

July 8, 2010

Office of the Secretary
U.S. Consumer Product Safety Commission
Room 502
4330 East-West Highway
Bethesda, MD 20814

Re: Safety Standard for Bassinets and Cradles (CPSC Docket No. 2010-0028)

To Whom It May Concern:

Congress established the Office of Advocacy (Advocacy) under Pub. L. 94-305 to represent the views of small business before Federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA); as such the views expressed by Advocacy do not necessarily reflect the views of the SBA or of the Administration.

Background

The Consumer Product Safety Commission (CPSC) was authorized by section 104(b) of the Consumer Product Safety Improvement Act of 2008 (CPSIA) to promulgate consumer product safety standards for durable infant and toddler products. On April 28, 2010, the CPSC published in the *Federal Register* a notice of proposed rulemaking titled: Safety Standard for Bassinets and Cradles (75 Fed. Reg. 22303, April 28, 2010).

The new regulation proposes to adopt the industry's voluntary ASTM International (formerly American Society for Testing and Materials) standards as mandatory and to add several requirements including additional product testing and the elimination of certain product features such as strap restraints.

Advocacy Comments

Advocacy appreciates the need for this regulation and that the CPSC prepared an Initial Regulatory Flexibility Analysis (IRFA) in the proposed rule as required by the Regulatory Flexibility Act (RFA). As CPSC provided size data in the IRFA that indicates that most of the firms that manufacture and/or import bassinets, cradles and/or infant hammocks are small, the preparation of the IRFA was appropriate. However, Advocacy has chosen to file comments on this rule because certain industry sources, which generally are supportive of the CPSC policy decision to mandate the voluntary industry standards for cribs and bassinets, have voiced concerns about the potential economic impact of the regulation on their businesses.

While industry members have told us that they approve of the CPSC's decision to make the current ASTM standards mandatory for all manufacturers, they are concerned about the costs likely to be incurred due to additional safety and testing requirements that the CPSC has proposed. The industry concerns partly spring from the CPSC's prior regulatory impact analysis and regulatory flexibility analysis contained in the Children's Products Containing Lead rule (lead rule).¹ In the proposed lead rule CPSC determined and certified pursuant to §605 of the RFA that there would not be a significant impact on a substantial number of small entities. The industry representatives that approached Advocacy suggest that despite CPSC's subsequent exemption of some products from the testing requirements of the lead rule, the economic impact as measured by the CPSC was underestimated. For example, the Juvenile Product Manufacturers Association (JPMA), which includes 135 small manufacturers of children's products, reported additional spending of more than \$45 million on increased testing and compliance staff and losing at least \$138 million in destroyed or returned inventory as necessitated by the requirements of the lead rule. Advocacy hopes that by bringing industry's concerns to CPSC's attention the bassinet and cradle rule will be more transparent and less burdensome on the manufacturers/importers of the affected products.

CPSC suggests that the majority of the modifications recommended by the rule are expected to have only a minor effect on small manufacturers. CPSC acknowledges that the rule will require some manufacturers to incur significant modification costs if their products utilize rocking/rest angles, sleep surface angle and spacing requirements for soft-sided products. Unfortunately, CPSC does not have the data to determine what the associated costs were for the modifications. The CPSC also suggests that although the rule's requirements could affect a few small firms significantly, the costs associated with compliance could gradually be recouped with sales of numerous units, or the costs could be passed on to consumers. CPSC also acknowledges that some small infant hammock suppliers will likely chose to go out of businesses rather than expend the approximately \$5.00 per unit to modify their product to comply with the rule.

Generally the RFA recommends the use of economic data to help measure whether a rule will have a significant impact on a substantial number of small entities. Advocacy is concerned that there is virtually no economic data contained in the RFA section of the rule. CPSC contends that many of the costs of compliance will not be significant for small businesses because affected businesses will be able to pass costs through to end consumers. Advocacy disagrees with CPSC's assertion in the absence of data demonstrating that market conditions in the relevant product market are such as that the incidence of regulatory costs will be borne by consumers rather than producers. Specifically, this requires that demand in the market is highly inelastic (perfectly inelastic in the case of a total cost pass through). As CPSC is surely aware, highly inelastic demand curves are relatively rare, especially in broadly defined product markets where many reasonably close substitute goods are available. If the CPSC wants to pursue a cost estimation strategy that relies on determining what portion of regulatory costs are borne by producers and what part by consumers, Advocacy believes that a more sophisticated market model is required, including a robust, empirically-derived market demand curve.

¹ 74 Fed. Reg. 2433, January 15, 2009.

While it is apparent that many of the small businesses that contacted Advocacy already comply with the voluntary regulations that form the basis of the proposed regulations, the transparency of the rule would be greatly increased if CPSC would give the public some indication of the costs necessary to comply with the rule. This is important because the businesses that have to comply with this rule are concerned that it will raise their costs and cut their revenue severely. One small manufacturer of cribs, a JPMA member that requested anonymity, estimates that the additional requirements of this regulation will increase its costs by \$1 per affected item, ultimately costing the consumer more than \$3 per item, an increase large enough to drive down demand. Another manufacturer states that the changes will eliminate its entire line of rocking bassinets, which currently account for more than \$3 million in annual sales for the company. Advocacy assumes that this is the type of economic impact data that CPSC is seeking through public comment on this rule. Because of the dearth of cost data contained in the rule, the industry will have a hard time assessing and comparing its compliance costs with those assumed by the CPSC.

Section 603(c) of the RFA requires that the promulgating agency provide a description of any significant alternatives to the proposed rule that accomplish the stated objectives of the applicable statutes and which minimize any significant impact on small entities. The CPSC suggests that under CPSIA the primary alternative that would reduce the impact on small entities is to make the voluntary standard mandatory with no additions or modifications. While there may be merit to such an argument, Advocacy encourages the CPSC to entertain the possibility of additional alternatives, e.g. increased compliance times for small entities.

Conclusion

Advocacy requests that CMS take Advocacy's RFA comments and the concerns identified by the affected industry into consideration as the Agency finalizes this rule. Many of the suggested improvements can be included in CPSC's Final Regulatory Flexibility Analysis (FRFA). By improving the analysis in the FRFA, CPSC will greatly improve the transparency of the rule.

Thank you for your attention to the above matter. If you have any questions or concerns, please do not hesitate to contact me at (202) 401-6880, or linwood.rayford@sba.gov.

Sincerely yours,

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