

Ballot Vote Sheet

TO: The Commission
Alberta E. Mills, Secretary

DATE: July 13, 2022

THROUGH: Austin C. Schlick, General Counsel
Jason K. Levine, Executive Director

FROM: Daniel R. Vice, Assistant General Counsel, Regulatory Affairs
Pamela J. Stone, Special Assistant to the General Counsel
Mary A. House, Attorney, Regulatory Affairs Division

SUBJECT: Draft *Federal Register* Notices to Codify the Safe Sleep for Babies Act of 2021 and Terminate a Related Proceeding: (1) Notice of Proposed Rulemaking for Ban of Crib Bumpers; (2) Safety Standard for Crib Bumpers/Liners: Termination of Rulemaking; and (3) Notice of Proposed Rulemaking for Ban of Inclined Sleepers for Infants

BALLOT VOTE DUE: Tuesday, July 19, 2022

On May 3, 2022, Congress passed the Safe Sleep for Babies Act of 2021 (SSBA), H.R. 3182, Pub. L. No. 117-126, which the President signed on May 16, 2022. Section 2 of the SSBA requires that, not later than 180 days after enactment, “inclined sleepers for infants, regardless of the date of manufacture, shall be considered a banned hazardous product under section 8 of the Consumer Product Safety Act (15 U.S.C. 2057).” 15 U.S.C. 2057d. Section 3 of the SSBA requires that, not later than 180 days after enactment, “crib bumpers, regardless of the date of manufacture, shall be considered a banned hazardous product under section 8 of the Consumer Product Safety Act (15 U.S.C. 2057).” 15 U.S.C. 2057e. Attached for Commission consideration are two similar draft notices of proposed rulemaking to codify both of these bans in the Code of Federal Regulations.

The third document provided for Commission consideration would close a related proceeding. On April 3, 2020, the Commission published a notice of proposed rulemaking that set forth proposed requirements for a safety standard for crib bumpers/liners pursuant to section 104 of the Consumer Product Safety Improvement Act of 2008 (85 FR 18878). The Commission received comments on the proposed rule but has not published a final rule. In light of the new statutory ban on crib bumpers, also attached is a draft *Federal Register* notice to terminate the pending rulemaking on crib bumpers/liners and associated amendments to 16 CFR part 1130 (registration cards) and 16 CFR part 1112 (notice of requirements).

Please indicate your votes on the following options:

**U.S. Consumer Product
Safety Commission**
4330 East-West Highway
Bethesda, MD 20814
cpsc.gov

**National Product Testing
& Evaluation Center**
5 Research Place
Rockville, MD 20850

Ballot Vote Sheet

With respect to the Notice of Proposed Rulemaking for Ban of Crib Bumpers:

I. Approve publication of the attached document in the *Federal Register*, as drafted.

(Signature)

(Date)

II. Approve publication of the attached document in the *Federal Register*, with the specified changes:

(Signature)

(Date)

III. Do not approve publication of the attached document in the *Federal Register*.

(Signature)

(Date)

IV. Take other action specified below:

(Signature)

(Date)

Ballot Vote Sheet

With respect to the Safety Standard for Crib Bumpers/Liners: Termination of Rulemaking:

I. Approve publication of the attached document in the *Federal Register*, as drafted.

(Signature)

(Date)

II. Approve publication of the attached document in the *Federal Register*, with the specified changes:

(Signature)

(Date)

III. Do not approve publication of any of the attached documents in the *Federal Register*.

(Signature)

(Date)

IV. Take other action specified below:

(Signature)

(Date)

**U.S. Consumer Product
Safety Commission**
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Bethesda, MD 20814
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**National Product Testing
& Evaluation Center**
5 Research Place
Rockville, MD 20850



Ballot Vote Sheet

With respect to the Notice of Proposed Rulemaking for Ban of Inclined Sleepers for Infants:

I. Approve publication of the attached document in the *Federal Register*, as drafted.

(Signature)

(Date)

II. Approve publication of the attached document in the *Federal Register*, with the specified changes:

(Signature)

(Date)

III. Do not approve publication of the attached document in the *Federal Register*.

(Signature)

(Date)

IV. Take other action specified below:

(Signature)

(Date)

Attachments: Draft *Federal Register* Notices to Codify the Safe Sleep for Babies Act of 2021: (1) Notice of Proposed Rulemaking for Ban of Crib Bumpers; (2) Safety Standard for Crib Bumpers/Liners: Termination of Rulemaking; and (3) Notice of Proposed Rulemaking for Ban of Inclined Sleepers for Infants.

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Bethesda, MD 20814

**National Product Testing
& Evaluation Center**
5 Research Place
Rockville, MD 20850

cpsc.gov

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1309

[CPSC Docket No. 2022-XXXX]

Ban of Crib Bumpers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On May 16, 2022, the President signed into law the Safe Sleep for Babies Act of 2021, requiring that crib bumpers, “regardless of the date of manufacture, shall be considered a banned hazardous product” under the Consumer Product Safety Act (CPSA). Pursuant to this authority, CPSC is proposing to codify the ban on crib bumpers pursuant to the Safe Sleep for Babies Act, and under a separate notice, terminate the rulemaking on crib bumpers/liners under the Consumer Product Safety Improvement Act of 2008 (CPSIA).

DATES: Submit comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You can submit comments, identified by Docket No. CPSC-2022-XXXX, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: <https://www.regulations.gov>. Follow the instructions for submitting comments. CPSC typically does not accept comments submitted by electronic mail (e-mail), except as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/hand delivery/courier Written Submissions: Submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: cpsc-os@cpsc.gov.

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: <https://www.regulations.gov>. Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier written submissions.

Docket: To review background documents or comments received on the proposed codification of the Ban on Crib Bumpers, go to: <https://www.regulations.gov>, and insert the docket number, CPSC-2022-XXXX, into the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Timothy P. Smith, Project Manager, Directorate for Engineering Sciences, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: (301)987-2557; email: tsmith@cpsc.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 3 of the Safe Sleep for Babies Act of 2021, H.R. 3182, Pub. L. No. 117-126 (SSBA), CPSC is issuing a proposed rule to codify the ban on crib bumpers under the SSBA. Additionally, under a separate *Federal Register*

notice, the Commission is terminating the pending rulemaking on crib bumpers/liners that CPSC initiated under section 104 of the CPSIA, CPSC Docket No. CPSC-2020-0010.

I. Background and Statutory Authority

On April 3, 2020, the Commission published a notice of proposed rulemaking (NPR) that set forth proposed requirements for a safety standard for crib bumpers/liners pursuant to section 104 of the CPSIA (85 FR 18878). The Commission received comments on the proposed rule but has not published a final rule.

On May 3, 2022, Congress passed the SSBA, which the President signed on May 16, 2022. Section 3 of the SSBA requires that, not later than 180 days after enactment, “crib bumpers, regardless of the date of manufacture, shall be considered a banned hazardous product under section 8 of the Consumer Product Safety Act (15 U.S.C. 2057).” 15 U.S.C. 2057e.

In light of the SSBA’s mandate that crib bumpers shall be considered a banned hazardous product under section 8 of the CPSA, CPSC no longer proposes to regulate crib bumpers under the CPSIA. By separate *Federal Register* notice, CPSC is terminating the rulemaking to establish a consumer product safety standard for crib bumpers/liners.¹ Instead, CPSC now proposes to achieve a similar improvement to safety by codifying the ban on “crib bumpers,” as defined in section 3 of the SSBA, as banned hazardous products.

II. Description of Proposed Ban on Crib Bumpers

In this rulemaking, CPSC proposes to codify the SSBA’s mandate that “crib bumpers” are banned hazardous products, as set forth below.

¹ The NPR used the terms “crib bumpers,” “crib bumpers and liners,” and “crib bumpers/liners,” but this NPR applies only to “crib bumpers” as defined in the SSBA.

A. Definitions

The Commission proposes codifying the definition of “crib bumper” used in the SSBA, which states that “crib bumper”:

- (1) Means any material that is intended to cover the sides of a crib to prevent injury to any crib occupant from impacts against the side of a crib or to prevent partial or complete access to any openings in the sides of a crib to prevent a crib occupant from getting any part of the body entrapped in any opening;
- (2) Includes a padded crib bumper, a supported and unsupported vinyl bumper guard, and vertical crib slat covers; and
- (3) Does not include a non-padded mesh crib liner.

B. Effective Date

The SSBA states that crib bumpers shall be considered banned hazardous products “not later than 180 days after the enactment of this Act,” *i.e.*, not later than November 12, 2022. Applying the 180-day effective date referenced by Congress would avoid confusion among manufacturers and retailers, while also being consistent with the 6-month implementation period the Commission proposed in its 2020 NPR to establish a safety standard for crib bumpers/liners. Therefore, CPSC proposes to make the effective date for the ban on crib bumpers November 12, 2022.

C. Inventory

The SSBA states that the ban applies to crib bumpers “regardless of the date of manufacture.” Therefore, crib bumpers manufactured before the ban becomes effective will be banned hazardous products beginning on the effective date of the SSBA, as well as any crib bumpers manufactured or sold after the effective date.

III. Preemption

Section 3(b)(2)(A) of the Executive Order 12988, *Civil Justice Reform* (Feb. 5, 1996), directs agencies to specify the preemptive effect of any rule. 61 FR 4729 (Feb. 7, 1996).

Because the SSBA states that crib bumpers are banned hazardous products, any state performance standards for a “crib bumper,” as defined in the SSBA (which expressly excludes non-padded mesh crib liners), would be inconsistent with federal law, and therefore, preempted.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. sections 601-612, requires that agencies review proposed rules for their potential economic impact on small entities, including small businesses, and identify alternatives that may reduce such impact, unless the agency certifies that the rule if promulgated, will not have a significant economic impact on a substantial number of small entities. The SSBA will take effect no later than November 12, 2022. Because the proposed rule is limited to codifying section 3 of the SSBA, with an effective date of November 12, 2022, the proposed rule imposes no additional economic impact on small entities beyond the requirements of the SSBA itself. Therefore, the Commission certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

V. Environmental Considerations

The Commission’s regulations address whether the agency must prepare an environmental assessment or an environmental impact statement. Under these regulations, certain categories of CPSC actions that have “little or no potential for affecting the human environment” do not require an environmental assessment or an environmental impact statement. 16 CFR 1021.5(c). The proposed rule codifying section 3 of the SSBA falls within the

categorical exclusion, so no environmental assessment or environmental impact statement is required.

VI. Paperwork Reduction Act

The proposed rule to codify crib bumpers as a banned hazardous product contains no information collection requirements that would be subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). However, if the Commission requires testing and certification to this ban, the Commission will expand the existing control number for Third Party Testing of Children’s Products, OMB Control No. 3041-0159.

VII. Request for Comments

We invite comments on all aspects of the Commission’s proposal to codify the ban on crib bumpers in section 3 of the SSBA with an effective date of November 12, 2022. Comments must be submitted in accordance with the instructions in the ADDRESSES section at the beginning of this notice. CPSC specifically requests comment on the following:

A. Effective Date: The Commission proposes to implement the crib bumper ban in the SSBA with an effective date of November 12, 2022. Should the Commission adopt this proposed effective date, or an alternative date “[n]ot later than 180 days after the date of enactment”? If the commenter believes that an effective date later than November 12, 2022, is permitted under section 3 of the SSBA, what is the legal basis for that assertion, and what later date should be adopted?

B. Testing and Certification: When a ban does not remove all products in a product category from the market, testing and certification requirements may apply. For example, CPSC requires a General Certificate of Conformity (GCC) for certain banned hazardous products. *See, e.g.,* <https://www.cpsc.gov/Business--Manufacturing/Testing-Certification/Lab->

[Accreditation/Rules-Requiring-a-General-Certificate-of-Conformity](#), CPSC’s website providing guidance that bans set forth in 16 CFR parts 1304, 1305, and 1306 require a GCC. In this case, non-padded mesh crib liners are not within the scope of the SSBA’s ban on crib bumpers. Because the crib bumper ban does not eliminate non-padded mesh crib liners from the market, what, if any, testing and certification requirements remain? For example, should CPSC require certification to the ban for non-padded mesh crib liners to demonstrate that a product is *not* within the scope of the ban? Why, or why not? Additionally, should the Commission add “non-padded mesh crib liners” to the list of durable infant or toddler products that require a registration card? Why, or why not?

List of Subjects in 16 CFR Part 1309

Administrative practice and procedure, Consumer protection, Infants and children.

For the reasons stated in the preamble, the Commission proposes to add part 1309 to title 16 of the Code of Federal Regulations as follows:

PART 1309 – BAN OF CRIB BUMPERS

Sec.

1309.1 Purpose and Scope

1309.2 Definitions

1309.3 Banned Hazardous Product

1309.4 Effective Date

Authority: Sec. 3, Pub. L. 117-126, 136 Stat. 1208. 15 U.S.C. 2057e.

§ 1309.1 Purpose and Scope

The purpose of this rule is to prohibit the sale of crib bumpers, as defined in part 1309.2, as set forth in the Safety Sleep for Babies Act of 2021.

§ 1309.2 Definitions

(a) *Crib bumper:*

- (1) Means any material that is intended to cover the sides of a crib to prevent injury to any crib occupant from impacts against the side of a crib or to prevent partial or complete access to any openings in the sides of a crib to prevent a crib occupant from getting any part of the body entrapped in any opening;
- (2) Includes a padded crib bumper, a supported and unsupported vinyl bumper guard, and vertical crib slat covers; and
- (3) Does not include a non-padded mesh crib liner.

(b) Reserved.

§ 1309.3 Banned Hazardous Product

Any crib bumper, as defined in section 1309.2, regardless of the date of manufacture, is a banned hazardous product under section 8 of the Consumer Product Safety Act (15 U.S.C. 2057).

§ 1309.4 Effective Date

The effective date of this ban is November 12, 2022.

Dated: _____

Alberta E. Mills
Secretary, Consumer Product Safety Commission

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1112, 1130, and 1240

[CPSC Docket No. CPSC-2020-0010]

Safety Standard for Crib Bumpers/Liners: Termination of Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Termination of rulemaking.

SUMMARY: On May 16, 2022, the President signed into law the Safe Sleep for Babies Act of 2021 (SSBA), requiring that crib bumpers, “regardless of the date of manufacture, shall be considered a banned hazardous product” under the Consumer Product Safety Act (CPSA). In light of that new statutory direction, CPSC is terminating its pending rulemaking proceeding on crib bumpers/liners, and in a separate notice of proposed rulemaking, proposing to codify the requirements for crib bumpers pursuant to the SSBA. The Commission is also terminating the related proposed rule amendment to include the safety standard for crib bumpers/liners in the list of notice of requirements, as well as the related proposed amendment to identify “crib bumpers/liners” as a durable infant or toddler product subject to CPSC’s consumer registration requirements.

FOR FURTHER INFORMATION CONTACT: Pamela J. Stone, Attorney Advisor, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504-7619; email: *pstone@cpsc.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 3 of the Safe Sleep for Babies Act of 2021, H.R. 3182, Pub. L. No. 117-126 (SSBA), the Commission is terminating the rulemaking on crib bumpers/liners it commenced under section 104 of the Consumer Product

Safety Improvement Act of 2008 (CPSIA), CPSC Docket No. CPSC-2020-0010. Under a separate *Federal Register* notice, CPSC is issuing a proposed rule stating that crib bumpers are banned under the SSBA.

On April 3, 2020, the Commission published a notice of proposed rulemaking (NPR) that set forth proposed requirements for a safety standard for crib bumpers/liners pursuant to section 104 of the CPSIA (85 FR 18878). The Commission received comments on the proposed rule but has not published a final rule.

On May 3, 2022, Congress passed the SSBA, which the President signed on May 16, 2022. Section 3 of the SSBA requires that, not later than 180 days after enactment, “crib bumpers, regardless of the date of manufacture, shall be considered a banned hazardous product under section 8 of the Consumer Product Safety Act (15 U.S.C. 2057).” 15 U.S.C. 2057e.

In light of the SSBA’s mandate that crib bumpers shall be considered a banned hazardous product under section 8 of the CPSA, CPSC is no longer proposing to regulate crib bumpers under the CPSIA and is terminating that rulemaking to establish a consumer product safety standard for crib bumpers/liners. In a separate *Federal Register* notice, CPSC proposes to issue a rule stating that crib bumpers are banned pursuant to the SSBA’s designation of crib bumpers as a banned hazardous product.

The termination of the crib bumpers/liners rulemaking includes termination of the proposal to amend 16 CFR part 1130 to include “crib bumpers/liners” in the definition of a “durable infant or toddler product.” 85 FR at 18893. The termination of this rulemaking additionally terminates the proposal to issue a notice of requirements for crib bumpers/liners, which proposed to amend 16 CFR part 1112 to include 16 CFR part 1240, the CFR section

where the crib bumpers/liners standard would have been codified if the standard had become final. *Id.*

Dated: _____

Alberta E. Mills, Secretary
Consumer Product Safety Commission

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1310

[CPSC Docket No. 2022-XXXX]

Ban of Inclined Sleepers for Infants

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On May 16, 2022, the President signed into law the Safe Sleep for Babies Act of 2021 (SSBA), requiring that “inclined sleepers for infants, regardless of the date of manufacture, shall be considered a banned hazardous product” under the Consumer Product Safety Act (CPSA). Pursuant to this authority, the U.S. Consumer Product Safety Commission (CPSC, or Commission) is proposing to codify the ban on inclined sleepers for infants.

DATES: Submit comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You can submit comments, identified by Docket No. CPSC-2020-XXXX, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: <https://www.regulations.gov>. Follow the instructions for submitting comments. CPSC typically does not accept comments submitted by electronic mail (e-mail), except as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/hand delivery/courier Written Submissions: Submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East

West Highway, Bethesda, MD 20814; telephone (301) 504-7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may e-mail them to: cpsc-os@cpsc.gov.

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: <https://www.regulations.gov>. Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier written submissions.

Docket: For access to the docket to read background documents or comments received, go to: <https://www.regulations.gov>, and insert the docket number, CPSC-2020-XXXX, into the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Celestine T. Kish, Project Manager, Directorate for Engineering, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: (301) 987-2547; email: ckish@cpsc.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Statutory Authority

On May 3, 2022, Congress passed the Safe Sleep for Babies Act of 2021, H.R. 3182, Pub. L. No. 117-126, which the President signed on May 16, 2022. Section 2(a) of the SSBA requires that, not later than 180 days after enactment, “inclined sleepers for infants, regardless of

the date of manufacture, shall be considered a banned hazardous product under section 8 of the Consumer Product Safety Act (15 U.S.C. 2057).” 15 U.S.C. 2057d(a).

II. Description of Proposed Ban on Inclined Infant Sleepers

In this rulemaking, CPSC proposes to codify the SSBA’s mandate that “inclined sleepers for infants” are a banned hazardous product, as set forth below.

A. Definitions

The Commission proposes codifying the definition of “inclined sleepers for infants” as stated in section 2(b) the SSBA: “a product with an inclined sleep surface greater than ten degrees that is intended, marketed, or designed to provide sleeping accommodations for an infant up to 1 year old.”

B. Effective Date

Section 2(a) of the SSBA states that inclined sleepers for infants shall be considered a banned hazardous product “not later than 180 days after the enactment of this Act,” *i.e.*, not later than November 12, 2022. CPSC proposes to make the effective date for this ban November 12, 2022, consistent with 180-day period referenced by Congress.

C. Inventory

The SSBA states that the ban applies to inclined sleepers for infants as defined in section 2 “regardless of the date of manufacture.” Therefore, inclined sleepers for infants manufactured before the ban becomes effective will be banned hazardous products beginning on the effective date, as well as any inclined sleepers for infants manufactured or sold on or after the effective date.

III. Preemption

Section 3(b)(2)(A) of Executive Order 12988, *Civil Justice Reform* (Feb. 5, 1996), directs agencies to specify the preemptive effect of any rule. 61 FR 4729 (Feb. 7, 1996). Because the SSBA states that inclined sleepers for infants are banned hazardous products, any state performance standards for inclined sleepers for infants, as those products are defined in the SSBA, would be inconsistent with federal law and therefore preempted by this ban.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-612, requires that agencies review proposed rules for their potential economic impact on small entities, including small businesses, and identify alternatives that may reduce such impact, unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The SSBA will take effect on November 12, 2022. Because the proposed rule would adopt the same effective date and is limited to codifying the relevant provisions of the SSBA with regard to inclined sleepers for infants, the proposed rule imposes no additional economic impact on small entities beyond the requirements of section 2 of the SSBA. Therefore, the Commission certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

V. Environmental Considerations

The Commission's regulations address whether the agency must prepare an environmental assessment or an environmental impact statement. Under these regulations, certain categories of CPSC actions that have "little or no potential for affecting the human environment" do not require an environmental assessment or an environmental impact statement. 16 CFR 1021.5(c). The proposed rule codifying section 2 of the SSBA falls within the

categorical exclusion, so no environmental assessment or environmental impact statement is required.

VI. Paperwork Reduction Act

The proposed rule to codify inclined sleepers for infants as a banned hazardous product contains no information collection requirements that would be subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). However, if the Commission requires testing and certification to this ban, the Commission will expand the existing control number for Third Party Testing of Children’s Products, OMB Control No. 3041-0159.

VII. Request for Comments

We invite comments on all aspects of the Commission’s proposal to codify the ban on inclined sleepers for infants under section 2 of the SSBA with an effective date of November 12, 2022. Comments must be submitted in accordance with the instructions in the ADDRESSES section at the beginning of this notice. We also invite comment on the following topics:

A. Effective Date: The Commission proposes to implement the inclined sleeper ban in the SSBA with an effective date of November 12, 2022. Should the Commission adopt this proposed effective date, or an alternative date “[n]ot later than 180 days after the date of enactment”? If the commenter believes that an effective date later than November 12, 2022, is permitted under section 2 of the SSBA, what is the legal basis for that assertion, and what later date should be adopted?

B. Interpretation: In 2021, the Commission promulgated its Safety Standard for Infant Sleep Products (16 CFR part 1236, the ISP Rule), which became effective on June 23, 2022. (86 FR 33022 (June 23, 2021)). Pursuant to 16 CFR 1236.2(b)(10)(i), the ISP Rule defines an “infant sleep product” as a “product marketed or intended to provide a sleeping accommodation for an

infant up to 5 months of age, and that is not subject to” one of the following: 16 CFR part 1218 (bassinets and cradles); 16 CFR part 1219 (full-size cribs); 16 CFR part 1220 (non-full-size cribs); 16 CFR part 1221 (play yards); and 16 CFR part 1222 (bedside sleepers) (collectively, CPSC sleep standards).¹ 86 FR at 33072. The SSBA, by contrast, applies to products “marketed, intended, or designed” for infants up to 1 years old. The operative provisions of the SSBA and the ISP Rule thus are not identical. Particularly in that light, the Commission requests comment on interpreting, codifying, and enforcing the SSBA with respect to inclined sleep products, including:

1. How should the Commission interpret and implement the phrase “sleeping accommodations” for purposes of the SSBA ban?
2. 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? For example, what significance, if any, might “designed” have for inclined products that are not marketed for sleep but in which an infant may fall asleep, such as bouncers, swings, and rockers?
3. In the SSBA, what product characteristics, if any, demonstrate that a product is “designed” for sleep?
4. 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?
5. 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

¹ If an infant sleep product does not already comply with a CPSC sleep standard, the ISP Rule requires the sleep surface angle to measure 10 degrees or less, and the product must meet part 1218 of the Commission’s Rules, the bassinet standard, including the definition of a bassinet, meaning the product must have a stand. The ISP Rule applies to both flat and inclined products.

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?

6. 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?

C. Testing and Certification: When a ban does not remove all products in a product category from the market, testing and certification requirements may apply. For example, CPSC requires a General Certificate of Conformity (GCC) for certain banned hazardous products. *See, e.g.,* <https://www.cpsc.gov/Business--Manufacturing/Testing-Certification/Lab-Accreditation/Rules-Requiring-a-General-Certificate-of-Conformity>, CPSC's website providing guidance that bans set forth in 16 CFR parts 1304, 1305, and 1306 require a GCC. In this case, inclined sleepers with an inclined sleep surface of 10 degrees or less, or that are marketed, intended, or designed to provide sleeping accommodations for an infant older than 1 year, are not within the scope of the SSBA's ban. To the extent inclined sleepers remain on the market that are not banned by this rule, and that are not regulated under the ISP Rule, should CPSC require testing and certification to this ban, to demonstrate that a product is *not* within the scope of the ban? Why, or why not?

List of Subjects

16 CFR Part 1310

Administrative practice and procedure, Consumer protection, Infants and children.

For the reasons stated in the preamble, the Commission proposes to add part 1310 to title 16 of the Code of Federal Regulations as follows:

PART 1310 – BAN OF INCLINED SLEEPERS FOR INFANTS

Sec.

1310.1 Purpose and Scope

1310.2 Definition

1310.3 Banned Hazardous Product

1310.4 Effective Date

Authority: Sec. 2, Pub. L. No. 117-126, 136 Stat. 1208; 15 U.S.C. 2057d.

§ 1310.1 Purpose and Scope

The purpose of this rule is to prohibit the sale of inclined sleepers for infants as set forth in the Safety Sleep for Babies Act of 2021.

§ 1310.2 Definition

Inclined sleeper for infants means “a product with an inclined sleep surface greater than ten degrees that is intended, marketed, or designed to provide sleeping accommodations for an infant up to 1 year old.”

§ 1310.3 Banned Hazardous Product

Any inclined sleeper for infants, regardless of the date of manufacture, is a banned hazardous product under section 8 of the Consumer Product Safety Act (15 U.S.C. 2057).

§ 1310.4 Effective Date

The effective date of this ban is November 12, 2022.

Dated: _____

Alberta E. Mills
Secretary, Consumer Product Safety Commission