



RETAIL INDUSTRY LEADERS ASSOCIATION

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June 17, 2020

Via Electronic Filing

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

Re: Safety Standard for Crib Bumpers/Liners; 85 Fed. Register 18878 (April 3, 2020); Docket ID: CPSC-2020-0010

Dear Secretary Mills:

The Retail Industry Leaders Association (RILA or the Association) appreciates the opportunity to submit written comments on the U.S. Consumer Product Safety Commission's (CPSC or Commission) proposed rule on Safety Standards for Crib Bumpers/Liners (Proposed Standard).¹ RILA and its members support the Commission's critical consumer safety mission and appreciate the CPSC's leadership on product safety matters, including consumer education campaigns, and stakeholder outreach.

By way of background, RILA is the U.S. trade association for leading retailers. We convene decision-makers, advocate for the industry, and promote operational excellence and innovation. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs, and more than 100,000 stores, manufacturing facilities, and distribution centers domestically and abroad.

RILA members take very seriously the compliance and safety of all products they sell, especially those intended for use by their youngest and most vulnerable customers. RILA members devote significant resources to ensuring products they sell meet or exceed applicable safety requirements. In addition, RILA routinely partners with other organizations (e.g., the Juvenile Product Manufacturing Association and Toy Association) to educate parents and caregivers on important children's product safety issues. RILA and its members also have a long history of collaborating with the CPSC to address consumer product safety issues, including regularly cooperating to implement product recalls, actively participating in the Commission's industry partnership programs, and promoting CPSC's consumer awareness initiatives.

¹ Notice of Proposed Rulemaking, Safety Standard for Crib Bumpers/Liners; 85 Fed. Register 18878 (April 3, 2020); Docket ID: CPSC-2020-0010.

RILA's comments will not cover the technical requirements of the Proposed Standard, which will be addressed by other expert commenters. Instead, RILA takes this comment opportunity to highlight an overarching policy recommendation around the Commission's safety standard-setting process, as well as to put forward one recommendation specific to the Proposed Standard, detailed below.

- As part of its regulatory agenda setting process, the Commission should prioritize promulgation of safety standards for consumer product categories where, in the absence or delay of a federal standard, states and cities are moving to enact state and local standards and bans that can create an inconsistent patchwork of product safety mandates.
- Consistent with Consumer Product Safety Act to develop uniform safety standards for consumer products, the Commission should clarify that its final safety standard for crib bumpers/liners preempts any existing state and local standards.

Each of these recommended priorities is discussed in more detail below.

1. Prioritize Promulgation of a Federal Safety Standard Where Emerging State Activity is Creating a Potential Patchwork of Inconsistent Product Safety Mandates

In recent years, there has been increasing momentum from some states and cities to move forward with issuing state and locality-specific consumer product safety mandates, and even bans on the sale of specific product categories, where federal standards are delayed or absent. This growing trend can lead to a patchwork of state and local standards that creates confusion for consumers and retailers alike. In addition, for large retailers like RILA members that operate in multiple states or nationwide, inconsistent, and different product compliance requirements create significant supply chain challenges and administrative burdens.

On the specific issue of crib bumpers/liners, the Commission's Proposed Standard comes a number of years after some states and localities have moved to take regulatory action in the wake of perceived inaction or delay in setting a federal safety standard.² For example, an Ohio ban on the sale or manufacture of non-mesh crib bumpers went into effect in April 2017.³ A provision within the Ohio law carved out an exception that allowed for the continued sale of mesh bumpers for three years beyond the April 2017 ban, at which point a ban on mesh bumpers would go into effect if the CPSC did not establish a safety standard in the interim. Given the delay in the CPSC action to issue a safety standard within that three-year period, all bumper/liner products are now subject to the Ohio ban as of April 17, 2020.

² See e.g., Press Release, New York State, [Governor Cuomo Signs Legislation Expanding Infant Safety Measures](#) (Aug. 13, 2019); Press Release, State of Maryland, [Sale of Hazardous Baby Bumper Pads to be Banned in Maryland](#) (Nov. 16, 2012).

³ [Title 37 Ohio Rev. Code § 3713.022](#)



RILA recognizes that the CPSC operates on a lean budget and must make difficult decisions as to which rulemakings should be prioritized with its limited resources. As part of its regulatory agenda setting process, RILA urges the Commission to consider state and local action around standard setting as it prioritizes resources toward promulgating federal product safety standards.

RILA also urges the Commission to act expeditiously to finalize the Proposed Standard following the close of comment period. In this case, a federal safety standard is needed to eliminate consumer confusion and restore regulatory predictability and consistency nationwide.

2. Include a Clear Preemption Provision in the Final Standard

The Consumer Product Safety Act, the CPSC's authorizing statute, makes it clear that one of the Commission's key roles is to "to develop uniform safety standards for consumer products and to minimize conflicting State and local regulations."⁴ RILA supports CPSC's conclusion in its preemption discussion in the notice for the Proposed Standard that Section 26(a) preemption does apply to consumer product safety standards for durable infant or toddler products, including crib bumpers/liners.⁵ To restore and maintain consistent product safety standards nationwide, RILA encourages the CPSC to include a clear statement in its final rule for the standard that it preempts any existing state or local crib bumper/liner safety standards.

Closing

In closing, RILA and its members strongly support the CPSC's consumer safety mission and share the Commission's commitment to protecting consumers and ensuring that all products sold to U.S. consumers are in stringent compliance with all applicable safety standards and legal requirements. We appreciate CPSC's leadership and consistent track record of meaningful engagement with stakeholders.

If you have any questions or need any additional information, please contact me at susan.kirsch@rila.org or (202) 866-7477.

Sincerely,

Susan Kirsch
Director Regulatory Affairs and Compliance

⁴ See 15 U.S.C. 2051(b)(3).

⁵ See discussion under "XVI Preemption" at 85 Fed. Reg 18893.

