October 2, 2014

Office of the Secretary
Consumer Product Safety Commission
Room 820
4330 East-West Highway
Bethesda, MD 20814

Re: Safety Standard for Sling Carriers (CPSC–2014-0018), 79 Fed. Reg. 42724 (July 23, 2014).

To Whom It May Concern:

On July 23, 2014, the Consumer Product Safety Commission (CPSC) published a proposed rule titled: *Safety Standard for Sling Carriers.*[1] I am writing with regard to the above-captioned rule. The Office of Advocacy believes the CPSC should revisit its analysis of the small business impacts of this regulation, be more transparent about the data and assumptions underlying the projected costs and benefits, and consider additional alternatives that would minimize the impacts of rule on small businesses while still allowing the Commission to achieve its regulatory goals.

The Office of Advocacy

The Office of Advocacy (Advocacy) was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),[2] as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),[3] gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives. The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.[4] The agency must include, in any explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to these written comments submitted by

[1] 79 Fed. Reg. 42724 (July 23, 2014).
[2] 5 U.S.C §601 et seq.
[3] Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et. seq.).
[4] Small Business Jobs Act of 2010 (Pub. L. 111-240) § 1601.

Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.[5]

Small Businesses Are Concerned About The Economic Impacts Associated With This Rule

The preamble of the rule provides that, pursuant to Section 104 of the Consumer Product Safety Improvement Act of 2008, the CPSC is required to promulgate safety standards for durable infant or toddler products.[6] This regulation proposes a safety standard for infant sling carriers, which would require a safety testing regimen, printed warnings and instructions that heretofore were deemed voluntary under ASTM F2907-14a according to the CPSC.[7]

Advocacy was approached by a number of small sling carrier manufacturers, most of which can be described as stay-at-home moms that supplement their income by creating the slings. Advocacy agrees with CPSC's description of these individuals as very small businesses.[8] Some of the small sling manufacturers that contacted Advocacy are affiliated with the Baby Wearing Carrier Alliance, and others are independent manufacturers like Teckhi Woven Sling Studio, Serendipity Handwoven, Luz Handwoven and GeoWeaves. All of the persons Advocacy spoke with are supportive of the goal of the regulation – increased child safety. However, they noted that currently sling carriers are disproportionately manufactured by very small businesses. They believe that the rule could be dramatically improved, resulting in a more balanced approach that would raise child safety while not putting the majority of small sling manufacturers out of business. Further, small stakeholders question whether small sling businesses have the resources to accomplish the testing regimen required by the proposed rule. The rule does nothing to lessen this concern, as the CPSC notes that, "At this time, the precise cost of changes necessary to satisfy testing under ASTM standard is unknown; and we cannot rule out the potential for costs high enough to lead to significant economic impacts, especially for the very small manufacturers."[9] The small sling manufacturers asked Advocacy to investigate whether the CPSC adequately assessed the number of small entities likely to be impacted by the rule, and to encourage the Commission to entertain reasonable alternatives that will improve child safety while minimizing the economic impacts of the rule on the small sling manufacturers.

An Improved IRFA Would Result In A Better Rule

Section 603 of the RFA generally requires agencies to prepare an Initial Regulatory Flexibility Analysis (IRFA) to accompany every proposed rule. In summary, the IRFA must identify the number of small entities likely to be impacted by the rule, provide a

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[5] *Id.*
[6] *Id.*
[7] ASTM International (formerly known as the American Society for Testing and Materials) standard F2907-14a, "Standard Consumer Safety Specification for Sling Carriers."
[8] 79 Fed. Reg. 42730.
[9] 79 Fed Reg. 42731.

description of projected reporting or recordkeeping requirements of the rule, and provide a description of any significant alternatives to the proposed rule which minimizes any significant economic impacts on small businesses.[10]

Pursuant to Advocacy's mandate under the RFA, my office has reviewed the Safety Standard for Sling Carriers proposed rule, which includes the IRFA.[11] Advocacy is pleased that the Commission concluded that this regulation will have a significant impact on a substantial number of small entities,[12] and therefore the agency's completion of the IRFA is appropriate. Advocacy encourages the CPSC to improve the transparency of the rule's RFA analysis. By improving the analysis (especially with respect to the number of small entities likely impacted by the rule and an improved discussion of alternatives), the CPSC will give affected small entities more information on the underlying assumptions used in the regulation allowing them to provide more meaningful comments. Advocacy's suggestions as to how to improve the IRFA are as follows.

1. **The CPSC's assumptions on the number of and impact on affected small carrier manufacturers is based on inadequate data and analyses.**

Section 603(b)(3) of the RFA requires that each IRFA estimate the economic impact of the rule on small firms. Specifically, the RFA requires an IRFA to contain, "a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply." The CPSC does provide the public with some data on the sling carrier market, but it is an inadequate basis for the CPSC's analyses as described in the IRFA. For example, the CPSC provides data on infant injury and mortality associated with the use of sling carriers, however, there is no causal data on how small manufacturers contributed to the accidents. More specifically, CPSC does not identify the proportion of these accidents that are attributable to products placed into the stream of commerce by small manufacturers of the slings.[13] The CPSC provides little discussion on the market share of these manufacturers. Consequently, the magnitude of the potential benefits from regulating small manufacturers under the proposal is not clear.

Importantly, the CPSC notes that the smallest manufacturers who may sell sling carriers directly online may not be following (for whatever reason) all relevant CPSC regulations. Without greater information on the extent of this problem, the CPSC may be overstating the benefits of this rule to the detriment of small sling manufacturers. Small sling manufacturers suggested to Advocacy that the CPSC may be able to prevent a sizeable proportion of accidents by simply enforcing current rules. If this is true, then the provisions in the proposed rule could prevent substantially fewer accidents relative to costs than expected. CPSC's benefit estimates are critical to how the Commission should evaluate alternatives under the RFA. The CPSC should be trying to find alternatives that best meet its regulatory goals while minimizing the burdens on small entities. Yet, if the

[10] 5 USC §603.
[11] 79 Fed. Reg. 42730.
[12] 79 Fed. Reg. 42731.
[13] Small sling manufacturers are of the opinion that many of the injuries to infants are not caused by the construction of the slings, but rather inappropriate use of the slings.

CPSC and the public are unsure of how the proposed rule will meet regulatory goals, it is difficult to determine which alternative is the most effective and efficient for this rulemaking.

The CPSC has not adequately estimated the number of, or potential costs incurred by, small manufactures. The CPSC provides a basic market description of the affected industry, but it relies on a misapplication of conventional survey methodologies.[14] The CPSC has identified 47 suppliers of slings to the U.S. market, but the Commission simultaneously noted that there may be hundreds more suppliers that produce small quantities of slings.[15] This understanding affects how the CPSC estimates the market-share controlled by small manufacturers and therefore the impact of this rule on small manufacturers. The CPSC acknowledged, and the small businesses that contacted Advocacy confirmed, that hundreds of small producers sell their products on websites such as Etsy or Ebay. However, the CPSC notes, "we have no information on these suppliers, based on the general nature of suppliers selling products on Etsy and similar markets, we assume that these suppliers are well within SBA criteria for small business."[16] Further the Commission states that, "For purposes of analysis, we refer to these suppliers as 'very small manufacturers,' to distinguish them from the more established manufacturers, but this is not an official SBA designation."[17] It is clear that these very small manufacturers make important contributions to the marketplace. However, without more information the CPSC cannot adequately evaluate the proposal's impact on this key sub-group as part of the IRFA.

The CPSC chooses to quantify some costs and dismiss others based on the Commission's admittedly limited understanding of small manufacturers' place in the market. For example, sling carrier stakeholders concluded that CPSC made a number of assumptions in the rule that are open to disagreement. These include:

1) The CPSC concludes that due to the nature of the product and the relative ease of production most of the changes necessary to meet the standard (changing fabric, stitching, adding reinforcements etc.) are unlikely to be costly.[18] Stakeholders suggest that among the most attractive aspects of the sling carrier market is that slings are handmade, and the variety of fabrics is unique. While they are not in a position to quantify the costs of changes to meet the rule's ASTM standard, they do not agree that the costs will necessarily be minimal.

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[14] See 79 Fed Reg. 42726. To determine the extent of the sling carrier market, the CPSC multiplies percentages representing discrete consumer groups from an unscientific 2006 survey and assumes that the result represents a completely different group of consumers. That is, multiplying the percentage of new mothers that own slings by one minus the percentage of handed-down slings will not reveal the percentage of new slings purchased. Advocacy disagrees with this methodology.
[15] 79 Fed. Reg. 42726.
[16] 79 Fed. Reg. 42730.
[17] *Id.*
[18] 79 Fed. Reg. 42731.

2) The CPSC assumes that a hypothetical sling manufacturer will produce one style of carrier in one fabric, produce 360 slings per year (1 per every day of the year), a test would cost on average $700, and the product will pass inspection on the first try and will never require additional testing.[19] One stakeholder believes a more realistic assumption would be that a small sling manufacturer would produce 150 carriers per year in two styles with three or more fabrics. If only one of the carriers fails inspection, it would add $4900 to the testing costs (7 tests at $700).[20]

3) CPSC assumes that a small manufacturer producing 20-30 low priced slings per month might have revenues of $10,800 (30 slings per month x 12 months x $30 per sling).[21] Therefore, testing one sample at $700 would amount to 6.5 percent of annual revenue. Even if the manufacturer could sell the sling at $150 testing one sample would result in 1.3 percent of revenue. Utilizing the stakeholder's assumptions cited in paragraph two above, testing would impact a far higher percentage of revenue. For example, if the seller sold the carrier at $30, the manufacturer would gross $4500 annually. The added cost of testing would be 109 percent of annual gross revenue; and at $150 per sling the testing would result in 21.7 percent of annual gross revenue.

In order to rationalize the potential costs and benefits of this rule, Advocacy recommends that the CPSC gather more information on small sling carrier manufacturers' market share as well as the number of accidents that can be attributed to them. If the CPSC is unable to obtain this information because of the uncertainty inherent in its analysis, Advocacy recommends the CPSC present a range of potential costs instead of a one point estimate. Similarly, the CPSC should consider running sensitivity analyses to determine if more effective and efficient regulatory alternatives should be considered given different assumptions around small sling carrier manufacturers.

2. Advocacy encourages the CPSC to improve its RFA discussion of alternatives.

Advocacy appreciates and commends the CPSC for proposing to minimize the rule's impacts on small and very small manufacturers by extending the effective date of the regulation by 12 months. Advocacy supports this decision and encourages the CPSC to finalize this provision.

Small sling manufacturers are particularly concerned about the regulation's requirement for yearly testing of products in an effort to minimize the weakening of the sling over time. Stakeholders told Advocacy that the slings, especially the cloth slings, do not change in any material way from year to year. They agree that if a product were to undergo a material change, such as use of a new yarn, structurally significant changes to the weave, or different hemming styles, the product should undergo testing as required in the rule. They ask the Commission to work with industry to design a re-testing regimen

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[19] *Id.*
[20] Comment letter on the Safety Standard for Sling Carriers submitted by Matthew Fischer.
[21] 79 Fed. Reg. 42731.

that would take place over a longer period of time which would serve to minimize the costs of the rule on small entities.

Small businesses that approached Advocacy raised some additional alternatives that, on their face, seem reasonable. For example, one business suggested that given the significant cost and loss of product associated with testing, coupled with the low volume of product from most manufacturers, testing should be limited to a manufacturing level achieved by a large manufacturer, or every three years, whichever comes sooner. The business owner suggested that this methodology would serve to level the playing field between large and small entities.

Section 603(c) of the RFA requires that any IRFA must, "contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities." I encourage the CPSC to entertain additional alternatives designed to minimize the rule's economic impacts on small entities.

Conclusion

Advocacy encourages the CPSC to revisit its analysis of the small business impacts of this regulation, and to entertain additional reasonable alternatives that will reduce the regulation's economic impacts on small covered entities.

If you have any questions or concerns, please do not hesitate to contact me or Linwood Rayford at (202) 205-6533, or linwood.rayford@sba.gov.

Sincerely yours,

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Cc: Howard Shelanski, Administrator, Office of Information and Regulatory Affairs