

U.S. CONSUMER PRODUCT SAFETY COMMISSION 4330 EAST WEST HIGHWAY BETHESDA, MD 20814

STATEMENT OF COMMISSIONER ROBERT S. ADLER REGARDING THE PROPOSED EXTENSION OF THE COMPLIANCE DATE OF THE NEW MANDATORY FULL SIZE AND NON-FULL-SIZE CRIBS STANDARDS UNDER SECTION 104 OF THE CPSIA

JUNE 16, 2011

On December 28, 2010, I was proud to join a unanimous Consumer Product Safety Commission in adopting new mandatory performance standards for full-size and non-full size cribs. As I wrote then, ¹ I believe the requirement in the Consumer Product Safety Improvement Act of 2008 (CPSIA) to update and make mandatory a number of voluntary safety standards for durable infant or toddler products was a long overdue and necessary step for the safety of our most involuntary risk-takers: infants. These new, mandatory standards go into effect on June 28, 2011. ² Today, after a public Commission meeting to consider a late request by a few crib retailers to extend the June deadline, I joined a majority of my colleagues in choosing not to allow the retail sale of cribs that do not meet the new crib standards after the mandatory compliance date. ³

Beginning a few weeks ago, the Commission started receiving letters from a few crib retailers asking for the compliance date of the rule to be extended because these stores possessed an excess of what will become non-compliant (and therefore unsalable) cribs on June 28.

However, beginning at around the same time, the Commission also started receiving letters from a number of other small, independent similarly situated crib

¹ See statement at: http://www.cpsc.gov/pr/adler12152010.pdf (Dec. 15, 2010). While I disagreed with my colleagues as to the compliance date for child care facilities and public accommodations, I joined the 5-0 Commission in the setting the effective date for manufacturers and retailers at six months from passage: June 28, 2011.

² More specifically, the new standards go into effect for all parties with the exception of child care facilities and public accommodations who have been granted an extension until December 28, 2012 to comply with the new rules. My rationale for dissenting from this extension can be found in my December statement.

³ On a second vote to allow for the short-term rental of cribs by crib rental companies that do not meet the mandatory crib standards until December 28, 2012, I abstained. While I recognize that it appears there is a shortage of compliant cribs available from manufacturers for this segment of the market, and I am convinced some extension may be required, I am not convinced that the shortage necessitates an eighteen month extension.

retailers. These small businesses begged the Commission to leave the compliance date alone because they had gone out of their way, suffering great expense, to liquidate their non-compliant merchandise so they would have only compliant cribs in stock by the end of June. These small retailers expressed great fear that if their competition were allowed to sell non-compliant merchandise after June 28, at what was sure to be a deep discount, it would put many of these small companies out of business. What would be particularly distressing about such a turn of events is that this second group of merchants have, at no small cost, unquestionably done the right thing and, if we granted an extension of the compliance date, they would be punished in the marketplace for following the rules.

Although I am not without sympathy for those retailers who, for whatever reason, have ended up with noncompliant inventory, I have to balance their concerns against the Congressionally mandated retroactive application of the crib rule and the special circumstances surrounding cribs as a consumer product. Cribs have been treated specially by Congress and this agency for good reason. A crib is the one place that infants are placed for hours all alone with no adult or other protective presence. Children are at their most vulnerable in a crib so the crib should be the safest place in the house both when they sleep and when they are moving about, shaking the crib's side, or exploring its every nook and cranny.

It is clear that Congress recognized the unique safety challenge that cribs present by enacting extremely broad provisions in the CPSIA. These provisions streamline agency rulemaking, require third party testing by independent labs, extend the scope of the rule beyond traditional parties to include child care facilities and family child care homes, and make any crib rule retroactive. In short, Congress expected extra safety efforts and quick action from the Commission, and anyone who would ask us to allow less safe cribs to be sold to consumers any longer than is absolutely necessary bears a heavy burden to persuade me to do so. I do not believe that burden has been met today.

When originally setting the June 28 compliance date, the Commission, with the help of its economists, attorneys, compliance officers, and other experts estimated how long it would take for the marketplace to produce enough compliant cribs so that consumers could be sure they would have access to the safest cribs available. Based on the information provided to us at the time, we chose six months from the date of the publication of the rule because it appeared to be the appropriate time frame needed to make sure there was an adequate supply of compliant cribs available for consumers. In retrospect, it appears that judgment was an accurate one.

In fact, most of those retailers who have suggested the June 28 date be extended have not contended six months was insufficient for compliant cribs to get to market. We also have not heard from consumers or consumer groups that there will be a lack of compliant cribs available for purchase on that date. If that were the case, it would surely be a concern worth addressing. Instead, the concerns expressed by a small segment of the retail crib industry have been exclusively their unhappiness at the prospect, whether through bad luck or bad planning, of having unsold noncompliant cribs in inventory once the standard's compliance date arrives.

Yet, the alternative being suggested is not compelling. Any type of extension of the effective date for this rule would be patently unfair to the many retailers, both small and large, that have planned ahead, worked hard, played by the rules and prepared themselves to sell only compliant cribs on June 28. What message would it send to the regulated community if we turned our back on those that do the right thing at the right time? What message would it send to consumers that these economic concerns for only a segment of the crib marketplace were placed above the interests of stopping the sale of cribs that no longer meet the minimum federal safety standard?

Our primary statutory mission is to protect the American public against unreasonable risks of injury associated with consumer products. Accordingly, it is our responsibility to be sure that parents and caregivers can be confident that the cribs they buy are the safest ones available. It is important to remember when addressing this issue that Congressional passage of this mandatory safety standard was a result of the deaths of dozens of infants in their cribs.

I continue to urge the Commission to engage in a robust and comprehensive education and information campaign through traditional and non-traditional media that alerts the public, the child care industry, state and local licensing agencies, manufacturers, retailers, and all other concerned stakeholders that the rules have changed and all cribs must be compliant with the new federal safety standard.

I also urge the manufacturing community to make good on their promised retrofit kits that would allow retailers to use the kits to bring their applicable inventory up to the new standard. June 28, 2011 should be a day for all to celebrate – and if the Commission, the manufacturers, and the retailers continue to work together, we can do the right thing for all concerned.