

Alert | Products Liability & Mass Torts



September 2023

Consumer Product Safety Commission Proposes First Safety Requirements for Nursing Pillows

September is **Baby Safety Month**, and this GT Alert highlights the most recent development in baby safety – the Consumer Product Safety Commission (CPSC)’s **Aug. 23 notice of proposed rulemaking (NPRM)** regarding nursing pillows. Nursing pillows, which assist in correctly positioning babies for breastfeeding and alleviating strain for parents, are regularly featured on baby registries and have been on the market for decades. Roughly 1.34 million units are sold annually in the United States.

Pursuant to the Consumer Product Safety Improvement Act of 2008, which requires the CPSC to promulgate consumer product safety standards for durable infant or toddler products, the NPRM proposes to amend CPSC’s consumer registration requirements to identify nursing pillows as “durable infant or toddler products” and proposes to amend CPSC’s list of Notice of Requirements to include nursing pillows. Effectively, these proposed changes aim to discourage caregivers from resting babies to sleep on these popular U-shaped products, and to require that such products be “sufficiently firm” to reduce the likelihood of conforming to infants’ faces, thereby reducing the risk of suffocation. The proposal also would require that the curve of the pillows be wide enough to avoid restricting infants’ head movements, as such restriction can cut off airflow.

On Sept. 8, 2023, the CPSC’s four commissioners **voted unanimously** to advance these proposed changes. Commissioner Richard Trumka Jr. described the proposal as “the next step in the march towards eliminating preventable infant sleep deaths.”

This action by the CPSC follows an [NBC News investigation](#) that claimed that at least 162 infants had died in incidents involving nursing pillows since 2007. Most fatalities allegedly occurred when babies were put to sleep on or next to these pillows. The CPSC’s proposal also states that between 2010 and 2022, there were 154 deaths involving nursing pillows, including incidents of suffocation, asphyxia, and Sudden Infant Death Syndrome (SIDS), although there is no evidence establishing that the nursing pillows’ design actually caused these deaths.

In September 2021 the CPSC commissioned Boise State University Assistant Professor Erin Mannen to conduct a study analyzing the safety of nursing pillows. In June 2022, Dr. Mannen, a biomechanical engineer, produced a [report](#) recommending that “firmness testing” be performed on all pillow products based on a method and tools created by her, none of which appear to be based on any currently existing validated test methods. If the product fails Dr. Mannen’s firmness test, she recommends that the product undergo “airflow testing,” which is another test method created by her with devices that have not yet been validated for such testing. Dr. Mannen’s report also discusses additional testing methods created by her team to further ensure the safety of these products before they are used for infant sleep.

There are no published U.S. voluntary standards for nursing pillows. However, on March 20, 2023, ASTM International (formerly known as the American Society for Testing and Materials), issued ballot F15.16 (23-01), which included the ASTM draft standard. This draft standard included several performance requirements, including the firmness recommendations provided in Dr. Mannen’s report. The ballot closed on April 20, 2023, and received 11 negative votes with comments and six other comments, and has yet to be adopted.

Given Dr. Mannen’s recommendations and some industry experts’ hesitancy to adopt certain of these performance requirements, the CPSC’s proposed rule seeks to impose several requirements for manufacturers, including but not limited to the experimental and unapproved firmness testing outlined in Dr. Mannen’s report.

Well before the CPSC’s proposed guidelines were published, major manufacturers in the nursing pillow sector formed the Breastfeeding Infant Development Support Alliance, aimed at lobbying against such regulations. The group contends that these measures would adversely affect breastfeeding mothers by imposing governmental decisions over maternal needs.

On Sept. 26, 2023, the NPRM was published in the Federal Register. The public have until Nov. 27, 2023, to comment. Following this comment period, the CPSC will review and finalize the regulations.

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