

39—AIRWORTHINESS DIRECTIVES

§ 39.13 [Corrected]

On page 41655, in the second table, Table 2—Initial Compliance Times for

Airworthiness Limitations Tasks, a fourth column title was inadvertently printed above the words “Within 240 Flight hours after the effective date of

this AD.” The table should appear as set forth below.

TABLE 2—INITIAL COMPLIANCE TIMES FOR AIRWORTHINESS LIMITATIONS TASKS

Bombardier, Inc. model—	Task(s)—	Initial compliance time (whichever occurs later)—	
CL-600-2A12 (CL-601) airplanes, serial numbers 3001 through 3066 inclusive; and CL-600-2B16 (CL-601-3A and CL-601-3R Variants) airplanes, serial numbers 5001 through 5194 inclusive; on which Bombardier Service Bulletin 601-0590 has been accomplished.	30-11-00-101, Wing Anti-icing ...	Prior to the accumulation of 4,800 total flight hours; or within 4,800 flight hours after accomplishing Task 30-11-06-204 in Section 5-20-15 of the applicable Time Limits/Maintenance Checks manual specified in table 1 of this AD; whichever occurs later.	Within 240 flight hours after the effective date of this AD.
CL-600-2A12 (CL-601) airplanes, serial numbers 3001 through 3066 inclusive; and CL-600-2B16 (CL-601-3A and CL-601-3R Variants) airplanes, serial numbers 5001 through 5194 inclusive; on which Bombardier Service Bulletin 601-0590 has been accomplished.	30-11-00-102, Wing Anti-icing ...	Prior to the accumulation of 4,800 total flight hours; or within 4,800 flight hours after accomplishing Task 30-13-00-205 in Section 5-20-15 of the applicable Time Limits/Maintenance Checks manual specified in table 1 of this AD; whichever occurs later.	Within 240 flight hours after the effective date of this AD.
CL-600-2B16 (CL-604 Variants) airplanes, serial numbers 5301 through 5665 inclusive.	30-11-00-101, Detailed Inspection of the Wing Anti-Ice Duct Piccolo-Tube, and 36-21-00-101, Functional Test of the Leading Edge Thermal Switches.	Prior to the accumulation of 6,400 total flight hours; except for airplanes having 6,400 total flight hours or more as of the effective date of this AD on which the task has not been accomplished: prior to the next scheduled 6,400 flight hour task inspection or prior to the next scheduled accomplishment of Task 57-10-00-208 in the applicable Time Limits/Maintenance Checks manual specified in table 1 of this AD, whichever occurs first.	Within 320 flight hours after the effective date of this AD.
CL-600-2B16 (CL-604 Variants) airplanes, serial numbers 5701 and subsequent.	30-11-00-101, Detailed Inspection of the Wing Anti-Ice Duct Piccolo-Tube, and 36-21-00-101, Functional Test of the Leading Edge Thermal Switches.	Prior to the accumulation of 6,400 total flight hours.	Within 320 flight hours after the effective date of this AD.

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Chapter II

[CPSC Docket No. CPSC-2011-0050]

Third Party Testing for Certain Children’s Products; Toys: Requirements for Accreditation of Third Party Conformity Assessment Bodies

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of requirements.

SUMMARY: The Consumer Product Safety Commission (“CPSC,” “Commission,” or “we”) is issuing a notice of requirements that provides the criteria and process for Commission acceptance of accreditation of third party conformity assessment bodies for testing, pursuant to ASTM International’s (formerly the American Society for Testing and Materials) (“ASTM”) *Standard Consumer Safety Specification for Toy Safety*, F 963-08 (“ASTM F 963-08”), and section 4.27 (toy chests) from ASTM International’s F 963-07e1 version of the standard (“ASTM F 963-07e1”), which are the consumer product safety standards for toys, pursuant to section 106 of the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110-314. The Commission is issuing this

notice of requirements pursuant to section 14(a)(3)(B)(vi) of the Consumer Product Safety Act (CPSA).

DATES: *Effective Date:* The requirements for accreditation of third party conformity assessment bodies to assess conformity with ASTM F 963-08 and/or section 4.27 of ASTM F 963-07e1 are effective August 3, 2011.¹

Comments in response to this notice of requirements should be submitted by September 2, 2011. Comments on this notice should be captioned “Third party Testing for Certain Children’s Products; Toys: Requirements for Accreditation of

¹ The Commission voted 5-0 to publish this notice of requirements. Chairman Inez M. Tenenbaum, Commissioner Nancy A. Nord, and Commissioner Robert S. Adler each issued a statement, and the statements can be found at <http://www.cpsc.gov/pr/statements.html>.

Third party Conformity Assessment Bodies.”

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2011–0050, by any of the following methods:

Electronic Submissions: Submit electronic comments in the following way:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through <http://www.regulations.gov>.

Written Submissions: Submit written submissions in the following ways: Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions) preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change to <http://www.regulations.gov>, including any personal information provided. Do not submit confidential business information, trade secret information, or other sensitive or protected information (such as a Social Security Number) electronically; if furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Richard McCallion, Team Leader for the Mechanical, Recreation, and Sports Program Area, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail RMcCallion@cpsc.gov. CPSC intends to issue a **Federal Register** notice providing information about its proposed education and outreach plan for stakeholders directly affected by the Notice of Requirements for Third Party Testing for Certain Children’s Products. The Federal Register notice will also request public comment and input. Many of the informative materials for stakeholders will be available at a dedicated toy safety standard webpage: <http://www.cpsc.gov/toysafety>.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 14(a)(3)(B)(vi) of the CPSA, as added by section 102(a)(2) of the CPSIA, directs the CPSC to publish a notice of

requirements for accreditation of third party conformity assessment bodies to assess children’s products for conformity with “other children’s product safety rules.” Section 14(f)(1) of the CPSA defines “children’s product safety rule” as “a consumer product safety rule under [the CPSA] or similar rule, regulation, standard, or ban under any other Act enforced by the Commission, including a rule declaring a consumer product to be a banned hazardous product or substance.” Under section 14(a)(3)(A) of the CPSA, each manufacturer (including the importer) or private labeler of products subject to those regulations must have products that are manufactured more than 90 days after the **Federal Register** publication date of a notice of the requirements for accreditation, tested by a third party conformity assessment body accredited to do so, and must issue a certificate of compliance with the applicable regulations based on that testing. Section 14(a)(2) of the CPSA, as added by section 102(a)(2) of the CPSIA, requires that certification be based on testing of sufficient samples of the product, or samples that are identical in all material respects to the product. The Commission also emphasizes that, irrespective of certification, the product in question must comply with applicable CPSC requirements (*see, e.g.*, section 14(h) of the CPSA, as added by section 102(b) of the CPSIA).

This notice provides the criteria and process for Commission acceptance of accreditation of third party conformity assessment bodies for testing toys, pursuant to ASTM F 963–08, and for testing toy chests, pursuant to section 4.27 of ASTM F 963–07e1. ASTM F 963–08 and section 4.27 of ASTM F 963–07e1 are voluntary standards, but under section 106(a) of the CPSIA, they have become mandatory federal requirements, “except for section 4.2 and Annex 4 [of ASTM F 963], or any provision that restates or incorporates an existing mandatory standard or ban promulgated by the Commission or by statute.” Readers may obtain a copy of ASTM F 963–08 and/or ASTM F 963–07e1 from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA, 19428–2959; (610)–832–9500; <http://www.astm.org>.

Section 106(a) of the CPSIA states that, beginning 180 days after August 14, 2008—the date the CPSIA was enacted—ASTM F 963–07 shall be considered a consumer product safety standard issued by the Commission under section 9 of the CPSA. Under section 106(g) of the CPSIA, when ASTM proposes to revise ASTM F 963, it must notify the Commission of the

proposed revision. The revised standard will be considered the consumer product safety standard effective 180 days after the date on which ASTM notified the Commission of the revision, unless the Commission objects within the first 90 days of the 180-day period. If the Commission determines that the proposed revision does not improve the safety of a consumer product, the Commission can notify ASTM that the already-existing standard will continue to be considered the consumer product safety standard.

ASTM proposed F 963–08 as a revised standard in February 2009, and on May 13, 2009, the Commission voted to accept F 963–08 as the consumer product safety standard for toys, except the revision omitting section 4.27 related to toy chests, which the Commission retained from the previous version of F 963 (ASTM F 963–07e1). Accordingly, ASTM F 963–08 and section 4.27 of ASTM F 963–07e1 (toy chests) are considered consumer product safety standards issued by the Commission under section 9 of the CPSA.

We anticipate the ASTM F963–08 standard is likely to be revised and updated in the future. Given this possibility, the Commission seeks comments now on how to make the transition in testing requirements as clear and efficient as possible should the standard change.

We note that ordinarily, when the Commission bases a mandatory requirement on a voluntary standard, we incorporate the voluntary standard by reference, in accordance with the rules of the Office of the Federal Register. *See* 1 CFR part 51. However, in this instance, ASTM F 963 became a consumer product safety standard by operation of law, rather than by an act of the Commission. *See* Public Law No. 110–314 § 106(a), (g). Therefore the Commission does not need to incorporate ASTM F 963 by reference.

We also note that certain provisions of ASTM F 963–08 and section 4.27 of ASTM F 963–07e1 will not be subject to third party testing and therefore we will not be accepting accreditations to those excepted sections. The exceptions are as follows:

- Those sections of ASTM F 963–08 that address food and cosmetics, products traditionally outside the Commission’s jurisdiction.
- Those sections of ASTM F 963–08 that pertain to the manufacturing process and thus, cannot be evaluated meaningfully by a test of the finished product (e.g., the purified water provision at section 4.3.6.1).

• Requirements for labeling, instructional literature, or producer's markings in ASTM F 963–08 or section 4.27 of ASTM F 963–07 ϵ 1. We have taken similar positions in other contexts. For example, the Commission has stated that it will not require testing and certification to the labeling requirements under the Federal Hazardous Substances Act, 15 U.S.C. 1261–1278. *See* 74 FR 68588, 68591 (Dec. 28, 2009) (Notice of Commission Action on the Stay of Enforcement of Testing and Certification Requirements). We also do not require third party testing for the labeling requirements for children's sleepwear under the Flammable Fabrics Act, 15 U.S.C. 1191–1204. *See* 75 FR 70911, 70913 (Nov. 19, 2010) (Third Party Testing for Certain Children's Products; Children's Sleepwear, Sizes 0 Through 6X and 7 Through 14: Requirements for Accreditation of Third Party Conformity Assessment Bodies).

• Those sections of ASTM F 963–08 that involve assessments that are conducted by the unaided eye and without any sort of tool or device.

• Section 4.3.8 of ASTM F 963–08, pertaining to a specific phthalate, because section 108 of the CPSIA specifically addresses phthalates and will be the subject of a separate notice of requirements.

In sum, the Commission will only require certain provisions of ASTM F 963–08 and Section 4.27 of ASTM F 963–07 ϵ 1 to be subject to third party testing and therefore we will only accept the accreditation of third party conformity assessment bodies for testing under the following toy safety standards:

- ASTM F 963–07 ϵ 1
- Section 4.27—Toy Chests (except labeling and/or instructional literature requirements)
- ASTM F 963–08
- Section 4.3.5.2, Surface Coating Materials—Soluble Test for Metals²
- Section 4.3.6.3, Cleanliness of Liquids, Pastes, Putties, Gels, and Powders (except for cosmetics and tests on formulations used to prevent microbial degradation)
- Section 4.3.7, Stuffing Materials
- Section 4.5, Sound Producing Toys
- Section 4.6, Small Objects (except labeling and/or instructional literature requirements)

² Products subject to 16 CFR part 1303, *Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead-Containing Paint*, that have been tested by a CPSC-accepted third party conformity assessment body and found not to exceed the lead limit in 16 CFR part 1303, do not need to be tested to the lead solubility standard in section 4.3.5.2 of ASTM F 963–08.

- Section 4.7, Accessible Edges (except labeling and/or instructional literature requirements)
- Section 4.8, Projections
- Section 4.9, Accessible Points (except labeling and/or instructional literature requirements)
- Section 4.10, Wires or Rods
- Section 4.11, Nails and Fasteners
- Section 4.12, Packaging Film
- Section 4.13, Folding Mechanisms and Hinges
- Section 4.14, Cords, Straps, and Elastics
- Section 4.15, Stability and Overload Requirements
- Section 4.16, Confined Spaces
- Section 4.17, Wheels, Tires, and Axles
- Section 4.18, Holes, Clearances, and Accessibility of Mechanisms
- Section 4.19, Simulated Protective Devices (except labeling and/or instructional literature requirements)
- Section 4.20.1, Pacifiers with Rubber Nipples/Nitrosamine Test
- Section 4.20.2, Toy Pacifiers
- Section 4.21, Projectile Toys
- Section 4.22, Teethers and Teething Toys
- Section 4.23.1, Rattles with Nearly Spherical, Hemispherical, or Circular Flared Ends
- Section 4.24, Squeeze Toys
- Section 4.25, Battery-Operated Toys (except labeling and/or instructional literature requirements)
- Section 4.26, Toys Intended to Be Attached to a Crib or Playpen (except labeling and/or instructional literature requirements)
- Section 4.27, Stuffed and Beanbag-Type Toys
- Section 4.30, Toy Gun Marking
- Section 4.32, Certain Toys with Spherical Ends
- Section 4.35, Pompoms
- Section 4.36, Hemispheric-Shaped Objects
- Section 4.37, Yo-Yo Elastic Tether Toys
- Section 4.38, Magnets (except labeling and/or instructional literature requirements)
- Section 4.39, Jaw Entrapment in Handles and Steering Wheels

We note that the ASTM toy safety standards cover toys intended for use by children under 14 years of age. *See, e.g.,* section 1.3 of ASTM F 963–08.

However, only “children's products” are required to be third party tested in support of the children's product certificate required by section 14(a)(2) of the CPSA. Section 3(a)(2) of the CPSA defines “children's product,” to mean, *inter alia*, “a consumer product designed or intended primarily for children 12 years of age or younger.” To the extent that there are products subject to ASTM F 963–08 and/or section 4.27 of ASTM F 963–07 ϵ 1 that are not “children's products,” as that term is defined in the CPSA, such products do not need to be third party tested in support of the certification required by section 14 of the CPSA.

Although section 14(a)(3)(B)(vi) of the CPSA directs the CPSC to publish a notice of requirements for accreditation

of third party conformity assessment bodies to assess conformity with “all other children's product safety rules,” this notice of requirements is limited to the safety standards identified immediately above.

The CPSC also recognizes that section 14(a)(3)(B)(vi) of the CPSA is captioned: “All Other Children's Product Safety Rules”; however, the body of the statutory requirement refers only to “other children's product safety rules.” Nevertheless, section 14(a)(3)(B)(vi) of the CPSA could be construed to require a notice of requirements for “all” other children's product safety rules, rather than a notice of requirements for “some” or “certain” children's product safety rules. However, whether a particular rule represents a “children's product safety rule” may be subject to interpretation, and Commission staff is continuing to evaluate which rules, regulations, standards, or bans are “children's product safety rules.” The CPSC intends to issue additional notices of requirements for other rules that the Commission determines to be “children's product safety rules.”

This notice of requirements applies to all third party conformity assessment bodies as described in section 14(f)(2) of the CPSA. Generally speaking, such third party conformity assessment bodies are: (1) Third party conformity assessment bodies that are not owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body for certification purposes; (2) “firewalled” conformity assessment bodies (those that are owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body for certification purposes and that seek accreditation under the additional statutory criteria for “firewalled” conformity assessment bodies); and (3) third party conformity assessment bodies owned or controlled, in whole or in part, by a government.

The Commission requires baseline accreditation of each category of third party conformity assessment body to the International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) Standard 17025:2005, “General Requirements for the Competence of Testing and Calibration Laboratories.” The accreditation must be by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation—Mutual Recognition Arrangement (ILAC—MRA), and the scope of the accreditation must include clear references to those

sections of ASTM F 963–08 and/or 4.27 of ASTM F 963–07ε1 identified earlier in part I of this document for which the third party conformity assessment body seeks CPSC acceptance.

(Descriptions of the history and content of the ILAC–MRA approach and of the requirements of the ISO/IEC 17025:2005 laboratory accreditation standard are provided in the CPSC staff briefing memorandum “Third Party Conformity Assessment Body Accreditation Requirements for Testing Compliance with 16 CFR part 1501 (Small Parts Regulations),” dated November 2008, and available on the CPSC’s Web site at: <http://www.cpsc.gov/library/foia/foia09/brief/smallparts.pdf>).

The Commission has established an electronic accreditation registration and listing system that can be accessed via its Web site at: <http://www.cpsc.gov/ABOUT/Cpsia/labaccred.html>.

The Commission stayed the enforcement of certain provisions of section 14(a) of the CPSA in a notice published in the **Federal Register** on February 9, 2009 (74 FR 6396); the stay applied to testing and certification of various products, including those covered by the safety standards in ASTM F 963. On December 28, 2009 the Commission published a notice in the **Federal Register** (74 FR 68588) revising the terms of the stay. One section of the December 28, 2009 notice addressed “Consumer Products or Children’s Products Where the Commission Is Continuing the Stay of Enforcement Until Further Notice,” due to factors such as pending rulemaking proceedings affecting the product or the absence of a notice of requirements. The ASTM F 963 testing and certification requirements were included in that section of the December 28, 2009 notice. The absence of a notice of requirements prevented the testing and certification stay from being lifted with regard to toys subject to ASTM F 963. While the publication of this notice would have had the effect of lifting the testing and certification stay with regard to ASTM F 963, at the decisional meeting on July 20, 2011, the Commission voted to stay enforcement of the testing and certification requirements of section 14 of the CPSA with respect to toys subject to ASTM F 963 until December 31, 2011.

Accordingly, each manufacturer of a children’s product covered by F 963–08 and/or section 4.27 of ASTM F 963–07ε1 (toy chests) must have any such product manufactured after December 31, 2011, tested by a third party conformity assessment body accredited to do so and must issue a certificate of

compliance with applicable sections of ASTM F 963–08 and/or section 4.27 of ASTM F 963–07ε1 based on that testing. (Under the CPSA, the term “manufacturer” includes anyone who manufactures or imports a product.)

This notice of requirements is exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553 (see section 14(a)(3)(G) of the CPSA, as added by section 102(a)(2) of the CPSIA (15 U.S.C. 2063(a)(3)(G)).

II. Accreditation Requirements

A. Baseline Third Party Conformity Assessment Body Accreditation Requirements

For a third party conformity assessment body to be accredited to test children’s products for conformity with one or more of the ASTM F 963 toy standards identified earlier in part I of this document, it must be accredited by an ILAC–MRA signatory accrediting body, and the accreditation must be registered with, and accepted by, the Commission. A listing of ILAC–MRA signatory accrediting bodies is available on the Internet at: <http://ilac.org/membersbycategory.html>. The accreditation must be to ISO Standard ISO/IEC 17025:2005, “General Requirements for the Competence of Testing and Calibration Laboratories,” and the scope of the accreditation must expressly include references to one or more of the following sections of ASTM F 963–08, *Standard Consumer Safety Specification for Toy Safety*, and/or 4.27 of ASTM F 963–07ε1, the consumer product safety standard for toy chests

- ASTM F 963–07ε1
- Section 4.27—Toy Chests (except labeling and/or instructional literature requirements)
- ASTM F 963–08
- Section 4.3.5.2, Surface Coating Materials—Soluble Test for Metals
- Section 4.3.6.3, Cleanliness of Liquids, Pastes, Putties, Gels, and Powders (except for cosmetics and tests on formulations used to prevent microbial degradation)
- Section 4.3.7, Stuffing Materials
- Section 4.5, Sound Producing Toys
- Section 4.6, Small Objects (except labeling and/or instructional literature requirements)
- Section 4.7, Accessible Edges (except labeling and/or instructional literature requirements)
- Section 4.8, Projections
- Section 4.9, Accessible Points (except labeling and/or instructional literature requirements)
- Section 4.10, Wires or Rods
- Section 4.11, Nails and Fasteners
- Section 4.12, Packaging Film
- Section 4.13, Folding Mechanisms and Hinges

- Section 4.14, Cords, Straps, and Elastics
- Section 4.15, Stability and Overload Requirements
- Section 4.16, Confined Spaces
- Section 4.17, Wheels, Tires, and Axles
- Section 4.18, Holes, Clearances, and Accessibility of Mechanisms
- Section 4.19, Simulated Protective Devices (except labeling and/or instructional literature requirements)
- Section 4.20.1, Pacifiers with Rubber Nipples/Nitrosamine Test
- Section 4.20.2, Toy Pacifiers
- Section 4.21, Projectile Toys
- Section 4.22, Teethers and Teething Toys
- Section 4.23.1, Rattles with Nearly Spherical, Hemispherical, or Circular Flared Ends
- Section 4.24, Squeeze Toys
- Section 4.25, Battery-Operated Toys (except labeling and/or instructional literature requirements)
- Section 4.26, Toys Intended to Be Attached to a Crib or Playpen (except labeling and/or instructional literature requirements)
- Section 4.27, Stuffed and Beanbag-Type Toys
- Section 4.30, Toy Gun Marking
- Section 4.32, Certain Toys with Spherical Ends
- Section 4.35, Pompoms
- Section 4.36, Hemispheric-Shaped Objects
- Section 4.37, Yo-Yo Elastic Tether Toys
- Section 4.38, Magnets (except labeling and/or instructional literature requirements)
- Section 4.39, Jaw Entrapment in Handles and Steering Wheels

A true copy, in English, of the accreditation and scope documents demonstrating compliance with the requirements of this notice must be registered with the Commission electronically. The additional requirements for accreditation of firewalled and governmental conformity assessment bodies are described in parts II.B and II.C of this document below.

The Commission will maintain on its Web site an up-to-date listing of third party conformity assessment bodies whose accreditations it has accepted and the scope of each accreditation. Subject to the limited provisions for acceptance of “retrospective” testing noted in part IV below, once the Commission adds a third party conformity assessment body to that list, the third party conformity assessment body may commence testing children’s products to support the manufacturer’s certification that the product complies with the applicable toy safety standards identified earlier in part I of this document.

B. Additional Accreditation Requirements for Firewalled Conformity Assessment Bodies

In addition to the baseline accreditation requirements in part II.A of this document above, firewalled conformity assessment bodies seeking

accredited status must submit to the Commission copies, in English, of their training documents, showing how employees are trained to notify the Commission immediately and confidentially of any attempt by the manufacturer, private labeler, or other interested party to hide or exert undue influence over the third party conformity assessment body's test results. This additional requirement applies to any third party conformity assessment body in which a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body owns an interest of 10 percent or more. While the Commission is not addressing common parentage of a third party conformity assessment body and a children's product manufacturer at this time, it will be vigilant to see if this issue needs to be addressed in the future.

As required by section 14(f)(2)(D) of the CPSA, the Commission must formally accept, by order, the accreditation application of a third party conformity assessment body before the third party conformity assessment body can become an accredited firewalled conformity assessment body.

C. Additional Accreditation Requirements for Governmental Conformity Assessment Bodies

In addition to the baseline accreditation requirements of part II.A of this document above, the CPSIA permits accreditation of a third party conformity assessment body owned or controlled, in whole or in part, by a government if:

- To the extent practicable, manufacturers or private labelers located in any nation are permitted to choose conformity assessment bodies that are not owned or controlled by the government of that nation;
- The third party conformity assessment body's testing results are not subject to undue influence by any other person, including another governmental entity;
- The third party conformity assessment body is not accorded more favorable treatment than other third party conformity assessment bodies in the same nation who have been accredited;
- The third party conformity assessment body's testing results are accorded no greater weight by other governmental authorities than those of other accredited third party conformity assessment bodies; and
- The third party conformity assessment body does not exercise undue influence over other

governmental authorities on matters affecting its operations or on decisions by other governmental authorities controlling distribution of products based on outcomes of the third party conformity assessment body's conformity assessments.

The Commission will accept the accreditation of a governmental third party conformity assessment body if it meets the baseline accreditation requirements of part II.A of this document above, and meets the additional conditions stated here. To obtain this assurance, CPSC staff will engage the governmental entities relevant to the accreditation request.

III. How does a third party conformity assessment body apply for acceptance of its accreditation?

The Commission has established an electronic accreditation acceptance and registration system accessed via the Commission's Internet site at: <http://www.cpsc.gov/about/cpsia/labaccred.html>. The applicant provides, in English, basic identifying information concerning its location, the type of accreditation it is seeking, and electronic copies of its accreditation certificate and scope statement from its ILAC-MRA signatory accreditation body, and firewalled third party conformity assessment body training document(s), if relevant.

Commission staff will review the submission for accuracy and completeness. In the case of baseline third party conformity assessment bodies and government-owned or government-operated conformity assessment bodies, when that review and any necessary discussions with the applicant are satisfactorily completed, the third party conformity assessment body in question is added to the CPSC's list of accredited third party conformity assessment bodies at: <http://www.cpsc.gov/about/cpsia/labaccred.html>. In the case of a firewalled conformity assessment body seeking accredited status, when staff's review is complete, staff transmits its recommendation on accreditation to the Commission for consideration. (A third party conformity assessment body that may ultimately seek acceptance as a firewalled third party conformity assessment body also can initially request acceptance as a third party conformity assessment body accredited for testing of children's products other than those of its owners.) If the Commission accepts a staff recommendation to accredit a firewalled conformity assessment body, the firewalled conformity assessment body will be added to the CPSC's list of

accredited third party conformity assessment bodies. In each case, the Commission will notify the third party conformity assessment body electronically of acceptance of its accreditation. All information to support an accreditation acceptance request must be provided in the English language.

Subject to the limited provisions for acceptance of "retrospective" testing noted in part IV of this document below, once the Commission adds a third party conformity assessment body to the list, the third party conformity assessment body may begin testing children's products to support certification of compliance with the applicable toy safety standards identified earlier in part I of this document for which it has been accredited.

IV. Limited Acceptance of Children's Product Certifications Based on Third Party Conformity Assessment Body Testing Prior to the Commission's Acceptance of Accreditation

The Commission will accept a certificate of compliance with the applicable sections of *Standard Consumer Safety Specification for Toy Safety*, F 963-08 and/or section 4.27 (toy chests) from ASTM F 963-07e1 based on testing performed by an accredited third party conformity assessment body (including a government-owned or -controlled conformity assessment body, and a firewalled conformity assessment body) before the Commission's acceptance of its accreditation if:

- At the time of product testing, the product was tested by a third party conformity assessment body that was ISO/IEC 17025 accredited by an accreditation body that is a signatory to the ILAC-MRA. For firewalled conformity assessment bodies, the firewalled conformity assessment body must be one that the Commission accredited, by order, at or before the time the product was tested, even though the order will not have included the test methods specified in this notice. If the third party conformity assessment body has not been accredited by a Commission order as a firewalled conformity assessment body, the Commission will not accept a certificate of compliance based on testing performed by the third party conformity assessment body before it is accredited, by Commission order, as a firewalled conformity assessment body;
- The third party conformity assessment body's application for testing to the toy standard section(s) under which the test(s) was conducted

is accepted by the CPSC on or before October 3, 2011;

- With regard to tests conducted under F 963–08, the product was tested to the applicable section(s) on or after May 13, 2009; with regard to tests conducted under section 4.27 of F 963–07ε1, the product was tested on or after August 14, 2008;

- The accreditation scope in effect for the third party conformity assessment body at the time of testing expressly included testing to the toy standard section(s) under which the test(s) was conducted;

- The test results show compliance with the applicable current toy standards; and

- The third party conformity assessment body's accreditation, including inclusion in its scope of the toy standard section(s) under which the test(s) was conducted, remains in effect through the effective date for mandatory third party testing and manufacturer certification for conformity with ASTM F 963–08 and/or section 4.27 of ASTM F 963–07ε1.

Dated: July 22, 2011.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 229, 230, 232, 239, 240, and 249

[Release No. 33–9245; 34–64975; File No. S7–18–08]

RIN 3235–AK18

Security Ratings

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: In light of the provisions of Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act, we are adopting amendments to replace rule and form requirements under the Securities Act of 1933 and the Securities Exchange Act of 1934 for securities offering or issuer disclosure rules that rely on, or make special accommodations for, security ratings (for example, Forms S–3 and F–3 eligibility criteria) with alternative requirements.

DATES: *Effective Date:* This rule is effective September 2, 2011 except for the following amendments, which are effective December 31, 2012:

- Amendatory instruction 2 amending 17 CFR 200.800;
- Amendatory instruction 4 amending 17 CFR 229.10;
- Amendatory instruction 10 amending 17 CFR 230.467;
- Amendatory instruction 11 amending 17 CFR 230.473;
- Amendatory instruction 13 amending 17 CFR 232.405;
- Amendatory instruction 21 amending 17 CFR 239.38;
- Amendatory instruction 22 amending Form F–8 [referenced in 17 CFR 239.38];
- Amendatory instruction 23 removing Form F–9 [referenced in § 239.39];
- Amendatory instruction 24 amending 17 CFR 239.40;
- Amendatory instruction 25 amending Form F–10 [referenced in 17 CFR 239.40];
- Amendatory instruction 26 amending 17 CFR 239.41;
- Amendatory instruction 27 amending Form F–80 [referenced in 17 CFR 239.41];
- Amendatory instruction 28 amending 17 CFR 239.42;
- Amendatory instruction 29 amending Form F–X [referenced in 17 CFR 239.42];
- Amendatory instruction 33 amending 17 CFR 249.240f; and
- Amendatory instruction 34 amending Form 40–F [referenced in 17 CFR 249.240f].

FOR FURTHER INFORMATION CONTACT:

Blair Petrillo, Special Counsel in the Office of Rulemaking, Division of Corporation Finance, at (202) 551–3430, or with respect to issuers of insurance contracts, Keith E. Carpenter, Senior Special Counsel in the Office of Disclosure and Insurance Product Regulation, Division of Investment Management, at (202) 551–6795, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting amendments to rules and forms under the Securities Act of 1933 (“Securities Act”),¹ and the Securities Exchange Act of 1934 (“Exchange Act”).² Under the Securities Act, we are adopting amendments to Rules 134,³ 138,⁴ 139,⁵ 168,⁶ Form S–3,⁷ Form S–4,⁸

¹ 15 U.S.C. 77a *et seq.*

² 15 U.S.C. 78a *et seq.*

³ 17 CFR 230.134.

⁴ 17 CFR 230.138.

⁵ 17 CFR 230.139.

⁶ 17 CFR 230.168.

⁷ 17 CFR 239.13.

⁸ 17 CFR 239.25.

Form F–3,⁹ and Form F–4.¹⁰ We are rescinding Form F–9¹¹ and adopting amendments to the Securities Act and Exchange Act forms and rules that refer to Form F–9 to eliminate those references.¹² We are also amending Schedule 14A¹³ under the Exchange Act.

I. Introduction

We are adopting amendments today to remove references to credit ratings in rules and forms promulgated under the Securities Act and the Exchange Act. On February 9, 2011, we proposed amendments in light of Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”)¹⁴ to remove references to credit ratings in rules and forms under the Securities Act and the Exchange Act.¹⁵ We proposed similar changes in 2008, prior to the enactment of the Dodd-Frank Act, but did not act on those proposals.¹⁶

We have considered the role of credit ratings in our rules under the Securities Act on several previous occasions and even proposed removal of some references to credit ratings prior to the enactment of the Dodd-Frank Act.¹⁷

⁹ 17 CFR 239.33.

¹⁰ 17 CFR 239.34.

¹¹ 17 CFR 239.39.

¹² We are removing references to Form F–9 in Securities Act Forms F–8 [17 CFR 239.38], F–10 [17 CFR 239.40], F–80 [17 CFR 239.41], and Form F–X [17 CFR 239.42]; in Exchange Act Form 40–F [17 CFR 249.240f], and in the following rules: 17 CFR 200.800, 17 CFR 229.10, 17 CFR 230.134, 17 CFR 230.467, 17 CFR 230.473, and 17 CFR 232.405.

¹³ 17 CFR 240.14a–101.

¹⁴ Pub. L. No. 111–203, 124 Stat. 1376 (2010). Section 939A of the Dodd-Frank Act requires that we “review any regulation issued by [us] that requires the use of an assessment of the credit-worthiness of a security or money market instrument and any references to or requirements in such regulations regarding credit ratings.” Once we have completed that review, the statute provides that we modify any regulations identified in our review to “remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness” as we determine to be appropriate.

¹⁵ See *Security Ratings*, Release No. 33–9186 (Feb. 9, 2011) [76 FR 8946] (“2011 Proposing Release”).

¹⁶ See *Security Ratings*, Release No. 33–8940 (July 1, 2008) [73 FR 40106] (“2008 Proposing Release”). In 2009, we re-opened the comment period for the release for an additional 60 days. See *References to Ratings of Nationally Recognized Statistical Rating Organizations*, Release No. 33–9069 (Oct. 5, 2009) [74 FR 52374]. Public comments on both of these releases were published under File No. S7–18–08 and are available at <http://www.sec.gov/comments/s7-18-08/s71808.shtml>. Comments also are available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m.

¹⁷ See the 2008 Proposing Release for a discussion of the history and background of references to credit ratings in rules and regulations under the Securities Act. See also *Credit Ratings Disclosure*, Release No.

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