



June 17, 2020

Division of the Secretariat
U.S. Consumer Product Safety Commission
Room 820
4330 East West Highway
Bethesda, MD 20814

**Comments of Consumer Reports to the
Consumer Product Safety Commission on the
Notice of Proposed Rulemaking:
“Safety Standard for Crib Bumpers/Liners”
Docket No. CPSC-2020-0010**

Consumer Reports, the independent, non-profit member organization,¹ welcomes the opportunity to submit comments to the Consumer Product Safety Commission (CPSC) regarding the agency’s notice of proposed rulemaking to establish a mandatory safety standard for crib bumpers/liners. We commend the CPSC for proposing a rule that would establish mandatory safety standards for crib bumpers/liners so that the products more closely align with medical experts’ safe sleep recommendations.

Parents and caregivers should be able to trust that all infant products—and especially those designed or marketed to be used for sleep—meet strong standards. However, the current voluntary standard for crib bumpers fails to keep babies safe and can give parents and caregivers a false sense of security. Accordingly, Consumer Reports strongly supports the proposed CPSC standard, with modest refinements to its performance tests, and urges the agency to finalize it expeditiously.

The Commission proposes promulgating a mandatory safety standard under section 104 of the Consumer Product Safety Improvement Act (CPSIA)² for crib bumpers/liners that would expand, build on, and substantially strengthen the current ASTM International standard, *Standard Consumer Safety Performance Specification for Infant Bedding and Related Accessories*, with respect to crib bumpers/liners (ASTM F1917-12). The proposed CPSC standard would apply to all crib bumpers/liners, expand the number of products subject to the

¹ Founded in 1936, Consumer Reports uses its dozens of labs, auto test center, and survey research center to rate thousands of products and services annually. CR works together with its more than 6 million members for a fairer, safer, and healthier world, and reaches nearly 20 million people each month across our print and digital media properties.

² Section 104(b) of the CPSIA requires the Commission to promulgate consumer product safety standards for durable infant or toddler products. These standards are to be substantially the same as relevant voluntary standards or more stringent than the voluntary standards if the Commission determines that more stringent standards would further reduce the risk of injury associated with such products. 15 U.S.C. 2056a(b)(1)(B).

ASTM standard's thickness test, and include two additional tests for firmness and airflow. The proposed rule reasonably reflects the research and incident data showing clear hazards of crib bumpers to infants and would more closely align with American Academy of Pediatrics (AAP) safe sleep recommendations than current voluntary standards.

While we do not address all of the questions posed by the CPSC in these comments, we stress certain key principles and make several core recommendations.

I. Crib bumpers pose serious risks of injury to infants and the CPSC should finalize a strong mandatory standard under section 104 of the CPSIA

To reduce the serious risk of injury to infants associated with crib bumpers, the CPSC should finalize under section 104 of the CPSIA its proposed rule for crib bumpers/liners, which is more stringent than the relevant voluntary standards.³ Section 104(f) of the CPSIA defines “durable infant or toddler product” as “a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years.”⁴ This subsection also includes a list of durable infant or toddler product categories that is “not static” or “non-exhaustive,” according to the CPSC.⁵

Crib bumpers have no place in a safe sleep environment and “have been implicated as a factor contributing to deaths from suffocation, entrapment, and strangulation,” according to the AAP safe sleep recommendations.⁶ In September 2019, CPSC staff identified 113 fatal and 113 non-fatal incidents related to crib bumpers between 1990 and 2019.⁷ From branded data that the CPSC released in error, and which may overlap with the information included in the CPSC staff briefing package, CR identified 23 infant fatalities tied to crib bumpers between 2012 and 2018.⁸

³ 15 U.S.C. § 2056a(b)(1)(B).

⁴ 15 U.S.C. § 2056a(f).

⁵ “CPSC staff also recognized in its 2016 Crib Bumper Briefing Package, that the list provided in the statute “is not intended to be exhaustive.” CPSC, “Briefing Package: CPSC Staff Response to the Record of Commission Action on Crib Bumpers” (Sept. 9, 2016) (online at: www.cpsc.gov/s3fs-public/StaffResponsetotheRecordofCommissionActiononCribBumper.pdf) at PDF p. 33; “In a 2009 rulemaking, the Commission explained that the list of products in section 104(f), and codified in the Commission’s consumer registration rule in 16 CFR 1130.2, is not static.” CPSC, “Amendment to Requirements for Consumer Registration of Durable Infant or Toddler Products” 83 Fed. Reg. 50542, 50543 (Oct. 9, 2018) (online at: www.govinfo.gov/app/details/FR-2018-10-09/2018-21865).

⁶ AAP, “SIDS and Other Sleep-Related Infant Deaths: Updated 2016 Recommendations for a Safe Infant Sleeping Environment” (Nov. 2016) (online at: pediatrics.aappublications.org/content/pediatrics/early/2016/10/20/peds.2016-2938.full.pdf).

⁷ CPSC staff briefing package on “Proposed Rule: Safety Standard for Crib Bumpers/Liners under the Danny Keysar Child Product Safety Notification Act” (Sept. 4, 2019) (online at: www.cpsc.gov/s3fs-public/Proposed%20Rule%20-%20Safety%20Standard%20for%20Crib%20Bumpers-Liners%20Under%20the%20Danny%20.._0.pdf).

⁸ Consumer Reports received branded incident data in error from the CPSC. See CPSC, “Section 6(b) Information Disclosure” (Apr. 2019) (online at: www.cpsc.gov/Business--Manufacturing/section-6b-information-disclosure); CR, “CR statement regarding CPSC information disclosure” (Apr. 19, 2019) (online at: advocacy.consumerreports.org/press_release/cr-statement-regarding-cpsc-information-disclosure).

Especially given the serious risks crib bumpers pose to infants, the CPSC is within its discretion to promulgate a mandatory standard under section 104 of the CPSIA that effectively would remove all padded crib bumpers from the marketplace. We agree with the proposed rule's reasons for classifying crib bumpers/liners as a durable infant or toddler product.⁹ In addition to being an accessory to a crib, it is clear that crib bumpers/liners share more similarities with other durable infant or toddler product categories than with infant bedding and accessories. For example, they use many of the same materials and design elements as parts of other durable products, like play yard walls and infant swing padding and stitching.

With respect to the proposed performance testing, CR does not consider the two-inch maximum thickness requirement and its related test method sufficient to protect infants from suffocation and other risks. As the CPSC documents in the notice of proposed rulemaking, one sample that passed the maximum thickness test yet failed the firmness test measured 2.5 inches thick, and its "very pliability, or softness, allowed it to pass the thickness test."¹⁰ This underscores the importance of establishing protective performance requirements for both thickness and firmness, and raises serious concerns that the two-inch maximum thickness requirement is inadequate and may lead to products on the market that put infants at a greater risk of suffocation or entrapment/wedging. In its final rule for crib bumpers/liners, CR urges the CPSC to establish a maximum thickness requirement that is significantly more stringent than a two-inch requirement in order to further reduce the risk of injury associated with crib bumpers/liners. Our informal review of the market indicates that most crib bumpers are significantly thinner than two inches thick, showing the feasibility of a more stringent thickness requirement under the proposed standard.

Furthermore, CR considers it unlikely that a performance requirement based on the airflow characteristics of mesh bumpers/liners would be protective enough to eliminate the risks of infant suffocation against a padded bumper. An airflow performance requirement would not obviate the need for thickness and firmness tests along the lines of what the CPSC has proposed, because there is a nearly-infinite number of variables for crib bumpers/liners' size, shape, and ability to conform to infants' faces, which themselves could contribute to a greater risk of injury or death for infants.

II. The continued sale of hazardous crib bumpers muddles critical safety messages to parents and caregivers by contradicting expert safe sleep recommendations

In 2016, the AAP formally updated and published its recommendations for a safe infant sleeping environment, following a thorough, multi-year process by pediatricians to evaluate the state of the medical evidence. The AAP's safe sleep recommendations include placing babies alone to sleep on a firm, flat surface in their own space, with no extra bedding.¹¹ The continued

⁹ "Crib bumpers are intended for, and reasonably expected to be used by, children under age 5. They are used with cribs, a product the CPSIA identifies as an example of a durable infant or toddler product. Like the other product categories, crib bumpers are covered by *[sic]* voluntary standard." CPSC, "Safety Standard for Crib Bumpers/Liners" 85 Fed. Reg. 18878, 18888 (Apr. 3, 2020) (online at: www.regulations.gov/document?D=CPSC-2020-0010-0001).

¹⁰ *Id.* at 18883.

¹¹ *Supra* note 6.

sale of crib bumpers/liners fundamentally contradicts these expert recommendations, muddles messages for safe infant sleep, and ultimately contributes to infants being put at risk.

Messaging around safe sleep recommendations—including that infants should sleep with nothing in the crib that could obstruct their breathing—should be clear and consistent for parents and caregivers. In the current marketplace, crib bumpers are one of many products marketed to keep infants safe, making it difficult for consumers to discern which products align with the recommendations. Well-meaning parents and caregivers, and especially new parents or grandparents, may unwittingly put infants at risk as they think they are doing the right thing.

In January 2020, CR queried its consumer research panel of 1,000 people, which included 248 self-identified parents, and asked the parents how they understood crib bumpers in the context of the “bare is best” message. What we found was that while 73% of the parents believed “bare is best” for infant sleep, only 55% of the parents believed that crib bumpers are unsafe to use for infant cribs. This stark contrast in responses—nearly a 20% difference—demonstrates the confusion that crib bumpers create for parents, since the use of crib bumpers inherently conflicts with “bare is best.”

The proposed rule better aligns with AAP safe sleep recommendations by making clear that padded crib bumpers are unsafe for infant sleep. While we commend the CPSC for taking this critical step toward effectively removing padded crib bumpers from the market, Consumer Reports also stresses the importance that all infant products should fully align with the AAP’s safe sleep recommendations. The agency should continue researching the safety of non-padded mesh liners and take appropriate action that protects infants from risks of injury or death by suffocation, entrapment, or another proximate cause.

III. The CPSC should foreclose any possibility of preempting state and local protections in finalizing its proposed standard for crib bumpers/liners

CR and its safety advocate partners have long called for the CPSC to prohibit crib bumpers, but the agency has failed to take meaningful action for years as infants have died.¹² As a result, CR and its partners have supported government and retailer actions to prohibit their sale. In recent years, Maryland, Ohio, New York State, and Chicago, Illinois, all have banned crib bumpers. In addition, most major retailers, including Walmart and Target, have removed crib bumpers from shelves.¹³ With a number of state and local jurisdictions already having laws or rules that ban padded crib bumpers, the CPSC should include provisions in its final crib bumpers/liners rule to expressly foreclose any possibility that the rule would preempt a state or

¹² “Comments of Kids In Danger, Consumer Federation of America, and Consumers Union on “Petition Requesting a Performance Standard to Distinguish and Regulate ‘Hazardous Pillow-Like’ Crib Bumpers from ‘Non-hazardous Traditional’ Crib Bumpers” (Aug. 24, 2012) (online at: www.regulations.gov/document?D=CPSC-2012-0034-0004); AAP, “CPSC Fails to Ban Crib Bumpers Dangerous to Infants” (Nov. 4, 2016) (online at: www.aap.org/en-us/about-the-aap/aap-press-room/Pages/CPSC-Fails-to-Ban-Crib-Bumpers-Dangerous-to-Infants.aspx).

¹³ Kids In Danger, “Testimony of Nancy A. Cowles the House Sub-Committee on Consumer Protection and Commerce, *Protecting Americans From Dangerous Products: Is the Consumer Product Safety Commission Fulfilling its Mission?*” (Apr. 9, 2019) (online at: docs.house.gov/meetings/IF/IF17/20190409/109316/HHRG-116-IF17-Wstate-CowlesN-20190409.pdf).

local protection that already exists. CR recommends that the CPSC take this step as a precaution, to remove any doubt that its intent is to preserve existing state and local requirements like those previously mentioned, which provide “a significantly higher degree of protection” from crib bumpers/liners’ risk of injury to infants as compared to the CPSC’s proposal and do not “unduly burden interstate commerce.”¹⁴

IV. After nearly three decades of research, the CPSC should finalize the proposed safety standard expeditiously, including an effective date that is as early as possible and not more than six months after issuance of the final rule

It is urgent for the CPSC to finalize the proposed safety standard for crib bumpers after nearly three decades of inaction. More than 100 infant deaths are linked to padded crib bumpers, and until the new standard is implemented, parents and caregivers in many jurisdictions will continue to be at an elevated risk of purchasing a product for their babies that fundamentally conflicts with safe sleep recommendations. Accordingly, CR urges the CPSC to modify the proposed effective date of 12 months after publication of a final rule for products manufactured or imported on or after that date. We urge the CPSC to set an effective date that is as early as possible and not more than six months after publication of a final rule. Given the substantial hazards posed to infants by products that would not meet the new safety standard, the CPSC should not just prohibit the manufacture and import of nonconforming crib bumpers/liners as of that date. Instead, the CPSC should follow the approach it took in 2010 for its final rule on cribs,¹⁵ and make it unlawful as of the effective date to sell, lease, or otherwise distribute or provide a crib bumper/liner for use that does not meet the new CPSC standard, regardless of the date on which the product was manufactured.

V. Conclusion

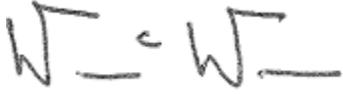
Infant health and safety is critical when evaluating the potential benefits and risks of consumer products. Companies and regulators must do all they can to eliminate confusion around what is safe and not safe, especially for products used for infant sleep and intended for when users of the products are at their most vulnerable. The agency should not give a stamp of approval to the category of products known as crib bumpers and thereby contribute to the public remaining confused about how to satisfy the “bare is best” recommendation for infant sleep. Instead, the CPSC should demonstrate safety leadership, and better align its own policies with expert, evidence-based safe sleep recommendations.

Thank you for your consideration of our comments. We look forward to continuing to work with the CPSC and all stakeholders to ensure a strong standard that will finally remove hazardous crib bumpers from the marketplace.

¹⁴ 15 U.S.C. § 2075(c).

¹⁵ CPSC, “Safety Standards for Full-Size Baby Cribs and Non-Full-Size Baby Cribs; Final Rule” 75 Fed. Reg. 81766 et seq. (Dec. 28, 2010) (online at: www.govinfo.gov/content/pkg/FR-2010-12-28/pdf/2010-32178.pdf).

Respectfully submitted,

Handwritten signature of William Wallace, consisting of stylized, blocky letters.

William Wallace
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Handwritten signature of Oriene Shin, written in a cursive script.

Oriene Shin
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