

## What Is the Future of the Inclined Sleeper?

Fisher-Price and Kids II recalled millions of sleepers, and the federal government is reconsidering the product category

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Last updated: May 08, 2019

**Update:** On May 8, members of the subcommittee on infant inclined sleep products met at an ASTM International meeting and rejected requests from consumer advocates, the American Academy of Pediatrics, and parents to withdraw the category from the market. Instead, members decided to investigate the category further, reconvening in October 2019. In the meantime, unless the Consumer Product Safety Commission intervenes, manufacturers can continue to sell infant inclined sleepers. This article was originally published on May 7.

Following the deaths of at least 37 babies, the Consumer Product Safety Commission says infant inclined sleep products present such a danger that the current standards and warning labels governing them may need to change.

The CPSC, which regulates the products, says it plans to “reevaluate” the entire product category. At the same time, consumer advocates are pushing to eliminate the category from the market.

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“Inclined infant sleepers are dangerous and have no place in a safe sleep environment,” said Ben Hoffman, M.D., chairperson of the American Academy of Pediatrics Council on Injury, Violence, and Poison Prevention Executive Committee, at a CPSC hearing last week. “We urge [the CPSC] to eliminate this product category altogether so these deadly products are no longer available.”

Though it is rare for the CPSC to keep an entire category of products off the market, the agency does have that authority. One possible scenario: The CPSC could withdraw the infant inclined sleep product category and implement new requirements and warnings for the products under a different category. This would likely require that the products be significantly redesigned and not marketed for sleep. If that were to happen, companies could no longer sell or import today’s infant inclined sleep products, and any such products on the market could be subject to recall.

## Inclined Sleepers on the Market

Last month, a [Consumer Reports investigation](#) into the safety of inclined sleepers helped prompt the recall of 4.7 million Fisher-Price Rock ‘n Play Sleepers linked to at least 32 infant fatalities, and the [recall of nearly 700,000 Kids II sleepers](#) linked to at least five infant deaths.

But there are still several other inclined sleep products available for sale, such as the SwaddleMe By Your Bed Sleeper and the hiccapop DayDreamer Sleeper Baby Lounger Seat and Travel Bed for Infants.

Currently, there is no specific federal regulation that would stop a company, including Fisher-Price or Kids II, from putting new inclined sleepers on the market. But CR thinks that the CPSC should use every tool at its disposal to help get all inclined sleepers off the market and out of people’s homes.

“The CPSC must take action to protect infants’ safety, and to help make sure that parents and caregivers don’t unwittingly put their babies at risk,” says William Wallace, manager of home and products policy for CR. “Inclined sleep products shouldn’t be on the market. They conflict with American Academy of Pediatrics safe sleep recommendations, which state that babies should be put to bed alone, on their backs, on a firm, flat surface, unrestrained, and without any soft bedding or bumpers.”



The Fisher-Price Rock 'n Play Sleeper (left) and the Kids II Ingenuity Moonlight Rocking Sleeper (right).

## Regulatory Red Tape

Getting an entire category of products off the market can be a long, bureaucratic process.

The infant inclined sleep product category was established via ASTM International, an independent organization that brings together manufacturers, government officials, academics, medical experts, consumers, and others to establish voluntary industry standards for thousands of products and processes. CR is an active member and participates in working groups, including the subcommittee for infant inclined sleep products.

In order to have the ASTM infant inclined sleep product standard withdrawn and the product category eliminated, the subcommittee would need to approve such a step and then bring the motion before other overarching committees, which would also need to sign off on the action.

The process might be lengthy, but it's not unprecedented to have a standard withdrawn. And given the recent recalls and the numerous deaths associated with inclined sleepers, it's a possibility that may get serious consideration when the members of the infant inclined sleep products subcommittee convene at an upcoming ASTM meeting on May 8.

In advance of the meeting, the CPSC's career staff submitted a memo with their comments, which the agency also sent to CR. The CPSC project manager for the infant inclined sleep products category stated that current warning labels on the sleepers are "insufficient to address the serious hazards posed by inclined sleep products" and that the CPSC staff "urges the subcommittee to reconsider the whole standard." The memo stopped short of calling for a complete withdrawal of the infant inclined sleep products standard.

The CPSC did not elaborate further on the comments, but individual CPSC commissioners—who are appointed by the President and confirmed by the U.S. Senate—often express their own perspectives.

CPSC commissioner Robert Adler told CR he has serious misgivings about infant inclined sleep products: "Right now I'm leaning toward being very skeptical about inclined sleepers as a product category. I think that [Dr. Hoffman of the American Academy of Pediatrics] made a powerful case that this is a product that probably shouldn't be on the market."

## Engineer Steps Down

Last week, the head of the ASTM infant inclined sleep products subcommittee, a Fisher-Price engineer who helped create the Rock 'n Play Sleeper, stepped down from that post, leaving representatives from ASTM to lead the upcoming proceedings. When CR asked Fisher-Price why its engineer stepped down as head of the subcommittee he helped establish, a company spokesperson did not answer the question directly, saying their "energies are focused on the recall at this time."

Nancy Cowles, executive director of Kids in Danger, a nonprofit that focuses on reducing childhood injuries from consumer products, also says that all infant inclined sleep products—not just the brands that have been recalled—are inherently unsafe and that there is no fix that could make it safe for infants to sleep at an incline unsupervised. "Inclined sleep products, like the Fisher-Price Rock 'n Play Sleeper, should not be used or sold," Cowles says. She also adds that infants should be put to bed in a crib, play yard, or bassinet that meets existing strong federal standards and that "no other product is safe for sleep."

In the meantime, the Juvenile Products Manufacturers Association, an industry trade group that certifies children's products, told CR that "JPMA will continue to certify inclined sleepers."

## Fight for Transparency

CR's investigation into inclined sleepers has put a spotlight on the government and industry systems that too often fail to protect consumers from harm. At the center of these failures is a controversial federal law—called Section 6(b) of the Consumer Product Safety Act—that sharply restricts and sometimes entirely prevents the CPSC from publicly releasing company-specific information, frequently keeping consumers in the dark about product-related hazards, injuries, and deaths.

As CR previously reported, 6(b) prevented consumers from learning about the number of deaths associated with the Rock 'n Play Sleeper and the Kids II sleepers. For years, the law also kept secret the number of tip-over deaths associated with Ikea dressers. At the CPSC hearing on May 1, many advocates voiced concerns about 6(b) and called for its repeal.

Crystal Ellis, a child safety advocate and a mother whose 2-year-old son Camden died after a dresser fell on top of him, spoke at the CPSC hearing about how Section 6(b) had kept her from learning about the safety risks of the Ikea dresser in her son's bedroom—a dresser that the CPSC and Ikea already knew had been linked to deaths.

"We need to eliminate 6(b) to protect consumers, the constituents. The restriction of information prevented my family from even having a chance to know that our dresser was unsafe," said Ellis, speaking on behalf of herself and Parents Against Tip-Overs, a nationwide coalition of parents of young children who lost their lives from a furniture tip-over incident. What's more, the law also "allowed Ikea to delay the recall [of the dresser] with an ineffective education campaign that ultimately resulted in the death of my friend, Janet's son, Ted."

Remington A. Gregg, counsel for civil justice and consumer rights at Public Citizen, a nonprofit advocacy organization, also put pressure on the CPSC during the hearing last week to reconsider Section 6(b). "Section 6(b) has restrained the CPSC in its ability to proactively disclose safety hazards to the public. To our knowledge, no other federal agency that deals with public health and safety is subject to similar public disclosure restrictions," Gregg said. "6(b) negatively affects consumers by unnecessarily shielding critical product safety information from public view. There is no legitimate justification for this law, and Congress should eliminate it. ... True transparency requires 6(b) to be removed from law."

When CR asked the CPSC about Section 6(b), a spokesperson stated that the agency does not have an official stance on the law. But individual commissioners sometimes express their personal opinions.

The two current Democratic CPSC commissioners—Elliot Kaye and Robert Adler—consistently have called for the law to be amended or eliminated. The three Republican commissioners have not taken a position on whether the law should be changed. Current acting chairman Ann Marie Buerkle, a Republican, recently told CR: "I affirm the legislative branch of elected officials should decide what our laws should be. I respect the roles of the different branches of government—they legislate, we execute."

Cowles, of KID, however, emphasized that the "CPSC owes it to public safety to reexamine their use of the Act."