limited to 25 years or less over 200 years; or

(2) A near-circular disposal orbit that avoids for at least 100 years:

(i) Altitudes 20,182 +/- 300 kilometers;

(ii) The geosynchronous region; and

(iii) Altitudes less than 2,000 kilometers.

(d) *Maneuver to disposal orbit above GEO.* The operator must place the upper stage and its components into an orbit with a perigee altitude above 36,100 kilometers for a period of at least 100 years after disposal.

(e) *Probability of Collision.* The operator must limit the probability of collisions with operational spacecraft and debris 10 cm and larger to less than 0.001 for 100 years after disposal.

(f) *Information requirements.* A launch or reentry operator must submit the following information in an Orbital Debris Assessment Plan—

(1) Verification through hardware and software testing or analysis that the system has at least a 90 percent probability of successfully executing the planned disposal option;

(2) A description of how the system will achieve and maintain the planned disposal orbit for the required time limit; and

(3) Statistical analysis demonstrating compliance with the probability of collision lifetime limit with operational spacecraft and debris.

§ 453.20 Real-Time Reporting of Orbital Safety Hazards.

(a) At the detection of any launch or reentry activity outside the 3-sigma trajectory provided for collision avoidance or any debris-creating event, or if requested by a cognizant Federal agency, an operator must immediately provide information to the FAA and, if appropriate, to the requesting agency pertinent to locating and categorizing any orbital objects.

(b) The operator shall provide the following information to the FAA and, if applicable, the requesting Federal agency:

(1) The size and mass of the affected objects,

(2) The last known orbital or trajectory information, and

(3) Other details as determined by the FAA necessary to locate and categorize orbital objects.

Issued under authority provided by 49 U.S.C. 106(f) and 51 U.S.C. 50903, 50905 in Washington, DC.

Kelvin B. Coleman,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 2023–20531 Filed 9–25–23; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 1

[File No. R307004]

Petition for Rulemaking of the U.S. Chamber of Commerce

AGENCY: Federal Trade Commission.

ACTION: Receipt of petition; request for comment.

SUMMARY: Please take notice that the Federal Trade Commission (''Commission'') received a petition for rulemaking from the U.S. Chamber of Commerce. This petition requests to amend the Commission's rule regarding the disqualification of Commissioners. The Commission invites written comments concerning the petition. Publication of this petition is pursuant to the Commission's Rules of Practice and Procedure and does not affect the legal status of the petition or its final disposition.

DATES: Comments must identify the petition docket number and be filed by October 26, 2023.

ADDRESSES: You may view the petition, identified by docket number FTC–2023–0059, and submit written comments concerning its merits by using the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit sensitive or confidential information. You may read background documents or comments received at *https://www.regulations.gov* at any time.

FOR FURTHER INFORMATION CONTACT: Daniel Freer (phone: 202–326–2663, email: *dfreer@ftc.gov*), Office of the Secretary, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 18(a)(1)(B) of the Federal Trade Commission Act, 15 U.S.C. 57a(1)(B), and FTC Rule 1.31(f), 16 CFR 1.31(f), notice is hereby given that the above-captioned petition has been filed with the Secretary of the Commission and has been placed on the public record for a period of thirty (30) days. Any person may submit comments in support of or in opposition to the petition. All timely and responsive comments submitted in connection with this petition will become part of the public record.

The Commission will not consider the petition's merits until after the comment period closes. It may grant or deny the petition in whole or in part, and it may deem the petition insufficient to warrant commencement of a rulemaking proceeding. The purpose of this document is to facilitate public comment on the petition to aid the Commission in determining what, if any, action to take regarding the request contained in the petition. This document is not intended to start, stop, cancel, or otherwise affect rulemaking proceedings in any way.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2).

(Authority: 15 U.S.C. 46; 15 U.S.C. 57a; 5 U.S.C. 601 note.)

April J. Tabor,

Secretary.

[FR Doc. 2023–20422 Filed 9–25–23; 8:45 am]

BILLING CODE 6750–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1112, 1130 and 1242

[CPSC Docket No. 2023–0037]

Safety Standard for Nursing Pillows

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Danny Keysar Child Product Safety Notification Act, section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA), requires the U.S. Consumer Product Safety Commission (Commission or CPSC) to promulgate consumer product safety standards for durable infant or toddler products. The Commission is proposing a safety standard for nursing pillows. The Commission is also proposing to amend CPSC's consumer registration requirements to identify

nursing pillows as durable infant or toddler products and proposing to amend CPSC's list of notice of requirements (NORs) to include such nursing pillows. This proposed rule would help ensure that consumers continue to have access to nursing pillows for feeding while reducing hazards that have been identified for this product category.

DATES: Submit comments by November 27, 2023.

ADDRESSES: Comments related to the Paperwork Reduction Act aspects of the marking, labeling, and instructional literature requirements of the proposed rule should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: CPSC Desk Officer, FAX: 202–395–6974, or emailed to *oira_submission@omb.eop.gov.*

Other comments, identified by Docket No. CPSC–2023–0037, may be submitted electronically or in writing, as follows:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. CPSC typically does not accept comments submitted by email, except as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/Hand Delivery/Courier Written Submissions: Submit comments by mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504–7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *cpsc-os@cpsc.gov.*

Instructions: All submissions received must include the agency name and docket number for this proposed rulemaking. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *www.regulations.gov.* Do not submit electronically any confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier written submissions.

Docket: For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov,* insert the docket number, CPSC–2023–0037, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Timothy Smith, Project Manager, Directorate for Engineering Sciences, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; email: *tsmith@cpsc.gov;* telephone: (301) 987–2557.

SUPPLEMENTARY INFORMATION:

I. Background and Statutory Authority

Section 104(b) of the CPSIA, part of the Danny Keysar Child Product Safety Notification Act, requires the Commission to (1) examine and assess the effectiveness of voluntary consumer product safety standards for durable infant or toddler products, in consultation with representatives of consumer groups, juvenile product manufacturers, and independent child product engineers and experts, and (2) promulgate consumer product safety standards for durable infant and toddler products. 15 U.S.C. 2056a(b)(1). The Commission must continue to promulgate standards for all categories of durable infant or toddler products ''until the Commission has promulgated standards for all such product categories.'' 15 U.S.C. 2056a(b)(2).

The Commission is issuing this notice of proposed rulemaking (NPR) to establish a consumer product safety rule for nursing pillows to further implement section 104 of the CPSIA.[1] The briefing package prepared by Commission staff defines ''nursing pillows'' as ''any product intended, marketed, or designed to position and support an infant close to a caregiver's body while breastfeeding or bottle feeding. These products rest upon, wrap around, or are worn by a caregiver in a seated or reclined position.'' [2] Nursing pillows provide support to caregivers by raising infants to the desired height for feeding, thereby reducing muscular strain and abdominal pressure on the caregiver and providing a buffering surface between the infant and the caregiver. When infants fall asleep or are left unattended on nursing pillows, however, they are at risk for death or serious injury by suffocation.

As required by section 104(b)(1)(A) of the CPSIA, CPSC consulted with manufacturers, retailers, trade organizations, laboratories, consumer advocacy groups, consultants, and the public to develop this rule, including through participation in the juvenile products subcommittee meetings of ASTM. CPSC formally began the consultation process for this rulemaking in December 2021, via a letter from CPSC staff requesting that ASTM form a working group to develop a voluntary standard to reduce the risk of death and injury from hazards associated with infant pillow products, including nursing pillows.[3] CPSC staff provided ASTM incident data associated with both nursing pillows and infant support cushions. In response, ASTM formed the following subcommittees to develop two separate voluntary standards:

- the F15.16 Infant Feeding Supports subcommittee,[4] intended to develop a standard for nursing pillows, which the subcommittee refers to as infant feeding supports; and
- the F15.21 Infant Loungers subcommittee, with a remit including nursing pillows that are also intended for lounging.

CPSC staff has been actively participating in both ASTM subcommittees to develop voluntary standards that address hazards associated with these products.

Currently, no voluntary or mandatory safety standard for nursing pillows exists to address the hazards of infants sleeping on or in these products. Pursuant to section 104 of the CPSIA, 15 U.S.C. 2056a, the Commission proposes to issue a mandatory standard for nursing pillows. Nursing pillows are sometimes used on elevated surfaces or inside an infant sleep product, which can lead to death or serious injury by suffocation, entrapment, or falls. CPSC staff identified 154 infant fatalities and 88 nonfatal incidents from January 1, 2010, to December 31, 2022, involving nursing pillows. Of the 154 fatalities, an infant was sleeping in or on the nursing pillow in 142 cases. In 1992, CPSC adopted a ban on certain types of hazardous ''infant pillows'' that contain loosely filled granular materials that conform to an infant's face or body, codified at 16 CFR 1500.18(a)(16) (Infant

[1] On September 8, 2023, the Commission voted (4–0) to publish this notice of proposed rulemaking. Chair Hoehn-Saric and Commissioners Trumka and Boyle issued statements in connection with their votes, available at: *https://www.cpsc.gov/s3fs-public/RCANoticeofProposedRulemakingSafetyStandardforNursingPillows.pdf?VersionId=wCUsHNj0AhXxb3KM2A.kxMawNVGbS6oE.*

[2] Staff Briefing Package: Staff's Draft Proposed Rule for Nursing Pillows (Aug. 23, 2023) (Staff's NPR Briefing Package), available at: *https://www.cpsc.gov/content/Commission-Briefing-Package-Notice-of-Proposed-Rulemaking-Safety-Standard-for-Nursing-Pillows.*

[3] *https://www.cpsc.gov/s3fs-public/Nursing-and-Support-Pillow-VS-request.pdf.*

[4] The ASTM F15.16 Infant Feeding Supports subcommittee was initially called the Feeding and Infant Support Products subcommittee.

Pillow Ban). Certain nursing pillows are exempt from the Infant Pillow Ban while others do not fall within its scope, such as pillows with a non-granular fill. Many products are currently marketed for both nursing and ''lounging,'' despite the suffocation hazard posed of by propping up very young infants. In 2020, the most recent year for which CPSC has complete data, nursing pillows are associated with 38 fatalities and 14 injuries.

To address the risk of death and injury associated with nursing pillows, and as required in section 104 of the CPSIA, the Commission is issuing this proposed rule to establish mandatory performance and labeling requirements for nursing pillows. The proposed rule is intended to address the hazards associated with infants in nursing pillows. Accordingly, the proposed rule addresses:

(1) suffocation hazards associated with nursing pillows, by requiring nursing pillows to be sufficiently firm that the product is unlikely to conform to an infant's face and occlude its airways;

(2) entrapment hazards posed when the product restricts an infant's head movements, via performance standards requiring testing to assess this hazard;

(3) suffocation and fall risks due to infant restraints that could suggest to consumers that infants can safely be left unattended in or on the product; and

(4) the risks of suffocation, entrapment, or fall when an infant is left unattended in the product by requiring labeling and instructional literature to better communicate risks.

Section VI of this preamble, and Tabs B and C in Staff's NPR Briefing Package, provide a detailed explanation of proposed performance and labeling requirements.

Nursing pillows are a durable infant or toddler product under section 104(f) of the CPSIA. Section 104(f)(1) defines the term ''durable infant or toddler product'' as ''a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years.'' 15 U.S.C. 2056a(f)(1). Section 104(f)(2) of the CPSIA provides a non-exhaustive list of product categories within the definition of ''durable infant or toddler products.'' Although nursing pillows are not specifically listed in section 104(f)(2), they are ''durable infant or toddler products'' because (as explained in Part VIII below) they are durable products reasonably expected to be used by infants under the age of 5 years for support while they are being fed.

Section 104(d) of the CPSIA requires manufacturers of durable infant or toddler products to establish a product registration program and comply with CPSC's rule for product registration cards, 16 CFR part 1130. Any product defined in part 1130 as a ''durable infant or toddler product'' must comply with the product registration requirements, as well as testing and certification requirements for children's products, that are codified in 16 CFR parts 1107 and 1109. Because nursing pillows are durable infant products that will be subject to the proposed consumer product safety standard, the Commission proposes to amend part 1130 to include nursing pillows in the list of durable infant or toddler products that must comply with these product registration requirements. *See* 16 CFR 1130.2(a).

The testing and certification requirements of section 14(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2063(a), apply to standards promulgated under section 104 of the CPSIA. Section 14(a)(3) of the CPSA requires the Commission to publish an NOR for the accreditation of third party conformity assessment bodies (test laboratories) to assess conformity with a children's product safety rule to which a children's product is subject. The proposed rule would be a children's product safety rule that requires the issuance of a NOR.

II. The Product Category

A. Definition of Nursing Pillows

Nursing pillows are infant products intended to position and support an infant during breastfeeding—also referred to as nursing—or bottle feeding. These products generally rest upon or are ''worn'' by the caregiver while seated or partially reclined. Nursing pillows are most commonly C-, U-, or crescent- (or horseshoe-) shaped—to fit closely around the caregiver's torso. However, other designs exist, including a V-shaped or boomerang-shaped product, a round pod with a recessed center to support the infant, a stack of multiple petal-shaped pillows attached to a central tubular pillow, and E-shaped products for twins. Most nursing pillows are filled with synthetic batting or foam, but products filled with cotton, wool, or dried grains are available. *See* Tab E of Staff's NPR Briefing Package.

In addition to providing a support surface for infants, nursing pillows raise the infant to the desired height for feeding, thereby reducing muscular strain on the caregiver, and provide a buffering surface between the infant and the caregiver, reducing pressure on the caregiver's abdomen. This latter function is especially helpful where the caregiver has abdominal stitches from a caesarean section. Some products include a strap or belt, sometimes with a buckle, to secure the product to the caregiver's body, and a few have restraints that attach the infant to the product. Many products come with removable fabric covers, and some products have small infant head support bolsters or fabric toys attached.[5]

Nursing pillows are not covered by an existing voluntary safety standard. However, CPSC staff has been working with ASTM's F15.16 Infant Feeding Supports subcommittee to develop requirements intended to address the primary hazards associated with nursing pillows. On March 20, 2023, ASTM's F15.16 subcommittee issued a preliminary draft of the ASTM Infant Feeding Supports voluntary standard (ASTM draft standard).[6] The ASTM draft standard (which is not an approved standard and remains subject to change) defines an infant feeding support as a ''product that is intended to position and support an infant (the occupant) close to a caregiver's body, and to reduce strain and pressure on the caregiver's body, while breastfeeding or bottle feeding.'' Although not part of the formal definition, the ASTM draft standard includes clarifying text that states: ''These products are commonly U-shaped in appearance, and generally rest upon, wrap around, or are worn by a caregiver in a seated or reclined position. These products are commonly known as nursing pillows.'' Thus, the ASTM draft standard for infant feeding supports would include nursing pillows within the scope of covered products.

B. Market Description

As discussed in Staff's NPR Briefing Package at Tab E, CPSC estimates that annual sales of new nursing pillows likely total approximately $67 million. New nursing pillows range in price from $15 to $100, with most products in the $25 to $65 range. The more expensive models tend to have removable covers. The Commission's estimate of $67 million per year in sales of new nursing pillows assumes an average price of approximately $50 and annual sales of 1.34 million units. Some parents, however, may already own a pillow that was purchased for an older child, make a pillow, or buy a used pillow to use for nursing. Used nursing pillows and replacement covers for nursing pillows are commonly available from secondary marketplaces such as eBay and Mercari,

[5] *See* Staff NPR Briefing Package at 5, figures 1 and 2, for examples of nursing pillow designs.

[6] *See* Staff NPR Briefing Package at 12–17 and Engineering, Human Factors, and Health Sciences assessments, Tabs B, C, and D.

where prices are observed to range from less than $7 to more than $120. The widespread availability of replacement covers extends the useful life and durability of nursing pillows, allowing covers to be cleaned or replaced as needed.

Although more than a thousand businesses sell nursing pillows and nursing pillow covers online, just nine companies supply the models commonly sold in brick-and-mortar stores. Individual stores typically have fewer than four models of nursing pillows in stock, which limits consumers' ability to assess the safety-related characteristics of the products and to make selections on that basis.

C. Infant Cushion/Pillow Ban and Nursing Pillow Exemption

In 1992, pursuant to the Commission's authority under the Federal Hazardous Substances Act (FHSA), the Commission issued its Infant Pillow Ban. 57 FR 27912 (June 23, 1992). The Infant Pillow Ban bans ''infant cushions,'' ''infant pillows,'' and similar articles that are:

- loosely filled with granular material, including but not limited to, polystyrene beads or pellets;
- easily flattened;
- capable of conforming to the body or face of an infant; and
- intended or promoted for use by children under 1 year of age.

This proposed rule for nursing pillows does not change the FHSA ban. That ban was limited to infant cushions and infant pillows defined in the Infant Pillow Ban and the specific hazard presented by products with loosely filled granular material such as polystyrene beads or pellets.

In 2008, the Commission approved an exemption to the Infant Pillow Ban. 73 FR 77493 (Dec. 19, 2008). The exemption applies to Boston Billow Nursing Pillows and substantially similar nursing pillows that are designed to be used only as nursing aids for breastfeeding mothers. 16 CFR 1500.86(a)(9). Examples of products that fall within this exemption include nursing pillows that are tubular in form, C- or crescent-shaped to fit around a caregiver's waist, round in circumference, and filled with granular material. The exemption applies only to the Infant Pillow Ban and is not applicable to this proposed rule. In approving the exemption, the Commission assessed the utility of nursing pillows and the risk of harm based on data from January 1992 to May 2008. The Commission found that the data available at that time did not support a ban on the sale of all nursing pillows under the FHSA. *Termination of Rulemaking Other Than With Respect to Boston Billow Nursing Pillow and Substantially Similar Nursing Pillows,* 73 FR 51386, 51387 (Sept. 3, 2008).

Unlike the Infant Pillow Ban, this proposed rule sets a performance standard pursuant to the CPSIA that allows for the sale of nursing pillows that meet the requirements in the standard. As described below, this proposed rule is based in part on new data concerning incidents that occurred between January 2010 through December 2022, many of which were fatal. The proposed rule does not alter either the Infant Pillow Ban at 16 CFR 1500.18(a)(16) or the exemption codified at 16 CFR 1500.86(a)(9), both of which would remain in place. Thus, products that are not banned under the Infant Pillow Ban but that meet this proposed rule's definition of a nursing pillow would need to comply with the proposed rule.

III. Incident Data and Hazard Patterns

CPSC staff searched the Consumer Product Safety Risk Management System (CPSRMS) [7] and National Electronic Injury Surveillance System (NEISS) [8] databases for fatalities, incidents, and concerns associated with nursing pillows and involving infants up to 12 months old, reported to have occurred between January 1, 2010, and December 31, 2022. Commission staff identified 154 fatal incidents and 88 nonfatal incidents and consumer concerns reported to CPSC during this time. Because reporting is ongoing, the number of reported fatalities and nonfatal incidents during this period may increase, especially for years 2021 and 2022. Tab A of Staff's NPR Briefing Package describes the incident and hazard patterns associated with nursing pillows.

A. Incident Severity

The Commission is aware of 242 incident reports associated with nursing pillows. Table 1 groups the reported cases by severity. Of the 242 reports, 154 (64 percent) involved a fatality.[9] Of the 88 nonfatal incidents, 64 (73 percent) resulted in an injury, and 24 (27 percent) reported no injury. Among the reported incidents without injury, some included concerns such as product integrity or the smell of the nursing pillow that are unrelated to the hazards this proposed rule is intended to address. Table 1 provides the distribution of incidents by year.

TABLE 1—REPORTED INCIDENTS AND INJURY SEVERITY BY YEAR, JANUARY 1, 2010–DECEMBER 31, 2022

Year	Fatalities	Injuries	No injury	Total
2010	7	3	2	12
2011	5	0	1	6
2012	7	1	1	9
2013	5	0	6	11
2014	4	2	3	9
2015	10	3	0	13
2016	6	3	1	10
2017	10	5	0	15
2018	16	2	0	18
2019	17	5	0	22

[7] CPSRMS is the epidemiological database that houses all anecdotal reports of incidents received by CPSC, ''external cause''-based death certificates purchased by CPSC, all in-depth investigations of these anecdotal reports, as well as investigations of select NEISS injuries. CPSRMS documents include hotline reports, online reports, news reports, medical examiner's reports, death certificates, retailer/manufacturer reports, and documents sent by state and local authorities, among others.

[8] NEISS is a statistically valid surveillance system for collecting injury data. NEISS is based on a nationally representative probability sample of hospitals in the U.S. and its territories. Each participating NEISS hospital reports patient information for every emergency department visit associated with a consumer product or a poisoning to a child younger than five years of age. The total number of product-related hospital emergency department visits nationwide can be estimated from the sample of cases reported in the NEISS. *See https://www.cpsc.gov/Research--Statistics/NEISS-Injury-Data.*

[9] More than half of the fatalities of which CPSC staff is aware were reported to have occurred since 2019. Staff's NPR Briefing Package at Tab A. However, staff has noted that because the reported data are anecdotal, fluctuations in the numbers of reported incidents could simply reflect changes in reporting rather than an actual change in incident frequency. *Id.*

TABLE 1—REPORTED INCIDENTS AND INJURY SEVERITY BY YEAR, JANUARY 1, 2010–DECEMBER 31, 2022—Continued

Year	Fatalities	Injuries	No injury	Total
2020	38	14	2	54
2021*	21	14	1	36
2022*	8	12	7	27
Total	154	64	24	242

Source: CPSRMS and NEISS.
Reporting is ongoing; 2021–2022 are incomplete.

As reflected in Table 2, nearly all (144 of the 154, or 94 percent) of the reported fatalities associated with nursing pillows involved infants 6 months old and younger, and most (110 out of 154, or 71 percent) were deaths of infants 3 months old or younger. For more than two-thirds of the nonfatal incidents and nearly all the incidents without injury, however, the victim's age is not available.

TABLE 2—REPORTED INCIDENTS AND INJURY SEVERITY BY AGE, JANUARY 1, 2010–DECEMBER 31, 2022

Age	Fatalities	Injuries	No injury	Total
1 month	44	7	0	51
2 months	36	4	0	40
3 months	30	5	0	35
4 months	15	4	1	20
5 months	10	4	0	14
6 months	9	1	0	10
7 months	6	1	0	7
8 months	2	1	0	3
9 months	1	1	0	2
Unknown	1	36	23	60
Total	154	64	24	242

Source: CPSRMS and NEISS.
Reporting is ongoing. 2021–2022 are considered incomplete.

B. Fatalities and Associated Hazard Patterns

The official cause of death reported by the medical examiner in nearly all of the 154 reported fatalities was asphyxia, suffocation, overlay, sudden unexpected infant death (SUID), sudden infant death syndrome (SIDS; a sub-type of SUID), or a similar cause. Nearly all reported *fatalities* (142 of the 154) involved use of the nursing pillow for sleep, and these cases often involved additional unsafe sleep conditions including sleep-surface sharing—also known as co-sleeping—or the presence of other soft bedding such as pillows or blankets.

Nursing pillows are intended to be used for feeding when both infant and caregiver are awake, and the caregiver is able to ensure that the infant's airways are not covered by the pillow. However, because infants frequently fall asleep during or after feeding, nursing pillows are foreseeably misused for infant sleep, which creates a potential hazard for the infant. For example, if a sleeping infant rolls over so their face is pressed against the nursing pillow, the infant's airways may be blocked, causing suffocation. Similarly, if an infant falls into the opening where the caregiver is positioned during feeding, the infant can land face-down with the pillow surrounding their head, causing entrapment against the surface on which the pillow rests. Even if the infant remains with their back against the top of the nursing pillow, if the infant's position shifts so that their head falls against their chest or tilts backwards over the top of the pillow, the hyperextension or hyperflexion of the infant's neck can prevent breathing.

For the most part, there was no witness observing the fatal incidents, and 60 of the fatal cases (39 percent) had insufficient details to enable CPSC staff to determine the hazard pattern or scenario. However, CPSC staff classified the remaining 94 reported fatalities by hazard patterns, based on the best available information about the position in which the victim was found. Table 3 shows the distribution of the 154 reported fatalities by hazard scenario.

TABLE 3—REPORTED FATALITIES BY HAZARD SCENARIO, JANUARY 1, 2010–DECEMBER 31, 2022

Hazard scenario	Fatalities	Percent*
Face into product	32	21
Face into other object/bedding outside product	21	14
Face down in opening	14	9
Neck extension/flexion	13	8
Bedding over face	4	3
Face into product or bedding (unknown)	4	3
Entrapment/overlay while nursing	3	2
Overlay	3	2
Unknown	60	39

TABLE 3—REPORTED FATALITIES BY HAZARD SCENARIO, JANUARY 1, 2010–DECEMBER 31, 2022—Continued

Hazard scenario	Fatalities	Percent *
Total	154	100

Source: CPSRMS.
Reporting is ongoing, especially for 2021–2022.
* Percentages may not sum to 100 due to rounding.

Sixty-two fatalities (40 percent) involved the nursing pillow product being used in another infant sleep product, such as a crib, portable playpen, or bassinet; 61 fatalities (40 percent) involved use of the product on an adult bed or mattress; and one fatality involved a mattress of unknown size. Eighteen reported fatalities (12 percent) involved the product being used on a couch, sofa, or loveseat; one fatality involved the product being used on the caregiver's lap in a recliner chair; and the use location for 11 fatalities is unknown. Table 4 displays fatal incidents by the location where the nursing pillow and infant were placed.

TABLE 4—REPORTED FATALITIES BY PILLOW/INFANT PLACEMENT, JANUARY 1, 2010–DECEMBER 31, 2022

Pillow/infant placement	Fatalities	Percent *
Infant sleep product	62	40
Bassinet	29	19
Crib	20	13
Portable playpen/crib	13	8
Adult sleep product	61	40
Adult bed	58	38
Adult mattress	3	2
Couch	18	12
Recliner chair	1	1
Unknown size mattress	1	1
Unknown	11	7
Total	154	100

Source: CPSRMS.
Reporting is ongoing, especially for 2021–2022.
* Percentages may not sum to 100 due to rounding.

C. Nonfatal Incidents

Of the 88 nonfatal incidents associated with nursing pillows, 64 resulted in an injury to the infant and 24 did not lead to a reported injury. Of the 64 injury victims, 19 infants were known to have been treated and released from the emergency department. All 19 of these injuries involved the infant falling or rolling off, or out, of the nursing pillow. An additional 3 injuries, one involving a burn, one due to a fall, and one due to cardiopulmonary arrest after the infant was laying on the nursing pillow, resulted in hospital admission. The remaining 42 injuries where the level of care was not known included falls, near suffocation, near strangulation, choking, and skin irritation or allergy. Table 5 summarizes the hazard patterns for the nursing pillow-related nonfatal incidents.

TABLE 5—REPORTED NONFATAL INCIDENTS BY HAZARD PATTERN, JANUARY 1, 2010–DECEMBER 31, 2022

Hazard	Nonfatal incidents	Percent *
Skin allergy/irritation	29	33
Fall/roll out	23	26
Elevated surface	19	22
Carrying in product	2	2
Same level	1	1
Unknown level	1	1
Filling coming out/choking hazard	6	7
Product integrity	5	6
Strong smell	5	6
Other	20	23
Total	88	100

Source: CPSRMS and NEISS.
Reporting is ongoing for these databases, especially for 2021–2022.
* Percentages may not sum to 100 due to rounding.

Table 6 displays nonfatal injuries by the location in which the nursing pillow and infant were placed. In 66 percent (42 of 64) of the nonfatal injuries, the location was unknown, but the most

common locations among the remaining incidents were couches and beds.

TABLE 6—REPORTED NONFATAL INJURIES BY PILLOW/INFANT PLACEMENT, JANUARY 1, 2010–DECEMBER 31, 2022

Pillow/infant placement	Injuries	Percent *
Couch	8	13
Adult bed ^	5	8
Bed, unknown type	3	5
Infant being carried in product	2	3
Table	2	3
Bathroom counter	1	2
Rocking Chair **	1	2
Unknown	42	66
Total	64	100

Source: CPSRMS and NEISS.
Reporting is ongoing for these databases, especially for 2021–2022.
* Percentages may not sum to 100 due to rounding.
^ In one incident, the caregiver was breastfeeding while in an adult bed.
** Infant was placed on the caregiver's lap while in the rocking chair.

IV. The BSU Final Report [10]

CPSC awarded a contract to Boise State University (BSU) for infant biomechanics and suffocation research and consultancy services. One task under this contract was for research on pillows intended for infant care and use, and an analysis of the risk of injury or death to infants associated with the use of infant pillows marketed as aiding infants during activities such as feeding, nursing, sleeping, propping, and lounging; that is, nursing pillows and infant support cushions.

BSU delivered its final report on June 30, 2022 (the BSU Final Report).[11] The BSU Final Report provides recommendations and conclusions related to the performance and design of nursing pillows, including:

- *Firmness Testing.* The BSU Final Report recommends that all nursing pillows be required to undergo firmness testing, because products that lack firmness are more likely to conform around an infant's nose and mouth and to present a suffocation hazard. The report recommends testing using a 3-inch diameter, anthropometry-based hemispheric probe that is geometrically similar to, and sized to represent the breadth of, an infant's face. The report suggests that this probe should be applied to the product at three locations: the location of maximum thickness, the location of minimum thickness, and a third location that seems particularly soft or is otherwise most likely to result in failure. The force required to displace the probe 1 inch into the product at each location must exceed 10 Newtons (N). Passing this requirement would mean that the product has firmness comparable to crib mattresses, which are generally considered the safest place for an infant to sleep.
- *Airflow Testing.* The BSU Final Report recommends that products that do not pass firmness testing be required to pass an airflow test. Passing the airflow test would mean that the product has airflow characteristics comparable to current mesh crib liners, which the BSU researchers believe would mitigate the suffocation hazard. However, the report also recommends that airflow testing is not required for products that pass their proposed firmness testing, because a firm product is unlikely to form a seal around an infant's nose and mouth.
- *Sagittal-Plane Testing.* BSU developed prototype sagittal-plane testing devices to allow for more comprehensive assessments of infant positioning in and on nursing pillows and infant support cushions.[12] The BSU Final report emphasizes that further research is needed to determine appropriate worst-case positions for testing and to set threshold values for acceptable body positions that would not negatively impact infant breathing.
- *Nursing Pillow Shape.* The BSU Final Report advises that nursing pillows that are firm and feature sharper corners, rather than cylindrical sides, are likely the safest option for infants, because there would be no reasonable way for consumers to use such a product for lounging, thereby limiting the hazards associated with sagittal-plane positioning in a nursing pillow.

CPSC considered the BSU Final Report and its recommendations when developing this proposed rule for nursing pillows. Tab B of Staff's NPR Briefing Package contains CPSC staff's assessment of how the proposed rule reflects the report's conclusions and recommendations.

V. ASTM's Draft Standard [13]

There are no published U.S. voluntary standards for nursing pillows. However, on March 20, 2023, ASTM issued ballot F15.16 (23–01), which included the ASTM draft standard. The ballot closed on April 20, 2023, and received 11 negative votes with comments and 6 other comments. Although not adopted, the ASTM draft standard reflects the types of performance requirements that are under consideration by industry, with input from CPSC staff.[14] It includes general requirements typically found in other ASTM juvenile product standards, such as requirements for lead, including lead in paints; prohibitions against small parts, hazardous sharp edges or points, and removable protective components; requirements to prevent injury from scissoring, shearing, and pinching; requirements for toy accessories that are attached to, removable from, or sold with the products; and permanency requirements for labels and warnings.

The ASTM draft standard also includes four performance requirements

[10] *See* Staff's NPR Briefing Package, Tab B.

[11] 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. Available at: *https://www.cpsc.gov/content/Pillows-Product-Characterization-and-Testing.*

[12] The sagittal plane is an anatomical plane that runs vertically through the human body, dividing it into left and right sections. It can be thought of as viewing the human body in profile.

[13] *See* Staff's NPR Briefing Package, Tab B.

[14] On August 21, 2023, ASTM issued ballot F15 (23–12), which included a revised draft of the ASTM Infant Feeding Supports voluntary standard. This new ballot is scheduled to close on September 21, 2023. Staff is currently reviewing the ballot

intended to address safety hazards specifically associated with nursing pillows:

- *Infant Restraints:* This requirement prohibits infant feeding supports from including an infant restraint system, which may entangle an infant and could invite misuse by suggesting to caregivers that it is acceptable to leave an infant unattended on the nursing pillow.
- *Fabric/Mesh Integrity:* This requirement is intended to address product integrity issues such as seam failures and material breakage.
- *Firmness:* This requirement places limits on the extent to which certain portions of the product can deflect when a 3-inch diameter hemispheric probe is applied to the product with a certain force. The proposed requirement and test method address the suffocation hazard when a nursing pillow conforms to an infant's face, and are based on the firmness recommendations in the BSU Final Report.[11] However, the BSU researchers' recommended requirements were applied not only to the top infant support surface, but also to the inner wall of the crescent-like opening of these products. Testing is performed at three locations on each of these two surfaces.
- *Occupant Containment:* This requirement applies a 9-inch diameter head probe to the opening of an infant feeding support; when moved laterally through this opening, the probe must not contact the side walls of the product. The requirement is intended to reduce the potential for an infant's head to become entrapped within this opening. This requirement also is intended to reduce the extent to which these products are used for infant propping or lounging, by limiting the amount of lateral support available to young infants if they were placed within the opening.

The ASTM draft standard also includes marking, labeling, and instructional literature requirements. These include requirements for warnings that must appear on nursing pillows and other infant feeding supports covered by the standard. Figure 1 illustrates the ASTM draft standard's required warning statements that must appear on all nursing pillows:

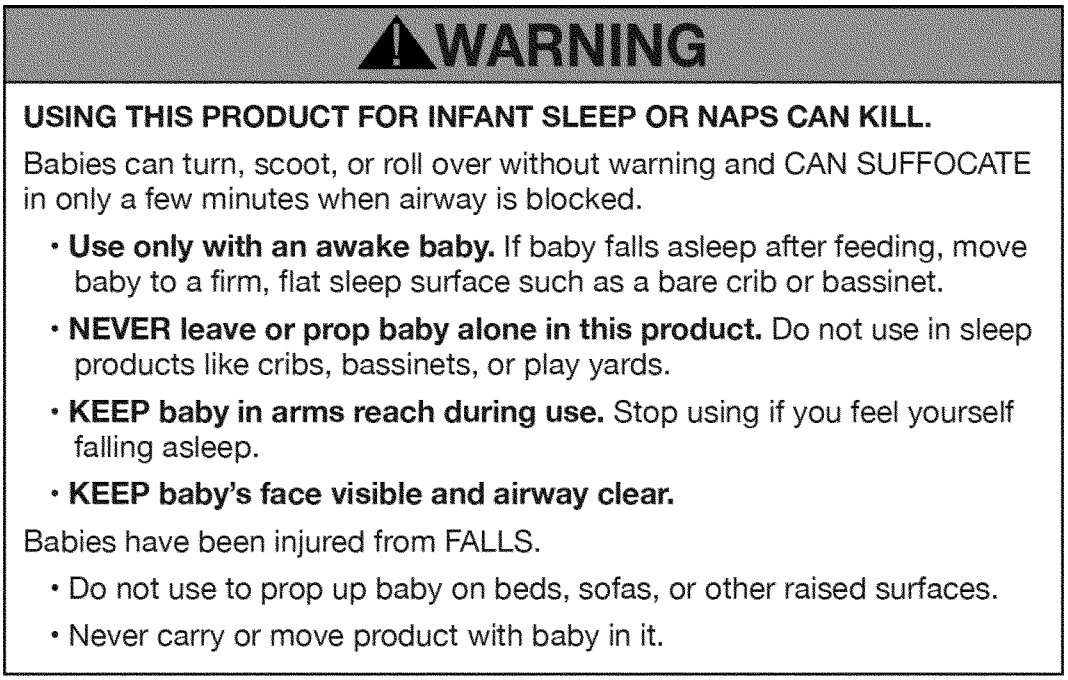


Figure 1: Warning Label in ASTM Draft Standard

The ASTM draft standard requires the warnings to be ''permanent'' and ''conspicuous,'' which the draft standard defines as a ''label that is visible, when the infant feeding support is in a manufacturer's recommended use position, to a person sitting near the infant feeding support at any position around the infant feeding support.''

The draft voluntary standard also includes requirements for package warnings against using nursing pillows for sleep or in sleep products, and to state the manufacturer's recommended weight, height, age, developmental level, or combination thereof, of the infant. In addition, the package cannot include warnings, statements, or graphics that indicate or imply that the infant may be left in the product without an adult caregiver in attendance.

Lastly, ASTM's draft voluntary standard includes requirements for instructional literature to accompany products covered by the standard. In addition to the warnings on the product, there must be instructions to consumers to: (1) read all instructions before using the product; (2) keep the instructions for future use; and (3) not use the product if it is damaged or broken. The instructions also must indicate the manufacturer's recommended maximum weight, height, age, developmental level, or combination thereof, of the infant. If the product is not intended for use by a child for a specific reason (*e.g.,* a disability that would prevent safe use of the product), the instructions must state this limitation.

VI. Description of the Proposed Mandatory Standard for Nursing Pillows [15]

To address established risks of death and injury associated with infant suffocations, entrapments, and falls, and as required in section 104 of the CPSIA, the Commission is issuing this proposed rule to establish mandatory performance

[15] *See* Staff's NPR Briefing Package, Tab B.

and labeling requirements for nursing pillows. The proposed rule addresses:

(1) suffocation hazards associated with nursing pillows, by requiring nursing pillows to be sufficiently firm so that the product is unlikely to conform to an infant's face and occlude its airways;

(2) entrapment hazards posed when the product restricts an infant's head movements, via performance standards requiring testing to assess this hazard;

(3) suffocation and fall risks due to infant restraints that could suggest that infants can safely be left unattended in the product; and

(4) the risks of suffocation, entrapment, or fall when an infant is left unattended in the product by requiring labeling and instructional literature to better communicate risks.

The text of the proposed rule is based on an evaluation of the nursing pillow market, the existing Infant Pillow Ban and its associated exemption, the ASTM draft standard for infant feeding supports that is under development, and the recommendations of the BSU Final Report. The proposed rule would apply to all nursing pillows, as defined below. The proposed rule is summarized below and explained in more detail in Tabs B and C of Staff's NPR Briefing Package.

A. Scope

Section 1242.2 of the proposed rule defines ''nursing pillow'' as:

Any product intended, marketed, or designed to position and support an infant close to a caregiver's body while breastfeeding or bottle feeding. These products rest upon, wrap around, or are worn by a caregiver in a seated or reclined position.

The definition of ''nursing pillow'' excludes maternity pillows, also known as pregnancy pillows, which staff defines as ''a large body pillow intended, marketed, and designed to provide support to a pregnant adult's body during sleep or while lying down,'' and sling carriers, as defined in 16 CFR part 1228, which are already required to meet CPSC's sling carrier safety standard.

This definition is intended to encompass all nursing pillows on the market and within the available incident data, while excluding products that are not intended primarily for nursing (maternity pillows) or that might be used for nursing but whose hazards are already addressed by another standard (sling carriers). This definition is similar to the definition developed by the ASTM infant feeding supports subcommittee for the ASTM draft standard. The proposed rule, however, does not include additional language used in the ASTM draft standard's definition of ''infant feeding support,'' which states that these products are commonly U-Shaped in appearance. That language is not needed because all products that meet the definition in the proposed rule are subject to the same hazards and should be considered within the scope of the proposed rule regardless of the details of their shape.

B. General Requirements

The proposed rule includes many of the general requirements included in the ASTM draft standard for infant feeding supports to address the potential hazards associated with lead in paints; small parts; sharp edges or points; toy accessories that are attached to, removable from, or sold with the nursing pillow; and the removal of protective components. However, the requirement in the ASTM draft standard to prevent the removal of protective components has been augmented in the proposed rule to include other possibly detachable components that are present, such as zipper pulls and buttons. If detached, these components can expose the infant to hazards such as sharp points, sharp edges, and choking hazards.

The proposed rule also includes the warning permanency requirements in the ASTM draft standard, with an additional permanency requirement for ''free-hanging'' labels that attach to the product at only one end and are particularly susceptible to attempts at removal or alteration by consumers. Section 1242.3(e)(4) of the proposed rule includes the following warning permanency requirement:

Warning labels that are attached to the fabric of nursing pillows with seams shall remain in contact with the fabric around the entire perimeter of the label, when the product is in all manufacturer-recommended use positions, when tested in accordance with [reference to existing test method for assessing permanency of warning labels attached with seams].

C. Proposed Performance Requirements

1. Infant Restraints

To address a potential entanglement hazard, the proposed rule prohibits nursing pillows from including an infant restraint system. The draft ASTM voluntary standard for infant feeding supports includes a similar requirement. Proper use of a nursing pillow involves actively attending to the infant during use, and the presence of restraints could suggest to consumers that infants properly can be left unattended on the product.

2. Seam Strength

Under the proposed rule nursing pillow seams would be subject to a tension test similar to that applied to toys intended for children up to 18 months old under ASTM F963, *Standard Consumer Safety Specification for Toy Safety* (the toy standard),[16] but tested at a higher tension force of 15 pounds rather than 10 pounds, because nursing pillows may be used for multiple children or passed on to other caregivers, meaning these products would be subject to stress over a usable life that can span more than a single infant's use. CPSC is aware of one injury associated with seam failures, where an infant reportedly choked on filling that came out of the product, and has received additional reports of nonfatal incidents involving product integrity issues such as seam failures *See* Staff's NPR Briefing Package at Tab A. The seam strength requirement and test method in the proposed rule would address such incidents.

3. Caregiver Attachments

To address the potential for infant falls if the buckled belts, straps, or other features intended to secure the product to the caregiver fails, the proposed rule includes a requirement and test method for the strength of caregiver attachments. Specifically, the proposed rule would require that each element of the caregiver attachment system (*e.g.,* strap or buckle) that is included on nursing pillows be required to withstand a static load equal to the recommended weight limit of the product, or 20 pounds, whichever is greater.

4. Firmness

The proposed rule includes a firmness requirement that applies to each nursing pillow's infant support surface, as well as the inner wall of the nursing pillow opening (*e.g.,* within the crescent-like opening). As explained in Tab B of Staff's NPR Package, the proposed firmness requirement and test method is based on the recommendations of the BSU Final Report, with modifications including the addition of a requirement to test the inner wall of the opening. The test applies a 3-inch diameter hemispheric probe, which is similar in size and shape to an infant's face, to three test locations on each surface. To meet the firmness requirement, the force

[16] Incorporated by reference in 16 CFR part 1250, *Safety Standard Mandating ASTM F963 for Toys.*

required to displace the probe 1 inch into each test location must exceed 10 N (about 2.25 pounds), which results in product firmness that is comparable to crib mattresses. The diagrams in Figure 2, below, illustrate the firmness test being applied to the two surfaces of a nursing pillow. This requirement is intended to reduce the likelihood that the infant support surface or the interior opening of the nursing pillow can conform to an infant's face and suffocate the child.

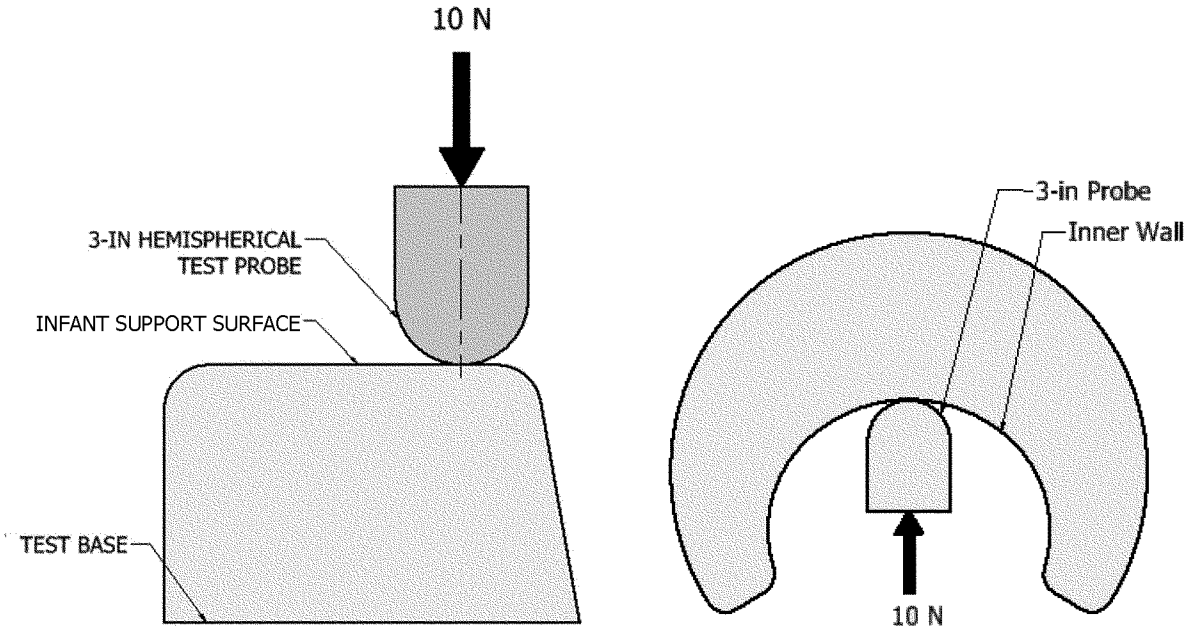


Figure 2: Illustration of Firmness Test Applied to Two Surfaces of Nursing Pillow

ASTM's draft voluntary standard includes a firmness requirement similar to the firmness requirement in the proposed rule, including for the inner wall of the nursing pillow opening.

5. Infant Containment

The proposed rule requires nursing pillow openings to be of a size that is more appropriate for an adult user, rather than an infant, and limits the amount of lateral support for young infants who might be placed within the nursing pillow opening. This requirement also reduces the potential for an infant's head to become entrapped in the nursing pillow's opening or for the product to restrict a young infant's head movements, should the infant find themselves in the opening.

As shown in Figure 3, a 9-inch probe is used to ensure that the product opening is wider than the probe and that the probe can be moved outward from inside the nursing pillow without contacting its surface.

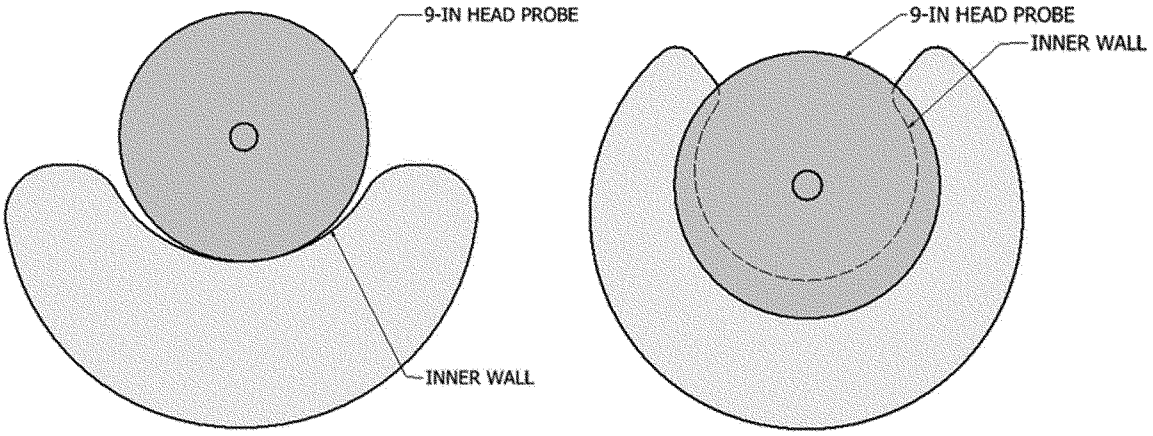


Figure 3: Illustration of nursing pillows that pass (left) and fail (right) CPSC's proposed infant containment provision.

Tab B in Staff's NPR Briefing Package contains a detailed description of this proposed testing method. The requirement in the proposed rule is similar to the requirement that appears in the ASTM draft standard for infant feeding supports. The proposed rule, however, includes an additional requirement that the nursing pillow cannot extend beyond the opposite end of the probe, and also requires testing to be performed both with and without any caregiver attachments secured, as shown in Figure 4, below.

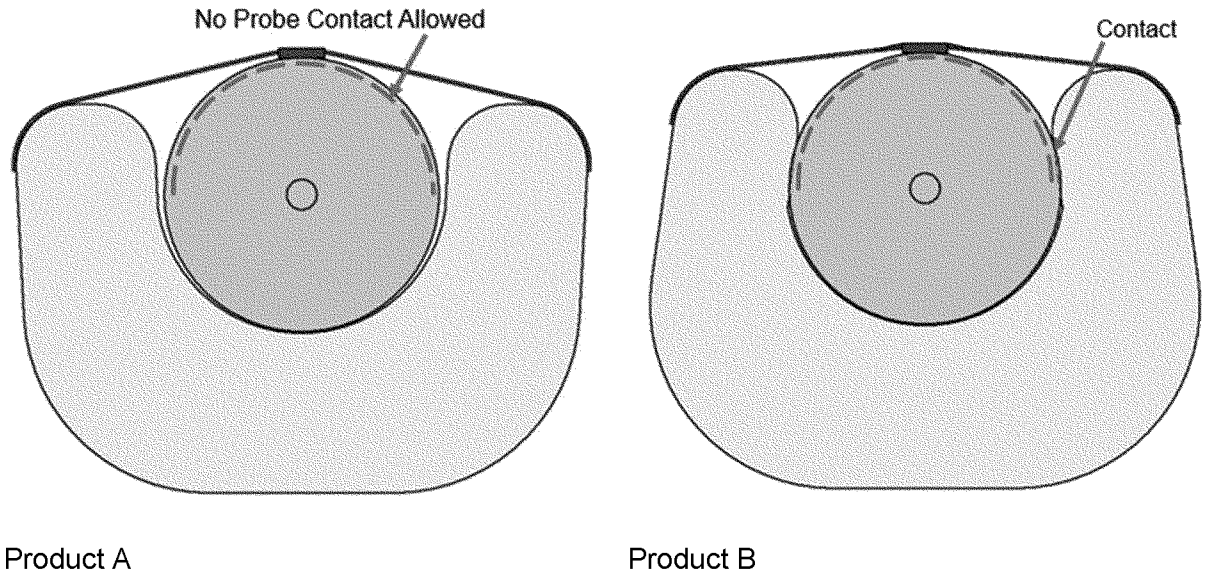


Figure 4: Example of Infant Containment Tests with Caregiver Attachments

D. Performance Requirements Considered But Not Proposed

1. Airflow Requirement

The BSU Final Report recommends that nursing pillows that do not pass firmness testing be required to pass an airflow test that would demonstrate the product has airflow characteristics comparable to mesh crib liners, which the authors concluded would mitigate the suffocation hazard. However, the report also stated that airflow testing is not needed for a product that passes the proposed firmness testing, because a firm product is unlikely to form a seal around an infant's nose and mouth. BSU Final Report at 49–63. Because the proposed rule would require that all nursing pillows meet firmness testing that is at least as stringent as that recommended in the BSU Final Report, an airflow requirement for nursing pillows is unnecessary.

2. Angular Requirement

The BSU Final Report assessed that nursing pillows that are firm and feature sharper corners, rather than cylindrical sides, might be safer for infants because there would be no reasonable way for consumers to use such a product as an infant support cushion. The proposed rule does not include an angular requirement, however, because of uncertainties surrounding what would be appropriate pass-fail criteria and the potential for such a requirement to increase the risk of positional asphyxia by neck hyperflexion or hyperextension if the nursing pillow is used as a support cushion for lounging. *See* Staff NPR Briefing Package at 21–22 and Tab C at 66–67.

The Commission invites public comments on this issue. Specifically, the Commission is interested in information on the potential effectiveness of an angular requirement, including what pass-fail criteria would effectively discourage use of a nursing pillow for infant lounging; the potential risks associated with such a requirement; and whether an alternative requirement could better discourage consumers from using nursing pillows for infant lounging without concurrently increasing risks if the product is used in that manner.

E. Warning and Instructional Requirements

Compared to the performance requirements described above, warnings are likely to be less effective in eliminating or adequately reducing exposure to nursing pillow hazards. Nevertheless, prominent and well-designed warnings can be a secondary safety mechanism that provides consumers important information about the hazards associated with these products and appropriate behaviors to avoid the hazards. Thus, the proposed rule includes requirements for on-product warnings that address the primary hazards associated with nursing pillows, with particular emphasis on the potentially deadly consequences of using these products for naps or sleep.

The proposed rule includes warning content and format requirements that are similar to those in the ASTM draft standard, with minor changes for clarity and internal consistency. Figure 5 shows the warning statements and format that would be required on all nursing pillows:

⚠WARNING

USING THIS PRODUCT FOR INFANT SLEEP OR NAPS CAN KILL.

Babies can turn, scoot, or roll over without warning and CAN SUFFOCATE in only a few minutes when airway is blocked.

- **Use only with an awake baby.** If baby falls asleep after feeding, move baby to a firm, flat sleep surface such as a bare crib or bassinet.
- **NEVER leave or prop up baby alone in this product.** NEVER use in sleep products like cribs, bassinets, or play yards.
- **KEEP baby in arm's reach during use.** Stop using if you feel yourself falling asleep.
- **KEEP baby's face visible and airway clear.**

Babies have been injured from FALLS.

- Do not use to prop up baby on beds, sofas, or other raised surfaces.
- Never carry or move product with baby in it.

Figure 5: Warning Statement Required On All Nursing Pillows

The ASTM draft standard requires the warning to be ''conspicuous,'' which the ASTM draft standard defines as a ''label that is visible, when the infant feeding support is in a manufacturer's recommended use position, to a person sitting near the infant feeding support at any position around the infant feeding support.'' The proposed rule does not rely on this definition, because it would allow the warning to be placed on a side of the product that is not visible to the caregiver who is using the product (*e.g.,* the side opposite the crescent-like opening). Instead, the proposed rule defines ''conspicuous'' as ''visible, when the nursing pillow is in each manufacturer's recommended use position, to a person while placing an infant into or onto the nursing pillow.''

More specifically, the proposed rule incorporates by reference the following provisions of the ANSI warning format requirements published in ANSI Z535.4, *Product Safety Signs and Labels* (ANSI Z535.4): sections 6.1–6.4, which include requirements related to safety alert symbol use, signal word selection, and warning panel format, arrangement, and shape; sections 7.2–7.6.3, which include color requirements for each panel; and section 8.1, which addresses letter style. *See* Staff's NPR Briefing Package, 72–73.

The ASTM draft standard also requires the warnings to be ''permanent'' and includes warning permanence requirements among the General Requirements for infant feeding supports. As discussed in Part VI.B. above, the proposed rule includes an additional permanence requirement to further reduce the potential for the warnings to be torn, ripped, or cut off.

In addition to on-product warnings, the ASTM draft standard includes basic warning requirements for the packaging that accompanies nursing pillows, largely based on the ASTM Ad Hoc Language task group's recommended requirements for package warnings. The requirements in the ASTM draft standard include warning statements about not using the product for sleep or in sleep products such as cribs, bassinets, or play yards; information about the manufacturer's recommended weight, height, age, or developmental stage; and a prohibition against other warnings, statements, or graphics that indicate or imply that an infant can be left in the product without an adult caregiver present. The package warnings also are required to have formatting similar to the on-product warnings. The proposed rule includes these requirements. The ASTM draft standard for infant feeding supports includes requirements for instructional literature to accompany nursing pillows, including requirements for the instructions to include all on-product warnings and to instruct consumers to read all instructions before using the product, to keep the instructions for future use, and not to use the product if it is damaged or broken. Like the package requirements, the instructions must provide information about the manufacturer's recommended weight, height, age, or developmental stage, at a minimum. These requirements are based on meetings of the ASTM Infant Feeding Supports Warnings task group and on the recommended requirements for instructional literature by the ASTM Ad Hoc Language task group. The proposed rule includes these instructional literature requirements.

VII. Proposed Amendment to 16 CFR Part 1112 To Include NOR for Nursing Pillows

Products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, must be certified as complying with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). Certification of children's products subject to a children's product safety rule must be based on testing conducted by a CPSC-accepted third party conformity assessment body. 15 U.S.C. 2063(a)(2). The Commission must publish an NOR for the accreditation of third party conformity assessment bodies to assess conformity with a children's product safety rule to which a children's product is subject. 15 U.S.C. 2063(a)(3). The proposed standard for nursing pillows would be a children's product safety rule that requires the issuance of an NOR.

The Commission published a final rule, *Requirements Pertaining to Third Party Conformity Assessment Bodies,* 78 FR 15836, which is codified at 16 CFR part 1112. Part 1112 became effective on June 10, 2013, and establishes requirements for accreditation of third-

party conformity assessment bodies (or laboratories) to test for conformance with a children's product safety rule in accordance with section 14(a)(2) of the CPSA. Part 1112 also lists the NORs that the CPSC has published. Accordingly, the Commission proposes to amend part 1112 to include the Safety Standard for Nursing Pillows in the list of other children's product safety rules for which the CPSC has issued NORs.

Laboratories applying for acceptance as a CPSC-accepted third party conformity assessment body to test to the new standard are required to meet the third party conformity assessment body accreditation requirements in part 1112. When a laboratory meets the requirements as a CPSC-accepted third party conformity assessment body, the laboratory can apply to the CPSC to have the *Safety Standard for Nursing Pillows* included in its scope of accreditation as reflected on the CPSC website at: *www.cpsc.gov/labsearch.*

VIII. Product Registration Rule Amendment

In addition to requiring the Commission to issue safety standards for durable infant or toddler products, section 104 of the CPSIA also directed the Commission to issue a rule requiring that manufacturers of durable infant or toddler products establish a program for consumer registration of those products. 15 U.S.C. 2056a(d). Section 104(f) of the CPSIA defines the term ''durable infant or toddler product'' as ''a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years,'' and lists 12 distinct product categories. 15 U.S.C. 2056a(f). The product categories listed in section 104(f)(2) of the CPSIA represent a non-exhaustive list of durable infant or toddler product categories. Nursing pillows are not included in the statutory list of durable infant or toddler products.

In 2009, the Commission issued a rule implementing the consumer registration requirement. 74 FR 68668 (Dec. 29, 2009) (establishing 16 CFR part 1130). As the CPSIA directs, the consumer registration rule requires each manufacturer of a durable infant or toddler product to provide a postage-paid consumer registration form with each product; keep records of consumers who register their products with the manufacturer; and permanently place the manufacturer's name and certain other identifying information on the product.

When issuing the consumer registration rule, the Commission identified six additional products as durable infant or toddler products: children's folding chairs; changing tables; infant bouncers; infant bathtubs; bed rails; and infant slings. *Id.* at 68669. The Commission explained that the specified statutory categories were not exclusive, and that the Commission is charged with identifying the product categories that are covered. ''Because the statute has a broad definition of a durable infant or toddler product but also includes 12 specific product categories,'' the Commission noted, ''additional items can and should be included in the definition, but should also be specifically listed in the rule.'' *Id.* at 68670.

The Commission proposes in this NPR to amend part 1130 to include ''Nursing pillows,'' as defined, as durable infant or toddler products. The Commission tentatively finds that nursing pillows are a category of ''durable infant or toddler product'' for purposes of CPSIA section 104 because they: (1) are intended for use, and may be reasonably expected to be used, by children under the age of 5 years; (2) are products similar to the other feeding support products listed in section 104(f)(2), such as high chairs, booster chairs, and hook-on chairs; and (3) are commonly available for resale or ''handed down'' for use by other children over a period of years.

IX. Incorporation by Reference

Section 1242.8 of the proposed rule incorporates by reference American National Standards Institute (ANSI) Z535.4–2011, *American National Standard for Product Safety Signs and Labels,* sections 6.1–6.4, 7.2–7.6.3, and 8.1, with modifications to further reduce the risk of injury associated with nursing pillows. In accordance with regulations of the Office of the Federal Register (OFR), 1 CFR part 51, section VI.E of this preamble summarizes the provisions of ANSI Z535.4–2011 that the Commission proposes to incorporate by reference. The ANSI standard is reasonably available to interested parties in several ways. By permission of ANSI, the standard can be viewed as a read-only document during the comment period on this NPR, at: *https://www.surveymonkey.com/r/DQVJYMK.* To download or print the standard, interested persons may purchase a copy of ANSI Z535.4–2011 from ANSI via its website, *https://www.ansi.org,* or by mail from ANSI, 25 West 43rd Street, 4th Floor, New York, NY 10036, USA, telephone: (212) 642–4900. Alternatively, interested parties may inspect a copy of the standard at CPSC's Office of the Secretary by contacting Alberta E. Mills, Commission Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504–7479; email: *cpsc-os@cpsc.gov.*

X. Effective Date

The Administrative Procedure Act (APA) generally requires that the effective date of a rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). The Commission proposes an effective date of 180 days after publication of the final rule in the **Federal Register**, such that the requirements of the rule would apply to all nursing pillows manufactured after that date. This amount of time is typical for rules issued under section 104 of the CPSIA. Six months is also the period that JPMA typically allows for products in their certification program to shift to a new standard once that new standard is published. Therefore, juvenile product manufacturers are accustomed to adjusting to new standards within this time. A 180-day effective date should also be sufficient for manufacturers to comply with this rule because the proposed requirements do not demand significant preparation by testing laboratories. For example, no new complex testing instruments or devices would be required to test nursing pillows for compliance to the proposed rule. The Commission invites comments, particularly from small businesses, that provide specific data addressing whether the proposed 180-day effective date period is appropriate.

XI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA); 5 U.S.C. 601–612, requires that agencies review a proposed rule's potential economic impact on small entities, including small businesses. Section 603 of the RFA generally requires that agencies make an initial regulatory flexibility analysis (IRFA) available to the public for comment when the NPR is published. The IRFA must describe the impact of the proposed rule on small entities and identify significant alternatives that accomplish the statutory objectives and minimize any significant economic impact of the proposed rule on small entities. CPSC Staff prepared an IRFA for this rulemaking that appears at Tab E of the Staff's NPR Briefing Package. We summarize the IRFA below.

A. Reasons and Legal Basis for the NPR

Section I of this preamble describes the reasons and legal basis for this NPR. As discussed in sections VI–VIII of this preamble, and detailed in Tab B of Staff's NPR Briefing Package, the proposed rule sets out mandatory requirements for nursing pillows to

address the suffocation, entrapment, fall, and other hazards associated with these products, adds nursing pillows to the list of products for which a registration card is required, and adds nursing pillows to the list of durable infant products for which an NOR is required.''

B. Small Entities to Which the Proposed Rule Would Apply

As explained in Tab E to Staff's NPR Briefing Package, Commission staff has identified 22 small U.S. manufacturers, 6 small U.S. importers, and more than 500 U.S. non-employer businesses that would be impacted by the proposed NPR in the United States. The majority of nursing pillow suppliers to the U.S. market are small U.S. manufacturers, importers, or non-employee businesses.

C. Impact of the Proposed Rule on Small Manufacturers and Importers

This proposed rule would likely have a significant impact on a substantial number of these small entities, based on the estimated costs of modifying nursing pillows to achieve compliance, and the ongoing cost of testing to demonstrate compliance. The Commission considers one percent of annual revenue to be a ''significant'' economic impact on a company, consistent with regulatory flexibility analyses used by other federal government agencies.

1. Costs Associated With Modifying Products

Most in-scope products on the market will require redesign to meet the requirements in the proposed rule, and redesign costs would be potentially significant for a substantial number of small firms for the first year that a rule is effective. With an estimated 1,000 models to be redesigned, the total cost of redesign to the industry in the first year could be as high as $13.5 million. The cost of redesign is likely to be significant for a substantial number of small U.S. firms, particularly small home crafters.

2. Third Party Testing Costs

If issued, a final rule would require all manufacturers and importers of nursing pillows to meet additional third-party testing requirements under section 14 of the CPSA. As specified in 16 CFR part 1109, though, entities that are not manufacturers of children's products, such as importers and wholesalers, may rely on the certificate of compliance provided by others. Further, manufacturers would pass on at least some of the cost of testing for compliance to importers and wholesalers.

Third party testing costs for nursing pillows under the proposed rule are estimated at $500 to $1,000 per model. The annual cost of samples for testing is estimated at around $150, bringing the overall annual cost to an estimated $650 to $1,150 per model. However, some small volume suppliers would likely be able to raise retail prices to cover at least some of their testing costs. For example, a hand crafter selling 200 nursing pillows a year could cover the entire testing cost by raising the price by $3.25, while a smaller supplier could cover at least some of their costs with a modest price increase.

3. Summary of Impacts

The best-selling nursing pillows are from companies that have sufficient sales volume to spread the cost of compliance over thousands of units and are unlikely to exit the market. It is likely that the products currently in stores, and the best-selling online-only products, would still be available, with modest redesigns. However, there may be some loss in sales of specific products if the redesigned products are less appealing to consumers.

The redesign could increase wholesale or retail prices by a few dollars, but likely not a significant amount, given that the materials and production methods are likely to remain roughly similar. Warning labels, registration forms, and instruction manuals could add up to $1 to the cost of the product. If companies decide to pass the ongoing cost of testing onto consumers, the additional retail price increase of perhaps $1, added to the additional $1 cost of the warning labels and instruction manuals, would total $2, or 4 percent of the price of a $50 item.

D. Other Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

CPSC has not identified any other federal rules that duplicate, overlap, or conflict with the proposed rule.

E. Alternatives Considered To Reduce the Impact on Small Entities

The Commission considered the following alternatives to the proposed rule to reduce the impact on small businesses. The Commission requests comments on these alternatives or other alternatives that could reduce the potential burden on small entities.

1. Not Establishing a Safety Standard

The Commission considered not establishing a safety standard for nursing pillows. While this alternative would result in no regulatory impact on small businesses, deaths and injuries from the use of nursing pillows would likely continue to occur at similar rates as those observed during the 2010–2022 time period. As discussed earlier, CPSC observed 88 nonfatal incidents and 154 fatalities during this time period. In 2020 alone—the most recent year for which there is complete data—there were 38 fatalities and 14 injuries from nursing pillows.

2. Delay To Await Publication of a Voluntary Standard

The Commission considered delaying the draft proposed rule to allow possible publication of a voluntary standard. Although this alternative would delay any impact on small businesses, it would also allow the hazard to continue indefinitely, as there is no clear date at which ASTM or any other voluntary standards organization will adopt a relevant standard; nor any assurance that a voluntary standard, if published, would be complied with or adequately address the identified hazards.

3. ''Angular'' Performance Requirement

The Commission considered including in the proposed safety standard an ''angular'' performance requirement based upon the BSU Final Report's suggestion that nursing pillows that are firm and feature sharper corners are likely safer for babies because there is no reasonable way to use these products for lounging. However, as the BSU Final Report notes, its recommendation on that point is preliminary and the Commission is seeking comment from the public on this point.

4. Earlier Effective Date

The Commission is proposing an effective date 180 days after publication of the final rule in the **Federal Register**. 180 days has generally been sufficient time for suppliers to come into compliance with durable infant or toddler product rules. Additionally, six months from the change in a voluntary standard is the period that JPMA uses for its certification program, so compliant manufacturers are used to this time frame to comply with a modified standard. Testing laboratories should have no difficulty preparing to test to the proposed new mandatory standards within a 180-day period.

The Commission considered adopting an earlier effective date to achieve the safety benefits of the rule more quickly, but a shorter period would increase the burden on small businesses to quickly redesign and test their products. In addition, a significantly earlier effective date could result in temporary shortages

of nursing pillows due to a lack of availability of testing laboratory resources.

F. Impact on Testing Labs

Section 14 of the CPSC requires that all products that are subject to a children's product safety rule must be tested by a third party conformity assessment body that has been accredited by CPSC. One of the roles of these third party conformity assessment bodies is to test products for compliance with applicable children's product safety rules. Testing laboratories that want to conduct testing must meet the NOR for third-party conformity testing. *See* 16 CFR part 1112.

The Commission does not expect a significant adverse impact on any testing laboratories as a result of this rule. Laboratories will not need to acquire complex or costly testing instruments or devices to test nursing pillows for compliance, and laboratories will decide for themselves whether to offer testing services for nursing pillow compliance.

XII. Environmental Considerations

Certain categories of CPSC actions normally have ''little or no potential for affecting the human environment'' and therefore do not require an environmental assessment or an environmental impact statement. Safety standards providing requirements for consumer products come under this categorical exclusion. 16 CFR 1021.5(c)(1). The proposed rule for nursing pillows falls within the categorical exclusion.

XIII. Paperwork Reduction Act

This proposed rule for nursing pillows contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501–3521). In this document, pursuant to 44 U.S.C. 3507(a)(1)(D), we set forth:

- a title for the collection of information;
- a summary of the collection of information;
- a brief description of the need for the information and the proposed use of the information;
- a description of the likely respondents and proposed frequency of response to the collection of information;
- an estimate of the burden that shall result from the collection of information; and
- notice that comments may be submitted to the OMB.

Title: Safety Standard for Nursing Pillows.

Description: The proposed rule would require each nursing pillow within the scope of the rule to meet the rule's new performance and labeling requirements. It would require suppliers to conduct third party testing to demonstrate compliance and provide the specified warning label and instructions. These requirements fall within the definition of a ''collection of information,'' as defined in 44 U.S.C. 3502(3).

Description of Respondents: Persons who manufacture or import nursing pillows.

Estimated Burden: We estimate the burden of this collection of information as follows:

TABLE 7—ESTIMATED ANNUAL REPORTING BURDEN

Burden type	Number of respondents	Frequency of responses	Total annual responses	Hours per response	Total burden hours
Labeling and instructions	844	1	844	2	1,688

While some products currently have labels, all products would have to meet the specific labeling requirements and instructions specified in the proposed rule, which provides the text and graphics for the required labels and instructions. Specialized expertise in graphics design would not be required to develop the warnings and instructions. Most reporting and recordkeeping requirements in this proposed rule would be new for all suppliers.

CPSC estimates there are 844 entities that would respond to this collection annually.[17] We estimate that the time required to create and modify labeling and instructions is about 2 hours per response. Therefore, the estimated burden associated with this collection is 844 responses × 1 response per year × 2 hours per response = 1,688 hours annually.

[17] Although Commission staff estimate the total number of nursing pillow suppliers to the United States to be more than 1,000, staff anticipates that only a portion of those suppliers will respond to the collection each year based on when they introduce new product models or redesign previous models.

We estimate the hourly compensation for the time required to respond to the collection is $37.41 (U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' March 2023, Table 4, total compensation for all sales and office workers in goods-producing private industries: *https://www.bls.gov/news.release/archives/ecec_06162023.pdf*). Therefore, the estimated annual labor cost of the collection is $63,148 ($37.41 per hour × 1,688 hours = $63,148.08).

Based on this analysis, the proposed standard for nursing pillows would impose an additional burden to industry of 1,688 hours at a cost of $63,148.

Comments. CPSC has submitted the information collection requirements of this proposed rule to OMB for review in accordance with PRA requirements. 44 U.S.C. 3507(d). CPSC requests that interested parties submit comments regarding information collection to the Office of Information and Regulatory Affairs, OMB (see the **ADDRESSES** section at the beginning of this NPR). Pursuant to 44 U.S.C. 3506(c)(2)(A), the Commission invites comments on:

- whether the collection of information is necessary for the proper performance of the CPSC's functions, including whether the information will have practical utility;
- the accuracy of the CPSC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- ways to enhance the quality, utility, and clarity of the information to be collected;
- ways to reduce the burden of the collection of information on respondents, including the use of automated collection techniques, when appropriate, and other forms of information technology; and
- the estimated burden hours associated with label modification, including any alternative estimates.

XIV. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that when a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a standard

or regulation that prescribes requirements for the performance, composition, contents, design, finish, construction, packaging, or labeling of such product dealing with the same risk of injury unless the state requirement is identical to the federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA refers to the rules to be issued under that section as ''consumer product safety rules.'' Therefore, if finalized, the preemption provision of section 26(a) of the CPSA would apply to this rule for nursing pillows.

XV. Request for Comments

The Commission seeks public comment on all aspects of the proposed rule. In particular, however, the Commission seeks comment on the potential effectiveness of an angular requirement not included in the proposed rule; including what pass-fail criteria would effectively discourage the use of nursing pillows for lounging, the potential risks associated with such a requirement, and whether an alternative requirement could assist in discouraging consumers from using nursing pillows for infant lounging without increasing risks to those infants whose caregivers still choose to use the product this way. The Commission also specifically requests comments on the proposed effective date and the costs of compliance with, and testing to, the proposed Safety Standard for Nursing Pillows.

Comments should be submitted in accordance with the instructions in the **ADDRESSES** section at the beginning of this notice.

List of Subjects

16 CFR Part 1112

Administrative practice and procedure, Audit, Consumer protection, Reporting and recordkeeping requirements, Third party conformity assessment body.

16 CFR Part 1130

Administrative practice and procedure, Business and industry, Consumer protection, Reporting and recordkeeping requirements.

16 CFR Part 1242

Consumer protection, Imports, Incorporation by reference, Infants and children, Labeling, Law enforcement, Nursing, Pillows, and Toys.

For the reasons discussed in the preamble, the Commission proposes to amend Title 16 of the Code of Federal Regulations as follows:

PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

■ 1. The authority citation for part 1112 continues to read as follows:

Authority: Pub. L. 110–314, section 3, 122 Stat. 3016, 3017 (2008); 15 U.S.C. 2063.

■ 2. Amend § 1112.15 by adding paragraph (b)(56) to read as follows:

§ 1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule or test method?

* * * * *

(b) * * *

(56) 16 CFR part 1242, Safety Standard for Nursing Pillows.

* * * * *

■ 3. The authority citation for part 1130 continues to read as follows:

Authority: 15 U.S.C. 2056a, 2065(b).

■ 4. Amend § 1130.2 by adding paragraph (a)(19) to read as follows:

PART 1130—REQUIREMENTS FOR CONSUMER REGISTRATION OF DURABLE INFANT OR TODDLER PRODUCTS

§ 1130.2 Definitions.

* * * * *

(a) * * *

(19) Nursing pillows.

* * * * *

■ 5. Add part 1242 to read as follows:

PART 1242—SAFETY STANDARD FOR NURSING PILLOWS

Sec.

1242.1 Scope, purpose, application, and exemptions.
1242.2 Definitions.
1242.3 General requirements.
1242.4 Performance requirements.
1242.5 Test methods.
1242.6 Marking and labeling.
1242.7 Instructional literature.
1242.8 Incorporation by reference.

Authority: 15 U.S.C. 2056a.

§ 1242.1 Scope, purpose, application, and exemptions.

(a) *Scope and Purpose.* This part 1242, a consumer product safety standard, prescribes requirements intended to reduce the risk of death and injury from hazards associated with nursing pillows, as defined in § 1242.2.

(b) *Application.* Except as provided in paragraph (c) of this section, all nursing pillows that are manufactured after March 25, 2024, are subject to the requirements of this part 1242.

(c) *Exemptions.* The following products are exempt from this part 1242: (1) Maternity pillows, as defined in § 1242.2, and (2) Sling carriers, as defined in 16 CFR part 1228.

§ 1242.2 Definitions.

Caregiver attachment means a portion of the product intended to secure the nursing pillow to the caregiver and not intended to secure the infant to the nursing pillow. A caregiver attachment may comprise components including, but not limited to, straps, buckles, or latches.

Caregiver opening means the surface of the nursing pillow, excluding the caregiver attachment, intended to fit against the caregiver's torso during use. This surface is typically, but not necessarily, crescent-like in shape.

Conspicuous means visible, when the nursing pillow is in each manufacturer's recommended use position, to a person while placing an infant into or onto the nursing pillow.

Infant restraint system means a portion of a product intended to secure or hold an infant in place on the product. These typically take the form of straps or harnesses that are secured by the caregiver.

Infant support surface means the manufacturer's intended support surface for the infant during nursing or feeding.

Maternity pillow, also known as a pregnancy pillow, means a large body pillow intended, marketed, and designed to provide support to a pregnant adult's body during sleep or while lying down.

Nursing pillow means any product intended, marketed, or designed to position and support an infant close to a caregiver's body while breastfeeding or bottle feeding. These products rest upon, wrap around, or are worn by a caregiver in a seated or reclined position.

Safety alert symbol means a symbol consisting of an exclamation mark surrounded by an equilateral triangle, or an equilateral triangle with a contrasting superimposed exclamation mark. The safety alert symbol precedes the signal word ''WARNING,'' or other signal word, in the signal word panel of a warning.

§ 1242.3 General requirements.

(a) *Lead in Paints.* All paint and surface coatings on the product shall comply with the requirements of 16 CFR part 1303.

(b) *Small Parts.* There shall be no small parts, as defined in 16 CFR part 1501, before testing or liberated as a result of testing.

(c) *Hazardous Sharp Edges or Points.* There shall be no hazardous sharp points or edges, as defined in 16 CFR

1500.48 and 16 CFR 1500.49, before or after testing.

(d) *Removal of Components.* When tested in accordance with § 1242.5(b), any removal of components that are accessible to an infant while in the product or from any position around the product shall not present a small part, sharp point, or sharp edge as required in § 1242.3(b) and § 1242.3(c).

(e) *Permanency of Labels and Warnings.* (1) Warning labels (whether paper or non-paper) shall be permanent when tested in accordance with § 1242.5(c)(1) through § 1242.5(c)(3).

(2) Warning statements applied directly onto the surface of the product by hot stamping, heat transfer, printing, wood burning, etc. shall be permanent when tested in accordance with § 1242.5(c)(4).

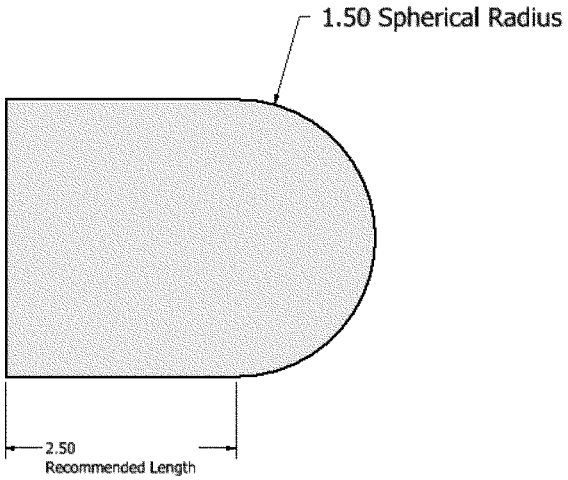
(3) Non-paper labels shall not liberate small parts when tested in accordance with § 1242.5(c)(5).

(4) Warning labels that are attached to the fabric of infant feeding supports with seams shall remain in contact with the fabric around the entire perimeter of the label, when the product is in all manufacturer-recommended use positions, when tested in accordance with § 1242.5(c)(3).

§ 1242.4 Performance requirements.

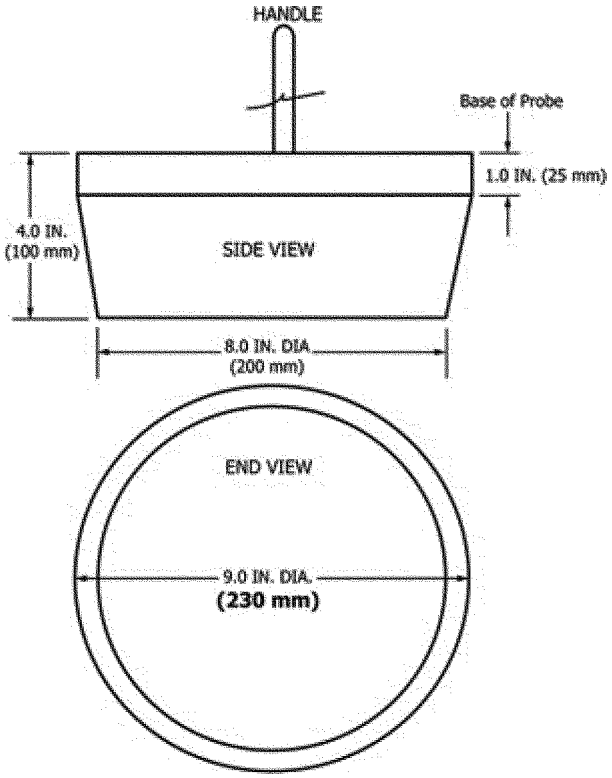
(a) *Firmness.* When tested in accordance with § 1242.5(d), § 1242.5(e) and § 1242.5(f), the force required for a 1.00-in. (2.54 cm) displacement of the 3-inch (76.2 mm) diameter hemispheric probe (Figure 1 to this paragraph (a)—3-in. head probe) at any measurement location shall be greater than 10.0 N (2.24 lb).

Figure 1 to Paragraph (a)—3-In Head Probe



(b) *Infant Containment.* When tested in accordance with § 1242.5(g), the surfaces within the caregiver opening of the product shall not contact the 9-inch (230 mm) diameter head probe (Figure 2 to this paragraph (b)—9-in. head probe) such that the probe is constrained within the caregiver opening and, when placed according to § 1242.5(g)(6), the probe must extend past the caregiver opening.

Figure 2 to Paragraph (b)—9-In. Head Probe



(c) *Infant Restraints.* Nursing pillows shall not include any infant restraint system.

(d) *Seam Strength.* When tested in accordance with § 1242.5(h), fabric/mesh seams and points of attachment shall not fail such that a small part, sharp point, or sharp edge is presented, as required in § 1242.3(b) and § 1242.3(c).

(e) *Caregiver Attachment Strength.* When tested in accordance with § 1242.5(i), material seams, points of attachment, and attachment components shall not fail, and shall create no hazardous conditions, such as small parts or sharp edges, as required in § 1242.3(b) and § 1242.3(c).

§ 1242.5 Test methods.

(a) *Test Conditions.* (1) Condition the product for 48 hours at 23 °C +/− 2 °C (73.4 °F +/− 3.6 °F) and a relative humidity of 50% +/− 5%.

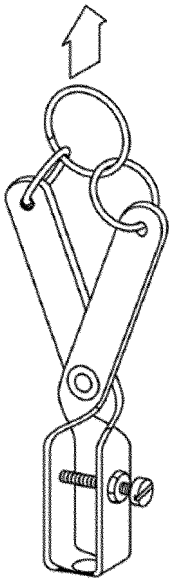
(2) Secure the firmness fixture to a test base such that the 3-in. head probe (Figure 1 to § 1242.4(a)) does not deflect more than 0.01 in. (0.025 cm) under a 10 N (2.2 lb) load applied in each orientation required in the test methods.

(b) *Removal of Components Test Method.* (1) For torque and tension tests, any suitable device may be used to grasp the component, provided that it does not interfere with the attachment elements that are stressed during the tests.

(2) *Torque Test.* Gradually apply a 4 lb-in. (0.4 N-m) torque over 5 seconds (s.) in a clockwise rotation to 180 degrees or until 4 lb-in. has been reached. Maintain for 10 s. Release and allow component to return to relaxed state. Repeat the torque test in a counterclockwise rotation.

(3) *Tension Test.* For components that can reasonably be grasped between thumb and forefinger, or teeth, apply a 15 lb (67 N) force over 5 s., in a direction to remove the component. Maintain for 10 s. A clamp such as shown in Figure 3 to this paragraph (b)(3) may be used if the gap between the back of the component and the base material is 0.04 in. (0.1 cm) or more.

Figure 3 to Paragraph (b)(3)—Tension Test Adapter Clamp



(c) *Permanency of Labels and Warnings.* (1) A paper label (excluding labels attached by a seam) shall be considered permanent if, during an attempt to remove it without the aid of tools or solvents, it cannot be removed, it tears into pieces upon removal, or such action damages the surface to which it is attached.

(2) A non-paper label (excluding labels attached by a seam) shall be considered permanent if, during an attempt to remove it without the aid of tools or solvents, it cannot be removed or such action damages the surface to which it is attached.

(3) A warning label attached by a seam shall be considered permanent if it does not detach when subjected to a 15-lbf (67–N) pull force applied in the direction most likely to cause failure using a ¾-in. (1.9 cm) diameter clamp surface. Gradually apply the force within a period of 5 s. and maintain for an additional 10 s.

(4) Adhesion Test for Warnings Applied Directly onto the Surface of the Product:

(i) Apply the tape test defined in Test Method B of Test Method D3359, eliminating parallel cuts.

(ii) Perform this test once in each different location where warnings are applied.

(iii) The warning statements will be considered permanent if the printing in the area tested is still legible and attached after being subjected to this test.

(iv) A non-paper label, during an attempt to remove it without the aid of tools or solvents, shall not fit entirely within the small parts cylinder defined in 16 CFR part 1501 if it can be removed.

(d) *Infant Support Surface Firmness Test Method.* Perform the following steps to determine the infant support surface firmness of the product as received from the manufacturer.

(1) Conduct tests at three locations on the surface to be tested, with 3 in. (7.62 cm) or more separation: maximum thickness perpendicular to the test surface and two other locations most likely to fail.

(2) Lay the product, with the infant support surface facing up, on a test base that is horizontal, flat, firm, and smooth.

(3) Prevent movement of the product in a manner that does not affect the force or deflection measurement of the product surface under test. Provide no additional support beneath the product.

(4) Orient the axis of the 3-in. head probe (Figure 1 to § 1242.4(a)) perpendicular to the test surface and aligned with a force gauge and parallel to a distance measurement device or gauge.

(5) Using a lead screw or similar device to control movement along a single direction, advance the probe onto the product and set the deflection to 0.0 in. when a force of 0.1 N (0.02 lb) force is reached.

(6) Continue to advance the head probe into the product at a rate not to exceed 0.1 inch per second and pause when the force exceeds 10.0 N (2.24 lb), or the deflection is equal to 1.00 in. (2.54 cm).

(7) Wait 30 s. If the deflection is less than 1.00 in. and the force is 10.0 N or less, repeat steps § 1242.5(d)(6) and § 1242.5(d)(7)).

(8) Record the final force and deflection amounts.

(9) Repeat the infant support surface firmness tests on any other infant support surface and in all manufacturer-intended configurations that could affect the infant support surface, such as the folding or layering of parts of the product.

(e) *Inner Wall Firmness Test Method.* For nursing pillows with a caregiver opening, perform the steps in § 1242.5(d)(1) through § 1242.5(d)(8) on the inner wall of the caregiver opening, and perform the following, to determine the inner wall firmness as received from the manufacturer. Repeat the inner wall firmness tests in all manufacturer-intended configurations that could affect the inner wall firmness.

(f) *Product Conditioning Firmness Test Method.* Following the firmness testing in § 1242.5(d) and § 1242.5(e), perform the following steps to determine the product firmness after conditioning.

(1) Launder and dry the product according to the manufacturer's instructions.

(2) Repeat § 1242.5(d) *Infant Support Surface Firmness Test Method.*

(3) Repeat § 1242.5(e) *Inner Wall Firmness Test Method.*

(g) *Infant Containment Test Method.* (1) Lay the product, with the infant support surface facing up, on a test base that is horizontal, flat, firm, and smooth.

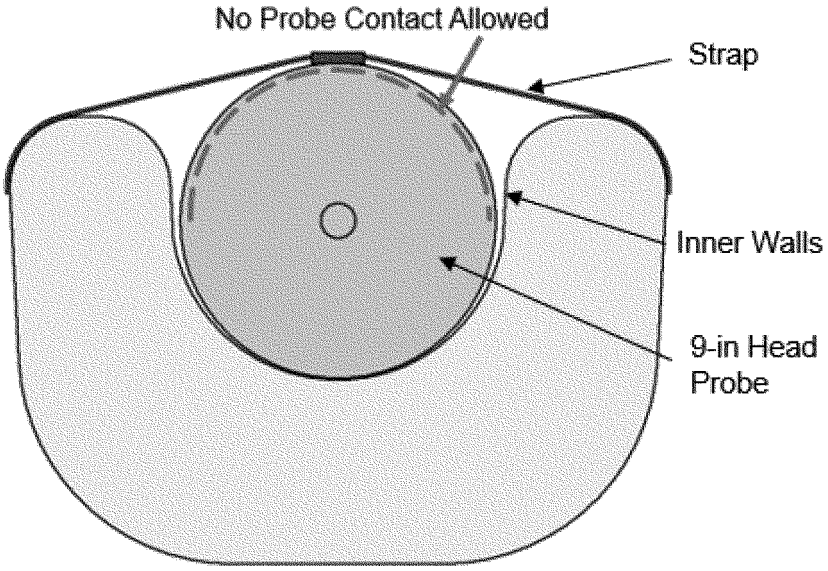
(2) For nursing pillows with a caregiver attachment, adjust and latch the caregiver attachment to the minimum length allowed by the product.

(3) Place the 9-in. head probe (Figure 2 to § 1242.4(b)) inside the caregiver opening such that the flat bottom of the probe rests on the test surface and the probe's perimeter contacts the innermost surface of the caregiver opening.

(4) If any inner surfaces of the caregiver opening contact the outwardly facing portions of the probe, or the inner surfaces interfere with placing the probe down, the caregiver opening is considered to constrain the probe. *See* Figure 4 to this paragraph (g)(4). Do not include in the assessment any contact with a caregiver attachment.

Figure 4 to Paragraph (g)(4)—Infant Containment, Example

In § 1242.5(g), the inner walls of the nursing pillow, excluding the strap, shall not constrain the 9-in. head probe in the caregiver opening, such that no contact with the outwardly facing portion (red arc) of the probe is allowed.



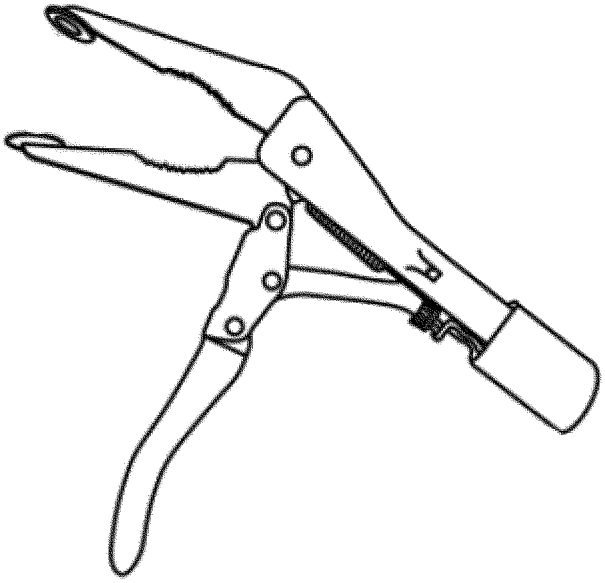
(5) Unlatch and move any caregiver attachment away from the caregiver opening. Conduct steps § 1242.5(g)(3) and § 1242.5(g)(4) in the procedure.

(6) With the probe at the position contacting the innermost surface within the caregiver opening, determine if any portion of the probe extends beyond a line projected across the outside limits of the caregiver opening.

(7) Slide the probe horizontally out of the caregiver opening to the outside of the nursing pillow. Determine if the probe is constrained by any inner surfaces of the caregiver opening contacting the outwardly facing portions of the probe. Do not include in the assessment any contact with a caregiver attachment.

(h) *Seam Strength Test Method.* (1) *Equipment.* Clamps with 0.75 in. (1.9 cm) diameter clamping surfaces capable of holding fabric and with a means to attach a force gauge. Figure 5 to this paragraph (h)(1), or equivalent. The force gauge must have an accuracy of ±0.5 lb (1.1 N).

Figure 5 to Paragraph (h)(1)—Seam Clamp



(2) Clamp the fabric of the nursing pillow on each side of the seam under test with the 0.75 in. clamping surfaces placed not less than 0.5 in. (1.2 cm) from the seam.

(3) Apply a tension of 15 lb (67 N) evenly over 5 s. and maintain for an additional 10 s.

(4) Repeat the test on every distinct seam and every 6 in. (15 cm) along each seam.

(i) *Caregiver Attachment Test Method.* (1) *Equipment.* Any suitable clamping devices with means to attach a force gauge with accuracy of 0.5 lb (1.2 N) may be used. The clamping surfaces shall grasp across the entire width of the strap or attachment element.

(2) Support the nursing pillow to resist the pull forces and release the buckle or clasp of the caregiver attachment.

(3) Clamp one side of the attachment or strap of the nursing pillow not less than 0.5 in. (1.2 cm) from the attachment to the nursing pillow.

(4) Apply a tension of 20 lb (89 N) evenly over 5 s. and maintain for an additional 10 s.

(5) Repeat the test on the other side of the attachment or strap.

(6) Join the buckle or clasp of the attachment or straps.

(7) Clamp both sides of the attachment or straps across the buckle or clasp, one on each side and not less than 0.5 in. (1.2 cm) from the buckle or clasp.

(8) Apply a tension of 20 lb (89 N) evenly over 5 s. and maintain for an additional 10 s.

§ 1242.6 Marking and labeling.

(a) Each product and its retail package shall be marked or labeled clearly and legibly to indicate the following:

(1) The name, place of business (city, state, and mailing address, including zip code), and telephone number of the manufacturer, distributor, or seller.

(2) A code mark or other means that identifies the date (month and year as a minimum) of manufacture.

(3) The marking or labeling in § 1242.6(a)(1) and § 1242.6(a)(2) are not required on the retail package if they are on the product and are visible in their entirety through the retail package. When no retail packaging is used to enclose the product, the information provided on the product shall be used for determining compliance with § 1242.6(a)(1) and § 1242.6(a)(2). Cartons and other materials used exclusively for shipping the product are not considered retail packaging.

(b) The marking and labeling on the product shall be permanent.

(c) Any upholstery labeling required by law shall not be used to meet the requirements of this section.

(d) Warning Design for Product: (1) The warnings shall be easy to read and understand and be in the English language at a minimum.

(2) Any marking or labeling provided in addition to those required by this section shall not contradict or confuse the meaning of the required information or be otherwise misleading to the consumer.

(3) The warnings shall be conspicuous and permanent.

(4) The warnings shall conform to ANSI Z535.4–2011, *American National Standard for Product Safety Signs and Labels,* sections 6.1 through 6.4, 7.2 through 7.6.3, and 8.1 (incorporated by reference, see § 1242.8), with the following changes.

(i) In sections 6.2.2, 7.3, 7.5, and 8.1.2, replace ''should'' with ''shall.''

(ii) In section 7.6.3, replace ''should (when feasible)'' with ''shall.''

(iii) Strike the word ''safety'' when used immediately before a color (for example, replace ''safety white'' with ''white'').

Note 1 to paragraph (d)(4)—For reference, ANSI Z535.1, *American National Standard for Safety Colors,* provides a system for specifying safety colors.

(5) The safety alert symbol and the signal word ''WARNING'' shall be at least 0.2 in. (5 mm) high. The remainder of the text shall be in characters whose upper case shall be at least 0.1 in. (2.5 mm), except where otherwise specified.

Note 2 to paragraph (d)(5)—For improved warning readability, avoid typefaces with large height-to-width ratios, which are commonly identified as ''condensed,'' ''compressed,'' ''narrow,'' or similar.

(6) Message Panel Text Layout. (i) The text shall be left-aligned, ragged-right for all but one-line text messages, which can be left-aligned or centered.

Note 3 to paragraph (d)(6)(i)—Left-aligned means that the text is aligned along the left margin, and in the case of multiple columns of text, along the left side of each individual column. *See* Figure 6 to this paragraph (d)(6)(i) for examples of left-aligned text.

Figure 6 to Paragraph (d)(6)(i)—Examples of Left-Aligned Text

The text shown for these warnings is filler text, known as lorem ipsum, commonly used to demonstrate graphic elements.

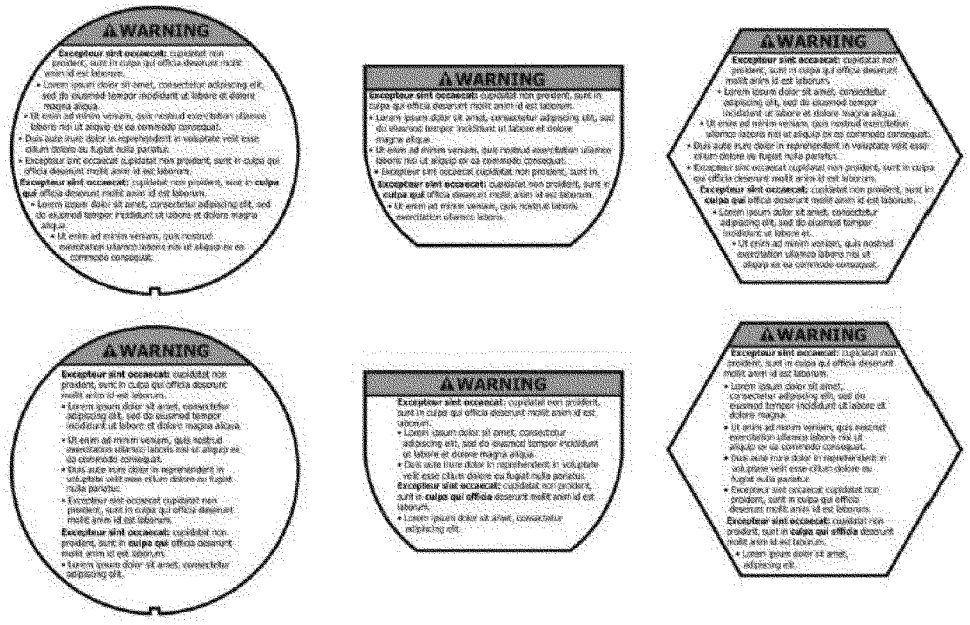


Figure 7 to Paragraph (d)(7)—Example of Warning

(ii) The text in each column should be arranged in list or outline format, with precautionary (hazard avoidance) statements preceded by bullet points. Multiple precautionary statements shall be separated by bullet points if paragraph formatting is used.

(7) An example warning in the format described in this section is shown in Figure 7 to this paragraph (d)(7).

WARNING

USING THIS PRODUCT FOR INFANT SLEEP OR NAPS CAN KILL.

Babies can turn, scoot, or roll over without warning and CAN SUFFOCATE in only a few minutes when airway is blocked.

- **Use only with an awake baby.** If baby falls asleep after feeding, move baby to a firm, flat sleep surface such as a bare crib or bassinet.
- **NEVER leave or prop up baby alone in this product.** NEVER use in sleep products like cribs, bassinets, or play yards.
- **KEEP baby in arm's reach during use.** Stop using if you feel yourself falling asleep.
- **KEEP baby's face visible and airway clear.**

Babies have been injured from FALLS.

- Do not use to prop up baby on beds, sofas, or other raised surfaces.
- Never carry or move product with baby in it.

(e) Warning Statements. Each product shall have warning statements. The text must address the warnings as shown in Figure 7 to paragraph (d)(7), Example of Warning.

Note 4 to paragraph (e)—''Address'' means that verbiage other than what is shown can be used as long as the meaning is the same or information that is product-specific is presented.

(f) Package Warnings. (1) The warnings and statements are not required on the retail package if they are on the product and are visible in their entirety through the retail package. Cartons and other materials used exclusively for shipping the product are not considered retail packaging.

(2) Warning Statements. Each product's package shall have warning statements to address the following, at a minimum, as specified in § 1242.6(d)(1), § 1242.6(d)(2), § 1242.6(d)(4), § 1242.6(d)(5), and § 1242.6(d)(6):

(i) Do not use for sleep.

(ii) Do not use in sleep products like cribs, bassinets, or play yards.

(3) Each product's retail package shall address the manufacturer's

recommended weight, height, age, or developmental stage or combination thereof of the infant.

(4) Warnings, statements, or graphic pictorials on the product and package shall not indicate or imply that the infant may be left in the product without an adult caregiver in attendance.

§ 1242.7 Instructional literature

(a) Instructions shall be provided with the product and shall be easy to read and understand and shall be in the English language at a minimum. These instructions shall include information on assembly, maintenance, cleaning, and use, where applicable.

(b) The instructions shall include all warnings specified in § 1242.6(e).

(c) The instructions shall address the following additional warnings:

(1) Read all instructions before using this product.

(2) Keep instructions for future use.

(3) Do not use this this product if it is damaged or broken.

(4) Instructions shall indicate the manufacturer's recommended maximum weight, height, age, developmental level, or combination thereof, of the infant for whom the nursing pillow is intended. If this product is not intended for use by a child for a specific reason, the instructions shall so state this limitation.

(d) The cautions and warnings in the instructions shall meet the requirements specified in § 1242.6(d)(4), § 1242.6(d)(5), and § 1242.6(d)(6), except that sections 6.4 and 7.2 through 7.6.3 of ANSI Z535.4—2011, *American National Standard for Product Safety Signs and Labels,* need not be applied. However, the signal word and safety alert symbol shall contrast with the background of the signal word panel, and the cautions and warnings shall contrast with the background of the instructional literature.

Note 5 to paragraph (d)—For example, the signal word, safety alert symbol, and the warnings may be black letters on a white background, white letters on a black background, navy blue letters on an off-white background, or some other high-contrast combination.

(e) Any instructions provided in addition to those required by this section shall not contradict or confuse the meaning of the required information or be otherwise misleading to the consumer.

Note 6 to paragraph (e)—For additional guidance on the design of warnings for instructional literature, please refer to ANSI Z535.6, *American National Standard: Product Safety Information in Product Manuals,* Instructions, and Other Collateral Materials.

§ 1242.8 Incorporation by Reference

ANSI Z535.4–2011, *American National Standard for Product Safety Signs and Labels,* approved October 20, 2017, is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the U.S. Consumer Product Safety Commission and at the National Archives and Records Administration (NARA). Contact the U.S. Consumer Product Safety Commission at: the Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone (301) 504–7479, email: *cpsc-os@cpsc.gov*. For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html*. A free, read-only copy of the standard is available for viewing on the ANSI website at *https://ibr.ansi.org/Standards/nema.aspx*. You may also obtain a copy from American National Standards Institute (ANSI), 25 West 43rd Street, 4th Floor, New York, NY 10036, USA, telephone: (212) 642–4900, *www.ansi.org*.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2023–20156 Filed 9–25–23; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 52

[REG–105954–22]

RIN 1545–BQ40

Superfund Chemical Taxes; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; notice of hearing.

SUMMARY: This document provides a notice of public hearing on proposed regulations relating to the excise taxes imposed on certain chemicals and certain imported substances.

DATES: The public hearing on this proposed regulation has been scheduled for October 25, 2023, at 10 a.m. ET. The IRS must receive speakers' outlines of the topics to be discussed at the public hearing by October 11, 2023. If no outlines are received by October 11, 2023, the public hearing will be cancelled.

ADDRESSES: The public hearing is being held in the Auditorium, at the Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington, DC. Due to security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present a valid photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

Send Submissions to CC:PA:1:PR (REG–105954–22), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday to CC:PA:1:PR (REG–105954–22), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–105954–22) (preferred).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Stephanie Bland or Natalie Payne, (202) 317–6855; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the public hearing, call Vivian Hayes (202) 317–6901 (not a toll-free numbers) or by email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG–105954–22) that was published in the **Federal Register** on Wednesday, March 29, 2023, (FR 88 18446).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by October 11, 2023.

A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing, and via the Federal eRulemaking Portal (*www.Regulations.gov*) under the title of Supporting & Related Material. If no outline of the topics to be discussed at the hearing is received by October 11, 2023, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.