



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

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BALLOT VOTE SHEET

Date: July 15, 2020

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
 David M. DiMatteo, Attorney

SUBJECT : Draft *Federal Register*: Delay of Effective Date for Safety Standard for Hand-Held Infant Carriers

BALLOT VOTE DATE: Tuesday, July 21, 2020

On May 20, 2020, the Consumer Product Safety Commission (Commission, or CPSC) published a direct final rule, revising the CPSC’s mandatory standard for hand-held infant carriers, to incorporate by reference the most recent version of the applicable ASTM standard. We received a comment in response to the direct final rule, recommending delaying the effective date of the direct final rule. The commenter suggested pushing the effective date from August 3, 2020, to January 1, 2021, because of compliance difficulties related to the COVID-19 pandemic. Staff is forwarding a briefing memorandum to the Commission for consideration, recommending that the Commission issue a final rule delaying the effective date of the Commission’s standard for hand-held infant carriers, 16 CFR part 1225, from August 3, 2020, to January 1, 2021. A draft *Federal Register* notice for that purpose is attached.

Please indicate your vote on the following options:

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

 (Signature)

 (Date)

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

(Signature)

(Date)

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

(Signature)

(Date)

IV. Take other action specified below.

(Signature)

(Date)

Attachment: Draft *Federal Register* notice titled, "Safety Standard for Hand-Held Infant Carriers"

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC-2012-0068]

16 CFR Part 1225

Safety Standard for Hand-Held Infant Carriers

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule; delay of effective date.

SUMMARY: On May 20, 2020, the Consumer Product Safety Commission (Commission, or CPSC) issued a direct final rule revising the CPSC’s mandatory standard for hand-held infant carriers to incorporate by reference the most recent version of the applicable ASTM standard. We are publishing this final rule to delay the effective date of the CPSC’s mandatory standard for hand-held infant carriers, due to the COVID-19 pandemic.

DATES: The effective date for the direct final rule published on May 20, 2020, at 85 FR 30605, is delayed from August 3, 2020, until January 1, 2021.

FOR FURTHER INFORMATION CONTACT: Keysha L. Walker, Compliance Officer, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814-4408; telephone: 301-504-6820; email: kwalker@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

On May 20, 2020, the Commission published a direct final rule (DFR), revising 16 CFR part 1225, the CPSC’s mandatory standard for hand-held infant carriers, to

incorporate by reference the most recent version of the applicable ASTM standard, ASTM F2050-19, *Standard Consumer Safety Specification for Hand-Held Infant Carriers*. See 85 FR 30605. The DFR was originally set to become effective by operation of law on August 3, 2020, unless the Commission received a significant adverse comment by June 19, 2020.

Since Commission approval of the DFR in April 2020, Executive Order (EO) 13924, “Regulatory Relief to Support Economic Recovery,” was issued on May 19, 2020. 85 FR 31385. EO 13924 encourages federal agencies to address the economic consequences of COVID-19 “by rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that may inhibit economic recovery, consistent with applicable law and with protection of the public health and safety.”

B. Delaying the Effective Date of the Rule

CPSC received two comments in response to the DFR notice. Neither comment is considered to be a “significant adverse comment.”¹ However, one commenter, who was anonymous, noted that in the last few months, the pandemic has “caused drastic changes in consumer behavior and manufacturing capabilities, including reduced sales and otherwise unforeseen production stoppages.” The commenter stated: “As a consequence, inventory levels of some previously ordered components have been extended further into

¹ 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. One commenter asserted that the incorporation by reference process does not allow the public free access to the law without paying for the incorporated voluntary standard. CPSC did not consider that comment to be a significant adverse comment because a copy of the standard can be inspected at the National Archives and Records Administration, or at the CPSC, and a read-only copy of the standard will be available for viewing on the ASTM website at www.astm.org/READINGLIBRARY.

the year than typical. Lead times for new material have also increased as manufacturers struggle to return to pre-pandemic production output capabilities.” The commenter recommends the effective date should be pushed back, “perhaps as far as to the end of the calendar year, to allow manufacturers more time to use up existing inventory before implementing the required changes.”

This comment is not a considered a significant adverse comment because it does not challenge the premise or purpose of the underlying rule. Nevertheless, the Commission recognizes that as a result of the COVID-19 pandemic, disruptions in the U.S. economy may limit manufacturers’ ability to comply with the new labeling requirements of ASTM F2050-19.

CPSC staff conducted a review of the safety impact of delaying the effective date for the revised hand-held infant carriers’ standard. As detailed in the staff briefing package for the DFR,² staff determined that the changes made by ASTM F2050–19 were either neutral or improved the safety for hand-held infant carriers. Based on staff’s findings, the Commission allowed the revised voluntary standard to become the consumer product safety standard for hand-held infant carriers. The substantive changes adopted by the Commission include:

- exempting hand-held bassinets/cradles from the requirement to display a “NEVER leave child unattended” warning message;
- changing the definition of “hand-held” infant carriers to include “semi-rigid” infant carriers within the scope of the standard; and

² <https://cpsc.gov/s3fs-public/ASTM%27s%20Revisions%20to%20Safety%20Standard%20for%20Hand-Held%20Infant%20Carriers.pdf>

- including a new warning icon and warning statement regarding the fall hazard with shopping cart use to be included in instructional literature.

Staff’s review of the impact on safety of delaying the effective date indicates that the above changes to the standard could be delayed until the end of the calendar year, consistent with the protection of public health and safety. Continuing to display a “NEVER leave child unattended” warning message would not adversely impact safety. Delaying the expansion of the definition of “hand-held” infant carrier in the voluntary standard does not reduce safety because “semi-rigid” infant carriers are already included in CPSC’s mandatory standard, 16 CFR § 1225(b)(1); the effect of the change to the voluntary standard is to match the current mandatory standard’s definition. Finally, although the requirement for including the new shopping cart fall hazard warning in instructional literature would be delayed, shopping carts that meet ASTM F2372–15, *Standard Consumer Safety Performance Specification for Shopping Carts*, will still be required to display the on-product warning, often on the seat flap, providing an important safety message addressing the same hazard as the new hazard warning in the voluntary standard.

Based on staff’s safety assessment that indicates delaying the effective date will not adversely impact safety, and the direction in EO 13294 to address the economic consequences of COVID-19, the Commission is delaying the effective date of the hand-held carriers’ standard until January 1, 2021. The delayed effective date should provide manufacturers that are not already compliant with the new standard the necessary time to comply with the new labeling requirement of the revised hand-held carriers’ standard without negatively impacting the safety of hand-held infant carriers.

C. The APA and Good Cause Finding

The Commission is issuing this final rule without an additional opportunity for public comment. Pursuant to section 553(b)(3)(B) of the Administrative Procedure Act (APA), general notice and the opportunity for public comment are not required with respect to a rulemaking when an “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”³

As a result of this rule, the DFR published by the Commission on May 20, 2020, which revised the Commission’s standard for hand-held infant carriers, will not be reflected in the Code of Federal Regulations until January 1, 2021. The COVID-19 pandemic has disrupted economic activity in the United States. EO 13294 urges federal agencies to take actions to reduce regulatory burdens that arise as a result of the pandemic “consistent with applicable law and with protection of the public health and safety.” As previously discussed in section B of the preamble, manufacturers may be handicapped in their ability to comply with the new labeling requirements of the revised hand-held carriers’ standard by the August 3, 2020 effective date set in the DFR. Therefore, the Commission has determined that delaying the effective date until January 1, 2021 is warranted, because delaying the effective date will not have an adverse impact on public health and safety, and as encouraged by EO 13924, it will help reduce regulatory burdens exacerbated by the pandemic. Delaying the effective date until January 1, 2021 will allow manufacturers to come into compliance with the new labeling

³ 5 U.S.C. 553(b)(3)(B).

requirements in the hand-held carriers’ standard while providing regulatory relief to manufacturers impacted by the COVID-19 pandemic. Because of the short time frame until the original August 3, 2020 effective date is scheduled to go into effect, and for the reasons discussed above, the Commission finds that there is good cause consistent with the public interest to issue the rule without advance notice and comment.⁴

The APA generally requires a 30-day delayed effective date for final rules, except for: (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.⁵ The Commission believes that the public interest is best served by having this final rule become effective immediately upon publication in the *Federal Register*, instead of the usual 30-day delayed effective date normally required by the APA. Therefore, the Commission finds that there is good cause to delay the effective date of the previously approved change to 16 CFR part 1225 of the Commission’s standard, for the reasons noted above.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that agencies 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 and 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. *Id.* As discussed previously, consistent with section 553(b)(B) of the APA, the Commission has determined for good cause that general notice and opportunity for

⁴ 5 U.S.C. 553(b)(3)(B); 553(d)(3).

⁵ 5 U.S.C. 553(d).

public comment is unnecessary. Thus, the RFA’s requirements relating to initial and final regulatory flexibility analysis do not apply.

However, the Commission is extending the effective date because economic disruptions affecting inventory levels could potentially affect a subset of manufacturers, although the exact number is not known. Although the cost to firms of having to dispose of an inventory of out-of-date printed instructions is probably low as a percent of their total costs or their total revenue, extending the effective date of the rule may provide some relief to manufacturers who may face delays in having new materials printed due to backlogs in print shops or because of local stay-at-home restrictions or other delays related to the COVID-19 pandemic. The additional time will allow manufacturers to come into compliance with the new requirements as they deplete their inventory of non-compliant materials.

E. Paperwork Reduction Act

The standard for hand-held infant carriers contains information-collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The revisions made no changes to that section of the standard. Thus, the revisions will have no effect on the information-collection requirements related to the standard.

F. 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.

G. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), 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. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the 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 rules.” 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.

H. The 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.

Dated:

DRAFT – July 15, 2020

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



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

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Memorandum

July 15, 2020

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

Robert Franklin, Supervisory Economist
Directorate for Economics

SUBJECT : Delay of Effective Date of Revision to the Standard for Hand-held Infant
Carriers (16 CFR part 1225)

I. INTRODUCTION

On February 5, 2020, ASTM officially notified CPSC that it published a revised 2019 version of ASTM F2050 that affects the requirements for hand-held infant carriers. On April 24, 2020, the Commission voted 4-0 to approve publication of a *Federal Register* notice for a direct final rule (DFR) to update the ASTM standard cited in the Commission's mandatory rule for hand held-infant carriers, 16 CFR part 1225, (60 FR 43108, 43111). This DFR was due to become effective by operation of law on August 3, 2020, unless the Commission received a significant adverse comment by June 30, 2020.

A. Comment

CPSC received two comments in response to the DFR notice. Neither comment is considered to be a “significant adverse comment.”¹ However, one commenter, who was anonymous, stated:

The last few months have also seen drastic changes in consumer behavior and manufacturing capabilities, including reduced sales and otherwise unforeseen production stoppages. As a consequence, inventory levels of some previously ordered components have been extended further into the year than typical. Lead times for new material have also increased as manufacturers struggle to return to pre-pandemic production output capabilities.

To meet the effectivity date of August 3, unusable (i.e. non-conforming) inventory will need to be scrapped at an unrecoverable cost to manufacturers.

This commenter suggested pushing back the effective date, perhaps as far back as the end of the calendar year, to allow manufacturers more time to use up existing inventory before implementing the required changes.

B. Executive Order 13924

In response to economic consequences of COVID-19, Executive Order 13924 states, in part:

Agencies should address this economic emergency by rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that may inhibit economic recovery, consistent with applicable law and with protection of the public health and safety, with national and homeland security, and with budgetary priorities and operational feasibility. They should also give businesses, especially small businesses, the confidence they need to reopen by providing guidance on what the law requires; by recognizing the efforts of businesses to comply

¹ 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. One commenter asserted that the incorporation by reference process does not allow the public free access to the law without paying for the incorporated voluntary standard. CPSC did not consider that comment to be a significant adverse comment because a copy of the standard can be inspected at the National Archives and Records Administration, or at the CPSC, and a read-only copy of the standard is available for viewing on the ASTM website at www.astm.org/READINGLIBRARY.

with often-complex regulations in complicated and swiftly changing circumstances; and by committing to fairness in administrative enforcement and adjudication.

II. DISCUSSION

A. Staff assessment of the safety implications of an effective date extension

As detailed in the staff briefing package for the DFR,² the changes made to ASTM F2050 – 19 were either neutral, or they improved the safety for hand-held infant carriers. Therefore, staff recommended, and the Commission approved, the revised voluntary standard to become the consumer product safety standard for hand-held infant carriers, 16 CFR part 1225.

The substantive changes that were adopted by the Commission include: (1) exempting hand-held bassinets/cribblers from the requirement to display a “NEVER leave child unattended” warning message; (2) changing the definition of “hand-held” infant carrier to include “semi-rigid” infant carriers in the scope of the standard; and (3) adding a new warning icon and warning statement in instructional literature regarding the fall hazard with shopping cart use.

Extending the effective date until the end of the calendar year for the manufacturers that are not already compliant would keep the warning “NEVER leave child unattended” on hand-held infant carriers for a longer period of time until the new effective date. In addition, retaining the older ASTM standard would delay clarifying the definition of “hand-held infant carrier” to include “semi-rigid” carriers within the standard, until the new effective date. Additionally, manufacturers would not be required to include the new shopping cart warning requirement in instructional literature until the new effective date.

Staff’s review shows that these changes could be delayed until the end of the calendar year, consistent with protection of public health and safety, because a requirement to continue to display a “NEVER leave child unattended” warning message would not adversely impact safety. In addition, changing the definition of “hand-held” infant carrier to include “semi-rigid” infant carriers within the scope of the standard does not impact the CPSC standard, because semi-rigid infant carriers are currently included in 16 CFR part 1225(b)(1). Finally, although the requirement for including the new shopping cart fall hazard warning in instructional



FIG. 4 Warning Statements and Symbols

Figure 1. Warning label in ASTM 2372 – 15

² <https://cpsc.gov/s3fs-public/ASTM%27s%20Revisions%20to%20Safety%20Standard%20for%20Hand-Held%20Infant%20Carriers.pdf>

literature would be delayed, shopping carts that meet ASTM F2372 – 15, *Standard Consumer Safety Performance Specification for Shopping Carts*, will still be required to display the on-product warning, often on the seat flap, providing the important safety message at point of use.

B. Potential Impact of the COVID-19 Pandemic on Manufacturers

Staff believes the comment to be a plausible scenario that may affect a subset of manufacturers, although the exact number is not known. Although staff believes that the cost to firms, as a percent of their total costs or their total revenue, of having to dispose of an inventory of out-of-date printed instructions is probably low, staff does believe there is merit to extending the effective date of the rule. An extension provides some relief to manufacturers who may face delays in having new materials printed, due to backlogs in print shops, because of local stay-at-home restrictions, or other delays related to the COVID-19 pandemic. Staff notes that as manufacturers deplete their inventory of noncompliant materials, and receive new, compliant materials, we expect that they will come into compliance with the new requirements. We do not expect delaying the effective date will provide manufacturers with an incentive to obtain new noncompliant printed materials.

Currently, there are eight manufacturers listed by JPMA³ who participate in the JPMA certification program for hand-held carriers. 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. ASTM F2050 – 19 was approved on December 15, 2019, published in January 2020. Therefore, the eight firms should be in compliance by July 2020. In 2019, staff identified 78 manufacturers of hand-held infant carriers, which may imply that there were up to 70 manufacturers that were not part of the JPMA program in 2019. In the final regulatory flexibility analysis for the original hand-held infant carrier rule in 2013, staff identified 71 suppliers, 50 of which would be considered small under the criteria established by the Small Business Administration. Although the number of manufacturers that would benefit from delaying the effective date of the rule is not known, it may help some manufacturers.

III. RECOMMENDATION

Given the minor impact on safety discussed above, to alleviate regulatory burden when possible during the economic recovery from the COVID-19 pandemic and related shutdowns, staff recommends allowing ASTM F2050 – 19 to become effective on January 1, 2021.

³ <https://www.jpma.org/search/newsearch.asp> Search for “hand-held carriers.”