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## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1223

[Docket No. CPSC–2013–0025]

#### Safety Standard for Infant Swings

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Direct final rule.

**SUMMARY:** In November 2012, the U.S. Consumer Product Safety Commission (CPSC) published a consumer product safety standard for infant swings under section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). The standard incorporated by reference the ASTM voluntary standard for infant swings that was in effect at that time. The CPSIA sets forth a process for updating mandatory standards for durable infant or toddler products that are based on a voluntary standard when a voluntary standards organization revises the standard. Consistent with the CPSIA update process, in January 2021, the Commission issued a direct final rule to revise the incorporation by reference for the mandatory infant swings standard, to reflect ASTM's 2020 revised voluntary standard for infant swings. This direct final rule updates the mandatory standard for infant swings to incorporate by reference ASTM's 2021 version of the voluntary standard.

**DATES:** The rule is effective on January 29, 2022, unless CPSC receives a significant adverse comment by November 29, 2021. If CPSC receives such a comment, it will publish a document 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 January 29, 2022.

**ADDRESSES:** You may submit comments, identified by Docket No. CPSC–2013–0025, 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 (email), except through <https://www.regulations.gov> and as described below. 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, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7479. Alternatively, as a temporary option during the COVID–19 pandemic, you can email such submissions to: [cpscos@cpsc.gov](mailto:cpscos@cpsc.gov).

**Instructions:** All submissions received must include the agency name and docket number for this direct final rule. All comments received may be posted 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–2013–0025, 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](mailto:kwalker@cpsc.gov).

#### SUPPLEMENTARY INFORMATION:

##### A. Background

###### 1. Statutory Authority

Section 104(b)(1)(B) of the 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 (CPSA) (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. Safety Standard for Infant Swings

In November 2012, under section 104(b)(1) of the CPSIA, the Commission adopted a mandatory rule for infant swings, codified in 16 CFR part 1223. The rule incorporated by reference ASTM F2088–12a, *Standard Consumer Safety Specification for Infant Swings*, with modifications to the labeling and test method requirements.<sup>1</sup> 77 FR 66703 (Nov. 7, 2012). At the time the Commission published the final rule, ASTM F2088–12a was the current version of the voluntary standard. Since promulgation of the mandatory infant swings standard in 2012, ASTM has

<sup>1</sup> The modifications included changes to the required warning label content and a revised test method to address an omission in the voluntary standard for toy mobiles attached to swings.

revised the voluntary standard five times. ASTM F2088–20 is the current mandatory standard incorporated by reference in 16 CFR part 1223.

On August 2, 2021, ASTM notified CPSC that it had revised the voluntary standard for infant swings, approving ASTM F2088–21 on May 15, 2021.<sup>2</sup> As discussed in this preamble, based on CPSC staff's review of ASTM F2088–21, the Commission will allow the revised voluntary standard to become the mandatory standard because the revised requirements in the voluntary standard either improve the safety of infant swings or are safety neutral. Accordingly, by operation of law under section 104(b)(4)(B) of the CPSIA, ASTM F2088–21 will become the mandatory consumer product safety standard for infant swings on January 29, 2022. 15 U.S.C. 2056a(b)(4)(B). This direct final rule updates 16 CFR part 1223 to incorporate by reference the revised voluntary standard, ASTM F2088–21.

## B. Revisions to ASTM F2088

The ASTM standard for infant swings includes performance requirements, test methods, and requirements for warning labels and instructional literature, to address hazards to infants associated with infant swings. ASTM has revised the voluntary standard for infant swings since ASTM F2088–20, which is the current mandatory standard. On May 15, 2021, ASTM approved a revised version of ASTM F2088 and published ASTM F2088–21 in June 2021. This section describes the changes in ASTM F2088–21. The 2021 revision contains a few editorial, non-substantive changes, along with several substantive changes to improve clarity, provide consistent terminology, and harmonize wording and warning label requirements consistent with other juvenile product standards. ASTM also made several revisions to ASTM F2088 to align the standard with wording changes initiated by ASTM for all of its juvenile products standards. Specific changes to the standard from ASTM F2088–20 to ASTM F2088–21 are described below.

### 1. Substantive Changes

(a) ASTM revised the age and developmental information for infant and cradle swings to maintain consistency between the scope, definitions, and warnings sections of the standard. Additionally, the revisions harmonize the age and developmental

information with the ASTM F2194 *Bassinets and Cradles* standard.<sup>3</sup>

Specifically, ASTM:

- Replaced the statement “*a child who cannot climb out of the product*” with “*an infant*” in section 1.3 (part of section 1. *Scope*) when describing the products and the intended user covered under this consumer safety specification. The use of the generic term “*infant*” better defines the developmental characteristics of the two age groups already defined in the standard: (1) “[infant] *begins to push up on hands and knees (approximately 5 months)*” and (2) “[infant] *attempts to climb out of the swing (approximately 9 months)*.”

- Added “*to swing or glide*” to the definition of “*cradle swing*” in section 3.1.3 to describe the motions of this product type, and to maintain consistency with section 1 *Scope* and with the motion types already defined for “*infant swings*” in section 3.1.5.

- Replaced “*can roll over or*” with “*begins to*” in the definition of “*cradle swings*” in section 3.1.3, and in the warning statements in section 8.6.2 *Cradle Swing*, to maintain consistency throughout the standard and to harmonize the wording with ASTM F2194 *Bassinets and Cradles* standard.

- Added the parenthetical statement “*(approximately 5 months)*” to the warning statements in section 8.6.2 *Cradle Swing*, to maintain consistency with the definition of “*cradle swing*” in section 3.1.3.

The Commission concludes that the substantive changes discussed above are neutral to the safety of infant swings, because they clarify the language of the standard, to harmonize the provisions throughout this standard and with other ASTM juvenile product standards.

(b) After the publication of Revision F of “*Recommended Language Approved by Ad Hoc Task Group*,”<sup>4</sup> the ASTM F15.21 subcommittee adopted the battery informational statements and/or warning language from the Ad Hoc document and incorporated it to the 2021 revision of F2088. Additionally, the revision consolidated the battery language spread throughout the standard into a single section titled 8.4 *Battery-operated Product Marking* under section 8 *Marking and Labeling*.

To effect these changes, ASTM made the following modifications:

<sup>3</sup> A cradle swing falls within the scope of ASTM F2194 *Bassinets and Cradles* standard when it is not in motion (*i.e.*, a cradle swing is a swing when in motion and a cradle when at rest.)

<sup>4</sup> Revision F of “*Recommended Language Approved by Ad Hoc Task Group*” was published on November 30, 2020.

- Created section 8.4 *Battery-operated Product Marking* to group all battery cautionary information into a single section;

- moved section 6.1.1 regarding the battery compartment marking and labeling to section 8.4.1 using the language from the Ad Hoc Wording recommendations;

- moved sections 8.6, 8.6.1, 8.6.2 and 8.6.3 regarding the battery cautions to sections 8.4.2, 8.4.2.1, 8.4.2.2 and 8.4.2.3 using the language from the Ad Hoc Wording recommendations.

The Commission concludes that adoption of the Ad Hoc Wording recommendations and consolidation into an area-specific section are improvements to safety because they provide clear, concise guidance to manufacturers to provide noticeable and consistent warning labels on infant swings.

(c) ASTM revised the requirement for *Instructional Literature* in section 9.4 and moved it to section 9.2, harmonizing it with the Ad Hoc Wording recommendations and to match the warning requirements with the *Marking and Labeling* section of the standard.

The Commission concludes that these changes improve the safety of infant swings, because they provide noticeable warning information and instructional literature that is consistent with the corresponding on-product warnings.

### 2. Non-Substantive Changes

ASTM made minor formatting changes to the standard, in accordance with ASTM form and style guidelines, such as changes to font size of the metric system expressions. Additionally, ASTM updated the sections' numbering hierarchy throughout the standard, to reflect added and updated sections. The Commission finds that all the non-substantive changes made in ASTM F2088–21 are neutral regarding safety for infant swings, because they are editorial in nature.

### C. Incorporation by Reference

Section 1223.2 of the direct final rule incorporates by reference ASTM F2088–21. 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. 1 CFR 51.5(b).

<sup>2</sup> ASTM published ASTM F2088–21 in June 2021.

In accordance with the OFR regulations, section B. Revisions to ASTM F2088, of this preamble summarizes the major provisions of ASTM F2088–21 that the Commission incorporates by reference into 16 CFR part 1223. The standard is reasonably available to interested parties and interested parties can purchase a copy of ASTM F2088–21 from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 USA; phone: 610–832–9585; [www.astm.org](http://www.astm.org). Additionally, until the direct final rule takes effect, a read-only copy of ASTM F2088–21 is available for viewing on ASTM's website at: <https://www.astm.org/CPSC.htm>. Once the rule takes effect, a read-only copy of the standard will be available for viewing on the ASTM website at: <https://www.astm.org/READINGLIBRARY/>. Interested parties can also schedule an appointment to inspect a copy of the standard 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: [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov).

#### 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 of 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 infant swings are children's products, a CPSC-accepted third party conformity assessment body must test samples of the products. Products subject to part 1223 also must comply with all other applicable CPSC requirements, such as the lead content requirements in section 101 of the CPSIA,<sup>5</sup> the phthalates prohibitions in section 108 of the CPSIA<sup>6</sup> and 16 CFR part 1307, the tracking label requirements in section

14(a)(5) of the CPSA,<sup>7</sup> and the consumer registration form requirements in section 104(d) of the CPSIA.<sup>8</sup>

#### 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 infant swings. 78 FR 15836 (Mar. 12, 2013). The NOR provided the criteria and process for CPSC to accept accreditation of third party conformity assessment bodies for testing infant swings to 16 CFR part 1223. 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 in 16 CFR part 1112. *Id.*

The revisions to ASTM F2088–21 do not require any change in the way that third party conformity assessment bodies test infant swings. Therefore, testing laboratories that have demonstrated competence for testing in accordance with ASTM F2088–20 will have the competence to test in accordance with the revised standard ASTM F2088–21.

Therefore, the Commission considers the existing CPSC-accepted laboratories for testing to ASTM F2088–20 to be capable of testing to ASTM F2088–21 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). The Commission concludes that when it updates a reference to an ASTM standard that the Commission 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 mandatory standard by operation of law. The Commission is allowing ASTM F2088–21 to become CPSC's new mandatory standard. The purpose of this direct final rule is to update the reference in the Code of Federal Regulations (CFR) so that it reflects the version of the standard that takes effect by statute. This rule updates the reference in the CFR, but under the update provision of section 104 of the CPSIA, ASTM F2088–21 takes effect as the new CPSC standard for infant swings, even if the Commission does not issue this rule. Thus, public comments would not alter 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 unnecessary.

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 comments. *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 direct final rule, the rule will become effective on January 29, 2022. 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 will withdraw this direct

<sup>5</sup> 15 U.S.C. 1278a.

<sup>6</sup> 15 U.S.C. 2057c.

<sup>7</sup> 15 U.S.C. 2063(a)(5).

<sup>8</sup> 15 U.S.C. 2056a(d).

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 section 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 infant swings 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). While the revised mandatory standard updates the provisions for marking, labeling, and instructional literature regarding consistency and clarity to be consistent with other ASTM voluntary standards, the revised mandatory standard does not alter these requirements substantively. The Commission took the steps required by the PRA for information collections when it adopted 16 CFR part 1223, 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 state or political subdivision of a state requirements 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 standards 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 infant swings. Therefore, ASTM F2088–21 will take effect as the new mandatory standard for infant swings on January 29, 2022, 180 days after the Commission received notice of the revision on August 2, 2021. Because it is a direct final rule, unless the Commission receives a significant adverse comment within 30 days of this notification, the rule will become effective on January 29, 2022.

#### 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 CRA 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, CPSC will submit the required information to each House of Congress and the Comptroller General.

#### List of Subjects in 16 CFR Part 1223

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

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

#### PART 1223—SAFETY STANDARD FOR INFANT SWINGS

■ 1. The authority citation for part 1223 continues to read as follows:

**Authority:** Sec. 104, Public Law 110–314, 122 Stat. 3016 (15 U.S.C. 2056a); Sec 3, Public Law 112–28, 125 Stat. 273.

■ 2. Revise § 1223.2 to read as follows:

#### § 1223.2 Requirements for infant swings.

Each infant swing shall comply with all applicable provisions of ASTM F2088–21, *Standard Consumer Safety Specification for Infant and Cradle Swings*, approved on May 15, 2021. 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 from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; phone: (610) 832–9585; [www.astm.org](http://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, email: [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov), or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email [fr.inspection@nara.gov](mailto:fr.inspection@nara.gov), or go to: [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html).

**Alberta E. Mills,**

*Secretary, U.S. Consumer Product Safety Commission.*

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