



Ballot Vote Sheet

TO: The Commission
Alberta E. Mills, Secretary

DATE: May 15, 2024

THROUGH: Jessica L. Rich, General Counsel
Austin C. Schlick, Executive Director

FROM: Daniel R. Vice, Assistant General Counsel, Regulatory Affairs

SUBJECT: ASTM's Notice of a Revised Voluntary Standard for Infant and Cradle Swings

BALLOT VOTE DUE: May 21, 2024

Section 104(b)(4)(B) of the Consumer Product Safety Improvement Act of 2008 sets forth a procedure for updating mandatory standards that incorporate by reference, in whole or in part, a voluntary standard for a durable infant or toddler product. 15 U.S.C. § 2056a(b)(4)(B). This procedure applies to the Safety Standard for Infant Swings, at 16 C.F.R. part 1223, which incorporates by reference ASTM F2088-22, *Standard Consumer Safety Specification for Infant and Cradle Swings*.

On March 18, 2024, ASTM notified the Commission that it had approved and published ASTM F2088-24 as a revised version of this voluntary standard. Under CPSIA section 104(b)(4)(B), revised voluntary standards that the Commission has incorporated by reference into a mandatory standard automatically are considered consumer product safety standards, unless the Commission determines and notifies the voluntary standards organization that the revised voluntary standard "does not improve the safety of the consumer product." 15 U.S.C. § 2056a(b)(4)(B).

As indicated in the attached draft final rule, staff recommends that the Commission allow the revised ASTM standard to become the updated mandatory standard for infant and cradle swings. Staff recommends that the Commission publish the attached draft direct final rule that revises the reference in CPSC's safety standard to refer to ASTM F2088-24.

Please indicate your vote on the following options:

- I. Accept ASTM F2088-24 as the new mandatory standard for infant and cradle swings and approve publication of the attached notice in the *Federal Register*, as drafted.

(Signature)

(Date)

**U.S. Consumer Product
Safety Commission**
4330 East-West Highway
Bethesda, MD 20814

**National Product Testing
and Evaluation Center**
5 Research Place
Rockville, MD 20850

II. Accept ASTM F2088-24 as the new mandatory standard for infant and cradle swings and approve publication of the attached notice in the *Federal Register*, with specified changes.

(Signature)

(Date)

III. Determine that ASTM F2088-24 does not improve the safety of infant and cradle swings and direct staff to notify ASTM accordingly.

(Signature)

(Date)

IV. Take other action specified below.

(Signature)

(Date)

Attachment: Draft *Federal Register* Notice: Direct Final Rule; Revision to Safety Standard for Infant Swings

[Billing Code 6355-01-P]

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1112 and 1223

[Docket No. CPSC-2013-0025]

Safety Standard for Infant and Cradle Swings

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In June 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 ASTM F2088-12a, *Standard Consumer Safety Specification for Infant Swings*, the voluntary standard for infant swings that was in effect at the time. Because the standard applied to both infant and cradle swings, in 2020, ASTM changed the title of the voluntary standard by adding cradle swings to the title. ASTM has now issued a revised standard, ASTM F2088-24, *Standard Consumer Safety Specification for Infant and Cradle Swings*. 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, this direct final rule updates the mandatory standard to incorporate by reference ASTM's 2024 version of the voluntary standard. It also revises the mandatory standard to include "cradle swings" to align with the voluntary standard.

DATES: The rule is effective on September 14, 2024, unless the Commission receives a significant adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If the Commission 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 September 14, 2024.

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

Mail/Hand Delivery/Courier/Confidential 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: Will Cusey, Small Business Ombudsman, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7945 or (888) 531-9070; email: sbo@cpsc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. 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 adopt mandatory standards for these products. 15 U.S.C. 2056a(b)(1). The mandatory standard must be “substantially the same as” the 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 the process for updating the Commission’s rules when a voluntary standards organization revises a standard that the Commission 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 (CPSA; 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).

B. Safety Standard for Infant and Cradle Swings

Under section 104(b)(1) of the CPSIA, the Commission adopted a mandatory rule for infant swings, codified in 16 CFR part 1223, “Safety Standard for Infant Swings.” 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. At the time the Commission published the final rule, ASTM F2088-12a was the current version of the voluntary standard.

In 2013, ASTM notified CPSC that it had issued a revised standard and the Commission published a direct final rule to update 16 CFR part 1223, incorporating by reference the new ASTM F2088-13, with no modifications. 78 FR 37706 (June 24, 2013). ASTM later approved two more revisions: ASTM F2088-15 and ASTM F2088-19. However, ASTM did not notify CPSC of these revisions under CPSIA section 104(b)(4)(B). Consequently, these revised standards did not become the mandatory standards by operation of law, and the Commission did not update the mandatory standard to incorporate by reference these revised ASTM standards. In 2020, ASTM notified CPSC that it had issued a further revised standard, ASTM F2088-20, and the Commission published a direct final rule to update 16 CFR part 1223, incorporating by

reference ASTM F2088-20, with no modifications.¹ 86 FR 4961 (Jan. 19, 2021). In 2021, ASTM notified CPSC that it had issued another revised standard, ASTM F2088-21, and the Commission published a direct final rule to update 16 CFR part 1223, incorporating by reference ASTM F2088-21, with no modifications. 86 FR 59609 (Oct. 28, 2021). In 2022, ASTM notified CPSC that it had issued an additional revision, ASTM F2088-22, and the Commission published a direct final rule to update 16 CFR part 1223, incorporating by reference ASTM F2088-22, with no modifications. 87 FR 57390 (Sep. 20, 2022). ASTM F2088-22 is the current mandatory standard incorporated by reference in 16 CFR part 1223.

In February 2024, ASTM published a revision to the voluntary standard, approving ASTM F2088-24. On March 18, 2024, ASTM notified CPSC of the revision. On March 28, 2024, the Commission provided notice in the *Federal Register* of the availability of the revised standard and sought comments on the effect of the revisions. 89 FR 21497. CPSC did not receive any comments.

As discussed below, based on CPSC staff's review of ASTM F2088-24, 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 and cradle swings, or are neutral with respect to safety.² In addition, with this update, the Commission is now revising the mandatory standard to align with the 2020 change to the title of the voluntary standard by including the words "cradle swings." Accordingly, by operation of law under section 104(b)(4)(B) of the CPSIA, ASTM F2088-24 will become the mandatory consumer product

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 The Commission voted **TBD-TBD** to approve this notice.

safety standard for infant and cradle swings on September 14, 2024. 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 F2088-24.

II. Revisions to ASTM F2088

ASTM F2088-24 includes several substantive additions and revisions, revisions to clarify existing requirements, and editorial revisions that do not alter substantive requirements in the standard or affect safety. The standard continues to apply to both infant and cradle swings.³

A. Substantive and Clarifying Revisions

ASTM F2088-24 contains substantive changes to requirements in section 6.9 that address the strangulation and entrapment hazard to non-occupants associated with tethered straps and cords on swings. 16 CFR part 1223, incorporating by reference ASTM F2088-22, addresses the strangulation hazard posed by a length of strap that can wrap around an infant's neck and specifies that any accessible tethered straps on the underside of the seat must not exceed 16 inches. The 16-inch length limit is based on the approximate perimeter of a 5th percentile 6-month-old small head probe used in other infant product standards (section X1.4).

However, accessible tethered straps on the underside of the seat can form an opening with other parts of the swing, also posing an entanglement or strangulation hazard. CPSC staff identified two incidents demonstrating this hazard involving products that would have passed the 16-inch ASTM F2088-22 tethered strap requirement and raised the issue with ASTM.⁴ In a non-fatal incident in 2018,⁵ a 10-month-old infant became entangled around the neck in the tethered

³ An infant swing is “a swing that enables an infant in a seated position to swing or glide and is intended for use with infants from birth until infant attempts to climb out of the swing (approximately 9 months).” A cradle swing is “a swing which is intended for use by an infant lying flat to swing or glide and is intended for use with infants from birth until infant begins to push up on hands and knees (approximately 5 months).”

⁴ Staff letter to Ms. Costello, chair of ASTM F15.21 on Infant Swings, dated October 1, 2020.

⁵ August 2018, IDI 180814HCC1899.

straps on the underside of an infant swing that formed an opening in conjunction with the fabric seat of the product, resulting in injuries. In a fatal incident in 2020,⁶ a 10-month-old was found “tangled” and not breathing with the tethered straps around the infant’s neck; the straps formed an opening in conjunction with the fabric seat of the swing.

Revisions in ASTM F2088-24 address the head entrapment and strangulation hazard by requiring that: (1) an opening under the swing (formed by the tethered strap by itself, with other straps, or in conjunction with the product) is either too small to allow an infant’s head to fit or large enough to allow an infant’s torso (and head) to pass through, and (2) if the opening is large enough to pass an infant’s torso, the tethered strap portion of the opening cannot be manipulated to loop around an infant’s neck. The revised requirements and corresponding test methods ensure that any openings bounded by the strap are either too small for an infant’s head to enter or are large enough for the infant’s head to escape (without also posing a strangulation hazard in the strap portion of the opening). Several revisions in the standard relate to this change.

First, the Terminology section of ASTM F2088-24 adds definitions for “cord” (section 3.1.3) and “strap” (section 3.1.13) and revises the definition of “tethered strap” (section 3.1.15). ASTM added the word “cord” to the requirements related to tethered straps throughout the standard. Using both “cord” and “strap” in the relevant requirements and defining these terms ensures that all components that present the same hazard are included within the relevant requirements. Consistent with this change, the defined term “tethered strap” was expanded to include “and/or cord,” and the wording of the definition was revised—previously it included only straps that attached a restraint system or seat to the product frame; as revised, it includes any accessible and exposed strap or cord behind or below the occupant support surface with both

⁶ December 2020, IDI 210616CCC3129.

ends secured to the product or itself. This revised definition addresses the fact that hazardous straps/cords can be part of or be attached to any component of the product and not just the restraint system or seat.⁷

Second, ASTM F2088-24 includes revised provisions in the Performance Requirements section (section 6.9) and Test Methods section (section 7.16). Where ASTM F2088-22 simply specified a 16-inch length limit for a tethered strap that is accessible on the underside of the seat, ASTM F2088-24 states that when tested under conditions specified in section 7 of the standard, all tethered straps and cords that form a bounded opening, alone or in conjunction with the product (1) must not allow the passage of the small head probe, or (2) must allow the passage of the large head probe, and the strap/cord portion of the bounded opening must not form a loop with a perimeter greater than 7.4 inches. Revised test methods in section 7.16 modify the test set-up and initial conditions for testing to ensure that the product is secured, the loop formed below the product is not influenced by weight in the seat, and the buckles and/or hardware are positioned to allow for the maximum length of any strap/cord to be accessible from behind or below the occupant support surface during testing.

ASTM F2088-24 also adds the use of a 3/4-inch diameter clamping surface tool during the strap/cord evaluation test method to ensure consistency during the application of the pull force. During the assessment of the bounded openings, the test methods specify the insertion forces to be used with the small and large head probes (10 and 5 pounds, respectively).⁸ The insertion forces allow for compression of soft goods in the testing area and consistency in testing.

⁷ The Terminology section also includes two added “discussion” points to clarify that neither straps/cords that are part of the restraint system and attached only to the front of the seat, nor straps/cords that are inaccessible or covered by other components of the product, are considered a “tethered strap and/or cord.” The hazard indicated in the incidents do not implicate these configurations.

⁸ The 10-pound force is based on the force used to evaluate loops and cords in the ASTM Toy Standard and the ANSI standard for Window Coverings (ASTM F2088-24, section X1.9).

After the large head probe test in the evaluation of the bounded opening, the test methods also include a provision to use a 7.4-inch circumference cylindrical probe to evaluate the strap/cord length and tautness. The standard includes new figures (figures 14, 15, 16, and X1.1) to provide dimensions and illustrations of the small head probe, large head probe, and cylindrical probe.

CPSC considers the revisions in ASTM F2088-24 to be an improvement to safety because the revisions address entrapment and strangulation hazards posed by openings created by accessible tethered straps under the swing and other parts of the product; this hazard is not addressed by ASTM F2088-22. Limiting the length of a tethered strap alone, as ASTM F2088-22 does, is less effective to address the entrapment and strangulation hazard because it does not address the size of an opening formed with the strap/cord and other parts of the product. The intent of the 16-inch maximum length requirement was to prevent the head of a child 6-months or older from becoming entangled if an exposed tethered strap formed a loop with itself. However, the requirement does not account for a strap that creates a bounded opening with other parts of the swing, which could create an opening large enough to allow the head of an infant to enter, and consequently, become entangled. Additionally, the requirement did not address that adjoining straps can pose an entrapment hazard. The revised requirements in ASTM F2088-24 address those hazard patterns. The revised requirements ensures that the opening formed in conjunction with the strap/cord is either (1) small enough to prevent an infant's head from entering and getting entrapped and posing a strangulation hazard,⁹ or (2) large enough for an infant's head to escape and not get entrapped and not pose a strangulation hazard when in the bounded opening.¹⁰ If the opening is large enough to allow an infant's torso and head to pass, an

⁹ As the revised section X1.4 of the Rationale section indicates, the small head probe represents the 5th percentile 6-month-old child because that is the youngest child with the developmental abilities to become entrapped.

¹⁰ As the new section X1.5 of the Rational section indicates, the large head probe represents the 97th percentile 3-year-old child.

additional test ensures that the strap portion of the opening is not loose/long enough to wrap around an infant's neck; this test uses a 7.4-inch circumference probe to verify strap cannot form loop around it.¹¹

These revisions in ASTM F2088-24 are an improvement to the safety of the swings because they address the head entrapment and entanglement hazards demonstrated in incidents with exposed straps/cords behind or below swings.

B. Non-Substantive Revisions

ASTM F2088-24 also includes several minor additions and revisions that are editorial and do not alter any substantive requirements in the standard. In particular, ASTM F2088-24 updates the list of Referenced Documents and includes several minor wording changes for consistency with the revisions to the tethered strap/cord requirements (*e.g.*, changing “tethered straps” to “tethered straps and cords”). The revised standard also updates section and figure numbers to reflect revised and new sections and figures. ASTM also updated the Rationale section of the standard to provide explanatory information about the revisions.

Because these revisions do not change any substantive requirements, they are neutral regarding the safety of infant and cradle swings.

III. Incorporation by Reference

Section 1223.2 of the direct final rule incorporates by reference ASTM F2088-24. 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

¹¹ As the new section X1.5 of the Rational section indicates, the 7.4-inch circumference limit was selected to provide a safety factor based on an average neck circumference of about 8.3 inches for a 5th percentile 3- to 6-month-old infant and is consistent with the cord length requirements in the Play Yards Standard (ASTM F406).

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 II. Revisions to ASTM F2088 of this preamble summarizes the major provisions of ASTM F2088-24 that the Commission incorporates by reference into 16 CFR part 1223. The standard is reasonably available to interested parties in several ways. Until the direct final rule takes effect, a read-only copy of ASTM F2088-24 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/>. Additionally, interested parties can purchase a copy of ASTM F2088-24 from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959 USA; phone: (610) 832-9500; www.astm.org. Finally, interested parties can 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.

IV. Certification

Section 14(a) of the Consumer Product Safety Act (15 U.S.C. 2063(a)) requires manufacturers, including importers, 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 and cradle 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;¹² the phthalates prohibitions in section 108 of the CPSIA¹³ and 16 CFR part 1307; the tracking label requirements in section 14(a)(5) of the CPSA;¹⁴ and the consumer registration form requirements in section 104(d) of the CPSIA.¹⁵ ASTM F2088-24 makes no changes that would impact any of these existing requirements.

V. 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 (third-party labs) for testing infant and cradle swings and codified the requirement at 16 CFR 1112.15(b)(8). 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 and cradle 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.* For consistency, the rule amends the notice of requirements in section 1112.15(b)(8) of 16 CFR part 1112 to read “16 CFR part 1223, Safety Standard for Infant and Cradle Swings.”

¹² 15 U.S.C. 1278a.

¹³ 15 U.S.C. 2057c.

¹⁴ 15 U.S.C. 2063(a)(5).

¹⁵ 15 U.S.C. 2056a(d).

ASTM F2088-24 includes revised requirements for testing infant and cradle swings. The revision requires the use of a small head probe, a large head probe, a 3/4-inch clamping surface tool, and a 2.355-inch diameter cylinder probe. The small head probe, large head probe, and clamping surface tool are common test equipment used by third-party labs on several juvenile products that are subject to CPSC mandatory standards, such as play yards (ASTM F406 uses all three tools), infant walkers (ASTM F977 uses the small head probe and clamping tool), high chairs (ASTM F404 uses the clamping tool), toys (ASTM F963 uses the clamping tool), infant bouncers (ASTM F2167 uses the clamping tool), and strollers (ASTM F833 uses the clamping tool). Accordingly, third-party labs that test juvenile products are likely to already have this test equipment.

However, third-party labs will need to buy or construct a cylindrical probe of 2.355 inches in diameter to perform the strap/cord length and tautness test (section 7.16.8). The building materials are easily accessible from supply stores and the probe would be simple to construct. The cost to procure or build the cylindrical probe is estimated to be approximately \$50.

Accordingly, the revisions do not significantly change the way that third-party labs test these products for compliance with the safety standard for swings. In addition, the existing accreditations that the Commission has accepted for testing requirements in earlier versions of ASTM F2088, including ASTM F2088-22, will cover testing to the revised standard. Therefore, the Commission considers the existing CPSC-accepted laboratories for the testing requirements in ASTM F2088-22 to be capable of testing to ASTM F2088-24 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.

VI. Direct Final Rule Process

On March 28, 2024, the Commission provided notice in the *Federal Register* of the revision to the standard and requested comment on whether the revision improves the safety of swings covered by the standard. 89 FR 21497. CPSC did not receive any comments. 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, notice and comment are not necessary.

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 terms of the CPSIA, ASTM F2088-24 would take effect as the new CPSC standard for infant and cradle swings in the absence of any action by the Commission. Thus, public comments would not lead to substantive changes to the standard or to the effect of the revised standard as a consumer product safety rule 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) endorses 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. CPSC did not receive any adverse comments about the requirements in this update in response to the Notice of Availability published on March 28, 2024.

Unless CPSC receives a significant adverse comment within 30 days of this notification, the rule will become effective on September 14, 2024. 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 that undermines “the rule’s underlying premise or approach,” or a showing that the rule “would be ineffective or unacceptable without change.” 60 FR 43108, 43111. As noted, this rule 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 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.

VII. 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 VI. 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.

VIII. Paperwork Reduction Act

The current mandatory standard 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). 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 and cradle swings are currently approved under OMB Control Number 3041-0159. The revision does not affect the information collection requirements or approval related to the standard.

IX. Environmental Considerations

The Commission’s regulations provide for a categorical exclusion 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). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

X. 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.

XI. 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 180 days after 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 revised standard for infant and cradle swings. Therefore, ASTM F2088-24 automatically will take effect as the new mandatory standard for infant and cradle swings on September 14, 2024, 180 days after the Commission received notice of the revision. As a direct final rule, unless the Commission receives a significant adverse comment within 30 days of this notice, the rule will become effective on September 14, 2024.

XII. 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, OIRA has determined that 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

16 CFR Part 1112

Consumer protection, Incorporation by reference, Third party conformity assessment body requirements, Audit

16 CFR Part 1223

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

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

PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

1. The authority citation for part 1112 continues to read as follows:

Authority: 15 U.S.C. 2063.

2. Amend § 1112.15 by revising paragraph (b)(8) to read as follows:

§ 1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule or test method?

* * * * *

(b) * * *

(8) 16 CFR part 1223, Safety Standard for Infant and Cradle Swings;

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PART 1223 – SAFETY STANDARD FOR INFANT AND CRADLE SWINGS

1. The authority citation for part 1223 is revised to read as follows:

Authority: 15 U.S.C. 2056a.

2. Revise § 1223.1 to read as follows:

§ 1223.1 Scope.

This part establishes a consumer product safety standard for infant and cradle swings (including combination swings).

3. Revise § 1223.2 to read as follows:

§ 1223.2 Requirements for Infant and Cradle Swings.

Each infant and cradle swing (including combination swings) must comply with all applicable provisions of ASTM F2088-24, *Standard Consumer Safety Specification for Infant and Cradle Swings*, approved on February 1, 2024. 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, PO Box C700, West Conshohocken, PA 19428-2959; telephone (610) 832-9500; 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.