

STAFF BRIEFING PACKAGE

Rule Review of 16 CFR Part 1219, “Safety Standard for Full-Size Baby Cribs,” and 16 CFR Part 1220, “Safety Standard for Non-Full-Size Baby Cribs”

Executive Summary

Section 610 of the Regulatory Flexibility Act (RFA) requires federal agencies to review regulations that have a significant economic impact on a substantial number of small entities within 10 years of their adoption. The purpose of a rule review under section 610 is to determine whether, consistent with the agency's statutory obligations, a regulation should be maintained without change, rescinded, or modified, to minimize any significant impact of the rule on a substantial number of small entities.

On December 28, 2010, the U.S. Consumer Product Safety Commission (CPSC) issued safety standards for full-size and non-full-size baby cribs under the authority of the Danny Keysar Child Product Safety Notification Act, section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). The Final Regulatory Flexibility Analysis (FRFA) for those rules found that both rules could have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, the CPSC must review these rules within 10 years of the publication of the final rule (*i.e.*, by December 28, 2020) (5 U.S.C. § 610 (a)).

The standards for full-size and non-full size baby cribs, codified at 16 CFR parts 1219 and 1220, had an effective date of June 28, 2011. The compliance date for the sale and importation of cribs was also June 28, 2011, while places of public accommodation (*e.g.*, child care facilities, hotels,) had until December 28, 2012, to remove noncompliant cribs from service. The CPSC standards incorporated by reference the relevant ASTM standards, with some additional provisions and modifications of testing procedures and terminology that CPSC determined were necessary to further reduce the risk of injury. The CPSC crib regulations subsequently were revised by direct final rule in 2012, 2013, 2018, and 2019 to reflect updates in the ASTM standards that harmonized the ASTM standards with the CPSC regulations.

On January 31, 2020, the Commission issued a notice in the *Federal Register* announcing a section 610 review under the RFA for the full-size and non-full-size baby cribs regulations. The public comment period was 60 days. The CPSC received four written comments representing the views of the Government of the People's Republic of China, members of the public, and the Juvenile Products Manufacturers Association (JPMA). Staff also used a contractor to interview nine current and former crib suppliers about the rules, using a structured interview questionnaire that was very similar to the questions in the *Federal Register* notice. The *Federal Register* notice and the questionnaire asked for information about the past and current economic impact of the rules on small entities, information on how the market for cribs has changed since 2010, and requested suggestions about ways CPSC could reduce the burden of the rules on small entities without reducing safety.

Based on a review of public comments received, the contractor's report of the interviews, and staff's analysis of the five factors specified in the RFA, CPSC staff does not recommend any changes to the crib safety standard rules at this time. Current suppliers provided suggestions for additional outreach and guidance to help small businesses, along with some suggestions for more specific public outreach regarding crib safety.



**UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
BETHESDA, MD 20814**

This document has been electronically
approved and signed.

Memorandum

Date: August 19, 2020

TO : The Commission
Alberta A. Mills, Secretary

THROUGH: John Mullan, General Counsel
Mary Boyle, Executive Director
DeWane Ray, Deputy Executive Director for Operations

FROM : Gregory Rodgers, PhD, Associate Executive Director
Directorate for Economic Analysis

Susan Proper
Economist, Directorate for Economic Analysis

SUBJECT : Section 610 Rule Review of 16 CFR Part 1219, "Safety Standard for Full-Size Baby Cribs," and 16 CFR Part 1220, "Safety Standard for Non-Full-Size Baby Cribs."

Introduction

The Regulatory Flexibility Act (RFA) requires federal agencies to review regulations for their impact on small business and to consider less burdensome alternatives. Section 610 of the RFA requires federal agencies to review regulations that have a significant economic impact on a substantial number of small entities within 10 years of their adoption as final rules.

On January 31, 2020, the U.S. Consumer Product Safety Commission (CPSC) issued a notice in the *Federal Register*, announcing review under section 610 of the RFA of the *Safety Standards for Full-Size and Non-Full-Size Baby Cribs*. (85 Fed. Reg. 5587). The notice solicited public comments on the review, particularly comment on the burden of the regulations on small businesses.

During the 60-day comment period, the CPSC received four comments that addressed the rule review. The comments came from the Government of the People's Republic of China, the

Juvenile Products Manufacturers Association (JPMA), and two members of the public.¹ CPSC also entered into a contract with Industrial Economics, Inc. (IEc), to obtain information from nine current and former crib manufacturers, of which eight self-identified as small businesses, regarding the impact of the regulations, and in particular, the burden on small businesses. All of the suppliers interviewed were headquartered in the United States, and designed their cribs in the United States. Four manufactured their cribs entirely in the United States, while the other five outsourced some or all of their production overseas.² Most of the current suppliers sell primarily to wholesalers, retail chains, and other distributors; although a few also sell directly to consumers. The former suppliers had similar distribution channels. One current supplier only sells directly to U.S. consumers.

This package presents staff's review of the crib regulations' impact on small businesses and our analysis of the comments received.

Background

2010 Crib Standards

On December 28, 2010, CPSC issued safety standards for full-size and non-full-size cribs (collectively referred to as "2010 crib standards") under the authority of the Danny Keysar Child Product Safety Notification Act, section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). Section 104(c) of the CPSIA stated that the standards for full-size and non-full-size cribs would apply to persons owning or operating child care facilities and places of public accommodation, in addition to persons usually subject to consumer product safety rules.

The standards for full-size and non-full-size cribs, codified at 16 CFR parts 1219 and 1220, respectively, had an effective date of June 28, 2011. The compliance date for the sale and importation of cribs was also June 28, 2011; meanwhile, places of public accommodation (*e.g.*, child care facilities, hotels) had until December 28, 2012, to remove noncompliant cribs from service. The 2010 crib standards incorporated by reference the relevant ASTM standards, with additional modifications to make the standards more stringent.

The CPSC crib standards addressed hazards associated with "drop side" cribs that had foldable or movable components that allow side access to the crib. The full-size crib standard addressed other known hazards, including failure of mattress support hardware, failure of glued or bolted connections, side latch failure, and dislodgment of teething rails. The full-size crib standard also addressed incidents associated with poor maintenance or assembly by requiring instructional literature that must accompany a crib. The non-full-size crib standard addressed similar hazards

¹ The World Trade Organization (WTO), on behalf of China, submitted several duplicates of the same comment.

² The study targeted current and former small U.S. manufacturers as a priority for participation, because those companies were predicted to experience significant economic impact in the Final Regulatory Flexibility Analysis accompanying the 2010 rule. The statute at 15 U.S.C. § 2052 defines a "manufacturer" as "any person who manufactures or imports a consumer product"; it also specifies that distributors and retailers are not manufacturers. Foreign companies, domestic large companies, and distributors were also contacted to participate in the study, but as a lesser priority. A few foreign companies and distributors initially agreed to participate, but later declined to participate, due to other responsibilities stemming from COVID-related manufacturing disruptions in Europe and Asia.

associated with cribs that are larger or smaller than a standard or full-size crib, including oval or round cribs. The non-full-size crib standard also addressed the hazard of poorly fitting mattresses for non-full-size cribs, by requiring such cribs to be sold with a mattress.

As discussed in the 2010 Crib Rule, section 14 of the CPSA requires that manufacturers of children's products certify that their products comply with all applicable children's product safety standards based on the third party testing. This statutory requirement is codified under 16 CFR parts 1107 and 1109.³

In the Final Regulatory Flexibility Analysis (FRFA) that accompanied the 2010 Crib Standards, CPSC staff concluded that there would be a significant burden on small entities, including child care facilities and other places of public accommodation. The burdens on child care facilities and other places of public accommodation included replacing cribs with new compliant cribs. The burdens on suppliers included disposing of, replacing, or modifying all noncompliant stock before the effective date of the rule, to be compliant with the rule, and conducting third party testing of their cribs to demonstrate compliance. The recordkeeping and third party testing requirements imposed additional burdens and costs on small suppliers. The FRFA did not conclude that there would be a significant impact on small retailers, because small retailers would have a proportionally small inventory to dispose of, and would likely sell many other items besides cribs.

CPSIA Amendment to Cribs in 2011

On August 12, 2011, in Pub. L. No. 112-28, Congress amended section 104 and specifically addressed potential revisions of the crib standards, stating that any revision after their initial promulgation "shall apply only to a person that manufactures or imports cribs," unless the Commission determines that application to any others covered by the initial crib standards is "necessary to protect against an unreasonable risk to health or safety." If the Commission applies a revised crib standard to additional persons, the statute requires the Commission to provide at least 12 months for those persons to come into compliance. Thus, if the Commission revises the full-size crib standard to adopt a more recent ASTM standard, CPSC's revised crib standard will apply only to persons who manufacture or import cribs, and it will not apply to persons (such as those owning or operating child care facilities and other places of public accommodation), unless the Commission expands the applicability of the revised standards to additional persons.

Since 2011, the full-size crib standard was revised on July 31, 2012 (77 FR 45242), December 9, 2013 (78 FR 73692), and July 23, 2019 (84 FR 35293); the non-full-size crib standard was revised on June 6, 2018 (83 FR 26206) and October 23, 2019 (84 FR 56684). The Commission did not extend the applicability of these subsequent revisions to child care facilities and other places of public accommodation.

³ The Commission has scheduled a section 610 review of the 16 CFR parts 1107 and 1109 rules in Fiscal Year 2021, and plans to publish a notice in the *Federal Register* soliciting public comments on the review, particularly comments on the burden of the third party testing rules on small businesses, and suggestions for ways CPSC could reduce that burden without reducing safety.

Current CPSC Crib Standards

The CPSC full-size baby crib standard currently incorporates by reference ASTM F1169-19, *Standard Consumer Safety Specification for Full-Size Baby Cribs*, approved on March 15, 2019, as the mandatory CPSC standard. ASTM F1169-19 specifies performance requirements and test procedures to determine the structural integrity of full-size cribs. It also contains design requirements addressing entanglement on crib corner post extensions, along with requirements for warning labels and instructional material. The CPSC's non-full-size baby crib standard currently incorporates by reference ASTM F406-19, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards*, approved on March 15, 2019, as the mandatory CPSC standard. ASTM 406-19 specifies the testing requirements for structural integrity and performance requirements for non-full-size cribs/play yards. It also provides requirements for warning labeling and instructional material.

Impact of 2010 Crib Standards on Small Entities

To perform the 610 rule review, staff reviewed the public comments received, which are discussed below. In addition, staff reviewed the IEC report conducted on behalf of the CPSC, and staff performed additional market research. IEC interviewed nine suppliers, which included current and former full-size and non-full-size crib suppliers, to evaluate the impact of the 2010 crib standards.

Staff's review of the IEC report indicated that much of the economic burden on small entities occurred during the first 2 years after the rules became effective, as a result of suppliers having to sell down or destroy their noncompliant stock and child care facilities and places of public accommodation having to purchase all new cribs. Suppliers also had to set up record-keeping systems as part of the required testing. According to some suppliers interviewed by IEC, the one-time costs of setting up the record keeping and testing, along with redesigning multiple models to meet the CPSC standard, reached as much as \$500,000. Some suppliers left the market as a result of the new requirements, particularly suppliers of inexpensive, noncompliant cribs, as well as custom crib manufacturers. Meanwhile, other suppliers entered the market, such that, based on staff analysis, in 2019, there were 71 full-size crib suppliers and 29 non-full-size crib suppliers, up from 68 and 17, respectively, in 2010. Nearly all of the suppliers are small, applying the current U.S. Small Business Administration (SBA) size standards for wood, metal, or other types of furniture manufacturing (750 employees) or wholesale furniture distribution (100 employees). The requirement that public accommodation facilities, including child care providers, remove all noncompliant cribs from their facilities proved to be a benefit to some small crib suppliers, because it increased their sales to child care providers, at least in the short term.

Nearly 10 years after the promulgation of the CPSC crib standards, staff's review shows that the current burden of complying with the CPSC crib standards does not appear to be economically significant, even considering the associated costs of third party testing and recordkeeping. Most respondents interviewed by IEC described how certain testing provisions in the regulations – in particular the side testing and other structural requirements – have impacted their production costs far more than the design requirements, such as side spindle spacing, short corner posts, labeling and other requirements imposed by the crib rules. Even so, the estimated current burden

on crib suppliers is under \$3,000 per model per year, for the cost of third party testing and associated recordkeeping, and up to \$20 per crib for the cost of stronger materials and additional hardware required to pass the compliance tests, such as additional lock washers and stronger laminated wood products for slats. Several suppliers reported very small additional materials costs, such as less than one penny for lock washers; and they further reported they were able to pass those costs on to consumers or retailers. Others reduced production costs by moving production overseas. In some cases, the supplier had sufficient market power to force their own suppliers to share the increased costs of those components. In other cases, the removal of “drop-side” functions simplified crib design, and correspondingly, may have reduced costs. Many suppliers were already compliant with the ASTM standards before CPSC crib standards went into effect, so their additional costs for materials were negligible.

The current burden of the 2010 crib standards does not appear to be economically significant, even for very small crib suppliers. Although the relevant SBA size standard for crib suppliers is 750 employees for furniture manufacturers and 100 employees for wholesale furniture distributors, some of the current suppliers who participated in the IEC report had fewer than 50 employees, or they sold fewer than 1000 cribs per year. These very small firms did not report that ongoing compliance with the rules was a significant burden.

We did not receive any information from public comments or the IEC report regarding the current burden on small child care providers and other places of public accommodation. Staff’s review shows that it is unlikely that any current burden exists, because for these entities, the replacement of noncompliant cribs with compliant ones represented a one-time cost, and all of the noncompliant cribs should have been replaced by 2012. Retail prices of cribs do not appear to have increased as a result of these regulations; and these entities were not required to replace cribs when the CPSC standards were updated in subsequent years to incorporate by reference the revised ASTM standards. As discussed, the Commission has not expanded the applicability of the crib standards to any additional persons in subsequent revisions to the standards.

Regulatory Flexibility Act Retrospective Review - Five Factor Evaluation

The purpose of a rule review under section 610 of the RFA is to determine whether, consistent with the CPSC’s statutory obligations, this standard should be maintained without change, rescinded, or modified to minimize any significant impact of the rule on a substantial number of small entities. Section 610 requires agencies to consider five factors in reviewing rules to minimize any significant economic impact of the rule on a substantial number of small entities:

- (1) The continued need for the rule;
- (2) The nature of complaints or comments received concerning the rule from the public;
- (3) The complexity of the rule;
- (4) The extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and
- (5) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

Continued need for the rule

The CPSC crib standards are required by statute. Section 104(b) of the CPSIA requires the Commission to issue consumer product safety standards for durable infant or toddler products. Full-size and non-full-size cribs are among the products identified as “durable infant or toddler products.” 15 U.S.C. § 2056a(f). The statute directs the Commission to promulgate standards, in accordance with notice and comment rulemaking under the Administrative Procedure Act, that are substantially the same as the voluntary standards or more stringent if the Commission determines that more stringent standards would further reduce the risk of injury associated with the product. Section 104(b)(1)(B) of the CPSIA.

Section 104(b)(4) establishes a process for the Commission to revise its standards when the voluntary standards organization revises the standard upon which the Commission’s rule was based, and this process applies to the revision of any standard the Commission issues under section 104, including the CPSC crib standards. In 2011, Public Law No. 112-28 amended the CPSIA and added section 104(c)(3), providing that if the Commission revises the crib standards to adopt a more recent ASTM standard, CPSC’s revised standard will apply only to persons who manufacture or import cribs, unless the Commission expands the applicability of the revised standards to additional persons.

Nature of complaints or comments received concerning the rule from the public

We received four comments from the public in response to the notice.

JPMA stated its support for continuing the rules without modification and encouraged CPSC to continue working with ASTM. JPMA did not comment specifically about the impact on small businesses. JPMA stated that it “supports maintaining these standards without change and continues to encourage continued collaboration with the subcommittees dedicated to revision of ASTM standards subject to 104 rulemakings. We [JPMA] believe that collaboration is the key to ensure all perspectives are considered in the standard development and revision process, so that the best and safest standards can be published, referred to in federal requirements, and made available to the manufacturing and consumer communities.”

The Government of the People’s Republic of China (PRC) submitted a comment, stating: “the two standards ASTM F1169 and ASTM F406, which are covered by the crib safety regulation, stipulate many performance requirements and testing procedures. As a result, the cost of product testing will increase by more than 30%, and the total product cost will increase by more than 10%. According to Article 2.2 of the WTO / TBT [World Trade Organization/Technical Barriers to Trade Agreement], ‘technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective’ the USA is requested to provide a sufficient basis for this

regulation.”⁴ This commenter also stated that the test methods “are not clear enough, which results in inconsistent test results and brings difficulties to specific operations.”

The PRC seems to have misinterpreted the *Federal Register* notice seeking comment for the review of the rules. The PRC seems to have interpreted the notice as proposing new requirements, rather than simply seeking comment on the burden of rules that have been in place for almost 10 years. Although the comment gave some estimates of increased costs resulting from the rule, it is not clear whether these apply to the burden of the rules that were promulgated almost 10 years ago, or whether it refers to an increase in the current burden for what the PRC mistakenly believes are new requirements being proposed in the *Federal Register* notice. In addition, the comment also provides no information about the impact on small U.S. businesses. Therefore, this comment did not provide any information that could be used in conducting this review. The comment was referred to the Office of International Programs.

Two individuals submitted separate comments similar to PRC’s comment, in the sense that these individuals indicated they were commenting on proposed rules that imposed new requirements. One individual commented on the hazards of “cheap plastic hardware” and faulty design. The other individual commented on the importance of enforcement and compliance with the “new” requirements. Like the PRC, these commenters seem to have misunderstood the purpose of the *Federal Register* notice. The *Federal Register* notice did not propose any new requirements. Rather, the notice requested comment on the burden of the CPSC crib standards on small entities; standards that have been in effect for almost 10 years. We also note that the ASTM standards, which the CPSC standards incorporate by reference, require that cribs meet certain durability and structural integrity requirements, as demonstrated through testing. The ASTM/CPSC standards are performance standards that do not mandate a particular material to meet those standards. This approach allows manufacturers to continue to innovate with new designs and technologies, while still meeting a performance threshold for safety.

Complexity of the rule

In the IEC report, the crib suppliers provided information about the complexity of the tests required by the CPSC crib standards and the burden this represents for small entities. In particular, they noted that durability tests in the CPSC standard require specialized equipment to shake the crib thousands of times. Small manufacturers often do not have this equipment, so they cannot test their own product for compliance before sending it to the third party testing labs. Some crib suppliers suggested more simple “overload” tests as a way to reduce the burden on small entities. These dynamic structural tests and vertical cyclic tests are specified in the CPSC standards. The durability tests are specifically designed to ensure that the crib will not experience structural failure during a reasonable product lifetime of stresses to the crib sides and mattress support. Simpler tests, like an “overload” test, while less costly for the suppliers, would

⁴ Article 2.2 of the WTO TBT cited, specifically includes national standards for “protection of human health or safety” as a “legitimate objective” for such technical regulations, unless, as specified in article 2.4, there are relevant international standards. There is no ISO crib safety standard. See https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm.

not replicate the lifetime stresses on a crib and could lead to a lower level of safety than provided by the current rules.

The crib suppliers also provided information that the component testing rule (16 CFR part 1109) can be difficult and confusing to implement in practice, particularly the recordkeeping for component traceability. For example, a former supplier who offered dozens of different painted decorative options, struggled to use the component rule to apply to the four colors of paint (cyan, magenta, yellow, black) mixed to make the decorations, rather than to each individual decoration. Others struggled more generally with applying the component rule to varnishes and hardware, including the traceability recordkeeping and finding compliant components to buy. Suppliers also commented that the required periodic testing specified in 16 CFR part 1107 could be less frequent and still provide safety, particularly since many models don't change much year on year. Others commented that they believe the third party testing does not improve safety because it duplicates their own in-house testing and quality control. Both the *Federal Register* notice and the IEC interviews requested information about testing costs and burdens, which was intended to solicit information about the specific burden of the crib rules. However, the information about difficulties with third party testing in general, while out of scope for this 610 review, will be useful in the 610 review of 16 CFR parts 1107 and 1109 in FY 2021.

The IEC report included some other suggestions from suppliers concerning difficulties with implementing the rules. One supplier suggested that CPSC provide a free, downloadable file of required warning labels to make it easier to comply with the standards. This would likely violate ASTM's copyright, and otherwise is unnecessary, because ASTM standards incorporated by reference in CPSC standards are available in read-only viewing on ASTM's reading library website⁵ and include the text of the required warnings. Several suppliers suggested that the CPSC standard should be consistent with the Canadian standards, to make it easier to sell one crib to the entire North American market. The performance requirements of the CPSC and Canadian standards are very similar, but Canada has French labeling requirements, and Canada has one rather than two separate standards for cribs. Therefore, adopting the Canadian standards would not reduce the burden on small U.S. entities. Moreover, adopting the Canadian standards would cause the CPSC standards to diverge from the ASTM voluntary standards, as well as potentially create confusion for U.S. consumers who do not read French. One supplier suggested a specific crib safety brochure to ensure that parents understand the information in the instruction manual required by the standards, or in the event they misplace the manual. This suggestion has been forwarded to the CPSC Safe Sleep team.

The extent to which the rule overlaps, duplicates, or conflicts with other federal rules, and, to the extent feasible, with state and local governmental rules

We received no information from the public, or from the crib suppliers indicating that these rules currently duplicate or conflict with other federal rules, or with state and local governmental rules. States typically require licensed child care facilities to document that their cribs are compliant with the CPSC standards.

⁵ <https://www.astm.org/READINGLIBRARY>.

Length of time since the rule has been evaluated, or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule

Based on the IEC interviews with crib suppliers, staff reviewed the factors that have changed since the promulgation of the crib standards. Several suppliers noted that the CPSC crib standards have driven out of the market poorly constructed, unsafe cribs. Several commented that they would prefer to compete on design features, rather than on safety; therefore, these commenters expressed strong support for continuing the rules. Others commented that the requirement for testing has effectively eliminated the market for uniquely designed and high-end custom cribs. It is not surprising that a mandatory standard has, in fact, led to a more consistent and standardized product. However, high-end cribs that cost more than \$2,000 are still available, as well as cribs made with unusual materials, such as acrylic and exotic hardwoods. Suppliers can use the component testing regulations to provide consumers with a menu of options for paints, varnishes, and decorative components. The CPSC crib standards are performance standards that do not require the use of specific materials.

Since 2010, the rise in Internet shopping has changed the market for cribs, as it has for many consumer products. However, the number of crib suppliers is slightly higher than it was in 2010; so the rise in Internet shopping apparently has not led to market consolidation. Based on staff analysis, there are slightly more crib suppliers in the U.S. market today than there were in 2010. Nearly all of them are small, applying the current SBA size standards for wood, metal, or other types of furniture manufacturing (750 employees) or wholesale furniture distribution (100 employees). Several suppliers noted that Internet shopping has led to consumer expectations of multiple models and colors; while others noted that all cribs tend to look alike now. Clearly, there are differences of opinion on the impact of Internet shopping on the market. Staff analysis found that there are multiple Internet sites that provide customers with literally hundreds of different cribs to choose from. There are many different suppliers. The expansion of the Internet marketplaces has made it easier for small manufacturers and importers to enter and exit the market. Some suppliers noted that as a result of Internet shopping, many small, independent baby item stores have gone out of business since 2010, but not as a result of the crib rules.

CPSC staff's analysis finds no evidence that average retail crib prices have risen since the rules were passed. Prices on retail and Internet sites searched in early 2020, reveal that most cribs cost between \$150 and \$450, with a few more-expensive, high-end cribs. This is approximately the same price range as in 2010, except that the lower end of the market was around \$100 in 2010.⁶ Suppliers also reported relatively stable prices; however, some noted that the price of the cheapest cribs has risen due to compliance with the standards. Others noted that high-end, custom cribs have exited the market. It is not possible to determine the extent to which the rules, rather than other market factors, such as the rise of Internet shopping and the continued market fragmentation, may have contributed to the relatively stable prices for cribs. Some suppliers noted a fall in prices for some models, which they attributed to import competition. Other suppliers noted that the ability of consumers to comparison-shop online has increased

⁶ The FRFA for the crib rule estimated a cost of crib replacement for child care facilities of \$500 per crib, based on input from public comments. However, that estimate included the cost of disposing of old cribs and assembling new ones, and reflected that child care facilities would tend to purchase higher end cribs for multi-year use. Other public comments on the 2010 rules estimated replacement costs of \$100 to \$400 per crib.

competitive pricing pressures. These suppliers added that imports and offshore production of domestically designed products have always been a large portion of the market.

The Final Regulatory Flexibility Analysis that accompanied the 2010 rules estimated that the cost of complying with the rules could represent an economically significant (more than 1% of annual revenue) one-time cost for as many as 16 crib suppliers whose products did not comply with the ASTM standards at the time the rule was published. However, the FRFA also found that only four of those firms had cribs making up most of their product line. The FRFA also noted that some crib suppliers who did not claim their products were ASTM-compliant, in fact, furnished products that met most of the requirements of the standard, and would require only minor modifications and labeling to be fully compliant with the CPSC standard. The FRFA also found that while a few small manufacturers in the United States might experience a significant economic impact, small importers would probably not, because it would be relatively easy for importers to find other compliant sources of cribs to import, given the variety of compliant and near-compliant cribs already on the market. The information provided by suppliers to IEC was consistent with this analysis; relatively few suppliers exited the market. And while some suppliers with many crib models reported one-time costs of as much as \$500,000 to set up record keeping and testing and redesign of their cribs, all suppliers reported ongoing costs to comply that represented less than 1 percent of their firm's revenue.

Overall, the information obtained by staff from market research and the contractor report regarding market and technological changes do not justify any specific changes to the regulations. In addition, it is difficult to determine whether any of the market changes since 2010 that impacted small crib suppliers, such as volume and source of imports, or competition from cheaper play yards, were caused or exacerbated by the rules, given that these changes might well have happened without the rules. The only changes to the market that were almost certainly due to the rules were removing from the marketplace drop-side cribs and customized products that did not comply with the CPSC standards and removing noncompliant secondhand or used cribs from the marketplace. The requirement to remove noncompliant cribs from child care facilities produced short-term, increased sales for the suppliers who had ready to ship inventory of compliant cribs. Suppliers generally benefited not only from the removal of competing used cribs from the marketplace, but also from the surrounding public outreach campaigns by CPSC and consumer interest groups making consumers aware of the dangers of used cribs.

Conclusion

Overall, staff does not recommend any changes to the crib standards at this time. The statutory authority for CPSC crib standards is clear. Staff's review of the public comments and the information from suppliers from the IEC report did not find any justification for supporting a change to the CPSC's current crib standards.

The IEC interviews with the suppliers did indicate some difficulties with implementing the component part testing rule under 16 CFR part 1109, and with the frequency of testing required in 16 CFR part 1107. Staff concludes that those concerns should be considered in the 610 review of those regulations in FY 2021.

Staff analysis found no evidence that the total burden of the crib standards on small entities was significantly different from that estimated in the 2010 FRFA. Most of the burden occurred during the first 2 years after the rules became effective. The current burden on small child care facilities is minimal, and the burden on current small crib suppliers also is not significant. Staff's review indicates the costs to be about \$500 to \$3,000 per year per model for testing and recordkeeping,⁷ plus the cost of stronger materials, ranging from less than one penny, to about \$20 more than the cost of pre-2010 models. There is no evidence that the average retail price of cribs has risen since 2010. Suppliers noted that the market now reflects a more standardized product, the shifting of some production overseas, and about the same number of suppliers as in 2010. More suppliers have entered than exited the market since the standards were promulgated. While suppliers offered a few suggestions to reduce the burdens of third party testing, both current and former crib suppliers expressed the belief that the standards provide a necessary safety benefit for consumers.

⁷ Suppliers interviewed by IEC provided estimates for testing costs ranging from \$500 to \$3000 per model, reflecting that some suppliers were including the cost of the product itself, and the cost of shipping the product to the testing lab, along with the cost of testing for lead and phthalates. Other suppliers interviewed indicated that they were only considering the cost of the specific crib rule testing. Additionally, some suppliers were using overseas testing facilities, while others were testing in the United States.