
Dear Mr. Stevenson:

The Juvenile Products Manufacturer’s Association (“JPMA”) appreciates the opportunity to comment on the November 9, 2015 Federal Register notice of requirements, “Safety Standard for High Chairs” (CPSC Docket No. CPSC-2015-0031). The U.S. Consumer Product Safety Commission (“CPSC”) invited comments pursuant to Section 104 of the Consumer Product Safety Improvement Act (“CPSIA”), which directs the Commission to issue mandatory regulation on durable infant products. In response to the request of the Commission’s staff, the JPMA submits the following comments.

The Juvenile Products Manufacturers Association (JPMA) is a national not-for-profit trade organization representing 95% of the prenatal industry including the producers, importers, or 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 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.

As the CPSC is aware, JPMA and its members have been active participants in supporting the current progression of the children’s high chair standard. The ASTM subcommittee, in which many of our members actively participate, has taken CPSC input and critique, when voiced, into account when finalizing and revising the ASTM standard. For the most part, CPSC’s changes were incorporated and acknowledged throughout the process.

Proposed Changes

As referenced in the NPR, “CPSC staff believes that ASTM F404-15 effectively addressed the hazards indicated in the incident data, with the exception of two areas.” This conclusion by the CPSC is disappointing for several reasons. The CPSC staff, as participants in the Standard setting process at ASTM should have notified the ASTM...
subcommittee of its concerns that the ASTM high chair standard recently under development, required changes with substantive supporting data justifying any such changes consistent with generally recognized ANSI requirements.

When a key party at the ASTM subcommittee meetings, such as CPSC staff, elects not to fully engage with recommendations supported by hazard based data and a preponderance of evidence the process loses its effectiveness, and is undermined. This is particularly the case when a key party was involved in development of the previously enacted warnings and there has been substantive reliance on such requirements.

If a CPSC representative disagrees with the group or intends to hold steadfast to a position inconsistent with current or proposed ASTM requirements within a given standard it is imperative that those thoughts be expressed and substantiated, so stakeholders can reasonably assess them as part of the ASTM consensus standard setting process. JPMA has expressed similar concerns related to such process with the Agency over the past several months.

As it relates to the proposals in the NPR, there are currently several ballots being discussed at ASTM that are important to the progression of the final standard. Specifically, the NPR omits references to material proposals under sections 7.7.2.1, 7.7.2.2 and 7.7.2.3, which focus on forward and sideways stability, that are essential to the proper conduct of the specified test protocol for stability. Additionally, the NPR omits recently balloted revisions to sections 7.7.2.4 and 7.7.2.5 of the standard for clarification of testing when the high chair does not include a tray or arm. These provisions are currently being balloted through the ASTM process to revise the current standard F404-15 and should be reasonably considered as part of any regulatory assessment.

Similarly, the requirements proposed for rearward stability and the rearward test protocol are currently out for ballot. Therefore, JPMA recommends considerations of these revisions currently under review at ASTM and a delay in adoption and reliance on the current ASTM Standard until these revisions can be reasonably considered, adopted and integrated into the final standard.

**Warning Labels**

JPMA respectfully disagrees with the CPSC regarding the proposed changes to existing warning labels. Additionally, the manner in which these changes have been proposed, bypasses the collaborative nature of the ASTM process. We have previously expressed these concerns to the Commission.⁠¹ As the CPSC is aware, on May 15, 2015, ASTM,

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¹ December 21, 2015 letter to CPSC Chairman Elliot Kaye expresses process concerns regarding Warning Labels as well as recommendations regarding process moving forward. CPSC has indicated a preference for consistent warnings in conformance with ANSI requirements for same.
with CPSC staff involvement, approved F404-15. The voluntary standard became effective in October 2015 and is currently relied upon in the marketplace. However, on its face, the proposed final rule is at variance with such requirements. If adopted, these changes will place manufacturers, distributors and retailers in a regulatory predicament with significant financial and legal ramifications.

For those parties that maintain a commitment to ASTM F404-15 compliance for their high chairs, the proposed labeling rule represents a substantive change to all products. Without justification for such change and without an orderly phase in for compliance, existing, safe inventory would be rendered obsolete when the new standard becomes effective. As the CPSC is aware, since the proposed rule involves a substantive change to required warnings, shelved product would be required to be exchanged, modified or credited to assure product consistency. To illustrate further, compliance would require manufacturers to either add duplicative label warnings to the product, or remove the previously safe products from the marketplace.

Consider the following contrasting on-product warnings to avoid falls from a high chair:

<table>
<thead>
<tr>
<th>ASTM Warning:</th>
<th>CPSC’s Proposed High Chair Rule Warning:</th>
</tr>
</thead>
<tbody>
<tr>
<td>WARNING: Prevent serious injury or death from falls or sliding out, always use the restraint system.</td>
<td>Always use restraints and adjust to fit snugly. Tray is not designed to hold child in chair.</td>
</tr>
<tr>
<td>Never leave child unattended.</td>
<td>Stay near and watch your child during use.</td>
</tr>
</tbody>
</table>

Moreover, because the instructions must mirror the on-product labels, instruction manuals will also have to contain the duplicative warnings or be replaced. This is an additional consequence of failing to adhere to the ASTM Standard Setting process, which could have served to avoid or mitigate such problems. Importantly, these duplicative warnings also serve to complicate labeling and manuals introducing unnecessary confusion for the consumer trying to follow the guidance provided on key safety topics.

Because the proposed rule represents a departure from F404-15’s warnings requirements, we hereby request the following:

1. The on-product warnings and instructional requirements for high chairs in the federal regulation should conform to existing ASTM F404-15; or

2. The proposed implementation date for warnings on product and in the instructions be moved out well beyond six months. If provided one year to implement, then an orderly marketplace transition can likely be achieved.
While we sincerely appreciate and acknowledge the hard work and dedication that has been conducted by CPSC staff in proposing a mandatory performance standard for this product category, we believe staff should delay adoption of such a standard until it can be thoroughly vetted and aligned through the ASTM Standard setting process with an updated ASTM F404-15.

Sincerely,

Mark S. Fellin, MPS
Director of Regulatory and Legislative Affairs, JPMA