



U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

STATEMENT OF COMMISSIONER DANA BAIOTTO

Statement of Commissioner Dana Baiotto on Final Rule for Infant Sleep Products

On Wednesday, June 2, 2021, the U.S. Consumer Product Safety Commission approved a final rule that requires all infant sleep products, which are marketed or intended to provide sleeping accommodations for infants up to 5 months of age, and that are not currently subject to any of CPSC's standards for infant sleep, to meet a mandatory safety standard generally applicable to bassinets and cradles. The goal of this rule is also to ensure that sleep products align closely with the safe sleep recommendations of the American Academy of Pediatrics (AAP). The AAP recommends that infants sleep alone, on their backs, on a firm flat surface, and with no extra bedding.

To be clear, no matter how others choose to (mis)characterize my vote, I supported this rule. Indeed, I voted in favor of the final rule to the extent it was harmonious with the SNPR – in language and in spirit.¹ In conjunction with that supporting vote, I also asked the Agency to take additional action with regard to the portion of the rule that I believe was overly broad and short on notice and an opportunity for all stakeholders to be heard. I am deeply troubled by the reasonably foreseeable impact that this rule inevitably will inflict upon a particular class of consumers whose viewpoints were given short-shrift. This is where the fork in the rulemaking road for me veers from my colleagues.

In its practical application, the final rule, which goes into effect in 12 months, will limit the infant sleep product market to cribs (full and non-full size), play yards, bassinets and cradles, and bedside sleepers. In other words, regardless of whether a product was previously available for parents to select in accordance with their life style or personal beliefs, if it does not fit into one of these categories and comply with the corresponding safety standard, it must be “redesigned.” The products that are not or cannot be redesigned will be banned *de facto*. The result will impact, in whole or in part, the bedsharing community.

Bedsharing is, in its most basic form, just as it sounds. For example, bedsharing can be and commonly is used by children sharing a room. Bedsharing, at times, is used to resolve space issues and/or housing limitations. Bedsharing is also practiced by parents with infants. In this scenario, bedsharing has been described to me, *inter alia*, as a family practice, a mother's choice, and an

¹ November 12, 2019, 84 *Federal Register Notice* 60949 available at <https://www.federalregister.gov/documents/2019/11/12/2019-23724/safety-standard-for-infant-sleep-products>

emotional or physical bonding and attachment necessity for a new mom and her infant.² Many women believe that bedsharing is essential for breast feeding, for the baby's comfort and support, to help a baby sleep through the night, and "for new parents who are simply trying to survive the newborn days with a baby who refuses to sleep extended periods of time following the classic 'ABCs of sleep.'"³

The medical community does not support or encourage bedsharing. Rather, pediatricians say that ideally, babies should remain in the same room as parents, but sleep in a separate bedside environment.⁴ Notwithstanding these recommendations, bedsharing happens all the time. (emphasis added). Make no mistake. Bedsharing occurs despite the advice of doctors, regardless of whether friends and family members approve, and will continue despite what opinions this Agency may have about the practice.

In the weeks leading up to the public decisional on the final rule, the Commissioners received an overwhelming amount of correspondence from various stakeholders. I received a measurable number of pleas from bedsharing parents to be heard on the matter. One request came from a self-described "Sleep & Well-being Specialist with a background as an occupational therapist," who asserted that bedsharing families are "amongst the largest, most underserved population in the U.S." The email contained additional information including literature, statistics, and other information for the Agency's consideration. "We are everywhere," she wrote, "[y]et we are largely ignored and excluded from conversations (at best), and at worst, we are demonized, fear-mongered, and called horrible names." She also opined:

...Regardless of a specific individual's views on bedsharing products like co-sleepers and loungers, and whether they should or should not be used for bedsharing, it's important to keep the discussion open in order to allow for more specific standards and regulations for these products if that is needed rather than just shutting the door to future conversation and development of these products. If the CPSC moves forward it will only cultivate more shame and silence along with a black market of products. (my emphasis added).

This paragraph goes to the heart of my apprehensions about the unintended but foreseeable consequences that this mandatory rule will have on this particular consumer group and the risks that babies raised by bedsharers may face because of it. Simply stated, to the extent that the mandatory rule will change the type and availability of products used by bedsharers, these parents will be left to figure out for themselves how best to compensate for the anticipated product void. I am particularly troubled about this situation because it very well may lead to and expose certain babies to unreasonable risks of harm. More to the point, without reasonable options, bedsharing parents will inevitably craft, trade, and/or devise what they believe to be appropriate substitutions for the

² I do not intend to suggest that dads are exempt or absent from newborn child care. I am well-aware that child care requires and has many participants.

³ The ABCs of Sleep are Alone, Back, Crib. More information available at <https://www.nationwidechildrens.org/family-resources-education/700childrens/2014/09/the-abcs-of-safe-sleep#:~:text=The%20ABC%27s%20of%20Safe%20Sleep%201%20A%20Stand,Crib.%20...%204%20S%20Stand%20for%20Smoking.%20>

⁴ September 26, 2019, letter from American Academy of Pediatrics, Consumer Federation of America, Consumers Union, Kids In Danger, and Public Citizen to CPSC Commissioners, re: Safe Sleep Principles

products that are no longer available to them. Or, as the author above confirms, parents will seek out black market products.

It is imprudent and perhaps even irresponsible for the Agency to ignore these realities and to not fully consider the consequences here. Frankly, I am beyond disappointed that these parents were summarily discounted and their requests to be fully heard rejected.⁵ In my opinion, the Agency did not give due consideration to how the final rule would impact diverse cultures, alternative parenting practices, and the socio-economic needs of all consumers. Nor did the Agency provide the Commission with a full analysis of the actual products that likely would be impacted, even though our economist confirmed at the hearing that “dozens of products” would indeed be impacted by the final rule.⁶

Many if not all of these deficiencies could have been addressed and even corrected by my request for the Commission to (a) hear publicly from the bedsharing community; (b) assess whether an acceptable safety standard could be developed for these products;⁷ and/or (c) to gather data to support a sustainable rationale for scooping this extra product class into the final rule. It is unfortunate that the Commission would not agree to take these judicious steps. Perhaps my colleagues were just too narrowly focused on traditional, stereotypical, and old-fashioned assumptions about how babies are or should be cared for, to get to where I believe they needed to be here.⁸

My colleagues exuberantly celebrated the passage of this final rule despite the deficiencies. I remain troubled, however, by the possibility that the overly broad application of this rule may unnecessarily expose certain babies to senseless risks. As I expressed in my closing remarks, I am truly worried that we have left bedsharing parents to figure things out for themselves, which in my humble opinion, is contrary to this Agency’s most basic charge.

⁵ I recommended during the Briefing on the Proposed Final Rule that the Agency should hold a public forum to receive comments from any interested persons on the proposed changes to the final rule described in the 2019 SNPR given the many requests for such a forum. This forum would have been no different than any previous forums held by the Commission to receive comments from stakeholders.

⁶ There is nothing in the 329-page package that demonstrated that any expert in this particular field had been consulted or heard on this rule. To be sure, during the hearing, Agency staff members confirmed that they did not consider input from any sleep specialist, occupational therapist, or any other professional who works with the bedsharing community. At most, the Agency relied on the single, non-peer reviewed report, of Dr. Erin Mannen, who was originally retained to evaluate inclined sleep products. Her report simply cannot be contorted to cover, after the fact, a different group of products used by the bedsharing community.

⁷ Even the most passionate supporters of this mandate concede that “loungers” are “perfectly safe” and that flat infant sleep products should be subject to a safety standard and can be made reasonably safe. Commissioner Kaye quite eloquently highlighted during his closing remarks that stakeholders could “work every single day” (with the ASTM voluntary standards committee) between now and the rule’s effective date to find an appropriate voluntary safety standard. Why, then, have we adopted an overly broad rule, the application of which could have unnecessary and potentially dangerous consequences?

⁸ I find it ironic that my three male colleagues summarily dismissed the views and concerns of the only mother on this Commission.