

47531, 47534, Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 2. Amend § 91.1605 by revising paragraph (e) to read as follows:

§ 91.1605 Special Federal Aviation Regulation No. 77—Prohibition Against Certain Flights in the Baghdad Flight Information Region (FIR) (ORBB).

* * * * *

(e) *Expiration.* This SFAR will remain in effect until October 26, 2024. The FAA may amend, rescind, or extend this SFAR, as necessary.

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f) and (g), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5), on or about September 22, 2022.

Billy Nolen,

Acting Administrator.

[FR Doc. 2022–20318 Filed 9–19–22; 8:45 am]

BILLING CODE 4910–13–P

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 with modifications to make the standard more stringent under section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). The standard incorporated by reference the 2012 voluntary standard for infant swings that was in effect at the 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 the voluntary standards organization revises the standard, unless the Commission determines the revision does not improve the safety of the consumer product. Consistent with the CPSIA's update process, the Commission issued direct final rules in June 2013, January 2021, and October 2021, each time to update the incorporation by reference for the mandatory standard to reflect ASTM's revision of the voluntary standard. In May 2022, ASTM approved another revision to the voluntary standard for infant swings, ASTM F2088–22. ASTM notified CPSC of this revision on July 5, 2022. Consistent with

the CPSIA's process for updating mandatory standards for durable infant or toddler products that are based on a voluntary standard, when the voluntary standards organization revises the standard, this direct final rule updates the mandatory standard for infant swings to incorporate by reference ASTM's 2022 version of the voluntary standard.

DATES: The rule is effective on January 1, 2023, unless CPSC receives a significant adverse comment by October 20, 2022. 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 1, 2023.

ADDRESSES: You can 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:

www.regulations.gov. Follow the instructions for submitting comments. CPSC typically does not accept comments submitted by electronic mail (email), except as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal.

Mail/Hand Delivery/Courier Written Submissions: Submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: cpsc-os@cpsc.gov.

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

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 mail/hand delivery/courier/confidential 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:

Carlos Torres, Project Manager, Division of Mechanical and Combustion Engineering, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: (301) 987–2504; email: ctorres@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

1. Statutory Authority

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

Section 104(b)(4)(B) of the CPSIA specifies a process for updating the Commission's rules when a voluntary standards organization revises a standard that the Commission previously incorporated by reference under section 104(b)(1). First, the voluntary standards organization must notify the Commission of the revision. Once the Commission receives this notification, the Commission may reject or accept the revised standard. The Commission may reject the revised standard by notifying the voluntary standards organization, within 90 days of receiving notice of the revision, that it has determined that the revised standard does not improve the safety of the consumer product and that it is retaining the existing standard. If the Commission does not take this action to reject the revised standard, the revised voluntary standard will be considered a consumer product safety standard issued under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the Commission received notification of the revision or on a later date specified by the Commission in the **Federal Register**. 15 U.S.C. 2056a(b)(4)(B).

2. Safety Standard for Infant Swings

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 make the standard more stringent. 77 FR 66703 (Nov. 7, 2012). The mandatory standard included performance requirements and test methods, as well as requirements for warning labels and instructions, to address hazards to children.

In 2013, ASTM notified CPSC that it had issued a revised standard for infant swings, ASTM F2088–13, and the Commission published a direct final rule incorporating by reference ASTM F2088–13, with no modifications. 78 FR 37706 (June 24, 2013). After the Commission issued the revised mandatory standard in 2013, ASTM approved two more revisions to the infant swing standard: ASTM F2088–15 and ASTM F2088–19. However, ASTM did not notify CPSC of these revisions under CPSIA section 104(b)(4)(B). In October 2020, ASTM notified CPSC that it had revised the voluntary standard for infant swings, ASTM F2088–20, and the Commission published a direct final rule incorporating by reference ASTM 2088–20, with no modifications. 86 FR 4961 (January 19, 2021).¹ In August 2021, ASTM notified CPSC that it had issued a revised standard for infant swings, ASTM F2088–21, and the Commission published a direct final rule incorporating by reference ASTM F2088–21, with no modifications. 86 FR 59609 (October 28, 2021).

In May 2022, ASTM published a revised version of the incorporated voluntary standard. On July 5, 2022, ASTM notified the Commission that it had approved and published the revised version of the voluntary standard. On July 14, 2022, the Commission provided notice in the **Federal Register** of the availability of the revised standard and sought comment on the effect of the revisions on the safety standard for infant swings. (87 FR 42117). No comments were received.

As discussed in section B. Revisions to ASTM F2088, based on CPSC staff's review of ASTM F2088–22,² the Commission will allow the revised voluntary standard to become the

mandatory standard.³ Accordingly, by operation of law under section 104(b)(4)(B) of the CPSIA, ASTM F2088–22 will become the mandatory consumer product safety standard for infant swings on January 1, 2023. 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 F2088–22.

B. Revisions to ASTM F2088

The ASTM standard for infant swings includes performance requirements, test methods, and requirements for marking, labeling, and instructional literature, to address hazards to children associated with infant swings. ASTM F2088 applies to swings with a powered mechanism used to provide a swinging or gliding seat/cradle in any direction relative to the frame. The swinging or gliding mechanism can be powered by batteries, AC adapter, wind-up mechanism, or other means. A cradle swing allows the infant to swing while lying flat. The cradle swing is intended for children from birth until the infant begins to push up on hands and knees (approximately 5 months). An infant swing enables the infant to swing in a seated position and is intended for children from birth until the infant attempts to climb out of the product (approximately 9 months).

ASTM F2088–22 contains substantive changes to the specified warning statement for infant swings in Section 8.6 *Warning Statements*. Specifically, in Section 8.6.1 *Infant Swing*, the revised standard changes the wording in the last warning bullet, as follows (changes are highlighted in italics):

- ASTM F2088–21: Stay near and watch infant during use. This product is not safe for unsupervised use or unattended sleep.
- ASTM F2088–22: Stay near and watch *baby* during use. This product is not safe *for sleep or unsupervised use*. *If baby falls asleep, remove baby as soon as possible and place baby on a firm, flat sleep surface such as a crib or bassinet.*

Thus, the word “infant” is replaced with “baby” in the first sentence. The order of the warnings is switched in the second sentence, first to warn that the product is not safe for sleep, and then to warn against unsupervised use.

³ The Commission voted 4–1 to approve this rule. Chair Hoehn-Saric and Commissioners Baiocco, Feldman and Boyle voted to approve publication of the rule as drafted. Commissioner Trumka voted to determine that the proposed revision does not improve the safety of infant swings and therefore not approve publication of the rule in the **Federal Register**. Commissioner Trumka issued a statement in connection with his vote.

Lastly, a third new sentence provides guidance advising caregivers to remove a baby who has fallen asleep to a product that is safe for sleep.

The Commission assesses that the change from “infant” to “baby” makes the warning more personal to the parent or caregiver. Typically, parents or caregivers identify the occupant of the swing as “my baby” or “the baby,” as opposed to the more impersonal, more clinical, and generic term “infant.” The use of the term “baby” rather than “infant” also aligns with the Ad Hoc Working Task Group’s wording developed in late 2014.⁴

The Commission assesses that the change from “*This product is not safe for unsupervised use or unattended sleep*” to “*This product is not safe for sleep or unsupervised use*” is an improvement in safety. The statement “. . . not safe for unsupervised use or unattended sleep” requires consumers to infer what is meant by “unattended.”⁵ Furthermore, consumers are likely to understand and comply with a message directly instructing them on how to avoid the hazard.^{6,7}

The Commission assesses that the addition of new language stating: “If baby falls asleep, remove baby as soon as possible and place baby on a firm, flat sleep surface such as a crib or bassinet” is an improvement in safety. The basis for this addition is the American Academy of Pediatrics guidance on safe sleep, which states: “If your baby falls asleep in a car seat, stroller, swing, infant carrier or sling, you should move

⁴ The ASTM Ad Hoc Language Task Group (Ad Hoc TG) is made up of members of the various durable nursery products voluntary standards committees, including CPSC staff. The Ad Hoc TG was formed to harmonize the wording of common provisions (e.g., introduction, scope, protective components), as well as the warning label requirements, across durable infant and toddler product voluntary standards.

⁵ Smith, T.P. (2018). Human Factors Staff Response to NPR Comments, and Revised Warning Requirements for High Chairs (CPSIA Section 104). CPSC Memorandum to Stefanie C. Marques, Project Manager, High Chairs Rulemaking, U.S. Consumer Product Safety Commission, Rockville, MD. Accessed at: <https://cpsc.gov/s3fs-public/Final%20Rule%20-%20Safety%20Standard%20for%20High%20Chairs%20-%20May%2030%202018.pdf?mBuoGQbXpGcMFyO6it0gNeBOOFZrTA9>.

⁶ Fors Marsh Group (2022). “Consumer Product Safety Commission (CPSC): Sleep Warnings Final Report” U.S. Consumer Product Safety Commission, Rockville, MD. (Task Order: 61320619F1101) Accessed at: <https://cpsc.gov/s3fs-public/Consumer-Product-Safety-Commission%20-%2080%20Sleep-Warnings-Final-Report.pdf?VersionId=MffCAAip4YNWVf.RllvXQtwNN7chjHyt>.

⁷ Wogalter, M.S.; Godfrey, S.S.; Fontenelle, G.A.; DeSaulniers, D.R.; Rothstein, P.R.; and Laughery, K.R. (1987). Effectiveness of Warnings. *Human Factors*, 29(5), 599–612.

¹ One revision to ASTM F2088–20 was to change the title for the standard from “*Standard Consumer Safety Specification for Infant Swings*” to “*Standard Consumer Safety Specification for Infant and Cradle Swings*.” The change to the title did not alter the scope of the standard; performance requirements and test methods for cradle swings had been in the scope of the standard since ASTM first adopted it. The revision was a clarifying change to the title to make it clear that the standard also applied to cradle swings.

² CPSC staff’s briefing package regarding ASTM F2088–22 is available at: http://www.cpsc.gov/s3fs-public/ASTMs-Revised-Safety-Standard-for-Infant-Swings_0.pdf?VersionId=1v3bF7g15OKsR.m3CMjqOAgCBamFKZO9.

them to a firm sleep surface on their back as soon as possible.”⁸ (Emphasis added). The new language clearly states that a swing is not safe for sleep. The new warning language instructs that in the case that the baby falls asleep, caregivers should move the baby to a firm, flat sleep surface. The new language provides tangible examples that consumers can refer to as safe sleep surfaces, such as a crib and a bassinet. In addition, CPSC staff contracted a focus group study⁹ including contextual interviews to gather caregivers’ perspectives regarding products in which infants may fall asleep, that the manufacturer asserts are not intended for infant sleep. This study sought to capture caregivers’ beliefs about the safety, utility, and risks of infants falling asleep in seated products, their reaction to labels designed to warn against unsupervised sleep, and their ability to discern how those labels influence caregiver behavior. Caregivers evaluated specific language, which states: “If baby falls asleep, move baby as soon as possible to a firm, flat sleep surface such as a crib or bassinet.” Overall, the phrase was well received and met parents and caregivers’ request for clear guidance on what to do if their child falls asleep in one of these products.

In summary, the revised warning statement provides concise guidance to parents and caregivers that infant swings are not safe for sleep and provides guidance that is consistent with CPSC messaging about the importance of placing sleeping babies on firm, flat sleep surfaces. In addition, the revised warning statement adopts a more personal tone with use of the word “baby” instead of “infant.” The Commission concludes that these changes to the warning statement improve the safety of infant swings.

C. Incorporation by Reference

Section 1223.2 of the direct final rule incorporates by reference ASTM F2088–22. 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).

In accordance with the OFR regulations, section B. Revisions to ASTM F2088 of this preamble summarizes the major provisions of ASTM F2088–22 that the Commission incorporates by reference into 16 CFR part 1223. The standard itself is reasonably available to interested parties. Until the direct final rule takes effect, a read-only copy of ASTM F2088–22 is available for viewing, at no cost, 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, at no cost, 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 Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, telephone: (301) 504–7479; email: cpsc-os@cpsc.gov. Interested parties can purchase a copy of ASTM F2088–22 from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 USA; telephone: (610) 832–9585; www.astm.org.

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 CPSA 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,¹⁰ the tracking label requirements in section 14(a)(5) of the CPSA,¹¹ and the consumer registration form requirements in section 104(d) of the CPSIA.¹² ASTM F2088–22 makes no changes that would impact any of these existing requirements.

E. Notice of Requirements

In accordance with section 14(a)(3)(B)(vi) of the CPSA, the Commission previously published a notice of requirements (NOR) for accreditation of third party conformity assessment bodies for testing infant swings. 78 FR 15836 (March 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.*

ASTM F2088–22 did not change the testing requirements, testing equipment, or testing protocols for infant swings. Accordingly, the revisions do not change the way that third party conformity assessment bodies test these products for compliance with the safety standard for infant swings. Testing laboratories that have demonstrated competence for testing in accordance with ASTM F2088–21 are competent to test in accordance with the revised standard ASTM F2088–22. Laboratories will begin testing to the new standard when ASTM F2088–22 goes into effect, and the existing accreditations that the Commission has accepted for testing to this standard will cover testing to the revised standard. Therefore, the Commission considers the existing CPSC-accepted laboratories for testing to ASTM F2088–21 to be capable of testing to ASTM F2088–22 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

On July 14, 2022, the Commission provided notice in the **Federal Register** of the revision to the standard and

⁸ <https://www.healthychildren.org/English/ages-stages/baby/sleep/Pages/A-Parents-Guide-to-Safe-Sleep.aspx#:~:text=If%20your%20baby%20falls%20asleep,specifically%20marketed%20for%20infant%20sleep.>

⁹ Fors Marsh Group (2022). “Refining Sleep Messaging for Seated/Non-Sleep Products Focus Group Study” U.S. Consumer Product Safety Commission, Rockville, MD. (Task Order: 61320621F1006) Accessed at: <https://cpsc.gov/s3fs-public/Refining-Sleep-Messaging-for-Seated-Non-Sleep-Products-Focus-Group-Study-4-15-22.pdf?VersionId=aEey8C2nwBfXGrmCEYcLr7QEXexqZMmg>.

¹⁰ 15 U.S.C. 1278a.

¹¹ 15 U.S.C. 2063(a)(5).

¹² 15 U.S.C. 2056a(d).

requested comment on whether the revision improves the safety of infant swings covered by the standard. 87 FR 42117. No comments were submitted. Now, 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, further notice and comment are unnecessary.

Specifically, under the process set out in section 104(b)(4)(B) of the CPSIA, when ASTM notifies CPSC that it has revised 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 F2088–22 to become CPSC’s new standard because its provisions improve the safety of the product. The purpose of this direct final rule is to update 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 CPSIA, ASTM F2088–22 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, further notice and comment are unnecessary.

In Recommendation 95–4, the Administrative Conference of the United States (ACUS) endorses direct final rulemaking as an appropriate procedure to expedite rules that are noncontroversial and 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 notification, the rule will become effective on January 1, 2023. 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 a change.” 60 FR 43108, 43111 (Aug. 18, 1995). As noted, this rule merely updates a reference in the CFR to reflect a change that occurs by statute, and public comments should address this specific action.

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

G. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612) generally requires agencies to review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603, 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. *Id.* As discussed in section F. Direct Final Rule Process of this preamble, the Commission has determined that further 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 revises the labeling language for infant swings, the revised language would not add to the burden

hours because the products already require marking, labeling, and instructional literature under the current standard. The revised labeling provisions merely require different language to that already required by the standard, which would impose minimal if any additional burden because the firm is already required to put labels on the product. The Commission took the steps required by the PRA for information collections when it promulgated 16 CFR part 1223, and the marking, labeling, and instructional literature for infant swings are currently approved under OMB Control Number 3041–0159. Because the information collection burden is unchanged, the revision does not affect the information collection requirements or approval related to the standard.

I. Environmental Considerations

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

J. Preemption

Section 26(a) of the CPSA provides that where a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. 15 U.S.C. 2075(a). Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to CPSC for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA deems rules issued under that provision “consumer product safety standards.” Therefore, once a rule issued under section 104 of the CPSIA takes effect, it will preempt in accordance with section 26(a) of the CPSA.

K. Effective Date

Under the procedure set forth in section 104(b)(4)(B) of the CPSIA, when a voluntary 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 timely notifies the standards organization that it has determined 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 F2088–22 will take effect as the new mandatory standard for infant swings on January 1, 2023, 180 days after July 5, 2022, when the Commission received notice of the revision.

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 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, Infants and children, Law enforcement, Safety.

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 1223.2 continues to read as follows:

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

- 2. Revise § 1223.2 to read as follows:

§ 1223.2 Requirements for Infant Swings.

Each infant swing must comply with all applicable provisions of ASTM F2088–22, *Standard Consumer Safety Specification for Infant and Cradle Swings*, approved on May 1, 2022. 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. A read-only copy of the standard is available for viewing on the ASTM website at <https://www.astm.org/READINGLIBRARY/>. You may obtain a copy from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West

Conshohocken, PA 19428–2959; telephone (610) 832–9585; www.astm.org. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone (301) 504–7479, email 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, or go to: www.archives.gov/federal-register/cfr/ibr-locations.html.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2022–20246 Filed 9–19–22; 8:45 am]

BILLING CODE 6355–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 227, 230, 239, and 240

[Release Nos. 33–11098; 34–95715]

Inflation Adjustments Under Titles I and III of the JOBS Act

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: To effectuate inflation adjustments required under Title I and Title III of the Jumpstart Our Business Startups Act (“JOBS Act”), we are adopting amendments to adjust the thresholds in the definition of “emerging growth company” as well as dollar amounts in Regulation Crowdfunding.

DATES: Effective September 20, 2022.

FOR FURTHER INFORMATION CONTACT: Charlie Guidry, Special Counsel, Office of Small Business Policy, at (202) 551–3460, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting amendments to 17 CFR 227.100(a)(2) (“Rule 100(a)(2)”) and 17 CFR 227.201(t) (“Rule 201(t)”) of 17 CFR 227.100 *et seq.* (“Regulation Crowdfunding”); 17 CFR 230.405 (“Rule 405”) and 17 CFR 239.900 (“Form C”) under the Securities Act of 1933 (“Securities Act”); and 17 CFR 240.12b–2 (“Rule 12b–2”) under the Exchange Act of 1934 (“Exchange Act”).

I. Introduction

Title I of the JOBS Act¹ added Securities Act Section 2(a)(19) and

Exchange Act Section 3(a)(80) to define the term “emerging growth company”² (“EGC”). Pursuant to the statutory definition, the Commission is required every five years to index to inflation the annual gross revenue amount used to determine EGC status to reflect the change in the Consumer Price Index for All Urban Consumers (“CPI-U”) published by the Bureau of Labor Statistics (“BLS”).³ In 2017, the Commission increased the annual gross revenue amount from \$1,000,000,000 to \$1,070,000,000.⁴ We are adopting amendments to our rules to reflect the next statutorily required inflation adjustment to the annual gross revenue amount.

Title III of the JOBS Act added Securities Act Section 4(a)(6),⁵ which provides an exemption from the registration requirements of Securities Act Section 5⁶ for certain crowdfunding transactions, and the Commission promulgated Regulation Crowdfunding⁷

² Section 101(a) of the JOBS Act amended Section 2(a) of the Securities Act [15 U.S.C. 77b(a)] and Section 3(a) of the Exchange Act [15 U.S.C. 78c(a)] to define an “emerging growth company” as an issuer with less than \$1 billion in total annual gross revenues during its most recently completed fiscal year. If an issuer qualifies as an EGC on the first day of its fiscal year, it maintains that status until the earliest of (1) the last day of the fiscal year of the issuer during which it has total annual gross revenues of \$1 billion or more; (2) the last day of its fiscal year following the fifth anniversary of the first sale of its common equity securities pursuant to an effective registration statement; (3) the date on which the issuer has, during the previous three-year period, issued more than \$1 billion in non-convertible debt; or (4) the date on which the issuer is deemed to be a “large accelerated filer” (as defined in Exchange Act Rule 12b–2). See Section 2(a)(19) of the Securities Act [15 U.S.C. 77b(a)(19)] and Section 3(a)(80) of the Exchange Act [15 U.S.C. 78c(a)(80)]. A “large accelerated filer” is an issuer that, as of the end of its fiscal year, has an aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates of \$700 million or more, as measured on the last business day of the issuer’s most recently completed second fiscal quarter; has been subject to the requirements of Section 13(a) or 15(d) of the Exchange Act for a period of at least twelve calendar months; has filed at least one annual report pursuant to Section 13(a) or 15(d) of the Exchange Act; and is not eligible to use the requirements for smaller reporting companies under the revenue test in paragraph (2) or (3)(iii)(B) of the “smaller reporting company” definition. See Exchange Act Rule 12b–2.

³ The CPI-U is the statistical metric developed by the BLS to monitor the change in the price of a set list of products. The CPI-U represents changes in prices of all goods and services purchased for consumption by urban households. See “Consumer Price Index” available at <https://www.bls.gov/cpi>.

⁴ See Inflation Adjustments and Other Technical Amendments Under Titles I and III of the Jobs Act, Release Nos. 33–10332; 34–80355 (Mar. 31, 2017) [82 FR 17545 (Apr. 12, 2017)] (“2017 Release”).

⁵ 15 U.S.C. 77d(a)(6).

⁶ 15 U.S.C. 77e.

⁷ 17 CFR 227.100 *et seq.*; see also Crowdfunding, Release No. 33–9974 (Oct. 30, 2015) [80 FR 71388] (“Crowdfunding Release”).

¹ Public Law 112–106, 126 Stat. 306 (2012).