their concerns about the costs of compliance by allowing additional time for them to locate funding and to absorb the costs of the rule. This approach still requires manufacturers and retailers (as well as other entities selling, leasing or otherwise providing cribs) to supply compliant cribs within 6 months just as the Commission had proposed. Providing tiered compliance dates should allow for an orderly process of supply, so that cribs are first manufactured and made available for sale before child care facilities, family child care homes, and places of public accommodation, which must purchase compliant cribs, are required to comply with the standards. This approach also will not delay the availability of cribs in stores for individual consumers to purchase, which would have been the case if the rule established a longer uniform effective date to accommodate the impact on child care facilities, family child care homes, and places of public accommodation. By setting a compliance date of 24 months from the date of publication of this final rule in the **Federal Register**, the Commission intends that any such entity that comes into being after the compliance date must comply with this rule when it begins operating.

An additional reason underlies the Commission's decision to create a separate compliance date for child care facilities, family child care homes, and places of public accommodation. It is unprecedented for the Commission to promulgate a rule containing a mandatory standard that not only sets product performance requirements but also places responsibility for compliance with the rule, in part, on users or providers of the product in an occupational setting. We are required to do so in this case, however, because

Congress singled out cribs for special treatment in the CPSIA.

Even though certain of the other durable infant products on which we will be promulgating mandatory standards may also be found in child care or other settings covered by section 104 of the CPSIA, it is only cribs failing to meet the mandatory standard that are required to be replaced by certain statutorily defined users and providers by a date to be determined by the Commission.

Of course, manufacturers of products are accustomed to meeting performance standards. Our understanding is that most crib manufacturers have been following this rulemaking and the attendant ASTM voluntary standards proceedings very closely, if not participating in them directly. Their numbers, though, are relatively few. In comparison, there are an estimated 59,000 child care and family home care providers and an estimated 53,000 public accommodations covered by this rule, many of whom may be wholly unaware of its consequences.

During this rulemaking, the issues that have been raised as part of the record by child care providers apply, in our view, to all users or providers of cribs described in sections 104(c)(2)(B) and (D) of the CPSIA. While we had no comments from operators of public accommodations, they likely will face the same difficulties as child care providers in complying in a timely manner with the new crib standard.

For instance, the number of complying cribs that will have to be manufactured to meet the new standard, just for those cribs needed in the child care setting, is, in our estimation, at least ten times more than those facilities usually buy in one year (cribs, on average, are normally on a 10-year replacement cycle). This surge in demand is in addition to the cribs that will, upon this rule becoming effective, need to be replaced by owners or operators of public accommodations, who would have otherwise not necessarily done so during that period. Whether enough complying cribs can be made in just one year's time to meet this increased need, on top of the normal annual number of cribs required by parents, is uncertain. All crib users and providers will be buying from the same finite pool of new complying cribs, but certain of those purchasers will be doing so pursuant to the added responsibilities placed upon them by this rule, as required by the CPSIA. The expense of replacing all of their non-complying cribs will weigh more heavily on the less affluent providers,

whether they are child care facilities or public accommodation facilities.

Given these realities, and the Commission's strong desire to ensure implementation of the rule is consistent with the statute's goal of providing safer sleep environments for those children using cribs, the Commission believes it is prudent to take all reasonable steps to try to provide adequate time for there to be a sufficient supply of complying cribs to meet demand, and for child care facilities, family child care homes, and places of public accommodation to obtain complying cribs before the penalties that could be imposed on them for failure to do so become effective. Therefore, the Commission is establishing a compliance date for those persons of 24 months (as measured from the date of publication of this final rule in the *Federal Register*) for them to provide compliant cribs. This gives affected persons an additional 18 months beyond the effective date that was suggested in the proposed rule to replace their noncomplying cribs. The Commission will also use this time to attempt to educate all those individuals and entities affected of their responsibilities under the law so they can plan for the replacement of their cribs in an orderly and timely fashion.

The Commission strongly encourages all child care facilities, family child care homes and public accommodation facilities to begin replacing their cribs with compliant cribs as quickly as the market allows, starting with the oldest ones first, as our experience has shown that the longer cribs are used, the more hazards they present to the children placed in them. Every day that a child is in an unsafe crib, or any unsafe sleep environment for that matter, puts that child at risk of serious injury or death. Every person who provides cribs in a child care setting or as part of the furnishings in a public accommodation has a responsibility to provide the safest possible environment for the children using those cribs.

#### I. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") generally requires that agencies review proposed rules for their potential economic impact on small entities, including small businesses, and prepare an initial regulatory flexibility analysis. 5 U.S.C. 603. The RFA further requires that agencies consider comments they receive on the initial regulatory flexibility analysis and prepare a final regulatory flexibility analysis describing the impact of the final rule on small entities and identifying alternatives that could reduce that impact. *Id.* 604. This section summarizes the staff's final

regulatory flexibility analyses for the full-size and non-full-size crib standards, which is provided at Tabs A and B of the staff's briefing package.

#### 1. Full-Size Cribs

##### a. The Market for Full-Size Cribs

As mentioned in section B.2 of this preamble, CPSC staff estimates that there are currently 68 manufacturers or importers supplying full-size cribs to the U.S. market. Of those that could be categorized, 10 are domestic importers; 42 are domestic manufacturers; 7 are foreign manufacturers; and 2 are foreign importers. CPSC staff estimates annual sales of new cribs to be about 2.4 million (could be an underestimate if new mothers buy more than one crib). CPSC staff estimates that there are currently approximately 591 models of full-size cribs compared to approximately 81 models of non-full-size cribs. Thus, approximately 88 percent of crib models are full-size cribs. Applying this percentage to the number of cribs sold annually results in a rough estimate of 2.1 million full-size cribs sold each year.

JPMA, the major U.S. trade association representing juvenile product manufacturers and importers, runs a voluntary certification program for several juvenile products. Approximately 30 firms (44 percent) supply full-size cribs to the U.S. market that have been certified by JPMA as compliant with the ASTM voluntary standard F 1169-09. Additionally, 15 firms claim compliance, although their products have not been certified by JPMA. The regulatory flexibility analysis assumes that the 45 firms that provide cribs that are certified to, or claim to be compliant with, earlier ASTM standards, will remain compliant with ASTM standard F 1169-10.

As noted previously, section 104 of the CPSIA operates such that when the Commission's crib standards take effect, they will apply to retailers of both new and used full-size cribs and to child care facilities and places of public accommodation, such as hotels, which provide full-size cribs to their patrons. Based on public comments received from child care centers in response to the proposed rule, it appears that child care centers typically use a mix of full-size and non-full-size cribs, but primarily non-full-size cribs. However, CPSC staff still assumes that places of public accommodation tend to provide non-full-size cribs to their customers, as opposed to the more unwieldy full-size cribs. The number of firms that may be selling or providing full-size cribs is unknown, but may be drawn from

approximately 24,985 retail firms (at least 5,292 of which sell used products); 59,555 firms supplying child care services; and 53,021 locations offering public accommodations to the public that may be supplying new or used full-size cribs.

#### b. Impact on Small Businesses

There are approximately 68 firms currently known to be producing or selling full-size cribs in the United States. Based on Small Business Administration (SBA) guidelines, which consider a manufacturer to be small if it has 500 or fewer employees and an importer to be small if it has 100 or fewer employees, 48 of these firms (36 domestic manufacturers, 10 domestic importers, and 2 firms with unknown sources of supply) are small. There are probably additional unknown small manufacturers and importers operating in the U.S. market.

According to SBA guidelines, retailers and service providers, such as child care centers and places of public accommodation, are considered small if they have \$7 million or less in annual receipts. Approximately 93 percent of all retailers have receipts of less than \$5 million, with an additional 3 percent having receipts between \$5 million and \$9.99 million. Excluding firms with receipts of between \$5 million and \$7 million, yields an estimated 23,236 small retail firms. Some portion of these retail firms would be affected by the final rule because only a small percentage of these small firms actually sell full-size cribs. Thus, the number of small retail firms affected will be far fewer than 23,236. Among child care service providers, approximately 98 percent have receipts of less than \$5 million, with an additional 0.9 percent having receipts between \$5 million and \$9.99 million. This suggests that roughly 58,364 small child care firms (of 59,555) could be affected.

#### i. Small Manufacturers

The impact of the standard for full-size cribs on small manufacturers will differ based on whether their products comply with ASTM standard F 1169-10. Of the 36 small domestic manufacturers, 24 produce cribs that are certified by JPMA or that they claim are in compliance with the voluntary standard. The impact on the 24 compliant firms is not expected to be significant. It seems unlikely that any of these products will require modification to meet the CPSC standard. Should any modifications be necessary, the modification would likely be minor (such as more effective screws or screw combinations).

The CPSC standard could have a significant impact on one or more of the 12 firms that are not compliant with the voluntary standard, because their products might require substantial modifications. The costs associated with these modifications could include costs for product design, development and marketing staff time, and product testing. There may also be increased production costs, particularly if additional materials are required. The actual cost of such an effort is unknown, but could be significant, especially for the two firms that rely primarily or entirely on the production and sale of full-size cribs and related products, such as accompanying furniture and bedding, and for a third firm that produces only one other product. However, the impact of these costs may be diminished if they are treated as new product expenses that can be amortized.

The scenario described above assumes that only those firms that produce cribs that are certified by JPMA or that claim ASTM compliance will pass the voluntary standard's requirements. This is not necessarily the case. CPSC staff has identified many cases in which products that are not certified by JPMA actually are compliant with the relevant ASTM standard. To the extent that this is true, the impact of the CPSC standard will be less significant than described.

#### ii. Small Importers

While 4 of the 10 small importers are not compliant with the voluntary standard, all would need to find an alternate source of full-size cribs if their existing supplier does not come into compliance with the new requirements of the CPSC standard. The cost to importers may increase, and they, in turn, may pass on some of those increased costs to their customers. Some importers may respond to the rule by ceasing to import cribs that do not comply. However, the impact of such a decision may be lessened by replacing the noncompliant crib(s) with complying products or other juvenile products. Deciding to import an alternative product would be a reasonable and realistic way to offset any lost revenue, given that most small importers import a variety of products.

#### iii. Small Retailers and Child Care Centers

The CPSIA requires that all full-size cribs sold (or leased) by retailers or provided by child care centers to their customers comply with the CPSC's full-size crib rule. This means that retailers, most of whom are small, will need to verify that any full-size cribs in their inventory (that they intend to sell or

lease after the effective date), and any that they purchase in the future, comply with the regulation prior to offering the cribs for sale. CPSC staff believes that most retailers, particularly small retailers, do not keep large inventories of cribs. With an effective date six months after publication of the final rule, retailers of new products should have sufficient notification and time to make this adjustment with little difficulty. The situation for retailers of used cribs is more complicated, however, because they may not always be able to determine whether the full-size cribs they receive comply with the new CPSC standard. For these affected retailers, it may be simpler to discontinue the sale of used full-size cribs. If cribs represent a small portion of the products they sell, then the impact of the rule on these firms may be limited.

Child care centers, family child care homes, and places of public accommodation must provide compliant cribs for their customers. The rule provides a 6-month effective date with an additional 18-month compliance period for these entities to meet the standards. This longer period to comply gives them additional time to purchase and replace their cribs that do not comply with the final rule. Without a longer period for compliance, the impact on these entities would be greater, particularly for those that would have to replace all of their cribs at once.

Based on data provided by the comments, it appears that the average child care center has between 4 and 45 cribs, fewer than half of which are likely to be full-size. Each crib costs approximately \$500. Therefore, if 25 percent of the cribs that must be replaced are full-size cribs, then replacement for an individual child care center could run from \$500 to as high as \$5,500. The total one-time cost to child care centers, the majority of which are small, of replacing all of their full-size cribs is estimated to be approximately \$97 million nationwide. Providing child care centers, family child care homes, and places of public accommodation with 24 months to comply with the new crib standards will reduce the impact on these entities.

There are additional considerations concerning the one-time costs child care providers face. Some costs may be passed on to customers through small increases in the rates child care providers charge. Child care providers would recoup these costs over an extended period, while the initial outlay for new cribs would be much more immediate. Additionally, as several commenters noted, child care centers

are limited in how much of the costs can be passed on to their customers. For example, one commenter stated that approximately 35 percent of the children in their care—more than 150,000—receive some form of state subsidy, and another provider stated that approximately one-third of the children in their care receive some subsidy. Raising rates above what customers can bear has the potential to deprive families of child care or force them into alternative child care arrangements that may not be subject to the final rule. The latter possibility has the potential for safety risks in excess of those that currently exist in child care centers.

Some centers could opt to replace their full-size cribs with play yards, which are less expensive to purchase (typically \$100–\$200) than full-size cribs, thereby spreading replacement costs over a longer period. While this would reduce the impact of the final rule, the alternative of providing play yards may be limited due to state licensing laws. The CPSC does not advocate the use of play yards over cribs, but acknowledges that the choice of play yards instead of cribs may be an option for some child care providers.

#### iv. Alternatives

Under section 104 of the CPSIA, one alternative that could reduce the impact on small entities would be to make the voluntary standard mandatory without any modifications. Adopting the current full-size crib voluntary standard without any changes potentially could reduce costs for 12 of the 36 small manufacturers and 4 of the 10 small importers that are not compliant already with the voluntary standard. However, these firms still will require substantial product changes in order to meet the voluntary standard. Because the CPSC's changes add little to the overall burden of the rule, adopting the voluntary standard without any changes will not offset significantly the burden that is expected for these firms.

Another way to reduce the impact on small firms would be to allow more time for such entities to comply with the final rule by providing a longer effective date for all entities. This would allow additional time for small manufacturers and small importers of non-compliant cribs. It could also alleviate inventory issues for small retailers.

A third alternative that could reduce the impact on small firms would be to provide an even longer compliance period for child care centers, family child care homes, and places of public accommodation. Although this would reduce the impact on the smaller of

these entities, it would not have any impact on small manufacturers or importers.

#### 2. Non-Full-Size Cribs

##### a. The Market for Non-Full-Size Cribs

CPSC staff estimates that there are currently at least 17 manufacturers or importers supplying non-full-size cribs to the U.S. market. Five of these firms are domestic importers and 10 are domestic manufacturers. Insufficient information is available to determine whether the remaining firms are manufacturers or importers.

Five firms supply non-full-size cribs to the U.S. market that have been JPMA-certified as compliant with the ASTM voluntary standard. Additionally, two firms claim compliance, although their products have not been certified by JPMA. Therefore, including the firms that claim compliance with the ASTM standard, five manufacturers and one importer have products that are ASTM compliant. Additionally, one of the firms with an unknown source of supply also claims compliance with the ASTM standard. This analysis assumes that firms that are certified or claim to be compliant with earlier ASTM standards will remain compliant with ASTM standard F 406–10a.

As explained in the analysis concerning full-size cribs (section I.1.b. of this preamble), CPSC staff estimates annual sales to households to be about 2.4 million cribs. CPSC staff estimates that there are approximately 81 non-full-size crib models currently being supplied (versus 591 full-size crib models). Therefore, approximately 12 percent of the crib models on the U.S. market are non-full-sized. Applying this to the number of cribs sold annually yields a rough estimate of 293,000 non-full-size cribs sold each year.

As previously noted, section 104 of the CPSIA explicitly makes the crib standards applicable to retailers of both new and used non-full-size cribs and to child care facilities and places of public accommodation, such as hotels that supply non-full-size cribs to their patrons. Based on comments received from child care centers in response to the proposed rule, it appears that child care centers typically use a mix of full-size and non-full-size cribs, with a bias in favor of non-full-size cribs. CPSC staff still assumes that places of public accommodation tend to provide their customers with non-full-size cribs as opposed to full-size cribs. The number of firms that may be selling or providing non-full-size cribs is unknown, but may be drawn from the approximately 24,985 retail firms (at least 5,292 of

which sell used products), the 59,555 firms supplying child care services, and the 53,021 locations providing public accommodations. Each of these groups may be supplying new or used non-full-size cribs to the public.

##### b. Impact on Small Businesses

There are approximately 17 firms currently known to be producing or selling non-full-size cribs in the United States. Based on the SBA's guidelines, which consider a manufacturer to be small if it has 500 or fewer employees and an importer to be small if it has 100 or fewer employees, 14 suppliers are small firms (9 domestic manufacturers and 5 importers). The size of the remaining firms—two with unknown supply sources and one domestic manufacturer—could not be determined. There are probably additional unknown small manufacturers and importers operating in the U.S. market.

As explained in the analysis of the impact of the full-size crib standard, CPSC staff estimates that 23,236 retail firms would be considered small according to SBA's guidelines. Not all of these small firms sell non-full-size cribs. Thus, the number of small retail firms affected will be fewer than 23,236. CPSC staff estimates that using SBA's guidelines, there are approximately 58,364 small child care firms (of 59,555) and 42,437 small hotel firms (of 53,021 locations providing public accommodations) that could be affected by the crib standards.

##### i. Small Manufacturers

The impact of the CPSC's non-full-size crib standard on small manufacturers will differ based on whether their products are expected to be compliant with ASTM standard F 406–10. Of the nine small domestic manufacturers, five are in compliance with the voluntary standard. The impact on the five compliant firms is not expected to be significant. It seems unlikely that any of these products will require modification to meet the final standard. Should any modifications be necessary, they would be most likely minor (such as more effective screws or screw combinations).

The CPSC's final standard for non-full-size cribs could have a significant impact on one or more of the four firms that are not compliant with the voluntary standard, because their products might require substantial modifications. The costs associated with these modifications could include product design, development and marketing staff time, and product testing. There may also be increased

production costs, particularly if additional materials are required. The actual cost of such an effort is unknown, but could be significant, especially for the one firm that relies on the production and sale of non-full-size cribs and related products, such as accompanying furniture and bedding. However, the impact of these costs may be diminished if they are treated as new product expenses that can be amortized.

The scenario described above assumes that only those firms that produce cribs certified by JPMA or claim ASTM compliance will pass the requirements of ASTM F 406-10a. This is not necessarily the case. CPSC staff has identified many cases in which products not certified by JPMA actually are compliant with the relevant ASTM standard. To the extent that this is true, the impact of the final rule will be less significant than described.

#### ii. Small Importers

Although four of the five small importers are not compliant with the voluntary standard, all would need to find an alternate source of non-full-size cribs if their existing supplier does not come into compliance with the new requirements of the final standard. The cost to importers may increase and they, in turn, may pass on some of those increased costs to their customers. Some importers may address the rule requirements by ceasing to import cribs that do not comply with the new standard. However, the impact of such a decision may be diminished by replacing the noncompliant cribs with complying products or other juvenile products. Deciding to import an alternative product would be a reasonable and realistic way to offset any lost revenue, given that most small importers import a variety of products.

#### iii. Small Retailers and Child Care Centers

The CPSIA requires that all cribs sold (or leased) by retailers or provided by child care centers to their customers comply with the CPSC's new crib standards. Thus, retailers will need to verify that any non-full-size cribs in their inventory (that they intend to sell or lease after the effective date), and that any they purchase in the future, comply with the regulation prior to offering the cribs for sale. CPSC staff believes that most retailers, particularly small retailers, do not keep large inventories of cribs. With an effective date six months after publication of the rule, retailers of new products should have sufficient notification and time to make this adjustment with little difficulty. Retailers of used cribs may have

difficulty determining whether the cribs they receive comply with the new CPSC standard, and therefore, may discontinue the sale of used non-full-size cribs. If cribs represent a small portion of the products they sell, then the impact of the rule on these firms may be limited.

Child care centers, family child care homes, and places of public accommodation must provide compliant non-full-size cribs for their customers. The rule provides a 6-month effective date (as measured from the date of publication of this final rule in the **Federal Register**) with an additional 18 months compliance period for these entities to meet the standards. This longer period of time to comply with the standards could reduce the impact on small firms. Based on data provided through public comments, it appears that the average child care center has between 4 and 45 cribs, more than half of which are likely to be non-full-size. Each crib costs approximately \$500. Therefore, if 75 percent of the cribs that must be replaced are non-full-size cribs, then replacement for an individual child care center could run from \$1,500 to as high as \$16,500. The total one-time cost to child care centers, the majority of which are small, of replacing all of their non-full-size cribs is estimated to be approximately \$290 million nationwide. Providing child care centers, family child care homes, and places of public accommodation with 24 months (as measured from the date of publication of this final rule in the **Federal Register**) to comply with the new crib standards will reduce the impact on them. According to 2007 U.S. Census data, there are 53,021 establishments providing public accommodations. Assuming that all of these establishments provide an average of about three non-full-size cribs for use by their clientele, as many as 160,000 cribs might need to be replaced at a cost of about \$500 per crib, or approximately \$80 million. This may be an overestimate as not all places of public accommodation provide cribs to their customers, but some portion of those that do will replace those cribs when the rule becomes effective.

As discussed in the analysis of the full-size crib standard, there are additional considerations concerning the one-time costs for child care providers. Some costs may be passed on to customers through small increases in the rates child care providers charge (although the expenditure for new cribs would be far more immediate). Child care centers may have limited ability to pass these costs on to their customers, particularly in light of the number of

children in child care who received some form of state subsidy. Although some child care centers could replace their non-full-size cribs with less expensive play yards (typically \$100-\$200), this alternative may not be available to some child care centers if state licensing laws require use of cribs rather than play yards.

Some hotels may provide a few non-full-size cribs for their customers. The number of cribs at any one establishment is likely to be low, especially because of the likelihood that parents traveling with young children will bring along sleep products, such as play yards or portable cribs, for their children. As with child care centers, this is a one-time cost for firms that, over time, likely can be passed on to customers. Firms, particularly smaller ones, may opt to reduce the replacement costs by ceasing to provide cribs to their customers, replacing only some cribs, or providing play yards instead of non-full-size cribs. Therefore, it is unlikely that the rule will have a significant impact on a substantial number of firms that provide these cribs in places of public accommodation. The Commission believes that because places of public accommodation, like child care centers, will need to purchase compliant cribs to provide to their customers, the rule establishes a 24 month compliance date (as measured from the date of publication of this final rule in the **Federal Register**) for them to provide compliant cribs as well.

#### iv. Alternatives

The same alternatives for reducing the impact of the full-size crib standard also apply to reducing the impact of the non-full-size crib standard. One alternative is to make the voluntary standard mandatory with no modifications. Adopting the current voluntary standard without any changes potentially could reduce costs for four of the nine small manufacturers and four of the five small importers who are not already compliant with the voluntary standard. However, these firms still will require substantial product changes in order to meet the voluntary standard. Since the changes add little to the overall burden of the rule on small manufacturers, adopting the voluntary standard with no changes will not offset significantly the burden that is expected for these firms. Adopting the voluntary standard with no modifications could reduce the impact on small retailers and some child care providers.

Another alternative that could reduce the impact on small firms would be to allow more time for such entities to comply with the final rule by providing

a longer effective date for all entities that are subject to the rule. This would allow additional time for small manufacturers and small importers of non-compliant cribs. It could also alleviate inventory issues for small retailers. A third alternative that could reduce the impact on small firms would be to provide an even longer compliance period for child care centers, family child care homes, and places of public accommodation. Although this would reduce the impact on the smaller of these entities, it would not have any impact on small manufacturers or importers.

#### J. Environmental Considerations

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

#### K. Paperwork Reduction Act

This rule contains information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Therefore, the preamble to the proposed rule (75 FR at 43319 through 43321) discussed the information collection burden of the proposed rule and specifically requested comments on the accuracy of our estimates. We did not receive any comments concerning the information collection burden of the proposal, and the final rule does not make any changes to that burden. We have applied to the U.S. Office of Management and Budget (OMB) for a control number for this information collection, and we will publish a notice in the *Federal Register* providing the number when the agency receives approval from OMB.

#### L. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a "consumer product safety standard under [the CPSA]" is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the State requirement is identical to the federal standard. (Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances.) 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.

#### M. 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, be certified as complying with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program or, for children's products, on tests on a sufficient number of samples by a third party conformity assessment body accredited by the Commission to test according to the applicable requirements. Section 104(b)(1)(B) of the CPSIA refers to standards issued under that section as "consumer product safety standards." By the same reasoning, 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 full-size cribs and non-full-size cribs are children's products, they must be tested by a third party conformity assessment body whose accreditation has been accepted by the Commission. Elsewhere in this issue of the *Federal Register*, we have issued a notice of requirements to explain how laboratories can become accredited as third party conformity assessment bodies to test to the new crib standards. The Commission previously issued a notice of requirements for accreditation to test to the existing crib standards (16 CFR parts 1508 and 1509) in the *Federal Register* of October 22, 2008 (73 FR 62965). (Baby cribs also must comply with all other applicable CPSC requirements, such as the lead content requirements of section 101 of the CPSIA, the phthalate content requirements in section 108 of the CPSIA, the tracking label requirement in section 14(a)(5) of the CPSA, and the consumer registration form requirements in section 104 of the CPSIA).

#### List of Subjects

##### 16 CFR Part 1219

Consumer protection, Incorporation by reference, Imports, Infants and

children, Labeling, Law enforcement, Reporting and recordkeeping, Toys.

##### 16 CFR Part 1220

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

##### 16 CFR Part 1500

Consumer protection, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, Reporting and recordkeeping, Toys.

■ Therefore, the Commission amends Title 16 CFR chapter II as follows:

■ 1. Add part 1219 to read as follows:

#### PART 1219—SAFETY STANDARD FOR FULL-SIZE BABY CRIBS

##### Sec.

1219.1 Scope, compliance dates, and definitions.

1219.2 Requirements for full-size baby cribs.

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

##### § 1219.1 Scope, compliance dates, and definitions.

(a) *Scope.* This part establishes a consumer product safety standard for new and used full-size baby cribs.

(b) *Compliance dates.* (1) Except as provided in paragraph (b)(2) of this section, compliance with this part 1219 shall be required on June 28, 2011, and applies to the manufacture, sale, contract for sale or resale, lease, sublet, offer, provision for use, or other placement in the stream of commerce of a new or used full-size baby crib on or after that date.

(2) Child care facilities, family child care homes, and places of public accommodation affecting commerce shall be required to comply with this part on December 28, 2012, but this provision applies only to the offer or provision for use of cribs by child care facilities, family child care homes, and places of public accommodation affecting commerce and not the sale, resale, or other placement in the stream of commerce of cribs by these entities.

(c) *Definitions.* (1) *Full-size baby crib* means a bed that is:

(i) Designed to provide sleeping accommodations for an infant;

(ii) Intended for use in the home, in a child care facility, a family child care home, or place of public accommodation affecting commerce; and

(iii) Within a range of  $\pm 5.1$  cm ( $\pm 2$  in.) of the following interior dimensions: The interior dimensions shall be  $71 \pm 1.6$  cm ( $28 \pm \frac{5}{16}$  in.) wide

as measured between the innermost surfaces of the crib sides and  $133 \pm 1.6$  cm ( $52\% \pm \frac{1}{2}$  in.) long as measured between the innermost surfaces of the crib end panels, slats, rods, or spindles. Both measurements are to be made at the level of the mattress support spring in each of its adjustable positions and no more than 5 cm (2 in.) from the crib corner posts or from the first spindle to the corresponding point of the first spindle at the other end of the crib. If a crib has contoured or decorative spindles, in either or both of the sides or ends, the measurement shall be determined from the largest diameter of the first turned spindle within a range of 10 cm (4 in.) above the mattress support spring in each of its adjustable positions, to a corresponding point on the first spindle or innermost surface of the opposite side of the crib.

(2) *Place of public accommodation affecting commerce* means any inn, hotel, or other establishment that provides lodging to transient guests, except that such term does not include an establishment treated as an apartment building for purposes of any State or local law or regulation or an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied as a residence by the proprietor of such establishment.

#### § 1219.2 Requirements for full-size baby cribs.

(a) Except as provided in paragraph (b) of this section, each full-size baby crib shall comply with all applicable provisions of ASTM F 1169-10, Standard Consumer Safety Specification for Full-Size Baby Cribs, approved June 1, 2010. 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; telephone 610-832-9585; <http://www.astm.org>. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [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 1169-10 standard with the following additions or exclusions:

(1) Do not comply with section 6.12 of ASTM F 1169-10.

(2) Instead of complying with section 7.7.1 of ASTM F 1169-10, comply with the following:

(i) The spindle/slat static force test shall be performed with the spindle/slat assemblies removed from the crib and rigidly supported within 3 in. of each end of the upper and lower horizontal rails in a manner that shall not interfere with a spindle/slat deflecting under the applied force. For cribs incorporating foldable or moveable sides for purposes of easier access to the occupant, storage and/or transport, each side segment (portion of side separated by hinges for folding) shall be tested separately.

(ii) [Reserved]

■ 2. Add part 1220 to read as follows:

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

Sec.

1220.1 Scope, compliance dates, and definitions.

1220.2 Requirements for non-full-size baby cribs.

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

##### § 1220.1 Scope, compliance dates, and definitions.

(a) *Scope.* This part establishes a consumer product safety standard for new and used non-full-size baby cribs.

(b) *Compliance dates.* (1) Except as provided in paragraph (b)(2) of this section, compliance with this part 1220 shall be required on June 28, 2011, and applies to the manufacture, sale, contract for sale or resale, lease, sublet, offer, provision for use, or other placement in the stream of commerce of a new or used non-full-size baby crib on or after that date.

(2) Child care facilities, family child care homes, and places of public accommodation affecting commerce shall be required to comply with this part on December 28, 2012, but this provision applies only to the offer or provision for use of cribs by child care facilities, family child care homes, and places of public accommodation affecting commerce and not the sale, resale, or other placement in the stream of commerce of cribs by these entities.

(c) *Definitions.* (1) *Non-full-size baby crib* means 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 (49 3/4 in.), or, an

interior width dimension either greater than 77.7 cm (30 5/8 in.) or smaller than 64.3 cm (25 3/8 in.), or both;

(iv) Includes, but is not limited to, the following:

(A) *Portable crib*—a non-full-size baby crib designed so that it may be folded or collapsed, without disassembly, to occupy a volume substantially less than the volume it occupies when it is used.

(B) *Crib pen*—a non-full-size baby crib with rigid sides the legs of which may be removed or adjusted to provide a play pen or play yard for a child.

(C) *Specialty crib*—an unconventionally shaped (circular, hexagonal, etc.) non-full-size baby crib incorporating a special mattress or other unconventional components.

(D) *Undersize crib*—a non-full-size baby crib with an interior length dimension smaller than 126.3 cm (49 3/4 in.), or an interior width dimension smaller than 64.3 cm (25 3/8 in.), or both.

(E) *Oversize crib*—a non-full-size baby crib with an interior length dimension greater than 139.7 cm (55 in.), or an interior width dimension greater than 77.7 cm (30 5/8 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).

(2) *Play yard* means 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.

(3) *Place of public accommodation affecting commerce* means any inn, hotel, or other establishment that provides lodging to transient guests, except that such term does not include an establishment treated as an apartment building for purposes of any State or local law or regulation or an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied as a residence by the proprietor of such establishment.

##### § 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 F 406-10a, Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards, approved October 15, 2010. 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, PO Box 0700,

West Conshohocken, PA 19428; telephone 610-832-9585; <http://www.astm.org>. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [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 406-10a standard with the following additions or exclusions:

(1) Do not comply with sections 5.6.2 through 5.6.2.4 of ASTM F 406-10a.

(2) Do not comply with section 5.16.2 of ASTM F 406-10a.

(3) Do not comply with section 6.10 of ASTM F 406-10a.

(4) Do not comply with section 7, *Performance Requirements for Mesh/Fabric Products*, of ASTM F 406-10a.

(5) Instead of complying with section 8.10.1 of ASTM F 406-10a, comply with the following:

(i) The spindle/slat static force test shall be performed with the spindle/slat assemblies removed from the crib and rigidly supported within 3 in. of each end of the upper and lower horizontal rails in a manner that shall not interfere with a spindle/slat deflecting under the applied force. For cribs incorporating foldable or moveable sides for purposes of easier access to the occupant, storage and/or transport, each side segment (portion of side separated by hinges for folding) shall be tested separately.

(ii) [Reserved]

(6) Do not comply with sections 8.11 through 8.11.2.4 of ASTM F 406-10a.

(7) Do not comply with sections 8.12 through 8.12.2.2 of ASTM F 406-10a.

(8) Do not comply with section 8.14 through 8.14.2 of ASTM F 406-10a.

(9) Do not comply with sections 8.15 through 8.15.3.3 of ASTM F 406-10a.

(10) Do not comply with sections 8.16 through 8.16.3 of ASTM F 406-10a.

(11) Do not comply with section 9.3.2 through 9.3.2.4 of ASTM F 406-10a.

(12) Instead of complying with section 9.4.2.6 of ASTM F 406-10a, comply with the following warning requirement:

(i) Child can become entrapped and die when improvised netting or covers are placed on top of product. Never add such items to confine child in product.

(ii) [Reserved].

#### PART 1500 [AMENDED]

■ 3. The authority citation for part 1500 is revised to read as follows:

Authority: 15 U.S.C. 1261-1278, 122 Stat. 3016; the Consumer Product Safety Improvement Act of 2008, Pub. L. 110-314, § 104, 122 Stat. 3016 (August 14, 2008).

■ 4. In § 1500.18 remove paragraphs (a)(13) and (14).

Dated: December 17, 2010.

Todd A. Stevenson,  
Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2010-32178 Filed 12-27-10; 8:45 am]

BILLING CODE 6355-01-P

#### CONSUMER PRODUCT SAFETY COMMISSION

##### 16 CFR Parts 1508 and 1509

##### Revocation of Requirements for Full-Size Baby Cribs and Non-Full-Size Baby Cribs

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

**SUMMARY:** Section 104(b) of the Consumer Product Safety Improvement Act of 2008 ("CPSIA") requires the U.S. Consumer Product Safety Commission ("CPSC" or "Commission") 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 issuing this rule to revoke its existing regulations pertaining to full-size and non-full-size cribs because, elsewhere in this issue of the *Federal Register*, the Commission is issuing consumer product safety standards for cribs that will further reduce the risk of injury associated with these products under section 104 of the CPSIA. The new consumer product safety standards for cribs will include the requirements that have been in 16 CFR parts 1508 and 1509 for full-size and non-full-size cribs. To eliminate duplication, the Commission is removing 16 CFR parts 1508 and 1509 entirely.

**DATES:** Effective June 28, 2011.

**FOR FURTHER INFORMATION CONTACT:** Christopher Melchert, Division of Regulatory Enforcement, Office of Compliance, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7588; [cmelchert@cpsc.gov](mailto:cmelchert@cpsc.gov).

**SUPPLEMENTARY INFORMATION:**

##### A. What regulations is the CPSC revoking?

The CPSC first published the full-size crib regulation, 16 CFR part 1508, in 1973 (38 FR 32129 (Nov. 21, 1973)) and amended it in 1982. The CPSC published the regulation for non-full-size cribs, 16 CFR part 1509, in 1976 (41 FR 6240 (Feb. 12, 1976)), and amended it in 1982. Both standards contain requirements pertaining to dimensions, spacing of components, hardware, construction and finishing, assembly instructions, cutouts, identifying marks, warning statements, and compliance declarations. In addition, 16 CFR part 1509 contains a requirement regarding mattresses.

##### B. Why is the CPSC revoking the regulations pertaining to cribs?

The Consumer Product Safety Improvement Act of 2008, Public Law 110-314 ("CPSIA"), was enacted on August 14, 2008. Section 104(b) of the CPSIA requires the Commission 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. Elsewhere in this issue of the *Federal Register*, the Commission is issuing safety standards for full-size and non-full-size cribs under the authority of section 104 of the CPSIA. These new standards adopt the voluntary standards developed by ASTM International (formerly known as the American Society for Testing and Materials), which are more stringent in some respects than the current applicable standards, and include ASTM F 1169-10, "Standard Consumer Safety Specification for Full-Size Baby Cribs," and ASTM F 406-10a, "Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards."

The crib standards that the CPSC is publishing elsewhere in this issue of the *Federal Register* incorporate all of the requirements currently found in 16 CFR parts 1508 and 1509. Consequently, the requirements found at 16 CFR parts 1508 and 1509 have become redundant. The Commission, therefore, is revoking 16 CFR parts 1508 and 1509 in their entirety.

The Commission emphasizes that the revocation of 16 CFR parts 1508 and 1509 would have no substantive effect on crib safety. The requirements from 16 CFR parts 1508 and 1509 still apply to full-size and non-full-size cribs, but are