



**U.S. CONSUMER PRODUCT SAFETY COMMISSION  
4330 EAST WEST HIGHWAY  
BETHESDA, MD 20814**

**STATEMENT OF COMMISSIONER ROBERT S. ADLER  
REGARDING ACCREDITATION REQUIREMENTS  
UNDER ASTM F-963 AND A RELATED  
STAY OF ENFORCEMENT UNTIL DECEMBER 31, 2011**

July 27, 2011

The Consumer Product Safety Improvement Act (CPSIA) of 2008 was the most ambitious and wide ranging consumer product safety law passed by Congress in a generation.<sup>1</sup> Recently, under the CPSIA, we cast one of the most significant votes in which I have been involved as a Commissioner. We voted to require independent third-party testing under a safety standard for toys, known as ASTM F-963 (F-963). Although this standard has been in effect since February 2009, requiring manufacturers actually to demonstrate their compliance with F-963 through testing at an independent laboratory provides a much-needed measure of assurance to the public that the toys they buy are safe.

**The “Toy Law’s” Toy Standard**

At times the CPSIA has been referred to as the “toy law” because it mandates that ASTM F-963 become a federal consumer product safety standard. Until CPSIA came along, F-963 was a voluntary standard governing how manufacturers produced toys. As most observers remember, CPSIA was mainly a result of two occurrences – a young child dying after swallowing loose magnets<sup>2</sup> and a series of recalls involving Chinese-produced toys containing high levels of lead.<sup>3</sup> Although the industry’s voluntary toy standard, F-963, covered both of these types of products, Congress concluded that greater compliance was needed and directed that the CPSC make it mandatory and enforce it as federal law. As enacted, F-963 is a comprehensive safety standard that covers hazards associated with toys, such as toxic chemicals, hazardous small parts and sharp edges, magnets that destroy digestive systems when swallowed, and a multitude of other toy dangers. It is one of the most far-reaching and detailed standards that the Commission enforces.

---

<sup>1</sup> The CPSIA passed by a vote of 424-1 in the House of Representatives and a vote of 89-3 in the U.S. Senate.

<sup>2</sup> Loose magnets inside a child’s digestive tract can easily block and puncture a child’s intestines – in some cases leading to death. See, Patricia Callahan, “Toy Magnets Kill Young Boy,” Chicago Tribune, May 5, 2007, and “Inside the Botched Recall of a Dangerous Toy,” Chicago Tribune, May 7, 2007.

<sup>3</sup> The number of recalls eventually totaled over 100, involving roughly 20 million toys.

As of February 2009, pursuant to the CPSIA's provisions, all manufacturers making toys for sale in the United States have had to comply with F-963.<sup>4</sup> And, on July 20, 2011, we approved a Notice of Requirements (NOR)<sup>5</sup> that guarantees manufacturers will have to prove compliance with F-963. More than two years after the rule became mandatory, the time has come for companies to be required to submit their products to independent third-party laboratories for testing and certification before these products are introduced into commerce, as required by the CPSIA. What makes this vote so significant is that manufacturers will no longer be able to wink and nod about complying with F-963; they must now demonstrate to the world that they are in compliance. With this critical step taken, there will be no excuse for manufacturers at this late date not to meet the law's clear protections for children.

### **Why I Supported a Stay of Enforcement**

When it comes to independent third-party testing, this Commission has been judicious in its implementation of CPSIA's requirements. I believe Congress implemented this requirement because it surveyed the situation in 2007 and saw that not only were some companies failing to take basic safety precautions before selling their products, but based on the agency's small size and limited staff resources, pre-approval of products by the CPSC itself would be too much to ask of the agency. Thus, Congress' solution was to place the responsibility on manufacturers to be sure of independent confirmation that their products met required safety standards before being sold.

In other words, Congress said the manufacturer's word, by itself without verification, is no longer going to be good enough. Without question, this requirement adds some expense and inconvenience for producers of children's products. In almost all cases, it seems well worth it – with one minor caveat. That is, the cost of abruptly requiring testing to show compliance with F-963 on small and micro producers of toys seems to have been unexpectedly high.

Here, the reality of the marketplace absent our intervention would have led to the following circumstance: our enforcement of testing for F-963 would be required in October of this year. This timing would disproportionately affect the smallest of our

---

<sup>4</sup> Whether all manufacturers have actually complied is another matter. Given the complexities of this standard, I fear that many have ignored the law. The true test will arrive when they have to submit their products to independent third party labs for testing to F-963's requirements. That is why our vote to require third party testing is so important.

<sup>5</sup> A Notice of Requirements is a notice published by the CPSC informing the public of the requirements for the accreditation of independent test labs (known as third party conformity assessment bodies) to assess compliance with specific CPSC safety rules, such as F-963. Once a lab is accredited to a standard, it can do third party tests for manufacturers. See § 14(a)(3)(A) of the CPSA. Should the standard change, the test lab must seek accreditation to test according to the new requirements. In most cases, given a lab's prior accreditation, re-accrediting to meet the amended provisions of a safety standard should be relatively simple.

nation's toy makers during their busiest manufacturing season.<sup>6</sup> It is true that all toy makers will be subject to the testing requirements ninety days after the NOR is published, but the requirement to test is only for newly manufactured products – which would leave large manufacturers relatively unaffected until next year. As I understand it, large manufacturers complete their holiday toy production by the summertime. Not so for the small manufacturers. Hence, not only would our enforcement of F-963's testing requirements this October be burdensome on small and micro toy makers – it would be almost exclusively burdensome on them. This seems unfair. Accordingly, with a strong reminder that all toys and other covered children's products must comply with the underlying standard of F-963, I have joined a unanimous Commission in voting to stay the enforcement of testing and certification for F-963 until December 31, 2011 out of a sense of fairness. This date matches up with the expiration of the rest of our stays, so that, beginning on December 31, 2011, all of our stays will lift, and the Commission will enforce the testing and certification of all children's products prior to their sale.

### **Whether the Commission Should Have Delayed Issuing the Notice of Requirements to Await a Revision in ASTM F-963.**

One of my colleagues, Commissioner Nancy Nord, has issued a statement strongly arguing that the Commission should have even further delayed issuing the Notice of Requirements for F-963 to await what she calls a pending “comprehensive” revision of the standard. Our failure to do so, she argues, places toy manufacturers in the “untenable” position of having to do redundant or perhaps irrelevant testing due to the possibility of having to comply with both F-963 and ASTM's revision of it simultaneously. Although her argument carries a surface plausibility, on careful analysis, I find it to be without merit.

As a starting point, my colleague ignores a critical safety issue. Although I have no way of knowing the exact extent of compliance with F-963, I have little doubt that a number of manufacturers have ignored this important safety standard because they have gambled that the Commission lacks the resources to catch them. After the effective date of this NOR, however, manufacturers will no longer be able to sidestep the standard because they will need to show that they have independent experts passing judgment on their compliance with it. Delaying the vote therefore would have meant that the Commission was twiddling its thumbs instead of taking decisive and timely action to protect children.

Moreover, her argument slights the fact that every time ASTM updates any voluntary standard that the Commission later adopts, manufacturers will face the need to modify their testing of toys as the CPSC revises its testing requirements for third party labs. The modification to which my colleague objects is routine and places no more of a burden on manufacturers than any other F-963 upgrade. She notes this in passing, but argues that,

---

<sup>6</sup> See July 3, 2011 letter from Handmade Toy Alliance, on file with the Office of the Secretary, CPSC.

had the Commission waited, we could have required manufacturers to meet only the requirements of the updated standard.

There are several problems with this argument. First, she omits mentioning that there is no new revision in place, and the industry has previously promised that a revision was “imminent” and then did not actually approve it for months after their announced deadlines. Second, according to staff, the most immediate changes to F-963 likely to be enacted in the near future are narrow and limited in scope, not in any way “comprehensive” or likely to require redundant or irrelevant testing. In other words, delaying for such small changes would mean the tiny tail wagged the big dog. Third, I know of no one at the Commission who advocates forcing manufacturers to test to a new, different standard before a revised NOR is made effective, so manufacturers will always have the chance to adjust to new standards in a timely and orderly way – no redundant or irrelevant testing necessary. Fourth, the only way that a manufacturer would face redundant or irrelevant testing would be if they jumped the gun and tested early to a revised ASTM standard – before the Commission required such testing. The Commission has regularly permitted a “look-back” period when we have issued NORs allowing manufacturers who (commendably) wish to begin testing prior to the Commission’s requirement to do so as long as they test at laboratories that later become accredited to the new standard. The Commission staff has made it clear they will make a similar recommendation for F-963, if appropriate. Personally, I see no reason that we would stop this practice. In other words, no harm, no foul.

## **Conclusion**

The journey to require third party testing and certification to F-963 has been a long one. When Congress passed the CPSIA in 2008, it decided not only to make F-963 mandatory but also to require companies to prove – through testing – that the products they make and sell meet all applicable toy safety requirements. F-963 has been a mandatory toy safety standard since February 2009 and all children’s products that are subject to F-963 have been required, by law, to be in compliance for more than two years now. It is time for the Commission to take the next step and fulfill our statutory mandate to require companies, both large and small, to test their children’s toys at independent third-party labs and demonstrate their compliance with F-963.