



Consumer Federation of America

October 6, 2010

Office of the Secretary
U.S. Consumer Product Safety Commission
Room 502
4330 East-West Highway
Bethesda, Maryland 20814

Via: www.regulations.gov
Docket No. CPSC-2010-0075

**Comments of Consumer Federation of America to the U.S. Consumer Product Safety
Commission
on “Safety Standards for Full-Size Baby Cribs and Non-Full-Size Baby Cribs; Notice of
Proposed Rulemaking; Proposed Rule”**

Introduction

Section 104(b) of the Consumer Product Safety Improvement Act (“CPSIA”) requires that the Consumer Product Safety Commission (“Commission”) promulgate mandatory standards for durable infant and toddler products, including full-size and non-full-size cribs.¹ Section 104(c) of the CPSIA requires that the mandatory crib standard covers used as well as new cribs. Therefore, this includes the use of cribs in child care facilities as well as in places of public accommodation affecting commerce such as hotels and motels.

The Commission, in issuing this Notice of Proposed Rulemaking, has invited comments concerning the proposed mandatory standards for cribs and non-full-size cribs as well as concerning the market impact of this rule on various entities.²

¹ See Consumer Product Safety Improvement Act (CPSIA), Public Law 110-314, Section 104(b).

² “Safety Standards for Full-Size Baby Cribs and Non-Full-Size Baby Cribs; Notice of Proposed Rulemaking; Proposed Rule,” Federal Register Vol. 75, No. 141, July 23, 2010.

Background

On January 21, 2010, the U.S. House of Representatives Subcommittee on Oversight and Investigations held a hearing entitled, “Crib Safety: Assessing the Need for Better Oversight.” Nancy Cowles, Executive Director of Kids In Danger testified about the hazards posed by unsafe cribs, the significant consequences for consumers and detailed the solutions necessary to address the hazard. In her testimony, Ms. Cowles explained the complexities inherent to cribs as an infant durable product:

The crib is first and foremost a safety device – meant to keep a child safe while sleeping and more importantly while the caregiver is sleeping. Cribs are the only children’s product meant to be safe enough for a helpless infant to use while unattended by an adult.

The issue of sleep environments is larger than just cribs and yet the safety issues are similar across all products meant for sleeping

- Again, cribs must be safe enough to leave the child unattended while sleeping, with the assumption that a baby will also spend some time awake, but unattended, in the product.
- Parents must understand the age, weight, height and developmental limits of each product. Bassinets can be used only until the time a baby starts to roll over or push up on her hands and knees. Crib mattresses must be lowered as a child grows. And most cribs are considered safe sleeping environments only until a child can attempt to climb out – usually around age two, but sometimes earlier.
- Cribs are usually set up in the home by the consumer. Rarely do consumers purchase cribs already assembled and home installation by a professional from the manufacturer or retailer is unusual.
- Cribs are probably the most expensive nursery item parents buy. It should be expected that parents plan to use cribs for more than one child or sell or hand it down when their children outgrow it.
- Cribs are often taken apart and reassembled, either between children or while moving or changing location in the home. In between, they may be stored in attics, basements or garages until needed again.³

³ Testimony of Nancy Cowles, Before the House Subcommittee on Oversight and Investigations, “Crib Safety: Assessing the Need for Better Oversight,” January 21, 2010. Available on the web at: http://energycommerce.house.gov/Press_111/20100121/cowles_testimony.pdf.

In addition to documenting the unique characteristics of cribs, which has made the need for strong safety standards so critical, Ms. Cowles also outlined how consumers interact with cribs:

There is not a consumer out there who expects to pay anywhere from \$200 to over \$1000 for a crib, use it for two years for one child and then destroy it. We welcome the addition of ‘lifetime products’ that allow parents to convert a crib to a toddler bed and then an adult bed – increasing the likelihood a new crib will be bought for a new child. But in reality almost every crib is used for more than one child, for more than 2 years. Using the same crib for all of your children, even if you have many; lending it to your sister, donating it to charity or even selling it, is not a misuse of a product. In these tough economic times and in the midst of a growing ‘green’ mindset, it is exactly what manufacturers should expect will happen to their products.

Here are the facts of consumer use

- Parents will use a crib, bassinet and portable crib for more than one child. They will offer these products to their family and friends and even sell them secondhand. It isn’t consumer misuse when a crib is assembled, taken apart and reassembled more than once. In addition to our military families who move frequently, other families do move and many parents, on the advice of their doctors, initially set up a crib in their room and then move it. Portable cribs are meant to be set up and taken down numerous times. So if a crib can’t handle being reassembled – it should not be sold.
- If a crib falls apart, losing screws or little safety plugs, or has a drop side that won’t stay up – parents are going to try to fix it. They aren’t engineers in most cases and don’t clearly understand the risk that a different screw or even duct tape might pose. Give parents a crib that lasts, hardware that doesn’t fall out and clear instructions on how to assemble, store, and use the product.⁴

Furthering the need for robust crib standards, CPSC has engaged in many compliance efforts involving unsafe cribs. “Since 2007, CPSC has issued 40 recalls of over 11 million cribs. All but 7 of these recalls were for product defects that created a substantial product hazard...”⁵ Thus, the need for a robust crib standard was long overdue. Consumer Federation of America lauds the

⁴ Testimony of Nancy Cowles, Before the House Subcommittee on Oversight and Investigations, “Crib Safety: Assessing the Need for Better Oversight,” January 21, 2010. Available on the web at: http://energycommerce.house.gov/Press_111/20100121/cowles_testimony.pdf.

⁵ “Safety Standards for Full-Size Baby Cribs and Non-Full-Size Baby Cribs; Notice of Proposed Rulemaking; Proposed Rule,” Federal Register Vol. 75, No. 141, July 23, 2010.

current Notice of Proposed Rulemaking as largely responsive to the market and consumer need for an effective mandatory crib safety standard.

Discussion of Proposed Crib Standard

As the Federal Register notice indicates, the voluntary standard setting process for cribs failed to address known hazards caused by cribs on the market and took much too long to be updated, even with modest improvements. The voluntary standard process began to address the known hazards posing danger to our babies and toddlers only after a large number of crib recalls, passage of the Consumer Product Safety Improvement Act in August of 2008, and the priority that the CPSC placed on crib safety and the development of a robust voluntary and mandatory standard for cribs. Without the critical role of CPSC, the voluntary crib standards would not be finalized nor would they be as robust in their addressing of known hazards. The voluntary standards, ASTM F 1169 and F 406 represent a sea change in crib safety. While these voluntary standards are a vast improvement over both the past voluntary standards and the previous mandatory standards, we agree with CPSC that a modest number of changes are necessary to best protect infants in cribs.

Consumer Federation of America supports the Commission's position on ASTM F 1169-10 and F 406-10. These voluntary standards are a huge leap in the right direction but need further strengthening to be effective in reducing the risk of injury and death in cribs. We support CPSC's modifications to the current ASTM standards. CPSC's proposed standards recognize how consumers use and interact with the crib in their home. We urge CPSC to carefully scrutinize how the new mandatory standard is addressing the hazard patterns reflected in crib incidents and to be at the forefront of making changes to the standard when necessary.

Significantly, CFA strongly supports CPSC's modification to the Full-Size Crib Standard (ASTM F 1169-10). ASTM F 1169-10 allows for the retightening of screw between the crib side latch test and mattress support vertical impact tests. CFA voted in opposition to this section of the standard because it fails to accurately take into account real world consumer use of cribs. Consumers will not be retightening screws after their infant uses the crib or shakes it vigorously one morning. The CPSC's modification to this provision, removing the retightening provision, more accurately reflects how consumers will use the crib over the lifetime of the crib. CFA agrees with CPSC that, "[r]etightening fasteners would sever the chain of accumulated conditioning effects. CPSC staff does not believe that performing the sequence of tests without retightening fasteners is an overly restrictive test."⁶ The Notice continues to state that the

⁶ "Safety Standards for Full-Size Baby Cribs and Non-Full-Size Baby Cribs; Notice of Proposed Rulemaking; Proposed Rule," Federal Register Vol. 75, No. 141, July 23, 2010 at 43314.

Canadian standard does not allow retightening and this has not proved problematic for the cribs tested. We applaud CPSC's prohibition of retightening screws between the side latch test and mattress support vertical tests.

Recommendations

CFA fully supports CPSC's Notice of Proposed Rulemaking. We suggest a number of additional issues to be considered as this proposed rule becomes final.

First, crib incident data analysis by CPSC has indicated that 23 percent of the 3,520 incidents involved falls from cribs. This accounted for the largest proportion of injuries.⁷ CPSC acknowledges in the proposed rule and we agree that it is difficult to fully address hazards caused by children climbing out and falling from cribs in this standard. The ASTM standard has however, placed the warning about moving children out of cribs when they have reached 35 inches, 24 months or begin to climb out, higher on the list of warnings. CFA agrees that lowering the age recommendation, requiring higher sides, or allowing the use of after-market products such as crib tents is problematic and increases potential hazard scenarios. We urge the Commission to research these issues and develop innovative solutions, both regarding products themselves as well as thorough public education efforts to limit hazards caused by children climbing out of their crib.

Second, CFA urges the Commission to modify the proposed standard regarding mattress fit. Consumers must use a mattress that fits tightly in the crib. While the proposed rulemaking offers detailed standards for cribs themselves, there is no standard for crib mattresses. Due to the absence of a mattress standard and the need to purchase full-size cribs and full-size crib mattresses separately, there is confusion in the marketplace about which mattresses to purchase to use with a crib and there are different mattress sizes available. CFA supports the Commission's indication of the need for a crib mattress standard.

For non-full size cribs including bassinets, mattresses are included in the sale of the product. Unfortunately, suffocation hazards exist when consumers seek to supplement the included mattress with soft bedding. A non-full size mattress standard is also necessary to ensure that mattresses bought separately fit tightly and do not pose additional hazards.

Concerns have been raised about the term in the non-full size crib standard, "use only mattress supplied by the manufacturer." Some consumers would like the option of selecting a mattress for a non-full size crib that may offer a unique benefit such as being organic or natural. This issue raises potential hazards because there are risks of suffocation caused by mattresses

⁷ "Safety Standards for Full-Size Baby Cribs and Non-Full-Size Baby Cribs; Notice of Proposed Rulemaking; Proposed Rule," Federal Register Vol. 75, No. 141, July 23, 2010 at 43311.

that don't fit properly. A potential solution is to allow replacement mattresses that are "supplied by or recommended by the manufacturer." This would create a market for mattresses that would involve an extensive collaboration between mattress and crib manufacturers. The result would be more consumer choice and mattresses that fit tightly in the crib. Importantly, the change to the crib standard should only take place after a mattress standard is developed.

Third, regarding limb entrapment between slats, CFA agrees with CPSC that the current slat spacing requirement of 2 3/8 inches has been effective in preventing incidents of neck entrapment and strangulation. Increasing the slat width to address limb entrapment would have the adverse effect of increasing risk for neck entrapment and strangulation. CFA supports CPSC's position to maintain current slat width.

Fourth, CFA supports the ASTM F 1169-10's inclusion of a requirement stating that crib designs only allow key structural elements to be assembled in one way or have conspicuous markings indicating missassembly. For most cribs, consumers assemble them at home. Crib designs should not allow missassembly. This provision is a necessary provision that will improve the chances that cribs are accurately assembled. However, the Commission should seek to minimize when markings are necessary as markings will not prevent hazards as much as making assembly impossible when parts are in the wrong orientation. CPSC should strengthen efforts to develop new ways to ensure accurate assembly. Some methods to improve accurate assembly include requiring captive hardware – that remains with the structural element when disassembled; assembly that reduces the use of hardware; and making the crib unusable when it is misassembled.

Fifth, section 104(c) of the CPSIA seeks to address hazards posed by older model cribs by removing them from the market. Specifically, this provision seeks to ensure that the new crib standard apply to all cribs sold or used in the stream of commerce. This applies to cribs sold new, cribs sold used, cribs used in child care facilities, and cribs used in public accommodations such as hotels and motels. The application of this provision means that older cribs that pose significant risks to children will be taken out of the stream of commerce. Section 104(c) is based upon laws already in existence in numerous states, including Arizona, Arkansas, California, Colorado, Illinois, Louisiana, Michigan, Minnesota, Oregon, Pennsylvania, Vermont and Washington. This provision seeks to extend the protections offered in these states to every state to ensure that children sleep in cribs that meet the most recent and most protective crib safety standards.

The Federal Register notice invites guidance on the effective date of the standard. Regarding implementation of 104(c), CFA supports the CPSC's current language regarding a six month effective date as it applies to manufacturers. The customary six months gives manufacturers adequate time to comply with the new crib standards. CFA will support, however, an additional six months, allowing for a year after publication of the final rule, for child care facilities to allow them to phase in replacement of non-compliant cribs over a longer time period.

Finally, while third party testing of cribs is not a part of these proposed standards, CFA urges the Commission not to accredit any 'firewalled' laboratories to conduct testing to certify compliance of full-size and non-full-size cribs. Given the documented and significant hazards posed by unsafe cribs, the many recalls of cribs posing harms to consumers and the reliance upon cribs by consumers as a safe sleeping environment for children, only independent third party laboratories should be approved to test cribs to meet these new safety standards.

Conclusion

CFA supports CPSC in issuing this Notice of Proposed Rulemaking concerning the proposed mandatory standards for cribs and non-full-size cribs. These standards strengthen the current voluntary standards and provide the most robust crib standards ever promulgated in the world for full-size and non-full-size cribs. Compliance with these standards by crib manufacturers, effective independent third party testing ensuring compliance with this standard, and enforcement of compliance with these standards by CPSC will significantly improve the safety of our nation's cribs. Compliance with section 104(c) of the CPSIA, specifically, will impact the resale and use of cribs in child care facilities and hotels and motels. CPSC has prioritized crib safety and these strong standards reflect the Commission's commitment to this issue. CFA encourages CPSC to continue to prioritize crib safety, closely monitor compliance with these standards, and educate all stakeholders about these standards. CFA looks forward to working with CPSC to continue to strengthen crib safety efforts.

Respectfully submitted,

A handwritten signature in black ink that reads "Rachel Weintraub". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Rachel Weintraub
Director of Product Safety and Senior Counsel
Consumer Federation of America