



Record of Commission Action
Commissioners Voting by Ballot*

Commissioners Voting: Chair Alexander D. Hoehn-Saric
 Commissioner Peter A. Feldman
 Commissioner Richard L. Trumka Jr.
 Commissioner Mary T. Boyle

ITEM:

Proposed Rule: Safety Standard for Adult Portable Bed Rails
(Briefing Package dated September 21, 2022, OS No. 0157)

DECISION:

The Commission voted unanimously (4-0) to approve publication of the proposed rule with specified changes, as described in the attached amendment, *Specified Changes to Safety Standard for Draft Proposed Rule: Adult Portable Bed Rails*.

For the Commission:

Alberta E. Mills
Secretary

*Ballot vote due October 12, 2022
(The Commission voted by electronic poll on September 29, 2022 to transfer this matter from a decisional meeting to a ballot vote).

Attachment: Commission adopted amendment

**Specified Changes to Safety Standard for
Draft Proposed Rule: Adult Portable Bed Rails**

Change Set 1: Anti-Stockpiling

On page OS-64:

Delete “The CPSC is not proposing an anti-stockpiling provision in the proposed rule given the brief 30-day effective time period but seeks comment on whether to include one in the final rule” and replace with “The CPSC is proposing an anti-stockpiling provision to prevent firms from manufacturing large quantities of non-compliant APBRs before the rule takes effect and seeks comment on this provision.”

On page OS-65:

Delete bullet that begins “Whether the Commission should include in the rule anti-stockpiling provisions . . .”

On page OS-67:

Insert below “1270.2 Requirements for adult portable bedrails” in the table of contents a new section labeled “1270.3 Prohibited Stockpiling”

Relabel “1270.3 Findings” as “1270.4 Findings”

On page OS-74:

Insert a new section following the end of § 1270.2 as follows:

§ 1270.3 Prohibited stockpiling.

(a) *Prohibited acts.* Manufacturers and importers of adult portable bed rails (APBRs) shall not manufacture or import APBRs that do not comply with the requirements of this part in any 1-month period between [DATE OF PUBLICATION OF FINAL RULE] and [EFFECTIVE DATE OF FINAL RULE] at a rate that is greater than 105 percent of the rate at which they manufactured or imported APBRs during the *base period* for the manufacturer or importer.

(b) *Base period.* The base period for APBRs is the calendar month with the median manufacturing or import volume within the last 13 months immediately preceding the month of promulgation of the final rule.

Relabel previous “§ 1270.3 Findings” as “§ 1270.4 Findings”

Change Set 2: Request for Comment on Product Utility

On page OS-65:

Insert a new bullet below the bullet beginning “Potential alternatives to APBRs if they are banned” and above the bullet beginning “The appropriateness of the 30-day effective date” as follows:

- Any qualitative or quantitative evidence concerning the utility that APBRs have for consumers relative to alternative products that might be used as substitutes in the event APBRs are banned;

Change Set 3: Clarification of Commission Preliminary Determinations

The specified changes below incorporate and reflect the following clarification: The Commission preliminarily determines that the voluntary standard is not likely to eliminate or adequately reduce the unreasonable risk of injury associated with entrapments on APBRs. Accordingly, the Commission is proposing to adopt the voluntary standard with specified modifications necessary to improve safety and adequately reduce the risk of injury associated with entrapment on APBRs.

On page OS-8:

Delete: “To address these risks, the Commission proposes to adopt ASTM F3186-17, with modifications, to improve safety.”

Replace with: “As discussed in section V. of this preamble, the Commission preliminarily determines that the voluntary standard is not likely to eliminate or adequately reduce the unreasonable risk of injury associated with entrapments on APBRs. Accordingly, the Commission is proposing to adopt the voluntary standard with specified modifications necessary to improve safety and adequately reduce the unreasonable risk of injury associated with entrapment on APBRs.”

On page OS-18:

Delete: “Staff’s review of ASTM F3186-17 shows that the voluntary standard, *with modifications*, is likely to eliminate or adequately reduce the entrapment hazards associated with APBRs. The Commission has preliminarily determined, however, that substantial compliance with the voluntary standard is not likely to eliminate or adequately reduce the risk of entrapments on APBRs without modifications.”

Replace with: “Based on staff’s review of ASTM F3186-17, the Commission has preliminarily determined that the voluntary standard is not likely to eliminate or adequately reduce the unreasonable risk of injury associated with entrapments on APBRs.”

On page OS-25:

Delete: “Although many provisions of ASTM F3186-17 do improve safety, for the reasons discussed in section V. of this preamble, the Commission preliminarily determines that, without additional modifications, the voluntary standard is insufficient to eliminate or adequately reduce the unreasonable risk of injury of entrapments on APBRs.”

Replace with: “For the reasons discussed in section V. of this preamble, the Commission preliminarily determines that the voluntary standard is not likely to eliminate or adequately reduce the unreasonable risk of injury associated with entrapments on APBRs. Accordingly, the Commission is proposing to adopt the voluntary standard with specified modifications necessary to improve safety and adequately reduce the unreasonable risk of injury associated with entrapment on APBRs.”

On page OS-31:

Delete: “As discussed in section V of this preamble, the Commission preliminarily determines that, without additional modification, the voluntary standard is insufficient to eliminate or adequately reduce the unreasonable risk of injury of entrapments on APBRs.”

Replace with: “As discussed in section V of this preamble, the Commission preliminarily determines that the voluntary standard is insufficient to eliminate or adequately reduce the unreasonable risk of injury of entrapments on APBRs.”

On page OS-51:

Delete: “Based on staff’s evaluation of ASTM F3186-17, the Commission preliminarily determines that the CPSC could rely on the current voluntary standard, ASTM F3186-17, if it were modified to improve clarity and safety for APBRs. However,”

Replace with: “Based on staff’s evaluation of ASTM F3186-17, the Commission preliminarily determines that the voluntary standard is not likely to eliminate or adequately reduce the unreasonable risk of injury associated with entrapments on APBRs. Further,”

On page OS-78

Delete: “The Commission preliminarily determines that, absent modification, the voluntary standard is not likely to eliminate or adequately reduce the risk of injury of entrapments on APBRs. The Commission also preliminarily determines that ASTM F3186-17, see § 1270.2, with modifications, is likely to adequately reduce the risk of injury associated with APBRs.”

Replace with: “The Commission preliminarily determines that the voluntary standard is not likely to eliminate or adequately reduce the unreasonable risk of injury associated with entrapments on APBRs. Accordingly, the Commission is proposing to adopt the voluntary standard with specified modifications necessary to improve safety and adequately reduce the unreasonable risk of injury associated with entrapment on APBRs.”