



U.S. CONSUMER PRODUCT SAFETY COMMISSION
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STATEMENT OF COMMISSIONER NANCY NORD
ON THE VOTE TO EXTEND THE COMPLIANCE DATE FOR THE NEW CRIB STANDARD

June 27, 2011

In December 2010, the CPSC unanimously approved a new safety standard for cribs. The standard, in large part, builds on a voluntary standard that was updated in 2009 and for which there is significant compliance. The new CPSC standard goes into effect tomorrow, June 28, 2011 and (as required by the CPSIA) is retroactive, impacting all cribs being sold in the US regardless of when manufactured.

All of the Commissioners are committed to assuring a safe sleep environment for infants and the technical aspects of the new standard demonstrate this commitment. Having said that, I believe that the Commission also has an obligation to roll out standards in such a way as to minimize disruption in the marketplace. In that, we have again fallen down on our responsibilities. As the issue that precipitated this vote shows, the roll-out of the new crib standard has been unnecessarily chaotic.

The crib standard is only the second major rule issued by this agency in its entire history. (A major rule has an impact on the economy of over \$100 million. The only other CPSC major rule dealt with the flammability of mattresses.) In spite of the crib rule's significance, no cost-benefit analysis was done so we did not know about the safety benefits of the rule compared to the economic impact of the rule, much less how to appropriately minimize that impact.

The day care industry did protest that the rule, as proposed, would result in approximately a \$1/2 billion impact to a group that could not immediately absorb costs of such magnitude, especially on the heels of many having just bought new cribs to meet the 2009 voluntary standards. As a result, at the last minute just before finalizing the rule, the Commission agreed to amend the proposed rule to delay the effective date for child care centers and hotels/motels by 18 months. There was no analysis behind this date; basically, it was pulled out of a hat. Then, just two weeks before the rule was scheduled to go into effect, we heard from the rental industry who cannot get cribs that comply with the new standard and asked that we delay the effective date as it applies to them.

We also heard from small retailers who are stuck with stranded inventory that they cannot sell, also asking for a delay. In many instances, the retailers were promised a retrofit kit from the crib manufacturers but kits were not forthcoming. We heard that a significant number of small retailers will be facing substantial losses because of the retroactive nature of the rule. This is even though last December's briefing documents, on which the Commission relied in voting on this rule, stated that there would be no significant impact on retailers. I was told that, in reaching this conclusion, no analysis was done on the impact of the rule on this segment of the market.

It is clear that we do not know the true state of the marketplace. We heard that some small retailers have been able to accommodate themselves to the effective date of the standard and that a number have not. (It appears from reading the letters from some of those who believe they are in compliance that their beliefs may be

somewhat misinformed.) The magnitude of the problem is unknown. An internal survey of 5 retailers found that those companies had at least 100,000 non-complying cribs in inventory. A survey done by a trade association representing one part of the small retailer community found that 35 companies had 17,500 cribs that cannot legally be sold. Together these snapshots represent only a tiny portion of the marketplace and we do not know how representative they are. The question of whether any of those cribs can be retrofitted is also unclear. Only two weeks before the effective date of the rule did we finally post some guidance on that subject but the letters we are getting into the agency also show that there continues to be much confusion out there in the marketplace.

I have no sympathy for those businesses who did not take the steps needed to get ready to comply with this new standard. However, I have heard from many companies who have tried to comply but still find themselves with inventory valued in the thousands of dollars that is now worthless. Consequently I believe that some relief is warranted. A brief delay in the effective date of 60 to 90 days for cribs that meet the 2009 standard would alleviate the burden without impacting safety.

The whole crib standard saga is a good illustration of how not to regulate. We rushed the standard out without doing the hard work upfront to understand the impact of the regulation. A cost-benefit analysis would have shown us how to get the maximum safety impact at the lowest cost. At the time we finalized the rule, we applied a band aid to stop the bleeding of two groups – child care centers and places of public accommodation. With this vote, we applied another band aid for those who rent out cribs. We declined to staunch the bleeding of small retailers. Our actions may have the result of driving some retailers selling perfectly safe cribs out of business. We will never know because we will never bother to find out. This is no way to regulate and the public deserves better.