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United States House of Representatives
Subcommittee on Commerce, Manufacturing and Trade
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Washington, DC 20515



Thank you Chairman Burgess and Ranking Member Schakowsky for the opportunity to provide testimony on “Industry Perspectives on the Consumer Product Safety Commission (CPSC)” to this Committee.

The Juvenile Products Manufacturers Association (JPMA) has a long and proud history of ensuring that juvenile products are built with safety in mind. JPMA members, who are comprised of parents, grandparents and caregivers, design products that help parents care for and protect their children. As an industry, we personally understand the importance of ensuring that our children are safe in all environments and that parents and caregivers are educated about the importance of juvenile product safety and best practices when choosing and using products for their babies and children.

On behalf of the JPMA members I have the honor of submitting and presenting the juvenile product industry’s perspective of the ongoing working relationship between our industry and the CPSC. Since 2012, I have acted in the role of Director of Regulatory and Legislative of Affairs for JPMA and I have a tremendous appreciation for the work this Committee has done since the implementation of the Consumer Product Safety Improvement Act (“CPSIA”) and related amendments thereto. Additionally, as both a former Congressional and CPSC staff member, I sincerely appreciate all the time and energy that staff have put in to making this hearing informative for all parties. Our Association has a long history of working with state and federal governments to advance JPMA’s core mission to be an information source and to provide leadership for all stakeholders related to the production and safe use of infant products.

My testimony today will focus on three areas: (1) Association’s relationship with the CPSC as it relates to Section 104 of the CPSIA, more commonly referred to as the “104 rules”; (2), CPSC staff involvement throughout the ASTM process; and (3) industry concerns that the integrity of the ASTM Standard setting process be maintained as they relate to required Section 104 rules that are currently part of the Agency’s mandate and operating plan.

I. Background of the JPMA

The Juvenile Products Manufacturers Association (JPMA) is a national not-for-profit trade association representing 95% of the prenatal industry including the producers, importers, and distributors of a broad range of childcare articles that provide protection to infants and assistance to their caregivers. JPMA exists to advance the interests, growth and well-being of North American prenatal to preschool product manufacturers, importers and distributors marketing under their own brands to consumers. It does so through

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advocacy, public relations, information sharing, product performance certification and business development assistance conducted with appreciation for the needs of parents, children and retailers. JPMA continues to work with government officials, consumer groups, and industry leaders on programs to educate consumers on the safe selection and use of juvenile products.

II. 104 Rulemaking

The Danny Keysar Child Product Safety Notification Act, section 104(b) of the Consumer Product Safety Improvement Act of 2008 (“CPSIA”; Pub. L. 110-314, 122 Stat. 3016), requires the United States Consumer Product Safety Commission to promulgate consumer product safety standards for durable infant and toddler products. These standards must be substantially the same as applicable voluntary standards or more stringent than the voluntary standard if the Commission determines that more stringent requirements would further reduce the risk of injury associated with a product.

JPMA has been instrumental in the development of many key standards that have advanced public safety, with participation by expert engineers and product design consultants from our members in ASTM Subcommittees under F15.18 involved in the development of standards on cribs, toddler beds, play yards, cradles and changing tables and other durable infant products. This group received former Chairman Inez Tenenbaum’s inaugural Chairman’s Circle of Commendation award for its work as “crucial to the development of CPSC’s new mandatory crib standards - the strongest in the world.”¹ JPMA and CPSC staff have worked collaboratively throughout the ASTM process. Relying on each others expertise, we have been able to enhance safety through the ASTM consensus process by facilitating the creation of effective standards based upon hazard data.² Unlike most federal standards, such standards do not remain static and are subject to periodic review and update.³ JPMA appreciates all the time and energy that career agency staff expend by attending meetings and providing constructive feedback.⁴ Like any relationship, it is not always without complications. Let me be very clear, our industry appreciates uniform national safety regulations. Our members take time out of their schedules, voluntarily and at their own cost in both time and money, to attend ASTM meetings, chair F.15 subcommittees, perform product testing to investigate whether proposed enhancements to standards improve safety, and provide feedback to the appropriate ASTM subcommittees. The ASTM process is the backbone of many advances in product safety.

¹ <http://www.cpsc.gov/Newsroom/News-Releases/2012/CPSC-Chairman-Inez-Tenenbaum-Awards-Her-First-Safety-Commendations-to-Five-Individuals-and-Groups/>

² Once a standard has successfully cleared the three levels of peer review provided by ASTM (subcommittee, main committee, and Society), it is assigned a fixed alphanumeric designation and receives an official approval date. An ASTM standard is capable of being cited in contractual language, referenced by a code body, or mandated by government as Congress did for toy safety specifications under ASTM F-963 et. Seq. and for Section 104 rules when CPSIA was enacted.

³ Review and potential updates are required every five years at minimum, but often revisions occur more frequently.

⁴ CPSC January 27, 2016 Final Rule to Amend 16 C.F.R. Part 1031 to expand participation of CPSC staff in voluntary standard setting processes.

However, this process is based upon consensus agreement, *only* after consideration of data and sound hazard analysis. In this regard, we do not favor regulating simply for the sake of regulating.

A. ASTM Provides an Effective Forum for Standard Setting.

Our members have actively participated in the various subcommittees where proposed changes to product, package and instruction warnings are being discussed. Seeing the need for uniformity across all juvenile product standards, the ASTM subcommittees independently formed a task group to develop consistent warnings. Over the years, our members have taken CPSC input into account when developing and revising the ASTM juvenile product standards. We believe in the collaborative nature of the process, and that the CPSC plays an important and vital role in that process. As part of this process, CPSC staff must better understand and appreciate the realities of implementing standards for the design and production of actual products. We remain concerned that CPSC staff not arbitrarily change language, placement or dynamic performance requirements within a standard without adequate justification. The ASTM process relies on individual participants' ability to comment on draft proposals, initiate revisions to a standard and review a final document before approval to ensure that all issues are vetted appropriately. While this process may take time from a CPSC standpoint, this approach assures that everyone's voice is heard and that the "*best standard*" is available for publication and consequently CPSC staff reference during Final Rulemaking as required for durable juvenile products.

In connection with development of ASTM Standards, participants often rely on CPSC staff to provide summaries of verified incident data and engineering analysis as part of the process of risk hazard analysis and development of performance requirements. Historically, such data has been provided while also maintaining confidentiality in accordance with CPSA Section 6 requirements. Unfortunately, such data has not recently been as forthcoming as required.⁵ We urge the Commission to provide such data as is available to ensure all parties have the necessary informed to make informed decisions.

JPMA also agrees with the Commission's recent recognition in its Strategic plan to address this shortfall when it noted "Difficulty in identifying emerging risks, as compared to known hazards, is another data- related area of vulnerability for the CPSC. Each of the strategic goals in the new strategic plan involves strategies and specific initiatives aimed at improving data systems and increasing data-based decision making."⁶

B. Warning Statements Must Be Consistent Across Standards

JPMA and our members have significant concerns about the manner in which warnings are currently being discussed during the ASTM process. From our standpoint, the CPSC

⁵ IE: October 19, 2015 letter from ASTM Gate Subcommittee Chair Jon Robinson to staff requesting incident data to support proposed changes to the gate standard and subsequent CPSC response letter dated November 24, 2015 that did not provide requested data or information.

⁶ CPSC Strategic plan 2016-2020 Section 2.1

has been inconsistent in its warnings proposals and proposed revisions. We remain committed to safety and advancing the standards. Arbitrarily changing language and /or format in the NPR, after it has been discussed and balloted on multiple occasions within the ASTM process, does not allow for the best standard to be incorporated as the final rule. Additionally, it has created the perception amongst many participants at ASTM that the CPSC will ultimately change the standard during mandatory rule making regardless of consensus at ASTM. We think we all can agree that this is **not** good rulemaking.

On December 21, 2015, and after several meetings both at the staff and Commissioner level, over 30 individuals representing juvenile product manufacturers, testing laboratories, independent consultants who participate in ASTM, consumer groups and other supply chain stakeholders, wrote a letter⁷ to the CPSC urging them to delay implementation of any juvenile product rulemaking specific to product, package and instruction warnings until a consensus based approved approach could be reached within the ASTM process.⁸

The Chairman has embraced the concept of adherence to ANSI Z535, a recognized standard governing the appropriate development of labeling requirements. We welcome such recognition. In this regard, however, assigned staff must embrace this process and provide justification for suggested warnings and rationale for placement sought. Additionally, staff should recognize that they are subject to the requirements of such standard setting processes and appreciate the collaborative nature required in a consensus standard setting process under ASTM process rules. Such processes have served all interested parties well over the past several years.

Across several subcommittees (Infant Bath Tubs, Bouncers, Children's Chairs, High Chairs, etc.), there has been inconsistent messaging coming from CPSC staff as it relates to warnings and warnings format in the various standards. We believe that many of the changes proposed by CPSC staff are circumventing the collaborative nature of the ASTM process, are confusing for both manufacturers and the respective testing labs, and also go beyond ANSI Z535 standard requirements.

In this context, there are no studies or data that demonstrate that the very specific warnings format and wording from CPSC will change consumer behavior more effectively than other formats and wording formerly adopted.

Additionally, we believe that many of the changes are not advancing overall product safety for the consumer. For instance, CPSC's recommendations for warning placement increase the potential that bi-lingual warnings will not be feasible. Even the proposed requirements for "non-compressed Sans Serif" are not generally understood in the printing industry. In our opinion, CPSC staff should not seek to regulate borders, panels, or coloring beyond ANSI requirements. Changes and suggestions such as this do not advance

⁷ December 21, 2015 letter to CPSC Chairman Elliot Kaye expresses process concerns regarding Warning Labels as well as recommendations regarding process moving forward.

⁸Such concerns are independent of conformance with 16 CFR 1500.121

safety, make manufacturing products for the US market more cost prohibitive and may not allow for innovations to accommodate new designs. Finally highly specific warning and format requirements from CPSC staff risk possible misalignment of standards with other countries.⁹ At a time when governments openly talk about alignment of standards, this approach can lead to further conflict with worldwide requirements.

Like the CPSC, we share the mutual objective of advancing product safety. Many of us dedicate significant personal time, and resources at ASTM meetings. We appreciate CPSC's dedication and believe they play a valuable role in the standards setting process. However, in order to more efficiently ensure that the best standard is available for the consumer, we have requested that the CPSC delay any portion of a proposed rule that incorporates proposed warning language revisions until these issues can be thoroughly vetted and incorporated into the ASTM process. We want to be active partners in this enterprise and are hopeful that the agency appreciates our concerns as genuine.

III. Pending Projects Under CPSC Operating Plan

JPMA believes strongly in the importance of an effective recall combined with government cooperation. Our manufacturers pride themselves on their ability to reach consumers and educate care-givers when a recall occurs. For years, the CPSC has been a tremendous asset in getting potentially unsafe products off the store shelves. Their award winning voluntary recalls program¹⁰ has saved manufacturers countless hours of negotiations and ensured that recalled products are voluntarily removed from the shelves as quickly as possible. Additionally, this program affords the CPSC the opportunity to save staff time and resources by not having to investigate defective product claims. From our perspective, the proposed changes to the voluntary recalls rule are significantly problematic. As the oft used adage asks, "If it isn't broke, why are we looking to find ways to fix it"? The proposed changes will not change the way "bad actors" are currently engaging with the CPSC, but could reduce the efficacy such recalls by responsible actors and lead to conflict in the efficient implementation of voluntary recalls as bureaucratic requirements are imposed and required to be extensively reviewed and negotiated. Many of our manufacturers are small "mom and pop" entities who might not have resources to engage in extensive negotiations of formal voluntary recalls as prescribed in the proposed rule.¹¹

As this Committee is aware, Congress has had on multiple occasions the opportunity to make changes to the 6b process.¹² Like Congress, we agree that the confidentiality safeguards available under CPSA Section 6b remain important to assuring the exchange of

⁹ Health Canada has expressed concerns during Ad Hoc Warning Label Committee meetings regarding proposed changes and regulation alignment.

¹⁰ <http://www.cpsc.gov/en/Business--Manufacturing/Recall-Guidance/Innovations-in-American-Government-Award-Fast-Track-Recall-Program/>

¹¹ In November 2013, the CPSC issued a proposed rule (78 Fed. Reg. 69793) that could negatively impact the Commission's voluntary recall process and would place significant burdens on manufacturers and retailers. Despite extensive opposition to the proposed rule, and Statements that it was not a priority it remains in the Commission operating plan.

¹² <http://www.regulations.gov/#!documentDetail;D=CPSC-2014-0005-0018>

confidential data by manufacturers voluntarily reporting to the CPSC and in connection with the staff's ability to obtain proprietary information from entities conducting voluntary recalls.¹³

While we do not agree with the Commission's decision to keep these projects on the operating plan, we do appreciate the Chairman's public commitments that neither of these will be heard for decisional votes.

At JPMA, safety has been, and always will be, our top priority. Our members strive to work collaboratively with both federal and state legislators and regulators to advance product safety. We urge this committee and CPSC and to continue to look for opportunities outside the consensus standards process to encourage collaboration between industry, CPSC and the rest of the product safety community. We would like to thank and commend Chairman Kaye for his willingness to work with industry on issues like the electronic filing of certificates at import. His leadership in bringing the various stakeholders together to solve a problem is key to effective rulemaking. In working with the Customs Advisory Committee (COAC), CPSC has proposed a pilot program that takes into consideration many of the implementation challenges presented, while achieving the shared objective of stopping unsafe products from coming into the country. We are also encouraged with recent studies commissioned by CPSC to look for ways to reduce the burdens posed by excessive third party testing requirements, in ways that do not compromise a product's safety, and we hope that these efforts will finally result in meaningful relief to small companies.

Regulations and legislation play an important and vital role in ensuring that only the safest products make it to market, and JPMA will continue to support and advocate for regulation that is meaningful and beneficial to consumers. The CPSC leadership and staff continue to state that there is an open door policy at the agency for all stakeholders.

JPMA and its members take advantage of the opportunity and engage on a regular basis to ensure all information and positions are considered in any decisional matters by the Commission. It is paramount that this policy be maintained and respected for all issues that affect the regulated community and that considerations of thoughtful, insightful and expert industry information is considered during each stage of any process. Without this process, consumers will not be well served. We look forward to our continuing engagement with this Committee and the CPSC and the ability to walk through an open door.

Thank you Chairman Burgess and Members of the Committee for calling this hearing and inviting me to testify today. I look forward to your questions.

¹³http://c.ymcdn.com/sites/www.jpma.org/resource/collection/DAD0B69F-A001-4829-931E-1131DAF39D79/JPMA_Voluntary_Recalls_Comments_Final_-_Feb.3,2014.pdf