



U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814-4408

MINUTES OF COMMISSION MEETING
July 14, 2010

Vice Chairman Robert S. Adler convened the July 14, 2010, meeting of the U. S. Consumer Product Safety Commission at 9:20 a.m. in open session. Commissioners Thomas H. Moore, Nancy A. Nord and Anne M. Northup were also in attendance. Chairman Tenenbaum participated by telephone.

1. Decisional Matter: Proposed Standards for Full-Size and Non-Full-Size Cribs under Section 104 of the Consumer Product Safety Improvement Act ("CPSIA") - Notice of Proposed Rulemaking ("NPR")

Vice Chairman Adler requested that the staff explain changes made by the staff to the draft Notice of Proposed Rulemaking on proposed standards for full-size and non-full-size cribs that were circulated before this decisional meeting. Patricia M. Pollitzer, General Attorney, Office of General Counsel, described the changes and explained that the changes are not substantively different from the original document. The Commissioners discussed and made comments about the proposed standard and its impact on the public. Patricia L. Edwards, General Engineer, and Jacob J. Miller, Mechanical Engineer, Division of Mechanical Engineering, Directorate for Engineering Sciences, responded to questions from the Commissioners. The Commission was briefed by the staff on the proposed rules at the Commission meeting of July 7, 2010. (Ref: staff briefing packages dated June 30, and July 9 and 12, 2010.)

Commissioner Moore moved that the Commission approve publication in the *Federal Register* ("FR") of the draft NPR proposing standards for full-size and non-full-size cribs with the staff changes. Vice Chairman Adler seconded the motion. Vice Chairman Adler made comments about the proposed rule and an education campaign about crib safety. The Commission voted unanimously (5-0) to adopt the motion.

Commissioner Moore moved that the Commission approve publication in the *FR* of the draft NPR proposing to revoke 16 C.F.R. parts 1508 and 1509 without change. Vice Chairman Adler seconded the motion and called for any discussion on the motion. There being no discussion, the Commission voted unanimously (5-0) to adopt the motion.

Commissioner Moore moved that the Commission approve publication in the *FR* of the draft notice withdrawing the 1996 crib Advance Notice of Proposed Rulemaking without changes. Vice Chairman Adler seconded the motion and called for any discussion on the motion. There being no discussion, the Commission voted unanimously (5-0) to adopt the motion.

Chairman Tenenbaum and Commissioners Nord and Northup issued statements about the matter.

2. Virginia Graeme Baker Pool and Spa Safety Act ("VGB Act"): Public Accommodations Facility, Final Interpretive Rule

Vice Chairman Adler introduced the issue and announced he will be submitting before next week's vote an amendment to remove the exemption for establishments that contain not more than five rooms for rent or hire and replace it with one that limits the exemption to single family residences rented to the public. Barbara Little, General Attorney, Office of General Counsel, Troy Whitfield, Lead Compliance Officer, Office of Compliance and Field Operations, and Elizabeth Leland, Economist, Directorate for Economic Analysis, briefed the Commission on VGB Act and its requirements for "public pools and spas," which is defined in the VGB Act to include a swimming pool or spa that is "open exclusively to patrons of a hotel or other public accommodations facility." The Act does not define the term "public accommodations facility." The proposed rule would interpret "public accommodations facility," with certain exclusions. The Commission discussed the issue and asked questions of the staff. No decisions were made in this part of the meeting.

There being no further business, Vice Chairman Adler adjourned the meeting at 10:25 a.m.

For the Commission:



Todd A. Stevenson
Secretary to the Commission



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**STATEMENT OF CHAIRMAN INEZ M. TENENBAUM ON THE COMMISSION
DECISION REGARDING THE PROPOSED RULE ON THE MANDATORY SAFETY
STANDARD FOR FULL-SIZE AND NONFULL-SIZE CRIBS**

A crib should be the safest place for an infant or toddler to sleep. For too long, and for too many young children, this has not been the case. Between November 2007 and April of this year, CPSC is aware of thirty-six deaths associated with crib structural problems. Thirty-five of those fatalities occurred when crib components detached, disengaged, or broke, ending in an entirely avoidable tragedy. The fatal and near fatal incidents resulting from crib failures made it abundantly clear to me and to CPSC that now is the time for new mandatory standards to address these risks.

Today, I am pleased to vote for the proposed rule to create what I believe are vastly improved standards for cribs. The standards' new requirements are mandatory and will provide much needed protection to children from the harms and dangers associated with crib failures. Far too many of these failures have brought pain and suffering that no parent should ever experience.

Section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) requires the Commission to evaluate voluntary consumer product safety standards for certain durable infant and toddler products. If the voluntary standards are inadequate, we must improve them in order to ensure that all mandatory durable nursery product safety standards "provide the highest level of safety for such products that is feasible." The more robust and protective a standard adopted by the voluntary standard body, the easier it is for CPSC to create an effective mandatory standard.

Congress recognized the critical importance of a safe sleeping environment. The CPSIA requires the new mandatory rule to apply broadly and retroactively. Indeed, once the rule becomes effective, no crib may be manufactured, distributed in commerce, resold, leased, sublet, offered, or provided for use that is not in compliance with the mandatory standard. This standard, therefore, will impact entire industries, from manufacturers to retailers, and from distributors to resellers and thrift stores. Also impacted will be businesses and service providers that either use or make cribs available to patrons, such as commercial and home child care facilities, hotels, and other places of public accommodation. I realize that the impact on some smaller entities may be great; however, Congress spoke clearly, and in a way that ensures children's safety through comprehensive and swift action.

Early in my tenure as Chairman, it became apparent that a pattern of risk was emerging due to failures of the hardware and component parts of drop-side cribs. As I spoke with our expert staff about these risks, I quickly learned there were other hazards that also posed serious dangers to babies. To better understand our data and the patterns of risk, I initiated a "Safe Sleep Team,"

drawing from staff across areas of technical expertise. This team reviewed incident and injury data related to cribs and verified patterns of specific failures at an expedited pace. In addition to drop-side failures, the team focused on detachment and breakage of crib slats, the failure of hardware and mattress supports, and the loosening of wood screws and other fasteners.

For the proposed standards approved today, the Commission considered the voluntary ASTM F 1169-10 standard for full-size cribs and ASTM F 406-10 for nonfull-size cribs. Thanks to the outstanding efforts of CPSC staff, working in collaboration with ASTM, consumer groups, the industry, and juvenile product experts, the new voluntary standards approved by ASTM on June 1, 2010, represent serious improvements to their predecessor standards. The new voluntary standards include numerous safety requirements recommended by CPSC, as well as elements from the Health Canada standard (SOR/86-962) and European standard (EN 716). Although the 2010 ASTM crib standards address many known risks and hazards, the proposed rule incorporates additional requirements designed to ensure that the mandatory standards provide the highest level of protection. Generally, the improvement to the ASTM standard for full-size cribs disallows the tightening of screws between stages of durability testing. Changes for nonfull-size cribs are more extensive and include the addition of several elements of more rigorous testing.

We currently are working to ensure that the marketplace, homes, child care centers, and other facilities are free of dangerous and defective cribs. To address the remaining cribs that pose serious risks to young children, the Safe Sleep Team worked with seven manufacturers to, on June 24, recall more than two million cribs to address drop-side and other hazards. Earlier today, CPSC and Pottery Barns Kids jointly announced another recall of drop-side cribs.

The development of this proposed rule reflects success on many levels. I commend the outstanding work of the Safe Sleep Team and technical experts who, at my direction, have worked tirelessly with ASTM committee members to create a standard that I believe will markedly reduce risks to children. I look forward to ASTM's continued dedication and cooperation with us as we move forward to develop future durable nursery product standards. Most importantly, I look forward to finalizing this rule and helping to ensure that parents and caregivers can rest easily while their babies and toddlers sleep safely in their cribs.



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STATEMENT OF COMMISSIONER NANCY NORD
ON THE VOTE TO APPROVE THE PROPOSED STANDARDS FOR FULL-SIZED AND
NON-FULL SIZED CRIBS UNDER SECTION 104 OF THE CPSIA
July 14, 2010

Protection of infants and toddlers is one of the Commission's most important roles and it is a role we have taken very seriously throughout our history. I fully support our long-standing and ongoing effort to get unsafe cribs out of consumer's hands. Therefore, I was pleased to join my colleagues today to publish in the *Federal Register* a draft NPR proposing standards for full-size and non-full size cribs, which is a critical element of that effort.

This draft regulation builds on continuing robust work by the Commission to address hazards in cribs. This draft NPR includes requirements developed from the 1996 ANPR addressing crib slat integrity and reflects work from the 2008 ANPR that resulted in substantial revisions to the ASTM voluntary standards in 2009 and 2010. It is also informed by data developed through the pilot Early Warning System initiated in 2008.

The proposed rule is a very strong standard that will address all aspects of crib construction and provide an effective margin of safety. I do have a concern, however, about the effective date and that the retroactive nature of the language in Section 104(c) (1) of the CPSIA will have a significant impact on the availability of compliant cribs. In addition to the prohibition on the sale of inventory and the resale of used cribs, day care centers and hotels will no longer be able to use their cribs when this rule goes into effect.

I urge industry and other affected parties to pay special attention to the questions raised in the Requests for Comments section of the NPR asking for information on such issues as: the effective date, the size of retailer inventory, the typical rate of turn-over, and the number of cribs in day care centers and hotels. We need your comments so we will have a basis to determine a realistic timeframe to make sure there is sufficient inventory available to deal with the demands this rule will create. We certainly do not want to create a situation where people stop using cribs and place their babies to sleep in unsafe environments.



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STATEMENT OF COMMISSIONER ANNE M. NORTHUP ON THE VOTE
TO APPROVE THE PROPOSED STANDARDS FOR FULL-SIZE AND
NON-FULL-SIZE CRIBS UNDER SECTION 104(b) OF THE CPSIA

July 14, 2010

In supporting today's draft proposed rule for cribs, I commend the hours of hard work that have gone into reviewing other standards as well as large amounts of incident data reported to the Commission. I hope that new mandatory standards will provide families with a sense of comfort and confidence in the cribs they purchase.

However, I believe there are also negative consequences that will follow from the issuance of these mandatory standards about which we have an obligation to seek public comment and to alert Congress. Our top priority, as always, should be to make sure parents, families, and institutions such as day care centers have safe cribs—period. But like many other well-intentioned aspects of the Consumer Product Safety Improvement Act (CPSIA), the section of the law pertaining to cribs may create a number of unforeseen consequences for young families and even babies. I intend to articulate these potential consequences not only in this statement but directly to Congress, which has asked this Commission on many occasions to provide feedback on areas of the CPSIA that work and areas that simply do not work.

The Facts: Drop-Side Cribs are Gone

As staff conveyed during today's Commission meeting, if one were to compare two cribs that were made by the same firm, using a similar design, the same wood, and coming from the same factory, the one that has a *drop side* is not as safe because it has more moving parts. As a result of this determination and a number of reported incidents with traditional drop-side cribs, the Commission has released several warnings over the years regarding their use. Recently, the ASTM voluntary standards committee changed the industry's standards (ASTM F 1169-09/ASTM F 406-10) in such a way that companies no longer will be able to make cribs with a traditional drop side. These particular standards were approved by ASTM in December of 2009 for full-size cribs and in June of this year for non-full-size cribs, respectively. Of course, considering the spotlight on the dangers of drop-side cribs in recent years and the expectation of a complete ban, families and institutions have already steered away from these types of cribs and invested in cribs complying with one of the newer voluntary standards.

Retroactivity of Crib Standards

Regardless of the steps that were taken to bring us to a place where traditional drop-side cribs will no longer be made (a place reached largely aside from the CPSIA's mandates), the CPSIA required the Commission to issue a mandatory standard for cribs—not just for new cribs, but for used cribs as well. Such a provision is unlike the mandatory standard requirements for other durable nursery goods, such as toddler

beds, play yards, or cradles. For cribs alone, the Commission's mandatory standard this year ***will make every crib in this country obsolete overnight and unable to be sold***—regardless of whether that crib was ever subject to a recall or ever considered unsafe.

What are the consequences of this provision of the law? First, any young family who has bought a new crib over the past year (not a small investment) will not be able to sell it or donate it to a thrift store after it has been used—even if the crib has fixed sides and is safe. Families often invest in second-hand cribs or hand them down to another family member due to the high cost of new cribs. While the Commission advises consumers not to use any crib that is over ten years old, for example, the fact remains that the safest place for a baby to sleep is in a crib, and the second-hand market for cribs remains a lifesaver for many families.

Unfortunately, once this provision of the law becomes effective, retail stores and thrift stores will no longer be able to sell fixed-side, safe cribs currently in their inventories—a waste not only for those stores but for families in need of affordable cribs later this year or next. Currently, the draft proposed rule includes an effective date of ***six months following the passage of the final rule***. I strongly request comments from retailers, thrift stores and other parties regarding the wisdom of this effective date and whether it provides enough time for retailers to sell down their inventories and for manufacturers to meet the coming spike in demand.

Furthermore, the law goes beyond just a prohibition on the purchase of new cribs. It expressly forbids cribs that do not meet the new mandatory standard from being offered ***for use*** by places of public accommodation. Once the new standard becomes effective, day care centers and hotels across the country will have to begin using brand-new cribs that meet the Commission-approved mandatory standard—even if they bought a crib earlier this year that meets the previous ASTM standard (less than a year old) and is completely safe. My biggest fear is that day care centers, in particular, will be stuck with no other option but to place babies in play yards or on floor mats—even temporarily—since the purchase of so many new cribs will be quite expensive. This result may not only mean that babies will be placed in less-safe sleep environments, but it will also represent a tremendous waste of money for families, day care centers, and taxpayer dollars that help fund many day care centers.

Another consequence of the retroactive effects of the law's provision on cribs that we barely mentioned in today's Commission meeting is that these mandatory standards for cribs ***will again be retroactive every time they are updated in the future***. In other words, once the mandatory standards are modified in the future to respond to changes in the market, new innovations, or new hazards, all the new cribs that meet the Commission standard ***this year*** will become obsolete once again, cannot be resold, and day care centers once again will be forced to buy another set of new cribs. This situation will be disastrous for families and day care centers that depend on the availability of affordable cribs. I am not convinced that Congress intended such a drastic result. On this issue of "rolling" retroactivity, I would request comments from day care centers, hotels and the general public assessing what this will mean to them.

If you are a crib company, at this point you are probably "dancing a jig" because of the various effects of this law. While companies certainly will lose current inventory that does not meet the new standard, they will also reap tremendous financial rewards since ***every family and day care center in the near future will be forced to purchase a brand-new crib***. They will not have access to any safe, used cribs in the resale market for quite a while. Even if they have recently gotten rid of their drop-side cribs, as this Commission has advised for many months, the new, fixed-side cribs they just bought will also be obsolete

and unable to be resold. In fact, they may not ever have access to much of a resale market if the mandatory standards for cribs continue to be modified periodically. Each time the standard is modified in the future, yesterday's crib will become outmoded, unable to be resold by families, and unable even to be used by such places as day care centers and hotels. (This alone provides quite an incentive for crib companies to continue proposing changes to the mandatory standard!)

As always, it is the sectors of the market least able to afford it that are negatively impacted by overregulation. This time, it is young families and many day care centers that will be negatively impacted by this crib rule in ways that are unnecessary to promote safety. We all support issuing the regulations that the CPSIA requires, but when these regulations result in untenable, ludicrous consequences that do more harm than good to American families, we have an obligation to approach Congress and inform them. I am hopeful that Congress would be open to amending the law to address these unforeseen consequences.