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The Honorable Alexander Hoehn-Saric
Chair
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

RE: 16 CFR 1243 Safety Standard for Infant Support Cushions
(Docket Number CPSC-2023-0047)

This letter is being submitted in response to the Notice of Proposed Rulemaking (NPR) relating to infant support cushions. These comments are provided on behalf of The Toy Association and its 900+ members, representing manufacturers, importers, designers, retailers, inventors, and toy safety testing labs, all working to ensure safe and fun play for families. Toy safety is the number one priority for the industry, as evidenced by the fact that the industry and The Toy Association have been global leaders in advancing toy safety for decades.

The Toy Association recognizes the benefit of the process of reviewing existing standards, updating the requirements as supporting documents are revised, and introducing new standards as and when safety data identifies potential hazards that are not addressed by existing standards. We also recognize that stakeholder input is an integral part of the rule process and appreciate the opportunity to provide these comments for consideration.

While the proposed revisions in the NPR do not relate directly to the toy industry, we feel it is necessary to raise significant concerns, as the proposed definition for 16 CFR 1243 as-written is overly broad, and would result in products from categories such as toys that clearly fall within the scope of 16 CFR 1250 to also fall under the scope of the proposed requirements.

Currently the definition of infant support cushion in §1243.2 of 16 CFR 1243¹ is as follows:

Infant support cushion means an infant product that is filled with or comprised of resilient material such as foam, fibrous batting, or granular material or with a gel, liquid, or gas, and which is marketed, designed, or intended to support an infant's weight or any portion of an infant while reclining or in a supine, prone, or recumbent position.

While this definition does encompass the type of product that has been associated with the safety concerns raised with certain products such as infant loungers in the Federal Register notice, its applicability is so broad that it would include other types of products that bear no causal determination with the injury data related to the product categories that the NPR is intending to address.

¹ FR Vol. 88, No. 10 p2544

Specifically, the proposed definition includes many types of toys intended for infants that are “...filled with or comprised of resilient material such as foam, fibrous batting, or granular material [...] and which is marketed, designed, or intended to support an infant’s weight or any portion of an infant [...] in a supine, prone or recumbent position.”² An internet search of toys used with infants will show many types of infant toys that have or include stuffed/filled elements that would fall under such a wide-ranging definition but do not include design elements analogous to those identified as being of concern under this NPR. Indeed, many toys are appropriately designed and intended to be used for prone-position (tummy-time) reasonably supervised play or supine-position play such as activity centers.

Although it is recognized that §1243.3 (d) states that “Toy accessories attached to, removable from, or sold with an infant pillow, as well as their means of attachment, shall comply with the applicable requirements of 16 CFR part 1250.”³, this does not address the concern being raised, since the reference to toys relates only as a supplemental requirement for certain accessories or secondary elements as opposed to the principal item (for example, toys and play mats).

Additionally, it is noted that the term ‘infant pillow’ is used in §1243.3 (d), but is used nowhere else in the proposed rule and is not a defined term. The Toy Association requests that this is either amended to reference the defined term of ‘infant support cushion’ for consistency, or ‘infant pillow’ is included as a discrete term in §1243.2.

While the proposed labeling shown in Figure 2 to Paragraph (d)(7) of §1243.6⁴ is provided as an example, it includes the statement “Use only on floor, with baby face-up on back.”. This, especially as it is being used as a type example, would actually contradict the safe and appropriate play pattern for any ‘tummy-time’ toy and is misleading if present. This could effectively act as a ban on any such items unless the scope is amended to exclude safe and appropriate infant toys.

A review of the NPR datasets⁵ does not indicate any record that products primarily intended and marketed as toys within the scope of 16 CFR 1250 caused any fatality or posed a risk of serious injury. As such, these products should be explicitly excluded from regulation proposed under §1243.1(c). Similarly there is no evidence on the record that indicates imposition of the requirements sought to be imposed on such toy products would reduce the risk of asphyxia associated with reasonable use or reasonably foreseeable abuse of such products.⁶ This is especially the case when considering such toy products significantly contribute to the healthy development of infants. Our position is consistent with recommendations of the National Institute of Health, American Academy of Pediatrics and other pediatric experts that tummy time play is beneficial to infant health and development.^{7 8}

² *Id.*

³ *Id.*

⁴ FR Vol. 88, No. 10 p2554

⁵ FR Vol. 88, No. 10 p2532

⁶ Consistent with historical data considered in development of ASTM F963 and previous CPSC research of the lack of suffocation risk from compliant stuffed toys.

⁷ <https://safetosleep.nichd.nih.gov/reduce-risk/tummy-time>

⁸ https://publications.aap.org/patiented/article-abstract/doi/10.1542/peo_document285/80192/Back-to-Sleep-Tummy-to-Play?redirectedFrom=fulltext

The Toy Association respectfully requests CPSC review and revise the proposed wording in 16 CFR 1243 in order to ensure that only the appropriate, applicable and intended product types (i.e. specifically infant support pillows of the type likely to present an actual risk of asphyxia as indicated in the data) fall under the scope of this rulemaking. Among the changes to be considered, The Toy Association recommends that products that fall under the scope of ASTM F963 as incorporated by reference in 16 CFR 1250 be specifically referenced in the list of exclusions identified in §1243.1(c), or be specifically excluded from the scope of the NPR as a separate reference.

We thank you for your attention to these comments. If you would like to further discuss any of the issues raised, please do not hesitate to contact me.

Regards,



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About The Toy Association and the toy industry:

The Toy Association is the North American based trade association; our membership includes more than 900 businesses, from inventors and designers of toys to toy manufacturers and importers, retailers and safety testing labs, and all members are involved in bringing safe & fun toys and games to children. The toy sector is a global industry of more than US \$90 billion worldwide annually, and our members account for more than half of this amount.

Toy safety is the top priority for The Toy Association and its members. Since the 1930s, we have served as leaders in global toy safety efforts; in the 1970s we helped to create the first comprehensive toy safety standard, which was later adopted under the auspices of ASTM International as ASTM F963. The ASTM F963 Toy Safety Standard has been recognized in the United States and internationally as an effective safety standard that has been adopted as a mandatory toy safety standard for all toys sold in the U.S. under CPSIA in 2008. It also serves as a model for other countries looking to protect the health and safety of their citizens with protective standards for children. The Toy Association continues to work with medical experts, government, consumers and industry to provide technical input to ensure that toy safety standards keep pace with innovation and potential emerging issues.

The Toy Association is committed to working with legislators and regulators around the world to reduce barriers to trade and to achieve the international alignment and harmonization of risk-based standards that will provide a high level of confidence that toys from any source can be trusted as safe for use by children. Standards alignment assures open markets between nations to maximize product availability and choice.