



[Billing Code 6355-01-P]

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1225

[Docket No. CPSC-2012-0068]

Safety Standard for Hand-Held Infant Carriers

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In December 2013, the U.S. Consumer Product Safety Commission (CPSC) issued a consumer product safety standard for hand-held infant carriers. The standard incorporated by reference the applicable ASTM voluntary standard, with one modification in the definition of the product, to clarify that semi-rigid carriers fall within the scope of the standard. We are publishing this 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.

DATES: The rule is effective on August 3, 2020, unless we receive significant adverse comment by [insert date 30 days after publication in the FEDERAL REGISTER]. If we receive timely significant adverse comments, we will publish notification 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 August 3, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CPSC-2012-0068, 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) 504-7479; email: amills@cpsc.gov.

Instructions: All submissions must include the agency name and docket number for this notification. CPSC may post all comments received 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-2012-0068, into the “Search” box, and follow the prompts.

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

1. Statutory Authority

Section 104(b)(1)(B) of the Consumer Product Safety Improvement Act (CPSIA), also known as the Danny Keysar Child Product Safety Notification Act, requires the Commission to promulgate consumer product safety standards for durable infant or toddler products. The law requires these standards to be “substantially the same as” applicable voluntary standards or more stringent than the voluntary standards if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product.

The CPSIA also sets forth a process for updating CPSC’s durable infant or toddler standards when the voluntary standard upon which the CPSC standard was based is changed. Section 104(b)(4)(B) of the CPSIA provides that 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. In addition, 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.

2. The Hand-Held Infant Carriers Standard

On December 6, 2013, the Commission published a final rule issuing a mandatory standard for hand-held infant carriers that incorporated by reference the standard in effect at that time, ASTM F2050-13a, *Standard Consumer Specification for Hand-Held Infant Carriers*, with one modification in the definition of the product, to clarify that semi-rigid carriers fall within the scope of the standard. 78 FR 73415. The ASTM standard for hand-held infant carriers, ASTM F2050-19, *Standard Consumer Safety Specification for Hand-Held Infant Carriers*, applies to hand-held infant carriers that are rigid (*e.g.*, infant car seat removed from the car) or semi-rigid (*e.g.*, Moses baskets). A hand-held infant carrier seat often serves as an infant car seat and also can be used with strollers and travel systems. A hand-held bassinet/cradle includes products such as carriage baskets (removed from a stroller base) and Moses baskets (those with handles). The standard was codified in the Commission’s regulations at 16 CFR part 1225. Since publication of ASTM F2050–13a, the current mandatory standard, ASTM has published two revisions to ASTM F2050. ASTM did not notify CPSC of the first revision. The second revision, ASTM F2050–19 was approved on December 15, 2019, and published in January 2020. ASTM officially notified the Commission of this revision on February 5, 2020. The rule is incorporating ASTM F2050–19 as the mandatory standard.

B. Revisions to the ASTM Standard

Under section 104(b)(4)(B) of the CPSIA, unless the Commission determines that ASTM’s revision of a voluntary standard that is a CPSC mandatory standard “does not

improve the safety of the consumer product covered by the standard,” the revised voluntary standard becomes the new mandatory standard. As discussed below, the Commission determines that the changes made in ASTM F2050–16 and –19 are neutral or improve the safety of hand-held infant carriers. Therefore, the Commission will allow the ASTM F2050-19 to become effective as a mandatory consumer product safety standard under the statute, effective August 3, 2020.

1. Differences between 16 CFR part 1225 and ASTM F2050-16

On February 1, 2016, ASTM approved a revised version ASTM F2050 and published ASTM F2050–16, but ASTM did not notify CPSC of the revision. The 2016 revision contained several editorial non-substantive changes and one substantive change, as described below.

Non-substantive changes

Minor formatting changes were made to bring the standard into accord with ASTM form and style guidelines (*e.g.*, “5s” to “5 s”, punctuation at the end of a sentence, and removing a repeated word). We find that all of the non-substantive changes made in ASTM F2050–16 are editorial in nature, and therefore, are neutral regarding safety for hand-held infant carriers.

Substantive change

In section 8.3.2.1, hand-held bassinets/cradles were exempt from the requirement to display a “NEVER leave child unattended” warning message. Although we generally assesses exemptions as a reduction in safety, in the case of this warning message, the exemption is unlikely to reduce safety because it is targeted at bassinets and cradles that are intended for sleep. In such a case, the caregiver would be rightly expected to leave a

sleeping child unattended in a bassinet. Therefore, we conclude this exemption is neutral regarding safety.

2. Differences Between 16 CFR part 1225 and ASTM F2050-19

In December 2019, ASTM revised ASTM F2050–19. These changes included non-substantive changes and one substantive change. The resulting standard is ASTM F2050–19, which was published in January 2020. The 2019 revision contained several editorial non-substantive changes and two substantive changes as described below.

Non-substantive changes

A number of minor and editorial changes were made throughout ASTM F2050–19 that do not affect the safety of hand-held infant carriers. These include:

- In section 1.7, “safety and health” was changed to “safety, health, and environmental.”
- Section 1.8 was added, stating that ASTM developed the standard in accordance with principles recognized by the World Trade Organization.
- Changes to unit expressions bring the standard into accordance with ASTM form and style guidelines. For example, the revision added a unit of measurement for each numerical value—“73 °F ± 9 °F.” instead of “73 ± 9 °F” and “minute” changed to “min.”
- Minor spelling changes (*e.g.*, “gage” to “gauge” in 7.4.2.1)
- Definition for acronyms added (*e.g.*, “EPS (expanded polystyrene), EPP (expanded polypropylene)” in note 3).

All of the non-substantive changes made in ASTM F2050–19 are editorial in nature and are neutral regarding safety for hand-held infant carriers.

Substantive changes

There are two substantive changes in ASTM F2050–19 that impact the safety of hand-held infant carriers, as described below.

- In section 3.1.3, the definition of “hand-held infant carrier” changed to include “semi-rigid.” This change harmonizes ASTM F2050 with the definition in 16 CFR part 1225, and is, therefore, an improvement in safety over the previous standard.
- In section 9.2.4.1, ASTM added a new warning icon and warning statement regarding the fall hazard with shopping cart use. Specifically, the message “Fall Hazard: The carrier can fall from the shopping cart. Do not use on shopping cart,” and a related icon must now appear in the instructional literature for a hand-held infant carrier. We conclude that this change is an improvement in safety because it alerts the caregiver to an additional hazard.

The two substantive changes made to ASTM F2050–19 improve the safety of hand-held infant carriers, and the non-substantive changes are neutral regarding safety.

In December 2013, the Commission incorporated by reference ASTM F2050–13a, with one modification in 16 CFR 1225.2(b)(1) to the definition of “hand-held infant carrier” in section 3.1.3 of ASTM F2050-13a to clarify that semi-rigid carriers fall within the scope of the standard. The modification in 16 CFR 1225.2(b)(1) is no longer necessary because ASTM F2050-19 includes semi-rigid products in the definition.

Therefore, the rule incorporates by reference ASTM F2050-19 and removes 16 CFR 1225.2(b)(1).

C. Incorporation by Reference

The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble to the final rule, ways that the materials the agency incorporates by reference are reasonably available to interested persons and how interested parties can obtain the materials. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR's requirements, section A of this preamble summarizes the major provisions of the ASTM F2050-19 standard that the Commission incorporates by reference into 16 CFR part 1225. The standard is reasonably available to interested parties, and interested parties may purchase a copy of the standard from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959 USA; phone: 610-832-9585; www.astm.org. 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/>. 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: 301-504-7479; email: amills@cpsc.gov.

D. Certification

Section 14(a) of the CPSA 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 the Commission 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 hand-held infant 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,¹ the phthalates prohibitions in section 108 of the CPSIA and 16 CFR part 1307,² the tracking label requirement in section 14(a)(5) of the CPSA,³ and the consumer registration form requirements in section 104(d) of the CPSIA.⁴

E. Notice of Requirements

In accordance with section 14(a)(3)(B)(iv) of the CPSIA, the Commission has previously published a notice of requirements (NOR) for accreditation of third party conformity assessment bodies for testing portable bed rails (78 FR 73415, December 6, 2013). The NOR provided the criteria and process for our acceptance of accreditation of third party conformity assessment bodies for testing hand-held infant carriers to 16 CFR

¹ 15 U.S.C. 1278a.

² 15 U.S.C. 2057c.

³ 15 U.S.C. 2063(a)(5).

⁴ 15 U.S.C. 2056a(d).

part 1225. 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,” codified at 16 CFR part 1112.

None of the test methods have been changed in the revised standard ASTM F2050-19. Therefore, testing laboratories that are currently CPSC-accepted, have demonstrated competence for testing in accordance with ASTM F2050-13a, and will have the competence to source a new sheet and conduct the testing to the new standard under the revised standard ASTM F2050-19. Therefore, the Commission considers the existing CPSC-accepted laboratories for testing to ASTM F2050-13a to be capable of testing to ASTM F2050-19 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’ accreditation to reflect the revised standard in the normal course of renewing their accreditation.

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.” 5 U.S.C. 553(b)(B). The Commission concludes that when the Commission updates a reference to an ASTM standard that the Commission has incorporated by reference under section 104(b) of the CPSIA, notice and comment are not necessary.

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 F2050-19 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 F2050-19 takes effect as the new CPSC standard for hand-held infant 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) endorsed 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 (August 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 notification, the rule will become effective on August 3, 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 comments 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) 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 explained, the Commission has determined that notice and comment are not necessary for this direct final rule. Thus, the RFA does not apply. We also note 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 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.

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, 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.

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*. The Commission has not set a different effective date. Thus, in accordance with this provision, this rule takes effect 180 days after we received notification from ASTM of revision to this standard. As discussed in the preceding section, this is a direct final rule. Unless we receive a significant adverse comment within 30 days, the rule will become effective on August 3, 2020.

L. 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.

List of Subjects in 16 CFR Part 1225

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

For the reasons stated above, the Commission amends 16 CFR chapter II as follows:

PART 1225 – SAFETY STANDARD FOR HAND-HELD INFANT CARRIERS

1. Revise the authority citation for part 1225 to read as follows:

Authority: 15 U.S.C. 2056a(b)(4)(B).

2. Revise § 1225.2 to read as follows:

§ 1225.2 Requirements for hand-held infant carriers.

Each hand-held infant carrier must comply with all applicable provisions of ASTM F2050-19, *Standard Consumer Safety Specification for Hand-Held Infant Carriers*, approved on December 15, 2019. The Director of the Federal Register approves the incorporation by reference listed in this section 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 USA; phone: 610-832-9585; 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 301-504-7479, 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.

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

[FR Doc. 2020-09166 Filed: 5/19/2020 8:45 am; Publication Date: 5/20/2020]