

Crib Standards: Additional Questions and Answers

Retrofitting Cribs

1. Q. Is it possible to retrofit a crib that is currently in use (*e.g.*, in a child care facility) to meet the new crib standards?

A. CPSC staff does not believe that a crib currently in use can be retrofitted and tested to show compliance with the new crib standards. Typically, a crib is destroyed in the process of testing; therefore, retrofitting cribs currently in use cannot be done. As discussed in the preamble to the final rule, the crib standards include multiple, complex requirements for many parts of a crib, making it difficult to determine whether a retrofitted crib currently in use would meet the requirements without testing that specific crib. (Section E.9 of the preamble to the final crib rule, 75 Fed. Reg. at 81771-72.) Also, a retrofit, such as a side rail immobilizer, which previously might have been an acceptable remedy to address a defect in a recalled crib, may not necessarily make a crib compliant with the new crib standards because additional new compliance requirements now apply to that crib design.

2. Q. Is it possible for a retailer, manufacturer, or lessor to retrofit unused crib inventory to meet the new crib standards?

A. Under some circumstances, it may be possible to retrofit unused, noncompliant crib inventory to meet the new crib standards. To comply with the new standards, an existing crib model—with the retrofit in place—must be put through the complete test regimen. In other words, the crib model, as it exists in inventory, must be tested with the retrofit, and it must meet all the provisions of the relevant new standards and be certified to the applicable new standards prior to its sale. The manufacturer should provide a way to ensure that all the crib models in inventory have been retrofitted properly. For unused cribs in inventory, we assume that cribs of the same model are sufficiently similar, so that when a model that is identical to the crib(s) in inventory is tested to the standard with the retrofit, and the crib passes the test, then that retrofit can be applied to all other identical models currently in inventory to make them compliant. It is the manufacturer's, retailer's, or lessor's responsibility to ensure that all cribs sold (or resold or leased) on and after June 28, 2011, are compliant with the new standards. If a retrofit is used, it is the manufacturer's or importer's responsibility to provide certification of the retrofitted crib, following testing by a CPSC-accepted certifying body, to ensure that the inventory is sold only with a retrofit that makes the crib compliant with the standard. The same retrofit methods developed for a non-compliant unused crib cannot be applied to a crib model that is used or that currently is in use because each crib is unique, due to its use patterns. Therefore, each used crib unit would have to be tested with the retrofit in place before the crib could be certified. The testing can be destructive; and likely would render the crib unusable.

3. Q. If inventory is retrofitted, what testing is required?

A. The crib model must be tested to the relevant crib standard (16 CFR part 1219 or 16 CFR part 1220) with the retrofit in place. The testing must be conducted by a third party testing body that has been accredited and accepted by the CPSC to test cribs to the new crib standards. www.cpsc.gov/cgi-bin/labsearch/

4. Q. Must crib manufacturers, retailers, and lessors get approval from the CPSC to retrofit crib inventory?

A. No. The CPSC does not approve crib retrofit methods. The CPSC relies on the manufacturer's/importer's certification of compliance of the retrofitted product that is supported by testing to the applicable standard by a CPSC accepted conformity assessment body.

Warranties

5. Q. If a customer purchases a crib that was manufactured before June 28, 2011, but they return the crib for a warranty claim after June 28, 2011, must the replacement crib meet the new crib standards?

A. Yes. When a manufacturer (retailer or other supplier) provides a replacement crib for use after the June 28, 2011 compliance date, the crib must meet the requirements of the CPSC's new crib standards.

Export of Noncompliant Cribs

6. Q. If a company has an inventory of cribs that do not comply with the new crib standards, could the company export the noncompliant cribs to another country?

A. Yes. However, after June 28, 2011, a company first must notify the CPSC and follow the procedures stated in 16 CFR part 1019, pertaining to Export of Noncomplying, Misbranded, or Banned Products.

Child Care Centers, Foster Homes, and Churches

7. Q. What types of child care arrangements are impacted by the new crib standards?

A. The Consumer Product Safety Improvement Act of 2008 (CPSIA) directed the U.S. Consumer Product Safety Commission (CPSC) to issue the new crib standards and apply them to (among others) "any person that ... based on the person's occupation, holds itself out as having knowledge or skill peculiar to cribs, including child care facilities and family child care homes." The law does not define "child care facility" or "family child care home."

Based on the CPSIA language and other federal programs related to child care, we consider a "child care facility" to mean a nonresidential setting that provides child care services (which could include early learning opportunities) for a fee. We consider "family

child care home” to mean a location that provides child care services (which could include early learning opportunities) for a fee in a residential setting. The residential setting is usually in a home other than the one where the child resides, although the child or children of the caregiver may also attend.

Licensing requirements vary widely from one state to another, and whether a child care provider is licensed does not determine the provider’s status as a child care facility or family child care home for purposes of CPSC’s crib standards.

We do not consider “in-home care,” where a child is cared for in his/her own home or by a relative in the child’s home or the relative’s home, to be a “child care facility” or a “family child care home.”

In turn, we do not consider such arrangements to be subject to the new crib standards.

8. Q. Are churches/church nurseries subject to the new crib standards?

A. The CPSIA does not provide any exclusion for churches. If a church operates a child care facility, the cribs that it provides must comply with CPSC’s crib standards. Given the language in the CPSIA, we consider a child care facility to be one that provides services for a fee. If volunteers take care of children during a church service without pay, we do not consider that arrangement to be a child care facility, and cribs used under such an arrangement would not be subject to CPSC’s crib standards.

9. Q. Are foster homes or residential facilities subject to the new crib standards?

A. We consider a foster home to be a private residence where care is provided in the child’s own home. This arrangement is similar to in-home care and would not be subject to CPSC’s crib standards. However, in addition to child care facilities and family child care homes, CPSC’s crib standards apply to “places of public accommodation,” which means “any inn, hotel, or other establishment ... that provides lodging to transient guests.”

We consider a public residential facility (as opposed to a private residence) to be a place of public accommodation and subject to CPSC’s crib standards.

10. Q. Are “hospital cribs” located in child care facilities subject to the new crib standards?

A. This depends on whether the crib is a medical “device.” CPSC’s crib standards do not apply to medical devices. A crib that meets the definition of “device” in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 201(h)) is subject to regulation by the Food and Drug Administration (FDA), not CPSC. You should contact FDA’s Center for Devices and Radiological Health to determine if a particular crib is a “device.”

A crib that is located in a child care facility and is not a “device” is subject to CPSC’s crib standards.

Portable cribs and play yard

11. Q. Are portable cribs or play yards affected by the regulation?

A. The crib standards cover portable cribs, but not play yards. CPSC’s crib rule includes a standard for full-size cribs (16 CFR part 1219) and a standard for non-full-size cribs (16 CFR part 1220). A non-full-size crib is a crib that is either larger or smaller (or otherwise shaped differently) from a full-size crib. The standard for non-full-size cribs covers portable cribs (a crib that “may be folded or collapsed, without disassembly, to occupy a volume substantially less than the volume it occupies when it is used”) as defined in that standard. The term “non-full-size crib” does not include products with mesh/net/screen or other non-rigid construction. Instead, enclosures with mesh or fabric sides are considered to be play yards and are not subject to the crib standards.

CPSC is developing a separate mandatory federal standard for play yards.

General Questions

12. Q. How do I know whether the specific crib that I own/use in my child care facility meets the new standards?

A. You cannot tell from looking at a crib whether it meets the new standards. It is not likely that cribs in use before the Commission issued its crib rule in December 2010 will comply with the new standards. If you are considering purchasing new cribs that meet the standards, you may want to ask the manufacturer or retailer whether the crib complies with 16 CFR 1219 (the new standard for full-size cribs) or 16 CFR 1220 (the new standard for non-full-size cribs). Manufacturers are required to test samples of their cribs to the new standards and to certify that they comply with the new standards. They must provide this certification to the retailer.

You can ask the manufacturer or retailer for a copy of the certificate of compliance that should indicate that the crib is certified to meet 16 CFR 1219 or 16 CFR 1220. After June 28, 2011, all cribs manufactured or offered for sale, lease, or resale are required to meet the new crib standards.

13. Q. Who will be enforcing the crib standards and what are the penalties for using cribs that do not meet the new standards?

A. CPSC will be the main agency enforcing the new crib standards. The initial focus will be on manufacturers and retailers since they must comply with the new standards by June 28, 2011. Anyone who is covered by the new crib standards and does not comply commits a prohibited act under section 19(a)(1) of the Consumer Product Safety Act (CPSA). A person or company that knowingly commits a prohibited act is subject to

possible civil penalties. States' attorneys general also have authority to enforce the crib standards through injunctions.

Q. 14. Can a retailer sell a noncompliant crib before June 28, 2011 and deliver it after that date?

A. Before June 28, 2011, a retailer can sell a crib that does not meet the new crib standard and delay delivery until after June 28, 2001, if a customer pays the full amount due on the crib before that date. By payment of the purchase price before June 28, the sale is complete and the crib effectively is in the customer's possession when the crib has been paid in full. However, if a customer purchases a crib under an arrangement where only partial payment of the purchase price of the crib is made before June 28, 2011 (often called layaway), and does not take possession before June 28, 2011, the crib must meet the new crib standards.

Under these circumstances, a retailer could not legally provide a noncompliant crib to the customer after June 28, 2011.