

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA-2006-25001; Directorate Identifier 2006-NM-079-AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by September 29, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 737-600, -700, -700C, -800, -900 and -900ER series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report that the top three inches of the aero/fire seals of the blocker doors on the thrust reverser torque boxes are not fireproof. We are issuing this AD to prevent a fire in the fan compartment (a fire zone) from migrating through the seal to a flammable fluid in the thrust reverser actuator compartment (a flammable fluid leakage zone), which could result in an uncontrolled fire.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection To Determine Part Number (P/N)

(f) Within 60 months or 8,200 flight cycles after the effective date of this AD, whichever occurs first: Perform a one-time detailed inspection to determine the color of the aero/fire seals of the blocker doors on the thrust reverser torque boxes on the engines. For any aero/fire seal having a completely gray color (which is the color of seals with P/N 315A2245-1 or 315A2245-2), with no red at the upper end of the seal, do the actions specified in paragraph (g) of this AD. For any aero/fire seal having a red color at the upper end of the seal (which indicates a different part number), no further action is required by this AD. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the correct

aero/fire seals (P/Ns 315A2245-7 or -8) can be conclusively determined to be installed from that review.

Note 1: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

Replace the Aero/Fire Seals

(g) For any aero/fire seal identified during the inspection/records check in paragraph (f) of this AD as having an affected P/N: Within 60 months or 8,200 flight cycles after the effective date of this AD, whichever occurs first, replace the aero/fire seals of the blocker doors on the thrust reverser torque boxes on the engines with new, improved aero/fire seals in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737-78-1074, Revision 1, dated September 15, 2005.

Credit for Actions Done Using Previous Service Information

(h) Replacements done before the effective date of this AD in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737-78-1074, dated April 7, 2005, are acceptable for compliance with the requirements of paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office, FAA, ATTN: Samuel Spitzer, Aerospace Engineer, Propulsion Branch, ANM-140S, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6510; fax (425) 917-6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on August 25, 2008.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. E8-20341 Filed 9-2-08; 8:45 am]

BILLING CODE 4910-13-P

CONSUMER PRODUCT SAFETY COMMISSION**16 CFR Part 1500****Exemption From Classification as Banned Hazardous Substance; Proposed Exemption for Boston Billow Nursing Pillow and Substantially Similar Nursing Pillows**

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to exempt the Boston Billow Nursing Pillow and substantially similar nursing pillows from the Commission's regulations banning infant cushions/pillows set forth in the Commission's regulations at 16 CFR 1500.18(a)(16)(i).

DATES: Written comments in response to this notice must be received by October 3, 2008.

ADDRESSES: Comments should be submitted to the Office of the Secretary by e-mail at cpssc-os@cpssc.gov, or mailed or delivered, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814. Comments may also be filed by facsimile to (301) 504-0127. Comments should be captioned "Infant Cushions/Pillows NPR."

FOR FURTHER INFORMATION CONTACT:

Suad Wanna-Nakamura, Directorate for Health Sciences, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; telephone (301) 504-7252; e-mail snakamura@cpssc.gov.

SUPPLEMENTARY INFORMATION:**A. Background**

Between 1985 and 1992, there were 35 infant deaths associated with the use of infant cushions/pillows (also known, among other names, as "baby beanbag pillows" and "beanbag cushions"). In almost all of the cases where the infant's position could be determined, the infant was in a prone, face down, position. 55 FR 42202. The Commission initiated a rulemaking proceeding to determine whether a ban was necessary to address an unreasonable risk of injury and death associated with these types of infant cushions/pillows. Due to the number of infant deaths associated with these products, the Commission proposed a rule to ban infant cushions/pillows with certain characteristics. 56 FR 32352. On June 23, 1992, the Commission issued a rule codified at 16 CFR 1500.18(a)(16)(i), banning infant cushions/pillows that: (1) Have a flexible fabric covering; (2) are loosely

filled with a granular material, including but not limited to, polystyrene beads or pellets; (3) are easily flattened; (4) are capable of conforming to the body or face of an infant; and (5) are intended or promoted for use by children under one year of age. 57 FR 27912.

On July 17, 2005, Boston Billows, Inc. (Boston Billows) submitted a petition requesting an amendment to 16 CFR 1500.18(a)(16)(i)(A)–(E) to allow an exception to the ban. The petitioner is the manufacturer of the Boston Billow Nursing Pillow, a granularly filled, C-shaped pillow intended for use by mothers when breastfeeding.

B. The ANPR

The Commission issued an advance notice of proposed rulemaking (ANPR) on September 27, 2006, to assess whether a rulemaking was necessary to address any unreasonable risk of injury or death which may be associated with infant cushions/pillows. 71 FR 56418. In addition to the Boston Billow Nursing Pillow, which met the criteria of the ban, there appeared to be a proliferation of other infant cushions/pillows or pillow-like products in the marketplace, including nursing pillows which met some, but not all, of the criteria set forth in the ban. The potential regulatory alternatives noted included whether to: (1) Amend the regulation to allow an exemption to the ban; (2) delete, revise or add criteria to the ban; (3) leave the existing regulation unchanged; or (4) repeal the existing regulation. Nine written comments were received in response to the ANPR in support of Boston Billows' request for exemption from the ban. After review of the comments, incident reports and other available information, the Commission determined there was insufficient data or product information on infant cushions or pillow-like products, other than the Boston Billow Nursing Pillow, to proceed with further rulemaking on those products at this time. Accordingly, a notice terminating the rulemaking on infant cushions/pillows or pillow-like products intended for use by infants, other than with respect to the Boston Billow Nursing Pillow and substantially similar nursing pillows, appears elsewhere in this **Federal Register**.

C. The Proposed Exemption

The ban on infant cushions/pillows was promulgated pursuant to the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261 *et seq.* Section 2(f)(1)(D) of the FHSA defines "hazardous substance" to include any toy or other article intended for use by

children which the Commission determines, by regulation, presents an electrical, mechanical, or thermal hazard. 15 U.S.C. 1261(f)(1)(D). An article may present a mechanical hazard if its design or manufacture presents an unreasonable risk of personal injury or illness during normal use or when subjected to reasonably foreseeable damage or abuse. 15 U.S.C. 1261(s). To grant Boston Billows' request for an exemption, the Commission must find that the Boston Billow Nursing Pillow does not present an unreasonable risk of injury from the mechanical hazard that the banning rule was intended to prevent.

Commission staff reviewed the incident data on infant cushions and nursing pillows for the period of January 1992 through June 2007. Staff also reviewed additional data from July 2007 through May 2008. Since 1992, there have been no reported deaths associated with infant cushions meeting the definition of a banned infant cushion/pillow. However, staff identified 531 infant deaths associated with pillows and cushions that did not meet the definition of a banned infant cushion/pillow. (From January 1992 through June 2007, there were 484 deaths reported and from July 2007 through May 2008, there were an additional 47 deaths reported.) The majority of these incidents involved adult pillows and sofa cushions which possess many of the same characteristics as the banned bean bag cushions. These products have soft covers and flexible filling material that can conform to an infant's face. A variety of pillow types and cushions with different types of filling including foam, feathers, and polyester were involved in the incidents. In this data set, two infant deaths have been associated with a polyester filled nursing pillow (which does not meet the definition of a banned infant cushion/pillow). One incident occurred in 2001 when a four-month-old infant was placed to sleep on his stomach in a playpen with his head resting on the nursing pillow. The second incident occurred in 2007, when a 46-day-old infant was placed in a prone position inside a crib with his head propped on the nursing pillow.

CPSC staff was also made aware of three additional deaths in 2006 where a nursing pillow was in the infant's sleep environment. The pillows involved with these deaths were polyester filled crescent-shaped nursing pillows not subject to the CPSC's infant cushion ban. The cause of these deaths in all cases was initially determined by the medical examiner to be Sudden Infant Death Syndrome (SIDS)/undetermined.

In 2008, the New York Westchester County Child Fatality Review Team examined the case files for these deaths. Further investigation of these incidents, including review of documents and photographs from the New York Westchester County Child Fatality Review Team and investigator interviews reveals that in two of the three deaths, while nursing pillows were in the sleep environment, the deaths were deemed to be caused by SIDS/undetermined and could not be causally connected to nursing pillows. With regard to the third death, the infant was propped to sleep in a prone position on a crescent-shaped nursing pillow. In summary, from 1992 to the present, staff is aware of a total of three cases where infants died from suffocation after being placed to sleep in a prone position with their heads propped on polyester filled crescent-shaped nursing pillows.

Staff's review revealed that in the vast majority of the 531 deaths associated with pillows and cushions, the infants were found in the prone position, lying on top of the pillow/cushion or with the head or neck propped on the pillow/cushion. A quarter of the deaths occurred in infant cribs, bassinets, cradles and playpens, while the rest occurred outside the normal infant sleep areas, such as on adult beds, on sofas, or on the floor. As with the banned infant bean bag cushion, these pillows and cushions can cause death by suffocation/asphyxiation when an infant is placed to sleep face down on them. According to staff, the analysis of the data does not reveal an increased risk due to any specific type of pillow or cushion filling, but rather it is the softness and malleability which are inherent properties of pillows that are the primary risk factors. The comparative risk of suffocation based upon filling is unknown; however, the greatest common risk factor is that infants were found in the prone position, face down, in the majority of the 531 deaths.

Prone sleeping is a high risk factor for infant suffocation on cushions/pillows. The limited physical and developmental capabilities of infants render them susceptible to danger from suffocation in certain sleeping environments. Physiological abnormalities and delays in the development of vital systems can further hamper an infant's ability to react to a hazardous condition. Infants who are not placed on their backs are especially at risk for suffocation on any type of soft pillow, regardless of the type of filling.

In 1992, the American Academy of Pediatrics, in an effort to reduce the risk

of SIDS, recommended that babies always be placed on their backs when put to sleep. As a result of this campaign, Sudden Infant Death Syndrome (SIDS) deaths between 1992 and 2004 in the United States decreased from 5,000 per year to 2,246 per year (based on vital statistics data of the United States). Although there has been a steady decrease in SIDS deaths, staff found there has not been a similar decrease in infant deaths associated with pillows and cushions. Even though the recommendation to place infants to sleep on their backs is being promoted, staff believes that the data indicates that there are still a significant number of people who continue to place infants to sleep in the prone position. For this reason, staff recommends increased information dissemination targeted at the population of caregivers whose infants are not placed to sleep in the supine position. Increased compliance with the recommendation for supine sleep, as well as continued vigilance in ensuring a safe sleeping environment, would have benefits in reducing the risk of infant suffocation deaths caused by adult pillows, sofa cushions, and other pillows as well as further reducing incidents involving SIDS.

In light of the ongoing risks posed by infant cushions/pillows when used in the sleep environment, the Commission found no justification for repealing the ban on infant cushions/pillows at this time. However, nursing pillows perform a related but different function than infant cushions/pillows. The purpose of nursing pillows is to provide a place for the mother to rest her arms while breastfeeding. The nursing pillow may also serve to give moldable but firm support to enhance comfort during extended periods when changing position during breastfeeding is difficult. The main risk of suffocation arises if the nursing pillow enters into the infant sleeping environment because suffocation can occur if children fall asleep on them in the prone position. However, an infant placed to sleep on any pillow or cushion, including a nursing pillow, in the prone position, is at risk for suffocation, regardless of size, type, shape of pillow or filling. Staff's review showed that when used for its intended purpose—nursing—the risk of infant suffocation on nursing pillows, including the Boston Billow Nursing Pillow, is very low. Staff estimates that 900,000 new nursing pillows are sold annually and that nursing pillows were used by approximately 1.8 million mothers in 2004. Exempting the Boston Billow Nursing Pillow would increase consumer choice by allowing consumers

an alternative to the nursing pillows already in the marketplace. Based on the staff's assessment, the Commission preliminarily concludes that an exemption from the ban on infant cushions/pillows should be granted for the Boston Billow Nursing Pillow and substantially similar nursing pillows.¹

D. Regulatory Flexibility Act Certification

Under the Regulatory Flexibility Act (RFA), when an agency issues a proposed rule, it generally must prepare an initial regulatory flexibility analysis describing the impact the proposed rule is expected to have on small entities. 5 U.S.C. 603. The RFA does not require a regulatory flexibility analysis if the head of the agency certifies that the rule will not have a significant effect on a substantial number of small entities.

The proposed exemption gives all companies more flexibility in the choice of material used in manufacturing nursing pillows. The exemption is deregulatory in nature and will not impose any additional costs on businesses of any size. Consequently, the Commission concludes that the proposed amendment exempting the Boston Billow Nursing Pillow and substantially similar nursing pillows would not have a significant impact on a substantial number of small entities.

E. Environmental Considerations

Generally, CPSC rules are considered to "have little or no potential for affecting the human environment," and environmental assessments are not usually prepared for these rules (see 16 CFR 1021.5(c)(1)). Nothing in this proposed rule alters that expectation. Therefore, the Commission does not expect the proposal to have any negative environmental impact.

F. Executive Orders

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations. The preemptive effect of this proposed regulation is stated in section 18 of the FHSA. 15 U.S.C. 1261n.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances,

¹ On February 1, 2008, Acting Chairman Nancy Nord and Commissioner Thomas Moore voted 2–0 to direct the Office of the General Counsel to prepare a notice of proposed rulemaking proposing an exemption for the Boston Billow Nursing Pillow and substantially similar nursing pillows. Acting Chairman Nord also voted to request ASTM to develop a product warning label for the product class.

Imports, Infants and children, Labeling, Law enforcement, and Toys.

G. Conclusion

For the reasons stated above, the Commission proposes to amend title 16 of the Code of Federal Regulations as follows:

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES: ADMINISTRATION AND ENFORCEMENT REGULATIONS

1. The authority for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1278.

2. Section 1500.86 is amended by adding a new paragraph (a)(9) to read as follows:

§ 1500.86 Exemptions from classification as banned toy or other banned article for use by children.

(a) * * *

(9) Boston Billow Nursing Pillow and substantially similar nursing pillows that may otherwise meet the criteria of the banned infant cushion/pillow at 16 CFR 1500.18(a)(16)(i).

Dated: August 27, 2008.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Infant Cushions/Pillows; Termination of Rulemaking Other Than With Respect to Boston Billow Nursing Pillow and Substantially Similar Nursing Pillows

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking; partial withdrawal.

SUMMARY: On September 27, 2006, the Commission issued an advance notice of proposed rulemaking (ANPR) to assess whether a rulemaking was necessary to address any unreasonable risk of injury or death which may be associated with the proliferation of infant cushions/pillows and pillow-like products intended for infants in the marketplace, including the Boston Billow Nursing Pillow. 71 FR 56418. After review of the comments, incident reports and other available information, the Commission has determined there is insufficient data or product information on infant cushions/pillows or pillow-like