



United States
Consumer Product Safety Commission

Record of Commission Action
Commissioners Voting by Ballot*

Commissioners Voting: Chair Alexander D. Hoehn-Saric
 Commissioner Peter A. Feldman
 Commissioner Richard Trumka Jr.
 Commissioner Mary T. Boyle

ITEM:

Draft Final Rule: Ban of Inclined Sleepers for Infants
(Briefing package dated July 26, 2023, OS No. 0234)

DECISION:

The Commission voted unanimously (4-0) to take other action and approve publication of the *Federal Register* notice codifying inclined sleepers for infants as a banned hazardous product at 16 C.F.R. part 1310 pursuant to the Safe Sleep for Babies Act of 2021 with the following specified changes:

In the first full paragraph on page OS-10:

Delete “direct evidence” and replace with “otherwise conclusive evidence”.

Delete “substantially identical to” and replace with “materially the same as”.

On page OS-12, strike the first paragraph and replace with:

Response B.3: The Commission agrees with commenters’ identification of characteristics that could be relevant to distinguishing whether products are designed for infant sleep for purposes of the SSBA, including, but not limited to: padded sides; excess padding or pillow-like items; soothing sounds, motions, lights, or vibrations; nighttime themes; and labels that warn only against specific types of sleep and not sleep generally.

For the Commission:

Alberta E. Mills
Secretary

Chair Hoehn-Saric and Commissioners Feldman and Trumka issued respective statements regarding this matter.

*Ballot Vote due August 4, 2023.

(Commissioner Feldman extended the vote due date from August 1 to August 4, 2023).

Attachments: Statement by Chair Hoehn-Saric
Statement by Commissioner Feldman
Statement by Commissioner Trumka



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIR ALEXANDER D. HOEHN-SARIC

**Statement of Chair Alexander Hoehn-Saric Regarding
Final Rules Implementing the Safe Sleep for Babies Act**

August 7, 2023

Today, the Commission voted to approve two rules implementing the Safe Sleep for Babies Act, which bans crib bumpers and inclined sleepers for infants. Congress passed this law, which went into effect on November 12, 2022, to address two types of products that were known to be hazardous for babies but that were marketed to parents and caregivers. The rules we approved today will guide the Commission's enforcement of the law going forward.

The Safe Sleep for Babies Act's ban on crib bumpers has been an important component of CPSC's work to ensure that an infant's sleep environment is as safe as possible. Its ban on inclined sleepers for infants buttressed the work CPSC had done through its Infant Sleep Products Rule, and extended the scope of the ban to include inclined sleepers for infants up to 12 months of age, instead of 5 months under the Rule.

I thank Representatives Cárdenas and Schakowsky, and Senators Duckworth, Portman, Blumenthal, and Brown for their leadership on this legislation.



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4330 EAST WEST HIGHWAY
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COMMISSIONER PETER A. FELDMAN

**STATEMENT OF COMMISSIONER PETER A. FELDMAN ON
SAFE SLEEP FOR BABIES ACT IMPLEMENTATION**

AUGUST 7, 2023

Today, the U.S. Consumer Product Safety Commission published its final rule codifying a ban on inclined infant sleepers. This action reconciles the Congressional directive under the Safe Sleep for Babies Act of 2021 (SSBA), which enjoyed broad bipartisan support, and the Commission's own Infant Sleep Products Rule (ISP Rule), which was passed by a bipartisan majority in June 2021. I was the deciding vote approving that rule.

The Commission took a measured approach in drafting this final rule. It offers structure for how the Commission will apply and interpret SSBA. Manufacturers will have guidance and regulatory certainty. Consumers will have peace of mind in the safety of the products they buy.

The Commission explicitly rejected the view that SSBA covers any product in which a baby *could* fall asleep. Infants can, and do, fall asleep almost anywhere. Such a broad reading would have been inconsistent with the Commission's current ISP Rule and would have led to agency overreach.



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COMMISSIONER RICH TRUMKA JR.

CPSC IMPLEMENTS SAFE SLEEP FOR BABIES ACT, EXPANDING ON 2022 INFANT SLEEP PRODUCTS RULE AND CLOSING LOOPHOLES

AUGUST 7, 2023

An inclined sleeper by any other name is still an inclined sleeper—and still poses an unreasonable risk of death to infants. The new CPSC rule announced today states our ability to clear the market of dangerous inclined products no matter what a manufacturer calls them and no matter how they market them. I hope that manufacturers receive the clear message that they cannot rename an inclined sleeper, make minor design changes, and keep selling it. Products that babies can sleep in need to be safe for sleep.

Today, the CPSC voted to expand on the protections included in the agency’s 2022 Infant Sleep Products Rule¹ with two new rules implementing the Safe Sleep for Babies Act. The Safe Sleep for Babies Act bans both crib bumpers, a category of products responsible for at least 107 infant deaths between 1990 and 2016 alone,² and inclined infant sleepers designed like the recalled Fisher-Price Rock n’ Play, which was linked to over 100 infant deaths.³

The manufacturers of some infant products have known from the start that their products were risky and violated safe sleep advice, and CPSC was working to address these dangers through enforcement of the Infant Sleep Products Rule. Now, CPSC has the additional enforcement tools provided by the Safe Sleep for Babies Act, which widens the scope of the Infant Sleep Products Rule by additionally banning products “*designed* [emphasis added] to provide sleeping accommodations for an infant up to 1 year old.”⁴ The Infant Sleep Products Rule banned products “*marketed or intended* [emphasis added] to provide a sleeping accommodation for an infant up to 5 months of age.”⁵

As one of the original sponsors of the Safe Sleep for Babies Act, Congressman Tony Cardenas, wrote in his statement heralding the signing of the Safe Sleep for Babies Act:

*Last year, the CPSC approved a new federal rule that will require products marketed or intended for infant sleep to meet a federal safety standard limiting the incline of sleepers to 10 degrees or lower. However, if a product by nature of its design soothes a baby to sleep, it must be safe for sleep. This bill would expand on the protections included in the CPSC rulemaking and remove these dangerous products from the marketplace.*⁶

With our new rules, the Commission is following Congress’ direction to address the design elements that present a danger to infants. I am thankful to the members of Congress who championed consumer protection through their work on the Safe Sleep for Babies Act:

Representatives Tony Cárdenas, Jan Schakowsky, and former Congressman Mondaire Jones, and Senators Tammy Duckworth, Rob Portman, Richard Blumenthal, and Sherrod Brown.

Some 3,400 babies under age one still die suddenly and unexpectedly in their sleep environment each year.⁷ We are one step closer to a future where parents can trust the safety of the products they use with their babies—particularly those products with a design that accommodates a sleeping infant.

¹Consumer Product Safety Commission, “CPSC’s New Federal Infant Sleep Products Safety Standard Takes Effect” (June 2022), available at: <https://www.cpsc.gov/Newsroom/News-Releases/2022/CPSCs-New-Federal-Infant-Sleep-Products-Safety-Standard-Takes-Effect>

²Consumer Product Safety Commission, “CPSC Staff Response to the Record of Commission Action on Crib Bumpers” (Sept. 2016), available at: <https://www.cpsc.gov/content/CPSC-Staff-Response-to-the-Record-of-Commission-Action-on-Crib-Bumpers>

³Consumer Product Safety Commission, “Fisher-Price Reannounces Recall of 4.7 Million Rock ‘n Play Sleepers; At Least Eight Deaths Occurred After Recall” (Jan. 2023), available at: <https://www.cpsc.gov/Recalls/2023/Fisher-Price-Reannounces-Recall-of-4-7-Million-Rock-n-Play-Sleepers-At-Least-Eight-Deaths-Occurred-After-Recall>

⁴Safe Sleep for Babies Act, H.R. 3182, 117th Congress (2022), available at: <https://www.congress.gov/bill/117th-congress/house-bill/3182/text>

⁵Consumer Product Safety Commission, “Safety Standard for Infant Sleep Products” (June 2021), available at: <https://www.federalregister.gov/documents/2021/06/23/2021-12723/safety-standard-for-infant-sleep-products>

⁶Congressman Tony Cardenas, “President Biden Signs Cárdenas Safe Sleep for Babies Act Into Law” (May 2022), available at: <https://cardenas.house.gov/media-center/press-releases/president-biden-signs-cardenas-safe-sleep-for-babies-act-into-law>

⁷Marlene Cimon, “Despite a Decades-Long Effort, Babies are still Dying of SIDS,” Washington Post (April 2022), available at: <https://www.washingtonpost.com/health/2022/04/10/how-common-is-sids/>