



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

This document has been electronically
approved and signed.

DATE: March 25, 2020

BALLOT VOTE SHEET

TO: The Commission
Alberta E. Mills, Secretary

THROUGH: John G. Mullan, General Counsel
Mary T. Boyle, Executive Director

FROM: Hyun S. Kim, Acting Assistant General Counsel, Regulatory Affairs
Meridith L. Kelsch, Attorney, Regulatory Affairs

SUBJECT: ASTM's Revised Safety Standard for Sling Carriers

BALLOT VOTE DUE: Tuesday, March 31, 2020

Staff is forwarding to the Commission a briefing memorandum recommending that the Commission issue a direct final rule to update the ASTM standard incorporated by reference in the Safety Standard for Sling Carriers in 16 CFR part 1228. The Commission issued the mandatory standard under the Consumer Product Safety Improvement Act of 2008 (CPSIA), incorporating by reference ASTM F2907-15, *Standard Consumer Safety Specification for Sling Carriers*, with one modification. The CPSIA provides that when there is a revision to a voluntary standard that the Commission incorporated by reference, the revised standard automatically becomes the mandatory standard, unless the Commission determines that the revised standard "does not improve the safety of the consumer product" and notifies the voluntary standards organization. ASTM has updated its voluntary standard, issuing ASTM F2907-19.

Staff recommends that the Commission allow the revised standard, ASTM F2907-19, to become the mandatory standard (while retaining the additional requirement in the mandatory standard). Consistent with that update, staff recommends that the Commission publish a direct final rule to revise the regulations to reference the updated version of the standard. Attached is a draft *Federal Register* notice for that purpose. The draft notice will be sent to the *Federal Register* for publication after we receive approval of the incorporation by reference from the Office of the Federal Register.

Please indicate your vote on the following options:

I. Approve publication of the attached notice in the *Federal Register*, as drafted.

(Signature)

(Date)

II. Approve publication of the attached notice in the *Federal Register*, with the specified changes.

(Signature)

(Date)

III. Do not approve publication of the attached notice in the *Federal Register*.

(Signature)

(Date)

IV. Take other action specified below.

(Signature)

(Date)

Attachment: Draft *Federal Register* Notice: Revisions to Safety Standard for Sling Carriers

[Billing Code 6355-01-P]

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC-2014-0018]

16 CFR Part 1228

Revisions to Safety Standard for Sling Carriers

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In January 2017, the U.S. Consumer Product Safety Commission (CPSC) published a consumer product safety standard for sling carriers under section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). The standard incorporated by reference the ASTM voluntary standard that was in effect for sling carriers at the time, with an additional requirement for warning label attachment. ASTM has since revised the voluntary standard for sling carriers. The CPSIA provides a process for when a voluntary standards organization updates a standard that the Commission incorporated by reference in a section 104 rule. Consistent with that process, this direct final rule revises the mandatory standard for sling carriers to incorporate by reference the updated version of the ASTM standard, while retaining the additional requirement for warning label attachment.

DATES: The rule is effective on July 6, 2020, unless CPSC receives a significant adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If CPSC receives such a comment, it will publish a notice in the *Federal Register*, withdrawing this direct final rule before its effective date. The

incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of July 6, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CPSC-2014-0018, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: <https://www.regulations.gov>. Follow the instructions for submitting comments. The CPSC does not accept comments submitted by electronic mail (e-mail), except through <https://www.regulations.gov>. The 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: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

Instructions: All submissions must include the agency name and docket number for this notice. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: <https://www.regulations.gov>. Do not submit electronically: 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 written submissions.

Docket: For access to the docket to read background documents or comments received, go to: <https://www.regulations.gov>, and insert the docket number, CPSC-2014-0018, into the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Keysha Walker, Compliance Officer, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-6820; email: kwalker@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background and Statutory Authority

Section 104 of the CPSIA requires the Commission to assess the effectiveness of voluntary standards for durable infant or toddler products and adopt mandatory standards for these products. 15 U.S.C. 2056a(b)(1). The mandatory standard must be “substantially the same as” the voluntary standard, or may be “more stringent than” the voluntary standard, if the Commission determines that more stringent requirements would further reduce the risk of injury associated with the product. *Id.*

Under this authority, the Commission adopted a mandatory rule for sling carriers in 16 CFR part 1228. The rule incorporated by reference ASTM F2907-15, *Standard Consumer Safety Specification for Sling Carriers*, into 16 CFR 1228.2(a), with an additional requirement for warning label attachment in 1228.2(b). 82 FR 8671 (Jan. 30, 2017). At the time the Commission published the final rule, ASTM F2907-15 was the current version of the voluntary standard. ASTM has since revised the voluntary standard, adopting ASTM F2907-19.¹

The CPSIA specifies the process for when a voluntary standards organization revises a standard that the Commission incorporated by reference in a section 104 rule. First, the voluntary standards organization must notify the Commission of the revision. Once the Commission receives this notification, the statute states: “the revised voluntary

¹ ASTM approved ASTM F2907-19 on November 1, 2019, and published it in November 2019.

standard shall be considered to be a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the date on which the organization notifies the Commission (or such later date specified by the Commission in the Federal Register) unless, within 90 days after receiving that notice, the Commission notifies the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard and that the Commission is retaining the existing consumer product safety standard.” 15 U.S.C. 2056a(b)(4)(B).

On January 8, 2020, the Commission received notification from ASTM that it had updated the sling carrier standard. As this preamble discusses, the revised standard includes revised requirements for test methods, labeling, and instructional literature, which improve the safety of sling carriers. Accordingly, the Commission is not determining that “the proposed revision does not improve the safety of the consumer product.” Therefore, under the CPSIA, ASTM F2907-19 will replace ASTM F2907-15 in subsection (a) of the mandatory standard for sling carriers, effective July 6, 2020, 180 days after CPSC received ASTM’s notice.

B. Revised Standard

1. Revisions to ASTM F2907

The ASTM standard for sling carriers includes performance requirements and test methods, as well as requirements for warning labels and instructional literature, to address hazards to children associated with sling carriers.

ASTM F2907-19 includes revised requirements for test methods, labeling, and instructional literature to address two considerations in the way sling carriers are

marketed and used. These considerations are: (1) the use of sling carriers for two occupants (rather than one), and (2) sling carriers that are marketed to carry more than the existing test weight of 35 pounds. ASTM F2907-19 also includes several revisions to clarify existing requirements, as well as editorial revisions that do not alter the substantive requirements or affect safety.

As described below, the revisions in ASTM F2907-19 more closely reflect the conditions for which some sling carriers are marketed and used. Under these revised requirements, sling carriers must undergo testing that simulates the conditions under which they are marketed to be used and are actually used. Because testing sling carriers under their actual use conditions more accurately assesses their durability, the Commission concludes that the revised standard improves the safety of sling carriers. Because the Commission declines to determine that the revision “does not improve the safety” of sling carriers, the revised ASTM standard will replace F2907-15 in subsection (a) of section 1228.2. The sections below discuss the revised portions of the ASTM standard, as well as CPSC staff’s assessment of those revisions.

a. Sling Carriers for Two Occupants

ASTM F2907-15 only addresses sling carriers designed to carry one occupant. The scope of the standard, the test procedures, and the instructional requirements all reflect this.² However, there are sling carriers designed for two occupants, and consumers sometimes use sling carriers for two occupants, especially twins. ASTM F2907-19

² The scope of the standard (section 1) uses the singular (*e.g.*, “an occupant,” “a child”) to refer to occupants of a sling carrier. The test procedures (section 7), require testing with a 35-pound weight, consistent with the weight of a single child occupant, referenced in the scope (section 1). Instructional literature requirements (section 9) require instructional literature to address the following: “Never place more than one baby in the sling carrier.”

modifies the scope, testing, labeling, and instructional literature requirements to address slings designed to contain up to two occupants. The following revisions in ASTM F2907-19 reflect these changes:

- in section 1.3, the scope covers sling carriers designed to contain up to two occupants;
- section 6.2 requires each restraint system to be tested, accounting for the possibility of more than one restraint system;
- section 7.1.5 requires two-occupant slings to be tested with weight in both support areas concurrently;
- in addition to the dynamic load requirements for single-occupant products in section 7.2.2, there are dynamic load requirements for two-occupant products in section 7.2.3;
- in addition to the occupant-retention test requirements for single-occupant products in section 7.5.2, there are occupant-retention test requirements for two-occupant products in section 7.5.3;
- section 8.1.4 requires labels to state the recommended child weight for each support area, accounting for the possibility of more than one occupant;
- section 8.3.4 requires pictograms of improper and proper infant positioning to include one or two occupants, depending on the product design; and
- the instructional literature requirements in section 9.3.9 retain the required language: “never place more than one baby in the sling carrier” for single-occupant sling carriers, but provide a modified statement for two-occupant sling carriers.

CPSC staff believes that these revisions improve the safety of sling carriers because they require sling carriers to be tested under the conditions for which they are marketed and used. Under ASTM F2907-15, two-occupant sling carriers would potentially fall outside the scope of the standard, or would be subject to test requirements that reflect the weight or presence of a single occupant only, which is less than the load they would bear during actual use. ASTM F2907-19 requires sling carriers that are marketed for two occupants to undergo the same testing as single-occupant products, but with the added conditions associated with two occupants.

Although staff is not aware of any incidents that involve multiple occupants in a single sling carrier,³ staff believes that the revised standard provides better safety than excluding two-occupant slings from the standard or testing them under the conditions associated with a single occupant.

b. Sling Carriers with Recommended Maximum Weights Above 35 Pounds

ASTM F2907-15 uses 35-pound weights/masses in its test procedures, consistent with the typical maximum weight of an occupant stated in the scope section. However, some manufacturers market sling carriers with a maximum weight above 35 pounds, to allow for a larger occupant or multiple occupants. ASTM F2907-19 addresses this by requiring test weights to be the greater of 35 pounds, or the manufacturer's recommended

³ Although CPSC is not aware of any incidents that involve multiple occupants in a single sling carrier, staff identified one fatality associated with simultaneous use of two sling carriers. Although this is not directly relevant to two-occupant slings, we note this incident because of its marginal relevance to the use of sling carriers with more than one child. Both of the sling carriers involved in that incident have been recalled because of hazards associated with single-occupant use; so staff cannot conclude that the use of multiple slings was a factor in the incident. Moreover, the standard does not support simultaneous use of multiple sling carriers, because both ASTM F2907-15 and -19 require instructional literature to state: "Never use/wear more than one carrier at a time."

maximum occupant weight. The following revisions in ASTM F2907-19 reflect these changes:

- in section 1.3, the scope notes that, although the typical maximum weight of an occupant is 35 pounds, manufacturers may provide a higher weight limit;
- for the dynamic load test, the test mass/weight in section 7.2.2 is the greater of 35 pounds, or the manufacturer's recommended maximum weight; and
- for the occupant-retention test, the test mass stated in section 7.5.1.3 is the greater of 35 pounds, or the manufacturer's recommended maximum weight.

CPSC staff believes that these revisions improve the safety of sling carriers, because they require sling carriers to be tested under the conditions for which they are marketed and used. ASTM F2907-19 requires sling carriers that are marketed to carry more than 35 pounds to be tested with the marketed maximum weight. This provides better safety than testing sling carriers with 35-pound weights when they are marketed as supporting more than that.

c. Clarifications

ASTM F2907-19 also includes several modifications to clarify, simplify, and add detail to existing testing requirements. These revisions do not alter the substantive requirements in the standard.

The first clarification is in section 7.1, which includes the static load testing requirements. Section 6.1.1 of both ASTM F2907-15 and ASTM F2907-19 state that after static load testing, “adjustable attachment systems of the sling carrier shall not slip more than 1 in. (25.44 mm) per element.” Section 7.1 in both versions of the standard describe the static load test procedure. However, a clarification in ASTM F2907-19

directs testers to mark the sling at the beginning and end of the testing to measure slippage.

The second clarification is in section 7.2, which includes the dynamic load testing requirements. In ASTM F2907-15, this section (7.2.3) provides a calculation for determining the number of cycles of testing. In ASTM F2907-19, the number of cycles is provided in a table (Table 1). The calculation in ASTM F2907-15 yields the numbers in the table; the revision simply eliminates the need for calculations. A footnote to the table also provides details about how to determine the number of carrying positions, which is the basis for the calculation and table. This table also replaces the same calculation previously used in section 7.5, on occupant retention testing.

d. Editorial Revisions

ASTM F2907-19 also includes editorial revisions that do not affect the substantive requirements in the standard. The following revisions in ASTM F2907-19 reflect these changes:

- section 1.8 adds environmental practices to the previous list of safety and health practices that users should consider;
- section 1.9 explains that ASTM developed the standard in accordance with principles recognized by the World Trade Organization;
- the term “manufacturer’s recommended carrying position” replaces various terms that referred to the carrying position, for standardization;
- the term “manufacturer’s recommended maximum weight” replaces “manufacturer’s maximum recommended weight”; and

- units are in forms consistent with ASTM Form and Style (e.g., “1 in. to 2 in.” replaces “1 to 2 in.”).

2. *More Stringent Requirement for Label Attachment*

The current mandatory standard incorporates by reference ASTM F2907-15, but includes an additional requirement for label attachment. Specifically, 16 CFR 1228.2(b) requires that “warning labels that are attached to the fabric with seams shall remain in contact with the fabric around the entire perimeter of the label, when the sling is in all manufacturer recommended use positions.” The Commission added this requirement to address comments expressing concerns that consumers would accidentally or intentionally remove or damage, or otherwise alter, “free-hanging” labels that are attached to a product at only one end of the label. The Commission explained that removing or altering these labels “would eliminate the potential safety benefit of the label,” and accordingly, adopted the additional attachment requirement. 82 FR 8671, 8679 (Jan. 30, 2017).

ASTM F2907-19 does not include this additional requirement. CPSC staff believes that this requirement remains appropriate. Therefore, the Commission is retaining this additional requirement in 16 CFR 1228.2(b).

C. Incorporation by Reference

Section 1228.2(a) of the direct final rule incorporates by reference ASTM F2907-19. The Office of the Federal Register (OFR) has regulations regarding incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble to a final rule, ways in which the material the agency incorporates by reference is reasonably available to interested parties, and how interested parties can obtain the

material. In addition, the preamble to the final rule must summarize the material. 16 CFR 1628.51.5(b).

In accordance with the OFR regulations, *B. Revised Standard* of this preamble summarizes the major provisions of ASTM F2907-19 that the Commission incorporates by reference into 16 CFR part 1228. The standard is reasonably available to interested parties and interested parties may purchase a copy of ASTM F2907-19 from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959 USA; phone; 610-832-9585; www.astm.org. A copy of the standard can also be inspected at CPSC's Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923. In addition, once the rule becomes effective, a read-only copy of the standard will be available for viewing on the ASTM website at:

<https://www.astm.org/READINGLIBRARY/>.

D. Certification

Section 14(a) of the Consumer Product Safety Act (CPSA; 15 U.S.C. 2051-2089) requires manufacturers of 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, to certify that the products comply with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program, or, for children's products, on tests on a sufficient number of samples by a third party conformity assessment body accredited by CPSC to test according to the applicable requirements. As noted, standards issued under

section 104(b)(1)(B) of the CPSIA are “consumer product safety standards.” Thus, they are subject to the testing and certification requirements of section 14 of the CPSA.

Because sling carriers are children’s products, a CPSC-accepted third party conformity assessment body must test samples of the products. These products also must comply with all other applicable CPSC requirements, such as the lead content requirements in section 101 of the CPSIA,⁴ the phthalates prohibitions in section 108 of the CPSIA,⁵ the tracking label requirements in section 14(a)(5) of the CPSA⁶, and the consumer registration form requirements in section 104(d) of the CPSIA.⁷

E. Notice of Requirements

In accordance with section 14(a)(3)(B)(iv) of the CPSIA, the Commission previously published a notice of requirements (NOR) for accreditation of third party conformity assessment bodies for testing sling carriers. 82 FR 8671 (Jan. 30, 2017). The NOR provided the criteria and process for CPSC to accept accreditation of third party conformity assessment bodies for testing sling carriers to 16 CFR part 1228. The NORs for all mandatory standards for durable infant or toddler products are listed in the Commission’s rule, “Requirements Pertaining to Third Party Conformity Assessment Bodies” in 16 CFR part 1112.

Under the revised provisions in ASTM F2907-19, testing of affected products involves increased test weights and testing of more occupant positions. However, the test methodologies remain the same. Accordingly, the revisions do not significantly change the way that third party conformity assessment bodies test these products for compliance

⁴ 15 U.S.C. 1278a.

⁵ 15 U.S.C. 2057c.

⁶ 15 U.S.C. 2063(a)(5).

⁷ 15 U.S.C. 2056a(d).

with the sling carriers standard. Laboratories will begin testing to the new standard when ASTM F2907-19 goes into effect, and the existing accreditations that the Commission has accepted for testing to this standard will cover testing to the revised standard. Therefore, the Commission considers the existing CPSC-accepted laboratories for testing to ASTM F2907-15 to be capable of testing to ASTM F2907-19 as well. Accordingly, the existing NOR for this standard will remain in place, and CPSC-accepted third party conformity assessment bodies are expected to update the scope of the testing laboratories' accreditations to reflect the revised standard in the normal course of renewing their accreditations.

F. Direct Final Rule Process

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA; 5 U.S.C. 551-559) generally requires agencies to provide notice of a rule and an opportunity for interested parties to comment on it, section 553 of the APA provides an exception when the agency, "for good cause finds," that notice and comment are "impracticable, unnecessary, or contrary to the public interest." *Id.* 553(b)(B).

Under the process set out in section 104(b)(4)(B) of the CPSIA, when ASTM revises a standard that the Commission has previously incorporated by reference under section 104(b)(1)(B) of the CPSIA, that revision will become the new CPSC standard, unless the Commission determines that ASTM's revision does not improve the safety of the product. Thus, unless the Commission makes such a determination, the ASTM revision becomes CPSC's standard by operation of law. The Commission is allowing ASTM F2907-19 to become CPSC's new standard. The purpose of this direct final rule is

merely to update the reference in the Code of Federal Regulations (CFR) so that it reflects accurately the version of the standard that takes effect by statute. The rule updates the reference in the CFR, but under the terms of the CPSIA, ASTM F2907-19 takes effect as the new CPSC standard for sling carriers, even if the Commission did not issue this rule. Thus, public comments would not impact the substantive changes to the standard or the effect of the revised standard as a consumer product safety standard under section 104(b) of the CPSIA. Under these circumstances, notice and comment are not necessary.

In Recommendation 95-4, the Administrative Conference of the United States (ACUS) endorses direct final rulemaking as an appropriate procedure to expedite rules that are noncontroversial and that are not expected to generate significant adverse comment. *See* 60 FR 43108 (Aug. 18, 1995). ACUS recommends that agencies use the direct final rule process when they act under the “unnecessary” prong of the good cause exemption in 5 U.S.C. 553(b)(B). Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule because CPSC does not expect any significant adverse comments.

Unless CPSC receives a significant adverse comment within 30 days of this notice, the rule will become effective on July 6, 2020. In accordance with ACUS’s recommendation, the Commission considers a significant adverse comment to be “one where the commenter explains why the rule would be inappropriate,” including an assertion challenging “the rule’s underlying premise or approach,” or a claim that the rule “would be ineffective or unacceptable without change.” 60 FR 43108, 43111. As noted, this rule merely updates a reference in the CFR to reflect a change that occurs by statute.

If the Commission receives a significant adverse comment, the Commission would withdraw this direct final rule. Depending on the comment and other circumstances, the Commission may then incorporate the adverse comment into a subsequent direct final rule or publish a notice of proposed rulemaking, providing an opportunity for public comment.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601-612) generally requires agencies to review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603, 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. *Id.* As discussed in *F. Direct Final Rule Process* of this preamble, the Commission has determined that notice and the opportunity to comment are unnecessary for this rule. Therefore, the RFA does not apply. CPSC also notes the limited nature of this document, which merely updates the incorporation by reference to reflect the mandatory CPSC standard that takes effect under section 104 of the CPSIA.

H. Paperwork Reduction Act

The current mandatory standard for sling carriers includes requirements for marking, labeling, and instructional literature that constitute a “collection of information,” as defined in the Paperwork Reduction Act (PRA; 44 U.S.C. 3501-3521). The revised mandatory standard does not alter these requirements. The Commission took the steps required by the PRA for information collections when it adopted 16 CFR part 1228, including obtaining approval and a control number. Because the information

collection is unchanged, the revision does not affect the information collection requirements or approval related to the standard.

I. Environmental Considerations

The Commission's regulations provide a categorical exclusion for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement where they "have little or no potential for affecting the human environment." 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

J. Preemption

Section 26(a) of the CPSA provides that where 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 requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. 15 U.S.C. 2075(a). Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to CPSC for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA deems rules issued under that provision "consumer product safety standards." Therefore, once a rule issued under section 104 of the CPSIA takes effect, it will preempt in accordance with section 26(a) of the CPSA.

K. Effective Date

Under the procedure set forth in section 104(b)(4)(B) of the CPSIA, when a voluntary standard organization revises a standard that the Commission adopted as a mandatory standard, the revision becomes the CPSC standard within 180 days of

notification to the Commission, unless the Commission determines that the revision does not improve the safety of the product, or the Commission sets a later date in the *Federal Register*. 15 U.S.C. 2056a(b)(4)(B). The Commission is taking neither of those actions with respect to the standard for sling carriers. Therefore, ASTM F2907-19 automatically will take effect as the new mandatory standard for sling carriers on July 6, 2020, 180 days after the Commission received notice of the revision on January 8, 2020. As a direct final rule, unless the Commission receives a significant adverse comment within 30 days of this notice, the rule will become effective on July 6, 2020.

L. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801-808) states that, before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The submission must indicate whether the rule is a “major rule.” The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a “major rule.”

Pursuant to the CRA, this rule does not qualify as a “major rule,” as defined in 5 U.S.C. 804(2). To comply with the CRA, the Office of the General Counsel will submit the required information to each House of Congress and the Comptroller General.

List of Subjects in 16 CFR Part 1228

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

For the reasons discussed in the preamble, the Commission amends 16 CFR chapter II as follows:

PART 1228 – SAFETY STANDARD FOR SLING CARRIERS

1. Revise the authority citation for part 1228 to read as follows:

Authority: Sec. 104, Pub. L. 110-314, 122 Stat. 3016 (15 U.S.C. 2056a).

2. Revise § 1228.2 to read as follows:

§ 1228.2 Requirements for Sling Carriers.

(a) Except as provided in paragraph (b) of this section, each sling carrier must comply with all applicable provisions of ASTM F2907-19, *Standard Consumer Safety Specification for Sling Carriers*, approved on November 1, 2019. 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. You may obtain a copy of this ASTM standard from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959; www.astm.org. A read-only copy of the standard is available for viewing on the ASTM website at <https://www.astm.org/READINGLIBRARY/>. You may inspect a copy at the Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fedreg.legal@nara.gov, or go to: www.archives.gov/federal-register/cfr/ibr-locations.html.

(b) In addition to complying with section 5.7.2 of ASTM F2907-19, comply with the following:

(1) 5.7.3 Warning labels that are attached to the fabric with seams shall remain in contact with the fabric around the entire perimeter of the label, when the sling is in all manufacturer recommended use positions.

(2) [Reserved]

Alberta E. Mills,
Secretary,
Consumer Product Safety Commission.



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY, BETHESDA, MD 20814

This document has been electronically
approved and signed.

Memorandum

March 25, 2019

TO : The Commission
Alberta E. Mills, Secretary

THROUGH: John G. Mullan, General Counsel

Mary T. Boyle, Executive Director

DeWane Ray, Deputy Executive Director for Safety Operations

FROM : Duane E. Boniface, Assistant Executive Director
Office of Hazard Identification and Reduction

Hope E J. Nesteruk, Children's Program Manager
Division of Mechanical and Combustion Engineering
Directorate for Engineering Sciences

SUBJECT : Consumer Product Safety Improvement Act of 2008 (CPSIA), as revised by
Pub. L. No. 112-28 (H.R. 2715), Notice of Revision to the Standards for Sling
Carriers (16 CFR part 1228)

I. INTRODUCTION

The Danny Keysar Child Product Safety Notification Act, section 104 of the CPSIA, instructs voluntary standards organizations, such as ASTM International (ASTM), to notify the U.S. Consumer Product Safety Commission (CPSC) of revisions to voluntary standards that are a basis for a consumer product safety standard promulgated by the Commission. CPSIA section 104(b)(4)(B) states:

COMMISSION ACTION ON REVISED VOLUNTARY STANDARD - If an organization revises a standard that has been adopted, in whole or in part, as a consumer product safety standard under this subsection, it shall notify the Commission. The revised voluntary standard shall be considered to be a consumer product safety standard issued by the Commission under section 9 of

the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the date on which the organization notifies the Commission (or such later date specified by the Commission in the Federal Register) unless, within 90 days after receiving that notice, the Commission notifies the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard and that the Commission is retaining the existing consumer product safety standard.

On January 30, 2017, the Commission issued a final rule that incorporated by reference ASTM F2907 – 15, *Standard Consumer Safety Specification for Sling Carriers*, as a portion of the mandatory standard for sling carriers under section 104 of the CPSIA. The Commission incorporated by reference ASTM F2907 – 15 in 16 CFR 1228.2(a), and also adopted one modification to the standard in 1228.2(b). 82 Fed. Reg. 8671. That standard is codified in 16 CFR part 1228 and covers products of fabric or sewn fabric construction that are designed to contain a child in an upright or reclined position while being supported by the caregiver’s torso. The ASTM standard provides that sling carriers include a variety of unstructured designs, ranging from a hammock-shaped product suspended on the caregiver’s upper torso, to a long length of material wrapped around the caregiver’s body.

On January 8, 2020, ASTM officially notified¹ CPSC that it published a revised 2019 version of ASTM F2907 that affects the requirements for sling carriers.

This memorandum outlines the differences between ASTM F2907 – 19 and 16 CFR part 1228. Staff recommends allowing this revision to be considered as the new CPSC safety standard for sling carriers and updating the incorporation by reference in 16 CFR 1228.2(a) accordingly, while retaining the additional requirement in 1228.2(b).

II. REVIEW/COMPARISON OF STANDARDS

Currently, 16 CFR 1228.2(a) incorporates by reference ASTM F2907 – 15, with one modification in 1228.2(b) (discussed in section III, below). The 2019 version is the first revision of ASTM F2907 since ASTM F2907 – 15.

Comparison of ASTM 2907 – 15 to ASTM F2907 – 19

Non-substantive changes

ASTM made a number of minor and editorial changes throughout ASTM F2907 – 19.

These changes do not affect the safety of sling carriers, and include the following:

- In section 1.8, “safety and health” was changed to “safety, health, and environmental.”

¹ Letter dated January 7, 2020, received January 8, 2020.

- Section 1.9 was added, stating that ASTM developed the standard in accordance with principles recognized by the World Trade Organization.
- Various terms that were intended to refer to the carrying position were standardized to the term “manufacturer’s recommended carrying position,” throughout the standard.
- Changes to units expressions to bring the standard into accordance with ASTM Form and Style, such as adding a repeater unit when expressing a range (*e.g.*, “1 in. to 2 in.” instead of “1 to 2 in.”).
- Serial lists were modified to incorporate the serial comma (*i.e.*, a comma placed immediately before the coordinating conjunction, such as “and,” or “or,” in a list of three or more items).

Substantive changes

The recent publication of ASTM F2907 – 19 incorporated two major changes that had implications throughout the standard. These changes (1) incorporate into the standard, sling carriers designed for use with two children, providing testing and labeling requirements for such sling carriers, and (2) allow manufacturers to specify a maximum weight greater than 35 pounds, which is then used as the testing weight. The higher maximum weight allows marketing for both larger children and multiple children in one sling. Both of these modifications address concerns noted in the sling carrier market.

Regarding the first change, under ASTM F2907 – 15, a sling carrier may contain only one child. The scope of the standard, the test procedures and weights, and the instructional requirements all reflect this. However, soft infant and toddler carriers can be designed and tested for two occupants, and consumers use them for two occupants. Because sling carriers are limited to one occupant, consumers often create make-shift solutions to combine two sling carriers or carry two occupants in a single sling carrier. To address this, the changes to the standard allow slings to contain two occupants, and the revised standard provides specific test requirements to reflect such use.

Regarding the second change, under ASTM F2907 – 15, test procedures use 35-lb. weights/masses to reflect the weight of occupants stated in the scope of the standard. However, some sling carrier manufacturers market products with a maximum weight above the weight specified in the standard, meaning the products are advertised as supporting a weight heavier than the test requirements. The changes to the standard address this by requiring test weights/masses to be the greater of 35 lbs. or the mass of the manufacturer’s recommended maximum occupant weight.

These modifications required changes to the following sections:

- Section 1.3, Scope, changed to state that sling carriers are designed to contain up to two children. In addition, the language specifying the expected child weight allows the manufacturer to specify a higher weight.
- Section 6.2, Restraint System, modified to specify that each restraint system must be tested. Prior versions assumed only one restraint system existed.
- Section, 7.1, Static Load Test:
 - Clarification added, as new sections 7.1.2 and 7.1.4, to indicate how to mark the sling during testing to assess slippage. This clarification is not related to the major changes listed above, but it was noted when the section was under review for relevant changes.
 - Section 7.1.2, now 7.1.3 after the renumbering described above, changed “manufacturer’s maximum recommended weight” to “manufacturer’s recommended maximum weight.” This is a non-substantive change, but it is included here for full discussion of changes in 7.1.
 - Section 7.1.5 added to specify that two-occupant slings must be tested with the weights in both support areas concurrently.
- Section 7.2, Dynamic Load Test:
 - 7.2.2, Single-Occupant Products, and 7.2.3, Two-Occupant Products, were added. Section 7.2.2 is similar to the test method in ASTM F2907 – 15, except, rather than calculating the number of cycles for testing, the reader can obtain this number from a new table added to the standard. This change was made because the calculation yielded only 3 possible cycles: 1000, 500, or 350, which are now clearly stated in the table. Section 7.2.3 details how to perform the dynamic load test for multiple-occupant slings.
 - Table 1. As detailed above, this table was added to replace the calculation formerly specified in section 7.2.5: “Calculate the variable X by dividing 1000 test cycles by the total number of different manufacturer’s recommended carrying positions and rounding up to the nearest multiple of 50. Substantially similar carrying positions shall be counted as 1 position. If the manufacturer has more than 3 carrying positions, X shall be 350.”
- Section 7.5, Occupant Retention Test
 - 7.5.2, Single-Occupant Products, and 7.5.3, Two-Occupant Products, were added with the same goals as 7.2.2. and 7.2.3, discussed above. These sections also refer to Table 1. In addition, the total weight of the test mass can increase above 35 pounds for sling carriers that are marketed as intended for children over 35 pounds.
- Section 8, Marking and Labeling
 - 8.1.4 was modified to indicate that a maximum recommended weight must be given for each support area of the sling carrier.

- 8.3.4 was modified to clarify that products can provide a pictogram with two occupants, if the sling carrier was intended for two occupants.
- Section 9. Instructional Literature
 - 9.3.9 replaced the statement “never place more than one baby in the sling carrier” with modified language allowing flexibility for two-occupant sling carriers. The revised language allows a manufacturer to use the language above, or similar language, for single-occupant sling carriers, or to address two-occupant carriers in a similar manner (*i.e.*, “This product can be used for up to two children in certain carry positions. Do not use product for more than two children.”)

III. DISCUSSION

A. Staff’s Assessment of the Revised Standards

Under CPSIA section 104(b)(4)(B), unless the Commission determines that ASTM’s revision to a voluntary standard that is referenced in a mandatory standard “does not improve the safety of the consumer product covered by the standard,” the revised voluntary standard replaces the earlier version and becomes mandatory. As detailed in the summary above, test requirements now require testing to the manufacturer’s recommended maximum weight whereas sling carriers previously were tested to 35 lbs., regardless of manufacturers’ recommendations. This modification is an improvement in safety, because it requires that sling carriers marketed as appropriate for carrying children over 35 lbs. are tested with test weights that are consistent with the marketed maximum recommended weight.

In addition, this revision allows for slings that are marketed for up to two occupants to be included within the scope of the standard. Previously, such sling carriers were outside the scope of the standard, and if tested to the standard, were only tested with a one-occupant load. Staff is not aware of any incidents involving multiple occupants in a single carrier.² Therefore, we view specifically addressing two-occupant slings as an improvement, because currently, slings are being used without any such requirements. Staff concludes that sling carriers that are marketed for two occupants should be required to comply with similar test and load requirements as slings for single occupants. Staff further concludes that the revised standard should reflect the added load of two occupants in the testing. Accordingly, staff concludes that requiring testing for each restraint and occupant position is consistent with the marketing of the sling, and it also constitutes an improvement in safety because it provides that sling carriers are designed and tested for the weights and occupant carrying positions for which they are marketed.

² Although only marginally related, the only known incident that is similar to this scenario was a fatality associated with a caregiver’s simultaneous use of two separate sling carriers; however, both sling carriers have since been recalled because of their association with multiple fatal incidents involving a single occupant. Therefore, staff cannot conclude that carrying two children, or the use of multiple slings, was a factor in the incident.

B. Modification to ASTM F2907 -19

Under 16 CFR 1228.2(b), the Commission required the following modification to ASTM F2907 – 15:

In addition to complying with section 5.7.2 of ASTM F2907-15, comply with the following:

- (1) 5.7.3 Warning labels that are attached to the fabric with seams shall remain in contact with the fabric around the entire perimeter of the label, when the sling is in all manufacturer recommended use positions.

This provision was added during promulgation of 16 CFR 1228 to address public comments regarding “free-hanging” warning labels that could be easily removed. 82 Fed. Reg. 8671, 8679 (Jan. 30, 2017). ASTM F2907 – 19 does not include this requirement in the revised standard. Therefore, staff recommends that the requirement of section 1228.2(b) remain, if the Commission approves ASTM F2907-19 as the revised standard.

Accordingly, staff recommends that the Commission allow the revised voluntary standard to become effective as the consumer product safety standard for sling carriers under 16 CFR 1228.2(a), while retaining the requirement in 1228.2(b).

B. Effect of the Changes on Third Party Testing

The notice of requirements (NOR), as set out in the final rules for sling carriers, provides the criteria and process for the Commission’s acceptance of accreditation of third party conformity assessment bodies for testing sling carriers to 16 CFR part 1228 (which incorporated ASTM F2907 – 15). The NORs are listed in the Commission’s rule, “Requirements Pertaining to Third Party Conformity Assessment Bodies” at 16 CFR part 1112.

As discussed, the revision to the performance requirements increases the potential test weights and number of occupant-carrying positions to be tested. However, the test methodologies essentially remain the same. Consequently, this modification would not necessitate any significant change in the way that third party conformity assessment bodies test these products for compliance to CPSC standards.

For the reasons stated above, staff recommends that the Commission consider the existing accreditations that CPSC has accepted for testing to this standard to cover testing to the revised standard as well. If the Commission follows this recommendation, the existing NORs for these standards would remain in place, and CPSC-accepted third party conformity assessment bodies would be expected to update the scope of the testing laboratories’ accreditation(s) to reflect the

revised standard in the normal course of renewing their accreditation(s). If the Commission approves the draft direct final rule, CPSC staff will notify all CPSC-accepted laboratories by e-mail and will provide links to the *Federal Register* notice to explain the changes to the standard and the effective date.

C. Alternatives

If the Commission concludes that allowing the sling carrier standard to cover sling carriers designed for two occupants would reduce the safety of sling carriers because carrying two occupants is not proven to be safe, the Commission could reject the update.

D. Effective Date

Section 104(b)(4) of the CPSIA provides that the revised standard will become effective 180 days after the date on which an organization notifies the Commission of the revision, unless the Commission notifies an organization that it has determined that a proposed revision does not improve the safety of a consumer product covered by the standard (or the Commission specifies another date). Under this time frame, ASTM 2907 – 19 will become effective on July 6, 2020, unless the Commission specifies a later date. Staff does not believe that a longer effective date is necessary. JPMA typically allows 6 months for products in their certification program to shift to a new voluntary standard once that new voluntary standard is published. Therefore, juvenile product manufacturers are accustomed to adjusting to new voluntary standards within this time frame. ASTM 2907– 19 was approved on November 1, 2019, published in November 2019, and staff believes that manufacturers should have complying products that meet this standard by July 6, 2020.

IV. RECOMMENDATION

Staff recommends that the Commission allow the provisions regarding sling carriers in ASTM F2907 – 19 to be considered a consumer product safety standard issued by the Commission for sling carriers. Staff also recommends that the Commission issue a direct final rule to revise the references in 16 CFR part 1228 to reflect the updated standard, while retaining the additional requirement in 1228.2(b). According to CPSIA section 104(b)(4)(B), unless the Commission notifies an organization that it has determined that a proposed revision does not improve the safety of a consumer product covered by the standard and that the Commission is retaining the existing standard, the revised standard will become effective 180 days after the date on which an organization notifies the Commission of the revision. Staff recommends allowing this effective date so that ASTM F2907 – 19 will become effective on July 6, 2020.