



441 G St. N.W.
Washington, DC 20548

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August 7, 2023

The Honorable Maria Cantwell
Chair
The Honorable Ted Cruz
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Cathy McMorris Rodgers
Chair
The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Consumer Product Safety Commission: Safety Standard for Adult Portable Bed Rails*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Consumer Product Safety Commission (CPSC) entitled "Safety Standard for Adult Portable Bed Rails" (CPSC-2013-0022). We received the rule on July 27, 2023. It was published in the *Federal Register* as a final rule on July 21, 2023. 88 Fed. Reg. 46958. The effective date is August 21, 2023.

According to CPSC, the final rule requires that adult portable bed rails (APBRs) meet the requirements of the existing voluntary standard for APBRs, with modifications. CPSC determined that there is an unreasonable risk of injury and death associated with entrapment and other hazards from APBRs, and CPSC stated it has identified 284 fatal incidents related to entrapment by APBRs between January 2003 and December 2021.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The final rule was published in the *Federal Register* on July 21, 2023. 88 Fed. Reg. 46958. The final rule has a stated effective date of August 21, 2023. Therefore, the final rule does not have the required 60-day delay in its effective date.¹

¹ In the final rule, CPSC stated, "To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General and postpone enforcement of the rule during the congressional review period specified in the CRA." The final rule as published does not reflect such postponement, and we have not received additional information from the agency.

Enclosed is our assessment of CPSC's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink, reading "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: David M. DiMatteo
Attorney for Regulatory Affairs Division
Consumer Product Safety Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
CONSUMER PRODUCT SAFETY COMMISSION
ENTITLED
“SAFETY STANDARD FOR ADULT PORTABLE BED RAILS”
(CPSC-2013-0022)

(i) Cost-benefit analysis

The Consumer Product Safety Commission (CPSC) estimated the final rule would provide benefits based on the baseline efficacy rate of the redesigned adult portable bed rails. At the 75 percent rate, CPSC estimated annualized benefits of \$200.24 million. It further estimated benefits of \$133.49 million at the 50 percent rate and \$66.75 million at the 25 percent rate. Additionally, CPSC estimated costs of \$2.01 million at each rate.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

CPSC conducted a Final Regulatory Flexibility Analysis. In the Analysis, CPSC discussed: (1) the need for and objectives of the final rule; (2) significant issues raised by comments; (3) small entities to which the final rule would apply; (4) compliance, reporting, and recordkeeping requirements of the final rule; (5) the impact on small entities; and (6) other significant alternatives to the rule it considered.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

As an independent regulatory commission, CPSC is not subject to the requirements of the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On November 9, 2022, CPSC published a proposed rule. 87 Fed. Reg. 67586. CPSC received seven comments in response to the proposed rule, and it addressed those comments in the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

CPSC determined the final rule contained Information Collection Requirements (ICRs) subject to the requirements of PRA. CPSC stated the ICRs are associated with Office of Management and Budget Control Number 3041-0192. CPSC stated the estimated burden for the ICRs had not changed from the proposed rule.

Statutory authorization for the rule

CPSC promulgated the final rule pursuant to section 553 of title 5 and sections 2056 and 2058 of title 15, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

As an independent regulatory commission, CPSC is not subject to the requirements of the Order.

Executive Order No. 13132 (Federalism)

As an independent regulatory commission, CPSC is not subject to the requirements of the Order.