



Ballot Vote Sheet

TO: The Commission
Alberta E. Mills, Secretary

THROUGH: Austin C. Schlick, General Counsel
Daniel R. Vice, Assistant General Counsel, Regulatory Affairs

FROM: Pamela J. Stone, Senior Counsel

SUBJECT: Draft Final Rule: Ban of Crib Bumpers

DATE: July 26, 2023

BALLOT VOTE DUE: Wednesday, August 2, 2023

On May 16, 2022, the President signed into law the Safe Sleep for Babies Act of 2021 (SSBA). The SSBA requires that crib bumpers, “regardless of the date of manufacture, shall be considered a banned hazardous product” under section 8 of the Consumer Product Safety Act, with the ban taking effect not later than 180 days after enactment of the SSBA (November 12, 2022). 15 U.S.C. § 2057e. The Office of the General Counsel is providing for Commission consideration the attached draft final rule to codify crib bumpers as a banned hazardous product at 16 C.F.R. part 1309, so that the Code of Federal Regulations reflects the statutory crib bumper ban.

Please indicate your vote on the following options:

- 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 changes. (Please specify.)

(Signature)

(Date)



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

(Signature)

(Date)

IV. Take other action. (Please specify.)

(Signature)

(Date)

Attachment: Draft Final Rule: Ban of Crib Bumpers

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1309

[CPSC Docket No. 2022-0024]

Ban of Crib Bumpers

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission is issuing this final rule to codify the ban of crib bumpers pursuant to the Safe Sleep for Babies Act of 2021, which requires that crib bumpers, regardless of the date of manufacture, shall be considered a banned hazardous product under the Consumer Product Safety Act.

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Will Cusey, Small Business Ombudsman, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504-7945 or (888) 531-9070; email: sbo@cpsc.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 3 of the Safe Sleep for Babies Act of 2021 (SSBA), Pub. L. No. 117-126, 15 U.S.C. 2057e, CPSC is issuing this final rule to reflect, in the Code of Federal Regulations, the statutory ban of crib bumpers that took effect by operation of law on November 12, 2022.

I. Background and Statutory Authority

On May 3, 2022, Congress passed the SSBA, which the President signed on May 16, 2022. Section 3(a) of the SSBA requires that, not later than 180 days after enactment, “crib

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bumpers, regardless of the date of manufacture, shall be considered a banned hazardous product” under section 8 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2057). 15 U.S.C. 2057e(a). The 180th day after enactment was November 12, 2022.

On July 26, 2022, the Consumer Product Safety Commission (Commission or CPSC) published a notice of proposed rulemaking (NPR) stating the Commission’s intention to codify the language in the SSBA requiring that crib bumpers be considered a banned hazardous product under section 8 of the CPSA. 87 FR 44307 (July 26, 2022). CPSC requested and received comments from the public on the proposed rule.

Because the SSBA mandated that crib bumpers shall be considered a banned hazardous product under section 8 of the CPSA, CPSC also terminated a prior proposed rule to establish a consumer product safety standard for crib bumpers/liners pursuant to section 104 of the Consumer Product Safety Improvement Act of 2008. 87 FR 44306 (July 26, 2022).

II. Overview of the Final Rule Banning Crib Bumpers

In this rule, the Commission codifies the SSBA’s mandate that crib bumpers are a banned hazardous product, as set forth in this section of this preamble.

A. Definitions

The Commission is codifying the definition of “crib bumper” used in the SSBA, 15 U.S.C. § 2057e(b), 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;

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- (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

Section 3(a) of the SSBA states that crib bumpers shall be considered a banned hazardous product “not later than 180 days after the enactment of this Act.” The NPR proposed an effective date of November 12, 2022, which was 180 days after enactment of the SSBA. The Administrative Procedure Act (APA) generally requires that the effective date of a rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). Because the November 12, 2022, effective date proposed in the NPR has passed, and because commenters supported CPSC implementing the rule expeditiously, the Commission is finalizing this rule with a 30-day effective date, the minimum permitted under the APA. Although the final rule will not be effective until **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the ban of crib bumpers has been in effect since November 12, 2022, pursuant to the SSBA. To reflect that the SSBA took effect on November 12, 2022, 16 CFR § 1309.4 notifies the public that the ban of crib bumpers was effective as of November 12, 2022.

C. Inventory

The SSBA states that the ban applies to crib bumpers “regardless of the date of manufacture.” Therefore, by statute, crib bumpers manufactured at any time became banned hazardous products as of November 12, 2022.

III. Response to Comments

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CPSC received six comments on the NPR during the comment period.¹ After the comment deadline, CPSC received a seventh comment² that primarily addressed non-padded mesh crib liners, which are outside the scope of this rule. The seventh comment has been added to the docket for this rulemaking, although it did not address the substance of this rule.

A. Effective Date

All the commenters supported CPSC codifying the ban of crib bumpers, as stated in the SSBA. None of the commenters suggested any revisions to the language of the proposed rule. Five of the commenters addressed the effective date of this rule. All five agreed with an effective date not later than November 12, 2022; four of these commenters (Johns Hopkins Bloomberg School of Public Health, Kids In Danger (KID), Consumer Reports, and American Academy of Pediatrics) urged CPSC to act as quickly as possible, asserting that an earlier effective date would benefit the public by improving safety. The SSBA's statutory ban of crib bumpers went into effect on November 12, 2022. The final rule will become effective 30 days after it is published, though crib bumpers have been banned pursuant to the SSBA since November 12, 2022. Commenter KID specifically commended CPSC's inclusion of the language from the SSBA stating that crib bumpers are banned regardless of the date of manufacture. The Consumer Federation of America agreed that crib bumpers manufactured before the effective date, as well as those manufactured after the effective date, are banned products.

B. Testing and Certification

¹ The commenters were: Johns Hopkins Bloomberg School of Public Health; Consumer Federation of America; Juvenile Products Manufacturers Association, Inc.; Kids In Danger; Consumer Reports; and American Academy of Pediatrics.

² BreathableBaby, LLC, was the late commenter.

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CPSC sometimes requires testing and certification to demonstrate that a product is not within the scope of a ban. Section 14(a)(2) of the CPSA requires the manufacturer or private labeler of a children's product that is subject to a children's product safety rule to certify that, based on a third-party conformity assessment body's testing, the product complies with the applicable children's product safety rule. 15 U.S.C. § 2063(a)(2). A "children's product" is a consumer product "designed or intended primarily for children 12 years of age or younger." *Id.* 2052(a)(2). A "children's product safety rule" includes rules under any act enforced by the Commission that "declar[e] a consumer product to be a banned hazardous product or substance." *Id.* 206(f)(1). Crib bumpers as defined in the SSBA meet the definition of a children's product for the purpose of Section 14. This final rule, which codifies crib bumpers as a banned hazardous product pursuant to the SSBA, fits the definition of a children's product safety rule under the CPSA. However, because the ban does not leave any crib bumpers in the marketplace, in this instance there is nothing to test. Though commenters provided a variety of ideas regarding testing and certification requirements, emerging products, age grading, and attachment issues for non-padded mesh crib liners, none urged a test for crib bumpers. Although the Commission may consider these issues at a later time, as warranted, CPSC is limiting this rule to codification of the terms of the ban prescribed by the SSBA. Therefore, CPSC has not made any revisions to the proposed rule based on these comments.

C. Technical and Clarifying Revisions

For the final rule, the Commission has updated the language proposed in the NPR by replacing the public law citation for the SSBA (Pub. L. No. 117-126) with the new U.S. Code citation (15 U.S.C. § 2057e).

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The Commission has also revised the proposed 16 CFR 1309.1, *Purpose and scope*, to more fully describe the substantive effect of Congress's classification of crib bumpers as banned hazardous products. Section 1309.1 of the final rule makes clear that the rule prohibits not only the sale of banned crib bumpers but also, in accordance with section 19(a)(1) of the CPSA, the offer for sale, manufacture for sale, distribution in commerce, or importation into the United States, of these products. *See* 15 U.S.C. § 2068(a)(1).

The Commission has also revised the proposed 16 CFR 1309.4, *Effective date*, to clarify that the ban of crib bumpers was effective as of November 12, 2022, pursuant to the SSBA, but that this final rule is effective as of **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The promulgation of this final rule does not change the fact that inclined sleepers have been banned pursuant to the SSBA since November 12, 2022.

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 crib bumpers are a banned hazardous product, any state performance standards allowing the sale of crib bumpers, as defined in the SSBA and this rule, would be inconsistent with federal law and therefore preempted by this ban.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-612, requires that agencies review proposed and final 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. In the NPR, the Commission certified that the final rule will not have a significant economic impact on a substantial number of small entities and received no comment on that issue. 87 FR 44308.

VII. Environmental Considerations

The Commission’s regulations at 16 CFR part 1021 address whether the agency must prepare an environmental assessment or an environmental impact statement. Under those 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). This final rule codifying section 3 of the SSBA falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

VIII. Paperwork Reduction Act

This final rule contains no information collection requirements that would be subject to public comment and review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

IX. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801-808) states that, before a rule can take effect, the agency issuing the rule must submit the rule and certain related information to each House of Congress and the Comptroller General, 5 U.S.C. 801(a)(1), and indicate whether the rule is a “major rule” as defined in 5 U.S.C. 804(2). The CRA further states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a “major rule.” OIRA has determined that this rule is not a “major rule” under the CRA. To comply with

the CRA, the Commission will submit the required information to each House of Congress and the Comptroller General.

List of Subjects in 16 CFR Part 1309

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

For the reasons discussed above, the Commission adds 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 Definition

1309.3 Banned Hazardous Product

1309.4 Effective Date

Authority: 15 U.S.C. 2057e.

§ 1309.1 Purpose and Scope

The purpose of this rule is to prohibit the sale, offer for sale, manufacture for sale, distribution in commerce, or importation into the United States, of any crib bumpers, as defined in part 1309.2, as set forth in the Safety Sleep for Babies Act of 2021 (15 U.S.C. 2057e).

§ 1309.2 Definition

Crib bumper:

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- a) 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;
- b) Includes a padded crib bumper, a supported and unsupported vinyl bumper guard, and vertical crib slat covers; and
- c) Does not include a non-padded mesh crib liner.

§ 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

By statute, the effective date of this ban is November 12, 2022. This effective date of this rule is **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Dated: _____

Alberta E. Mills
Secretary, Consumer Product Safety Commission