



August 25, 2022

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:
“Ban of Inclined Sleep Products”
Docket No. CPSC-2022-0025**

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 codify the ban on inclined sleep products pursuant to the Safe Sleep for Babies Act (SSBA).² Consumer Reports strongly supports and welcomes the CPSC’s action to categorize inclined sleep products, regardless of the date of manufacture, as a banned hazardous product under section 8 of the Consumer Product Safety Act (CPSA).³

Parents and caregivers should be able to trust that all products for infant sleep must meet strong standards that align with medical evidence on how to keep babies safe. However, until now, parents have had to navigate a confusing marketplace in which infant sleep products were offered for sale despite not being required to comply with any minimum CPSC safety requirements. Tragically, sleep-related deaths among infants remain stubbornly high, with an estimated 3,500 infants younger than one year old dying from sudden unexpected infant death (SUID) each year.⁴ Following the lead of the American Academy of Pediatrics (AAP), Consumer Reports and partner organizations have repeatedly voiced serious concerns about those infant products, including inclined sleep products, that do not align with evidence-based

¹ Founded in 1936, Consumer Reports (CR) is an independent, nonprofit and nonpartisan organization that works with consumers to create a fair and just marketplace. Known for its rigorous testing and ratings of products, CR advocates for laws and company practices that put consumers first. CR is dedicated to amplifying the voices of consumers to promote safety, digital rights, financial fairness, and sustainability. The organization surveys millions of Americans every year, reports extensively on the challenges and opportunities for today's consumers, and provides ad-free content and tools to 6 million members across the U.S.

² Safe Sleep for Babies Act of 2021, Pub. L. No. 117-126 (2022).

³ 15 U.S.C. 2057d.

⁴ AAP, “Sleep-Related Infant Deaths: Updated 2022 Recommendations for Reducing Infant Deaths in the Sleep Environment” (July 21, 2022) (online at: publications.aap.org/pediatrics/article/150/1/e2022057990/188304/Sleep-Related-Infant-Deaths-Updated-2022).

safe sleep recommendations. Together, we called for the removal of inclined sleep products from the marketplace.

In 2019, CR began an extensive investigation into the safety of inclined sleep products which ultimately revealed that dozens of previously undisclosed infant deaths were linked to inclined sleepers.⁵ After CR published the alarming results of our investigation in April 2019, Fisher-Price recalled all 4.7 million Rock 'n Play Sleepers in the U.S., and Kids II recalled nearly 700,000 rocking sleepers.⁶ Since CR's initial reporting, the number of reported infant deaths connected to inclined sleepers has almost tripled to nearly 100, and the CPSC has continued to secure recalls of infant products that put sleeping infants at serious risk of injury and death. In July 2022, the AAP further specified in an updated version of its safe sleep guidelines that sleep surfaces with inclines of greater than ten degrees are "unsafe for infant sleep."⁷

CR commends the CPSC for its ongoing work to protect the public from hazardous infant products that may be used for sleep, including the agency's compliance activity and its final rule establishing a safety standard for infant sleep products (ISP Rule), which went into effect in June 2022. As the agency continues its work to ensure compliance with the ISP Rule and implement the SSBA, we offer the following comments in response to the CPSC's questions provided in the agency's notice of proposed rulemaking.

I. The CPSC should implement the SSBA's ban on inclined sleepers for infants as soon as possible and no later than November 12, 2022.

A growing body of medical evidence makes clear: inclined sleep products are not safe for infant sleep. CPSC data, CR reporting, and a congressional investigation have tied nearly 100 infant deaths to inclined sleep products. Medical and biomechanical research has concluded that placing infants on sleep surfaces with inclines greater than ten degrees is unsafe for infant sleep.⁸ Given the substantial hazards that inclined sleep products pose to infants, the CPSC should implement the ban as early as possible and no later than November 12, 2022, the date required under the SSBA. The CPSC must take this opportunity to prohibit all inclined sleep products for

⁵ CR's investigation was based in part on our analysis of previously undisclosed, manufacturer-specific data that the CPSC released in error to CR, as well as reviews of lawsuits and interviews with numerous medical experts, product engineers, government and industry officials, and parents. CR, "Fisher-Price Rock 'n Play Sleeper Should Be Recalled, Consumer Reports Says" (Apr. 8, 2019; last updated May 16, 2019) (online at: www.consumerreports.org/recalls/fisher-price-rock-n-play-sleeper-should-be-recalled-consumer-reports-says); CR, "Four More Deaths Linked to Infant Sleepers Like the Fisher-Price Rock 'n Play Sleeper" (Apr. 11, 2019; last updated May 16, 2019) (online at: www.consumerreports.org/child-safety/more-deaths-linked-to-infant-sleepers-like-fisher-price-rock-n-play-sleeper); CR, "While They Were Sleeping" (Dec. 30, 2019) (online at: www.consumerreports.org/child-safety/while-they-were-sleeping).

⁶ CR, "Fisher-Price Recalls the Rock 'n Play Sleeper After It Was Tied to Infant Deaths" (Apr. 12, 2019; last updated May 16, 2019) (online at: www.consumerreports.org/recalls/fisher-price-recalls-rock-n-play-sleeper); CR, "Kids II Recalls Inclined Sleepers Linked to Infant Deaths" (Apr. 26, 2019) (online at: www.consumerreports.org/recalls/kids-ii-inclined-sleeper-recall-rocking-sleepers-linked-with-infant-deaths).

⁷ *Supra* note 4.

⁸ *Id.*; Mannen EM, Carroll J, Bumpass DB, et al. Biomechanical analysis of inclined sleep products. Little Rock, AR: University of Arkansas; 2019.

infants—regardless of manufacture date—from being sold, offered for sale, manufactured for sale, distributed in commerce, or imported.

II. The CPSC should interpret the SSBA to provide strong, sensible, and easily-understood safety protections for infants and their families.

The SSBA is a critical law that will help clarify the marketplace for parents and caregivers and help keep infants safe. Consumer Reports provides the following comments on interpreting, codifying, and enforcing the SSBA with respect to inclined sleep products for infants.

- *How should the Commission interpret and implement the phrase “sleeping accommodations” for purposes of the SSBA ban?*

The CPSC should interpret “sleeping accommodations” as any product that parents or caregivers reasonably would be expected to use for the purpose of having a baby sleep, regardless of duration and whether or not the sleep is attended/supervised. In the wake of CR’s reporting and the recalls of the Fisher-Price Rock ‘n Play and other similar products, many inclined sleep products were repackaged and renamed with a different stated purpose, like a “soother” or “lounger.” This practice all too easily could have created confusion for parents and allowed for inclined sleep products to remain on the market under a different name. The Commission should apply the term “sleeping accommodation” broadly enough to account for such practices and ensure that any products that either were intended, marketed, or designed originally for infant sleep or that include key design elements of inclined sleepers are subject to scrutiny for the purposes of this ban.

- *What, if any, effect should inclusion of the term “designed” in the SSBA have on the Commission's interpretation and implementation of the SSBA as compared to the ISP Rule?*

The inclusion of the term “designed” in the SSBA reinforces the CPSC’s ability to comprehensively identify all inclined sleep products and protect the public from their risks. At a minimum, this includes those products that originally may have been designed or intended for infant sleep at an incline, but have been rebranded or repackaged as products for a different stated purpose, like “lounging” or “soothing.” Before the SSBA and the ISP Rule, such practices by manufacturers frequently muddled the marketplace and made it extremely difficult for parents and caregivers to know which infant products available for purchase were safe for infant sleep and which were not. Inclusion of the term “designed” in the SSBA backs up the CPSC’s ability to take appropriate action on products that are inclined sleep products for infants, yet may have been packaged, labeled, or marketed differently in an attempt to evade restrictions under the ISP Rule.

- *In the SSBA, what product characteristics, if any, demonstrate that a product is “designed” for sleep?*

In implementing the SSBA, the CPSC should consider product characteristics and features that reasonably could be understood as facilitating infant sleep, regardless of duration or whether the sleep is supervised, including the following:

1. Product designs that include features that likely would facilitate babies falling asleep or remaining asleep, like soothing sounds, nature sounds, or vibrations.
 2. Aesthetic design features that may signal to parents or caregivers that the product is to be used for sleep, including muted color schemes, nighttime themes, and illustrations of sleeping animals or closed eyes.
 3. Characteristics and features that serve no other purpose but to indicate to the parent that the product is designed to keep your infant cozy, including features like soft pillow-like headrests and plush padding when present in a product that does not need those attributes for any other purpose unrelated to sleep.
 4. Unclear warning labels that fail to warn against infant sleep generally and warn only against specific types of sleep, such as “prolonged,” “unattended,” or “overnight” sleep.
- *How should the Commission interpret and implement the terms “marketed” and “intended” as a sleeping accommodation in the SSBA? Should these terms be interpreted and implemented the same as in the ISP Rule? Why or why not?*

The CPSC should interpret “marketed” and “intended” broadly, and in the same way for both the SSBA and the ISP Rule. Such an approach would help to minimize confusion for parents and caregivers as to which products are safe and which are not. A uniform and broad interpretation of these terms would assist the CPSC in protecting the public and help keep inclined infant sleep products out of the marketplace.

- *What is the significance of the age distinction between the ISP Rule and the SSBA's ban? How might this difference bear on implementation of the SSBA as compared to the ISP Rule, including with respect to developmental differences between a newborn to 5 month old as identified in the ISP Rule, versus a newborn to 1 year old as identified in the SSBA?*

The age distinction between the IISP Rule and the SSBA is significant and indicates a need for the CPSC to address different hazard concerns in a complementary manner. Newborn and young infants have not yet developed the neck muscle strength to lift and hold up their heads, nor the arm strength or motor skills needed to roll back over once on their stomachs. As a result, they are at greater risk of specific hazards, including positional asphyxia. As older infants reach various developmental milestones, build greater strength, and increase their mobility, inclined sleep products may present different hazard concerns, including an increased risk of strangulation from straps and other types of restraints. The SSBA requires that the CPSC address the hazards associated with inclined sleep surfaces for older infants in a way not currently

reflected in the ISP Rule. Together, the ISP Rule and the SSBA would help address the wide range of hazards posed by inclined sleep products for infants up to one year of age.

- *How, if at all, should the SSBA's ban of inclined sleepers for infants affect the ISP Rule or the Commission's application of it?*

The SSBA ban on inclined sleep products for infants should not limit the agency's ongoing work to implement its ISP Rule. Consumer Reports strongly supports the Rule, which went into effect on June 23, 2022, and the agency's vigorous enforcement of its requirements. The Rule establishes strong protections for infants by requiring all infant sleep products to comply with minimum CPSC safety standards that align with expert safe sleep guidelines.

The SSBA's ban on inclined sleepers reinforces the CPSC's ISP Rule and builds on its foundation to ensure all inclined sleep products for infants are kept out of the marketplace. The CPSC should use all authority under the SSBA and the ISP Rule to conduct an extensive review of infant products currently in the market and execute compliance and enforcement actions to protect the public from hazardous infant products, including all inclined sleep products.

III. The CPSC should set testing and certification requirements to ensure compliance with the SSBA and minimize the risk of companies evading the new law.

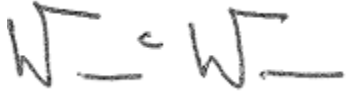
The CPSC should require manufacturers of any inclined infant product to submit independently certified test results to demonstrate that a product is not within the scope of the ban and that it complies with CPSC regulations. Specifically, these manufacturers should have to demonstrate that a product is not a sleep product or that the product has a sleep surface with an incline of less than 10 degrees and complies with one of the mandatory safety standards for sleep products (bassinets/cradles, cribs, play yards, or bedside sleepers). Such testing and certification would help to eliminate potential loopholes that would enable products that should be banned to be offered for sale to consumers; moreover, it would help avoid muddling the longstanding "bare is best" messaging.

IV. Conclusion

Health and safety must be paramount when evaluating the potential benefits and risks of consumer products—and especially infant products. The CPSC should promptly implement the SSBA's ban on inclined sleep products and issue a final rule as soon as possible and no later than November 12, 2022. The agency also should ensure that this final rule protects infants from any new or emerging type of product that conflicts with well-established safe sleep guidelines.

Thank you for your consideration of our comments. We look forward to continuing to work with the CPSC and stakeholders to ensure that all infant sleep products align with expert, evidence-based safe sleep recommendations.

Respectfully submitted,

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

William Wallace
Associate Director, Safety Policy

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

Oriene Shin
Policy Counsel