

condensate from the evaporator side of the product to enhance performance of the condenser. Central air conditioners, which are covered under ASHRAE Standard 37, generally do not have this feature and operate primarily with dry condensers. DOE notes that changes in the barometric pressure have an impact on the moist air conditions, and this may affect room air conditioner performance differently than it would affect central air conditioners because of the difference in condenser operation. This factor could lead to different efficiency measurement impacts of barometric pressure for these two types of products. DOE has not received any information from ASHRAE indicating that ASHRAE is considering revisions to Standard 16 at this time.

DOE also received additional information from AHAM supporting the inclusion of the barometric pressure

correction factor in the calculation of cooling capacity from ASHRAE Standard 16. AHAM indicated that as atmospheric pressure drops, so does the air density and, therefore, the mass of air in a room. As atmospheric pressure drops, the efficiency of a unit would also drop because there would be less medium for heat transfer. "The performance of the cooling coil is considerably influenced, and the cooling capacity of the air supplied to the conditioned room is reduced, by altitude effects because air density reduces \* \* \*. Air mass flow rate is probably the most important effect of barometric pressure changes upon system performance. It is the air mass flow rate that transfers heat between cooler coils or condensers and airstreams and removes the sensible and latent heat gains from the conditioned space. Therefore, it is of vital

importance that the correct air density or specific volume be used in calculations." (William Peter Jones, *Air Conditioning Applications and Design*, 32 (2d Ed. 1997)). AHAM indicated that because barometric pressure is connected to the measured efficiency of the unit, multiple tests of the same unit, under slightly different barometric pressure conditions, will likely produce different results.

AHAM also provided data from a room air conditioner performance simulation using IMST-ART version 3.30 modeling software of five simulations, in each case progressively reducing the barometric pressure inputs by 1 in. Hg starting from standard barometric pressure (29.92 in. Hg). The results from this simulation, presented below in Table 1, show that the cooling capacity decreases as atmospheric pressure decreases.

TABLE 1—AHAM ROOM AIR CONDITIONER PERFORMANCE SIMULATION DATA

	1. Units	2. Case 1	3. Case 2	4. Case 3	5. Case 4	6. Case 5
Evaporator Inlet Pressure (Atmospheric Pressure Inputs).	psia .....	14.695	14.204	13.713	13.222	12.731
Condenser Inlet Pressure (Atmospheric Pressure Inputs).	psia .....	14.695	14.204	13.713	13.222	12.731
Condensation Temp. ....	°F .....	122.21	122.65	123.12	123.62	124.15
Evaporation Temp. ....	°F .....	47.867	47.689	47.511	47.33	47.144
Condensation Press. ....	psia .....	446.62	449.1	451.8	454.7	457.8
Evaporation Press. ....	psia .....	151.96	151.53	151.09	150.64	150.18
EER Fan/Pump Included .....		11	10.8	10.7	10.6	10.4
Cooling Capacity .....	Btu/h .....	11,740	11,670	11,590	11,500	11,420
Refrigerant .....		R410A	R410A	R410A	R410A	R410A

DOE recently published a final rule to amend the test procedure for room air conditioners and clothes dryers. (75 FR 972, Jan. 6, 2011). In the final rule, DOE noted that section 6.1.3 of ANSI/ASHRAE Standard 16-1983 (RA 2009) introduces a correction factor based on the test room condition's deviation from the standard barometric pressure of 29.92 inches (in.) of mercury (Hg) (101 kilopascal (kPa)). Section 6.1.3 of ANSI/ASHRAE Standard 16-1983 (RA 2009) states that the cooling capacity may be increased 0.8 percent for each in. of Hg below 29.92 in. of Hg (0.24 percent for each kPa below 101 kPa). For the reasons stated in the final rule, DOE amended the DOE test procedure to reference the relevant section of the ANSI/ASHRAE Standard and include use of the barometric pressure correction factor.

The amended test procedure was effective February 7, 2011 and applies prospectively. DOE notes that the Administrative Procedure Act defines a rule as being prospective in nature. 5 U.S.C. 551(4) ("rule" means the whole

or a part of an agency statement of general or particular applicability and future effect \* \* \*") In addition, the Supreme Court has stated that absent express statutory authority, agencies cannot promulgate retroactive rules. *See Bowen v. Georgetown University Hospital*, 488 U.S. 204 (1988). The Energy Policy and Conservation Act of 1975, as amended, 42 U.S.C. 6291, *et seq.*, does not authorize DOE to specify retroactive application of any portion of the test procedure in a test procedure rulemaking.

For the reasons stated above, DOE denies AHAM's petition as moot.

Issued in Washington, DC, on April 4, 2010.

Sean A. Lev,  
Acting General Counsel.

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**CONSUMER PRODUCT SAFETY COMMISSION**

**16 CFR Part 1224**

[CPSC Docket No. CPSC-2011-0019]

**Safety Standard for Portable Bed Rails: Notice of Proposed Rulemaking**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of proposed rulemaking.

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

standard for portable bed rails that will further reduce the risk of injury associated with these products.<sup>1</sup>

**DATES:** Written comments must be received by June 27, 2011. Interested persons are requested to submit comments regarding information collection by May 11, 2011, to the Office of Information and Regulatory Affairs, OMB (*see ADDRESSES*).

**ADDRESSES:** Comments, identified by Docket No. CPSC–2011–0019, may be submitted by any of the following methods:

#### Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through <http://www.regulations.gov>.

#### Written Submissions

Submit written submissions in the following way:

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

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

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

Comments related to the Paperwork Reduction Act aspects of the instructional literature and marking requirements of the proposed rule should be directed to the Office of Information and Regulatory Affairs, OMB, Attn: CPSC Desk Officer, FAX:

202–395–6974, or e-mailed to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov).

#### FOR FURTHER INFORMATION CONTACT:

Rohit Khanna, Project Manager, Office of Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7546; [rkhanna@cpsc.gov](mailto:rkhanna@cpsc.gov).

#### SUPPLEMENTARY INFORMATION:

### A. Background and Statutory Authority

#### 1. The Consumer Product Safety Improvement Act

The Consumer Product Safety Improvement Act of 2008, Public Law 110–314 (“CPSIA”) was enacted on August 14, 2008. Section 104(b) of the CPSIA requires the Commission to promulgate consumer product safety standards for durable infant or toddler products. These standards are to be “substantially the same as” applicable voluntary standards or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. This document proposes a safety standard for portable bed rails. The proposed standard is substantially the same as the voluntary standard developed by ASTM International (formerly known as the American Society for Testing and Materials), ASTM F 2085–10a, “Standard Consumer Safety Specification for Portable Bed Rails,” but we are proposing some modifications to strengthen the standard because these more stringent requirements would further reduce the risk of injury associated with portable bed rails.

#### 2. Previous Commission Rulemaking Activity Concerning Portable Bed Rails

In the *Federal Register* of October 3, 2000 (65 FR 58968), we published an advance notice of proposed rulemaking (“ANPR”) inviting written comments concerning the risks of injury associated with portable bed rails, regulatory alternatives discussed in the ANPR, other possible ways to address the risks of injury associated with portable bed rails, and the economic impacts of the regulatory alternatives. The ANPR was intended to initiate a rulemaking proceeding that could result in a rule banning portable bed rails that present an unreasonable risk of injury, and we issued the ANPR under our authority in the Federal Hazardous Substances Act (“FHSA”). Elsewhere in this issue of the *Federal Register*, the Commission has issued a notice that the Commission has terminated the rulemaking proceeding that it began under the FHSA because it

has been superseded by the rulemaking required under section 104(b) of the CPSIA.

In May 2001, the ASTM published a standard, ASTM F 2085, “Standard Consumer Safety Specification for Portable Bed Rails.” In October 2001, CPSC staff prepared a draft proposed standard, which included performance requirements to address entrapment hazards on portable bed rails. The Commission voted to direct CPSC staff to prepare a notice of proposed rulemaking (“NPR”) based on its recommended standard. Thereafter, the ASTM Portable Bed Rail Subcommittee agreed to ballot a revision to ASTM F 2085 that was substantially the same as CPSC staff’s recommended standard. Accordingly, we did not issue an NPR at that time. ASTM approved and published the revised standard in June 2003. In 2008, ASTM published another revision to the standard that included a structural integrity test to address fall incidents involving hinge lock mechanism failures. From 2009 to 2010, ASTM made and published minor revisions to the standard. The current edition of the standard is ASTM F 2085–10a, “Standard Consumer Safety Specification for Portable Bed Rails.” The standard in this proposed rule would be more stringent in some respects than the voluntary standard ASTM F 2085–10a. The proposed modifications, if finalized, will further reduce the risk of death and injury associated with portable bed rails.

### B. The Product

ASTM F 2085–10a defines a “portable bed rail” as a “portable railing installed on the side of an adult bed and/or on the mattress surface which is intended to keep a child from falling out of bed.” The scope of the ASTM standard also states that a portable bed rail “is as a device intended to be installed on an adult bed to prevent children from falling out of bed.” Portable bed rails are intended for children (typically from 2 to 5 years of age) who can get in and out of an adult bed unassisted. They include bed rails that only have a vertical plane that presses against the side of the mattress but does not extend over it (referred to as “adjacent type bed rails”), as well as bed rails that extend over the sleeping surface of the mattress (called “mattress-top bed rails”).

A review of market information shows that there are products that differ from traditional, rigid portable bed rails in that they are constructed of nonrigid materials, such as foam or inflatable materials. Although these foam and inflatable products do not use the term “bed rails” in their packaging or

<sup>1</sup> The Commission voted 5–0 to approve publication of this notice of proposed rulemaking. Commissioner Nancy Nord filed a statement concerning this action which may be viewed on the Commission’s Web site at <http://www.cpsc.gov/pr/statements.html> or obtained from the Commission’s Office of the Secretary.

labeling, we believe that the products meet the definition of a portable bed rail and should be included in the scope of the voluntary standard. However, most performance requirements of ASTM F 2085–10a do not apply to these products because the standard was developed to address the hazards from portable bed rails constructed from rigid (wood/metal) materials. Accordingly, the proposed rule would revise ASTM F 2085–10a to include foam and inflatable products, but would require that only certain relevant provisions of the standard apply to such items.

Both portable bed rails made for a specific manufacturer's adult-size beds and "universal" bed rails that can attach to any adult-size bed are included in the scope of ASTM F 2085–10a. However, guard rails that are used with crib mattresses on toddler beds are not covered under the voluntary standard. They are addressed under the Consumer Safety Standard for Toddler Beds (April 28, 2010, 75 FR 22291). Other products that are not covered by ASTM F 2085–10a include: side rails that connect the headboard to the footboard and may or may not have any barrier purposes; conversion rails intended to convert a crib to a full-size bed; and adult-size beds where the rail is permanently attached to the bed (*i.e.*, bunk beds).

Additionally, the U.S. Food and Drug Administration ("FDA") has several regulations pertaining to hospital beds, including a regulation for pediatric hospital beds (21 CFR 880.5140). The FDA regulations, in general, identify a hospital bed as having (among other things) movable and latchable side rails. If a pediatric hospital bed is subject to regulation by the FDA as a medical device, then the bed rails on that pediatric hospital bed are outside the scope of this proposed rule.

### C. ASTM Voluntary Standard

The ASTM standard for portable bed rails was first published in May 2001 (ASTM F 2085–01). This was a minimum standard with requirements for labeling but no performance requirements. The portable bed rails that met the 2001 standard typically were designed with two arms at right angles to the vertical portion of the rail. This type of portable bed rail was installed on a bed by inserting the arms between the mattress foundation and the mattress. These older style portable bed rails relied on friction between the arms and the foundation/mattress to stay in place. However, this type of design allowed the portable bed rail to be moved outward away from the mattress unintentionally if a force was applied in that direction. An outward

force may result from activity by a child in the bed while the child is asleep or awake. Once the bed rail is moved outward, a gap could be created between the vertical portion of the rail and the side of the mattress. The primary hazard scenario would involve a child rolling into a gap between the mattress and portable bed rail and becoming entrapped. Once entrapped, the child could suffocate or strangle.

To address this hazard, the ASTM Subcommittee on Portable Bed Rails revised the standard in June 2003 (ASTM F 2085–03). ASTM F 2085–03 addressed the entrapment hazard by including a new section, "Openings Created by a Displacement," with requirements to deal with displacement of a portable bed rail. In 2008, ASTM published a revised standard (ASTM F 2085–10) that included a structural integrity test to address incidents involving hinge lock mechanism failures. From 2009 to 2010, ASTM made and published minor revisions to the standard. The current edition of the standard is ASTM F 2085–10a.

To assess the adequacy of ASTM F 2085–10a, we tested a variety of portable bed rails currently in the market. Several portable bed rails were certified to ASTM F 2085–10a by the Juvenile Products Manufacturers Association ("JPMA"). JPMA operates a program to certify portable bed rails to the voluntary standard. To obtain JPMA certification, manufacturers submit their products to an independent test laboratory for conformance testing to the most current voluntary standard. For portable bed rails that are assembled and installed in accordance with the manufacturer's instructions, we believe that the requirements to address structural integrity and prevent displacement from the mattress are adequate. However, if a portable bed rail is misassembled or misinstalled on the bed, it could present an entrapment hazard. ASTM F 2085–10a does not address misassembly or misinstallation of portable bed rails.

We also reviewed the British Standard Institution ("BSI") standard for bed rails, BS 7972:2001+A1:2009 Safety Requirements and Test Methods for Children's Bedguards for Domestic Use. The BSI standard primarily addresses entrapment and structural integrity, but also includes some requirements for warning labels. The BSI standard also contains a performance requirement that the bed rail remain attached to the bed after rolling a 30 lb cylinder into the bed rail. The test simulates a child rolling into the bed rail; the ASTM standard does not have an equivalent requirement. We conducted limited

testing to compare this requirement with requirements in the ASTM standard that address potential entrapment hazards. Based on staff's review, we find that the ASTM standard is more stringent than the BSI standard because the ASTM test methods provide more stress to the portable bed rail and mattress interface when evaluating entrapment hazards.

### D. Incident Data

#### 1. Incident Reports

The CPSC Directorate for Epidemiology analyzed incident data related to portable bed rails from January 1, 2000 through March 31, 2010. We received reports of a total of 132 incidents related to portable bed rails. Among the 132 reported incidents, there were 13 fatalities, 40 nonfatal injuries, and 79 noninjury incidents. Of the 13 child fatalities reported involving portable bed rails, most children (9 out of 13) were under 1 year old; two were between 1 and 2 years old; and two children, both physically handicapped, were 6 years old. While all 13 incidents reported some sort of entrapment of the child between the portable bed rail and the mattress, no additional product- or scenario-specific information was available for five reports. Among the remaining eight incidents, two deaths resulted from portable bed rail displacement, when the portable bed rail partially pushed away from underneath the mattress and allowed the child to fall into the opening and get trapped. There were three cases of portable bed rail misassembly. In the first incident, the middle bar was absent, and the child rolled into the mesh and got wedged between the mattress and the rail. In the second incident, the middle bar was not inserted through the mesh sleeve, and the child's head slipped between the bottom edge of the mesh panel and the top edge of the mattress. In the third incident, the bottom horizontal bar was not attached to the vertical bar, resulting in a hazardous gap. In the remaining three fatality incidents, not enough information was available to determine the contributing factor(s) that led to the hazardous entrapment scenario. The beds used in all eight cases were adult-size.

A total of 40 nonfatal incidents associated with the use of a portable bed rail involved injury to a child. Eighty-three percent of the injured children were 2 years old or older. The majority of the injuries (28 out of 40, or 70 percent) were identified as fractures/contusions resulting from a fall when the portable bed rail became dislodged,

or lacerations/scratches on sharp or broken surfaces of the portable bed rail. The remaining injuries resulted from the child getting caught on a torn mesh panel of the rail; the child getting partially entrapped in a portable bed rail that was partly pushed out; and the child nearly choking on small parts (e.g., hardware or labels) that separated from the portable bed rail. While no injuries were reported for the remaining 79 incidents, the incident scenarios indicate that injuries or fatalities potentially could have occurred.

## 2. Hazard Patterns

We considered the 132 incidents together to identify the hazard patterns associated with portable bed rail-related incidents. The hazard patterns can be grouped into the following categories:

- *Displacement of the portable bed rail*—Sixty-nine of the 132 incidents (52 percent) involved the displacement of the portable bed rail, where the portable bed rail pushed out from underneath the mattress and created an opening between the mattress and the rail. In cases where the opening was small, the child became entrapped in the space. In cases where the opening was wide or the rail dislodged completely, the child fell to the floor. There were two fatal incidents, where the portable bed rail had pushed out partially and entrapped the child. There were about 21 nonfatal injuries that resulted from displacement of the rail. A small proportion of the 69 incident reports provided enough information to indicate that, for some “double-rail” configurations (i.e., a design that has two bed rails, one on each side of the mattress), failure of the push-pin or buckle lock mechanism (on the connecting bars/straps underneath the mattress) usually was the main cause of the portable bed rail displacement.

- *Worn or poor quality fabric on mesh panel*—Seventeen of the 132 incidents (13 percent) involved a tear in the mesh, the unraveling of the stitching around the mesh, or simply very loose fabric on the mesh panel. Most nonfatal incident reports in this category involved the child getting caught in the tear/hole (tooth, limb, or even head); loose thread from the stitching getting tightly wound around the child (finger or neck); and mesh coming completely loose, allowing the child to slide through the panel and fall. Many consumers in the incident reports expressed concern over the potential of the tears/holes in the mesh to become larger and increase the risk of strangulation.

- *Sharp surface*—Fourteen of the 132 incidents (11 percent) involved

lacerations or scratches, or the potential thereof, on sharp surfaces of the portable bed rail. Some of the portable bed rails reportedly involved in these incidents had sharp surfaces to begin with, while in other incidents, sharp surfaces were created when parts of the portable bed rail broke away. Occasionally, depending upon the part that broke, the broken components created a potential fall hazard.

- *Hinge lock disengagement*—Eleven of the 132 incidents (8 percent) involved the hinge lock mechanism failing to remain locked to keep the side panel in an upright position. This allowed the child to fall out. Three out of the 11 incidents involving hinge lock mechanism failures resulted in injuries.

- *Misassembly*—Seven of the 132 incidents (5 percent) involved either misassembly or misinstallation of the portable bed rail. Misassembly resulted in three fatalities. In the first case, the middle bar was absent; in the second case, the middle bar was not inserted through the mesh sleeve; and in the third case, the bottom horizontal bar was not attached to the vertical bar. Examples of nonfatal incidents related to misinstallation included the use of a portable bed rail on a toddler bed, as well as the use of a portable bed rail with an extra thick mattress, which prevented the portable bed rail from attaching securely.

- *Miscellaneous Other or Unknown Issues*—Fourteen of the 132 incidents (11 percent) involved other problems not listed above. Six reports—including five fatalities—did not provide any product- or scenario-specific information. Three additional fatality reports provided insufficient information to draw any conclusions about why the portable bed rail was not flush with the mattress. The remaining five nonfatal incidents involved the potential for choking on small parts, such as loose hardware or labels; instability issues resulting from loose hardware; and inadequate design issues, such as extra-wide openings in nonmesh side panels or insufficient rail height.

## E. Assessment of Voluntary Standard ASTM F 2085–10a and Description of Proposed Changes and the Proposed Rule

### 1. Assessment of Voluntary Standard ASTM F 2085–10a

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. CPSC

staff has consulted with these groups regarding the ASTM voluntary standard, *Consumer Safety Specification for Portable Bed Rails*, throughout its development. Consultation with members of this subcommittee is ongoing. ASTM F 2085–10a contains several labeling and performance criteria. The standard addresses many of the same hazards associated with other durable nursery products, and includes requirements for lead in paints, sharp edges/sharp points, small parts, wood part splinters, structural integrity, openings, protrusions, and warning labels. For the eight fatal incidents associated with portable bed rails for which investigations by CPSC staff were completed, we identified two major contributing factors: (1) Improper installation, and (2) misassembly. It is also notable that 11 of the 13 deaths involved children under 2 years old. Portable bed rails, which are meant to be installed on an adult bed, are not intended for this age group. Placing a railing on the side of an adult bed does not make the adult bed safe for infants (i.e. convert an adult bed into a crib). Despite the current warning label cautioning against the use of this product with children under 2 years old, parents of infants continue to use this product with their infants.

Most portable bed rails currently in the market are difficult for consumers to assemble correctly, due to the number of components and the complexity of the fastening hardware. There were three fatal incidents involving misassembled portable bed rails and, based on our testing of sample portable bed rails, consumers are likely to have difficulty assembling and installing portable bed rails correctly. The proposed rule would contain new performance requirements and associated test methods to address misassembly of portable bed rails.

These proposed performance requirements should reduce the likelihood of portable bed rail misassembly. The proposed misassembly performance requirements would prevent portable bed rail entrapment fatalities that result from assembly of a product without critical assembly components (i.e., any component of the portable bed rail that requires consumer assembly to meet the performance requirements); incorrectly installing the portable bed rail’s fabric cover/mesh (if present); or inverting/interchanging parts of the portable bed rail. The addition in the standard of misassembly performance requirements will result in portable bed rail designs that will render the portable bed rail no longer functional if it is not assembled according to the manufacturer-intended

final assembly, or make it obvious to the consumer that the product is misassembled. While current portable bed rail designs do not meet the proposed misassembly requirements, we are aware of the technical feasibility of this requirement because we have developed and demonstrated to ASTM, two prototypes using common portable bed rails designs (adjacent style and mattress top) that meet the proposed requirements.

The proposed rule also would contain a new performance requirement and associated warning label for portable bed rail critical installation components to address issues related to misinstallation of portable bed rails. Although we are not aware of any deaths associated with portable bed rail misinstallation, we are aware of entrapment hazards caused by misinstallation. Furthermore, review and testing of market samples indicate that some consumers may have difficulty installing portable bed rails, which could lead to potentially hazardous conditions. Installation of a portable bed rail onto a bed can require complex or physically demanding adjustments to the portable bed rail, particularly when reaching between the mattress and mattress foundation. A portable bed rail that has been installed improperly could move away from the mattress and form a hazardous gap. Portable bed rail installation components, such as anchor plate and strap combinations, can be misplaced, or not used at all. The proposed performance requirement for critical installation components would increase the likelihood that such components are attached permanently to a structural component of the portable bed rail. In addition, a proposed new warning label for critical installation components would reinforce the importance of using the installation components when installing portable bed rails onto the bed and reduce the likelihood of misinstallation.

## 2. Proposed Changes to the ASTM Standard's Requirements

Consistent with section 104(b) of the CPSIA, the Commission, through this proposed rule, would establish a new 16 CFR part 1224, *Safety Standard for Portable Bed Rails*. The new part 1224 would incorporate by reference the requirements for portable bed rails in ASTM F 2085–10a with certain changes to specific provisions and additions to the standard. The proposed modifications and additions to the standard would reduce further the risk of injury associated with portable bed rails.

Part 1224 would consist of two sections: § 1224.1, *Scope, application, and effective date*, and § 1224.2, *Requirements for portable bed rails*.

To understand the proposed rule, it is helpful to view the current ASTM F 2085–10a standard for portable bed rails and our proposed modifications, along with the explanations provided in part E.2 of this preamble. The ASTM standard is available for viewing for this purpose during the comment period through this link: <http://www.astm.org/cpsc.htm>. For example, the proposed rule would create several new sections in ASTM F 2085–10a. To distinguish between the requirements that would be published in the Code of Federal Regulations, we describe those requirements as proposed § 1224.1 or proposed § 1224.2, and describe the new sections that the proposed rule would create in ASTM F 2085–10a as a “new section.”

### a. Scope, Application, and Effective Date (Proposed § 1224.1)

Proposed § 1224.1 would explain that part 1224 establishes a consumer product safety standard for portable bed rails manufactured or imported on or after a specific date. The date would be the effective date of a final rule, which is normally six months after date of publication of a final rule in the Federal Register.

### b. Requirements for Portable Bed Rails (Proposed § 1224.2)

#### (i). Incorporation by Reference (Proposed § 1224.2(a)).

Proposed § 1224.2(a) would state that each portable bed rail, as defined in ASTM F 2085–10a, must comply with all applicable provisions of ASTM F 2085–10a, except as provided in proposed § 1224.2(b). Proposed § 1224.2(a) also would incorporate ASTM F 2085–10a by reference, and inform interested parties how they can obtain a copy of the standard or inspect the standard at the CPSC or at the National Archives and Records Administration.

#### (ii). Foam and Inflatable Products (Proposed § 1224.2(b)(1)).

Proposed § 1224.2(b)(1) would revise the scope section in ASTM F 2085–10a to include foam and inflatable products. A “foam bed rail” is defined as a portable bed rail constructed primarily of nonrigid materials, such as fabric or foam. An “inflatable bed rail” is defined as a portable bed rail constructed primarily of nonrigid material that requires air to be inflated into the product to achieve structure. Our review of market information indicates that there are products that differ from

traditional, rigid portable bed rails in that they are constructed of foam or inflatable rubber materials and meet the definition of a portable bed rail under ASTM F 2085–10a. However, most performance requirements of ASTM F 2085–10a do not apply to these products because the standard was developed to address the hazards from portable bed rails that consist of rigid (wood/metal) materials. Accordingly, the proposed rule would state that the foam and inflatable portable bed rails must meet only the General Requirements of section 5; the performance requirement of subsection 6.3, *Enclosed Openings*; and the warning statements of subsection 9.3.1 of ASTM F 2085–10a because those requirements can be applied to foam and inflatable portable bed rail products.

#### (iii). Terminology (Proposed § 1224.2(b)(2)).

Proposed 1224.2(b)(2) would revise the terminology in section 3 of ASTM F 2085–10a by creating new terms to be numbered as new sections 3.1.10 through 3.1.14 of ASTM F 2085–10a. The new terms would be as follows:

*Foam bed rail* is a portable bed rail constructed primarily of nonrigid materials, such as fabric or foam;

*Inflatable bed rail* is a portable bed rail constructed primarily of nonrigid material that requires air to be inflated into the product to achieve structure;

*Critical assembly component* is any component of the portable bed rail that requires consumer assembly in order to meet the performance requirements of sections 6.1, *Structural Integrity*, 6.3 *Enclosed Openings*; 6.4, *Openings Created by Portable Bed Rail Displacement of Adjacent Style Portable Bed Rails*; 6.5, *Openings Created by Displacement of Mattress-Top Portable Bed Rails*; and 6.6, *Openings Created by Displacement of Portable Bed Rails Intended for Use on Specific Manufacturers' Beds* of ASTM F 2085–10a;

*Critical installation component* is any component of the portable bed rail that is used to attach the portable bed rail onto the bed; and

*Misassembled/functional portable bed rail* is a portable bed rail that has been assembled incorrectly but appears to function as a portable bed rail. Misassembly/functionality is determined by meeting one of the criteria listed in proposed section 6.9, *Determining Misassembled/Functional Portable Bed Rail*, of ASTM F 2085–10a.

The proposed rule would create these new terms because the Commission is proposing new requirements for foam and inflatable products. In addition, the

Commission is proposing new requirements to address misassembly and misinstallation of portable bed rails. Accordingly, the addition of the new terms will help testing laboratories understand the new performance requirements and associated test methods to reduce entrapment hazards associated with portable bed rails.

(iv). General Requirements (Proposed § 1224.2(b)(3)).

Proposed section 1224.2(b)(3) would create a new section 5.6 of ASTM F 2085–10a, *Critical Installation Components*. This new section of ASTM F 2085–10a (new section 5.6.1) would provide that critical installation components that are also critical assembly components and meet the definition of a misassembled/functional portable bed rail must be permanently affixed to a structural component(s) of the portable bed rail. If a critical installation component(s) is also a critical assembly component and may result in a misassembled/functional portable bed rail, a new section 5.6.2 of ASTM F 2085–10a would require that a portable bed rail not remain upright or that the vertical height must decrease by 6 inches at any point along the top rail when tested to the method for determining the acceptability of the vertical structure of a misassembled/functional portable bed rail. (The requirement regarding a portable bed rail not remaining upright or meeting certain vertical height requirements would be at a new section 6.10.1 of ASTM F 2085–10a, which we discuss later in section v of this document.) The addition of critical installation components would reduce the likelihood of portable bed rail misassembly in that a misassembled bed rail would no longer be functional without the critical installation components.

(v). Determining Misassembled/Functional Portable Bed Rail (Proposed § 1224.2(b)(4)(i) and (ii)).

Proposed § 1224.2(b)(4)(i) would create a new section 6.9 of ASTM F 2085–10a, *Determining Misassembled/Functional Portable Bed Rail*. It would consider a portable bed rail to be a misassembled/functional portable bed rail if:

- The portable bed rail can be assembled without any critical assembly component (new section 6.9.1 of ASTM F 2085–10a);
- The portable bed rail can be assembled without the supplied fasteners, such as screws, nuts, or bolts that are not captive to a critical assembly component like the frame (new section 6.9.2 of ASTM F 2085–10a);

- The portable bed rail's fabric cover or mesh can be placed over the rigid frame structure without engaging critical parts of the frame as intended in final assembly (new section 6.9.3 of ASTM F 2085–10a), or

- The portable bed rail can be assembled by improper placement of any critical component, such as an inverted or an interchanged part, without permanent deformation or breakage (new section 6.9.4 of ASTM F 2085–10a).

To determine the acceptability of a misassembled/functional portable bed rail, proposed section 1224.2(b)(4)(ii) would set forth the requirements for a new section 6.10, *Determining Acceptability of Misassembled/Functional Portable Bed Rail*, of ASTM F 2085–10a. The new section would provide that misassembled/functional portable bed rails must meet sections 6.10.1, 6.10.2, 6.10.3, or 6.10.4 of ASTM F 2085–10a. Under the proposed rule, a new section 6.10.1 of ASTM F 2085–10a would provide that the portable bed rail must not remain upright or the vertical height must decrease by 6 inches at any point along the top rail when tested to new section 8.7 (*Test Method for Determining Acceptability of Vertical Structure of a Misassembled/Functional Portable Bed Rail*) of ASTM F 2085–10a. This section would provide criteria to determine whether a misassembled portable bed rail lacks sufficient vertical structure.

A new section 6.10.2 of ASTM F 2085–10a would provide that the fabric cover or mesh attached to the bed rail must have a permanent sag that is a minimum of 3 inches after tested in accordance with new section 8.8 (*Test Method for Determining Fabric Sag Acceptability of a Misassembled/Functional Portable Bed Rail*) of ASTM F 2085–10a. A new section 6.10.3 of ASTM F 2085–10a would provide that a product will not be considered acceptable if the fabric cover will not fit over the frame without tearing. A new section 6.10.4 of ASTM F 2085–10a would provide that mating parts must clearly show misassembly by two parts overlapping and creating a minimum of a ½ inch protrusion out of the plane of the rail. These new sections would provide the criteria for testing laboratories to determine the sufficiency of visual cues for fabric mesh misassembly.

(vi). Test Equipment (Proposed § 1224.2(b)(5)(i)).

Proposed section 1224.2(b)(5)(i) would state that a force gauge must have a minimum range of 0 to 50 lb (222N) with a maximum tolerance of  $\pm 0.25$  lb (1.11N), as set forth under a new section

7.6 of ASTM F 2085–10a. The addition of this section will help clarify the manner in which the force will be applied under the proposed test methods discussed in section (vii) below.

(vii). Test Method for Determining Acceptability of Vertical Structure of a Misassembled/Functional Portable Bed Rail. (Proposed §§ 1224.2(b)(6)(i) and (ii)).

Proposed §§ 1224.2(b)(6)(i) and (ii) would require new test methods to address misassembly of portable bed rails. These proposed requirements would include a test method for determining the acceptability of the vertical structure of a misassembled/functional portable bed rail under a new section 8.7 of ASTM F 2085–10a, as well as a test method for determining fabric sag acceptability of a misassembled/functional portable bed rail under a new section 8.8 of ASTM F 2085–10a. These tests would provide a method for testing laboratories to determine if a misassembled portable bed rail lacks sufficient vertical structure and also determine the sufficiency of visual cues for portable bed misassembly.

Under a new section 8.7 of ASTM F 2085–10a, the proposed test method for determining acceptability of vertical structure of a misassembled/functional bed would require, if possible, an attempt to assemble the portable bed rail in a misassembled configuration(s), as described in new section 6.9 of ASTM F 2085–10a. The proposed test method also would include:

- Firmly securing the misassembled portable bed rail on a table top or other stationary flat surface using clamps (new section 8.7.2 of ASTM F 2085–10a). The clamps should be located 4 to 6 inches from the intersection of the portable bed rail legs to the vertical plane.
- Gradually applying a force of 10 lbs, using a ½ inch disc to the uppermost horizontal component of the rail in a downward direction at a location along the horizontal component most likely to vertically deform the portable bed rail; and applying the force over a period of 5 seconds, and holding the force for 10 seconds and releasing (new section 8.7.3 of ASTM F 2085–10a); and
- Repeating the steps in new sections 8.7.1 through 8.7.3 for all misassembly configurations (new section 8.7.4 of ASTM F 2085–10a).

The proposed test method for determining fabric sag acceptability of a misassembled/functional portable bed rail (new section 8.8 of ASTM F 2085–10a) would require, if possible, an attempt to assemble the portable bed rail

in a misassembled configuration(s), as described in new section 6.9 of ASTM F 2085–10a, and depicted in new Figure 8. The proposed test method would include:

- Gradually applying a force of 1 lb using a ½ inch disc on the fabric/mesh in any direction or location along the fabric/mesh that is most likely to cause it to come off of the frame; applying the force over a period of 5 seconds; and holding for an additional 10 seconds and releasing (new section 8.8.2 of ASTM F 2085–10a); and
- Repeating these steps for all misassembly configurations discovered in new section 6.9 of ASTM F 2085–10a (new section 8.8.3 of ASTM F 2085–10a).

(viii). Marking and Labeling. (Proposed § 1224.2(b)(7), (8), and (9)).

Proposed section 1224.2(b)(7) would add a warning symbol



and the word “WARNING” prior to “Suffocation and Strangulation Hazard” under section 9.3.1.1 of ASTM F 2085–10a. This proposed addition would give the warning more emphasis.

Proposed section 1224.2(b)(8) would replace the existing marking under section 9.3.1.3 of ASTM F 2085–10a, which states: “Infants who cannot get in and out of an adult bed without help can be trapped between a mattress and a wall and suffocate. NEVER place infants in adult beds with or without a portable bed rail.” The proposed warning would state instead: “Children who cannot get in and out of an adult bed without help can be trapped between a mattress and a wall and suffocate. NEVER place children younger than 2 years old in adult beds with or without a portable bed rail.” Despite the current warning label cautioning against the use of this product with children under 2 years old, parents of infants continue to use this product with their infants. Accordingly, the revised language would emphasize the hazard presented to children younger than 2 years old when placed in adult beds.

Proposed section 1224.2(b)(9) would require critical installation components to be labeled with the entrapment hazard warning for portable bed rail use to warn of issues related to misinstallation of portable bed rails under a new section 9.4 of ASTM F 2085–10a. A new section 9.4 of ASTM F 2085–10a would require the entrapment hazard warning to be in contrasting colors, permanent, conspicuous, and sans serif-style font.

The proposed warning would require in the entrapment hazard warning statement the safety alert symbol



and the words “WARNING—ENTRAPMENT HAZARD” to be not less than 0.20 in. (5 mm) high. The remainder of the text would consist of characters whose upper case must be at least 0.10 in. (2.5 mm) high. The warning would state: “NEVER use portable bed rail without installing this part onto bed. Incorrect installation can allow the portable bed rail to move away from mattress, which can lead to entrapment and death.” Components such as a locking clamp on a mattress-top portable bed rail or an anchor plate/strap are critical installation components. If these components are not installed properly, the portable bed rail will not be secure and may move away from the mattress and can result in an entrapment hazard. The warning requirement would emphasize the importance of proper installation of key components.

(ix). Instructional Literature (Proposed § 1224.2(b)(10)). This proposed section would revise the language in section 11.1 of ASTM F 2085–10a to add the word “installation” among the topics in instructional literature. This proposed section would read: “Instructions must be provided with the portable bed rail and must be easy to read and understand. Assembly, installation, maintenance, cleaning, operating, and adjustment instructions and warnings, where applicable, must be included.” This requirement would add clear instructional literature for installation components to provide consumers easy to understand information for securing portable bed rails on beds.

#### F. Request for Comments

This proposed rule begins a rulemaking proceeding under section 104(b) of the CPSIA to issue a consumer product safety standard for portable bed rails. We invite all interested persons to submit comments on any aspect of the proposed rule. Comments should be submitted in accordance with the instructions in the **ADDRESSES** section at the beginning of this notice.

#### G. Effective Date

The Administrative Procedure Act (“APA”) generally requires that the effective date of a rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). To allow time for manufacturers of portable bed rails to bring their products into compliance with the new requirements, the

Commission intends that the standard would become effective six months after publication of a final rule. The Commission seeks comment on how long it would take manufacturers of portable bed rails to come into compliance with the rule.

#### H. Regulatory Flexibility Act

##### 1. Introduction

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

1. A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
2. A description of the reasons why action by the agency is being considered;
3. A succinct statement of the objectives of, and legal basis for, the proposed rule;
4. A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities subject to the requirements and the type of professional skills necessary for the preparation of reports or records; and
5. An identification, to the extent possible, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule.

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

##### 2. The Market

Typically, portable bed rails are produced and/or marketed by juvenile product manufacturers and distributors or by furniture manufacturers and distributors. Currently, there are at least 14 known manufacturers or importers supplying portable bed rails to the U.S. market. Ten are domestic manufacturers (71 percent) and three are domestic

importers (21 percent). The remaining firm has an unknown supply source, and there is no publicly available information regarding its size.

Under the U.S. Small Business Administration ("SBA") guidelines, a manufacturer of portable bed rails is small if it has 500 or fewer employees, and an importer is considered small if it has 100 or fewer employees. Based on these guidelines, nine of the domestic manufacturers and all of the domestic importers known to be supplying the U.S. market are small. There may be additional unknown small manufacturers and importers operating in the U.S. market as well.

The Juvenile Product Manufacturers Association ("JPMA") runs a voluntary certification program for several juvenile products. Five manufacturers supply portable bed rails to the U.S. market that are compliant with the ASTM standard. Among them, four are JPMA-certified as being compliant with the current ASTM voluntary standard, and one claims compliance with the ASTM standard. Of the importers, one is JPMA-certified, and one claims compliance. JPMA estimates that current annual sales of portable bed rails are approximately 750,000 units, and retail sales are approximately \$20 million. This estimate is similar to a 2003 sales estimate provided by JPMA. No information is available about the average product life of portable bed rails; if, for example, portable bed rail sales are assumed to have remained constant and portable bed rails remain in use for three to five years, there might be 2.25 million to 3.75 million portable bed rails in use. National estimates of portable bed rail product injuries are not available because National Electronic Injury Surveillance System ("NEISS") data does not allow for clear identification of portable bed rail incidents. Therefore, the risk of injury associated with the number of products in use cannot be calculated.

### 3. Impact of the Proposal on Small Business

Out of the 14 firms currently known to be producing or selling portable bed rails in the United States, one is a large domestic manufacturer, nine are small domestic manufacturers, and three are small domestic importers; and there is insufficient information regarding the size or supply source of the remaining firm. The impact on the 12 small domestic firms could be significant. However, the impact of the proposed standard on small manufacturers could differ, based on whether their products are compliant with the voluntary ASTM F 2085-10a. Of the nine small domestic

manufacturers, five produce portable bed rails that are certified as compliant by JPMA or claim to be in compliance with the voluntary standard. The four noncompliant manufacturers may require substantial modifications to meet both the ASTM standard and the proposed requirements. The costs associated with these modifications could include product design, development and marketing staff time, product testing, and focus group expenses. There may be increased costs of production as well, particularly if additional materials are required. The actual cost of such an effort is unknown but could be significant for some firms. However, the impact of these costs may be mitigated if they are treated as new product expenses and amortized.

The impact of the proposed standard on the five compliant firms may be less significant because they already comply with the voluntary standard. However, even ASTM-compliant portable bed rails currently on the market will require modifications to meet the proposed changes. Any product redesign would entail costs similar to those outlined for non-ASTM compliant firms. Some ASTM-compliant firms may opt to preassemble the critical assembly components rather than redesign their product. Preassembled products may require larger shipping boxes, and there may be higher shipping costs associated with shipping larger boxes. To the extent that retailers charge high stocking and inventory fees, firms may face additional costs. Manufacturers may be able to offset these fees if they are able to pass on some of the expense to consumers.

While preassembly may reduce product redesign costs, meeting a requirement that critical installation components be affixed permanently may also require some product redesign. There will be some costs associated with redesign. In addition, all manufacturers will need to modify existing warning labels. A new warning label poses a small burden because it represents a minor modification. Costs associated with the new warning label would be low because no new materials are used. At least one small manufacturer's product line consists entirely or primarily of nonrigid portable bed rails. This firm may need to alter the warning label but otherwise is not likely to be affected significantly by the proposed standard.

Of the three small domestic importers, two import portable bed rails that are certified compliant by JPMA or claim to be in compliance with the voluntary standard. All of these small importers would need to find an alternate source

of portable bed rails if their existing supplier does not come into compliance with the new requirements of the proposed standard. The cost to importers may increase, and, in turn, they may pass on some of those increased costs to consumers. Some importers may respond to the rule by discontinuing the import of their portable bed rails. However, the impact of such a decision may be lessened by replacing the noncompliant portable bed rail with a complying product or another juvenile product. Deciding to import an alternative product would be a reasonable and realistic way for most importers to offset any lost revenue, given that most import a variety of products. However, for small importers whose product lines rely largely on portable bed rails, substituting another product may not be realistic. The impact on these small importers likely would be more significant.

### 4. Alternatives Regarding Impact on Small Business

If the current voluntary standard is adopted without any modifications, the impact on small businesses potentially could be reduced in terms of costs for manufacturers and importers because redesign would not be required. Small manufacturers and importers who are compliant with the voluntary standard would have a reduced burden. However, firms that are not in compliance with the ASTM standard may still need to make substantial product changes to meet ASTM F 2085-10a. A second alternative to reduce the impact on small businesses would be to set an effective date later than six months. This would allow suppliers additional time to modify or develop compliant portable bed rails and spread the associated costs over a longer period of time.

### 5. Conclusion of the Initial Regulatory Flexibility Analysis

It is possible that the proposed standard, if finalized, could have a significant impact on some small firms. The extent of these costs is unknown, but because product redevelopment would likely be necessary, it is possible that the costs could be large for some firms. Additionally, all manufacturers eventually will be subject to third party testing and certification requirements, as discussed in section L below. There will likely be some additional costs associated with third party testing and certification.

However, at least some costs are expected to be passed on to consumers without a reduction in the firms' ability to compete because of the special

features associated with these products. We invite comment on what these costs may be, whether they may be passed on to the consumer, and how these costs will impact small businesses. We also seek information on the effect on retailers (e.g., the impact of increased package size on the number of units kept in stock).

**I. Environmental Considerations**

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

**J. Paperwork Reduction Act**

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

We particularly invite comments on: (1) Whether the collection of information is necessary for the proper performance of the CPSC’s functions, including whether the information will have practical utility; (2) the accuracy of the CPSC’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and

clarity of the information to be collected; (4) ways to reduce the burden of the collection of information on respondents, including the use of automated collection techniques, when appropriate, and other forms of information technology; and (5) estimated burden hours associated with label modification, including any alternative estimates.

*Title:* Safety Standard for Portable Bed Rails.

*Description:* The proposed rule would require each portable bed rail to comply with ASTM F 2085–10a, *Standard Consumer Safety Specification for Portable Bed Rails*. Sections 9, 10, and 11 of ASTM F 2085–10a contain requirements for marking and instructional literature.

*Description of Respondents:* Persons who manufacture or import portable bed rails.

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

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

16 CFR section	Number of respondents	Frequency of responses	Total annual responses	Hours per response	Total burden hours
1224.2(a) .....	7	2	14	1	14

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

Our estimates are based on the following:

Proposed § 1224.2(a) would require each portable bed rail to comply with ASTM F 2085–10a. Sections 9 and 11 of ASTM F 2085–10a contain requirements for marking, labeling, and instructional literature that are disclosure requirements, thus falling within the definition of “collections of information” at 5 CFR 1320.3(c).

Section 9.1.1 of ASTM F 2085–10a requires that the name and the place of business (city, state, mailing address, including zip code, or telephone number) of the manufacturer, importer, distributor, or seller be clearly and legibly marked on each product and its retail package. Section 9.1.2 of ASTM F 2085–10a requires a code mark or other means that identifies the date (month and year as a minimum) of manufacture.

There are 14 known firms supplying portable bed rails to the U.S. market. Seven of the 14 firms are known to produce labels that comply with these sections of the standard, so there would be no additional burden on these firms. The remaining seven firms are assumed

to use labels on their products and their packaging but would need to make some modifications to their existing labels. The estimated time required to make these modification is about 1 hour per model. Each firm supplies an average of two different models of portable bed rails; therefore, the estimated burden hours associated with labels is 1 hour × 7 firms × 2 models per firm = 14 annual hours.

We estimate that the hourly compensation for the time required to create and update labels is \$28.00 (Bureau of Labor Statistics, September 2010, all workers, goods-producing industries, sales, and office, Table 9). Therefore, the estimated annual cost to industry associated with the Commission-recommended labeling requirements is \$392 (\$28.00 per hour × 14 hours = \$392).

Section 11.1 of ASTM F 2085–10a requires instructions to be supplied with the product. Portable bed rails are products that generally require assembly, and products sold without such information would not be able to compete successfully with products supplying this information. Under the OMB’s regulations (5 CFR 1320.3(b)(2)), the time, effort, and financial resources

necessary to comply with a collection of information that would be incurred by persons in the “normal course of their activities” are excluded from a burden estimate, where an agency demonstrates that the disclosure activities required to comply are “usual and customary.” Therefore, because the CPSC is unaware of portable bed rails that: (a) Generally require some installation, but (b) lack any instructions to the user about such installation, we estimate tentatively that there are no burden hours associated with the instructions requirement in section 11.1 of ASTM F 2085–10a because any burden associated with supplying instructions with portable bed rails would be “usual and customary” and not within the definition of “burden” under the OMB’s regulations. Based on this analysis, the proposed standard for portable bed rails would impose a burden to industry of 14 hours at a cost of \$392 annually.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted the information collection requirements of this rule to the OMB for review. Interested persons are requested to submit comments regarding information collection by May 11, 2011, to the Office

of Information and Regulatory Affairs, OMB (see ADDRESSES).

#### K. 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) of the CPSIA refers to the rules to be issued under that section as “consumer product safety rules,” 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.

#### L. Certification

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

Because portable bed rails are children’s products, certifications of compliance must be based on testing

conducted by a CPSC-approved third party conformity assessment body. In the future, we will issue a notice of requirements to explain how laboratories can become accredited as third party conformity assessment bodies to test to the new safety standard. We seek comment on the testing requirements of this standard, particularly comment on whether any further specificity is required for the testing procedures and equipment and comment on whether the testing requirements are reliable, replicable, and sufficiently specific to allow laboratories to set pass/fail criteria for compliance determinations. We also seek comment on what a testing program might entail for portable bed rails.

Portable bed rails also must comply with all other applicable CPSC requirements, such as the lead content and phthalate content requirements in sections 101 and 108 of the CPSIA; the tracking label requirement in section 14(a)(5) of the CPSA; and the consumer registration form requirements in section 104 of the CPSIA.

#### List of Subjects in 16 CFR Part 1224

Consumer protection, Imports, Incorporation by reference, Infants and children, Labeling, and Law enforcement.

Therefore, the Commission proposes to amend Title 16 of the Code of Federal Regulations by adding part 1224 to read as follows:

#### PART 1224—SAFETY STANDARD FOR PORTABLE BED RAILS

Sec.

1224.1 Scope, application, and effective date.

1224.2 Requirements for portable bed rails.

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

##### § 1224.1 Scope, application, and effective date.

This part 1224 establishes a consumer product safety standard for portable bed rails manufactured or imported on or after [DATE 6 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

##### § 1224.2 Requirements for portable bed rails.

(a) Except as provided in paragraph (b) of this section, each portable bed rail as defined in ASTM F 2085–10a, *Standard Consumer Safety Specification for Portable Bed Rails*, approved October 1, 2010, must comply with all applicable provisions of ASTM F 2085–10a. The Director of the Federal Register approves this incorporation by

reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of this ASTM standard from ASTM International, 100 Barr Harbor Drive, 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](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

(b) Comply with the ASTM F 2085–10a standard with the following additions:

(1) In addition to complying with section 1.4 of ASTM F 2085–10a, comply with the following:

(i) 1.4.1 *Foam and inflatable bed rails* need meet only the General Requirements of section 5, the performance requirement of 6.3 *Enclosed Openings*, and the warning requirement of section 9.3.1.

(ii) [Reserved]

(2) In addition to complying with section 3.1.9.1 of ASTM F 2085–10a, comply with the following:

(i) 3.1.10 *foam bed rail, n*—portable bed rail constructed primarily of nonrigid materials such as fabric or foam.

(ii) 3.1.11 *inflatable bed rail, n*—a portable bed rail constructed primarily of nonrigid material that requires air be inflated into the product to achieve structure.

(iii) 3.1.12 *critical assembly component, n*—any component of the portable bed rail that requires consumer assembly in order to meet the performance requirements of 6.1 *Structural Integrity*, 6.3 *Enclosed Openings*, 6.4 *Openings Created by Portable Bed Rail Displacement of Adjacent Style Portable Bed Rails*, 6.5 *Openings Created by Displacement of Mattress-Top Portable Bed Rails* and 6.6 *Openings Created by Displacement of Portable Bed Rails Intended for Use on Specific Manufacturers’ Beds*.

(iv) 3.1.13 *critical installation component, n*—any component of the portable bed rail that is used to attach the portable bed rail onto the bed.

(v) 3.1.14 *misassembled/functional portable bed rail, n*—a portable bed rail that has been assembled incorrectly but appears to function as a portable bed rail. Misassembly/functionality is determined by meeting one of the criteria listed in 6.9.

(3) In addition to complying with section 5.5 of ASTM F F 2085–10a, comply with the following:

(i) 5.6 *Critical Installation Components* that are also *critical assembly* components and that meet the definition of a misassembled/functional portable bed rail must meet 5.6.1 or 5.6.2.

(A) 5.6.1 Critical installation components must be permanently affixed to a structural component(s) of the portable bed rail.

(B) 5.6.2 If a critical installation component(s) is also a critical assembly component and may result in a misassembled/functional portable bed rail, the portable bed rail must meet 6.10.1.

(4) In addition to complying with section 6.8 of ASTM F 2085–10a, comply with the following:

(i) 6.9 *Determining Misassembled/Functional Portable Bed Rail*—a portable bed rail must be considered a misassembled/functional portable bed rail if it meets one of the criteria in 6.9.1, 6.9.2, 6.9.3, or 6.9.4.

(A) 6.9.1 The portable bed rail can be assembled without any critical assembly component.

(B) 6.9.2 The portable bed rail can be assembled without the supplied fasteners, such as screws, nuts, or bolts that are not captive to a critical assembly component such as the frame.

(C) 6.9.3 The portable bed rail's fabric cover or mesh can be placed over the rigid frame structure without engaging parts of the frame as intended in final assembly.

(D) 6.9.4 The portable bed rail can be assembled by improper placement of any critical assembly component, such

as an inverted or an interchanged part, without permanent deformation or breakage.

(ii) 6.10 *Determining Acceptability of Misassembled/Functional Portable Bed Rail*—Misassembled/Functional Portable Bed Rails must meet 6.10.1, 6.10.2, 6.10.3 or 6.10.4.

(A) 6.10.1 The portable bed rail must not remain upright or the vertical height must decrease by 6 inches at any point along the top rail when tested to 8.7.

(B) 6.10.2 The fabric cover or mesh must have a permanent sag a minimum of 3 inches after tested in accordance with 8.8.

(C) 6.10.3 The fabric cover will not fit over the frame without tearing.

(D) 6.10.4 Mating parts must clearly show misassembly by two parts overlapping and creating a minimum of a 1/2-inch protrusion out of the plane of the rail.

(5) In addition to complying with section 7.5 of ASTM F F 2085–10a, comply with the following:

(i) 7.6 *Force Gauge*—gauge must have a minimum range of 0 to 50 lb (222N) with a maximum tolerance of  $\pm 0.25$  lb (1.11N).

(ii) [Reserved]

(6) In addition to complying with section 8.6 of ASTM F 2085–10a, comply with the following:

(i) 8.7 *Test Method for Determining Acceptability of Vertical Structure of a Misassembled/Functional Portable Bed Rail*:

(A) 8.7.1 If possible, attempt to assemble the portable bed rail in a misassembled configuration(s) as defined in 6.9 *Determining Misassembled/Functional Portable Bed Rail*:

(B) 8.7.2 Firmly secure the misassembled portable bed rail on a table top or other stationary flat surface using clamps. The clamps should be located 4 to 6 inches from the intersection of the portable bed rail legs to the vertical plane (see figure 8).

(C) 8.7.3 Gradually apply a force of 10 lb using a 1/2-inch disc to the uppermost horizontal component of the rail in a downward direction at a location along the horizontal component most likely to vertically deform the portable bed rail (see figure 8). Apply the force over a period of 5 seconds, hold the force for 10 seconds, and release.

(D) 8.7.4 Repeat 8.7.1 through 8.7.3 for all misassembly configurations discovered in 6.9.

(ii) 8.8 *Test Method for Determining Fabric Sag Acceptability of a Misassembled/Functional Portable Bed Rail*:

(A) 8.8.1 If possible, attempt to assemble the portable bed rail in a misassembled configuration(s) as defined in 6.9 *Determining Misassembled/Functional Portable Bed Rail*.

(B) 8.8.2 Gradually apply a force of 1 lb using a 1/2-inch disc on the fabric/mesh in any direction or location along the fabric/mesh that is most likely to cause it to come off of the frame (see figure 8). Apply the force over a period of 5 seconds, hold for an additional 10 seconds, and release.

(C) 8.8.3 Repeat 8.8.1 through 8.8.2 for all misassembly configurations discovered in 6.9.

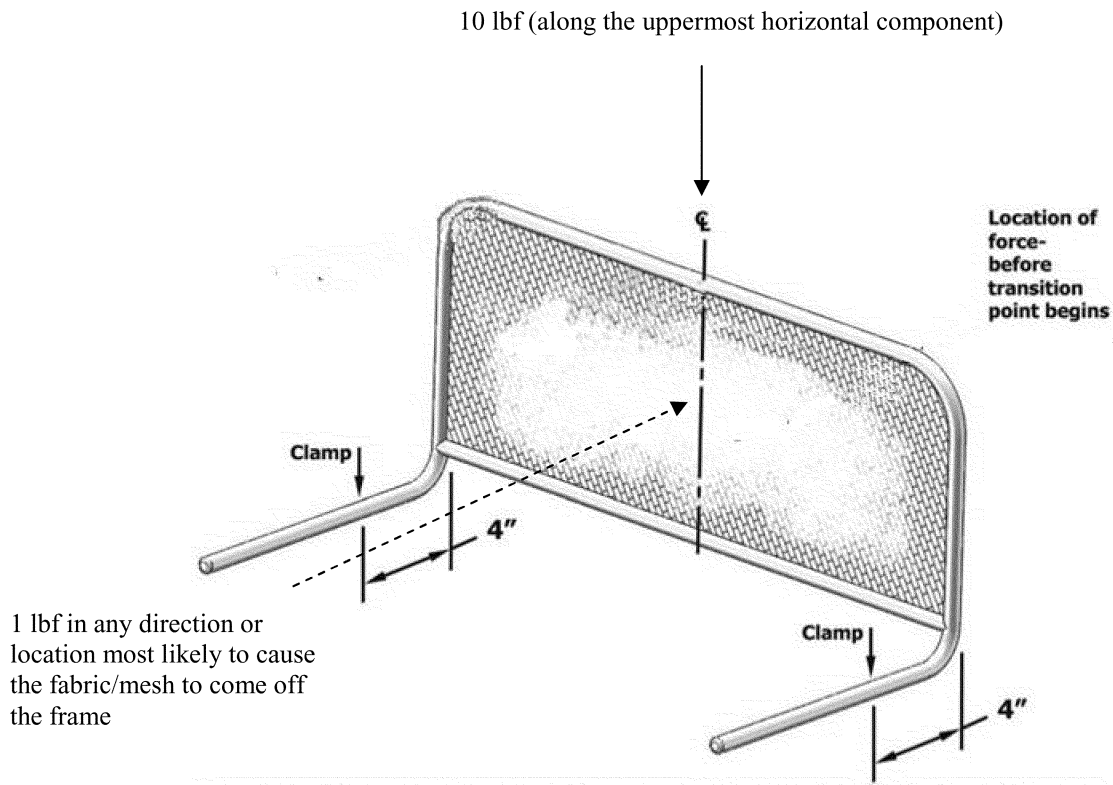


Figure 8: Determining misassembly/functional portable bed rail test setup

(7) Instead of complying with sections 9.3.1.1 of ASTM F 2085-10a, comply with the following:

(i) 9.3.1.1  **WARNING:** Suffocation and Strangulation Hazard.

(ii) [Reserved]

(8) Instead of complying with sections 9.3.1.3 of ASTM F 2085-10a, comply with the following:

(i) 9.3.1.3 Children who cannot get in and out of an adult bed without help can be trapped between a mattress and a wall and suffocate. NEVER place children younger than 2 years old in adult beds with or without a portable bed rail.

(ii) [Reserved]

(9) In addition to complying with section 9.3.2.5 of ASTM F 2085-10a, comply with the following:

(i) 9.4 Critical installation components must be labeled with the entrapment hazard warning in 9.4.1. The entrapment hazard warning must be in contrasting colors, permanent, conspicuous, and sans serif-style font. In the entrapment hazard warning statement the safety alert symbol



and the words "WARNING—ENTRAPMENT HAZARD" must not be less than 0.20 in. (5 mm) high. The remainder of the text must be characters whose upper case must be at least 0.10 in. (2.5 mm) high.

(A) 9.4.1. The warning must including the following, exactly as stated below:

**WARNING – ENTRAPMENT HAZARD**



NEVER use portable bed rail without installing this part onto bed. Incorrect installation can allow bed rail to move away from mattress, which can lead to entrapment and death.

(B) [Reserved]

(ii) [Reserved]

(10) Instead of complying with section 11.1 of ASTM F 2085-10a, comply with the following:

(i) 11.1 Instructions must be provided with the portable bed rail and must be easy to read and understand. Assembly, installation, maintenance, cleaning, operating, and adjustment instructions and warnings, where applicable, must be included.

(ii) [Reserved]

Dated: April 6, 2011.

**Todd A. Stevenson,**

*Secretary, U.S. Consumer Product Safety Commission.*

[FR Doc. 2011-8558 Filed 4-8-11; 8:45 am]

**BILLING CODE 6355-01-P**

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1500

#### Portable Bed Rails: Withdrawal of Advance Notice of Proposed Rulemaking

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Withdrawal of advance notice of proposed rulemaking.

**SUMMARY:** The U.S. Consumer Product Safety Commission (“Commission,” “CPSC,” or “we”) is terminating a proceeding initiated for portable bed rails under the Federal Hazardous Substances Act (“FHSA”), which the Commission began with publication of an advance notice of proposed rulemaking (“ANPR”) on October 3, 2000, 65 FR 58968. On August 14, 2008, the Consumer Product Safety Improvement Act of 2008 (“CPSIA”) was enacted. Section 104(b) of the CPSIA requires the Commission to promulgate consumer product safety standards for durable infant or toddler products, which are to be “substantially the same as” applicable voluntary standards (or more stringent requirements if they would further reduce the risk of injury associated with the product). Elsewhere in this issue of the **Federal Register**, we are proposing a safety standard for portable bed rails in response to section 104(b) of the CPSIA. The proposed portable bed rail standard includes provisions that address the risks of injury identified in the ANPR.

**DATES:** The advanced notice of proposed rulemaking published on October 3, 2000 (65 59868) is withdrawn as of April 11, 2011.

**FOR FURTHER INFORMATION CONTACT:** Rohit Khanna, Project Manager, Office

of Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7546; [rkhanna@cpsc.gov](mailto:rkhanna@cpsc.gov).

#### SUPPLEMENTARY INFORMATION:

##### A. Background

In the **Federal Register** of October 3, 2000 (65 FR 58968), we published an advance notice of proposed rulemaking (“ANPR”), which initiated a rulemaking proceeding that could result in a rule banning portable bed rails that present an unreasonable risk of injury under the FHSA. After publication of the ANPR, we worked with the voluntary standards group, ASTM International (formerly known as the American Society for Testing and Materials), which added provisions in its standard for portable bed rails, ASTM F 2085, *Standard Consumer Safety Specification for Portable Bed Rails*, to address entrapment hazards. ASTM subsequently revised its standard to also address the structural integrity of bed rails. The current edition of the standard is ASTM F 2085-10a.

The Consumer Product Safety Improvement Act of 2008 (“CPSIA”, Pub. L. 110-314) was enacted on August 14, 2008. Section 104(b) of the CPSIA requires the Commission to promulgate consumer product safety standards for durable infant or toddler products. These standards are to be “substantially the same as” applicable voluntary standards or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. Elsewhere in this issue of the **Federal Register**, we are publishing a proposed rule that would establish safety standards for portable bed rails that would incorporate by reference voluntary standard ASTM F 2085-10a, *Standard Consumer Safety Specification for Portable Bed Rails*, with certain modifications to strengthen the standard, making it more stringent and reducing the risk of injury associated with these products, including provisions that address foam and inflatable bed rail products, and new performance requirements to reduce the likelihood of misassembly and misinstallation of portable bed rails by consumers.

##### B. Withdrawal of the ANPR

The rulemaking that the Commission is now initiating under section 104(b) of the CPSIA proposes to establish new requirements for portable bed rails that will include the ASTM F 2085-10a, *Standard Consumer Safety*

*Specification for Portable Bed Rails*, with modifications. Accordingly, we are withdrawing the October 3, 2000 ANPR and terminating that rulemaking.

Dated: April 6, 2011.

**Todd S. Stevenson,**

*Secretary, U.S. Consumer Product Safety Commission.*

[FR Doc. 2011-8557 Filed 4-8-11; 8:45 am]

**BILLING CODE 6355-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[Docket No. USCG-2011-0182]

RIN 1625-AA08

#### Special Local Regulations for Marine Events; Patapsco River, Northwest Harbor, Baltimore, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish special local regulations during the “Baltimore Dragon Boat Challenge,” a marine event to be held on the waters of the Patapsco River, Northwest Harbor, Baltimore, MD on June 25, 2011. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Patapsco River during the event.

**DATES:** Comments and related material must be received by the Coast Guard on or before April 26, 2011.

**ADDRESSES:** You may submit comments identified by docket number USCG-2011-0182 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section