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PETITIONERS

November 29, 2021

Ms. Alberta E. Mills
Secretary of the Commission
U.S. Consumer Product Safety Commission
4330 East-West Highway
Bethesda, MD 20814
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Re: Petition to Standardize the Size of Play Yards and Play Yard Mattresses

Petitioners, Carol Pollack-Nelson, Ph.D., Alan H. Schoem, Esq., and Sarah Newens, M.S. (hereinafter "Petitioners"), pursuant to 16 C.F.R. § 1051 Procedure for Petitioning for Rulemaking, request that the U.S. Consumer Product Safety Commission initiate mandatory rulemaking to standardize the size of play yards and play yard mattresses. The variety of play yard mattresses in the market can, and have, resulted in consumers placing an inappropriately sized mattress into a play yard, resulting in fatality. When a play yard mattress is too small for the play yard and leaves a gap 2 inches or greater, an infant can roll into and become entrapped in this space which can result in suffocation.

Background & Data

On June 16, 2015, the president of Keeping Babies Safe (KBS) petitioned the CPSC, requesting a ban on supplemental mattresses for play yards with non-rigid sides (petition CP 15-2: Petition Requesting Rulemaking on Supplemental Mattresses for Play Yards with Non-Rigid Sides). In the petition, CP-15, the petitioner relayed her family's tragic experience with the death of her 4-month-old son, Garret, in a portable crib with an inadequately sized supplemental mattress. The petitioner stated "We were totally unaware of the risk of danger we exposed our son to. We used the supplemental mattress in the play yard because it looked more comfortable than the original mattress; we had done it before with our other children and knew many other parents that had done the same."

In response to this petition, CPSC Staff reviewed play yard fatalities reported from Jan 1, 2000, to Dec 31, 2016. In the 17-year period studied, they identified 12 reported fatal incidents that likely involved the use of an aftermarket mattress in a non-rigid-sided play yard. CPSC's Health Sciences staff determined that seven of the 12 incidents were entrapments that likely involved use of an aftermarket mattress in a non-rigid-sided play yard; i.e., mesh or fabric-sided play yards. In these seven incidents, the aftermarket mattress was too small for the play yard. "For those 7 incidents associated with a poor fitting mattress, the size of the space between the edge of the mattress and the play yard side varied in width from 2 to 7 inches" (Nakamura, 2017, p. 53).

As the staff recognized in its briefing package transmitted to the Commission September 22, 2021, recommending a final crib mattress rule, the data on play yard fatalities from Jan 2000 through Dec 2016 does not support a ban of all supplemental mattresses. Rather, the data supports a ban of ill-fitting mattresses that create a gap between the side of the mattress and the play yard wall in which the baby's head/face can become entrapped. The Staff Briefing Package did not identify any entrapment incidents involving well-fitted mattresses (i.e., those with gaps of 2 inches or less¹).

In addition to incident data, the CPSC also has information about how and why consumers use play yards as they do with regard to adding an aftermarket mattress and soft bedding. One source of data is online reviews of after-market mattresses for play yards. In online reviews, caregivers express concern for infants sleeping on the hard OEM play yard mattress. Their perception that the play yard mattress is hard is likely due to existing requirements for play yard mattresses. The ASTM standard requires play yard mattresses to have a *maximum thickness* of 1.5" inches, including up to 1" of filler. However, as we have learned through participation in the ASTM subcommittee, manufacturers typically use less than 1" of filler in order to ensure their products are in compliance. Thus, in actuality, play yards often have $\frac{3}{4}$ " filler or less.

This explains why parents and caregivers think the play yard floor is so hard and why they seek to add additional cushioning. To make the hard mattress/floor in the play yard more comfortable, some consumers seek out an after-market mattress that is thicker than the original equipment provided by the manufacturer. After-market mattresses are typically between 2" to 4" thick. As previously discussed, in 17 years of fatality data, there are no cases of fatality involving a well-fit after-market mattress.

Ensuring that mattresses fit the play yard is key to their safety. Consumers should not have to measure or have uncertainty about the fit of the replacement mattress. However, if there are a variety of mattress sizes available in the market for a given perimeter shape, consumers may inadvertently purchase the wrong size. This poses a potential entrapment danger.

In addition, if it is difficult for consumers to figure out the appropriate size mattress for their play yard, they may instead opt to place folded blankets, quilts, or pillows under their baby. In fact, two studies commissioned by the CPSC found the majority of study participants add blankets, quilts and pillows under their baby in the play yard in an effort to soften the hard surfaces.²

¹ There is one incident mentioned in the CPSC data that involves a play yard with a 1" gap between the mattress and the side of the play yard. However, it is our understanding that in that case, the IDI does not mention entrapment. Rather, it indicates that the infant was lying face down and states that the infant's face was found against the mesh side; not in the gap.

² 2014 Durable Nursery Product Exposure Survey (DNPES); 2020 Fohrs Marsh Study of Caregiver Perceptions and Reactions to Product Safety Messages.

Clearly the current requirement for play yard mattresses to be thin and with little filler is inducing consumers to add soft bedding or seek out an after-market replacement mattress. Even if the Commission issues a final rule allowing aftermarket mattresses to be 1.5 inches or thicker, with so many different dimensions of play yards and mattresses, there still is a risk that consumers inadvertently will use the wrong size mattress in their play yard. To make this process easier and safer, we are petitioning the Commission to issue a mandatory standard standardizing the sizes of play yards to one size per perimeter shape, i.e., one size for square play yards, one size for rectangular play yards, one size for oval play yards and one size for round play yards.

A Precedent for Standardizing Infant Sleep Spaces - Standardization of Crib Mattresses

A precedent for standardizing infant sleep spaces into one size was established in the original Requirements for Full-Size Baby Cribs published in the Federal Register of November 21, 1973, 38 Fed. Reg. 32,129. In that regulation, when asked by a commenter to specify only “maximum values for the interior dimensions [of cribs]” the Commission rejected that comment concluding that

setting minimum interior dimensions is necessary to provide uniformity of size for consumers who must purchase accessories, including properly fitting mattresses, which contribute to the crib’s safety aspects.

38 Fed. Reg. 32,129 (November 21, 1973).

Accordingly, the Commission established one interior dimension for full-size baby cribs at 16 CFR § 1508.3(a), now 16 CFR § 1219.(c)(iii).

The identical rationale applies to play yards.

Deaths in play yards can be prevented if the Commission changes the play yard standard to require a uniform interior dimension as it did in 1973 for full-size cribs.

Petitioners’ Request

To mitigate the risk posed by an undersized mattress in a play yard, we are petitioning the Commission to initiate rulemaking to standardize the size of play yards and play yard mattresses to one size for each given perimeter shape. Such standardization would necessitate play yard mattresses being sized appropriately to fit a standardized play yard with a maximum gap of 1/2-inch (or such other dimension the Commission determines to be appropriate).

Standardizing the size of play yards and their mattresses would allow consumers to purchase properly fitting after-market mattresses without requiring them to precisely measure the interior dimensions of their play yard. This action should greatly reduce or eliminate the risk of suffocation incidents due to entrapment in an ill-fitting mattress. It also should mitigate the need for consumers to add cushions, pillows, soft bedding and the like to overcome the perceived discomfort of the mattress pad currently supplied with play yards.

Respectfully submitted,

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