

**\* Consumer Reports \* Consumer Federation of America \* Kids In Danger \*  
\* Public Citizen \* U.S. Public Interest Research Group \***

December 22, 2023

Office of the Secretary  
Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

**Joint Comments to the Consumer Product Safety Commission on the Notice of Proposed  
Rulemaking; Safety Standard for Infant and Infant/Toddler Rockers  
Docket No. CPSC-2023-0046**

Consumer Reports, Consumer Federation of America, Kids In Danger, Public Citizen, and U.S. Public Interest Research Group welcome the opportunity to comment on the notice of proposed rulemaking (NPR) by the U.S. Consumer Product Safety Commission (CPSC) on the Safety Standard for Infant and Infant/Toddler Rockers.

Products such as rockers, bouncers, and swings are used by parents and caregivers not only as a place to put down a non-mobile baby, but also for interaction with a baby while they are in a slightly upright position (as compared to laying flat). Rockers are also used for soothing purposes.

However, using these products for sleep, even briefly, runs directly counter to evidence-based safe sleeping practices for infants established by the American Academy of Pediatrics (AAP), which include placing a baby alone, on their back, on a firm, noninclined surface in a safe sleep environment without soft objects or loose bedding.<sup>1</sup> Despite established safe sleep guidelines and some warnings that rockers should not be used for sleep, incident data confirms both that some caregivers use the products for brief or extended infant or toddler sleep and some product marketing seems to encourage this.

Reports to the CPSC of infant deaths related to rockers are ongoing. As recently as November 2023, a six-month-old baby reportedly died in a Fisher-Price infant-to-toddler rocker.<sup>2</sup> Reportedly, her father placed her in the rocker for one hour and 15 minutes while he slept two feet away, and when he woke up, she was “on her stomach, face to the side” and had died.<sup>3</sup>

More must be done to discourage the use of rockers as a sleep product, even for short naps, as sleeping in a rocker can result in an infant having difficulty getting enough air while in the inclined position, or moving into an unsafe position that restricts their airway. To reduce

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<sup>1</sup> AAP, “Sleep-Related Infant Deaths: Updated 2022 Recommendations for Reducing Infant Deaths in the Sleep Environment” (June 21, 2022) ([publications.aap.org/pediatrics/article/150/1/e2022057990/188304/Sleep-Related-Infant-Deaths-Updated-2022](https://publications.aap.org/pediatrics/article/150/1/e2022057990/188304/Sleep-Related-Infant-Deaths-Updated-2022)).

<sup>2</sup> CPSC, SaferProducts.gov Report No. 20231116-CB7E2-2147343965 (Nov. 16, 2023) ([www.saferproducts.gov/PublicSearch/Detail?ReportId=4476673](https://www.saferproducts.gov/PublicSearch/Detail?ReportId=4476673)).

<sup>3</sup> *Id.*

infant injury and death associated with rockers, it is vital that the CPSC finalize a strong rule for infant and infant/toddler rockers that accounts for the real-world ways in which caregivers and infant/toddler occupants will interact with the product.

For this rulemaking, the CPSC has relied on data showing an average of about one death per year associated with these products. However, as a recent news article reiterated,<sup>4</sup> the agency's death data can lag months or even years behind, and may not include all deaths tied to a particular product. The CPSC relies on reports made by consumers and health professionals, news articles, and death certificates, among other sources, which can take years to receive, and reporting by coroners and medical examiners is voluntary and reports may be incomplete.

Our organizations support the CPSC's proposed rule. We agree with CPSC staff's decision to incorporate into the proposed rule a number of tests from ASTM F3084, Standard Consumer Safety Specification for Infant and Infant/Toddler Rockers; namely, we support incorporation of the sideward and rearward stability tests to address product sideward and rearward tip-over, the structural integrity test to address hardware failures and collapse hazard, the toy bar integrity test to address toy bars snapping apart, and the restraint system test to ensure the heaviest intended occupant is safely secure. We also agree with the additional requirements proposed by the agency to address several factors that ASTM F3084 standard either fails to address, or does not adequately address.

With regard to the forward stability requirement, we support the agency's proposal, which addresses the serious deficiencies in the current ASTM standard. As discussed in more detail below, we strongly encourage the CPSC to specify a minimum age requirement for rockers, and the proposed forward stability requirements will ensure the product is safer for infants older than four months and toddlers. Therefore, we support CPSC staff's proposal to match the test conditions specified in the mandatory standard for infant bouncers to account for tip-over risk. We also support the agency's decision to address battery-related hazards reflected in incident reports by adding electrical requirements based on the requirements of the bouncer rule.

With regard to the specific information requested by the CPSC, our organizations offer the following comments:

**I. The Risks Rockers Pose to Infants Under Four Months of Age Outweigh Any Potential Benefits and CPSC Should Specify a Minimum Age of Four Months**

For older infants and some toddlers, rockers ostensibly serve as a safe place caregivers can use during one of the most stressful early-parenting scenarios: having to put a baby down for various reasons, such as going to the restroom, getting the door, or heating up a bottle. However, the risks of leaving infants under four months of age unattended in a rocker outweigh the potential benefits provided to the child and the parent.

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<sup>4</sup> NBC News, "5 takeaways from NBC News' yearlong investigation into deadly consumer products" (Dec. 22, 2023) ([www.nbcnews.com/news/us-news/consumer-product-safety-commission-death-delay-takeaways-rcna130399](https://www.nbcnews.com/news/us-news/consumer-product-safety-commission-death-delay-takeaways-rcna130399)).

While the CPSC has strengthened its regulation of and guidance on myriad infant and toddler inclined products to advise that rockers should not be used for sleep,<sup>5</sup> many products currently for sale send mixed messages to parents and caregivers. Alarming, for instance, infant rockers are sometimes confused with a banned predecessor, infant inclined sleepers, still found in homes and secondary markets, such as thrift stores. Thus, despite the CPSC and National Institute of Health’s evidence-based safe sleep guidance,<sup>6</sup> and the fact that many rockers and other inclined products have been recalled or discontinued in the last few years, other products remain on the market, and they improperly convey to parents and caregivers that they are useful for sleep. In some cases, the product description or labeling says this directly.

The disconnect between evidence-based safe sleep practices and infant products on the market has dire consequences. For example, parents followed manufacturers’ suggested use for infant inclined sleepers, despite the AAP’s recommendations for safe infant sleep practices, and it was reported the infant inclined sleepers had been linked to approximately 100 deaths and more than 1,000 incidents, including serious injuries.<sup>7</sup> In April 2019, the Fisher-Price Rock ‘n Play Sleeper, along with Kids2 rocking sleepers, were recalled, citing the hazard that infants rolled from their back to their stomach or side while unrestrained on the rockers.<sup>8</sup> Concerningly, the widespread popularity around the Fisher-Price Rock ‘n Play persisted after the April 2019 recall. In early 2023, it was reported that at least eight additional babies died in infant rockers after they were recalled.<sup>9</sup> Advertised by Fisher-Price as a “nighttime sleeper,” parents and caregivers used it as such, unaware of the suffocation risk it posed.

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<sup>5</sup> CPSC, “CPSC and Fisher-Price Warn Consumers About 13 Deaths in Fisher-Price Infant-to-Toddler and Newborn-to-Toddler Rockers: Advise Rockers Should Never Be Used for Sleep” (June 14, 2022) ([www.cpsc.gov/Newsroom/News-Releases/2022/CPSC-and-Fisher-Price-Warn-Consumers-About-13-Deaths-in-Fisher-Price-Infant-to-Toddler-and-Newborn-to-Toddler-Rockers-Advise-Rockers-Should-Never-Be-Used-for-Sleep](http://www.cpsc.gov/Newsroom/News-Releases/2022/CPSC-and-Fisher-Price-Warn-Consumers-About-13-Deaths-in-Fisher-Price-Infant-to-Toddler-and-Newborn-to-Toddler-Rockers-Advise-Rockers-Should-Never-Be-Used-for-Sleep)).

<sup>6</sup> National Institutes of Health, “Safe Sleep Environment for Baby,” ([safetosleep.nichd.nih.gov/reduce-risk/safe-sleep-environment](http://safetosleep.nichd.nih.gov/reduce-risk/safe-sleep-environment)); Centers for Disease Control and Prevention, “Helping Babies Sleep Safely” (Last reviewed: Sept. 29, 2023) ([www.cdc.gov/reproductivehealth/features/baby-safe-sleep/index.html#:~:text=Weighted%20products%20such%20as%20weighted,with%20no%20soft%20bedding%20use](http://www.cdc.gov/reproductivehealth/features/baby-safe-sleep/index.html#:~:text=Weighted%20products%20such%20as%20weighted,with%20no%20soft%20bedding%20use)).

<sup>7</sup> Rachel Rabkin Peachman, Consumer Reports, “While They Were Sleeping, How a product tied to 73 infant deaths came to market and stayed for a decade, as government and industry knew the risks” (Dec. 30, 2019) ([www.consumerreports.org/child-safety/while-they-were-sleeping/](http://www.consumerreports.org/child-safety/while-they-were-sleeping/)); Lauren Kirchner, Consumer Reports, “More Deaths Linked to Fisher-Price Rock ‘n Play and Kids2 Infant Sleepers, Even After Recalls” (Jan. 9, 2023) ([www.consumerreports.org/product-safety/deaths-linked-to-fisher-price-rock-n-play-kids2-sleepers-a8423713154/](http://www.consumerreports.org/product-safety/deaths-linked-to-fisher-price-rock-n-play-kids2-sleepers-a8423713154/)); CPSC, “Fisher-Price Reannounces Recall of 4.7 Million Rock ‘n Play Sleepers; At Least Eight Deaths Occurred After Recall” (Jan. 9, 2023) ([www.cpsc.gov/Recalls/2023/Fisher-Price-Reannounces-Recall-of-4-7-Million-Rock-n-Play-Sleepers-At-Least-Eight-Deaths-Occurred-After-Recall](http://www.cpsc.gov/Recalls/2023/Fisher-Price-Reannounces-Recall-of-4-7-Million-Rock-n-Play-Sleepers-At-Least-Eight-Deaths-Occurred-After-Recall)).

<sup>8</sup> CPSC, “Fisher-Price Recalls Rock ‘n Play Sleepers Due to Reports of Deaths” (Apr. 12, 2019) ([www.cpsc.gov/Recalls/2019/Fisher-Price-Recalls-Rock-n-Play-Sleepers-Due-to-Reports-of-Deaths](http://www.cpsc.gov/Recalls/2019/Fisher-Price-Recalls-Rock-n-Play-Sleepers-Due-to-Reports-of-Deaths)).

<sup>9</sup> CPSC Commissioner Richard Trumka, Jr., “Eight New Deaths in Rock ‘n Play as Tragedies Mount in Fisher-Price Products; CPSC Working on a Rule that Could Prevent the Next Wave of Deaths” (Jan. 9, 2023) ([www.cpsc.gov/About-CPSC/Commissioner/Richard-Trumka/Statement/Eight-New-Deaths-in-Rock-n-Play-as-Tragedies-Mount-in-Fisher-Price-Products-CPSC-Working-on-a-Rule-that-Could-Prevent-the-Next-Wave-of-Deaths](http://www.cpsc.gov/About-CPSC/Commissioner/Richard-Trumka/Statement/Eight-New-Deaths-in-Rock-n-Play-as-Tragedies-Mount-in-Fisher-Price-Products-CPSC-Working-on-a-Rule-that-Could-Prevent-the-Next-Wave-of-Deaths)); Lauren Kirchner, Consumer Reports, “More Deaths Linked to Fisher-Price Rock ‘n Play and Kids2 Infant Sleepers, Even After Recalls” (Jan. 9, 2023) ([www.consumerreports.org/product-safety/deaths-linked-to-fisher-price-rock-n-play-kids2-sleepers-a8423713154/#:~:text=The%20CPSC%20recommends%20that%20if,as%20CR%20reported%20last%20February](http://www.consumerreports.org/product-safety/deaths-linked-to-fisher-price-rock-n-play-kids2-sleepers-a8423713154/#:~:text=The%20CPSC%20recommends%20that%20if,as%20CR%20reported%20last%20February)).

Even when rockers are not expressly described as useful for sleep, retailers and manufacturers often suggest the products can be used as a way for babies to “rest” or “relax” or be “soothed.” For example, the Kids2 “Ingenuity Keep Cozy 3-in-1 Grow with Me Baby Bouncer, Rocker & Toddler Seat” rocker highlights that “soothing vibrations help keep your infant calm,”<sup>10</sup> and consumer reviews describe “sleep” as the reason for providing the Fisher-Price Infant-to-Toddler Rocker with five-star reviews.<sup>11</sup>

Given the history of inclined infant sleep products and the incidents associated with rockers, our organizations believe that the risk associated with rockers outweigh any potential benefits of these products to infants under four months of age. Our organizations, therefore, strongly encourage the CPSC to specify a minimum age of four months as the threshold for when it may be appropriate to place infants in rockers. Before this age, most infants lack the ability to lift and move their heads independently, making them particularly vulnerable to health and safety risks associated with rockers. The agency should also make clear that the specification of four months as an appropriate minimum age for placement in rockers applies only to full-term infants. It is important for the agency to reiterate that parents and caregivers of premature infants should consult with a pediatrician regarding appropriate age minimums.

It is foreseeable that changes to age grading will only have a limited impact on preventing caregivers from using a rocker with younger infants if a product’s appearance is unchanged. We encourage the agency to consider changes in the product’s appearance to encourage safe use, such as prohibiting any image that can reasonably be found to be associated with sleep—for example, moons, stars, or sleeping animals. Further, if the Commission determines that an age minimum older than four months is appropriate, the agency should carefully consider additional risks that would be posed to the older babies using the product and what measures the agency should implement to address those risks.

If the agency pursues a final rule for rockers with an age minimum of four months or greater, an inclined surface with an angle greater than 10 degrees may be appropriate to permit. However, if the product has an angle of 10 degrees or less, it would be considered an infant sleep product. Based on current rockers in the marketplace, such products would fail to comply with the agency’s safety standard for bassinets (or another mandatory standard for an infant sleep product), and thus be illegal under the agency’s safety standard for infant sleep products if sold for use by children under five months of age. They would also be illegal if sold for use by children up to one year old under the Safe Sleep for Babies Act.<sup>12</sup>

## **II. Physical Design Characteristics Should Clearly Communicate to Consumers That Rockers Are Not Safe Sleep Environments for Infants**

Our organizations strongly support the agency’s efforts to clearly communicate to consumers that rockers are not safe sleep environments for infants, even for brief periods, and

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<sup>10</sup> Target product listing: “Ingenuity Keep Cozy 3-in-1 Grow with Me Baby Bouncer, Rocker & Toddler Seat,” (for sale as of Dec. 19, 2023) ([www.target.com/p/ingenuity-keep-cozy-3-in-1-grow-with-me-baby-bouncer-rocker-38-toddler-seat-burst/-/A-89298663](https://www.target.com/p/ingenuity-keep-cozy-3-in-1-grow-with-me-baby-bouncer-rocker-38-toddler-seat-burst/-/A-89298663)).

<sup>11</sup> Amazon listing, Fisher-Price Infant-to-Toddler Rocker (product not available for purchase on Dec. 19, 2023, on this site but listing remains) ([www.amazon.com/dp/B09QFQN182](https://www.amazon.com/dp/B09QFQN182)).

<sup>12</sup> Pub. L. No. 117-126.

should not be used as such. While we support the proposed warning labeling requirements, it is evident from incident data that warning labels alone are insufficient to communicate to adults that infants should not sleep in rockers.

Given the serious risk of sudden unexpected infant death (SUID), the most effective approach is to require manufacturers to design products to prevent SUID, rather than rely solely on warning labels and caretakers' adherence to them. We are therefore pleased to see the agency go beyond the requirements of ASTM F3084-22 and propose concavity and firmness requirements, which will help protect children. The CPSC should also continue researching and testing additional ways to make it clear to consumers that rockers are unsafe sleep environments for infants.

- a. Our organizations do not support the CPSC allowing additional soothing features, such as vibrations or calming sounds, on rockers.*

The rocking motion of these products will help soothe some babies; however, we have concerns about permitting the incorporation of other soothing features on rockers. In particular, we are concerned about vibrations which last for extended periods of time, as the vibrations may induce sleep. While we encourage the Commission to prohibit all other soothing features beyond rocking, if the Commission does permit such features, we strongly urge measures to encourage frequent adult interaction, such as timed limits for soothing features that require manual reactivation by a caretaker. This would help ensure that there is more frequent adult interaction with the product and the child using it.

We are also particularly concerned with the rule permitting music or sounds, a feature available on many rockers. We suggest that lullabies or soothing or calming music or sounds not be permitted. Besides inducing sleep, music or sounds may prevent a caregiver from hearing an infant who has woken up or is struggling to breathe. We strongly encourage the CPSC to continue researching whether certain soothing features, including extended periods of vibration, may induce sleep, or are tied to any adverse health effects. If the agency is able to identify certain features that either promote sleep or are linked to health issues in infants, the agency should consider banning these features.

- b. Torso angle restrictions should be evidence-based.*

As discussed above, rockers are not safe sleep environments for infants. A maximum angle that is similar to infant sleep products, in which the sleep surface angle can be up to 10 degrees, would be confusing to caregivers and may lead to more infants being placed in rockers for sleep. However, using research conducted by the Boise State University (BSU) research team, or soliciting additional research, the CPSC can set a maximum angle that reduces the likelihood of slumping or rolling, such as 15 or 20 degrees. This should be evidence-based, and we urge the CPSC to conduct or solicit additional research in this area.

As also discussed in greater detail above, the undersigned groups support the specification of a minimum age requirement. The intended occupants of the product – older infants and toddlers – are likely to have the ability to sit upright with assistance, like in a high chair. Therefore, we do not have a recommendation for a minimum or maximum angle at this

time, but again urge the CPSC to continue its research into this important area for infant and toddler safety.

### **III. The CPSC Should Require Additional Testing and Conduct or Commission Future Studies**

- a. *Our organizations support a third firmness test point and performance testing in the same manner as described in the recent nursing pillows notice of proposed rulemaking.*

As discussed in detail above, the history of inclined infant sleep products and incidents linked to rocker products demonstrate that some manufacturers and retailers use euphemisms to convey to consumers that rockers can help babies relax and be soothed to the point of falling asleep. This is certainly the way many parents and caregivers interpret the products' descriptions or their overall utility. For this reason, our organizations support proposed changes that would require rockers to have the same firmness standards as other products that are frequently used for sleep. The NPR has identified two test points in Figure 6 to paragraph (b)(10)(xiv). The test points are eight inches apart.

However, the NPR should include a third firmness test point in an area around the head that is most likely to fail the test and most critical to safety, given its proximity to a baby's nose and mouth. The BSU Final Report recommended that, for nursing pillows, firmness testing should be required because "products that lack firmness are more likely to conform around an infant's nose and mouth and to present a suffocation hazard."<sup>13</sup> The report recommended testing using an "anthropometry-based hemispheric probe" that is three inches in diameter, "geometrically similar to, and sized to represent the breadth of an infant's face."<sup>14</sup> The report also suggests testing at three locations: the point of maximum thickness, the point of minimum thickness and "a third location that seems particularly soft or is otherwise most likely to result in failure."<sup>15</sup>

Testing for rockers should without question be performed in the same manner. It would raise the bar on safety for rockers and mean that, as recommended for nursing pillows, rockers would have "firmness comparable to crib mattresses, which are generally considered the safest place for an infant to sleep."<sup>16</sup>

- b. *Biomechanical differences in children that impact the risk of injury and death associated with infant and infant/toddler rockers should be investigated further.*

According to the BSU report, "[f]uture studies should focus more on the biomechanical differences between younger and older infants within infant products." The Commission requests

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<sup>13</sup> Mannen, E.M., Davis, W., Goldrod, S., Lujan, T., Siddicky, S.F., Whitaker, B., & Carroll, J. (2022). *Pillows Product Characterization and Testing*. Prepared for the U.S. Consumer Product Safety Commission under contract no. 61320620D0002, task order no. 61320621F1015. ([www.cpsc.gov/content/Pillows-Product-Characterization-and-Testing](http://www.cpsc.gov/content/Pillows-Product-Characterization-and-Testing)).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*



comments on the biomechanical differences that impact the risks of injury and death associated with infant and infant/toddler rockers, particularly for premature infants and infants under four months.

The BSU research team was composed of biomechanical engineers, a pediatric pulmonologist, and consultants to develop test devices. In their research, they “evaluated the safety of seated products for infants by testing infants within the product and learning how infants use their muscles to move within its confines.”<sup>17</sup> The team reviewed the investigations of 47 incidents, tested 24 products among various seated product types and reviewed past research. The BSU research team also looked at how infants sit, move and use their muscles in seated products and looked at “kinematics (head-neck flexion, trunk flexion, and torso-pelvis flexion) in supine and prone positions to determine risks during intended placement and in the case of an infant who rolled over in the product.”<sup>18</sup>

The BSU report is critical in helping to inform the agency’s proposed rule. While the insights from this research are invaluable, one does not have to be a pediatrician or biologist to understand that babies have differing abilities at the same age. This includes neck strength and the ability to roll over. Because these products are used by caregivers for infants of varying ages, weights and strengths, the CPSC should conduct or commission future studies on the risks of infant rockers and infant/toddler rockers based on biomechanical differences, especially for babies born prematurely and infants younger than four months.

#### **IV. The Marketing, Warning, and Labeling Requirements Are Sensible, but Could Also Be Stronger**

Despite existing warnings, incident data confirms that some caregivers use rockers for brief or extended infant sleep. While warning labels alone cannot be relied upon, we support efforts by the agency to further clarify to adults that rockers are not safe for sleep. This may include increasing the size of required warning labels and the included font.

If the product is age graded for babies four months and up, it would be useful to provide a prominent warning that use with babies under that age can lead to suffocation, positional asphyxia, and entrapment, which can all be deadly. If the CPSC does not limit the age range of the product to children four months and older, such a warning would be even more critical.

#### **V. Effective Date and Stockpiling**

We strongly urge the CPSC to adopt the soonest possible implementation date that is feasible. We also urge the agency to take action to prevent manufacturers from substantially increasing production of non-compliant products, and sellers from offering for sale in large quantities products that fail to comply with this rule. Any rockers that do not meet the new

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<sup>17</sup> CPSC, “CPSC Staff Statement on Boise State University’s, ‘Seated Products Characterization and Testing’” (June 2023) ([www.cpsc.gov/s3fs-public/CPSC-Seated-Products-Report-FINAL.pdf?VersionId=UI.1.6SXqTfedecBi0Bwf\\_xrsrAoHtZnD](http://www.cpsc.gov/s3fs-public/CPSC-Seated-Products-Report-FINAL.pdf?VersionId=UI.1.6SXqTfedecBi0Bwf_xrsrAoHtZnD)).

<sup>18</sup> *Id.*

standard and were involved in a death should be recalled by the CPSC to ensure their removal from the secondhand market.

## **VI. Conclusion**

Our organizations appreciate the opportunity to comment on this proposed rule. We support the agency's proposal, which adopts ASTM tests where appropriate, and adds additional requirements where appropriate to further protect children from the risks associated with infant and infant/toddler rockets. We strongly urge the CPSC to adopt a minimum age threshold of four months. Finally, as the agency works to finalize the rule, we urge the CPSC to continue its research to ensure infants and toddlers are not exposed to unnecessary risks.

Thank you for your consideration of our comments.

Respectfully submitted,

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