"Microorganisms" & "Toxins," ECCN 1C351 is amended by removing the name "Chlamydia psittaci", where it appears in paragraph c.7 of the "*Items*" paragraph in the List of Items Controlled section, and adding in its place the name "Chlamydophilapsittaci (formerly known as Chlamydia psittaci)".

3. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, "Microorganisms" & "Toxins," ECCN 1C352 is amended by removing the name "Lyssa virus", where it appears in paragraph a.8 of the "Items" paragraph in the List of Items Controlled section, and adding in its place the name "Lyssa virus (a.k.a. Rabies)".

4. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B350 is amended under the "*Items*" paragraph in the List of Items Controlled section:

a. By adding the parenthetical phrase "(polymeric or elastomeric materials with more than 35% fluorine by weight)" immediately following the word "Fluoropolymers", where it appears in paragraphs a.3, b.3, c.3, d.3, e.3, g.3, h.3, and i.3;

b. By removing the phrase "chemical(s) being processed or contained", where it appears in the introductory text to paragraph g, and adding in its place the phrase "chemical(s) being produced, processed, or contained";

c. By removing the phrase "Glass or glasslined (including vitrified or enameled coatings);", where it appears in paragraph g.4, and adding in its place the phrase "Glass (including vitrified or enameled coating or glass lining)"; and

d. By adding the parenthetical phrase "(high silicon iron alloys)" immediately following the word "Ferrosilicon", where it appears in paragraph i.11.

Dated: April 12, 2011.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2011–9613 Filed 4–19–11; 8:45 am]

BILLING CODE 3510–33–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1217

RIN 3041–AC79

Safety Standard for Toddler Beds

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: 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 issuing a safety standard for toddler beds in response to the CPSIA. The safety standard addresses 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 standard also addresses corner post extensions that can catch items worn by a child.

DATES: The rule will become effective on October 20, 2011, and apply to products manufactured or imported on or after that date. The incorporation by reference of the publications listed in this rule are approved by the Director of the Federal Register as of October 20, 2011.

FOR FURTHER INFORMATION CONTACT: Troy Whitfield, Office of Compliance and Field Operations, Consumer Product Safety Commission, Bethesda, MD 20814–4408; telephone (301) 504–7548; *twhitfield@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

A. Background: Section 104(b) of the Consumer Product Safety Improvement Act

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. The law requires that these standards are to be "substantially the same as" applicable voluntary standards or more stringent than the voluntary standards 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 is issuing a safety standard for toddler beds. The 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.

In the **Federal Register** of April 28, 2010, the Commission published a notice of proposed rulemaking that proposed to incorporate by reference ASTM F 1821–09, *Standard Consumer Safety Specification for Toddler Beds,* with several modifications. 75 FR 22291. The final rule is very similar to the proposed rule. We summarize the proposed rule in section F of this preamble and discuss the final rule (including differences between the proposal and the final rule) in section G of this preamble. The information discussed in this preamble comes from CPSC staff's briefing package for the toddler bed final rule, which is available on the CPSC's Web site at *http://www.cpsc.gov/library/foia/foia11/brief/toddlerfinal.pdf.*

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. The standard includes cribs that can be converted into a toddler bed using a full-size crib mattress.

CPSC staff estimates that there are currently at least 73 known manufacturers or importers supplying toddler beds and/or convertible cribs to the U.S. 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 that imports from other countries and exports to the United States.

Based on information from a 2005 survey conducted by the American Baby Group, CPSC staff estimates annual convertible crib sales to number about 776,000 and annual sales of toddler beds to total about 819,000. Thus, a total of approximately 1.6 million units (convertible cribs and toddler beds) sold per year might be affected by the toddler bed standard.

C. Incident Data

The preamble to the proposed rule summarized the data for incidents related to toddler beds for the period 2005 to 2009. During this period of time, CPSC staff is aware of 4 fatalities and 81 nonfatal incidents (with and without injuries) related to toddler beds. The data were drawn 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"). More information concerning those incidents is provided in the preamble to the proposed rule. 75 FR 22292 (April 28, 2010).

While preparing the final rule, CPSC staff conducted a new search of CPSC's epidemiological databases and found that 41 toddler bed-related incidents were reported between June 23, 2009 and December 12, 2010. None of these were fatalities. Seventeen incidents reported an injury (primarily bumps, bruises, sprains, and lacerations). One report was of a child nearly choking on loose hardware; another report was of a child suffering a dental injury from falling on the bed; and another report was of a possible case of lead poisoning of a child from chewing paint on the toddler bed. While most of these injuries did not require any major medical intervention, one child was hospitalized for a fractured limb.

In 31 of the 41 incidents, the age of the child was reported. In four of those incidents, a child younger than 15 months was involved. The majority of the incidents (17 out of 31) reported the child's age to be between 17 months and 2 years old. It was not always clear, however, that the age reported pertained to the child who was the regular user of the toddler bed. Occasionally, an incident report stated specifically that the injured child was playing on a sibling's toddler bed; a few others reported that the injured child was playing or climbing on a toddler bed. This indicates that the reported victim's age was not always the age of the regular user of the bed.

Among the 41 incident reports, the following hazards were identified:

- Broken, loose, or detached components of the bed, such as the guardrail, hardware, or other accessories (14 incidents, 3 of which involved injuries);
- Entrapment, mostly of a limb (10 incidents, 8 of which resulted in injuries ranging from fractures and sprains to bruises);
- Product integrity issues, mostly the integrity of the mattress support (4 incidents, 1 of which also reported a finger injury to the child);
- Inadequate mattress fit issues (3 incidents, no injuries);
- Miscellaneous issues, such as a sharp surface, lead paint, bed height/clearance, guardrail inadequacy, and bed accessory involvement (9 reports, 4 of which reported associated injuries).

CPSC staff reviewed data from NEISS for injuries related to toddler beds for 2009 and 2010. A total of 32 such injuries, and no deaths, were reported through NEISS from January 1, 2009 through December 12, 2010. (The number of reported incidents was too small for NEISS to publish national injury estimates for injuries related to toddler beds.) The most frequent characteristics of the 32 toddler bed-related injuries reported through NEISS were:

- Hazard: falls out of the toddler bed to a lower level (78%);
- Injured body part: head and face (59%) and limbs (25%);
- Injury type: head injury (31%) and fractures (22%); and
- Disposition: treated and released (97%).

About 9 percent of the patients were reported to be younger than 15 months old, while about 69 percent were reported to be between 17 months and 2 years old. As was the case for incident data reported through sources other than NEISS, it was not always clear whether the patient injured was the usual user of the toddler bed.

D. The ASTM Voluntary Standard

ASTM F 1821, *Standard Consumer Safety Specification for Toddler Beds,* was first approved in 1997, and revised in 2003 and 2006. The current version, ASTM F 1821–09, was approved on April 1, 2009, and published in May 2009. ASTM has been working on revisions to the standard, but has not approved a subsequent version as of the date of this final rule.

Requirements in the ASTM F 1821–09 Standard for toddler beds include:

- Toddler beds must comply with the 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.
- Toddler beds must not present scissoring, shearing, or pinching hazards.
- Openings must meet specified dimensions to prevent finger entrapment.
- Openings that will permit passage of a specified block with a wedge on one end are prohibited to protect against torso entrapment.
- The distance that corner posts may extend above the upper edge of an end or side panel is limited.
- Protective components must not be removable with a specified force after torque and tension tests.
- 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.
- The mattress must be supported and contained so that it does not move horizontally to cause an opening that will allow the passage of the wedge block when tested.
- There are tests for the physical integrity of the mattress support system and its attachments and the side rails.
- There are wedge block tests for openings in the guardrails and end structures to test whether they could cause entrapment.
- There is a probe test to protect against entrapment in partially bounded openings in the bed.
- Instructions must be provided with the bed.
- Warning statements are required on the bed to address entrapment and strangulation hazards.

E. Response To Comments on the Proposed Rule

In the **Federal Register** of April 28, 2010, we published a proposed rule for toddler beds (75 FR 22291). We received 13 comments on the proposed rule. Four of the comments stated general support for the proposed rule, with minor changes in wording to emphasize the hazard. The other nine comments raised specific issues that are addressed by topic below.

We describe and respond to the comments in section E of this document and also describe the final rule. To make it easier to identify the comments and our responses, the word "Comment," in parentheses, will appear before the comment's description, and the word "Response," in parentheses, will appear before our response. We also have numbered each comment to help distinguish between different comments. The number assigned to each comment is purely for organizational purposes and does not signify the comment's value, or importance, or the order in which it was received.

1. Guardrail Designs

(Comment 1)—One commenter addressed guardrail designs for toddler beds. The commenter suggested that replacing spindles on the toddler bed guardrails with a full piece of wood or material would decrease the risk of children getting a body part entrapped in the guardrail.

(Response 1)—We acknowledge that currently, some manufacturers use solid panel guardrails on their toddler beds. However, mandating that all guardrails be solid panels may limit the utility of converting some types of cribs to toddler beds. Although limb entrapments might be reduced if guardrails were limited to solid panels, the incident data reported in the preamble to the proposed rule (75 FR at 22292) indicate that only three of the reported injuries involving entrapment between slats were fractures of limbs, and the majority of the injuries were bumps and bruises. Only one fracture directly involved a guardrail. This occurred when the occupant fell from the bed after the occupant's leg became entrapped in the guardrail slats. The other two fractures involved entrapment between slats located on the headboard and footboard. Therefore, we encourage manufacturers to consider solid panel guardrails, but decline to make this a requirement in the final rule.

2. Guardrail Height

(Comment 2)—One commenter disagreed with the guardrail height specified in the proposed rule. (The proposed rule stated that the guardrail height must be 5 inches above the top of the mattress.) The commenter suggested specifying that the guardrail must be 9 inches above the mattress support.

(Response 2)—We disagree with a guardrail height of 9 inches above the mattress support. Because the majority of full-size crib mattresses are approximately 6 inches thick, a guardrail height of 9 inches above the mattress support would provide a barrier of only 3 inches approximately, which is not sufficient to prevent children from rolling/falling off the bed. Similarly, guardrails on bunk beds are intended to prevent children from rolling/falling off the bed. ASTM F 1427–07, *Standard Consumer Safety Specification for Bunk Beds,* requires a 5-inch barrier above the top of the mattress to prevent a sleeping child from rolling and falling off the bed. Therefore, the final rule does not change the proposed guardrail height provision, except to specify that, if no maximum mattress thickness is stated, the guardrail height is to be based on a 6 inch thick mattress.

3. Guardrail Structural Integrity Testing

(Comment 3)—One commenter disagreed with the proposed test methodology for guardrail structural integrity. The commenter suggested: (1) Testing at the most onerous point instead of at three locations; (2) specifying the contact area of the force and how far from the top of the rail this force should be applied; and (3) specifying the height of the bed rail or measuring from the mattress support platform so the measurement will be consistent.

(Response 3)— We agree with the commenter's suggested test methodology for applying the test force to the guardrail. The language in the proposed rule was adopted from the portable bed rail structural integrity test, as stated in section 8.1 of ASTM F 2085–09, *Standard Consumer Safety Specification for Portable Bed Rails.* After the proposed rule had been published, an ASTM task group developed the alternative language that the commenter suggests. This suggested language is more applicable to the typical geometry of toddler bed guardrails as opposed to portable bed rails. For example, the proposed rule would require applying a horizontal force at three points along the uppermost horizontal edge of the rail (*i.e.,* in the center of the upper rail and on the sides of the rail directly above each of the outermost legs). The majority of toddler bed guardrails only have one outermost leg or free end. The other end of a toddler bed guardrail typically is secured to a corner post attaching the headboard to the guardrail. Each of the guardrail failure incidents that have been reported involved a guardrail detaching or fracturing at the corner post attachment point. We agree with the commenter that applying a single force above the rail's free end is more onerous than the proposed test and exerts the greatest force on the guardrail's attachment points. Furthermore, the commenter's suggestion provides improved test repeatability by specifying a procedural method for applying the test force to a guardrail free end with a significantly contoured geometry. The final rule uses the language suggested by the commenter instead of the proposed wording for the guardrail structural integrity test (§ 1217.2(c)(5)(i)).

(Comment 4)— Another commenter stated that there was not sufficient justification for the proposed 50-pound force requirement and suggested a 40-pound force instead. The commenter stated that the incident data only refers to two injuries from broken components and that the incidents do not mention that guardrails were involved. The commenter further stated that only a fraction of a 50-pound force would be used by a sleeping child inadvertently rolling off the bed, and that a child pulling on the guardrail from outside of the bed in play would tip most toddler beds over before reaching the proposed 50-pound force.

The commenter also requested an exemption for removable guardrails or guardrails that could be removed without the use of tools.

(Response 4)— We disagree with replacing the 50-pound force requirement with a 40-pound force requirement and disagree with the commenter's claim that there have not been any incidents involving a guardrail breaking or detaching from a toddler bed. In one reported incident, the occupant fell to the floor and received a bruise and laceration to the head. We also disagree with the commenter that 50 pounds is an excessive amount of force. We have received several detailed reports of children climbing on, or leaning against, guardrails, which resulted in subsequent structural failure of the guardrail or its means of attachment.

We tested several different makes and models of toddler beds to the 50-pound force requirement, incorporating the commenter's suggested test methodology and applying the test force 11 inches above the top of the mattress support. We used the guardrail structural integrity test suggested by the commenter and the language in the proposed rule to test five toddler beds: two plastic and three wooden beds. Two of the five toddler beds chosen for testing had been involved in incidents where the guardrail detached or broke when the occupant leaned on the guardrail. The guardrails on all five toddler beds successfully withstood the application of 40 pounds (the force suggested by the commenter). Conversely, when performing the test as stated in the proposed rule, only the guardrails on the three toddler beds that had not been involved in incidents were able to withstand application of the 50-pound force. The guardrail on one toddler bed that had been involved in an incident broke at one of its attachment points at approximately 42 pounds. The guardrail of the other bed that had been involved in an incident withstood the initial application of 50 pounds, but detached from the toddler bed within the first 3 seconds after maintaining 50 pounds. Based on this testing, we concluded that the 50-pound

force is appropriate and adequate to identify guardrails that could be susceptible to detachment. The final rule retains the 50-pound force requirement.

Finally, we disagree with exempting removable guardrails from the guardrail structural integrity test. A guardrail should be attached to a toddler bed with sufficient means to provide substantial rigidity. Guardrails that would require only the consumer's strength to install would be susceptible to the foreseeable forces that a toddler could apply to the guardrail. Such a guardrail would not be sufficient to protect a child.

4. Spindle/Slat Strength of Guardrails, Side Rails, and End Structures

(Comment 5)—Two comments addressed the testing requirements for the spindles/slats. One commenter suggested that language in the toddler bed standard regarding slat strength should match the language in the CPSC's new crib standards. A second commenter agreed with the proposal to test 25 percent of slats at 80 pound-force, but questioned the rationale for testing the remaining 75 percent of slats at 60 pound-force.

(Response 5)—We agree that the toddler bed spindle/slat strength test should be consistent with the full-size and non-full-size crib spindle/slat strength requirements in ASTM F 1169–10 and ASTM F 406–10a, respectively, referenced in the recently published mandatory requirements, 75 FR 81766 (Dec. 28, 2010), to be codified at 16 CFR part 1219 and 16 CFR part 1220, respectively. This will harmonize the spindle/slat strength requirements for cribs and toddler beds and provide consistency and clarity because many toddler beds are converted from cribs, and many toddler bed manufacturers also manufacture cribs. Therefore, the final rule modifies the spindle/slat strength test language to reflect the changes made in the full-size and non-full-size crib standards. Changing the spindle/slat strength requirement to be consistent with the requirement in the crib standard means that no slats would be tested at 60 pound-force (the crib standard requires testing 25 percent of slats at 80 pound-force and then another 25 percent of slats at 80 pound-force if needed, with no more than 50 percent of the slats tested).

5. Mattress Retention and Warning

(Comment 6)—One commenter requested that the mattress retention requirements, corresponding tests, and related warning labels be removed from the standard because they are now obsolete.

(Response 6)—We agree with the commenter that the mattress retention sections 6.1, 6.1.1, 6.1.2, test method section 7.1, and warning section 8.4.4.2, as identified in ASTM F 1821–09 and referenced in the proposed rule, are obsolete. Accordingly, we have removed those sections from the final rule. The original intent of these sections was to ensure that the mattress did not horizontally or vertically dislocate enough to allow a child access to potentially dangerous mattress support openings, which could entrap a child's torso or head, possibly resulting in a fatality. The current ASTM standard, ASTM F 1821–09, includes provisions to reduce entrapment hazards by testing for hazardous openings, not only in the mattress support system, but also in the bed's guardrails and end structures, including the headboard, footboard, and any point where these components could be joined. These requirements are more stringent than the mattress retention requirements, making the mattress retention provisions unnecessary. Accordingly, we have eliminated these requirements from the final rule.

6. Warning Labels

(Comment 7)—Two commenters recommended that the full-size crib and toddler bed standards be harmonized with respect to the required warnings because many full-size cribs convert into toddler beds and, therefore, would require the warnings specified in both standards. The commenters argued that such harmonization would eliminate redundant warning statements, making the warnings more effective. One of these commenters suggested that specifying the content, but not the exact wording of the required warnings in the proposed toddler bed rule, would be one method of harmonizing these standards.

(Response 7)—We agree that failing to harmonize warnings in the toddler bed rule and in the full-size crib standard could introduce redundant and extraneous warnings on convertible cribs, and that this might diminish the effectiveness of the warnings. For example, the strangulation warning requirements for toddler beds specified in the proposed rule are redundant with the strangulation warning requirements specified in section 8.4.1.2 of ASTM F 1169–10, *Standard Consumer Safety Specification for Full-Size Baby Cribs.* Additionally, the entrapment warning requirements for toddler beds specified in the proposed rule do not apply to full-size cribs that might convert to a toddler bed. Thus, we have revised the final rule's entrapment and strangulation warning requirements for toddler beds to apply only to toddler beds that do not convert from a crib. Toddler beds that convert from a crib must use the warnings specified in ASTM F 1169–10, incorporated by reference at 16 CFR part 1219, *Safety Standard for Full-Size Baby Cribs,* with additional text that specifies the minimum mattress thickness, as detailed below.

The proposed rule for toddler beds, shortened the warning for the minimum mattress size that appears in section 8.4.4.1 of ASTM F 1821–09 to state: "ONLY use full-size crib mattress of the recommended size," based on our understanding that section 8.3.2 of that standard already required both the bed and its retail carton to be clearly and legibly marked with the intended mattress size (75 FR at 22294 through 22295). Since then, we have discovered that section 8.3.2 of ASTM F 1821–09 only requires the retail carton to be marked with the intended mattress size. Given this, we believe that it would be reasonable to maintain a mattress size warning similar to that specified in section 8.4.4.1 of ASTM F 1821–09 in the final rule. Section 8.1.3 of the full-size crib standard, ASTM F 1169–10, specifies the exact wording of a warning statement regarding the intended mattress size. The language used in this warning is very similar to the warning content specified in 8.4.4.1 of ASTM F 1821–09.

Therefore, the final rule provides the following mattress size warning requirement:

⚠CAUTION
ENTRAPMENT HAZARD
To avoid dangerous gaps, any mattress used in this bed must be a full-size crib mattress at least 51 ⅝ in. (1310 mm) in length, 27 ¼ in. (690 mm) in width, and 4 in. (100 mm) in thickness.

Because full-size cribs that convert to toddler beds require the exact warning statement specified in section 8.1.3 of the full-size crib standard, ASTM F 1169–10, requiring the warning statement on all toddler beds would mean that convertible cribs would need two warning statements about mattress size that are largely redundant. Thus, as in the case of the entrapment and strangulation warnings, the final rule provides that the warning requirement for mattress size for toddler beds apply only to toddler beds that do not convert from a crib. To address the fact that the full-size crib standard specifies a maximum mattress thickness of 6 inches, but the toddler bed standard specifies a minimum mattress thickness of 4 inches, the final rule provides that toddler beds that convert from a crib must include additional text indicating that a minimum mattress thickness of 4 inches is required. This language would be included at the end of the warning statement specified in section 8.1.3 of the full-size crib standard, ASTM F 1169–10.

(Comment 8)—One commenter generally supported the proposed warning requirements but suggested that the statement, "*ALWAYS follow assembly instructions,*" is not useful on the product itself. The commenter suggested that it would be more appropriate for this statement to be located on the packaging and at the top of the assembly instructions.

(Response 8)—We disagree with the commenter's assessment and believe that locating this warning statement on the product would be more beneficial than locating it either on the packaging or at the top of the assembly instructions. Generally, a warning should be located where the consumer is likely to be looking when the warning is needed. The warning is intended to alert consumers of the need to follow the assembly instructions, and the target audience for the message would be consumers who otherwise would not follow such instructions. For this reason, a warning located at the top of the assembly instructions is unlikely to be noticed or read by those who need the information most. A warning located on the product itself, however, is more likely to be noticed by these consumers because all consumers must interact with the product to assemble it, even if they do not examine the assembly instructions or product packaging beforehand. The final rule does not make any changes related to the placement of this warning statement.

(Comment 9)—One commenter suggested that the warning statement specified in section 8.4.4.2 of ASTM F 1821–09 and referenced in the preamble to the proposed rule (75 FR at 22294), concerning the use of a guardrail as a means of containing the mattress, should be removed from the final rule. The commenter asserted that the warning statement, as well as the mattress retention requirements on which the warning statement is based (specified in sections 6.1, 6.1.1, and 6.1.2), are now obsolete.

(Response 9)—We agree that the warning requirement regarding the use of a guardrail to contain the mattress is obsolete. The proposed rule would specify two alternative entrapment warnings because of the requirement of a warning about guardrail use. Therefore, removing this obsolete warning statement about guardrail use eliminates the need for two alternative warning labels that address the entrapment hazard.

7. Legal Authority

(Comment 10)—A commenter objected to incorporating the ASTM standard by reference into the published regulation, arguing that the law requires that the terms of legal requirements must be freely available to the public, citing *Banks* v. *Manchester,* 128 U.S. 244, 9 S. Ct. 36, 40 (1888). The commenter also cited *Veeck* v. *Southern Building Code Congress International, Inc. ("SBCCI"),* 293 F.3d 791 (5th Cir. 2002).

(Response 10)—The cases to which the commenter refers do not apply to the rules issued under section 104 of the CPSIA. In *Banks,* the court held that a reporter authorized by the State of Ohio to publish the state's judicial opinions was not authorized by Federal law to obtain a copyright on the opinions because he was not the author of those opinions. That is not an issue here where ASTM already has copyright protection for its standards. In the *Veeck* case, Veeck posted the local building codes of two Texas towns on his Web site. The text of the building codes was created and copyrighted by a building code organization and was adopted by the towns as law. The court stated: "As *law,* the model codes enter the public domain and are not subject to the copyright holder's exclusive prerogatives. As model codes, however, the organization's works retain their protected status." *Id.* at 793 (emphasis in the original).

The building code organization had encouraged local government entities to adopt its code into law without any cost to the government entity. *Id.* at 794. In contrast, ASTM has not given its permission for the CPSC to adopt its standards. Thus, the cases cited by the commenter do not require us to publish the copyrighted ASTM standard in the Code of Federal Regulations. Because the U.S. government is not immune from suit for copyright infringement, *see Schnapper* v. *Foley,* 667 F.2d 102 (DC Cir. 1981, *cert. denied,* 102 S. Ct. 1448, the CPSC could be subject to a legal challenge if it copied the ASTM standard and published it in the **Federal Register** without permission from ASTM.

8. Validity of Data

(Comment 11)— One commenter observed that the majority of the incident data concerning fatalities involved children who were less than 15 months old (*i.e.,* the intended minimum age for toddler beds) or involved a cord that was a strangulation risk. The commenter noted that the preamble to the proposed rule had acknowledged this, but the commenter expressed concern that CPSC staff appeared to be "inflating the number of incidents and that data cited as 'related to' or 'associated with' are insufficient to rely upon in the absence of data and analysis that establishes that the products proximately caused the incident or injury complained of."

A second commenter expressed concern that although the current standard is intended to address children "not less than 15 months and weighing no more than 50 pounds," the "National Injury Estimates reported in the NPR identified victims between 4 months and 6 years." The commenter believed that this difference could affect the basis for the standard.

(Response 11)—The commenters misinterpret the discussion of incident data in the preamble to the proposed rule. The discussion was intended to provide an overall view of problems associated with toddler beds that are reported to the CPSC. The discussion of the four fatalities noted that three of the decedents were under the age intended for use of the product and explained that the product involvement in the fourth fatality was incidental. The "National Injury Estimates" are used to identify the injuries associated with toddler beds; they are not used to change the age/weight designations in the standard. Age requirements for users and placement of toddler beds in relation to window cords are addressed in the warning labels specified in the current voluntary standard; therefore, these issues are relevant in evaluating the voluntary standard. In addition, the discussion in the proposed rule used appropriate qualifying statements (such as "associated with" and "related to"). These statements are intended to qualify the types of incidents reported to the CPSC and do not "inflate" the data. This approach reflects the statutory directive of section 104 of the CPSIA to issue a consumer product safety standard for toddler beds that is substantially the same as, or more stringent than, the voluntary standard. The portions of the final rule that are more stringent than the ASTM standard are based upon human factors and engineering analyses, which concluded that the more stringent provisions would reduce further the identified risks of injury associated with toddler beds.

F. Summary of Commission-Proposed Modifications

When the Commission issued its notice of proposed rulemaking in April 2010, the Commission proposed incorporating by reference ASTM F 1821–09, *Standard Consumer Safety Specification for Toddler Beds,* with four modifications that are described below.

The Commission proposed that guardrails be a minimum height of 5 inches above the manufacturer's recommended sleeping surface. This requirement was intended to help prevent falls from the bed.

The Commission proposed to add a test for the overall stability of guardrails. The proposed test requires applying a 50-pound force to the center along the length of the guardrail and directly over each of the outermost legs of the guardrail. The test was intended to keep children from falling out of bed and to ensure that guardrails remain intact when children lean against them or use them to climb into bed. The basis for selecting a 50-pound force was that 50 pounds is the maximum weight of a child intended to use a toddler bed.

The Commission proposed modifying the ASTM standard's test for spindles/slats on guardrails, side rails, and end structures. ASTM F 1821–09 uses a torso wedge and a 25-pound force on guardrails and end structures in the most adverse orientation to ensure that slats and spindles do not break and allow an opening in which a child could become entrapped. The Commission proposed modifying this provision to test 25 percent of all slats (rather than just those on the end structure and guardrails) using an 80-pound force. The 80-pound force was selected based on tests that CPSC staff performed on 20 cribs or toddler beds. (Details of this testing are provided in the preamble to the proposed rule, 75 FR 22293 (April 28, 2010).) The Commission proposed that the remaining 75 percent of slats be tested with a 60-pound force.

The Commission also proposed changes to the warning requirements in ASTM F 1821–09. The Commission proposed: (1) Changing the warning specified in 8.4.3 of ASTM F 1821–09 to separate this into two warnings, one for entrapment and one for strangulation; (2) providing two options for entrapment warnings: one for beds where the guardrail is the means of mattress containment and one where the guardrail is not; and (3) removing provisions in 8.4.4 of ASTM F 1821–09 concerning warning statements addressing issues (but not specifying wording and layout) because these warnings would be redundant and unclear with the warnings the Commission proposed to specify.

G. Assessment of the Voluntary Standard and Description of the Final Rule

1. Section 104(b) of the CPSIA: Consultation and CPSC Staff Review

Section 104(b) of the CPSIA requires the Commission to assess the effectiveness of the voluntary standard in consultation with representatives of consumer groups, juvenile product manufacturers, and other experts. This consultation process for the toddler bed standard began in late 2009, before we published the proposed rule. Our consultations with ASTM are ongoing.

2. Description of the Final Rule, Including Changes to the ASTM Standard's Requirements

While most requirements of ASTM F 1821–09 are sufficient to reduce the risk of injury posed by toddler beds, we have determined that modifying or adding several provisions to the standard will make the requirements more stringent and further reduce the risk of injury. The following discussion describes the final rule, including changes to the ASTM requirements, and notes any changes from the proposed rule.

a. Scope, Application, and Effective Date (§ 1217.1)

The final rule states that part 1217 establishes a consumer product safety standard for toddler beds manufactured or imported on or after a date which would be six months after the date of publication of a final rule in the **Federal Register**. We received no comments on this provision and are finalizing it without change.

b. Incorporation by Reference (§ 1217.2(a) and (b))

Section 1217.2(a) provides language to incorporate by reference ASTM F 1821–09, *Standard Consumer Safety Specification for Toddler Beds.* The standard also incorporates by reference the labeling requirements in section 8 of ASTM's full-size crib standard (ASTM F 1169–10, *Standard Consumer Safety Specification for Full-Size Baby Cribs*) because CPSC's toddler bed standard requires toddler beds that convert from cribs to comply with the labeling requirements in the ASTM crib standard. Section 1217.2(a) also provides information on how to obtain a copy of the ASTM standards or to inspect a copy of the standards at the CPSC.

We received no comments on this provision. We are changing it to include the language necessary to incorporate by reference the labeling provisions of the ASTM crib standard.

c. Mattress Retention Provisions (§ 1217.2(c)(1), (4), and (6))

The final rule removes provisions concerning mattress retention (in the ASTM standard, these are performance provisions in sections 6.1 through 6.1.2; test method provisions in sections 7.1.2 through 7.1.6; warning provision in section 8.4.4.2). As explained in response to a comment in section E.5 of this preamble, the mattress retention provisions are no longer necessary because of other changes in the standard that better address entrapment protection, which was the purpose of the mattress retention provisions. This is a change from the proposed rule.

d. Guardrails (§ 1217.2(c)(2) and (5)(i))

The final rule makes several additions or modifications to ASTM F 1821–09 to strengthen the guardrail provisions. As

in the proposal, the final rule requires that the upper edge of the guardrail be at least 5 inches above the manufacturer's recommended sleeping surface. The final rule adds a sentence to clarify that if the manufacturer does not specify a mattress thickness, the guardrail height must be based on a mattress thickness of 6 inches. We chose 6 inches because many toddler beds convert from cribs, and the full-size crib standard specifies 6 inches as the maximum thickness allowed for a crib mattress. In response to a comment discussed in section E.3 of this preamble, the final rule modifies the test methodology that we had proposed. These changes, suggested by a commenter, make the test more suitable for the geometry of a guardrail (as opposed to that of a portable bed rail) and improve repeatability of the test. With these changes, the test is better suited to toddler bed guardrails and thus, will better address the risk of injury.

e. Spindle/Slat Static Load Strength (§ 1217.2(c)(3) and (5)(ii))

As discussed in section F of this preamble, we had proposed adding requirements for testing the spindles/slats on guardrails, side rails, and end rails. These provisions in the final rule are largely the same as proposed. However, we received a comment (discussed in section E.4 of this preamble) asking that spindle/slat requirements for toddler beds match such requirements for cribs, which are stated in ASTM's full-size crib standard, ASTM F 1169–10. In response to this comment, we have revised the spindle/slat requirements so that these provisions are more consistent with the requirements for cribs. Like the crib rule, the final rule requires testing 25 percent of spindles/slats at 80 pound-force and then another 25 percent of spindles/slats at 80 pound-force, if needed, with no more than 50 percent of the spindles/slats tested. The 80 pound-force is applied for a period of 2 to 5 seconds midway between the top and bottom of the spindle/slat being tested and is maintained for 10 seconds. The final rule also specifies, as provided in the crib standard, how to test toddler beds that may contain folding sides. The modifications make the standard in the final rule more stringent than ASTM F 1821–09 because ASTM F 1821–09 does not contain any requirements concerning spindle/slat strength.

f. Warning Label Requirements (§ 1217.2(c)(6))

As noted in the preamble to the proposed rule, the warning provisions in ASTM F 1821–09 are confusing and redundant, *see* 75 FR 22293–96. We proposed that the warning be separated into two warnings, one to address entrapment, and one to address strangulation.

Like the proposal, the final rule requires that specified warnings addressing entrapment and strangulation appear on toddler beds. The final rule also requires a specified warning concerning mattress size to address potential entrapment in gaps surrounding the mattress. As noted in section E.6 of this preamble, the Commission agrees with a commenter who asked that warning labels on toddler beds be harmonized with warning labels required for cribs because many toddler beds convert from cribs. Accordingly, the final rule requires toddler beds that convert from cribs to meet the warning requirements specified in the full-size crib standard, ASTM F 1169–10 (incorporated by reference at 16 CFR part 1219, *Safety Standard for Full-Size Baby Cribs*) instead of using the warnings specified in the toddler bed standard. The mattress thickness requirements are different for cribs and for toddler beds. In order to avoid requiring a convertible crib to have two warnings concerning mattress size (one to address the crib requirements and one to address the toddler bed requirements), the final rule provides that toddler beds that convert from cribs must provide the mattress size warning required by the crib standard and add a line to the warning specifying that the minimum mattress thickness is 4 inches. The modifications to ASTM F 1821–09 make the standard more stringent. Separating the strangulation and entrapment warnings should increase consumers' understanding of the connection between the relevant behaviors and hazards. In addition, the entrapment hazard warning emphasizes the group most at risk and the consequences of the hazard, as well as provides a more explicit description of how the entrapment hazard occurs.

H. 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). The preamble to the proposed rule indicated that the standard would become effective six months after publication of a final rule (75 FR at 22296). We did not receive any comments on the proposed six-month effective date. The final rule provides a six-month effective date (as measured from the date of publication of this final rule in the **Federal Register**).

I. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") generally requires that agencies review proposed rules for their potential economic impact on small entities, including small businesses, and prepare an initial regulatory flexibility analysis. 5 U.S.C. 603. The RFA further requires agencies to consider comments they receive on the initial regulatory flexibility analysis and prepare a final regulatory flexibility analysis describing the impact of the final rule on small entities and identifying alternatives that could reduce that impact. *Id.* 604. This section summarizes CPSC staff's final regulatory flexibility analysis for the toddler bed standard. (CPSC staff's final regulatory flexibility analysis can be found at Tab F of the staff's briefing package.)

1. The Market

There are currently at least 73 known manufacturers or importers supplying toddler beds (including convertible cribs) to the U.S. 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.

Under U.S. Small Business Administration ("SBA") guidelines, a manufacturer of toddler beds or convertible cribs is small if it has 500 or fewer employees; an importer is considered 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 U.S. market are small. There are an additional eight domestic manufacturers of unknown size, most (at least seven) of which are likely to be small. However, there are probably additional unknown small manufacturers and importers operating in the U.S. market as well.

The Juvenile Products Manufacturers Association ("JPMA"), the major U.S. trade association that represents juvenile product manufacturers and importers, runs a voluntary certification program for several juvenile products. Approximately 29 firms supplying toddler beds and/or convertible cribs to the U.S. market make or import products that comply with ASTM F 1821–09 (40 percent). Of the small domestic businesses, 11 manufacturers (27 percent) and 6 importers (55 percent) make or import products that are JPMA-certified as ASTM compliant.

Additionally, there are two small manufacturers that claim compliance with the ASTM standard that are not part of the JPMA Certification Program.

The most recent U.S. birth data shows that there are approximately 4.2 million births per year (this figure has been updated since publication of the proposed rule). The 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 secondhand. If these rates remained constant, this suggests annual convertible crib sales would be about 776,000 ($0.22 \times 0.84 \times 4.2$ million births per year) currently. (These estimates are intended to provide a general characterization of the market. They are not intended to provide estimates of future sales.) Of those consumers with nonconvertible cribs, some proportion of them eventually will use toddler beds when their children get older. However, consumers may choose to use a twin or larger bed (and possibly use portable bed rails) rather than a separate toddler bed. Assuming that approximately 50 percent of consumers elect to use toddler beds, and assuming that approximately 50 percent buy them new, this would mean that around 819,000 toddler beds are sold per year (0.78 percent nonconvertible cribs $\times$ 4.2 million births $\times$ 0.5 percent use toddler beds $\times$ 0.5 percent buy them new). Adding this number 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 toddler bed standard.

2. Impact on Small Business

There are 73 firms currently known to be marketing toddler beds and/or convertible cribs in the United States. Of these, 6 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 small domestic manufacturers, 7 presumed to be small domestic manufacturers, and 11 small domestic importers) is the focus of the remainder of this analysis.

a. Small Domestic Manufacturers

For the most part, the impact of the final rule on small manufacturers will differ based on whether they currently make products that comply with the voluntary ASTM standard. If they do not, as is the case with 28 firms, the impact on them could be significant. These firms likely would have to undergo product redevelopment. As explained below, the cost of such an effort for toddler beds/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. Other one-time costs include the retooling of manufacturing equipment, which could also be recouped gradually over the sales of numerous units. There also are 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 on some of their increased costs to consumers, the impact still could 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 are competing against producers of substitute products as well, firms that would not be covered under the recommended standard. Toddler beds compete with twin (or possibly larger) beds, which can be used with portable guardrails. Similarly, convertible cribs compete with adult-size beds when children are older and with standard cribs for younger children.

There is expected to be less impact on the 13 firms that are known to produce products that comply with the current voluntary standard. It is believed that at least some of these firms may be able to comply with the new requirements without modifying their products (except for labeling). The remaining firms may opt to redesign their product(s) as well, which again would result in some one-time costs, as well as 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 requirements that differ from the ASTM standard; modifying the materials used may be sufficient for many products, and the associated cost is not expected to exceed a few dollars per unit.

Two of the 28 manufacturers supplying noncompliant products would be affected differently by the final rule. They are firms that take already-manufactured toddler beds and convertible cribs, decorate them (often with original artwork), and sell them as a final product. Because these firms do not make the underlying toddler beds/convertible cribs, the impact of the final rule on them will be the same as on an importer. They would need to find a new supplier of compliant products if their current supplier does not make the necessary modifications. The new products presumably would be higher quality, as well as more expensive, because some of the original manufacturer's production costs (and possibly redevelopment costs) will be passed on to these firms.

The scenario described above assumes that only those firms that produce products which are JPMA-certified or claim ASTM compliance will pass the voluntary standard's requirements. This is not necessarily the case. We have identified many cases in which products not certified by JPMA actually comply with the relevant ASTM standard. However, there is insufficient evidence of this for toddler beds/convertible cribs to quantify this impact. To the extent that some products may already comply with non-U.S. standards, the effect of the new and modified requirements may be less substantial than outlined above. However, there is insufficient information to quantify this effect.

b. Small Domestic Importers

The majority of small domestic importers (6 out of 11) supply products that comply with the current voluntary standard. We believe that at least some of these firms will not need to make any additional product modifications to meet the final rule (except for labeling). 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 presumably will be more expensive, as well as higher in quality. However, the actual price increase is unknown and is likely to vary based upon the degree of modifications required. All of the remaining five firms supplying products that do not comply with the ASTM voluntary standard would need to find suppliers whose products comply with the standard or ensure that their current supplier made the modifications necessary to comply. Depending upon 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 actually may comply with ASTM F 1821–09 or one or more of the new/modified requirements in the final standard, the impact of the final rule would be lower.

For the most part, the impact on importers tends to be smaller than on manufacturers. Even if importers respond to the rule by discontinuing the import of their noncomplying toddler beds and convertible cribs, either 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/toddler beds and their associated products (*i.e.,* matching furniture) form the core of their product line. For these firms, a substantial price increase possibly could drive them out of business or require them to rebuild their business based on alternative products.

3. 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. 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 final rule, but only marginally. Similarly, limiting the requirements of the rule to those already in the voluntary standard probably would 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 ASTM F 1821–09, rather than the changes associated with the final rule. The difference for importers also is likely to be minimal, whether they supply products that comply with the voluntary standard or not,

A second alternative would be to set a later effective date. This would allow suppliers additional time to modify and/or develop compliant toddler beds and convertible cribs, thereby spreading the associated costs over a longer period of time.

4. Conclusion

It is possible that the final rule could have a significant impact on a substantial number of small entities. Firms supplying products that already comply with the voluntary standard may not need to make any product modifications to meet the final rule, but this group is known to include only 42 percent of the small firms identified. Some of these firms and all other firms will need to make at least some modifications to their toddler beds and convertible cribs to comply with the final rule. The extent of these costs is unknown; but because product redevelopment likely would 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.

A few small businesses 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 any standard. 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 mitigated easily by the sale of other juvenile products.

J. Environmental Considerations

The Commission's regulations provide a categorical exclusion for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement because they "have little or no potential for affecting the human environment." 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

K. Paperwork Reduction Act

This rule contains information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The preamble to the proposed rule (75 FR at 22296 through 22297) discussed the information collection burden of the proposed rule and specifically requested comments on the accuracy of our estimates. We did not receive any comments concerning the information collection burden of the proposal, and the final rule does not make any changes to that burden. We have applied to the U.S. Office of Management and Budget (OMB) for a control number for this information collection, and we will publish a notice in the **Federal Register** providing the number when we receive approval from the OMB.

L. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a "consumer product safety standard under [the CPSA]" is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the State requirement is identical to the Federal standard. (Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances.) Section 104(b)(1)(B) of the CPSIA refers to the rules to be issued under that section as "consumer product safety standards," thus implying that the preemptive effect of section 26(a) of the CPSA would apply. Therefore, a rule issued under section 104 of the CPSIA will invoke the preemptive effect of section 26(a) of the CPSA when it becomes effective.

M. Certification

Section 14(a) of the 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, be certified as complying with all applicable CPSC 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 noted in the discussion above concerning preemption, section 104(b)(1)(B) of the CPSIA refers to standards issued under that section as "consumer product safety standards." By the same reasoning, such standards also would be subject to section 14 of the CPSA. Therefore, any such standard would be considered a consumer product safety rule, to which products subject to the rule must be certified.

Because toddler beds are children's products, they must be tested by a third party conformity assessment body whose accreditation has been accepted by the Commission. Elsewhere in this issue of the **Federal Register**, we have issued a notice of requirements to explain how laboratories can become accredited as third party conformity assessment bodies to test to the new toddler bed standard. (Toddler beds also must comply with all other applicable CPSC requirements, such as the lead content requirements of section 101 of the CPSIA, the phthalate content requirements in section 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.)

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 amends Title 16 of the Code of Federal Regulations by adding part 1217 to read 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 on or after October 20, 2011.

§ 1217.2 Requirements for toddler beds.

(a) The Director of the Federal Register approves the incorporations by reference listed in this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of these ASTM standards from ASTM International, 100 Barr Harbor Drive, P.O. 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) Except as provided in paragraph (c) 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.

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

(1) Do not comply with sections 6.1 through 6.1.2 of ASTM F 1821–09.

(2) Instead of complying with section 6.5 of ASTM F 1821–09, comply with the following:

(i) 6.5 *Guardrails:*

(ii) 6.5.1 For products with guardrails, there shall be no opening in the guardrail structure below the lowest surface of the uppermost member of the guardrail and above the mattress support structure that will permit complete passage of the wedge block shown in Figure 2 when tested in accordance with 7.4.

(iii) 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. If no maximum mattress thickness is specified, the guardrail height shall be based on a mattress thickness of 6 in. (152 mm).

(iv) 6.5.3 When tested in accordance with 7.9, the guardrail shall not break, detach, or create a condition that would present any of the hazards described in Section 5. Guardrails that do not have any free ends, that is, they are attached to both the headboard and the footboard, are exempt from this test. For guardrails with two free ends, perform this test at each free end.

(3) In addition to complying with section 6.7 of ASTM F 1821–09 comply with the following:

(i) 6.8 *Spindle/Slat Static Load Strength:*

(A) 6.8.1 Toddler beds that contain wooden or metal spindles/slats shall meet the performance requirements outlined in section 6.8.2 or 6.8.3.

(B) 6.8.2 Except as provided in section 6.8.3, after testing in accordance with the procedure in 7.10, there shall be no complete breakage of a spindle/slat or complete separation of a spindle/slat from the guardrails, side rails, or end structures.

(C) 6.8.3 Toddler beds that convert from a full-size crib, also known as convertible cribs, shall meet the requirements specified in section 6.7 of ASTM F 1169–10 *Safety Standard for Full-Size Baby Cribs,* approved June 1, 2010, instead of the requirements of 6.8.2. See 16 CFR Part 1219 for complete requirements for full-size cribs.

(ii) [Reserved]

(4) Do not comply with sections 7.1.2 through 7.1.6 of ASTM F 1821–09,

(5) In addition to complying with section 7.8.5 of ASTM F 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 over a period of 5 s apply a 50 lbf (222.4 N) to the guardrail from the inside of the toddler bed, outward and perpendicular to the place of the rail, and hold for 10 s. The force is to be applied to the geometric center of a $3 \times 6 \times \frac{1}{2}$ in. ($7.62 \times 15.24 \times 1.27$ cm) piece of plywood with the long end parallel to the floor (see Fig. 11).

(B) 7.9.2 For guardrails with a rectangular shape, the plywood shall be placed with the upper long edge of the plywood even with a line drawn parallel to the rail, which is 11 inches (27.94 cm) from the mattress support and the short edge even with the free short edge of the rail.

(C) 7.9.3 For contoured guardrails that are not rectangular, the plywood shall be placed with the upper long edge of the plywood even with a line drawn parallel to the rail which is 11 inches (27.94 cm) from the mattress support and the short edge placed so that the downward slope of the free rail edge intersects the corner of the plywood.

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

(A) 7.10.1 The spindle/slat static force test shall be performed 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 (7.6 cm^2) when measured from the end of the rail in a direction parallel to the longitudinal axis of the rail. Besides the corners, the upper and lower horizontal rails of both linear and contoured rails shall be free to deflect under the applied force. For toddler beds incorporating folding or moveable sides for purposes of easier access to the occupant, storage and/or transport, each side segment (portion of side separated by hinges for folding) shall be tested separately as described above.

(B) 7.10.2 Gradually, over a period of not less than 2 s nor greater than 5 s, apply an 80 lbf (355.8 N) perpendicular to the plane of the side at the midpoint, between the top and bottom of the spindle/slat being tested. This force shall be applied through a force measuring device and contact area $1 \pm \frac{1}{16}$ in. (25.4 ± 1.6 mm) wide by a length at least equal to the width of the spindle/slat being tested at the point of application. This force shall be maintained for 10 s. The force measuring device must be capable of recording the force at breakage, if breakage occurs during this test. This force measuring device must be capable of a maximum measurement resolution of 0.25 lbf (1.11 N).

(C) 7.10.3 Test, according to 7.10.2, 25% (rounding up to the nearest percentage, if necessary) of all spindles/

slats. 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.

(D) 7.10.4 Upon completion of testing as defined in 7.10.2 and 7.10.3, no spindle/slat shall have failed at an applied force less than or equal to 60 lbf. If no more than one spindle/slat fails and that failure occurs only as the result of an applied force greater than 60 lbf, then an additional 25% of spindles/slats shall be tested per 7.10.2 and 7.10.3. During testing of this second 25%, any spindle/slat failure (at or below 80 lbf) shall constitute failure of the test.

(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.

(6) Instead of complying with sections 8.4.2 through 8.4.4.5 of ASTM F 1821–09, comply with the following:

(i) 8.4.2 The safety alert symbol "⚠" and the word "WARNING" or "CAUTION" must be at least 0.2 in. (5 mm) high, and the remainder of the text shall be characters whose upper case shall be at least 0.1 in. (2.5 mm) high, sans serif.

(ii) 8.4.3 Except as provided in 8.4.4 and 8.4.5, the following warnings must appear on all toddler beds, 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 follow assembly instructions.

⚠ 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.

⚠ CAUTION

ENTRAPMENT HAZARD
To avoid dangerous gaps, any mattress used in this bed shall be a full-size crib mattress at least 51 5/8 in. (1310 mm) in length, 27 1/4 in. (690 mm) in width, and 4 in. (100 mm) in thickness.

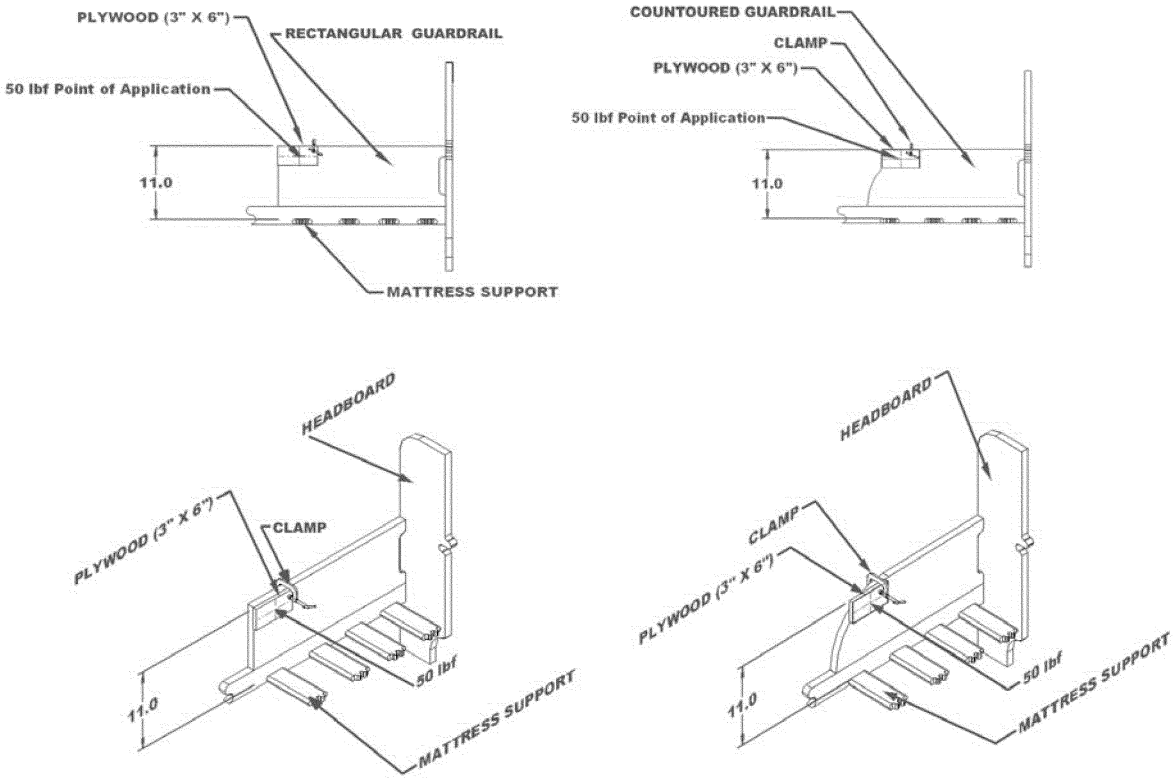

FIGURE 11 -- Guardrail Structural Integrity Test

Dated: April 14, 2011.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2011–9421 Filed 4–19–11; 8:45 am]

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CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. CPSC–2009–0064]

16 CFR Part 1217

Third Party Testing for Certain Children's Products; Toddler Beds: Requirements for Accreditation of Third Party Conformity Assessment Bodies

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of requirements.

SUMMARY: The Consumer Product Safety Commission (CPSC or Commission) is issuing a notice of requirements that provides the criteria and process for Commission acceptance of accreditation of third party conformity assessment bodies for testing pursuant to the CPSC regulation relating to toddler beds. The Commission is issuing this notice of requirements pursuant to section 14(a)(3)(B)(vi) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2063(a)(3)(B)(vi)).

DATES: *Effective Date:* The requirements for accreditation of third party conformity assessment bodies to assess conformity with 16 CFR part 1217 are effective April 20, 2011.

FOR FURTHER INFORMATION CONTACT: Robert "Jay" Howell, Assistant Executive Director for Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail *rhowell@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 14(a)(3)(B)(vi) of the CPSA, as added by section 102(a)(2) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110–314, directs the CPSC to publish a notice of requirements for accreditation of third party conformity assessment bodies to assess children's products for conformity with "other children's product safety rules." Section 14(f)(1) of the CPSA defines "children's product safety rule" as "a consumer product safety rule under [the CPSA] or similar rule, regulation, standard, or ban under any other Act enforced by the Commission, including a rule declaring a consumer product to be a banned hazardous product or substance." Under section 14(a)(3)(A) of the CPSA, each manufacturer (including the importer) or private labeler of products subject to those regulations must have products that are manufactured more than 90 days after the **Federal Register** publication date of a notice of the requirements for accreditation, tested by a third party conformity assessment body accredited to do so, and must issue a certificate of compliance with the applicable regulations based on that testing. Section 14(a)(2) of the CPSA, as added by section 102(a)(2) of the CPSIA, requires that certification be based on testing of sufficient samples of the