



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

MINUTES OF COMMISSION MEETING
December 15, 2010

Chairman Inez M. Tenenbaum convened the December 15, 2010, meeting of the U. S. Consumer Product Safety Commission at 10:00 a.m. in open session. Commissioners Thomas H. Moore, Nancy A. Nord, Robert S. Adler and Anne M. Northup were also in attendance.

Decisional Matter: Full-Size and Non-Full-Size Cribs - Final Rules

The Commission considered the issuance of a *Federal Register* ("FR") notice on the draft final rules for mandatory standards for full-size cribs and non-full-size cribs. Patricia Pollitzer, General Attorney, Office of General Counsel, and Patricia Edwards, General Engineer, Directorate for Engineering Sciences were present to respond to questions. The Commission was briefed on this matter by the staff at the Commission meeting of December 8, 2010. (Ref: staff briefing package dated December 1, 2010.)

Chairman Tenenbaum made opening remarks and introduced the decisional matter pending before the Commission. Chairman Tenenbaum asked the Commission whether there were any questions for the staff on the matter. Commissioner Adler asked questions about the time period for the compliance or effective date regarding day care centers. There being no other questions, Chairman Tenenbaum moved to amend in the form of a substitute, an amended draft *FR* notice for the original staff *FR* notice of the draft final rule for standards for full-size and non-full-size cribs. Commissioner Moore seconded the motion. Chairman Tenenbaum explained the differences in the amended draft *FR* notice, including allowing child care facilities an additional twelve months to come into compliance with the new standards and allow public accommodations, such as hotels and motels, to come into compliance with the new standards at the same time as the child care facilities. Chairman Tenenbaum discussed other aspects of the mandatory standard. After further discussion by the Commissioners regarding the final rules on cribs and the extended compliance date for child care facilities and public accommodations, Chairman Tenenbaum called for a vote on the motion. The Commission voted (4-1) to adopt the motion to substitute an amended draft *FR* notice for the original staff draft *FR* notice. Chairman Tenenbaum and Commissioners Moore, Nord and Northup voted to adopt the motion. Commissioner Adler voted to not adopt the motion.

Chairman Tenenbaum asked if there were any other motions or discussion. There being none, Chairman Tenenbaum moved to approve publication of the amended final rule for full-size and non-full-size cribs in the *FR*. Commissioner Nord seconded the motion. There being no discussion, Chairman called for the vote on the motion. The Commission voted unanimously (5-0) to approve publication of the amended draft final rule in the *FR*.

Chairman Tenenbaum called for any other motions to be considered. There being none, Chairman Tenenbaum moved to approve publication in the *FR* of the draft final rule revoking 16 C.F.R. parts 1508 and 1509. The rule revokes existing regulations relating to full-size and non-full-size cribs, to be effective on the effective date of the new final rule for full-size and non-full-size cribs. Commissioner Moore seconded the motion. With no discussion on the motion, Chairman Tenenbaum called for a vote on the question. The Commission voted unanimously (5-0) to approve the publication in the *FR* the draft final rule revoking 16 C.F.R. parts 1508 and 1509.

Chairman Tenenbaum made closing remarks about the final rules. There being no further business on the agenda, Chairman Tenenbaum adjourned the meeting at 10.30 a.m.

Chairman Tenenbaum and Commissioners Moore, Adler and Northup each submitted separate statements regarding the matter. Copies of the statements are attached.

For the Commission:

A handwritten signature in black ink, appearing to read "Todd A. Stevenson". The signature is written in a cursive style with a long horizontal stroke at the end.

Todd A. Stevenson
Secretary to the Commission

Attachments: Statement of Chairman Tenenbaum
Statement of Commissioner Moore
Statement of Commissioner Adler
Statement of Commissioner Northup



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December 15, 2010

**STATEMENT OF CHAIRMAN INEZ M. TENENBAUM ON THE
COMMISSION DECISION REGARDING THE FINAL RULE ON THE
MANDATORY SAFETY STANDARDS FOR FULL-SIZE AND NON-FULL-
SIZE CRIBS**

Today the Commission delivered on my promise to Congress and to parents across the nation to adopt mandatory robust and highly protective standards for full-size and non-full-size cribs in 2010. This was an enormous undertaking and an accomplishment achieved through the incredible work ethic and dedication to the safety of children demonstrated by CPSC staff, my fellow Commissioners and our stakeholders involved in the voluntary standards process.

As a result of the collaborative efforts of everyone involved in developing this rule, our nation has established some of the strongest crib standards in the world. I believe that a safe crib is the safest place for a baby to sleep. Upon the availability of these newly-compliant cribs, these new standards will give parents greater confidence in the safety of cribs for sale, markedly reduce crib-related hazards, and ensure that young children, no matter where they live or what their circumstances are, sleep more safely in their cribs.

Upon taking over as Chairman of the Commission last year, I observed that there was an alarming pattern of failures of crib hardware and component parts, particularly related to drop-side cribs. The situation required meaningful short-term and long-term strategies to address this trend. According to our data, between November 2007 and April of this year, there were thirty-six deaths associated with crib structural problems. Thirty-five of those fatalities occurred when crib components detached, disengaged, or broke, ending in unspeakable tragedy.

To begin addressing this serious concern quickly and comprehensively, I initiated a "Safe Sleep Team," drawn from CPSC staff across areas of legal and technical expertise to review incident and injury data related to cribs and to investigate patterns of specific failures at an expedited pace. I also directed the Safe Sleep Team to clean up the marketplace by recalling unsafe cribs already in consumers' homes. Directly related to today's vote, I also requested the CPSC staff to accelerate significantly the work on a robust mandatory crib standard intended to help ensure that new cribs coming into the marketplace would be as safe as possible. Combined with our

sustained and ongoing efforts to rid the marketplace of older, defective cribs, the development and passage of new mandatory crib standards represents a responsible and holistic approach to giving consumers increased confidence in the safety of their cribs.

The development and passage of these new standards is also consistent with my philosophy as Chairman that recall after recall is not the path to improved safety in the marketplace in the long term. The emphasis on quickly improving the standards became even more important as parents and caregivers became overwhelmed by millions of cribs being recalled over the past four years.

The passage of this rule, however, does not mark the end of our efforts in the area of crib safety. I will continue my commitment to ensure that CPSC remains vigilant and consumers can continue to have confidence that the agency is committed to ensuring that children have a safer sleeping environment.

I deeply appreciate—and am very much concerned about—the impact of this Congressionally-mandated rule on smaller entities, particularly child care facilities and places of public accommodation. Serious concerns have arisen that child care facilities in particular would not be able to obtain cribs that meet the new standard immediately after it becomes effective. Based upon a close examination of the information, CPSC staff anticipates that more than 59,000 child care facilities, 98 percent of which are small businesses, could be affected. Taking into account that the average child care center has between four and forty-five cribs, staff anticipates that about 775,000 cribs will require replacement, with the average cost of replacement per facility ranging from \$2,000 to \$22,000. Together, our staff estimated that child care facilities and places of public accommodation will create a demand of approximately 935,000 cribs, which would amount to nearly \$467 million in replaced crib costs altogether.

These numbers are not inconsequential, and responsible implementation of this rule required that we carefully consider how quickly affected entities may reasonably be able to comply. I believe that sufficient time must be built into the process not only to allow enough crib inventory to reach the market but also to allow affected entities to purchase the new cribs. The entire purpose of the new standard—as well as the statute that required we make the standard mandatory—would be undermined by picking a date for compliance that is too early and results in the unintended consequence of well-intentioned facilities that are unable to comply having no choice but to avoid penalty by switching to potentially less safe sleep environments.

Thus, in order to address this concern and better ensure both widespread availability of compliant cribs and an orderly and successful transition to the use of compliant cribs by child care providers and places of public accommodation, the Commission has adopted a two-step phase in of the rule. First, for all manufacturers, distributors, and retailers of full-size and non-full-size cribs, the final rule will become effective six months from the publication date in the *Federal Register*. Second, child care centers, family child care homes, and places of public accommodation will then have an additional eighteen months to comply.

Full compliance for every child care center in the United States and its territories will be no easy task, and choosing how best to achieve this goal in a reasonable and timely fashion has not been accomplished with ease. I believe we have struck the right balance to ensure that children will benefit from safer cribs while at the same time working to prevent a crippling impact on smaller entities and a crisis in available child care for working families.

Finally, as we strive to ensure that a crib is the safest place for an infant or toddler to sleep, we must not forget that a safe sleeping environment also includes ensuring that the child is not put at risk of suffocation by items placed in a crib by a caregiver. A large part of our public outreach, therefore, is designed to inform caregivers about the serious dangers associated with the use of soft bedding in cribs. According to our research, the number one fatal crib hazard is adding extra bedding, such as pillows or comforters, to a baby's crib. In order to address these deaths we will continue to work to educate parents and caregivers on the suffocation dangers associated with soft bedding placed into cribs.

Our work to ensure that the marketplace, homes, child care centers, and other facilities are free of dangerous and defective cribs is the cornerstone of the safe sleep campaign, and I am very pleased that these new rules will stop the manufacture and sale of dangerous traditional drop-side cribs and will make cribs sturdier. All these changes are intended to usher in a new generation of safer cribs for consumers in 2011. This new standard and the new cribs that will come to the market next year is our way at CPSC to honor Tyler Witte, Liam Johns, Bobby Cirigliano, and all of the other children who have died in crib incidents. We have taken strong action today to ensure that cribs are safer so that all children using cribs can have a safer sleep.



UNITED STATES
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STATEMENT OF COMMISSIONER THOMAS H. MOORE ON THE
FINAL STANDARDS FOR FULL-SIZE AND NON-FULL-SIZE CRIBS
UNDER SECTION 104 OF THE CONSUMER PRODUCT SAFETY
IMPROVEMENT ACT AND REVOCATION OF
16 C.F.R. PARTS 1508 AND 1509
December 15, 2010

The crib provisions in section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) contain some of the most far-reaching requirements in that Act. With recognition of that reach, I am voting today to implement them in a manner that is consistent with their intention of providing a safer sleeping environment for young children and to implement them in a manner that is mindful of the effects that the provisions will have on those who are subject to their mandates.

As a result of the actions taken by the Commission today, a new mandatory standard for full-size and non full-size cribs will become effective next year. When the new mandatory crib standard takes effect, every crib made, sold, or re-sold in this country will have to comply with that new, tougher standard. Our staff has worked extremely hard to identify safety issues associated with crib construction and to incorporate testing requirements into the new standard targeted to address those issues. Over time, as old cribs are replaced with cribs that meet the new mandatory standard, we should see a dramatic drop in the deaths of infants from unsafe cribs. It will not happen overnight as cribs tend to have a fairly long useful life and even though they cannot be resold, cribs in homes are often given to friends and relatives when they are no longer needed by their original purchaser. While the Act is far-reaching, it cannot reach into consumers' homes to remove those older cribs.

In addition to those who traditionally are affected by a new mandatory standard—manufacturers, importers and retailers—the CPSIA treats cribs as it has treated no other product category by prohibiting certain crib users and providers from using cribs that do not meet the new standard, effectively banning further use of those older cribs. Close to one million cribs will need to be replaced to meet this statutory requirement—an estimated 775,000 in child care centers and 160,000 in places of public accommodations. This is in addition to the 2.4 million cribs sold each year to households, for a one-time increase in demand of up to 43 percent. I believe that this surge in demand necessitates a reasonable, measured phase-in period for manufacturers to step up production, for retailers to make room for increased inventory and for those who will have to replace their cribs to budget for and obtain complying products.

Let me make this clear to all, my preference would have been to make **all** aspects of the crib standard effective in six months because the safety of children has always been my highest priority. But the realities of the marketplace and the enormity of the changes being required of so many business entities across the country, called for a more careful rollout of this unparalleled

national crib safety initiative. I believe having manufacturers comply first and begin to produce the large number of new cribs that are necessary to meet user demand and to then give those users time to come into compliance will assure greater compliance in the long run and lead to the safer infant sleeping environment envisioned by the CPSIA.

I would like to thank all who have played an essential role in this important step to providing a much needed added measure of safety to our young children's sleeping environment. The benefits of our action today will be saving the lives of innocent babies.



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**STATEMENT OF COMMISSIONER ROBERT S. ADLER
REGARDING THE COMPLIANCE DATE OF THE FINAL STANDARDS
FOR FULL SIZE AND NON-FULL-SIZE CRIBS
UNDER SECTION 104 OF THE CPSIA**

DECEMBER 15, 2010

The passage of the Consumer Product Safety Improvement Act (CPSIA) in 2008 required a number of important voluntary safety standards for durable infant or toddler products to be updated and made mandatory by the Consumer Product Safety Commission. This was a long overdue and necessary step for the safety of our most involuntary risk-takers: babies. Accordingly, I am honored to be at the Commission at this moment so that I may support the passage of new performance standards for full-size and non-full size cribs. The professional staff has gone significantly above and beyond the call of duty to bring this rule to finality by the end of 2010, and one and all should be commended for their tireless efforts. This new standard provides significant safety upgrades both with respect to the way cribs are manufactured and the way they are tested. This is exactly the type of work the Commission was created to undertake. Unfortunately, I disagree with my colleagues with respect to their extending to two years the compliance date for child care facilities and public accommodations. However, let me be clear: my disagreement in no way changes my strong support for the substantive provisions of the standards that are before us today.

I have been involved in consumer issues for almost forty years. In this time, I have come to believe strongly in something that is known as the "precautionary principle." Put simply, the precautionary principle leads me, as a policy maker, always to err on the side of consumers if the data do not clearly point to one course of action.

Yet another foundational belief of mine is that the Consumer Product Safety Commission makes decisions based on data. That was the case when the agency was founded, and I believe it must remain the case today.

Accordingly, although I recognize the good faith and sincerity of my fellow Commissioners in casting their vote to extend the compliance date for child care facilities and public accommodations, I cannot support it. Their vote means that these facilities will not be required to meet this critical safety standard for a full two years from the date this rule will be published – which will be almost five years after the passage of CPSIA. It's not that I know that two years is the *wrong* date for this rule to take effect – it's that I have no evidence that it is the *right* date. Reasonable minds can disagree on how the

same data can be interpreted, but in this instance I do not see any data that supports adding 12 extra months to the professional staff's recommendation of a one-year compliance date.

After a herculean effort by our staff, including engineers, economists, psychologists, and attorneys who have covered the crib industry on a daily basis for years, their recommendation was for a six month compliance date for manufacturers, retailers, and other crib providers, but a twelve month compliance date for child care facilities. The majority has chosen, without justification, to extend this date to a two year compliance date for child care facilities and other entities. Oddly, there is no request in the record for a two year delay in the compliance date for this rule. The majority of commenters suggested that a one year date would be sufficient for child care facilities to comply with the rule, while two commenters suggested five years but provided little hard data in support of this comment, and one commenter suggested no postponement of any kind.

I concede that twelve months is not a magic number and may not offer enough time for the marketplace to adjust, and we may yet discover that two years is exactly right. But, I see nothing in the record to justify it. This date is too important to be selected haphazardly. I believe that a far better approach would be to accept the staff's recommendation and then ask for more information from the marketplace once the six month effective date for manufacturers and retailers goes into effect. That way we could have hard data that helps the agency understand what is happening in the real world in real time – not just theoretically.

I recognize that we are in uncharted waters. The Commission has never before entered into a rulemaking, whether or not required by Congress, that not only has retroactive applicability, but also requires the replacement of every product in a given product class – particularly in an occupational setting like child care facilities. This rule, whatever its compliance date, will require child care facilities to accelerate replacement of their crib inventory possibly ten times faster than they would normally. In addition, these facilities must wait until new inventory is available in the marketplace, and then compete with consumers and child care providers for those new cribs. In short, I am extremely sympathetic to their situation.

Yet it is for this very reason that I believe we must get the compliance date correct. If the date is too soon, we risk child care facilities unsuccessfully struggling to meet the cost of compliance. On the other hand, if we choose a date that is too far in the future, we risk having thousands of children in unnecessarily unsafe, non-compliant cribs. To me, the wiser course is to acquire data that helps the Commission make a rational and objective decision.

No matter the compliance date, it is incumbent upon us to be sure that all child care providers, public accommodations, parents, and others that use or provide cribs are aware of this rule, what it means, and the need for safe cribs to be available to all children. 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, and all other concerned stakeholders that the rules have changed and all cribs must be compliant with the new federal safety standard.



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COMMISSIONER ANNE M. NORTHUP

STATEMENT OF COMMISSIONER ANNE M. NORTHUP ON THE VOTE
TO APPROVE THE FINAL RULE FOR STANDARDS FOR FULL-SIZED AND
NON-FULL-SIZED CRIBS UNDER SECTION 104 OF THE CPSIA

December 15, 2010

I would like to commend Chairman Tenenbaum, fellow Commissioners and staff for their work on this final rule on full-size and non-full-size cribs. I am pleased to support these efforts to ensure that the safest cribs are sold in the marketplace and to provide families with a sense of comfort and confidence in all of their crib purchases.

Notably, I am grateful for the two-year compromise on the compliance date reached for child care centers and places of public accommodation, entities which will have to dispose of and replace the cribs they currently own. As Commissioners, we must balance safety objectives with the legitimate financial costs (and unintended safety risks) that these facilities will have to bear to become compliant. At a minimum, it is important to consider the time it will take the manufacturing community to ramp up production to meet this one-time spike in demand (as required by the law) for brand-new cribs to be available (and affordable) for every single child care center and applicable hotel in the country—and still maintain the quality expected for all such cribs. Given these considerations, I believe that two years provides a more realistic amount of time to allow child care centers and hotels to become compliant with the new law.