



UNITED STATES  
CONSUMER PRODUCT SAFETY COMMISSION  
4330 EAST WEST HIGHWAY  
BETHESDA, MD 20814

This document has been electronically  
approved and signed.

DATE: October 13, 2021

## BALLOT VOTE SHEET

**TO:** The Commission  
Alberta E. Mills, Secretary

**THROUGH:** Pamela J. Stone, Acting General Counsel  
Mary T. Boyle, Executive Director

**FROM:** Daniel R. Vice, Assistant General Counsel, Regulatory Affairs  
David M. DiMatteo, Attorney, Regulatory Affairs

**SUBJECT:** ASTM's Revised Safety Standard for Infant Swings

**BALLOT VOTE DUE:** Tuesday, October 19, 2021

Staff is forwarding to the Commission a briefing memorandum recommending that the Commission issue a direct final rule to update the ASTM standard incorporated by reference into the Safety Standard for Infant Swings, codified in 16 CFR part 1223. In 2012, the Commission issued the mandatory standard under the Consumer Product Safety Improvement Act of 2008 (CPSIA), incorporating by reference ASTM F2088-12a, *Standard Consumer Safety Specification for Infant Swings*, and has since updated the standard to incorporate by reference ASTM F2088-20. Under the CPSIA, when ASTM revises a voluntary standard for a durable infant or toddler product that the Commission has incorporated by reference, the revised standard automatically becomes the mandatory standard, unless the Commission determines that the revised standard “does not improve the safety of the consumer product” and notifies the voluntary standards organization. ASTM updated the voluntary standard for infant swings, issuing ASTM F2088-21, and notified the Commission of the revised standard. Staff recommends that the Commission allow the revised voluntary standard to become the mandatory standard and publish a direct final rule to revise part 1223 to reference ASTM F2088-21. Attached for Commission consideration is a draft *Federal Register* notice for that purpose. If approved by the Commission, OGC will send the notice to the *Federal Register* for publication after we receive approval of the incorporation by reference from the Office of the Federal Register.

Please indicate your vote on the following options:

- I. Approve publication of the attached notice in the *Federal Register*, as drafted.

CPSC Hotline: 1-800-638-CPSC(2772) ★ CPSC's Web Site: <http://www.cpsc.gov>

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

II. Approve publication of the attached notice in the *Federal Register*, with the specified changes.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

III. Do not approve publication of the attached notice in the *Federal Register*.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

IV. Take other action specified below.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

Attachment: Draft *Federal Register* notice: Safety Standard for Infant Swings

[Billing Code 6355-01-P]

**CONSUMER PRODUCT SAFETY COMMISSION**

**16 CFR Part 1223**

**[Docket No. CPSC-2013-0025]**

**Safety Standard for Infant Swings**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Direct final rule.

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

**DATES:** The rule is effective on January 29, 2022, unless CPSC receives a significant adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If CPSC receives such a comment, it will publish a notice in the *Federal Register*, withdrawing this direct final rule before its effective date. The

incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of January 29, 2022.

**ADDRESSES:** You may submit comments, identified by Docket No. CPSC- 2013-0025, by any of the following methods:

*Electronic Submissions:* Submit electronic comments to the Federal eRulemaking Portal at: <https://www.regulations.gov>. Follow the instructions for submitting comments. The CPSC does not accept comments submitted by electronic mail (e-mail), except through <https://www.regulations.gov> and as described below. The CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

*Mail/hand delivery/courier Written Submissions:* Submit comments by mail/hand delivery/courier to: Division of the Secretariat, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7479. Alternatively, as a temporary option during the COVID-19 pandemic, you can email such submissions to: [cpsc@cpsec.gov](mailto:cpsc@cpsec.gov).

*Instructions:* All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: <https://www.regulations.gov>. Do not submit electronically confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information please submit it according to the instructions for written submissions.

*Docket:* For access to the docket to read background documents or comments received, go to: <https://www.regulations.gov>, and insert the docket number, CPSC-2013-0025, into the “Search” box, and follow the prompts.

**FOR FURTHER INFORMATION CONTACT:** Keysha Walker, Compliance Officer, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-6820; email: [kwalker@cpsc.gov](mailto:kwalker@cpsc.gov).

**SUPPLEMENTARY INFORMATION:**

**A. Background**

*1. Statutory Authority*

Section 104(b)(1)(B) of the CPSIA, also known as the Danny Keysar Child Product Safety Notification Act, requires the Commission to promulgate consumer product safety standards for durable infant or toddler products. The law requires these standards to be “substantially the same as” applicable voluntary standards or more stringent than the voluntary standards if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product.

The CPSIA also sets forth a process for updating CPSC’s durable infant or toddler standards when the voluntary standard upon which the CPSC standard was based is changed. Section 104(b)(4)(B) of the CPSIA provides that if an organization revises a standard that has been adopted, in whole or in part, as a consumer product safety standard under this subsection, it shall notify the Commission. In addition, the revised voluntary standard shall be considered to be a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2058), effective 180 days after the date on which the organization notifies the

Commission (or such later date specified by the Commission in the *Federal Register*) unless, within 90 days after receiving that notice, the Commission notifies the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard and that the Commission is retaining the existing consumer product safety standard.

2. *Safety Standard for Infant Swings*

In November 2012, under section 104(b)(1) of the CPSIA, the Commission adopted a mandatory rule for infant swings, codified in 16 CFR part 1223. The rule incorporated by reference ASTM F2088-12a, *Standard Consumer Safety Specification for Infant Swings*, with modifications to the labeling and test method requirements.<sup>1</sup> 77 FR 66703 (Nov. 7, 2012). At the time the Commission published the final rule, ASTM F2088-12a was the current version of the voluntary standard. Since promulgation of the mandatory infant swings standard in 2012, ASTM has revised the voluntary standard five times. ASTM F2088-20 is the current mandatory standard incorporated by reference in 16 CFR part 1223.

On August 2, 2021, ASTM notified CPSC that it had revised the voluntary standard for infant swings, approving ASTM F2088-21 on May 15, 2021.<sup>2</sup> As discussed in this preamble, based on CPSC staff's review of ASTM F2088-21, the Commission will allow the revised voluntary standard to become the mandatory standard because the revised requirements in the voluntary standard either improve the safety of infant swings or are safety neutral. Accordingly, by operation of law under section 104(b)(4)(B) of the

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

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

CPSIA, ASTM F2088-21 will become the mandatory consumer product safety standard for infant swings on January 29, 2022. 15 U.S.C. 2056a(b)(4)(B). This direct final rule updates 16 CFR part 1223 to incorporate by reference the revised voluntary standard, ASTM F2088-21.

## **B. Revisions to ASTM F2088**

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

### *1. Substantive changes*

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

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

Specifically, ASTM:

- replaced the statement “*a child who cannot climb out of the product*” with “*an infant*” in section 1.3 (part of section 1. *Scope*) when describing the products and the intended user covered under this consumer safety specification. The use of the generic term “*infant*” better defines the developmental characteristics of the two age groups already defined in the standard: (1) “[*infant*] *begins to push up on hands and knees (approximately 5 months)*” and (2) “[*infant*] *attempts to climb out of the swing (approximately 9 months)*.”
- added “*to swing or glide*” to the definition of “*cradle swing*” in section 3.1.3 to describe the motions of this product type, and to maintain consistency with section 1 *Scope* and with the motion types already defined for “*infant swings*” in section 3.1.5.
- replaced “*can roll over or*” with “*begins to*” in the definition of “*cradle swings*” in section 3.1.3, and in the warning statements in section 8.6.2 *Cradle Swing*, to maintain consistency throughout the standard and to harmonize the wording with ASTM F2194 *Bassinets and Cradles* standard.

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

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

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

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

To effect these changes, ASTM made the following modifications:

- created section 8.4 *Battery-operated Product Marking* to group all battery cautionary information into a single section;
- moved section 6.1.1 regarding the battery compartment marking and labeling to section 8.4.1 using the language from the Ad Hoc Wording recommendations;

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

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

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

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

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

## 2. *Non-substantive changes*

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

## **C. Incorporation by Reference**

Section 1223.2 of the direct final rule incorporates by reference ASTM F2088-21. The Office of the Federal Register (OFR) has regulations regarding incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble to a final rule, ways in which the material the agency incorporates by reference is reasonably available to interested parties, and how interested parties can obtain the material. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR regulations, section **B. Revisions to ASTM F2088**, of this preamble summarizes the major provisions of ASTM F2088-21 that the Commission incorporates by reference into 16 CFR part 1223. The standard is reasonably available to interested parties, and interested parties can purchase a copy of ASTM F2088-21 from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959 USA; phone; 610-832-9585; [www.astm.org](http://www.astm.org). Additionally, until the direct final rule takes effect, a read-only copy of ASTM F2088-21 is available for viewing on ASTM's website at: <https://www.astm.org/CPSC.htm>. Once the rule takes effect, a read-only copy of the standard will be available for viewing on the ASTM website at: <https://www.astm.org/READINGLIBRARY/>. Interested parties can also schedule an appointment to inspect a copy of the standard at CPSC's Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone: 301-504-7479; email: [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov).

#### **D. Certification**

Section 14(a) of the Consumer Product Safety Act (CPSA; 15 U.S.C. 2051-2089) requires manufacturers of products subject to a consumer product safety rule under the

CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, to certify that the products comply with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program, or, for children’s products, on tests of a sufficient number of samples by a third party conformity assessment body accredited by CPSC to test according to the applicable requirements. As noted, standards issued under section 104(b)(1)(B) of the CPSIA are “consumer product safety standards.” Thus, they are subject to the testing and certification requirements of section 14 of the CPSA.

Because infant swings are children’s products, a CPSC-accepted third party conformity assessment body must test samples of the products. Products subject to part 1223 also must comply with all other applicable CPSC requirements, such as the lead content requirements in section 101 of the CPSIA,<sup>5</sup> the phthalates prohibitions in section 108 of the CPSIA<sup>6</sup> and 16 CFR part 1307, the tracking label requirements in section 14(a)(5) of the CPSA,<sup>7</sup> and the consumer registration form requirements in section 104(d) of the CPSIA.<sup>8</sup>

**E. Notice of Requirements**

In accordance with section 14(a)(3)(B)(iv) of the CPSIA, the Commission previously published a notice of requirements (NOR) for accreditation of third party conformity assessment bodies for testing infant swings. 78 FR 15836 (Mar. 12, 2013). The NOR provided the criteria and process for CPSC to accept accreditation of third party conformity assessment bodies for testing infant swings to 16 CFR part 1223. The

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

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

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

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

NORs for all mandatory standards for durable infant or toddler products are listed in the Commission’s rule, “Requirements Pertaining to Third Party Conformity Assessment Bodies,” codified in 16 CFR part 1112. *Id.*

The revisions to ASTM F2088-21 do not require any change in the way that third party conformity assessment bodies test infant swings. Therefore, testing laboratories that have demonstrated competence for testing in accordance with ASTM F2088-20 will have the competence to test in accordance with the revised standard ASTM F2088-21. Therefore, the Commission considers the existing CPSC-accepted laboratories for testing to ASTM F2088-20 to be capable of testing to ASTM F2088-21, as well. Accordingly, the existing NOR for this standard will remain in place, and CPSC-accepted third party conformity assessment bodies are expected to update the scope of the testing laboratories’ accreditations to reflect the revised standard in the normal course of renewing their accreditations.

#### **F. Direct Final Rule Process**

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA; 5 U.S.C. 551-559) generally requires agencies to provide notice of a rule and an opportunity for interested parties to comment on it, section 553 of the APA provides an exception when the agency, “for good cause finds,” that notice and comment are “impracticable, unnecessary, or contrary to the public interest.” *Id.* 553(b)(B). The Commission concludes that when it updates a reference to an ASTM

standard that the Commission incorporated by reference under section 104(b) of the CPSIA, notice and comment are not necessary.

Under the process set out in section 104(b)(4)(B) of the CPSIA, when ASTM revises a standard that the Commission has previously incorporated by reference under section 104(b)(1)(B) of the CPSIA, that revision will become the new CPSC standard, unless the Commission determines that ASTM’s revision does not improve the safety of the product. Thus, unless the Commission makes such a determination, the ASTM revision becomes CPSC’s mandatory standard by operation of law. The Commission is allowing ASTM F2088-21 to become CPSC’s new mandatory standard. The purpose of this direct final rule is to update the reference in the Code of Federal Regulations (CFR) so that it reflects the version of the standard that takes effect by statute. This rule updates the reference in the CFR, but under the update provision of section 104 of the CPSIA, ASTM F2088-21 takes effect as the new CPSC standard for infant swings, even if the Commission does not issue this rule. Thus, public comments would not alter substantive changes to the standard or the effect of the revised standard as a consumer product safety standard under section 104(b) of the CPSIA. Under these circumstances, notice and comment are unnecessary.

In Recommendation 95-4, the Administrative Conference of the United States (ACUS) endorsed direct final rulemaking as an appropriate procedure to expedite rules that are noncontroversial and that are not expected to generate significant adverse comments. *See* 60 FR 43108 (Aug. 18, 1995). ACUS recommends that agencies use the direct final rule process when they act under the “unnecessary” prong of the good cause exemption in 5 U.S.C. 553(b)(B). Consistent with the ACUS recommendation, the

Commission is publishing this rule as a direct final rule, because CPSC does not expect any significant adverse comments.

Unless CPSC receives a significant adverse comment within 30 days of this notice, the rule will become effective on January 29, 2022. In accordance with ACUS’s recommendation, the Commission considers a significant adverse comment to be “one where the commenter explains why the rule would be inappropriate,” including an assertion challenging “the rule’s underlying premise or approach,” or a claim that the rule “would be ineffective or unacceptable without change.” 60 FR 43108, 43111. As noted, this rule merely updates a reference in the CFR to reflect a change that occurs by statute.

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

#### **G. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601-612) generally requires agencies to review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603, 604. The RFA applies to any rule that is subject to notice-and-comment procedures under section 553 of the APA. *Id.* As discussed in section **F. Direct Final Rule Process** of this preamble, the Commission has determined that notice and the opportunity to comment are unnecessary for this rule. Therefore, the RFA does not apply. CPSC also notes the limited nature of this document, which merely updates the incorporation by

reference to reflect the mandatory CPSC standard that takes effect under section 104 of the CPSIA.

#### **H. Paperwork Reduction Act**

The current mandatory standard for infant swings includes requirements for marking, labeling, and instructional literature that constitute a “collection of information,” as defined in the Paperwork Reduction Act (PRA; 44 U.S.C. 3501-3521). While the revised mandatory standard updates the provisions for marking, labeling, and instructional literature regarding consistency and clarity to be consistent with other ASTM voluntary standards, the revised mandatory standard does not alter these requirements substantively. The Commission took the steps required by the PRA for information collections when it adopted 16 CFR part 1223, including obtaining approval and a control number. Because the information collection is unchanged, the revision does not affect the information collection requirements or approval related to the standard.

#### **I. Environmental Considerations**

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

## **J. Preemption**

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

## **K. Effective Date**

Under the procedure set forth in section 104(b)(4)(B) of the CPSIA, when a voluntary standards organization revises a standard that the Commission adopted as a mandatory standard, the revision becomes the CPSC standard within 180 days of notification to the Commission, unless the Commission determines that the revision does not improve the safety of the product, or the Commission sets a later date in the *Federal Register*. 15 U.S.C. 2056a(b)(4)(B). The Commission is taking neither of those actions with respect to the standard for infant swings. Therefore, ASTM F2088-21 will take effect automatically as the new mandatory standard for infant swings on January 29, 2022, 180 days after the Commission received notice of the revision on August 2, 2021. Because it is a direct final rule, unless the Commission receives a significant adverse

comment within 30 days of this notice, the rule will become effective on January 29, 2022.

#### **L. Congressional Review Act**

The Congressional Review Act (CRA; 5 U.S.C. 801-808) states that before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The CRA submission must indicate whether the rule is a “major rule.” The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a “major rule.” Pursuant to the CRA, this rule does not qualify as a “major rule,” as defined in 5 U.S.C. 804(2). To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General.

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

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

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

#### **PART 1223 – SAFETY STANDARD FOR INFANT SWINGS**

1. Revise the authority citation for part 1223 to read as follows:

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

2. Revise § 1223.2 to read as follows:

**§ 1223.2 Requirements for Infant Swings.**

Each infant swing shall comply with all applicable provisions of ASTM F2088-21, *Standard Consumer Safety Specification for Infant and Cradle Swings*, approved on May 15, 2021. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959; phone: (610) 832-9585; [www.astm.org](http://www.astm.org). A read-only copy of the standard is available for viewing on the ASTM website at <https://www.astm.org/READINGLIBRARY/>. You may inspect a copy at the Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone (301) 504-7479, email: [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov), or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email [fr.inspection@nara.gov](mailto:fr.inspection@nara.gov), or go to: [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html).

Dated: \_\_\_\_\_

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Alberta E. Mills, Secretary,  
U.S. Consumer Product Safety Commission



UNITED STATES  
CONSUMER PRODUCT SAFETY COMMISSION  
4330 EAST WEST HIGHWAY, BETHESDA, MD 20814

This document has been electronically  
approved and signed.

**Memorandum**

October 13, 2021

TO : The Commission  
Alberta E. Mills, Secretary

THROUGH: Pamela Stone, Acting General Counsel  
Mary T. Boyle, Executive Director  
DeWane Ray, Deputy Executive Director for Safety Operations

FROM : Duane E. Boniface, Assistant Executive Director  
Office of Hazard Identification and Reduction

Carlos G. Torres, Mechanical Engineer  
Division of Mechanical and Combustion Engineering  
Directorate for Engineering Sciences

SUBJECT : Revision to the Safety Standard for Infant Swings (16 CFR part 1223)

**I. INTRODUCTION**

Section 104 of the Danny Keysar Child Product Safety Notification Act/Consumer Product Safety Improvement Act of 2008 (CPSIA) requires voluntary standards organizations, such as ASTM International (ASTM), to notify the U.S. Consumer Product Safety Commission (CPSC) of revisions to voluntary standards that are the basis for a consumer product safety standard promulgated by the Commission. CPSIA section 104(b)(4)(B) states:

*COMMISSION ACTION ON REVISED VOLUNTARY STANDARD - If an organization revises a standard that has been adopted, in whole or in part, as a consumer product safety standard under this subsection, it shall notify the Commission. The revised voluntary standard shall be considered to be a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the date on which the organization notifies the Commission (or such later date specified by the Commission in the Federal Register) unless, within 90 days after receiving that notice, the Commission notifies the organization that it has determined that the proposed revision does not improve the safety of the*

*consumer product covered by the standard and that the Commission is retaining the existing consumer product safety standard.*

On August 2, 2021, ASTM notified CPSC that it revised the voluntary standard on which the mandatory standard for infant swings is based. The revised standard is ASTM F2088-21, *Standard Consumer Safety Specification for Infant and Cradle Swings*, approved by ASTM on May 15, 2021 (ASTM F2088-21). This memorandum outlines the differences between ASTM F2088-20, the Commission's mandatory standard for infant swings incorporated by reference in 16 CFR part 1223 (Part 1223), and ASTM F2088-21, ASTM's revised voluntary standard. Staff recommends allowing ASTM F2088-21 to become the new consumer product safety standard for infant swings. In addition, staff recommends publishing a direct final rule to incorporate by reference ASTM F2088-21 as the mandatory standard codified in Part 1223.

## **II. BACKGROUND**

In 2012, the Commission issued the Safety Standard for Infant Swings under section 104 of the CPSIA.<sup>1</sup> The Commission incorporated by reference ASTM F2088-12a, *Standard Consumer Safety Specification for Infant Swings*, with modifications.<sup>2</sup> In 2013, the Commission revised the standard under CPSIA section 104(b)(4)(B), incorporating by reference ASTM F2088-13, with no modifications.<sup>3</sup> In 2020, the Commission revised the standard again under CPSIA section 104(b)(4)(B), incorporating by reference ASTM F2088-20, with no modifications.<sup>4</sup> On August 2, 2021, ASTM officially notified CPSC that it published a revised 2021 version of ASTM F2088 that affects the requirements for infant swings.

ASTM F2088-21 applies to swings with a powered mechanism used to provide a swinging or gliding seat/cradle in any direction relative to the frame. The swinging or gliding mechanism can be powered by batteries, AC adapter, wind-up mechanism, or other means. A cradle swing allows the infant to swing while lying flat, and it is intended for children from birth until the infant begins to push up on hands and knees (approximately 5 months). An infant swing enables the infant to swing in a seated position, and it is intended for children from birth until the infant attempts to climb out of the product (approximately 9 months). ASTM F2088-21 does not cover products that are intended to provide sleeping accommodations for the occupant.

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<sup>1</sup> 77 *Fed. Reg.* 66,703 (Nov. 7, 2012).

<sup>2</sup> The modifications included changes to the labeling requirements and a revised test method to address an omission in the voluntary standard in the test method for toy mobiles that are attached to swings.

<sup>3</sup> 78 *Fed. Reg.* 37,706 (June 24, 2013).

<sup>4</sup> 86 *Fed. Reg.* 4,961 (Jan. 19, 2021).

### III. DISCUSSION

The CPSC's mandatory Safety Standard for Infant Swings in Part 1223 currently incorporates by reference ASTM F2088-20, with no modifications. ASTM has updated the voluntary standard since ASTM F2088-20, recently issuing ASTM F2088-21. The changes to ASTM F2088 consist of revising the age and developmental information to maintain consistency throughout the standard, and to harmonize the battery cautionary information for consistency with other juvenile product standards. Staff concludes that these changes are either safety neutral or improve the safety of infant swings. The sections below discuss in detail the substantive and non-substantive changes since issuance of ASTM F2088-20.

#### *A. Comparison and Review of ASTM F2088-21*

On May 15, 2021, ASTM approved a revised version of ASTM F2088 and published ASTM F2088-21 in June 2021. The 2021 revision contains a few editorial, non-substantive changes, and several substantive changes to improve clarity, provide consistent terminology, and harmonize wording and warning label requirements consistent with other juvenile product standards.

ASTM made several revisions to ASTM F2088 to align the standard with wording changes ASTM initiated for all of its juvenile products standards. After publishing ASTM F2088-13, ASTM convened a task group, the ASTM Ad Hoc Wording Task Group (Ad Hoc TG), consisting of members of the various durable nursery products voluntary standards committees, including CPSC staff. The purpose of the Ad Hoc TG was to harmonize the wording of common provisions (*e.g.*, introduction, scope, protective components), as well as the warning label requirements, across durable infant and toddler product voluntary standards. CPSC's Human Factors Division subject matter expert represented CPSC staff in this task group. ASTM published its first version of the Ad Hoc TG recommendations as a reference document, titled, "*Recommended Language Approved by Ad Hoc Task Group*" in October 2016, and published its latest revision (revision F) on November 2020 as part of the F15 Committee Documents. ASTM F15 committees for various juvenile products then used these recommendations to update the juvenile products standards so that common provisions and requirements for warnings are consistent across the standards.<sup>5</sup> These recommendations are reflected in two of the substantive changes discussed subsequently.

Changes to the standard from ASTM F2088-20 to ASTM F2088-21 included substantive and non-substantive changes.

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<sup>5</sup> This process is ongoing, and not all standards have adopted these recommendation as of the current date.

### Substantive changes

(1) ASTM revised the age and developmental information for infant and cradle swings to maintain consistency between the scope, definitions, and warnings sections of the standard. Additionally, the revisions harmonize the age and developmental information with the ASTM F2194 *Bassinets and Cradles* standard.<sup>6</sup>

To this effect, ASTM:

- replaced the statement “*a child who cannot climb out of the product*” with “*an infant*” in section 1.3 (part of section 1. *Scope*) when describing the products and the intended user covered under this consumer safety specification. The use of the generic term “*infant*” better defines the developmental characteristics of the two age groups already defined in the standard: (1) “[*infant*] *begins to push up on hands and knees (approximately 5 months)*” and (2) “[*infant*] *attempts to climb out of the swing (approximately 9 months)*.”
- added “*to swing or glide*” to the definition of “*cradle swing*” in section 3.1.3 to describe the motions of this product type, and to maintain consistency with section 1 *Scope* and with the motion types already defined for “*infant swings*” in section 3.1.5.
- replaced “*can roll over or*” with “*begins to*” in the definition of “*cradle swings*” in section 3.1.3, and in the warning statements in section 8.6.2 *Cradle Swing*, to maintain consistency throughout the standard and to harmonize the wording with ASTM F2194 *Bassinets and Cradles* standard.
- added the parenthetical statement “*(approximately 5 months)*” to the warning statements in section 8.6.2 *Cradle Swing*, to maintain consistency with the definition of “*cradle swing*” in section 3.1.3.

Staff concludes that all of the substantive changes above are neutral to the safety of infant swings because they are clarifications to the language of the standard to harmonize the provisions throughout this standard and with other ASTM juvenile product standards.

(2) After the publication of Revision F of “*Recommended Language Approved by Ad Hoc Task Group*,”<sup>7</sup> the ASTM F15.21 subcommittee adopted the battery informational statements and/or warning language from the Ad Hoc document and incorporated it in the 2021 revision of F2088. Additionally, the revision consolidated the battery language spread throughout the standard into a single section titled 8.4 *Battery-operated Product Marking* under section 8 *Marking and Labeling*.

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<sup>6</sup> A cradle swing falls into the scope of ASTM F2194 *Bassinets and Cradles* standard when it is not in motion (*i.e.*, a cradle swing is a swing when in motion and a cradle when at rest.)

<sup>7</sup> Revision F of “*Recommended Language Approved by Ad Hoc Task Group*” was published on November 30, 2020.

To effect these changes, ASTM made the following modifications (the specific changes are attached in Appendix A):

- created section 8.4 *Battery-operated Product Marking* to group all battery cautionary information into a single section;
- moved section 6.1.1 regarding the battery compartment marking and labeling to section 8.4.1 using the language from the Ad Hoc Wording recommendations;
- moved sections 8.6, 8.6.1, 8.6.2 and 8.6.3 regarding the battery cautions to sections 8.4.2, 8.4.2.1, 8.4.2.2 and 8.4.2.3 using the language from the Ad Hoc Wording recommendations.

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

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

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

#### Non-substantive changes

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

### **B. Staff's Assessment of the Revised Voluntary Standard**

Under CPSIA section 104(b)(4)(B), unless the Commission determines that ASTM's revision to a voluntary standard that is referenced in a mandatory standard "*does not improve the safety of the consumer product covered by the standard,*" the revised voluntary standard becomes the new mandatory standard. As detailed in the staff assessment above of ASTM F2088-21, the changes

made to ASTM F2088-21 are either safety neutral or improve the safety of infant swings. Therefore, staff recommends that, pursuant to the statute, the Commission allow the revised voluntary standard to become the mandatory consumer product safety standard for infant swings. Staff also recommends that the Commission publish the draft direct final rule to revise the incorporation by reference in 16 CFR part 1223 to the revised voluntary standard, ASTM F2088-21.

### ***C. Effect of the Changes on Third Party Testing***

The notice of requirements (NOR), as set out in the final rule for infant swings, provides the criteria and process for the Commission's acceptance of accreditation of third-party conformity assessment bodies for testing infant swings to 16 CFR part 1223 (which incorporated ASTM F2088-20). The NORs for children's product safety rules are listed in the Commission's rule, "*Requirements Pertaining to Third Party Conformity Assessment Bodies,*" at 16 CFR part 1112.

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

For these reasons, staff recommends that the Commission accept the existing accreditations for testing to this standard as sufficient for testing to the revised standard as well. If the Commission follows this recommendation, the existing NORs for these standards would remain in place, and CPSC-accepted third party conformity assessment bodies would be expected to update the scope of the testing laboratories' accreditation(s) to reflect the revised standard in the normal course of renewing their accreditation(s). If the Commission approves the draft direct final rule, CPSC staff will notify all CPSC-accepted laboratories by e-mail and will provide links to the *Federal Register* notice to explain the changes to the standard and the effective date.

### ***D. Effective Date***

Section 104(b)(4)(B) of the CPSIA provides that a revised voluntary standard shall be considered to be a consumer product safety standard under section 9 of the CPSA effective 180 days after the date on which the organization notifies the Commission (or such later date specified by the Commission in the *Federal Register*) unless, within 90 days after receiving that notice, the Commission notifies the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard and that the Commission is retaining the existing standard consumer product safety standard. Therefore, if the Commission does not reject the revised standard, ASTM F2088-21, the standard would be considered the new mandatory standard for infant swings effective on January 29, 2022, unless the Commission specifies a later date. Staff does not believe that a longer effective date is necessary. The

voluntary Juvenile Products Manufacturers Association (JPMA) typically allows 6 months for products in their certification program to shift to a new voluntary standard once that new voluntary standard is published. Therefore, many juvenile product manufacturers are accustomed to adjusting to new voluntary standards within this time frame.

#### **IV. RECOMMENDATION**

Staff recommends that the Commission allow ASTM F2088-21 to become the mandatory consumer product safety standard for infant swings. Staff also recommends that the Commission publish a direct final rule to revise the incorporation by reference in 16 CFR part 1223 to reflect the revised standard. Under section 104(b)(4)(B) of the CPSIA, unless the Commission notifies an organization that it has determined that a proposed revision does not improve the safety of a consumer product covered by the standard, and that the Commission is retaining the existing standard, the revised standard will become effective 180 days after the date on which an organization notifies the Commission of the revision. Staff recommends allowing ASTM F2088-21 to become the new mandatory standard for infant swings effective on January 29, 2022.



**UNITED STATES  
CONSUMER PRODUCT SAFETY COMMISSION  
4330 EAST WEST HIGHWAY, BETHESDA, MD 20814**

**Memorandum**

**APPENDIX A. Changes between F2088-20 and F2088-21 regarding battery informational statements and/or warnings language.**

F2088-20	F2088-21 <sup>(1)</sup>
- None -	8.4 <i>Battery-operated Product Marking:</i>
6.1.1 Each battery compartment or area immediately adjacent to the battery compartment shall be marked permanently and legibly to show the correct battery polarity, size, and voltage.	8.4.1 Each product’s battery compartment, battery compartment door/cover, or area immediately adjacent to the battery compartment shall be marked or labeled permanently and legibly to show the correct battery polarity, size, and voltage. These markings are not required for products utilizing one or more non-replaceable batteries.
8.6 Swings that use more than one battery in one circuit shall have additional instructional statements, which are not subject to the formatting requirements in 8.4:	8.4.2 Swings that use more than one battery in one circuit shall have cautions:
8.6.1 Remote control devices are exempt from these requirements.	8.4.2.1 Remote control devices are exempt from these requirements.
8.6.2 The additional statements contained in this section shall be in or located immediately adjacent to the battery compartment.	8.4.2.2 The cautions contained in this section shall be in or located immediately adjacent to the battery compartment.
8.6.3 The product shall have the following additional instructional statements to address the following at a minimum:	8.4.2.3 The cautions shall address the following:
<ul style="list-style-type: none"> <li>• Old and new batteries should not be mixed.</li> <li>• Alkaline, standard carbon-zinc, and rechargeable nickel-cadmium batteries should not be mixed.</li> <li>• Remove batteries before putting swing into storage for a prolonged period of time.</li> </ul>	<p>To prevent battery leaks, which can burn skin and eyes:</p> <ul style="list-style-type: none"> <li>• Always replace the entire set of batteries at one time.</li> <li>• Never mix old and new batteries, or batteries of different brands or types.</li> <li>• Remove batteries when storing product for a long time.</li> <li>• Dispose of used batteries immediately.</li> </ul>
<p>Note: (1) ASTM F15.21 subcommittee adopted the battery informational statements and/or warnings language from the Ad Hoc Wording recommendations, Revision F, “<i>Recommended Language Approved by Ad Hoc Task Group</i>”, published on November 30, 2020.</p>	