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Before The US Consumer Product Safety Commission on
“Agenda and Priorities FY 2017 and/or 2018”
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Thank you Chairman Kaye and Commissioners for the opportunity to provide testimony on your priorities for Fiscal Years (FY) 2017 and/or 2018.

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 and to provide our suggestions for priorities in the upcoming fiscal years. Since 2012, I have acted in the role of Director of Regulatory and Legislative of Affairs for JPMA. JPMA has a tremendous appreciation for the work CPSC has done since the implementation of the Consumer Product Safety Improvement Act (“CPSIA”) and related amendments thereto. 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.

CPSC’s engagement with all external stakeholders, including manufacturers, retailers, consumer advocates and safety experts, is key to the agency’s ability to fulfill its safety mission. Regulated industries should be viewed as partners in safety as they have vital information on product specifications, consumer behavior, global supply chains business practices and the real-life impact of regulations on businesses. Consistent stakeholder engagement will aid the CPSC in making better informed decisions and rulemaking, help guide the retroactive review of inefficient and burdensome regulations and perhaps most importantly, address emerging safety risk and hazards. We believe this engagement should be ongoing and formalized. Therefore, we are supportive of the development of Federal Advisory Committees to address ongoing issues that have a significant contribution to CPSC’s mission: import surveillance, recall effectiveness and information collection/management.

My testimony today, on behalf of JPMA, will focus on four areas: (1) Maintaining flexibility and openness as it relates to Section 104 of the CPSIA, more commonly referred to as the “104 rules” and CPSC staff involvement throughout the ASTM process; (2), initiate rulemaking on JPMA’s crib bumper petition to adopt the ASTM standard; (3), proper-

ly allocating resources to measure and evaluate recall effectiveness ; and (4) continuing to look at ways to reduce third party testing burdens placed on manufacturers and ensure resources are available to industry.

I. 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.

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

Finally, JPMA urges the Commission to work with Congress to address any potential shortfalls in the timing of 104 rules. On multiple occasions, Congress has provided the Agency with the opportunity to request changes to this process if necessary. To date, the Commission has not taken them up on that offer. Too often it seems that a standard is

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

rushed through the ballot process at ASTM, only to be changed during the final rule. This dynamic leads to the perception that the CPSC is the only expert in the room.

To that end, and as we all are aware, the CPSC has the authority to enforce current ASTM standards, In order to fully evaluate all data and make necessary changes, we would encourage the Agency to request flexibility in that process if the current rate is unattainable or compromising of the process.

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 to the process and believe staff play a valuable role in the standards setting process.

II. Initiate Rulemaking on JPMA Crib Bumper Petition

JPMA appreciates the Commission's recent February 16, 2016 Federal Register request, "Agency Information Collection Activities; Proposals, Submissions, and Approvals: Crib Bumpers" (CPSC Docket No. CPSC-2012-0034). JPMA and our members submitted comments and data that we believe will be helpful in your efforts to make a scientific determination on the use of this product. As the proper government agency with regards to this product category, we would urge the Commission to initiate rulemaking and make a determination regarding the use of this product.

III. Recall Effectiveness

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. The award winning voluntary recalls program⁷ 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

⁷ <http://www.cpsc.gov/en/Business--Manufacturing/Recall-Guidance/Innovations-in-American-Government-Award-Fast-Track-Recall-Program/>

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.⁸

As you know, recall effectiveness is a top priority for our industry as well as the Commission. We were encouraged by the Chairman’s remarks at ICPHSO regarding a workshop on this very topic. JPMA believes that all stakeholders play an important role in improving recall effectiveness. We would encourage the Commission to allocate the necessary funds to conduct this workshop with stakeholders. Additionally, JPMA would encourage the Commission to set forth its expectations of what is considered an “effective recall.”

By properly measuring results with quantifiable metrics such as consumer understanding of a recall and what it means to their product, customer choice in reacting to that recall, and price point recalls; rather than measuring results based solely on return rates, we can more effectively understand consumer behavior and better target messaging to ensure that all parties are notified of a recall and feel empowered to take the appropriate steps based upon their personal choice.

IV. Third Party Testing Reduction and Manufacturer Resources

Testing is a critical component to product safety assurance. However, small companies are still struggling with crippling costs associated with unnecessary and redundant third party tests, an unintended consequence of the requirements under the Consumer Product Safety Improvement Act of 2008. As mandated by P.L. 112-28, the amendment to the CPSIA, the agency has spent significant time identifying opportunities to reduce unnecessary testing burdens. However, to date, with limited exceptions these funds have gone to efforts that have resulted in very little relief for the manufacturing community. We urge the CPSC to continue to look for meaningful ways to reduce costs while still ensuring compliance.

A. Continue to Fund Ombudsman Office

The CPSC created an Office of the Small Business Ombudsman in 2010 which has proved to be an invaluable resource for small businesses who have CPSC compliance questions. The Ombudsman also spoke to businesses around the world educating companies about how to comply with product safety regulations. Most recently, the Office recently created a tool, the Regulatory Robot which is helpful for small companies to better determine what CPSC regulations would apply to their products. We urge the CPSC to

⁸ 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.

continue to invest resources to this position so that small businesses can continue to have a direct line into the CPSC.

Conclusion

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.

Finally, as you and your fellow Commissioners look at your individual staff plans for the upcoming year, we would like to encourage and invite you to JPMA's inaugural industry event in the spring of 2017 to be held in Anaheim, CA. This event will bring manufacturers, consumers, retailers, and industry stakeholders together to view new products, discuss safety improvements, and educate consumers about our industry. The event will incorporate and expand upon the programming traditionally offered at the JPMA Washington Summit, to enable a wider industry audience to benefit from direct access to information about the most current regulatory updates and priorities. We believe this is a great opportunity for you to speak to, and meet with, the regulated community and view the new products and innovations in the marketplace. As always, we look forward to our continuing engagement with CPSC and the ability to provide feedback and help in a meaningful way.

Thank you Chairman Kaye and Commissioners for the opportunity to provide JPMA's suggestions as you evaluate your priorities. I look forward to your questions.