

**FINAL REVISED VERSION**

**Comment to CPSC Regarding the Need for Safer Products:**

**Consumer Product Safety Commission  
16 CFR Part 1218**

**RIN3041-AC81**

**CPSC Docket No. CPSC-2010-0028**

**Safety Standard for Bassinets and Cradles:  
Notice of Proposed Rule-Making**

**Comment Provided By:**

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## Introduction

The objective of this comment is to encourage the Consumer Product Safety Commission to promulgate its regulations with the objective of advancing, on a broader scale, the cause of safer children's products. The ability to advance this cause has recently been accelerated with the passage of the Consumer Product Safety Improvement Act of 2008 (CPSIA).

Safer products, in the context of the current proposed rule, include much more than what is currently proposed. It includes the issues relating to chemical and environmental safety, as well as various other issues, e.g. proper firmness, etc.

It is also not productive to attempt to restrict parents from choosing the manufacturers of their choice. In particular, pertinent to this proposed rule, instructing parents to use only the pad/mattress provided by the bassinet/cradle manufacturer will not achieve the objectives of the CPSC.

## The Need for Chemically Safer Products

The CPSC has been successful at implementing measures directed at improving acute physical safety.

Beyond the immediate acute physical safety considerations, the Consumer Product Safety Commission should also investigate the materials and chemicals being used in baby and children's products, including pads/mattresses for baby and children's bassinets, cradles, and other beds. Infants sleep on these pads/mattresses for fifteen or more hours everyday.

Various scientific, medical, and governmental authorities have focused on issues of potentially inappropriate chemical exposures to babies and children.<sup>1</sup> It is well established that pads/mattresses for bassinets and cradles, as well as for cribs and other beds for babies and children, are made with materials and chemicals that are, as a practical matter, not significantly regulated by any government authority regarding the use of chemicals in these products.

In particular, pertinent to this proposed rule, every single bassinet/cradle (and non-full-size crib) bed in the U.S. comes with a pad/mattress included with the bed. In general, these pads/mattresses are low-cost basic designs (generally a piece of foam with a vinyl cover). Further, these pads/mattresses are generally obtained by bassinet/cradle manufacturers from overseas sub-contractors.

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<sup>1</sup> Here's what a scientific study of chemicals in mattresses concluded:

*"The results of the study demonstrated that some crib mattresses emitted mixtures of chemicals capable of causing respiratory-tract irritation and generating combinations of SI [sensory irritation], PI [pulmonary irritation] and AFL [airflow limitation]...chemicals...involved in the manufacture of the mattress and cover...have toxic properties...to lung, liver, and brain... respiratory tract irritants...carcinogenic and neurotoxic..."* (Respiratory Toxicity of Mattress Emissions in Mice, Rosalind C. Anderson, Archives of Environmental Health, January 2000)

Here's what the lead physician at a prominent children's hospital has to say about the relationship between chemicals and children's health:

*"While genetic factors are thought to account for 10-20% of cases of chronic disease in childhood, the majority of causes are unknown. It is strongly suspected that some pediatric diseases are caused in part by exposures to environmental toxins."* (A National Prospective Cohort Study of American Children, Philip J. Landrigan MD, M.Sc., Pediatrician, Chair of the Department of Community and Preventive Medicine, Director of the Center for Children's Health and the Environment at the Mount Sinai School of Medicine, New York, June 1, 2002, [www.childenvironment.org/factsheets/longitudinal\\_study.htm](http://www.childenvironment.org/factsheets/longitudinal_study.htm))

Here's what the EPA has to say about chemicals in children's products:

*"A child born in America today will grow up exposed to more chemicals than a child from any other generation in our history...Our kids are getting steady infusions of industrial chemicals before we even give them solid food... There are subtle and troubling effects of chemicals on hormonal systems, human reproduction, intellectual development and cognition."* (EPA Administrator Lisa Jackson, October 2009)

Virtually all manufacturers of pads/mattresses do not provide any meaningful test data regarding the materials and chemicals in their products. The public is increasingly becoming aware of concerns regarding questionable materials and chemicals in pads/mattresses.

Pads/mattresses can be made with more chemically and environmentally preferable materials, including, for example, organic cotton fabrics and filling (batting), and other chemically and environmentally preferable alternative materials.

CPSC should review the materials and chemicals used in pads/mattresses. More stringent regulation of these materials will lead to safer products. Meanwhile, until such regulations are in place, the CPSC should encourage parents to select pads/mattresses made with chemically and environmentally preferable materials.

### **The Need For Other Safety Parameters**

The Consumer Product Safety Commission should also undertake a regulatory initiative, under the Consumer Product Safety Improvement Act, or otherwise, to investigate other potential causes of unsafe products. One current area of concern, for example, is the issue of firmness. Many pads/mattresses are not firm at all. In fact, many can only be described as “mushy” or “flimsy.” Placing babies on such pads poses serious potential danger (especially regarding prone suffocation concerns).

### **The Need For Properly Fitting Pads/Mattresses**

An important area regarding the need for safer products revolves around the issue of properly fitting pads/mattresses. In this context, the proposed Safety Standard for Bassinets and Cradles [16 CFR Part 1218, Docket No. CPSC-2010-0028, Section 1218.2(b)(13)(i) Pg 22317] includes the following proposed wording:

*“Use only the pad provided by the manufacturer.”*

Attempting to force parents to “use only the pad provided by the manufacturer” will not achieve the objectives of the CPSC, and, in fact, will work against the objective of safer products, as per the following discussion.

Every single bassinet/cradle (and non-full-size crib) in the U.S. already comes with a pad/mattress provided by the manufacturer of the bed. If a pad/mattress does not fit properly, there can only be a limited number of reasons for such improper fit. These reasons include:

1. The pad/mattress supplied by the bassinet/cradle manufacturer may not fit properly in the first place;
2. The pad/mattress supplied by the bassinet/cradle manufacturer may be, or may become, ripped or otherwise damaged and the consumer has no choice other than to find another pad (and if the consumer doesn't obtain the correct replacement size, it will result in an improper fit); and
3. Some parents will, and do, remove and discard a brand new, already paid for, and presumably perfectly usable pad/mattress due to the chemical and environmental issues with those pads/mattresses (and, once again, if the consumer doesn't obtain the correct replacement size, it will result in an improper fit).

A more detailed discussion of these three reasons for improper fit follows:

1. The pad/mattress supplied by the bassinet/cradle manufacturer may not fit properly in the first place. This may occur simply because most manufacturers of bassinets/cradles do not manufacturer the pads that they supply. Instead, the bassinet/cradle manufacturers generally buy the pads from overseas contractors and simply insert them into their various bassinets/cradles. Sometimes, the fit simply is not a good fit. Rather than sending back entire containers of product to the overseas manufacturer (who probably would not take them back anyway), the bassinet/cradle manufacturer may simply choose to insert the poorly fitting pad and sell the bassinet/cradle with

that pad. (This may also be done to avoid long backorder situations, especially with retailers waiting for timely delivery of product on the shelf.)

If the improperly fitting pad did not fit in the first place, then instructing the consumer to “*use only the pad provided by the manufacturer*” does not solve the problem. To the contrary, it only exacerbates the problem. In fact, it tends to provide a degree of cover for the substandard practices of any such manufacturers. If anything, the consumer, instead of being told to “*use only the pad provided by the manufacturer*” would be better served by language that states “*do not use any pad that does not fit snugly*” or other such language.

2. The pad/mattress supplied by the bassinet/cradle manufacturer may be, or may become, ripped or otherwise damaged and the consumer has no choice other than to find another pad. In such a situation, instructing the consumer to “*use only the pad provided by the manufacturer*” also does not accomplish the intended objective. The consumer needs to be able to obtain an alternate pad that fits the product regardless of who the manufacturer is of the pad/mattress.

Bassinets/cradles (and non-full-size cribs) generally have useful lives that significantly exceed the useful lives of the pads/mattresses in them. Pads/mattresses rip, stain, and otherwise become unusable on an ongoing basis. A typical bassinet/cradle (or non-full-size crib) will generally require several pads/mattresses over the course of its useful life. (The CPSC is well aware of this, which is apparent from the exclusion of mattresses and pads from CPSIA Registration Card requirements.)

At the same time, manufacturers of bassinets/cradles (and non-full-size cribs) do not generally provide replacement pads (as they are generally not pad/mattress manufacturers to begin with). Consumers need to be able to walk into a juvenile store and purchase an appropriate pad/mattress without regard to whether that store carries (or still carries) products by the original manufacturer of the bed.

3. Some parents will, and do, remove and discard a brand new, already paid for, and presumably perfectly usable pad/mattress due to the chemical and environmental issues with those pads/mattresses. Why do some parents throw out the pad provided by the manufacturer? These consumers prefer a more chemically and environmentally friendly pad/mattress. Virtually all pads/mattresses provided by the bassinet/cradle (and non-full-size crib) manufacturers are constructed with a vinyl surface cover and filled with polyurethane foam. As indicated earlier, most of these pads are low cost basic pads obtained from overseas contractors. Aside from fit or other issues, increasing numbers of consumers are refusing to place their babies on these chemically and environmentally questionable materials. No instruction, from the CPSC or otherwise, to “use only the pad provided by the manufacturer” will dissuade these chemically and environmentally conscientious consumers from putting their babies on more preferable alternatives.

If anything, the CPSC should be at the forefront of encouraging the use of chemically and environmentally preferable materials in pads/mattresses.

There is no reason, of course, why an alternative pad, more preferable to the consumer, can't be manufactured in the marketplace. The consumer, though, needs to be informed as to the required size for the particular bassinet/cradle. (This is no different than the earlier situation where the consumer needs a replacement pad/mattress because the original has ripped or has otherwise become unusable.) The consumer needs to have the necessary sizing information in order to obtain a properly fitting pad/mattress.

Other parents, instead of removing and replacing the undesirable pad/mattress provided by the manufacturer, may choose to add extra bedding to separate the chemically undesirable pad/mattress from the baby. This would only exacerbate the entrapment concern.

Either way, whether these chemically and environmentally conscientious parents would remove and replace the pad/mattress, or whether they would add extra layers, the general problem of

improperly fitting pads/mattresses will only get worse if these consumers are prevented by CPSC from purchasing more chemically and environmentally preferable alternative pads/mattresses that are designed to fit the particular bassinet/cradle.

As such, no matter which of all the above three reasons of improper fit would apply, the concern with improperly fitting pads/mattresses can only be resolved by focusing on the criteria of a properly fitting pad/mattress. It cannot be resolved by focusing on who the manufacturer is of that pad/mattress.

Attempting to force parents to use only the pad/mattress provided by the bassinet/cradle manufacturer will also lead to other unintended consequences as well:

- If the CPSC mandates that consumers “*use only the pad provided by the manufacturer*” then retailers will be inclined to stop offering alternative pads/mattresses.
- If stores stop carrying alternative/replacement pads/mattresses due to the fear of violating a CPSC directive to “*use only the pad provided by the manufacturer,*” then this can also cause a general shortage of replacement pads/mattresses, including for those who desire chemically and environmentally preferable pads/mattresses.
- If retailers will discontinue offering alternative pads/mattresses, then (as indicated earlier) at least some chemically and environmentally conscientious consumers will resort to “homemade” pads/mattresses made from folded-up organic blankets, etc. (If anything, this will further exacerbate the issue of improper fitting pads/mattresses.) The only resolution to this issue is to permit consumers to purchase the pads/mattresses that they prefer, as long as those pads fit properly and otherwise comply with the various requirements.
- The pads/mattresses provided by bassinet/cradle (and non-full-size crib) manufacturers tend to be bought from overseas contractors. Instructing consumers to “*use only the pad provided by the manufacturer*” only serves to promote overseas low-cost manufacturers at the expense of American manufacturers.

Consumers deserve the right to purchase chemically and environmentally preferable pads/mattresses in the open marketplace. In this regard, consumers should be permitted to reject, for example,

- (a) polyurethane foam – highly flammable petroleum and isocyanate based;
- (b) so-called “soybean” foam – which is polyurethane foam with some soybean or castor oil mixed in;
- (c) latex – which the FDA says cannot be called “hypo-allergenic”;
- (d) coconut coir – which is mixed with latex; or
- (e) animal hairs.

It would be best if manufacturers didn’t make pads/mattresses from these materials to begin with. But they do. In any event, at a minimum, environmentally conscientious consumers deserve the right to choose not to use these pads/mattresses.

Some bassinet/cradle manufacturers claim that their liability is increased when a consumer uses a pad not provided by them. To the contrary. When a consumer removes the pad provided by the manufacturer and replaces it with another pad, the bassinet/cradle manufacturer does not have increased liability, and if anything, had decreased liability. Further, consumers have been purchasing alternative pads for bassinets/cradles (and non-full-size cribs) for many years and decades without any unreasonable liability concerns to the marketplace. Finally, liability protection is not the aim of the CPSC. Promoting safer products is.

The criteria for a properly fitting mattress should be based on the correct dimensions that are required for that bassinet/cradle (or non-full-size crib). Every bassinet/cradle (or non-full-size crib) should provide the exact measurements required for the pad for that bed.

The proposed language “*use only the pad provided by the manufacturer*” will not improve product safety (it will actually do the opposite as enumerated above, and, in particular, will lead environmentally conscientious consumers to substitute poorly fitting “home-made” pads/mattresses). The proposed language will also harm a free marketplace (and, in particular, it will harm the ability of more natural and organic manufacturers to freely offer their products to the public in competition with what is currently being provided).

The proposed Rule states that “*the standard is a performance specification for bassinets and cradles*” [16 CFR Part 1218(E)(2)]. Indeed, that’s what it needs to be. The Rule should mandate safety criteria, i.e. fit, firmness, chemical safety, etc. The one item which the Rule should not be concerned with is which manufacturers make the pads/mattresses.

### **Alternate Possible Language**

- Firstly, instead of warning parents to “*use only the pad provided by the manufacturer,*” parents should instead be instructed NOT to use any pad that doesn’t fit snugly. Example wording can be:
  - WARNING! To avoid entrapment, use only a pad that fits snugly.
  - WARNING! To avoid entrapment, use only a pad that fits this product without gaps.
  - WARNING! To avoid entrapment, DO NOT use a pad if it does not fit snugly.
- Secondly, more helpful language would be similar to language that CPSC uses for other situations, namely, for the bassinet/cradle manufacturer to indicate (as a tag or other marking on the product) what the proper dimensions should be for a pad used with the product. Example wording can be:
  - WARNING! To avoid entrapment, use only a pad that is \_\_\_\_ inches long and \_\_\_\_ inches wide.
- Thirdly, parents can be warned to only use pads specifically designed for the product. Example wording can be:
  - WARNING! To avoid entrapment, only use a pad that is specifically designed for this bassinet/cradle.
- Finally, the CPSC can mandate that all pad manufacturers specifically list on their packaging which bassinet/cradles (or other beds) the particular pad is intended for.

Any or all of the above suggestions will improve the likelihood of parents using properly fitting pads.



In all the above, it must be noted that “replacement” pads (i.e. a pad that replaces, at any point in time, the original pad provided by the manufacturer) versus “added” pads (i.e. pads added on top of the regular pad) are two separate matters. An added pad is likely to be problematic regarding extra bedding issues, prone issues, and/or wedging issues. (Warnings against the use of “added” pads are appropriate and are not the focus of this discussion.) A replacement pad, on the other hand, that is properly designed to fit the specific bed will not have any of these issues.

### **Conclusion**

Regulation of pads/mattresses, as for all baby and children’s consumer products, should focus on the materials and chemicals contained in those products (as well as all the other relevant issues, i.e. fit, firmness, etc.). The public is increasingly aware and sensitive to these issues. The scientific, medical, and regulatory communities are increasingly focusing on these concerns and implementing the necessary steps to better protect our babies and children. The CPSC should focus on the criteria for safer products and not on who the manufacturers should be. The CPSC is invited to work with the public, including those who support this comment, in achieving truly safer products for our babies and children.