Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1217

[No. CPSC–2010–0022]

RIN 3041–AC79

Safety Standard for Toddler Beds

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: Section 104(b) of the Consumer Product Safety Improvement Act of 2008 ("CPSIA") requires the United States Consumer Product Safety Commission ("Commission," "CPSC") to promulgate consumer product safety standards for durable infant or toddler products. These standards are to be "substantially the same as" applicable voluntary standards or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. The Commission is proposing a safety standard for toddler beds in response to the direction under section 104(b) of the CPSIA. The proposed safety standard would address entrapment in bed end structures, entrapment between the guardrail and side rail, entrapment in the mattress support system, and component failures of the bed support system and guardrails. The proposed standard also addresses corner post extensions that can catch items worn by a child.

DATES: Submit comments by July 12, 2010.

Submit comments relating to the instructional literature and bed and carton marking required by the proposed rule, as these materials relate to the Paperwork Reduction Act, by May 28, 2010.

ADDRESSES: Comments relating to the instructional literature and bed and carton marking required by the proposed rule relating to the Paperwork Reduction Act should be directed to the Office of Information and Regulatory Affairs, OMB, Attn: CPSC Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov.*

Other comments, identified by Docket No. CPSC–2010–0022, may be submitted by any of the following methods:

1. *Electronic Submissions.* Submit electronic comments to the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. (To ensure timely processing of comments, the Commission is no longer directly accepting comments submitted by electronic mail (e-mail). The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.)

2. *Written Submissions.* Submit written submissions in the following ways:

a. *Fax:* 301–504–0127.

b. *Mail/Hand delivery/Courier* (for paper, disk, or CD–ROM submissions): Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received, including any personal information provided, may be posted without change to *http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.regulations.gov.* Accordingly, we recommend that you not submit confidential business information, trade secret information, or other sensitive information that you do not want to be available to the public.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, CPSC 2010–0022, into the "Search" box and follow the prompts.

FOR FURTHER INFORMATION CONTACT: *Technical information:* Celestine Kiss, Division of Human Factors, Directorate for Engineering Sciences, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301)504–7739, e-mail *ckiss@cpsc.gov. Legal information:* Harleigh Ewell, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301)504–7683; e-mail *hewell@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background—The Consumer Product Safety Improvement Act as Applied to Durable Infant or Toddler Products

The Consumer Product Safety Improvement Act of 2008 ("CPSIA," Pub. L. 110–314) was enacted on August 14, 2008. Section 104(b) of the CPSIA requires the Commission to promulgate consumer product safety standards for durable infant or toddler products. These standards are to be "substantially the same as" applicable voluntary standards or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. The term "durable infant or toddler product" is defined in section 104(f) of the CPSIA as a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years. Toddler beds are one of the products specifically identified in section 104(f)(2) of the CPSIA as a durable infant or toddler product.

In this document, the Commission proposes a safety standard for toddler beds. The proposed standard is largely the same as a voluntary standard developed by ASTM International (formerly the American Society for Testing and Materials), ASTM F 1821–09 *Standard Consumer Safety Specification for Toddler Beds,* but with several modifications that strengthen the standard. The ASTM standard is copyrighted, but can be viewed as a read-only document, only during the comment period on this proposal, at *http://www.astm.org/cpsc.htm,* by permission of ASTM. Documents that support statements in this notice are identified by [Ref. #], where # is the number of the reference document as listed below in section M of this notice.

B. The Product

The ASTM voluntary standard defines a toddler bed as any bed sized to accommodate a full-size crib mattress having minimum dimensions of 51⅝ inches in length and 27¼ inches in width and that is intended to provide free access and egress to a child not less

than 15 months of age and weighing no more than 50 pounds.

C. Incident Data [Ref. 2]

1. *Introduction.* CPSC databases did not have a dedicated product code for identifying incidents before 2005 that involved toddler beds. Accordingly, the data discussed below begins with the year 2005. The data come from two databases: (1) Actual injuries and fatalities of which the Commission is aware; and (2) estimates derived from reports of emergency-room treatment in a statistical sample of hospitals that makes up the National Electronic Injury Surveillance System ("NEISS"). The CPSC staff is aware of 4 fatalities and 81 nonfatal incidents (with and without injuries) related to toddler beds that were reported to have occurred since 2005.

2. *Fatalities.* Of the four fatalities reported to CPSC staff, two resulted from entrapments. The first death was the result of a 6-month-old infant getting entrapped in the footboard while sleeping on a toddler bed. The second death involved a 13-month-old getting entrapped in the side rail of a flipped-over toddler bed while playing with an older sibling. The third death was due to asphyxiation when a 10-month-old was napping in an inflatable children's bed. (Although an inflatable children's bed does not meet the definition of a toddler bed that is in ASTM F 1821–09, this incident was coded as associated with a toddler bed.) The last fatality was a strangulation death of a 3-year-old on the cord of mini blinds located over his toddler bed. (The ASTM F 1821–09 standard addresses this hazard with a warning label. The Commission does not have information indicating whether the toddler bed involved in this death bore such a warning label.) It is notable that three of the four reported fatalities involved victims under the age of 15 months, which is recommended in the current ASTM voluntary standard as the minimum age for use of a toddler bed. The ASTM standard requires a label warning against using the bed with children under 15 months.

3. *Nonfatal Incidents.* Of the 81 nonfatal incidents known to the CPSC staff that were associated with a child on a toddler bed, 26 involved injuries. Three of the injuries were fractures of limbs. The vast majority of the injuries were bumps and bruises. Sprains, scrapes, and lacerations were some of the other reported injuries associated with toddler beds.

Listed below are the hazard patterns identified among the reports of nonfatal incidents:

- Entrapment was the most commonly reported hazard. Approximately 31 percent of the incidents involved entrapment of a limb. The associated injuries, if any, ranged from fractures to sprains to bruises. More serious, potentially fatal, entrapments of head or body in the side rails, in the mesh covering of the side rails, or between the mattress-support rails were reported in 14 percent of the incidents.
- Broken, loose, or detached components of the bed, such as the guardrail, hardware, or other accessories, were the next most commonly reported problems. However, only two injuries—one laceration and one ingestion—resulted from these problems.
- Product integrity issues, mostly integrity of the mattress-support, were the next most commonly encountered hazard. These often resulted in the collapse of the bed, causing the child to fall through.
- Inadequate mattress-fit issues were the next most common hazard. A few children suffered sprains and broken limbs from being caught in the gap between the mattress and the bed frame.
- Finally, there were some complaints of paint/coating issues, bed height/clearance issues, and inadequacy of guardrails, assembly instructions, and recalls.

Among the nonfatal incidents that reported the child's age (67 out of 81), the age ranged between 11 months to 6 years. Nearly 66 percent of these incidents reported the age to be between 15 and 24 months. About 16 percent of the incidents involved children less than 15 months of age. However, it was not always clear that the reported age pertained to the child who was the regular user of the toddler bed. Three of the 81 nonfatal incident reports involved inflatable children's beds, which do not conform to the ASTM definition of toddler beds and are not included within the scope of the proposed standard.

4. *National Injury Estimates.* There were an estimated 1,380 injuries related to toddler beds that were treated in hospital emergency departments in the United States over the 4-year period from 2005 to 2008. The injury estimates for individual years are not reportable because the numbers each year fail to meet NEISS's publication criteria. There was no statistically significant increase or decrease observed in the estimated injuries from one year to the next, and there was no statistically significant trend observed over the 2005–2008 period. No deaths were reported through NEISS. For the emergency department-treated injuries related to toddler beds, the following characteristics occurred most frequently:

- Hazard—falls out of the toddler bed to a lower level (87%).
- Injured body part—head (30%) and face (24%).
- Injury type—lacerations (26%) and contusions/abrasions (20%).
- Disposition—treated and released (nearly 100%).

The age of patients in these injuries ranged between 4 months and 6 years, with nearly 53 percent between 18 months and 2 years. It was not always clear whether the patient injured was the usual user of the toddler bed.

D. The ASTM Voluntary Standard

The ASTM F 1821–09 voluntary standard contains requirements addressing a number of hazards. The requirements include:

1. Toddler beds must comply with CPSC's regulations at 16 CFR part 1303 (ban of lead in paint), 1500.48 (sharp points), 1500.49 (sharp edges), 1500.50 through 1500.53 (use and abuse tests), and part 1501 (small parts that present choking, aspiration, or ingestion hazards), both before and after the product is tested according to the standard.
2. Toddler beds must not present scissoring, shearing, or pinching hazards.
3. Openings must meet specified dimensions in order to prevent finger entrapment.
4. Openings that will permit passage of a specified block with a wedge on one end are prohibited in order to protect against torso entrapment.
5. The distance that corner posts may extend above the upper edge of an end or side panel is limited.
6. Protective components shall not be removable with a specified force after torque and tension tests.
7. There are requirements for marking and labeling each bed and its retail carton, and for warning statements on the bed. There are requirements for the permanency of labels and warnings.
8. The mattress shall be supported and contained so that it does not move horizontally to cause a horizontal opening that will allow the passage of the wedge block when tested.
9. There are tests for the physical integrity of the mattress support system and its attachments and the side rails.
10. There are wedge block tests for openings in the guardrails and end structures that could cause entrapment.
11. There is a probe test to protect against entrapment in partially-bounded openings in the bed.

12. Instructions must be provided with the bed.

13. Warning statements are required on the bed to address entrapment and strangulation hazards.

E. Description of the Proposed Rule and Its Changes to the ASTM Standard

Due to the significant number of incidents reported regarding component failures of bed support systems and guardrails, the Commission's staff has recommended additional testing requirements to address those types of incidents. Accordingly, the Commission proposes a new 16 CFR 1217 that, if finalized, would adopt the ASTM standard F 1821–09 by reference, but with some changes and additions that would strengthen the ASTM standard's provisions.

1. Scope, Application, and Effective Date (Proposed § 1217.1)

Proposed § 1217.1 would state that part 1217 establishes a consumer product safety standard for toddler beds manufactured or imported after a date that would be 6 months after the publication date of a final rule in the **Federal Register**.

2. Requirements for Toddler Beds (Proposed § 1217.2)

a. The Applicable ASTM Standard (Proposed § 1217.2(a))

Proposed § 1217.2(a) would explain that, except as provided in § 1217.2(b), each toddler bed as defined in ASTM F 1821–09, "Standard Consumer Safety Specification for Toddler Beds," must comply with all applicable provisions in ASTM F 1821–09. The proposal also would explain how interested parties may obtain a copy of the ASTM standard or inspect a copy at the CPSC.

b. Minimum Height for the Upper Edge of Guardrails (Proposed § 1217.2(b)(1) Through (3))

Proposed § 1217.2(b)(1) through (3) would revise the ASTM standard to require that guardrails be a minimum height of 5 inches above the manufacturer's recommended sleeping surface. This is intended to help prevent falls. Although the proposed standard does not require guardrails, persons who choose to have guardrails on their toddler beds should be able to rely on the guardrail performing the function of helping to prevent falls. The 5-inch minimum height is widely adopted by industry as a minimum height for guardrails in bunk beds [Ref. 3].

c. Structural Integrity of Guardrails (Proposed § 1217.2(b)(4) and 1217.2(b)(6))

In addition to the already existing test for guardrail openings, the Commission, at proposed § 1217.2(b)(4) and 1217.2(b)(6), would add a test for the overall stability of guardrails using a 50-lb force while the bed is firmly secured. The force is to be applied in the center along the length of the guardrail and then repeated with the force applied directly over each of the outermost legs of the guardrail. This additional test is intended to prevent children from falling out of bed; it is also calculated to ensure that the guardrails remain intact when children lean against them or attempt to use them to climb into bed. The 50-lb force was chosen because that is the maximum weight of a child that should use a toddler bed [Ref. 3]. After testing in accordance with 7.9, the guardrail shall not be broken or detached or create a condition that would present any of the hazards described in section 5. The guardrail also shall not be deformed or displaced so as to create a hazard addressed by the performance requirements of section 6.

d. Slat/Spindle Testing for Guardrails, Side Rails, and End Structures (Proposed § 1217.2(b)(5) and 1217.2(b)(7))

Currently, the torso wedge is used in combination with a 25-pound force ("lbf") on guardrails and end structures in the most adverse orientation to assure that the slats or spindles (hereafter referred to collectively as "slats") do not break and allow an opening in which a child could become entrapped. Proposed § 1217.2(b)(5) and 1217.2(b)(7) would modify the existing ASTM test requirements in the following ways.

First, 25 percent of all slats, rather than just those of the end structures and guardrails, would be tested using 80 lbf instead of 25 lbf. The slats that present the least resistance to bending shall make up the 25 percent, except that when a slat is selected for testing with 80 lbf, neither of its adjacent slats shall be tested at that force. The 80 lbf is chosen on the basis of tests performed by the Commission's staff on 18 cribs or toddler beds that were involved in actual breakage incidents in the field ("incident beds") and on two samples of a model of a crib that has been widely sold to consumers and has not been reported to have been involved in a breakage incident ("the non-incident crib") [Ref. 3].

There is very little anthropometric data available to help determine the forces a child can apply to a bed slat. The tests of the slats of the non-incident crib produced failures of the slats at forces ranging from 85 lb to 123.5 lb [Ref. 3]. Since there have not been any incidents reported for this model crib despite its wide distribution, it is reasonable to conclude that the occupants of this crib can exert a force on the slats that is somewhat less than the minimum failure force of 85 lb obtained for this crib. The 18 incident beds tested had minimum failure forces ranging from 28.8 lb to 78.8 lb [Ref. 3]. Taken together, these two sets of failure forces support setting a maximum test force of 80 lb.

However, when testing the non-incident crib model, the Commission's staff observed that testing adjacent slats significantly compromised the integrity of the bed rails [Ref. 3]. This occurred even at the lower end of the range of failure forces, *i.e.,* 85 to 90 lb. Therefore, it is plausible that testing all slats to 80 lbf would have a similar effect and be too stringent a test. Accordingly, the Commission is proposing that 25 percent of the slats be tested to 80 lbf so that adjacent slats would not have to be tested at that force. The Commission proposes that the remaining 75 percent of slats be tested at 60 lbf. This reduction in force is intended to compensate for any damage to the bed rail caused by testing an adjacent slat to 80 lbf and is a much higher force than the 25 lbf specified in the current ASTM standard. The Commission concludes that the force of 60 lb is adequate for these remaining slats since the slats with geometry that is most likely to bend (and thus break) will have been tested to the full 80 lbf.

e. Improved Warning Label (Proposed § 1217.2(b)(8)) [Ref. 4]

ASTM F 1821–09 is intended to minimize entrapments in bed end structures, between the guardrail and side rail, and in the mattress support system. Entrapment of a child's head or neck can result in asphyxiation. Section 8.4 of ASTM F 1821–09 specifies warning statements to be included on toddler beds. Section 8.4.3 of ASTM F 1821–09 states that the warnings shall include the following label, exactly as stated:

⚠ WARNING ENTRAPMENT/STRANGULATION HAZARD

Infants have died in toddler beds from entrapment and strangulation.
Failure to follow these warnings and the assembly instructions could result in serious injury or death.
NEVER use bed with children under 15 months.
NEVER place bed near windows where cords from blinds or drapes may strangle a child.

Section 8.4.4 of ASTM F 1821–09 specifies additional required warning statements that address the following:

1. The minimum mattress dimensions for use on the bed;
2. The use of provided guardrails to avoid the formation of gaps that could pose an entrapment hazard;
3. The placement of the bed relative to cords from blinds or drapes;
4. The placement of strings, cords, or similar objects around a child's neck; and
5. The suspension of strings over the bed.

Like the warning label specified in section 8.4.3 of ASTM F 1821–09, all of these additional warning statements appear to be intended to address entrapment and strangulation hazards. Proposed § 1217.2(b)(6) would revise these warning requirements to reduce the risk of injury associated with the use of toddler beds.

The Commission's Human Factors staff believes that the warnings section of ASTM F 1821–09 is confusing as it is currently organized, with explicit warning language for only certain information, "additional" warning statements that leave the applicable hazards open to interpretation, and redundancies between these two sets of required warning information [Ref. 4]. The additional warning statements specified in section 8.4.4 of ASTM F 1821–09 apparently address the same hazards addressed by the warning label specified in section 8.4.3 of ASTM F 1821–09. (Section 8.4.4.3 of ASTM F 1821–09 requires an additional warning statement about placing the bed near the cords of blinds and drapes, yet this issue is already addressed explicitly in the warning label specified in 8.4.3 of ASTM F 1821–09.) In addition, the warning label specified in section 8.4.3 of ASTM F 1821–09 merges two distinct hazards into a single label, making it difficult to tell what warning information is associated with each hazard. To address these issues, the Human Factors staff suggested that all of the required warnings specified in section 8.4 of ASTM F 1821–09 be presented as two separate warnings, one addressing the entrapment hazard and the other addressing the strangulation hazard, and proposed § 1217.2(b)(8) reflects the two warnings.

(i) Entrapment warning.

ASTM F 1821–09 specifies different warning requirements for toddler beds that employ a removable guardrail as the mattress containment means. Specifically, section 8.4.4.2 of ASTM F 1821–09 states that toddler beds that employ a removable guardrail for this purpose shall include a warning statement telling consumers that the guardrail must be used to avoid the formation of a gap between the mattress and the bed that could cause entrapment. However, this warning statement would not be needed for toddler beds that did not present an entrapment hazard with the guardrail removed. Thus, the Commission proposes that this warning statement would not be required for toddler beds that meet the performance requirements of sections 5.8.2 (torso entrapment), 6.1 (mattress retention), 6.2 (mattress support system integrity), 6.3 (mattress support system attachment to end structures), 6.4 (mattress support system openings), 6.6 (end structure openings), and 6.7 (partially bounded openings) of ASTM F 1821–09 with the guardrails removed. With this in mind, the Commission proposes two alternative labels that address the entrapment hazard: One for toddler beds with removable guardrails that will not meet these performance requirements with the guardrail removed and one for all other toddler beds.

The entrapment warning for beds with removable guardrails where the beds present an entrapment hazard when the guardrails are removed would read as follows:

⚠WARNING

INFANTS HAVE DIED IN TODDLER BEDS FROM ENTRAPMENT.
Openings in and between bed parts can entrap head and neck of a small child.
NEVER use bed with children younger than 15 months.
ALWAYS use supplied guardrails to avoid gaps between mattress and bed.
ONLY use full-size crib mattress of the recommended size.
ALWAYS follow assembly instructions.

The entrapment warning for all other beds would read as follows:

⚠WARNING

INFANTS HAVE DIED IN TODDLER BEDS FROM ENTRAPMENT.
Openings in and between bed parts can entrap head and neck of a small child.
NEVER use bed with children younger than 15 months.
ONLY use full-size crib mattress of the recommended size.
ALWAYS follow assembly instructions.

These warnings would use the type-size requirements described in the standard, and the safety alert symbol design is consistent with the latest version of ANSI Z535.4 (2007), *American National Standard for Product Safety Signs and Labels.* The primary differences between these proposed warnings and the relevant portions of the current ASTM warnings are the following:

1. The proposed warnings do not state "ENTRAPMENT HAZARD," which would be analogous to the original "ENTRAPMENT/STRANGULATION HAZARD" statement in the original warning;

2. The proposed warning places greater emphasis on the subpopulation most at risk and the hazard consequences;

3. The proposed warning includes a more explicit description of the mechanism that creates the entrapment hazard; and

4. The proposed warning omits the statement in the label in the voluntary standard concerning the possibility of serious injury or death from not following the warnings.

To the CPSC staff's knowledge, the minimum age recommendation of 15 months for toddler beds is based largely on the increased entrapment potential for children younger than this. Thus, the statement that "[i]nfants have died in toddler beds from entrapment and strangulation," which appears in the original warning, has been carried over, with deletion of the reference to the strangulation hazard, to the proposed entrapment warning label as, "Infants have died in toddler beds from entrapment." Given that this statement already explicitly references "entrapment," the CPSC staff concluded that including an initial "ENTRAPMENT HAZARD" statement would introduce unnecessary redundancy. Furthermore, omitting this statement from the warning allows greater emphasis on the consequences of the hazard (death, in this case) and the subpopulation most at risk of dying from exposure to the hazard. This greater emphasis on the consequences of the hazard is done by: (1) Moving the statement, "Infants have died in toddler beds from entrapment," toward the beginning of the warning message; and (2) reformatting this statement in all-uppercase, boldface type. The ASTM F 1821 subcommittee has pointed out that there continue to be incidents with toddler beds involving children younger than the intended age for these products, so emphasizing the at-risk population is important [Ref. 4]. In addition, warnings and persuasion research has found that the degree of seriousness of a perceived threat plays a significant role in whether one complies with a warning, so emphasizing the potential for death would tend to increase the efficacy of a warning [Ref. 4].

The statement in the original warning, "Failure to follow these warnings * * * could result in serious injury or death," is unlikely to have a substantial impact on injuries or warning compliance. The warning already communicates the safety importance of its content via a safety alert symbol, the word "WARNING," and a description of the hazard and its consequences, so telling consumers that not following the warning could result in serious injury or death is redundant at best. In contrast, explicit hazard information in a warning has been found to lead to higher levels of perceived hazardousness and greater intent to comply with the warning. The original warning message did not specify the source of entrapment or how entrapment might lead to death, and it is unclear whether many consumers could readily and correctly infer this information. The sentence, "Openings in and between bed parts can entrap head and neck of a small child," is intended to remedy this situation by providing a more explicit description of the mechanism that creates the hazard. The Commission also is keeping the warning to follow the assembly instructions because consumer misassembly has been a problem with similar products, such as cribs, and could lead to entrapment.

Section 8.4.4.1 of ASTM F 1821–09 states that additional warning statements shall address the minimum mattress size. The language of this section implies that the precise mattress dimensions should be provided, both in English and metric units. Section 8.3.2 of ASTM F 1821–09, however, already specifies that both the bed and its retail carton shall be clearly and legibly marked with the intended mattress for the bed, including the precise dimensions in both English and metric units. The Human Factors staff, therefore, concluded that repeating precise dimensions within the warning is unnecessary and may, by making the warning longer, discourage some consumers from reading it. Therefore, proposed § 1217.2(b)(8) would have the warning label include the statement "ONLY use full-size crib mattress of the recommended size" instead of repeating the dimensions of the recommended mattress.

(ii) *Strangulation warning.*

To address the strangulation hazard, the Commission, at proposed § 1217.2(b)(8), is proposing the following warning label for all toddler beds:

⚠WARNING

STRANGULATION HAZARD

NEVER place bed near windows where cords from blinds or drapes may strangle a child.
NEVER suspend strings over bed.
NEVER place items with a string, cord, or ribbon, such as hood strings or pacifier cords, around a child's neck. These items may catch on bed parts.

Like the proposed entrapment warning labels, this warning would use the type-size requirements described in the standard, and the safety alert symbol design is consistent with ANSI Z535.4–2007, *American National Standard for Product Safety Signs and Labels.* This warning largely reflects all of the information relevant to hazards that was required in the original warnings. A warning statement about not placing items with a string, cord, or ribbon around a child's neck would be more effective with an additional clarifying sentence, "These items may catch on bed parts." Without this sentence, consumers may find it difficult to infer how the presence of a cord around a child's neck is relevant to the toddler bed or how the cord and bed interact to create the potential for strangulation. Concern has been raised about the label statement warning that a string, cord, or ribbon around a child's neck may catch on bed parts. The concern is that the label statement does not point out that strings, cords, or ribbons around a child's neck can catch on many other items as well and that the Commission recommends against the use of such items for children. The Commission invites comments regarding this concern.

F. Effective Date

The Administrative Procedure Act ("APA") generally requires that the effective date of a rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). To allow time for toddler beds to come into compliance after the final rule is issued, the Commission proposes that the standard would become effective 6 months after publication of a final rule as to products manufactured or imported on or after that date. The Commission invites comments on how long it would take manufacturers of toddler beds to come into compliance with the rule.

G. Paperwork Reduction Act

This proposed rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). We describe the provisions in this section of the document with an estimate of the annual reporting burden. Our estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

We particularly invite comments on: (1) Whether the collection of information is necessary for the proper performance of the CPSC's functions, including whether the information will have practical utility; (2) the accuracy of the CPSC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Safety Standard for Toddler Beds.

Description: The proposed rule would require each toddler bed and convertible crib to comply with ASTM F 1821–09, "Standard Consumer Safety Specification for Toddler Beds." Sections 8 and 9 of ASTM F 1821–09 contain requirements for marking and instructional literature.

Description of Respondents: Persons who manufacture or import toddler beds.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

16 CFR Section	Number of respondents	Frequency of responses	Total Annual responses	Hours per response	Total burden hours
1217.2(a)	44	10	440	0.5	220

There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimates are based on the following:

Proposed § 1217.2(a) would require each toddler bed and convertible crib to comply with ASTM F 1821–09. Sections 8 and 9 of ASTM F 1821–09 contain requirements for marking and instructional literature that are disclosure requirements, thus falling within the definition of "collections of information" at 5 CFR 1320.3(c).

Section 8.1.1 of ASTM F 1821–09 requires that the name and place of business (city, state, mailing address, including zip code and telephone number) of the manufacturer, importer, distributor, of the manufacturer, distributor, or seller be clearly and legibly marked on each bed and its retail carton. Section 8.1.2 of ASTM F 1821–09 requires that each bed and its retail carton be clearly and legibly marked with the model number, stock number, catalog number, item number, or other symbol expressed numerically or otherwise, such that only articles of identical construction, composition and dimensions bear identical markings and requires the manufacturer to change the model number whenever a significant structural or design modification is made that affects its conformance with this consumer safety specification.

Section 8.1.3 of ASTM F 1821–09 requires a code mark or other means that identifies the date (month and year as a minimum) of manufacture and permits future identification of any given model and that such mark be clearly and legibly marked on each bed and its retail carton.

There are 73 known firms supplying toddler beds to the United States market. Twenty-nine of the 48 firms are known to already produce labels that comply with sections 8.1.1, 8.1.2, and 8.1.3 of the standard, so there would be no additional burden on these firms. The remaining 44 firms are assumed to already use labels on both their products and their packaging, but would need to make some modifications to their existing labels. The estimated time required to make these modification is about 30 minutes per model. Assuming that, on average, each of these firms supplies 10 different models of toddler beds or convertible cribs, the estimated burden hours associated with labels is 30 minutes × 44 firms × 10 models per firm = 13,200 minutes or 220 annual hours.

The Commission estimates that hourly compensation for the time required to create and update labels is $27.78 (Bureau of Labor Statistics, September 2009, all workers, goods-producing industries, Sales and office, Table 9). Therefore, the estimated annual cost associated with the Commission's proposed labeling requirements is approximately $6,112 ($27.78 per hour × 220 hours = $6,111.60, which we have rounded up to $6,112).

Section 9.1 of ASTM F 1821–09 requires instructions, where applicable, for assembly, maintenance, cleaning, folding, and warning information to be supplied with the bed. Toddler beds and convertible cribs are products that generally require some assembly and maintenance, and products sold without such information would not be able to successfully compete with products supplying this information. Under OMB's regulations (5 CFR 1320.3(b)(2)), the time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the "normal course of their activities" are excluded from a burden estimate where an agency demonstrates that the disclosure activities needed to comply are "usual and customary." Therefore, because the CPSC is unaware of toddler beds or convertible cribs that: (a) Generally require some assembly and maintenance, but (b) lack any instructions to the user about these topics, we tentatively estimate that there are no burden hours associated with the instruction requirement in section 9.1 of ASTM F 1821–09. This is because any burden associated with supplying instructions with a toddler bed or convertible crib would be "usual and customary" and not within the definition of "burden" under OMB's regulations.

Based on this analysis, the requirements of the proposed toddler bed rule would impose a burden to industry of 220 hours at a cost of $6,112 annually.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted the information collection requirements of this rule to OMB for review. Interested persons are requested to fax comments regarding this information collection by May 28, 2010, to the Office of Information and Regulatory Affairs, OMB (*see* **ADDRESSES**).

I. Certification

Section 14(a) of the Consumer Product Safety Act ("CPSA") imposes the requirement that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, must be certified as complying with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product or on a reasonable testing program or, for children's products, on tests on a sufficient number of samples by a third party conformity assessment body accredited by the Commission to test according to the applicable requirements. As discussed above in section H, section 104(b)(1)(B) of the CPSIA refers to standards issued under that section, such as the rule for toddler beds being proposed in this notice, as "consumer product safety standards." Furthermore, the designation as consumer product safety standards subjects such standards to certain sections of the CPSA, such as section 26(a) regarding preemption. By the same reasoning, such standards would also be subject to section 14 of the CPSA. Therefore, any such standard would be considered to be a consumer product safety rule to which products subject to the rule must be certified.

In addition, the CPSIA is another act enforced by the Commission, and the standards issued under section 104(b)(1)(B) of the CPSIA are similar to consumer product safety rules. For this reason also, toddler beds will need to be tested and certified as complying with the safety standard when it becomes effective. Because toddler beds are children's products, they must be tested by a third-party conformity assessment body accredited by the Commission. In the future, the Commission will issue a notice of requirements to explain how laboratories can become accredited as a third party conformity assessment bodies to test to the new safety standard. (Toddler beds also must comply with all other applicable CPSC requirements, such as the lead content and phthalate content requirements in sections 101 and 108 of the CPSIA, the tracking label requirement in section 14(a)(5) of the CPSA, and the consumer registration form requirements in section 104 of the CPSIA.) The Commission seeks comment on what it may cost to comply with all of the CPSC requirements outlined above, including the proposed modifications in section E, and how these costs will impact toddler bed manufacturers.

J. Environmental Considerations

The Commission's environmental review regulation at 16 CFR Part 1021 has established categories of actions that normally have little or no potential to affect the human environment and therefore do not require either an environmental assessment or an environmental impact statement. The proposed rule is within the scope of the Commission's regulation, at 16 CFR 1021.5(c)(1), which provides a categorical exclusion for rules to provide design or performance requirements for products. Thus, no environmental assessment or environmental impact statement for this rule is required.

K. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires agencies to consider the impact of proposed rules on small entities, including small businesses. Section 603 of the RFA requires that CPSC staff prepare an initial regulatory flexibility analysis and make it available to the public for comment when the general notice of proposed rulemaking is published. The initial regulatory flexibility analysis must describe the impact of the proposed rule on small entities and identify any alternatives that may reduce the impact. Specifically, the initial regulatory flexibility analysis must contain:

1. A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

2. A description of the reasons why action by the agency is being considered;

3. A succinct statement of the objectives of, and legal basis for, the proposed rule;

4. A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities subject to the requirements and the type of professional skills necessary for the preparation of reports or records; and

5. An identification, to the extent possible, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule.

In addition, the initial regulatory flexibility analysis must contain a description of any significant alternatives to the proposed rule that would accomplish the stated objectives of the proposed rule while minimizing the economic impact on small entities.

Toddler beds and convertible cribs are typically produced or marketed by juvenile product manufacturers and distributors or by furniture manufacturers and distributors, some of which have separate divisions for juvenile products. The CPSC's staff believes that there are currently at least 73 known manufacturers or importers that supply toddler beds and/or convertible cribs to the United States market. Approximately 48 suppliers are domestic manufacturers (66 percent), 13 are domestic importers (18 percent), 11 are foreign manufacturers (15 percent), and the remaining firm is a foreign supplier who imports from other countries and exports to the United States. (For sources of information used in this initial regulatory flexibility analysis, see Ref. 5.)

Under Small Business Administration (SBA) guidelines, a manufacturer of toddler beds or convertible cribs is small if it has 500 or fewer employees and an importer is small if it has 100 or fewer employees. Based on these guidelines, 11 of the domestic importers and 34 domestic manufacturers known to be supplying the United States market are small. (Six of these small domestic manufacturers have between 100 and 500 employees.) There are an additional eight domestic manufacturers of unknown size, most of which are likely to be small as well. (In fact, there was sufficient information to include seven of these firms as small in the analysis that follows.) However, there are probably additional unknown small manufacturers and importers operating in the United States market as well.

The Juvenile Products Manufacturers Association (JPMA), the major United States trade association that represents juvenile product manufacturers and importers, runs a voluntary Certification Program for several juvenile products. Approximately 29 firms that supply toddler beds and/or convertible cribs to the United States market are compliant with the current ASTM voluntary standard (40 percent). (Twenty-six of these firms are JPMA-certified as compliant, while an additional three firms claim compliance. Of the small domestic businesses, 11 manufacturers (27 percent) and 6 importers (55 percent) are JPMA-certified as ASTM-compliant. Additionally, there are two small manufacturers that claim compliance with the ASTM standard that are not part of JPMA's Certification Program.

The most recent United States birth data shows that there are approximately 4.3 million births per year. The vast majority of these babies eventually use cribs for sleeping purposes, although there is some evidence that play yards are becoming a common substitute. In fact, according to a 2005 survey conducted by the American Baby Group (*2006 Baby Products Tracking Study*), 22 percent of new mothers own convertible cribs. Approximately 16 percent of convertible cribs were handed down or purchased second-hand.[1] If these rates hold, this suggests annual convertible crib sales of about 795,000 ($0.22 \times 0.84 \times 4.3$ million births per year). Of those consumers with non-convertible cribs, some proportion of them will eventually use toddler beds when their children get older. However, consumers may choose to use a twin or larger bed and use portable bed rails rather than use a separate toddler bed. Assuming that approximately 50 percent elect to use toddler beds and that approximately 50 percent of those buy them new, this would mean that around 839,000 toddler beds are sold per year (0.78 non-convertible cribs $\times$ 4.3 million births $\times$ 0.5 use toddler beds $\times$ 0.5 buy them new).[2] Adding this to the estimate of convertible cribs yields a total of approximately 1.6 million units (convertible cribs and toddler beds) sold per year that might be affected by the proposed toddler bed standard.

Reason for Agency Action and Legal Basis for the Proposed Rule. Section 104 of the CPSIA requires the CPSC to promulgate a mandatory standard for toddler beds that is substantially the same as, or more stringent than, the voluntary standard. The Commission is proposing four additional requirements to the current ASTM standard. The first would assure more structurally sound guardrails. The second is intended to reduce the likelihood of entrapments due to broken slats/spindles. The third would improve the safety of guardrails by adding height requirements. The fourth, modified warnings, is intended to emphasize that deaths in toddler beds have occurred due to entrapments and strangulation. The Commission concludes that the more stringent standard would reduce the risk of future injuries and deaths associated with toddler beds and convertible cribs.

Compliance Requirements of the Proposed Rule. The Commission proposes adopting the voluntary ASTM standard for toddler beds with four additions. Key components of ASTM F 1821—09 include:

- Mattress retention requirements intended to control the horizontal position of the mattress and prevent torso entrapments, as well as assure that the mattress does not fall too far below the mattress support when used by a child of the maximum recommended weight (50 lbs);
- Mattress support systems requirements intended to prevent disengagement which might result in a sharp edge or an opening in which a child might become entrapped;
- Requirements for mattress support systems attached to end structures intended to assure that the mattress support system remains attached to the end structures and does not create a hazard, such as sharp edges or openings in which a child might become entrapped;
- Requirements for guardrails intended to prevent openings in guardrails in which children might be trapped; and
- End structures intended to prevent openings in end structures in which children might be trapped.

The voluntary standard also includes: (1) Requirements for several features to prevent entrapment and cuts (minimum and maximum opening size, hazardous sharp points or edges, and edges that can scissor, shear, or pinch); (2) torque and tension tests to assure that components cannot be removed; (3) requirements for partially bounded openings; (4) marking and labeling requirements; (5) requirements for the permanency and adhesion of labels; (6) requirements for instructional literature; and (7) requirements to address corner post extensions, which may catch various children's items and pose a choking hazard.

[1] The data on second-hand products for new mothers was not available. Instead, data for new mothers and expectant mothers was combined and broken into first-time mothers and experienced mothers. Data for first-time mothers and experienced mothers was averaged to calculate the approximate percentage that was handed down or purchased second-hand.

[2] Any per-year estimate for toddler beds will be approximate since when parents make such a purchase for their child is likely to vary.

Based on CPSC staff recommendations, the Commission proposes to modify the existing ASTM standard by revising the entrapment/strangulation warnings, and adding three new requirements for guardrail height, slat/spindle strength, and structural integrity for guardrails:

• *Guardrail height.* The proposed rule would require that guardrails be a minimum height of 5 inches above the manufacturer's recommended sleeping surface. This will help prevent falls.

• *Slat/spindle strength.* The proposed rule adds a new requirement to test the strength of spindles and slats in guardrails, side rails, and end structures using an 80-lb force.

• *Structural integrity for guardrails. In addition to the existing test* for guardrail openings, the proposed rule would add a test for the overall stability of guardrails using a 50-lb force while the bed is firmly secured. This additional test is intended to help prevent children from falling out of bed; it is also calculated to ensure that the guardrails remain intact when children lean against them or attempt to use them to climb into bed.

• *Entrapment/strangulation warnings.* The proposed rule would modify the existing warnings by adding a more detailed description of mechanisms creating the hazard and separating the entrapment and strangulation messages into two warning labels. This is intended to increase the efficacy of the warning by emphasizing the potential for death for each of the two different mechanisms.

As explained earlier in section F of this preamble, toddler beds and convertible cribs entering commerce would need to meet the new requirements if they are manufactured or imported after 6 months from the date of publication of the final rule. In other words, the standard, if finalized, would not apply retroactively.

The recommended slat/spindle strength requirement may help prevent incidents where slats break and children are either cut, fall through the opening, or become entrapped. This proposed modification to the current voluntary standard could potentially add significant costs to toddler bed and convertible crib suppliers. Preliminary testing indicates that some toddler beds and convertible cribs currently on the market would meet this requirement with no further modifications, while others would not.

Plastic toddler beds would be exempt from the slat/spindle requirement, because they do not have wooden slats/spindles and have not been associated with the hazards addressed by this requirement. Therefore, we believe that some products will need to be modified to meet the slat/spindle requirement, which is likely to affect at least a few firms.

Suppliers may also need to make product modifications to meet the revised structural integrity requirement and new height requirement for guardrails. No testing has been performed so far that would indicate how many products currently on the market would meet these requirements, but it appears that at least some products will be able to meet the guardrail height requirements. It is possible for firms to eliminate guardrails from their products entirely as a way to address the proposed guardrails requirements if they can comply with the other requirements of the proposed standard without the guardrail in place (guardrails themselves are not required). However, it would be unreasonable to assume that all of the firms whose products may require modifications can or will take this approach. Therefore, it is expected that at least some products will require modifications to meet these guardrail requirements and that at least a few firms will be affected.

In meeting the slat/spindle strength and guardrail structural integrity requirements, it is possible that firms may improve the quality of materials used to make the slats/spindles or guardrails. (Plastic toddler beds and convertible cribs would not need to make such modifications since they have not been associated with the identified risks from these parts.) For wooden toddler beds and convertible cribs, switching to a stronger material is unlikely to exceed more than a few dollars per unit. For example, using white ash rather than western white pine improves average strength properties by an average of 74 percent (*http://www.woodbin.com/ref/wood/strength_table.htm*) while increasing the price of the material by an average of 26 percent (*http://www.willardbrothers.net/ORDER%20FORM.htm*) for a maximum of $1.55 more for the largest quantity listed. These cost differentials are based on raw lumber costs which would affect firms differently, depending upon how much wood was used in their particular product. Metal toddler beds/convertible cribs are less common than products made from wood or plastic, but material changes should not be substantially more expensive than for wooden products. Alternatively, firms could undertake product redevelopment to develop compliant toddler beds, which would likely be more expensive than using alternate materials. Therefore, it is likely that at least some firms would select the less expensive option.

Increasing the height of guardrails may help prevent children from falling from the bed. As discussed above, the proposed rule would not require guardrails to be included with toddler beds or convertible cribs, so firms with noncompliant products have the option of eliminating guardrails entirely if their products will comply with the other requirements of the proposed standard with the guardrails removed. Alternatively, they could redesign their product (or the guardrail portion of their product) to make their guardrails higher. If the second option is taken, there will likely be some cost associated with product redevelopment, as well as some increased costs for additional materials.

The remaining requirements, entrapment and strangulation warnings, are expected to have only a minimal impact on current suppliers of toddler beds or convertible cribs. The revised warnings would be only a minor modification for firms currently complying with the ASTM standard. Even for those firms supplying toddler beds without such a warning or with a warning that differs from the one outlined in the current voluntary standard, the costs associated with printing a revised warning or a completely new warning would be low.

Other Federal Rules. CPSC staff has not identified any federal or state rule that either overlaps or conflicts with the staff's draft proposed rule.

Impact on Small Businesses. There are 73 firms currently known to be marketing toddler beds and/or convertible cribs in the United States. Six are large domestic manufacturers, 1 is a domestic manufacturer of unknown size, 2 are large domestic importers, and 12 are foreign firms. The impact on the remaining 52 small firms—34 firms known to be small domestic manufacturers, 7 firms that are presumed to be small domestic manufacturers, and 11 small domestic importers—is the focus of the remainder of this analysis.

Small Domestic Manufacturers. For the most part, the impact of the proposed standard on small manufacturers will differ based on whether they currently comply with the voluntary ASTM standard. If they do not, as is the case with 28 firms, the impact could be significant. These firms would likely have to undergo product redevelopment. As explained below, the cost of such an effort for toddler beds and convertible cribs is unknown, but could be substantial for some firms.

Product development costs include product design, development and

marketing staff time, product testing, and focus group expenses. These costs can be very high, particularly when there are multiple products, but they can be treated as new product expenses and amortized over time. If a firm deals with multiple products subject to the proposed standard, there may be some economies of scale for some of these development stages that would reduce the marginal costs for each new product being redeveloped. Other one-time costs include the retooling of manufacturing equipment, which could be gradually recouped over the sales of numerous units. There are also expected to be increased costs of production. Producing toddler beds and convertible cribs that have greater structural integrity, stronger slats/spindles, and higher guardrails may require additional raw materials or possibly heavier materials. In addition to increasing the costs of production, this could increase shipping costs as well.

Even if these firms are able to pass their increased costs on to consumers, the impact could still be considerable. This is because firms manufacturing toddler beds and convertible cribs are not simply competing against other producers of toddler beds and convertible cribs. They also compete against producers of substitute products, firms whose products would not be subject to the proposed standard. Toddler bed producers must compete with producers of twin (or possibly larger) beds that can be used with portable guardrails, while convertible cribs must compete with these same products for larger children and with standard cribs for smaller children.

There is expected to be less of an impact on the 13 firms that are known to comply with the current voluntary standard. At least some of these firms should be able to comply with the new requirements without product modifications other than labeling. The remaining firms may opt to redesign their products as well, which, again, would result in some one-time costs and a possible increase in production costs. It is also possible, however, that they may be able to select a potentially less expensive option to address some of the recommended requirements. A modification in the materials used may be sufficient for many products, and the associated cost is not expected to exceed a few dollars per unit.

There are two manufacturers that do not comply with the current voluntary ASTM standard that would be affected differently by the proposed standard. These firms take already manufactured toddler beds and convertible cribs, decorate them (often with original artwork), and then sell them as a final product. Because these firms do not make the underlying toddler beds and convertible cribs, the impact of the proposed standard on these firms will be the same as that of an importer. These firms would need to find a new supplier of compliant products if their current supplier does not make the necessary modifications. The new products would presumably be of higher quality, as well as more expensive since some of the original manufacturer's production costs (and possibly redevelopment costs) are likely to be passed on to these firms.

The scenario described above assumes that only those firms that are JPMA-certified or claim ASTM compliance will pass the voluntary standard's requirements. This is not necessarily the case. CPSC staff has identified many cases where products not certified by JPMA actually comply with the relevant ASTM standard; however, there is insufficient evidence of this for toddler beds and convertible cribs to quantify this impact. Additionally, the effect of the new and modified requirements may be less substantial than outlined above to the extent that some products may already comply with foreign standards with some more rigorous requirements. However, there is insufficient information to quantify this effect. Therefore, the Commission invites comments from small businesses affected by this proposal explaining the economic impact it will impose on them.

Small Domestic Importers. The majority of small domestic importers (six out of 11) comply with the current voluntary standard. At least some of these firms should not need to make any product modifications (other than labeling) to meet the proposed standard. However, those whose products do require modifications will need to find an alternate supplier if their existing one does not come into compliance. The new products will presumably be of higher quality, as well as more expensive. However, the actual price increase is unknown and likely to vary based upon the degree of modification required. All of the remaining five firms not now in compliance with the ASTM voluntary standard would need to either require their current supplier to make the modifications necessary to comply with the standard or find other suppliers that did comply. Depending on the degree to which their toddler beds and convertible cribs are out of compliance with the voluntary standard, the price increase (as well as the increases in quality and safety) could be relatively high. To the extent that some of these firms may actually comply with the current voluntary standard or one or more of the new/modified requirements in the proposed standard, the impact of the proposed rule would be lower.

For the most part, the impact of the proposed rule on importers should be smaller than that on manufacturers. Even if importers respond to the rule by discontinuing the import of noncomplying toddler beds and convertible cribs, either by replacing them with a complying product or another juvenile product, deciding to import an alternative product would be a reasonable and realistic way to offset any lost revenue. The one exception would be firms for which convertible cribs or toddler beds and their associated products (*i.e.,* matching furniture) form the core of their product line. For these firms, a substantial price increase could possibly drive them out of business or require them to rebuild their business based on alternative products.

Alternatives. Under section 104 of the CPSIA, the primary alternative that would reduce the impact on small entities is to make the voluntary standard mandatory with no modifications. (This option may not be feasible, given the CPSIA's direction for the Commission to issue more stringent standards if that would further reduce the risk of injury associated with durable nursery products.) For small domestic manufacturers that already meet the requirements of the voluntary standard, adopting the standard without modifications may reduce their costs relative to the proposed rule, but only marginally. Similarly, limiting the requirements of a final rule to those now in the voluntary standard would probably have little beneficial impact on small manufacturers that do not currently meet the requirements of the voluntary standard. This is because, for these firms, most of the cost increases would be associated with meeting the requirements of the current voluntary standard, rather than the changes associated with the proposed rule. The difference for importers, whether compliant with the voluntary standard or not, is also likely to be minimal.

Conclusion. The proposed rule could have a significant impact on a substantial number of small entities. Even if all the small firms that are JPMA-certified as compliant with ASTM's voluntary standard did not require any changes other than labeling to comply with the proposed standard, there would still be 63 percent (33 out of 52 firms) that would probably need to redevelop their products to comply.

This would typically need to be done for multiple products for each firm. (To the extent that some of the products not certified by JPMA may still comply, the impact will be reduced.) Firms supplying products that already comply with the voluntary standard may not need to make any product modifications (other than labeling) to meet the proposed rule, but this applies to only 42 percent of the known small firms. Some of these firms, and basically all of the other small firms, will need to make at least some modifications to their toddler beds and convertible cribs to comply with the proposed rule. The extent of these costs is unknown, but since product redevelopment would likely be necessary in many cases, it is possible that the costs could be large and have the potential to reduce firms' ability to compete with substitute products.

Nineteen small businesses are believed to have product lines consisting entirely or primarily of toddler beds, convertible cribs, and related products (such as accompanying furniture). These firms may be affected disproportionately by the proposed rule. If the cost of developing (or importing) a compliant product proves to be a barrier for these firms, the loss of toddler beds and convertible cribs as a product category could be significant and may not be easily mitigated by the sale of other juvenile products.

L. Request for Comments

All interested persons are invited to submit their comments to the Commission on any aspect of the proposed rule. Comments should be submitted in accordance with the instructions in the **ADDRESSES** section at the beginning of this notice.

M. References

1. CPSC staff memorandum, from Celestine T. Kiss, Project Manager, Division of Human Factors, Directorate for Engineering Sciences, and Robert J. Howell, Assistant Executive Director, Office of Hazard Identification and Reduction, "Staff's Draft Proposed Rule for toddler Beds," March 3, 2010, with Tabs A–D.

2. CPSC staff memorandum, from Risana T. Chowdhury, Division of Hazard Analysis, to Celestine T. Kiss, Division of Human Factors, Directorate for Engineering Sciences, "Toddler Beds-Related Deaths, Injuries and Potential Injuries, and NEISS Injury Estimates; 2005–Present," January 28, 2010 (Tab A to Ref. 1).

3. CPSC staff memorandum, from Jacob J. Miller, Division of Mechanical Engineering, Directorate for Engineering Sciences, to Celestine T. Kiss, Project Manager, Division of Human Factors, Directorate for Engineering Sciences, "Proposed Changes to ASTM F 1821–09, Standard consumer Safety Specification for Toddler Beds, for Incorporation in Staff's Draft Proposed Rule," February 23, 2010 (Tab B to Ref. 1).

4. CPSC staff memorandum, from Timothy P. Smith, Engineering Psychologist, Division of Human Factors, Directorate for engineering Sciences, to Celestine T. Kiss, Project Manager, Division of Human Factors, Directorate for Engineering Sciences, "Warning Statements for Toddler Beds (CPSIA Section 104)," March 3, 2010 (Tab C to Ref. 1).

5. CPSC staff memorandum, from Jill L. Jenkins, Ph.D., Economist, Directorate for Economic Analysis, to Celestine T. Kiss, Project Manager for Toddler Beds, Division of Human Factors, Directorate for Engineering Sciences, "Initial Regulatory Flexibility Analysis of Proposed Standard for Toddler Beds," February 18, 2010 (Tab D to Ref. 1).

List of Subjects in 16 CFR Part 1217

Consumer protection, Infants and children, Incorporation by reference, Law enforcement, Safety, Toddler beds.

For the reasons stated above, and under the authority of 5 U.S.C. 553, and sections 3 and 104 of Public Law 110–314, 122 Stat. 3016 (August 14, 2008), the Consumer Product Safety Commission proposes to add a new 16 CFR part 1217 as follows:

PART 1217—SAFETY STANDARD FOR TODDLER BEDS

Sec.
1217.1 Scope, application, and effective date.
1217.2 Requirements for toddler beds.

Authority: Sections 3 and 104 of Pub. L. 110–314, 122 Stat. 3016 (August 14, 2008).

§ 1217.1 Scope, application, and effective date.

This part 1217 establishes a consumer product safety standard for toddler beds manufactured or imported after 6 months after publication of the final rule in the **Federal Register**.

§ 1217.2 Requirements for toddler beds.

(a) Except as provided in paragraph (b) of this section, each toddler bed as defined in ASTM F 1821–09, *Standard Consumer Safety Specification for Toddler Beds*, approved April 1, 2009, shall comply with all applicable provisions of ASTM F 1821–09, as that standard is amended by this part 1217. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of this ASTM standard from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959 USA, phone: 610–832–9585; *http://www.astm.org/*. You may inspect copies at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal regulations/ibr_locations.html.*

(b) Comply with ASTM 1821–09 with the following additions or exclusions.

(1) Instead of the section number of section 6.5 and its introductory heading "Guardrails—" comply with the following:

(i) 6.5.1

(ii) Reserved.

(2) In addition to section 6.4 of ASTM F 1821–09, comply with the following:

(i) 6.5 *Guardrails:*

(ii) [Reserved]

(3) In addition to complying with the provisions of paragraphs (b)(1) and (b)(2) of this section, comply with the following:

(i) 6.5.2 The upper edge of the guardrails shall be at least 5 in. (130 mm) above the sleeping surface when a mattress of a thickness that is the maximum specified by the manufacturer's instructions is used.

(ii) [Reserved]

(4) In addition to section 6.4 of ASTM 1821–09 comply with the following:

(i) 6.8 *Structural Integrity of Guardrails*—After testing in accordance with 7.9, there shall be none of the hazardous conditions described in Section 5.

(ii) [Reserved.]

(5) In addition to the changes to ASTM 1821–09 in paragraphs (b) (1), (2) and (3) of this section comply with the following:

(i) 6.9 *Slat/Spindle Strength*—Toddler beds that contain wooden or metal slats or spindles shall meet the performance requirements outlined in section 6.9.1.

(A) 6.9.1 After testing in accordance with the procedure in 7.10, there shall be no slat or spindle breakage or separation of a slat or spindle from the guardrails, side rails, or end structures.

(B) [Reserved]

(ii) [Reserved]

(6) In addition to section 7.8 of ASTM 1821–09 comply with the following:

(i) 7.9 *Test Method for Guardrail Structural Integrity:*

(A) 7.9.1 Firmly secure the toddler bed on a stationary flat surface using clamps. Gradually apply 50 lbf to the uppermost horizontal part of the mattress side of the guardrail in a direction perpendicular to the plane of the rail. The force should be applied in the center along the length of the rail and then repeated with the force applied directly over each of the outermost legs of the guardrail. The force should be applied in the direction away from the mattress within a period of 5 s and maintained for an additional 10 s.

(B) [Reserved]

(ii) [Reserved]

(7) In addition to the changes to ASTM 1821–09 in paragraph (b)(5) of this section comply with the following:

(i) 7.10 *Slat/Spindle Testing for Guardrails, Side Rails, and End Structures:*

(A) 7.10.1 The spindle/slat static load test shall be performed for all slats and spindles with the spindle/slat assemblies removed from the bed and supported only on the rail corners through a contact area not more than 3 square inches when measured parallel to the longitudinal axis of the end of the rail. Besides the corners, the upper and lower horizontal rails of both linear and contoured shall be free to deflect under the applied force.

(B) 7.10.2 Gradually, over a period of not less than 2 s or greater than 5 s, apply the force specified in 7.10.3 or 7.10.4 at the midpoint between the top and bottom of the spindle/slat being tested. This force shall be applied through a contact area large enough to not cause visible indentation or cutting of the spindle/slat, but not wider than 1 in. (2.54 cm) when measured parallel to the longitudinal axis of the spindle/slat. This weight shall be maintained for 30 seconds.

(C) 7.10.3 Test, according to 7.10.2, 25% (or the next highest percentage if 4 does not divide evenly into the total number) of all spindles/slats with a force of 80 lb. Spindles/slats that offer the least resistance to bending based upon their geometry shall be selected to be tested within this grouping of 25%, except that adjacent spindles/slats shall not be tested per 7.10.2. Place an identifying mark on all tested spindles/slats.

(D) 7.10.4 Upon completion of the test described in 7.10.2 and 7.10.3, gradually apply, over a period of not less than 2 s or greater than 5 s, 60 lbf (266.9 N) at the midpoint between the top and bottom of all spindles/slats not previously tested under 7.10.2 and 7.10.3. This force shall be applied through a contact area large enough to not cause visible indentation or cutting of the spindle/slat, but not wider than 1 in. (2.54 cm) when measured parallel to the longitudinal axis of the spindle/slat. This force shall be maintained for 30 s.

(E) 7.10.5 End vertical rails that are joined between the slat assembly top and bottom rails are not considered slats and do not require testing under 7.10.

(ii) [Reserved]

(8) Comply with ASTM 1821–09 section 8.4. Instead of complying with section 8.4.3, including the warning label, and sections 8.4.4 through 8.4.5 of ASTM 1821–09, use the following:

(i) 8.4.3 Toddler beds that meet the performance requirements of sections 5.8.2 (torso entrapment), 6.1 (mattress retention), 6.2 (mattress support system integrity), 6.3 (mattress support system attachment to end structures), 6.4 (mattress support system openings), 6.6 (end structure openings), and 6.7 (partially bounded openings) with the guardrails removed may bear the following label, exactly as depicted, instead of the label required by section 8.4.4:

⚠WARNING

INFANTS HAVE DIED IN TODDLER BEDS FROM ENTRAPMENT.
Openings in and between bed parts can entrap head and neck of a small child.
NEVER use bed with children younger than 15 months.
ONLY use full-size crib mattress of the recommended size.
ALWAYS follow assembly instructions.

(ii) 8.4.4 All toddler beds that do not bear the label allowed for certain toddler beds by section 8.4.3, shall bear the following label, exactly as depicted:

⚠WARNING

INFANTS HAVE DIED IN TODDLER BEDS FROM ENTRAPMENT.
Openings in and between bed parts can entrap head and neck of a small child.
NEVER use bed with children younger than 15 months.
ALWAYS use supplied guardrails to avoid gaps between mattress and bed.
ONLY use full-size crib mattress of the recommended size.
ALWAYS follow assembly instructions.

(iii) 8.4.5 In addition to the label allowed by section 8.4.3 or required by section 8.4.4, all toddler beds shall bear the following label, exactly as depicted:

⚠WARNING

STRANGULATION HAZARD

NEVER place bed near windows where cords from blinds or drapes may strangle a child.
NEVER suspend strings over bed.
NEVER place items with a string, cord, or ribbon, such as hood strings or pacifier cords, around a child's neck. These items may catch on bed parts.

Dated: March 24, 2010

Todd Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2010–6947 Filed 4–27–10; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1218

[CPSC Docket No. CPSC–2010–0028]

Safety Standard for Bassinets and Cradles: Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 104(b) of the Consumer Product Safety Improvement Act of 2008 ("CPSIA") requires the United States Consumer Product Safety Commission ("CPSC" or "Commission") to promulgate consumer product safety standards for durable infant or toddler products. These standards are to be "substantially the same as" applicable voluntary standards or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. The Commission is proposing a more stringent safety standard for bassinets and cradles that will further reduce the risk of injury associated with these products.

DATES: Written comments must be received by July 12, 2010.

ADDRESSES: Comments relating to the instructional literature and marking required by the proposed rule relating to the Paperwork Reduction Act should be directed to the Office of Information and Regulatory Affairs, OMB, Attn: CPSC Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov.*

Other comments, identified by Docket No. CPSC–2010–_____, may be submitted by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through *http://www.regulations.gov.*

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Han Lim, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7538; *hlim@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background and Statutory Authority

The Consumer Product Safety Improvement Act of 2008, Public Law 110–314 ("CPSIA") was enacted on August 14, 2008. Section 104(b) of the CPSIA requires the Commission to promulgate consumer product safety standards for durable infant or toddler products. These standards are to be "substantially the same as" applicable voluntary standards or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. In this document the Commission proposes a safety standard for bassinets and cradles. The proposed standard is more stringent in some respects than the voluntary standard developed by ASTM International (formerly the American Society for Testing and Materials), ASTM F 2194–07a$^{\varepsilon 1}$, "Standard Consumer Safety Specification for Bassinets and Cradles." The proposed modifications, if finalized, will further reduce the risk of injury associated with bassinets and cradles.

B. The Product

A bassinet or cradle is a small bed for infants supported by free-standing legs, a wheeled base, a rocking base, or that can swing relative to a stationary base. A bassinet or cradle is not intended to be used with children who are beyond the age of approximately 5 months. Bassinet and cradle attachments for non-full-size cribs or play yards are considered a part of this product category, as are bedside sleeper bassinets that can be converted to a four-sided bassinet not attached to a bed.

Full-size cribs and infant swings are not included under the definition of bassinet or cradle. Products used in conjunction with infant swings or strollers or Moses baskets (hand-carrying baskets) are not included under the definition of bassinet or cradle. However, a Moses basket or a similar product used with infant swings or strollers that can attach to a separate base which can convert it to a bassinet