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Office of the Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway, Room 820
Bethesda, MD 20814

Submitted via *www.regulations.gov*

Comments of Kids In Danger, Consumer Federation of America, Consumer Reports, and Keeping Babies Safe to the Consumer Product Safety Commission on the Petitions Requesting Rulemaking To Amend the Safety Standard for Play Yards to Require a Minimum Thickness for Play Yard Mattresses, and to Standardize the Size of Play Yards and Play Yard Mattresses (CPSC-2022-0015)

Kids In Danger, Consumer Federation of America, Consumer Reports, and Keeping Babies Safe welcome the opportunity to submit comments to the Consumer Product Safety Commission (CPSC) on two petitions filed at the agency related to play yards and play yard mattresses. Our joint comments, including responses to the CPSC's questions, are below.

Mattress Thickness Petition CP 22-1

Petition CP 22-1, filed in November 2021,¹ asks for the CPSC to require a minimum play yard mattress thickness of 1.5 inches with a minimal tolerance allowed. This depth is presently the maximum thickness allowed by the play yard standard. In addition to a minimum thickness of 1.5 inches, the petitioners request a maximum space allowance of 0.5 inches between the side of the mattress and the mesh side of the play yard. A maximum gap size of 0.5 inches will effectively prevent entrapment between the mattress and the mesh. Further, a 0.5-inch maximum gap size is consistent with the maximum gap that the ASTM Task Group on Play Yard Fit and Thickness has proposed as a revision to the standard.

This petition also requests the Commission establish a maximum play yard mattress thickness of 3 inches. This is based on the CPSC's data and analysis of that data over a 17-year period. The CPSC staff undertook a review of play yard fatalities reported from January 1, 2000, to December 31, 2016. In that time, there were six incidents of head entrapment in an aftermarket mattress that was too small for the play yard, leaving a gap ranging from 2 to 7 inches between the side of the mattress and the play yard wall. The staff briefing package did not identify any entrapment incidents involving well-fitted mattresses (i.e., with gaps of 1 inch or less).

Recommendation:

We support allowing thicker play yard mattresses up to 2 or 3 inches, provided that a test of the side gap is added that uses a device that will put outward pressure on the mesh side walls

¹ <https://www.cpsc.gov/s3fs-public/Play-Yard-Petition-Mattress-Thickness-11-29-2021--CP-22-1.pdf>

to measure any deflection that might increase the gap size and thereby allow entrapment. We have no position on the minimum thickness since it does not present safety issues.

CPSC Question in the Request for Comments:

Are any of the issues raised in the Mattress Thickness Petition supported, mooted, or rendered superfluous by the continuing work on the gap-entrapment hazard in the ASTM F15.18 Subcommittee on Play Yards and Non-Full-Size Cribs?

The work already begun in ASTM 15.18 should be the focus of the CPSC's and other stakeholders' work as we think the group can come to an agreement. We are not certain that a rulemaking is necessary at this time in response to Petition CP 22-1.

Play Yard Size Petition CP 22-2

Petition CP 22-2 asks the Commission to initiate rulemaking to standardize the size of play yards and play yard mattresses to one size for each given perimeter shape. Petitioners state that this request is intended to mitigate the risk posed by an undersized mattress in a play yard, and that such standardization would necessitate play yard mattresses being sized appropriately to fit a standardized play yard with a maximum gap of 1/2-inch (or such other dimension the Commission determines to be appropriate).

Recommendation:

Our main response to this petition is to ask: Is limiting sizes of play yards a bona fide safety issue? There is a type of standardization, such as for batteries, which makes it easier and perhaps safer for consumers to buy and use the correct product that goes with another product. Unlike play yards, however, batteries are a constant purchase, not a rare one- or two- time purchase. And because play yards, when purchased, come fully functional with a mattress as original equipment, there is no need for consumers to purchase an aftermarket mattress. Buying an aftermarket mattress in no way adds to the safety of the play yard; in fact, it can make it less safe.

The restriction proposed by petitioners would serve to make the aftermarket manufacture of mattresses more streamlined for those manufacturers. We consider this the primary effect of the petitioners' proposal, rather than providing a significant convenience or safety benefit for a consumer (or even a play yard manufacturer). Because current play yard instructions and warnings call for using the original equipment manufacturer (OEM) mattress only, or one that meets the same specifications, the proposed change would be directed at the ease of fitting into a play yard an aftermarket supplemental mattress which is currently warned against.

While full-size cribs do have standardized dimensions, cribs that are longer, larger, smaller, or wider, for instance, are allowed – but they are considered non-full-size cribs and must be sold with their own mattress. Play yards already come with a mattress.

Under the new CPSC final rule for crib mattresses that goes into effect on August 15, 2022, aftermarket mattresses for play yards or non-rectangular non-full-size cribs have to meet the same specifications as the OEM mattress provided with the play yard or crib. This means that

it will be required to test an aftermarket play yard mattress with the models of play yards that the mattress will be sold to fit—obviating the stated need for the change proposed by petitioners. Moreover, even if play yard size is uniform, other attributes that vary among play yards, such as those involving a support floor, attachment mechanisms, and structural integrity, would not be addressed otherwise, but would need to be.

CPSC Questions in the Request for Comments:

The Commission's rules are typically stated in terms of performance requirements, and/or requirements for labeling and instructions. See, e.g., 15 U.S.C. 2056(a). Is the proposal in the Play Yard Size Petition to limit the sizes of play yards and play yard mattresses consistent with this practice? If not, is the departure justified?

We do not think that addressing the size of play yards, as petitioners propose, is consistent with what is included in current commission rules. ASTM International, which addresses standardization of sizes in other standards, might be a better venue for addressing this issue than through the CPSC's mandatory standard process.

Can the safety objective identified in the Play Yard Size Petition, i.e., assisting consumers to purchase play yard mattresses that properly fit into a play yard, be addressed by a performance requirement different from that proposed in the Play Yard Size Petition? If so, are there reasons to favor or disfavor the requirement proposed in the Play Yard Size Petition? Does the existing requirement for play yard mattresses in the Safety Standard for Play Yards adequately address this hazard?

Ensuring that mattresses fit specific play yards properly has been addressed by ASTM in the development of ASTM F2933-21a, Standard Consumer Safety Specification for Crib Mattresses, and by the CPSC in the rulemakings on crib mattresses and play yards. However, it is known that parents add padding – such as purchased aftermarket mattresses, or their own homemade padding – due to a perception of a play yard mattress being too “hard.” This is solely a perception problem as babies do not need a soft surface for sleep; rather, babies, and especially newborns, need a firm, flat surface for sleep. There are other measures mattress makers – both OEM and aftermarket – can take to provide a perception of a softer mattress without making it softer or adding height.

We are not opposed to standardized sizes in play yards to avoid mattress fit issues. However, we are not sure that a CPSC rule is the solution, or even that it is necessary. We think the steps requested by this petition would have much less of an impact on safety, and much more of an impact on uniformity-in-manufacturing for aftermarket mattress manufacturers.

Respectfully submitted,

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