



UNITED STATES  
CONSUMER PRODUCT SAFETY COMMISSION  
4330 EAST WEST HIGHWAY  
BETHESDA, MD 20814

## Memorandum

This document has been electronically approved and signed.

Date: December 13, 2010

TO: The Commission  
Todd A. Stevenson, Secretary

THROUGH: Cheryl A. Falvey, General Counsel  
Kenneth R. Hinson, Executive Director

FROM: Robert J. Howell, Assistant Executive Director,  
Office of Hazard Identification and Reduction

Patricia L. Edwards, Project Manager,  
Directorate for Engineering Sciences

SUBJECT: CPSC Staff Response to Questions Regarding the Draft Final Rule for Safety Standards for Full-Size and Non-Full-Size Cribs.

## Introduction

The following is the staff's response to Commissioners' questions received December 8, 2010, regarding the draft final rule for safety standards for full-size and non-full-size cribs.

## Responses to Commissioner Nord's Questions

1. *What is the applicability of the scope of the rule to schools, churches (including Sunday schools), and social service entities, such as shelters, etc.?*

### *CPSC Staff Response:*

Section 104(c) applies to any person that, *inter alia*, "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." Thus, the law applies to "occupational" settings where child care facilities and family child care homes provide cribs. Those entities must comply with the Commission's crib rule, but the CPSIA does not provide any further definition of those terms. The American Heritage Dictionary, however, defines "child care" as "of, relating to, or providing care for children, especially preschoolers."

CPSC staff has looked at some statutes and case law to consider possible definitions. A federal statute providing loan forgiveness for child care providers defines the term “child care facility” as “a facility, including a home, that – (A) provides child care services; and (B) meets applicable State or local government licensing, certification, approval, or registration requirements, if any.” 20 U.S.C. § 1078.11(b). Staff has not researched all state laws and regulations for definitions. Some cases refer to some of these definitions. One example is a Texas statute concerning licensing requirements which defines “child care facility” as “a building used as a day nursery, children’s boarding home, child placing agency or other place for the care or custody of children under 15 years of age.” *TK’s Video Inc., v. Denton County*, 24 F.3d 705 (5<sup>th</sup> Cir. 1994). An Illinois statute defines “child care facility” as “any person who or which receives or arranges for care of one or more children unrelated to the operator of the facility.” *Youakim v. Miller*, 562 F.2d 483 (7<sup>th</sup> Cir. 1977) (case involved foster care and quoted Ill. Rev. Statutes Ch. 23 § 2212.05).

When staff prepared the regulatory flexibility analysis to assess the impact of the rule on small business, it considered information from the National Center for Education Statistics to estimate the number of children under the age of one in child care. The staff did not include the categories of parents or other relatives taking care of members of their own family in its analysis, but included nonrelative child care arrangements. This seems reasonable because section 104(c) of the CPSIA names a child care facility as an example of a entity that meets the statutory definition which begins with the clause “based on the person’s occupation, holds itself out as having knowledge or skill peculiar to cribs.” Thus, staff thinks that arrangements where a family member is caring for a child should be excluded.

Aside from this exclusion, however, it seems logical to include persons or locations that are paid to care for children and where cribs are provided as “child care facilities” or “family child care homes.” The staff believes this would include a school, a church, or social service entity paid for the service of providing child care.

In addition, section 104(c) applies to “places of public accommodation affecting commerce” which includes establishments that provide “lodging to transient guests, except that such term does not include an establishment . . . located within a building that contains not more than five rooms for rent or hire and that is occupied as a residence by the proprietor of such establishment.” The definition emphasizes the commercial nature of the establishment by stating that it must “affect commerce.” The staff believes that some social service entities, such as the “shelters” referenced in the question, would be covered by this definition if they are paid for the service of providing transient lodging and provide cribs for use.

2. *Did the staff make an attempt to determine how many products would need to be replaced and what the cost would be for hotels, motels and other public places of accommodation to meet the new requirements? If not, would you please seek and provide this information?*

*CPSC Staff Response:*

According to 2007 U.S. Census data, there are 53,021<sup>1</sup> 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. However, this is probably an overestimate. Not all places of public accommodation provide cribs to their customers; some hotels do not even allow small children in their establishments. Additionally, some places of public accommodation provide play yards instead of cribs. In fact, staff discussions with a few places of public accommodations indicate that this may be the case for many establishments. Also, staff cannot assume that places of public accommodation will necessarily replace their cribs with new cribs in response to the final rule. They might replace them with less expensive play yards. They might opt to replace only some of their cribs. Also, since the provision of cribs is an additional service rather than a necessary component of their business, they might opt to discontinue supplying cribs altogether. Additionally, places of public accommodation have the option of recouping their costs by charging an additional fee for crib use.

3. *Do we have any incident data that addresses safety issues with ASTM's December 2009 revised standard? Have there been any recalls?*

*CPSC Staff Response:*

Staff cannot determine from the incident data if the cribs involved in the incidents complied with ASTM's December 2009 revised standard (ASTM F 1169-09). However, there are several safety issues and associated recalls not addressed in ASTM F 1169-09. Those include but are not limited to:

- mattress support hazardous openings;
- loosening of fasteners, leading to the formation of hazardous gaps;
- mattress support detachments or collapses; and
- misassembly of key components.

According to the memo dated June 3, 2010 from Risana Chowdhury, Directorate for Epidemiology, to Patricia Edwards, entitled "*Full-Size and Non-Full-Size Cribs – Related Deaths, Injuries and Potential Injuries, November 2007 – Present,*" there were approximately 170 incidents relating to mattress support issues reported to CPSC staff from November 2007 to April 11, 2010. Of these incidents, three resulted in deaths. In addition, there were

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<sup>1</sup> In the staff briefing package, staff identified 43,303 firms providing public accommodations, 42,437 of which are small businesses. Here, the 53,021 includes the total number of locations providing public accommodations, not just firms.

approximately 120 reported incidents pertaining to other miscellaneous problems associated with the structural integrity of the crib that were not associated with drop-sides, falls, limb entrapments, or mattress support systems. Hardware or loose fastener incidents are included in this category and are not addressed by ASTM F 1169-09. There were 12 deaths in this group, of which at least half were associated with hardware or loose fasteners.

There have been 21 crib recalls to date in 2010. Of those recalls, 17 are related to drop-side issues and one dealt with noncompliance to 16 CFR 1508 dimensional requirements. The other three recalls dealt with hazards that were not addressed in ASTM F 1169-09: two dealt with mattress support hazards and one with a misassembly hazard. In addition, one of the drop-side recalls also included a warning relating to a mattress support misassembly hazard.

4. *Do we have any information about how many cribs meeting ASTM's 2009 standard have been sold?*

*CPSC Staff Response:*

Staff does not have any data on how many cribs have been sold that meet ASTM's 2009 standards for full-size and non-full-size cribs.

5. *How many cribs has JPMA certified to the requirements in our July Notice of Proposed Rule briefing package? If there are some certified products, how much of the market share do they represent?*

*CPSC Staff Response:*

No cribs have been certified by the Juvenile Products Manufacturers Association (JPMA) to the proposed rule. JPMA only certifies to ASTM's voluntary standards, not CPSC requirements. CPSC staff is not aware of how many cribs JPMA has certified to either the 2009 or 2010 ASTM standard.

6. *Do you know of other manufacturers that may have used other testing laboratories to certify cribs to the requirements contained in the July Notice of Proposed Rule briefing package and if so, how many cribs have been certified for the U.S. market?*

*CPSC Staff Response:*

Based on conversations with manufacturers as part of the consultation process required by the Consumer Product Safety Improvement Act (CPSIA), staff believes that many manufacturers are already making changes to meet the final rule and testing their cribs for compliance with it. For this reason, staff has recommended in the notice of requirements for lab accreditation that test results dating back to the publication of the notice of proposed rulemaking be used to satisfy the certification requirements of section 102 of the CPSIA. Staff has limited information regarding which laboratories these manufacturers are using. Staff has no information on how many cribs have been tested to the new standards.

7. *How many labs are currently certified to do crib testing? How long will it take to certify labs up to the level needed to do the new testing?*

There are seven laboratories in the U.S. certified by the CPSC to test cribs to the current crib regulations (16 CFR parts 1508 and 1509). There are an additional ten laboratories in China and 11 elsewhere in southeast Asia for a minimum of 28 worldwide.

The current CPSC certification process verifies that an accredited lab has 16 CFR 1508 and 1509 in its scope and does not deal with the requirements of the ASTM crib standards. CPSC staff is aware that many, if not most, of these 28 laboratories also have the capability to test to the ASTM crib standards. Any lab that is currently capable of testing cribs to 1508, 1509, and the 2010 ASTM crib standards would need little investment, if any, to be capable of testing to the final crib rule. The only new test is the slat strength testing of folding or sectioned sides. Thus the impact would be extremely low since existing slat strength equipment is probably sufficient.

A lab that is certified to test to 1508, 1509, and the 2009 ASTM crib standards (but not the 2010 ASTM crib standards) would need to add test equipment for the cyclic shake test, perform modifications to the vertical mattress support impact test, and possibly modify the slat strength test equipment. The most cost prohibitive and longest lead time item is the procurement and setup of the cyclic shake system. Staff estimates that a lab could procure the equipment, validate the test system, and train operators in 12 weeks or less.

8. *Based on the reported estimates of 2.4 million cribs normally sold each year and the estimated additional 700,000 needed to replace all the child care cribs plus an additional 1.5 to 2 million needed to replace the used cribs that are normally sold from consumer to consumer, what evidence do we have showing it is feasible to test the various models and produce this magnitude of cribs in this period of time?*

*CPSC Staff Response:*

Staff estimates that approximately 2.4 million new cribs are sold to households annually, with an additional 77,000 and 16,000 to child care facilities and places of public accommodation respectively. The demand for new cribs by child care facilities and places of public accommodation could result in a one-time increase to approximately 935,000 cribs (775,000 for child care facilities and 160,000 for places of public accommodation). Therefore, staff estimates that the manufacturers of cribs could experience a one-time increase in demand of as much as 43 percent (up to 3.3 million from 2.4 million).

Based on conversations with manufacturers as part of the consultation process required by the CPSIA, staff believes that many manufacturers have already made changes to meet the final rule (or are in the process of doing so), particularly those engaged in the voluntary standard development process. Given that the industry is aware of the coming increase in demand, it is reasonable to assume they are making arrangements to increase the production of compliant crib

models to take advantage of the temporary increase in demand. Because some manufacturers have asked staff to allow a look-back period for testing, staff knows some compliant cribs have already been manufactured.

In addition, staff received a comment to the NPR from JPMA that discussed the six-month effective date proposed in the NPR. The commenter discussed the financial burden on child care facilities and places of public accommodation but nowhere in its comment did JPMA mention that it will not be possible or practical for crib manufacturers to make enough compliant cribs in the six-month proposed effective date.

Staff recognizes that some of the 1.4 million used cribs sold or handed-down annually may instead result in the purchase of a new crib.<sup>2</sup> However, it is unlikely that the practice of selling or handing down cribs to family or neighbors will cease, even though sales through second-hand stores will.

Therefore, staff believes that the supply of cribs can and likely will expand to meet the one-time increase in demand.

With regard to the question about the feasibility of testing various models, the production of more cribs does not necessarily correspond to additional models that will require testing. It is more likely that more cribs of each model type will be produced and sold. Therefore, staff does not believe that the added crib sales will make crib testing less feasible.

*9. What incident data do we have on the drop gate hinge and what is the nature of these incidents?*

*CPSC Staff Response:*

CPSC staff is aware of 13 incidents from the Early Warning System (EWS) data discussed in the briefing package that are known to have occurred in drop gate cribs. Of these 13 incidents, there were five injuries and no deaths. The injuries related to either falls from the crib (two) or injuries to the occupants' hands or fingers (three).

*10. What is the significance in using the term 'effective compliance date' as opposed to calling this an effective date, which is the term we typically use?*

*CPSC Staff Response:*

The draft rule uses both the terms "effective date" and "compliance date." The effective date is the date on which the rule takes effect, and the compliance date is the date on which entities subject to the rule must comply with the rule. Usually, the Commission issues rules that provide one effective date and thus, require all entities subject to the rule to comply on that effective date. The draft crib rule establishes one effective date and two compliance dates.

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<sup>2</sup> According to the *2006 Baby Products Tracking Study*, 90 percent of new mothers own cribs, approximately 37 percent of which were handed-down or purchased second-hand. This suggests annual sales of about 1.4 million cribs to households (.37 x .9 x 4.3 million births per year according to the CDC).

## **Responses to Commissioner Moore's Question**

- 1. Assuming the FR notice gets published on January 1, will most/some/few of the cribs being offered for sale in the six-month window that follows meet our mandatory standard?*

### *CPSC Staff Response:*

Staff expects the proportion of cribs compliant with the final rule that are offered for sale to increase over the course of the six-month period following the publication of the rule. Staff believes it is reasonable to assume that retailers will sell off current inventory of cribs, including cribs that are not compliant with the final rule prior to the effective date.

## **Responses to Commissioner Northup's Question**

- 1. Using the same scope of data already given in the crib packet for crib-related, structural incidents (35 deaths, 1,675 injuries), what portion of these incidents occurred in child care centers? (How many are deaths, and how many resulted in injuries?)*

### *CPSC Staff Response:*

The 35 deaths and 1,675 injuries cited in the question are totals for full-size cribs and cribs of unknown size only. These numbers do not include non-full-size cribs, which are often found in child care facilities. In addition, the 1,675 injuries included injuries not related to the structural aspects of the crib such as impacts, cardiac arrests, and sepsis. This data is anecdotal, not drawn from a statistically based sample, and cannot be used for any sort of statistical comparison or inference.

There were 32 reported incidents from the EWS data discussed in the briefing package that were identified to have occurred in child care facilities. However, this number is considered a minimum due to missing location information and underreporting. Of these 32 incidents, there were 12 injuries and seven deaths. This includes all reported incidents occurring in child care facilities, not just those related to structural aspects of the crib. Of these 32 incidents, 17 were determined to be associated with the structural aspects of the crib, including one death and four injuries. Staff is also aware of several other deaths and injuries associated with the structural aspects of cribs that occurred in child care facilities outside the time frame referenced in the NPR and final briefing packages.