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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1223

[CPSC Docket No. CPSC–2012–0011]

RIN 3041–AC90

Safety Standard for Infant Swings

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: Section 104(b) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), part of the Danny Keysar Child Product Safety Notification Act, requires the United States Consumer Product Safety Commission (Commission, CPSC, or we) to promulgate consumer product safety standards for durable infant or toddler products. These standards are to be ''substantially the same as'' applicable voluntary standards or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. In this final rule, the Commission is issuing a safety standard for infant swings, as required under section 104(b) of the CPSIA.

DATES: The rule is effective May 7, 2013 and applies to products manufactured on or after that date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of May 7, 2013.

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SUPPLEMENTARY INFORMATION:

A. Background: Section 104(b) of the CPSIA

The CPSIA was enacted on August 14, 2008. Section 104(b) of the CPSIA, part of the Danny Keysar Child Product Safety Notification Act, requires the Commission to promulgate consumer product safety standards for durable infant and toddler products. These standards are to be ''substantially the same as'' applicable voluntary standards or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. The term ''durable infant or toddler product'' is defined in section 104(f)(1) of the CPSIA as a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years. Infant swings are one of the products specifically identified in section 104(f)(2)(K) of the CPSIA as a durable infant or toddler product.

In the **Federal Register** of February 29, 2012, the Commission published a notice of proposed rulemaking (NPR) that proposed incorporating by reference ASTM F2088–11b, *Standard Consumer Safety Specification for Infant Swings,* with several modifications to strengthen the standard. 77 FR 7011. In this document, the Commission is issuing a safety standard for infant swings, which incorporates by reference, the new voluntary standard developed by ASTM International (formerly the American Society for Testing Materials), ASTM F2088–12a, *Standard Consumer Safety Specification for Infant Swings,* with the addition of a labeling modification to strengthen the standard and a revised test method to address an omission in the voluntary standard in the test method for toy mobiles that are attached to the swing.

We summarize the final rule (including differences between the proposal and the final rule) in section F of this preamble. The information discussed in this preamble comes from CPSC staff's briefing package for the infant swing rule, which is available on the CPSC's Web site at *http://www.cpsc.gov/library/foia/foia12/brief/infantswings.pdf.*

B. The Product

1. Definition

ASTM F2088–12a, and its predecessors, ASTM F2088–11b and ASTM F2088–12, define an ''infant swing'' as ''a stationary unit with a frame and powered mechanism that enables an infant to swing in a seated position. An infant swing is intended for use with infants from birth until a child is able to sit up unassisted.'' ASTM F2088–12a, and its predecessors, ASTM F2088–11b and ASTM F2088–12, also address ''cradle swings,'' which are defined as ''an infant swing which is intended for use by a child lying flat'' and ''travel swings,'' which are defined as ''a low profile, compact swing having a distance of 6 in. or less between the underside of the seat bottom and the support surface (floor) at any point in the seat's range of motion.'' The standard was developed in response to incident data supplied by CPSC staff to address hazards such as: Swings tipping over or collapsing, structural failures, entanglement in the restraints, and entrapment in leg holes.

2. The Market

Based on a 2005 survey conducted by American Baby Group, titled, ''2006 Baby Products Tracking Study,'' and Centers for Disease Control and Prevention birth data, we estimate that approximately 2.7 million infant swings are sold in the United States each year. We estimate that there are at least 10 manufacturers or importers supplying infant swings to the U.S. market. Eight firms are domestic manufacturers, and two are domestic importers with a foreign parent company.

The Juvenile Products Manufacturers Association (JPMA) is the major U.S. trade association that represents juvenile product manufacturers and importers. The JPMA provides a certification program that allows manufacturers and importers to use the JPMA seal if they voluntarily submit their products for testing to an independent laboratory to determine if their products meet the most current ASTM voluntary standard. Currently, there are five manufacturers that sell JPMA-certified infant swings.

C. Incident Data

1. Introduction

The preamble to the NPR (77 FR 7012 through 7013) summarized the data for incidents with infant swings from January 1, 2002, through May 18, 2011. In this section, we discuss CPSC staff's analysis of incidents collected between May 19, 2011 and May 23, 2012. During that period, 351 new infant swing-related incidents were reported to the CPSC. Almost all were reported to have occurred between 2009 and 2012. The majority (333 out of 351 or 95 percent) of the reports were submitted to the CPSC by retailers and manufacturers through the CPSC's ''Retailer Reporting System.'' The remaining 18 incident reports were submitted to the CPSC from various sources, such as the CPSC Hotline, Internet reports, newspaper clippings, medical examiners, and other state/local authorities. Two of the 351 incidents were fatal, and 349 were nonfatal; 24 of the nonfatal incidents resulted in injuries.

2. Fatalities

Of the two decedents in the fatal incidents, one was a 2-month-old who died when a blanket placed in the swing obstructed his airway, and the other was a 3-month-old who died when she rolled over to a prone position onto the soft surface of the infant swing. The report did not state whether a restraint was in use at the time of the latter incident.

3. Nonfatal Incidents

There were 24 injuries reported among the 349 nonfatal incidents. Among the injured, 79 percent were 6 months old or younger; the remaining injured infants were 7 and 8 months of age. Some reports specifically mentioned the type of injury, while others only mentioned an injury with no specifics. Among the injuries specified, bumps, bruises, and lacerations were common. None required hospitalization. Most of the injuries were related to various product-related issues, such as swing seat, structural integrity, or restraint, similar to those reported and addressed in the NPR and the latest version of the voluntary standard.

4. National Injury Estimates [1]

Therewere an estimated total of 1,900 injuries (sample size = 73, coefficient of variation = 0.18) related to infant swings that were treated in U.S. hospital emergency departments during 2011. Although this reflects a decrease from the 2010 estimate of 2,200 injuries, the change was not statistically significant. Comparing with national injury estimates from the prior years, no statistically significant trend was observed over the 2002–2011 period.

No deaths were reported through the NEISS. About 78 percent of the injured were 6 months of age or younger, and about 91 percent were 12 months or younger. For the emergency department-treated injuries related to infant swings, the following characteristics occurred most frequently:

- Hazard—falls (78%); a majority of the reports did not specify the manner or cause of fall;
- Injured body part—head (62%);
- Injury type—internal organ injury (59%); and
- Disposition—treated and released (97%).

5. Hazard Pattern Characterization Based on Incident Data

The hazard patterns identified among the 351 new incident reports were similar to the hazard patterns that were identified among the incidents considered for the NPR. Most of the issues were determined to be product related. They are grouped as follows (in descending order of frequency of incidents):

- *Swing seat issues,* either seat design or seat failure, were the most commonly reported hazard, accounting for 25 percent of the 351 incident reports and four (17 percent) injuries. Seat design issues caused the seats to lean to one side, or tilt forward or backward. Seat failures resulted in seats folding up on the infant, seat pads not staying in place, or seats falling off with no other apparent component failure. With seats that leaned to one side, the infant bumped into the swing frame; with the seat failures, the infant almost always fell out of the swing.
- *Broken, detached, or loose components of the swing housing,* such as the arm, leg, motor housing, or hardware, were the next most commonly reported problems. They accounted for 24 percent of the 351 incident reports and five (21 percent) injuries.
- *Restraint issues,* either the inadequate design of the restraint or the failure of the restraint, were reported in 23 percent of the 351 reported incidents. These issues resulted in the highest proportion of injuries (10 injuries or 42 percent). Common restraint-design scenarios included: (1) Infant falling (or nearly falling) out of the seat when leaning forward or sideways; and (2) infant putting more weight toward the back of the seat, causing the seat to tilt back and the restraint failing to prevent the infant from sliding out on his/her head. Common restraint-failure scenarios included buckles or straps breaking or detaching from the product altogether.
- *Electrical or battery-related issues* were reported in 15 percent of the 351 reports. Overheating of the motor housing was the most common scenario. However, there were no injuries reported related to this issue.
- *Instability of the swing* was reported in 5 percent of the incident reports. In most of these cases, the swing was described as lifting up one leg when swinging, or tipping over completely. The latter scenario resulted in one injury.
- *Other product-related issues,* such as inadequate clearance between seat and swing frame, broken or detached toys and mobiles, and problems with swing speed, seat fabric, and assembly instructions were reported in 6 percent of the 351 incidents. One injury was reported.
- *Miscellaneous other issues* accounted for the remaining 2 percent of the 351 incident reports. This category includes the two fatalities, which were determined to be non-product-related. Also in this category were five reports with insufficient information to characterize any specific hazard, and one report of product misuse, such as the intentional removal of the restraint; these nonfatal incidents resulted in three injuries.

D. Response to Comments on the Proposed Rule

Below, we describe and respond to the comments on the proposed rule. A summary of each of the commenter's topics is presented, and each topic is followed by our response. Each ''Comment'' is numbered to help distinguish between different topics. The number assigned to each comment is for organizational purposes only, and it does not signify the comment's value, or importance, or the order in which it was received. We received 24 comments. All of the comments can be viewed on *www.regulations.gov,* by searching under the docket number of the rulemaking, CPSC–2012–0011.

[1] The source of the injury estimates is the National Electronic Injury Surveillance System (NEISS), a statistically valid injury surveillance system. NEISS injury data is gathered from emergency departments of hospitals that are selected as a probability sample of all the U.S. hospitals with emergency departments. The surveillance data gathered from the sample hospitals enable CPSC staff to make timely national estimates of the number of injuries associated with specific consumer products.

1. Slump-Over Warning Label

(*Comment 1*) Sixteen comments recommend that the text of the warning specify or clarify the hazard or the consequences of not avoiding the hazard. Comments about the need to specify the consequences of not avoiding the hazard generally recommend that the warning state explicitly that there is a risk of serious injury, death, or both. Comments about the need to clarify the hazard suggest explicit references to ''asphyxiation'' or ''choking,'' or suggest references to the slump-over position or to a hunched position with the ''chin touching chest.'' Several of the comments recommend that the warning specify the ages of the children at risk.

(*Response 1*) We believe that the current warning language requirements pertaining to the slump-over hazard are insufficient and agree that the warning should be revised to clarify the hazard and the consequences of exposure to the hazard if the consumer cannot avoid it. The current warning statement does not describe the slump-over hazard, and the formatting of the warning implies that using the swing in the most reclined seat position is an additional measure intended to address the potential for the infant user to fall or strangle in the straps. In addition, one could argue that the warning statement does not describe the probable consequences of not avoiding the slump-over hazard because the warning's reference to ''serious injury or death'' is specific to falls and strangulations.

The final rule separates the warning statement pertaining to the slump-over hazard from the warnings about falls and strangulations and strengthens this warning statement as follows:

Keep swing seat fully reclined until child is at least 4 months old AND can hold up head without help. Young infants have limited head and neck control. If seat is too upright, infant's head can drop forward, compress the airway, and result in DEATH.

2. Warning Concerning Use of Cradle Swing

(*Comment 2*) Five comments recommend that the warning should state that infants who cannot hold up their heads unassisted should use only cradle swings. One comment states that such a change would not substantially reduce the risk.

(*Response 2*) The proposed revisions to the slump-over warning statement already improve the relevant warning statement in ASTM F2088–12a, by describing the hazard more explicitly, the consequences of exposure to the hazard, and the infants who are most at risk. The language, ''*Keep swing seat fully reclined* until child is at least 4 months old AND can hold up head without help'' (emphasis added) is the part of the revised slump-over warning intended to communicate the appropriate hazard-avoidance behavior. Several comments recommend that the highlighted portion of this statement be replaced with one that instructs consumers to use only cradle swings.[2] The effectiveness of this change, therefore, depends upon whether the use of a cradle swing with these children would address more incidents than fully reclining the seat back on non-cradle swings.

As noted in the staff's briefing package for the NPR, all known swing fatalities occurred when the child was in the infant seat mode rather than the cradle mode. However, CPSC staff concluded that, for infant swings having an adjustable seat recline with a seat back angle greater than 50 degrees, fully reclining the seat back until the infant can hold up his or her head unassisted also would address the slump-over hazard. Thus, we doubt that a warning that tells consumers to use only cradle swings will be more effective than one that tells consumers to recline the seat fully.

3. Warning on All Swings

(*Comment 3*) Five comments request that all infant swings, not just reclining models with a seat back angle greater than 50 degrees, bear a warning related to the slump-over hazard. One of these comments recommends that all reclining swings, regardless of the seat back angle, warn about placing the seat in the most reclined position for infants who are younger than 3 months or who cannot hold up their heads without assistance. The remaining comments recommend that certain swings bear a warning prohibiting their use with infants who are younger than 3 months or who cannot hold up their heads without assistance. Of these, one recommends that such a warning be present on all infant swings that do not lie ''flat''; one recommends displaying the warning for all reclining swings, regardless of the seat back angle; two recommend that such a warning be present on all non-reclining models; and one of these two comments also recommends displaying the warning for all reclining models with seat back angles less than 50 degrees.

(*Response 3*) As far as the Commission knows, all infant swings currently on the market are either cradle swings or reclining swings with a maximum seat back angle greater than 50 degrees from horizontal when measured in accordance with the ASTM standard. We are unaware of any reclining swings with a maximum seat back angle less than 50 degrees from horizontal. Therefore, all reclining infant swings would bear the warning label recommending that the seat be placed in the most reclined position for infants who are younger than 4 months or who cannot hold up their heads without assistance. As noted earlier, CPSC staff has concluded that fully reclining the seat back on reclining swings with a seat back angle greater than 50 degrees addresses the slump-over hazard. Thus, although the final rule would not prevent manufacturers from including the warning on reclining swings with a maximum seat back angle less than 50 degrees from horizontal, we do not believe that mandating such a warning on these products is necessary. Cradle swings would not require the warning label because the seat back angle on these swings is not inclined enough to create the slump-over hazard.

4. Use of Pictures or Visual Aids

(*Comment 4*) Two comments recommend the use of pictures or visual aids to clarify the warning message. One of these comments suggests that this recommendation was intended for parents whose primary language is not English, or who are not familiar with measurements described in degrees.

(*Response 4*) We acknowledge that well-designed graphics might be useful to illustrate the appropriate orientation of the seat back when the infant swing is used with children 3 months old and younger. However, we are not convinced that a graphic is necessary to convey this message to most consumers, and CPSC staff's prior analyses of the incident data associated with infant swings has not revealed a pattern of incidents involving people who were not literate in English. Moreover, the design of effective graphics can be difficult. Some seemingly obvious graphics are poorly understood and can give rise to interpretations that are opposite the intended meaning (so-called ''critical confusions''). Thus, although the Commission may take action in the future if it believes graphic symbols are needed to reduce further the risk of injury associated with these products, the rule permits, but does not mandate, such supporting graphics.

Lastly, although the slump-over warning statement would be required on infant swings that have an adjustable seat recline with a seat back angle greater than 50 degrees, the warning

[2] Section 3.1.2 of ASTM F2088–12a defines a ''cradle swing'' as ''an infant swing which is intended for use by a child lying flat.''

statement itself is not required to reference this 50-degree measurement. The final rule does not include any revisions to the slump-over warning statement that would introduce reference to ''degrees.''

5. Age Recommendations To Recline Settings

(*Comment 5*) One comment recommends that the infant swing recline settings include age recommendations. However, this commenter also acknowledges that developmentally delayed infants may be endangered when the parent or caregiver follows the age-recommended settings.

(*Response 5*) The new warning label wording in the final rule explicitly directs consumers to use the swing in the most reclined position until the infant is 4 months of age and can hold their head up without help. Once the infant is able to do this, the swing can be used in any of the other settings. Therefore, adding age recommendations to the swing settings is not necessary.

6. Additional Languages on Warning Labels

(*Comment 6*) One comment recommends that the slump-over warning be required to be printed in languages in addition to English. The comment suggests that the warning should be in English and Spanish at least.

(*Response 6*) The Commission does not dismiss the potential usefulness of providing the slump-over warning and other warning information in Spanish and other non-English languages, and it recognizes that adding Spanish versions of the warnings most likely would improve warning readability among the U.S. population more than adding any other language. Nevertheless, as noted in the response to comment 4 above, CPSC staff's prior analyses of the incident data associated with infant swings has not revealed a pattern of incidents involving people who were not literate in English. Thus, although the final rule does not prohibit manufacturers from providing the required warnings in languages other than English, the available information provides no basis for mandating that manufacturers do so.

7. Additional Warning on the Label

(*Comment 7*) Two comments state that the product should include warnings about the importance of using the restraint system. One of these comments recommends the use of the phrase: ''DO NOT PLACE INFANT IN SWING WITHOUT SECURING RESTRAINTS.'' The other comment states that the warnings should ''address the risks associated with a caregiver's failure to properly employ the use of restraints while the swing is in use.'' One additional comment uses ''failing to use the restraint system'' as an example of product misuse, which should be warned against.

(*Response 7*) Section 8.3.1 of ASTM F2088–12a already warns about the potential for ''serious injury or death from infants falling or being strangled in straps'' and instructs consumers: ''[a]lways secure infant in the restraint system provided.'' In addition, the latter statement is nearly identical to the specific phrase recommended in the first comment cited in the comment summary. Thus, we believe that the current warning statements about this hazard are sufficient.

We do not believe that the product should include warnings about general product misuse. Consumers are less likely to read numerous warnings, especially about hazards that are highly unlikely. Therefore, warning about general product misuse or about numerous instances of product misuse that, individually, are very rare, would increase the likelihood that consumers will not receive the most important hazard information for the product.

8. Warnings Against Sleeping in Swings

(*Comment 8*) Three comments state that the product should warn against allowing infants to sleep in the swing. One of the comments suggests that the following language be added to the warning: ''Do not use the swing for routine sleep.''

(*Response 8*) We do not believe that warning statements about not allowing infants to sleep in the swing should be added. CPSC staff's prior review of the available incident data suggests that the angle of the seat back is more relevant to the potential for slump-over deaths and that adjusting the seat back to the most reclined position would have addressed these incidents. The warnings already include a statement about adjusting the seat back to the most reclined position for those children most at risk of slumping over, and the final rule revises the warning statement to clarify this message. Thus, we believe that warnings about not sleeping in infant swings are unlikely to reduce further the incidence of slump-over deaths; additionally, the data do not support mandating such a warning.

9. Warnings Limiting Swing Use

(*Comment 9*) One comment recommends that there be warnings about limiting the amount of time that infants spend in the swing for ''health and developmental concerns,'' namely, positional/deformational plagiocephaly and developmental delays from a lack of ''tummy time.''

(*Response 9*) Warnings are safety communications intended to inform consumers about hazards, with the ultimate goal of reducing injuries and deaths. Thus, while there may be exceptions, one generally should not provide a warning, unless a significant hazard exists. We are not aware of any reported incidents of positional/deformational plagiocephaly involving infant swings. Even if one presumes that such an association exists, CPSC staff has confirmed that this condition does not pose a hazard to infants. Similarly, developmental delays from a lack of ''tummy time'' are not hazards *per se,* and they do not directly lead to injuries or deaths. Consequently, we do not believe that this issue rises to the level that such a mandatory warning on the product is necessary.

10. Seat Deflection Warning

(*Comment 10*) One comment recommends that swings supported by a single arm include a warning about the increased likelihood of seat deflection.

(*Response 10*) We do not believe that a warning about an increased likelihood of seat deflection is necessary for single-arm infant swings. Since publication of the NPR, CPSC staff has worked with the ASTM Subcommittee on Infant Swings to develop new, improved performance requirements intended to address seat deflection. We believe that these requirements, which are part of the final rule, will effectively address the risk associated with seat deflection, and therefore, eliminate the need for a warning.

11. Electrical Cord Strangulation Warning

(*Comment 11*) One comment recommends that all swings with AC or electrical power cords include a warning label on the cords similar to that in the baby monitor standard, which warns about the strangulation hazard that such cords pose.

(*Response 11*) We do not believe that mandating a strangulation warning on the AC or electrical power cords that might accompany certain infant swings is appropriate at this time. The recently published voluntary standard for baby monitors, ASTM F2951–12, *Standard Consumer Safety Specification for Baby Monitors,* does require strangulation warnings on the cords of baby monitors, but specifies different warnings, depending on whether the product is intended to be attached to a crib or not.

For transmitters that are not intended to be attached to a crib, the warning instructs consumers to keep the cord more than 3 feet away from the child. For transmitters that are intended to be attached to a crib—a situation more analogous to an infant swing that holds the infant and has an electrical power cord attached—the warning instructs consumers to use the manufacturer-supplied protective cord covering at all times. However, infant swings are not required to provide protective coverings for electrical power cords, so it is unclear how consumers would comply with such a warning.

A general warning about the risk of strangulation from these cords when the child is in the product might be more reasonable. However, we are not aware of any incidents associated with this hazard scenario involving infant swings, which suggests that this hazard does not rise to the level that a mandatory warning is necessary. Manufacturers of infant swings with cords are free to include strangulation warnings on their cords, and we can revisit the possibility of mandating such warnings if future incident data show that doing so would be appropriate.

12. Dynamic and Static Tests

(*Comment 12*) One comment states that the CPSC-proposed rule would require the tester to use a 75-lb weight and to drop it 500 times on the swing seat. The comment questions the new test method's predictive ability to replicate real-world conditions and injuries, because, the commenter states, the ASTM standard required a 25-lb weight dropped 50 times onto the seat. Next, the comment suggests that the total number of drops could be increased beyond the current 500 drops. The total number of drops could be based on a consumer survey, asking parents how many times a day they put their baby in the swing and whether they used it for one or more babies. Lastly, the comment states that it is unclear why the test involves dropping. The force of an impact, especially with a drop mass of 75 lbs repeated 500 times, could weaken the infant swing at an unreasonable and unrepresentative rate. The comment recommends instead that the test should measure the effect of a static mass placed in the seat over a period of time. Another comment questions the 75-lb requirement in the static load test and requests the justification for this requirement.

(*Response 12*) The current ASTM standard, F2088–12a, has adopted the CPSC staff recommendation to increase the number of drops from 50 to 500 in the dynamic load test. The additional cycles were based on CPSC staff testing, which included life cycle testing. We believe a cyclic test of 500 drops is an appropriate test to evaluate the potential for structural failure in an infant swing. Continued testing beyond 500 cycles did not reveal any new issues, and it may place an unnecessary burden on the manufacturers and test labs. Additionally, the dynamic test specifies a 25-lb load not a 75-lb load, as suggested by the comment. The 25-lb load is the approximate weight of a 95th percentile 10- to 12-month-old child, and we agree with the rationale listed in the appendix of ASTM F2088–12a. The static load test included in the standard is the only test that calls for the application of a 75-lb load in the seat. The 75-lb static load has been part of the voluntary standard since its inception in 2001; this is not something newly added by the CPSC.

Finally, the dynamic test drop height is 1 inch. We consider the forces applied from this drop to be consistent with actual forces associated with swing use. Performing the dynamic test as specified in the standard ensures consistent, repeatable testing results. Together, these tests are intended to evaluate the structural integrity of the infant swing, and we believe they are sufficient to address structural issues that would occur over the life of the product.

13. Product Misassembly

(*Comment 13*) One comment states: ''Because of the constant use/storage/lending use pattern of swings, we recommend that CPSC consider including additional requirements in the standard for infant swings, such as the provisions in the crib standard that seek to reduce hardware loss or misassembly. This could include requiring hardware that doesn't back out or become loose, captive hardware, performance requirements to avoid misassembly, and a method to make sure instructions stay with the product.''

(*Response 13*) The CPSC has considered or addressed misassembly issues in the standards for bassinets, play yards, and cribs, based on reported incidents and known usage patterns. We are aware of these hazard patterns in other juvenile product incidents, but we have concluded that ASTM has sufficiently addressed these issues by requiring that all threaded fasteners connecting structural components have a locking mechanism, such as lock washers, self-locking nuts, or other features designed to prevent detachment due to vibration. A product evaluation by CPSC staff revealed that many current swing designs use other means, such as Valco-type (push) button fasteners, which are permanently attached to the respective component. In most swing designs, misassembly of a swing would make the frame overtly unstable or result in an unnatural appearance that would be obvious to the consumer. The addition of a misassembly requirement would add a testing requirement for an incident pattern that is not evident among the incidents reported and that is addressed by the existing standard.

14. Seat Deflection

(*Comment 14*) Multiple comments question the seat deflection test and how it relates to injury reduction. Individual comments suggest including a second test to account for the potential of increased deflection over the life of the product. Another comment states that the CPSC did not explain why the agency chose 4 inches as its performance requirement.

(*Response 14*) Seat deflection is a design issue that should be addressed during the product's development and verified with standard testing. The seat deflection test proposed by the Commission was a preliminary test procedure under development at the time of the NPR. CPSC staff has continued to work with ASTM to refine the seat deflection test for infant swings. ASTM's latest standard includes a new test methodology and performance requirements that measure various seat angles, as was suggested by one commenter, and it addresses satisfactorily the seat deflection issues raised by CPSC staff.

15. Electrical Requirements

(*Comment 15*) One comment states that infant swings are not designed to be operated by children. Instead, the comment states that infant swings are designed to be *used* by children, but they are designed to be *operated* by adults. Therefore, the comment asserts that infant swings are not subject to 16 CFR part 1505, *Requirements for electronically operated toys or other electrically operated articles intended for use by children.* According to the comment, third party laboratories have been interpreting 16 CFR part 1505 in this manner for many years. Adding a new interpretation to 16 CFR part 1505, the comment suggests, would create confusion and would be inconsistent with test protocols currently employed.

(*Response 15*) While the NPR proposed that swings operating from an a/c power source be required to conform to 16 CFR 1505, ASTM reworded the provision in ASTM F2088–12a to address the issue of assuring that AC

adapters meet all national safety standards. We agree with the new language contained in ASTM F2088–12a, which is being incorporated into the final rule. Therefore, it is unnecessary to include any reference to part 1505 in the final rule.

16. Compliant Product Marking

(*Comment 16*) One comment recommends that the CPSC consider adding a marking on products that are manufactured after the effective date so that consumers can clearly identify new products that meet the new mandatory standard.

(*Response 16*) A date code is already required to be on the product under section 8.1.3 of ASTM F2088–12a and under the requirements for consumer registration of durable infant or toddler products in 16 CFR 1130.3. In addition, future changes to the standard may come into effect. Because it is not practicable to delineate every change to the standard through a new mark on the product, we decline to take such action.

17. Regulation Coverage

(*Comment 17*) One comment states: ''* * * the pre-existing voluntary standards unaddressed by the new regulation is [sic] the sweeping definition that places all infant swings in the same category for children up to the age of five.''

(*Response 17*) The proposed rule and the voluntary standard both indicate that the infant swings are ''*intended for use with infants from birth until a child is able to sit up unassisted.''* The comment may have misunderstood the reference in the **Federal Register** notice, where the *''definition of a 'durable infant or toddler product' is defined in section 104(f)(1) of the CPSIA as a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years.''*

18. The Regulatory Flexibility Act

(*Comment 18*) One comment states that CPSC staff should try ''to obtain a more accurate number of manufacturers who do not meet the ASTM standard'' and suggests that we ''count those manufacturers that sell at major retailers that require ASTM compliance'' as well. The comment states that because ''just ten firms are making or importing swings, CPSC could easily get direct information that would more clearly identify costs.''

(*Response 18*) We have attempted to obtain accurate estimates of small firms that do not conform to the ASTM voluntary standard for infant swings and information on the likely costs of conformance. Further effort would not change the results of the analysis. Nor is it necessarily easy for firms to estimate prospectively the economic impact that a regulation will have on their costs.

(*Comment 19*) One commenter states that the regulatory flexibility analysis should consider the effect that a product recall would have on firms '' * * * that are not known to be in compliance with the voluntary standard.''

(*Response 19*) The Regulatory Flexibility Act requires an evaluation of the likely economic impacts of conforming to the standard that is being proposed, not the economic impact of violating the standard. If firms comply with the standard, recalls related to nonconformance would be avoided.

E. ASTM Voluntary Standard

ASTM F2088, ''*Standard Consumer Safety Specification for Infant Swings,''* is the voluntary standard that was developed to address the identified hazard patterns associated with the use of infant swings. Section 104(b) of the CPSIA requires the Commission to assess the effectiveness of the voluntary standard in consultation with representatives of consumer groups, juvenile product manufacturers, and other experts. We have consulted with these groups regarding the ASTM voluntary standard, ASTM F2088, throughout its development. The standard was first approved in 2001, and revised in 2003, 2008, 2009, twice in 2011, and twice in 2012. ASTM F2088–11b was the version of the standard referenced in the NPR. In response to the proposed rule, the ASTM Subcommittee on Infant Swings, in collaboration with CPSC staff, approved and published two versions of the standard since publication of the NPR, including, ASTM F2088–12a (approved on September 1, 2012, and published in September 2012), which mainly incorporates the proposed modifications in the proposed rule, with a few clarifications and modifications that strengthen the standard. ASTM F2088–12a contains more stringent requirements than its predecessor, ASTM F2088–11b, and would reduce further the risk of injury associated with infant swings.

F. Assessment of the Voluntary Standard and Description of the Final Rule

1. Changes to Requirements of the ASTM F2088 Voluntary Standard

In the NPR, the Commission proposed safety standards for infant swings based on the voluntary standard for infant swings, ASTM F2088–11b. We proposed additional requirements that were intended to strengthen the voluntary standard. *See* 77 FR 12182. Since the publication of this notice, ASTM has published two newer versions of the standard, ASTM F2088–12 and ASTM F2088 12a. The newest version, ASTM F 2088–12a, includes additional changes that were not addressed previously, modifies the CPSC proposed language, or adopts the proposal, with some differences.

The final rule incorporates by reference ASTM F2088–12a as a mandatory standard, with two modifications. Some of the more significant requirements of ASTM F2088–12a are listed below. The requirements that have been added to the ASTM voluntary standard since the NPR are in italics:

- Stability test—intended to prevent tip over. Swing models that rotate about the horizontal axis are positioned on an inclined surface with the swing facing forward and then facing backward. Swings that do not rotate about the horizontal axis are tested in the position most likely to fail. *This was modified in ASTM F2088–12 to clarify the test procedure, as proposed by the Commission in the NPR.*
- Test to prevent unintentional folding—intended to ensure that any locking/latching mechanisms remain functional after testing.
- Tests on restraint system—intended to prevent slippage and breakage during regular use.
- Requirements for cradle swing orientation—intended to ensure that the surface remains relatively flat both while in motion and while at rest.
- Requirements for *electrically powered* swings—intended to prevent leakage and otherwise protect consumers. *These requirements originally applied only to battery-operated swings but were expanded in ASTM F2088–12 to encompass all electrically powered swings, as proposed by the Commission in the NPR. ASTM F2088–12a extends the compliance requirements of all AC adaptors and includes a list of accepted national safety standards. There are also some editorial differences between the NPR and ASTM F2088–12a.*
- Requirement for toy mobiles—intended to ensure that toys within a child's reach do not detach when pulled. This requirement was new to the 2011a standard *and was modified for the 2012 standard to prevent detachment when pulled horizontally as well (as proposed in the February 2012 NPR).*

• Shoulder strap requirement—In the NPR, we proposed that shoulder straps be required for swing seats with angles greater than 50 degrees. *The seat back angle measurement procedure has been updated since the NPR. Now it addresses the issues that the CPSC proposed to address with the seat deflection test included in the NPR. Now it now addresses seats that fold up or tilt, by limiting the severity of angles created by the seat and seat back, or by requiring shoulder straps as part of the restraint system.*

• Dynamic and static load requirements—intended to ensure that the infant swing can support these loads without breaking. *The dynamic load test procedure was modified in F2088–12 to mirror proposed changes in the February 2012 NPR, including increasing the number of times the weight is dropped.*

The voluntary standard also includes: (1) Torque and tension tests to ensure that components cannot be removed; (2) requirements for several infant swing features to prevent entrapment and cuts (minimum and maximum opening size, small parts, exposed coil springs, protective components, hazardous sharp edges or points, and edges that can scissor, shear, or pinch); (3) requirements for the permanency and adhesion of labels; (4) a leg opening test to ensure that occupants cannot slide out; (5) requirements for instructional literature; and (6) restraint system requirements. Additionally, all testing must be performed without adjusting or repositioning the swing, and swings with multiple seat configurations must be placed in the most disadvantageous position for testing. The following is a discussion of how the new standard addresses the issues raised in the NPR.

a. Seat Deflection

The Commission proposed a preliminary test procedure to address the seat deflection issue and specifically asked for comments on the proposed test method in the NPR. In addition, the CPSC continued to work with ASTM to refine the seat deflection test for infant swings. ASTM F2088–12a includes new language that contains a more comprehensive requirement based on maximum seat angle specifications, which includes additional seat back angle measurements or shoulder strap requirements. We believe this requirement addresses more adequately the incidents where a child falls out of the seat due to seat deflection.

b. Stability Testing

We raised two issues in the NPR regarding stability testing and both are addressed in ASTM F2088–12a. ASTM F2088–12a has added the requirement for testing of alternative swing designs in the worst-case orientation, as recommended by the Commission. So now not only are traditional horizontal access swings tested for stability, but also nontraditional, alternative designs with other than a horizontal axis of swing motion must also be tested to the new requirements.

The second stability issue the CPSC raised was intended to refine the testing on swings with ''L-'' shaped cantilevered legs. The CPSC raised the issue out of concern that a test lab could interpret this test to require that the force be applied at the end of the ''L-'' shaped leg that is not in the vertical plane of the latch. In this case, the maximum force normally associated with folding is at the end of the leg vertically under the latch. However, after further discussions with ASTM, we have concluded that the current wording allows testing to be performed as stated in the NPR, and the proper testing location for this design is readily apparent to all involved. Therefore, the infant swing unintentional folding test statement proposed in the NPR, as a clarification to the existing test procedure, is not included in the final rule.

c. Electrical Overload Requirements

The NPR proposed electrical testing requirements to reduce the likelihood of overloading electrical components, battery leakage, or electrical failures that could lead to fire. As part of these requirements, ASTM F2088–12a does not include the following statement: ''The test shall be conducted using a new swing.'' However, the testing on swing samples is done largely independent of the electrical components. Therefore, the electrical components on a swing sample normally can be considered ''new,'' even after other components have been tested. By accepting deletion of that statement, the number of samples required to complete a test is reduced. We accept the electrical overload requirement—as stated in ASTM F2088–12a—as sufficient.

d. Dynamic Drop Test Cycles

The NPR proposed increasing the dynamic drop test cycles from 50 to 500 cycles to improve structural integrity and reveal potential structural issues of the swing components. Increasing the number of dynamic impact cycles to which the swing will be tested will reduce the possibility of structural failures, and it is expected to lead to a decrease in the number and severity of injuries. ASTM included this change in ASTM F2088–12a.

e. Modify Mobile and Toy Retention Requirements

The NPR proposed modifying mobile and toy retention requirements to allow the force to be applied in any direction at or below the horizontal plane, in the orientation most likely to fail. This change is contained in ASTM F2088–12a.

f. Other Changes to ASTM F2088–12 and 12a

In addition to the changes discussed above, in response to the NPR, ASTM made two other changes to ASTM F2088–12 and 12a, which we find acceptable. One change deals with the seat back recline fixture. ASTM accepted CPSC staff's recommendation to use steel plates—as opposed to wood boards—for the seat back recline fixture and then added more design changes to adjust the center of gravity of the fixture to approximate more accurately the weight distribution of an actual child. The device is now identified as the ''Hinged Weight Gage-Infant,'' and a drawing of the figure is included in the ASTM standard. This change will improve the accuracy of testing, and therefore, improve the safety of the standard. This change was not proposed in the NPR, but it was developed with the participation of CPSC staff.

The other issue ASTM addressed was a clarification to the AC adapters supplied with the product. ASTM F2088–12 states: ''*6.1.5 AC adapters supplied with the product must be compliant with the appropriate current national standard for AC adapters.''* ASTM received a number of comments after ASTM F2088–12 was published, asking for clarification of what ''appropriate current national standard'' meant in the requirement. ASTM added new wording and a note to make this clearer, and ASTM F2088–12a includes those changes. We find these changes to be acceptable.

2. Description of the Final Rule

a. Section 1223.1—Scope

Section 1223.1 of the final rule states that part 1223 establishes a consumer product safety standard for infant swings. We received no comments on this provision and are finalizing it without change.

b. Section 1223.2—Requirements for infant swings

Section 1223.2(a) of the final rule provides language to incorporate by reference ASTM F2088–12a, *Standard Consumer Safety Specification for*

Infant Swings. Section 1223.2(a) also provides information on how to obtain a copy of the ASTM standard or to inspect a copy of the standard at the CPSC or National Archives and Records Administration. We received no comments on this provision, but we are changing the language in the incorporation in the final rule to refer to ASTM F2088–12a, the current version of the standard.

In the NPR, § 1223.2(b) proposed to add two new requirements to ASTM F2088–11b to make the standard more stringent than the current voluntary standard and to reduce the risk of injury associated with infant swings: (1) A performance requirement and test method to address electrical overload in infant swing motors and batteries, as well as an accessible component temperature requirement and a requirement to ensure that swings that run on a/c power are safe; and (2) a performance requirement and test method to address seat deflection. We also proposed two major modifications to ASTM F2088–11b that would make the standard more stringent than the voluntary standard at that time and would reduce the risk of injury associated with infant swings: (1) An increase in the number of test cycles used in the dynamic load test, from 50 cycles to 500 cycles, and (2) a modification to the mobile test to account for mobiles that can be pulled in downward directions other than straight down vertically. Finally, in proposed § 1223.2(b) of the NPR, we proposed to clarify the test methods for the dynamic load test, the stability test, the unintentional folding test, and the seat back angle measurement method.

As discussed in the previous section of this preamble, the additional requirements in proposed § 1223.2(b) either have been incorporated into ASTM F2088–12a, or we are satisfied with ASTM's changes from the proposal or explanations regarding why some proposals were not necessary. Therefore, the language in proposed § 1223.2(b) of the NPR is no longer necessary.

Finally, as discussed previously in the response to comment 1 in section D of this preamble, we received many comments regarding the inadequacy of the slump-over warnings in section 8.3 of ASTM F2088–11b. Section 8.3 of ASTM F2088–12a contains the identical slump-over warning contained in section 8.3 of ASTM F2088–11b that we proposed in the NPR. We agree that the current warning language requirements pertaining to the slump-over hazard in ASTM F2088–12a are insufficient and that the warning should be revised to clarify the hazard and the consequences of exposure to the hazard if the consumer cannot avoid it. The warning statement required in ASTM F2088–12a does not describe the slump-over hazard, and the formatting of the warning implies that using the swing in the most reclined seat position is an additional measure intended to address the potential for the infant user to fall or strangle in the straps. In addition, one could argue that the warning statement does not describe the probable consequences of not avoiding the slump-over hazard because the warning's reference to ''serious injury or death'' is specific to falls and strangulations.

Therefore, in place of the language proposed in § 1223.2(b) of the NPR, § 1223(b)(1) of the final rule requires that infant swings must comply with the ASTM F2088–12a standard with two exceptions. In the case of the first exception to the ASTM standard, instead of complying with section 8.3.1 of ASTM F 2088–12a, infants swings are required to have warning statements for products that have an adjustable seat recline with a maximum seat back angle greater than 50 degrees from horizontal, measured in accordance with 7.13 of ASTM F 2088–12a, that address the following:

> Keep swing seat fully reclined until child is at least 4 months old AND can hold up head without help. Young infants have limited head and neck control. If seat is too upright, infant's head can drop forward, compress the airway, and result in DEATH.

Additionally, swings must have a warning statement to prevent serious injury or death from infants falling or being strangled in straps:

- Always secure infant in the restraint system provided.
- Never leave infant unattended in swing.
- Discontinue use of swing when infant attempts to climb out.
- Travel swings are required to have a warning indicating: ''Always place swing on floor. Never use on any elevated surface.''

A second exception to the requirements in ASTM F2088–12a specifies the test method for testing toy mobiles that are attached to the swing. The final rule provides new language for the test method described in section 7.12.2 of ASTM F2088–12a. We are adding this language in response to information from ASTM that ASTM had inadvertently omitted updating the test method described in section 7.12.2 of ASTM F2088–12a to reflect the latest revision that ASTM had made to the test fixture used in section 7.12.2. We have added ASTM's revised version of the test method language in the final rule text in § 1223(b)(2). This is the language that ASTM is balloting to revise section 7.12.2 in its standard.

G. Effective Date

The Administrative Procedure Act (APA) generally requires that the effective date of the rule to be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). The preamble to the proposed rule indicated that the standard would become effective 6 months after publication of the rule in the **Federal Register**. We sought comment on how long it would take infant swing manufacturers to come into compliance. We received one comment stating that the Commission should ''* * * consider extending the effective date to one year to help minimize a possibility of a substantial loss of revenue from the potential product recalls on the small manufacturers and importers.'' Almost all of the requirements proposed in the NPR were incorporated into ASTM F2088–12a, and the final rule differs from the proposed rule only in the requirement that an additional warning label regarding use has been added. Therefore, we believe that an effective date of 6 months after publication of the final rule is sufficient to allow for review of the new requirements thoroughly and to ensure that new infant swings manufactured or imported after that date are in compliance with the new requirements. The 6-month effective date is consistent with the effective date established in most other rules issued under section 104 of the CPSIA. Accordingly, the final rule will be effective 6 months after publication in the **Federal Register**, unchanged from the proposed rule.

H. Testing and Certification

Once there is a safety standard in effect for infant swings, it will be unlawful for anyone to manufacture, distribute, or import an infant swing into the United States that is not in conformity with this standard. 15 U.S.C. 2068(1).

In addition, section 14(a)(2) of the CPSA, 15 U.S.C. 2063(a)(2), imposes the requirement that products subject to a children's product safety rule must be tested by a third party conformity assessment body accredited by the Commission to test the product. As discussed in section A of this preamble, section 104(b)(1)(B) of the CPSIA refers to standards issued under this section as ''consumer product safety standards.'' Under section 14(f)(1) of the CPSA, 15 U.S.C. 2063(f)(1), the term ''children's

product safety rule'' includes all standards enforced by the Commission. Thus, the infant swing standard will be a children's product safety rule, subject to third party testing and certification.

The Commission is required to issue a notice of requirements (NOR) to explain how laboratories can become CPSC-accepted third party conformity assessment bodies to test infant swings to the new safety standard. On May 24, 2012, the Commission published in the **Federal Register** the proposed rule, *Requirements Pertaining to Third Party Conformity Assessment Bodies,* 77 FR 31086, which, when finalized, would establish the general requirements and criteria concerning testing laboratories, including a list of the children's product safety rules for which the CPSC has published NORs for laboratories. The Commission proposed a new NOR for the safety standard for infant swings in that proposed rule. *See* 77 FR at 31113. The final NOR for the safety standard for infant swings will be issued once the final rule for *Requirements Pertaining to Third Party Conformity Assessment Bodies* is published in the **Federal Register**. That final rule will address the issuance of the NOR for infant swings.

I. Regulatory Flexibility Act

1. Introduction

The Regulatory Flexibility Act (RFA) requires that final rules be reviewed for their potential economic impact on small entities, including small businesses. Section 604 of the RFA requires that the Commission prepare a final regulatory flexibility analysis when it promulgates a final rule. The final regulatory flexibility analysis must describe the impact of the rule on small entities and identify any alternatives that may reduce the impact. Specifically, the final regulatory flexibility analysis must contain:

- A succinct statement of the objectives of, and legal basis for, the rule;
- A summary of the significant issues raised by public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
- A description of, and, where feasible, an estimate of, the number of small entities to which the rule will apply;
- A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities subject to the requirements and the type of professional skills necessary for the preparation of reports or records; and
- A description of the steps the agency has taken to reduce the significant economic impact on small entities, consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the rule, and why each one of the other significant alternatives to the rule considered by the agency, which affect the impact on small entities, was rejected.

The NPR for infant swings was based on the voluntary ASTM standard for infant swings ASTM F2088–11b. The Commission proposed several modifications, additions, and clarifications at that time. Most of the proposed changes have been incorporated into ASTM F2088–12a, which the final rule incorporates by reference, along with one additional change, modifying the slump-over warning.

2. The Market for Swings

Infant swings are typically produced and/or marketed by juvenile product manufacturers and distributors. We estimate that currently, there are at least 9 domestic manufacturers and one domestic importer supplying infant swings to the U.S. market. Infant swings from five of the 10 firms have been certified as compliant with the ASTM voluntary standard ASTM F2088–11b by JPMA, the major U.S. trade association that represents juvenile product manufacturers and importers. Two additional firms claim compliance with F2088–11b.

Information on annual sales of infant swings can be approximated using information from the 2005 survey conducted by the American Baby Group (*2006 Baby Products Tracking Study*). About 79 percent of new mothers own at least one infant swing—61 percent own full-sized infant swings, and 33 percent own smaller travel infant swings. Approximately 31 percent of full-sized infant swings and 26 percent of travel infant swings were handed down or purchased secondhand. Thus, about 69 percent of full-sized infant swings, and 74 percent of travel infant swings were acquired new. This suggests annual sales of about 2.7 million infant swings to households (.69 × .61 × 4.1 million births per year + .74 × .33 × 4.1 million births per year).

Typically, infant swings are used for only a few months early in a child's life. Therefore, we have estimated the risk of injury based on the number of infant swings in the households of new mothers. Based on data from the *2006 Baby Products Tracking Study,* approximately 3.9 million infant swings are owned by new mothers (0.61 percent own full-size × 4.1 million births + 0.33 percent own travel size × 4.1 million births). This suggests that at least 3.9 million infant swings may be available to children during the first year of their lives. During 2011, there were an estimated 1,900 emergency department-treated injuries to children under age 5 related to infant swings. Consequently, there would have been about 4.9 emergency department-treated injuries annually for every 10,000 infant swings available for use in the households of new mothers.

3. Impact of the Standard on Small Businesses

As noted earlier, there are approximately 10 domestic firms currently known to be producing or selling infant swings in the United States. Under U.S. Small Business Administration (SBA) guidelines, a manufacturer of infant swings is small if it has 500 or fewer employees, and an importer is considered small if it has 100 or fewer employees. Based on these guidelines, five domestic manufacturers are small firms. The remaining firms are four large domestic manufacturers and one large domestic importer. There may be additional unknown small manufacturers and importers operating in the U.S. market.

Small Manufacturers

The expected impact of the final rule on small manufacturers will differ based on whether their infant swings are compliant with ASTM F2088–11b. Firms whose infant swings meet the requirements of ASTM F2088–11b are generally expected to continue to do so as new versions of the standard are published, typically within 6 months, which is the amount of time JPMA allows for products in their certification program to shift to a new standard. Many of these firms are active in the ASTM standards development process, and compliance with the voluntary standard is part of an established business practice. Therefore, it is likely that firms supplying infant swings that comply with ASTM F2088–11b (which went into effect for JPMA certification purposes in May 2012) would also comply with ASTM F2088–12a by March 2013, even in the absence of a mandatory standard.

The direct impact on the three known small domestic manufacturers whose infant swings are compliant with ASTM F2088–11b is not expected to be significant. Each firm will need to

modify the slump-over warning label for their infant swings. This is not generally expected to be costly; although some firms may experience larger costs than others, depending upon their label development process, and where the warning labels are affixed on their products. One firm estimates that the one-time cost of changing their labels, including development time and materials, would be approximately $1,000 per model.

Complying with ASTM F2088–12a's requirements could necessitate product redesign for some infant swings believed not to be compliant with ASTM F2088–11b. The redesign would be minor if most of the changes involve adding straps and fasteners or using different mesh or fabric; but the redesign could be more significant if changes to the frame are required. Consequently, the final rule potentially could have a significant direct impact on the two small manufacturers of infant swings that are believed not to have conformed to ASTM F2088–11b, regardless of how they choose to meet the staff-recommended warning label requirement. One manufacturer estimated that a complete infant swing redesign would cost approximately $400,000, not including significant overhead costs, such as engineering time, which at $100 per hour, easily could increase overall redesign costs by $100,000 or more. However, a complete product redesign is unlikely to be necessary in most cases, and any direct impact may be mitigated if costs are treated as new product expenses that can be amortized.

It is possible that the two firms whose infant swings are neither certified as compliant, nor claim to be compliant with ASTM F2088–11b, in fact, are compliant with the standard. We have identified many such cases with other products. To the extent that these firms may supply compliant infant swings and have developed a pattern of compliance with the voluntary standard, the direct impact of the final rule will be less significant than described above.

Although the direct impact of the final rule should not be significant for most small manufacturers, there are indirect impacts as well. These impacts are considered indirect because they do not arise directly as a consequence of the requirements of the final rule. Nonetheless, these indirect costs could be significant. Once the final rule becomes effective, and the notice of requirements is in effect, all manufacturers will be subject to the additional costs associated with the third party testing and certification requirements. This will include the physical and mechanical test requirements specified in the final rule; lead and phthalates testing is already required, and hence, it is not included here.[3]

Based on information provided by manufacturers, additional industry input, and information obtained when staff was developing the third party testing rule, third party testing costs for ASTM F2088–12a (including toy testing, which is part of the infant swings voluntary standard) are estimated to be around $900 per model sample. Testing overseas potentially could reduce third party testing costs, but that may not always be practical.

On average, each small domestic infant swing manufacturer supplies six models of infant swings to the U.S. market annually. Therefore, if third party testing was conducted every year, third party testing costs for each manufacturer might add about $5,400 annually to the manufacturer's costs, assuming only one sample of each model had to be tested. Based on a review of firm revenues, the impact of third party testing to ASTM F2088–12a is unlikely to be significant for small manufacturers unless a large number of samples had to be tested for each model.

Small Importers

CPSC staff was unable to identify any small importers currently operating in the U.S. market. However, if any exist, they would need to find an alternate source of infant swings if their existing supplier does not come into compliance with the requirements of the staff-recommended final rule. They could also discontinue importing any noncomplying infant swings, possibly replacing them with another juvenile product. As is the case with manufacturers, importers will be subject to third party testing and certification requirements; consequently, they would experience costs similar to those for manufacturers, if their supplying foreign firm(s) does not perform third party testing.

4. Alternatives

Under section 104 of the CPSIA, one alternative that would reduce the impact on small entities would be to make the voluntary standard mandatory with no modifications. However, while this alternative would eliminate any additional costs associated with the slump-over label change in the final rule, firms supplying noncompliant infant swings could still require substantial product redesign in order to meet the voluntary standard. Because of the frequency and severity of the incidents associated with slump-over incidents, we do not recommend this alternative.

A second alternative would be to set an effective date later than 6 months. This would allow suppliers additional time to modify and/or develop compliant infant swings and spread the associated costs over a longer period of time. We generally consider 6 months sufficient time for suppliers to come into compliance with a mandatory standard; it is common in the industry, representing the amount of time that the JPMA allows for products in their ASTM certification program to shift to a new standard.

J. Paperwork Reduction Act

This rule contains information collection requirements that are subject to public comment and review by the U.S. Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The preamble to the proposed rule (77 FR 7021 through 7022) discussed the information collection burden of the proposed rule and specifically requested comments on the accuracy of our estimates. We did not receive any comments from the public concerning the information collection burden of the proposal. However, in response to a comment made by OMB, the final rule makes a modification regarding the information collection burden. OMB noted that all 10 firms identified should be considered when accounting for the labeling burden.

As indicated in the NPR (77 FR 7021 through 7022), there are 10 known firms supplying infant swings to the U.S. market. In the NPR, we estimated that five of the 10 firms already made product labels that comply with ASTM F2088. We revise our burden estimate to assume that all 10 firms already use labels on both their products and packaging, but they might need to make some modifications to their existing labels. Based on this revision, our revised burden estimate is as follows: The estimated time required to make these modifications is about 1 hour per model. Each of these firms supplies an average of five different models of infant swings; therefore, the estimated burden hours associated with labels is 1 hour × 10 firms × 5 models per firm = 50 annual hours.

We estimate that hourly compensation for the time required to create and update labels is $28.36 (U.S.

[3] Infant swing suppliers already must third party test their products to the lead and phthalate requirements. Therefore, these costs already exist and will not be affected by the final infant swings standard.

Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' September 2011, Table 9, total compensation for all sales and office workers in goods-producing private industries: *http://www.bls.gov/ncs/*). Therefore, the estimated annual cost associated with the proposed requirements is $1,418 ($28.36 per hour × 50 hours = $1,418).

We have applied to OMB for a control number for this information collection, and we will publish a notice in the **Federal Register** providing the number when we receive approval from OMB.

K. Preemption

Section 26(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2075(a), provides that where a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA refers to the rules to be issued under that section as ''consumer product safety rules,'' thus implying that the preemptive effect of section 26(a) of the CPSA would apply. Therefore, a rule issued under section 104 of the CPSIA will invoke the preemptive effect of section 26(a) of the CPSA when the rule becomes effective.

L. 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 because they ''have little or no potential for affecting the human environment.'' 16 CFR 1021.5(c)(2). This final rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

List of Subjects in 16 CFR Part 1223

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

■ Therefore, the Commission amends Title 16 of the Code of Federal Regulations by adding part 1223 to Chapter II to read as follows:

PART 1223—SAFETY STANDARD FOR INFANT SWINGS

Sec.
1223.1 Scope.
1223.2 Requirements for Infant Swings.

Authority: The Consumer Product Safety Improvement Act of 2008, Pub. L. 110–314, Sec. 104, 122 Stat. 3016 (August 14, 2008).

§ 1223.1 Scope.

This part establishes a consumer product safety standard for infant swings.

§ 1223.2 Requirements for infant swings.

(a) Except as provided in paragraph (b) of this section, each infant swing must comply with all applicable provisions of ASTM F2088—12a, Standard Consumer Safety Specification for Infant Swings, approved on September 1, 2012. 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 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; *http://www.astm.org.* You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal regulations/ibr_locations.html.*

(b)(1) Instead of complying with section 8.3.1 of ASTM F2088–12a, comply with the following:

(i) 8.3.1 The warning statements shall address the following at a minimum:

(ii) 8.3.1.1 Products having an adjustable seat recline with a maximum seatback angle greater than 50 degrees from horizontal measured in accordance with 7.13 shall address the following:

Keep swing seat fully reclined until child is at least 4 months old AND can hold up head without help. Young infants have limited head and neck control. If seat is too upright, infant's head can drop forward, compress the airway, and result in DEATH.

(iii) 8.3.1.2 To prevent serious injury or death from infants falling or being strangled in straps:

(A) Always secure infant in the restraint system provided.

(B) Never leave infant unattended in swing.

(C) Discontinue use of swing when infant attempts to climb out.

(D) Travel swings (see 3.1.11) shall address the following:

Always place swing on floor. Never use on any elevated surface.

(2) Instead of complying with section 7.12.2 of ASTM F2088–12a, comply with the following:

(i) 7.12.2 Place the back of the swing in the most upright position. Remove positioning accessories, including pillows. Position the segments of the restraint system to limit interaction with the Hinged Weight Gage—Infant (see Fig. 10) when placed in the seat. Place the Hinged Weight Gage—Infant with the hinge located at the junction of the swing back and seat bottom (see Fig. 8). Determine if the lowest point of the toy positioned over the occupant is within 25.25 in. (641.5 mm) of the top surface of the Lower Plate (see Fig. 10)—throughout the swing seat's range of motion. Proceed to 7.12.3 if the distance is 25.25 in. (641.5 mm) or less. The toy is considered out of reach and not tested to 7.12.3 if the distance is greater than 25.25 in. (641.5 mm).

(ii) [Reserved]

Dated: November 1, 2012.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2012–27027 Filed 11–6–12; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0946]

Special Local Regulation; Southern California Annual Marine Events for the San Diego Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Special Local Regulations in 33 CFR 100.1101 from 7 a.m. to 11:30 a.m. on November 11, 2012 on Mission Bay, CA in support of the San Diego Fall Classic. This action is necessary to restrict vessel movement and provide for the safety of the participants, crew, spectators, sponsor vessels of the race, and general users of the waterway. During the enforcement period, persons and vessels are prohibited from entering into, transiting through, or anchoring within this designated race area unless authorized by the Captain of the Port, or his designated representative.