

TO: The Commission
Alberta E. Mills, Secretary

DATE: December 20, 2023

THROUGH: Austin C. Schlick, General Counsel
Jason K. Levine, Executive Director

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

SUBJECT: Draft Direct Final Rule: Revision to the ASTM F-963 Voluntary Standard
for Toys

BALLOT VOTE DUE: January 5, 2024

The Office of the General Counsel is forwarding for the Commission's consideration a draft direct final rule updating the incorporation by reference in the mandatory toy standard in 16 C.F.R. part 1250, with corresponding updates to the notice of requirements in 16 C.F.R. part 1112.

In the "Safety Standard Mandating ASTM F963 for Toys," 16 C.F.R. part 1250, the Commission has incorporated by reference the ASTM F963-17 voluntary standard, with one exception. Pursuant to section 106(g) of the Consumer Product Safety Improvement Act, if ASTM revises ASTM F963, it must notify the Commission. 15 U.S.C. § 2056b(g). On October 23, 2023, ASTM notified the Commission of the revisions in ASTM F963-23. The revised voluntary standard will take effect as CPSC's mandatory standard effective 180 days after ASTM notified the Commission, unless within 90 days after receiving that notice, the Commission responds to ASTM that it has determined that the proposed revision does not improve the safety of the consumer products covered by the standard. 15 U.S.C. § 2056b(g). The Commission accordingly must decide **by January 21, 2024**, whether to allow the provisions of ASTM F963-23 to go into effect as the mandatory toy standard. If the Commission allows ASTM F963-23 to become the new mandatory standard, it would be effective on April 20, 2024.

As reflected in the accompanying draft direct final rule, staff recommends that the Commission allow revised ASTM F963-23 to become the CPSC mandatory toy standard. Specifically, staff recommends that the Commission publish a direct final rule that incorporates by reference ASTM F963-23 into 16 C.F.R. part 1250 and removes an exception to the incorporation of ASTM F963-17 that appears in current 16 C.F.R. § 1250.2(c), that is now obsolete. The direct final rule would also amend the notice of requirements in 16 C.F.R. part 1112 to reflect the revisions in ASTM F963-23. A draft *Federal Register* notice for that purpose is attached. If the Commission approves the direct final rule, OGC will send the direct final rule to the *Federal Register* for publication.

Please indicate your vote on the following options:

- I. Determine that the revisions to ASTM F963-23 improve the safety of toys covered by the standard and approve publication of the attached direct final rule in the *Federal Register*, as drafted.

(Signature)

(Date)

- II. Determine that the revisions to ASTM F963-23 improve the safety of toys covered by the standard and approve publication of the attached direct final rule in the *Federal Register*, with specified changes.

(Signature)

(Date)

- III. Determine that the proposed revisions to ASTM F963-23 do not improve the safety of toys covered by the standard and therefore do not approve publication of the attached notice in the *Federal Register*.

(Signature)

(Date)

- IV. Take other action specified below.

(Signature)

(Date)

Attachment: Draft Direct Final Rule: Safety Standard Mandating ASTM F963 for Toys

[Billing Code 6355-01-P]

CONSUMER PRODUCT SAFETY COMMISSION**16 CFR Parts 1112 and 1250****[Docket No. CPSC-2017-0010]****Safety Standard Mandating ASTM F963 For Toys****AGENCY:** Consumer Product Safety Commission.**ACTION:** Direct final rule.

SUMMARY: Section 106 of the Consumer Product Safety Improvement Act (CPSIA) made ASTM F963-07ε1, *Standard Consumer Safety Specification for Toy Safety*, a mandatory consumer product safety standard. Section 106 also provides procedures for revisions to the ASTM F963 standard. In accordance with those procedures, the Consumer Product Safety Commission (CPSC or Commission) has allowed the revised standard, ASTM F963–23, to become the mandatory toy standard. This direct final rule incorporates by reference ASTM F963–23 and updates the existing notice of requirements (NOR) that provide the criteria and processes for Commission acceptance of accreditation of third-party conformity assessment bodies for testing to ASTM F963.

DATES: The rule is effective on April 20, 2024, 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 significant adverse 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 April 20, 2024.

ADDRESSES: You can submit comments, identified by Docket No. CPSC-2017-0010, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: www.regulations.gov. Follow the instructions for submitting comments. Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. CPSC typically does not accept comments submitted by e-mail except as described below.

Mail/Hand Delivery/Courier/Confidential Written Submissions: CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal. You may, however, submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504-7479.

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: www.regulations.gov. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may e-mail them to: cpsc-os@cpsc.gov.

Docket: For access to the docket to read background documents or comments received, go to: www.regulations.gov, and insert the docket number, CPSC-2017-0010, into the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Will Cusey, Small Business Ombudsman, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7945 or (888) 531-9070; email: sbo@cpsc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 106(a) of CPSIA mandated that beginning on February 10, 2009, ASTM F963-07¹, *Standard Consumer Safety Specifications for Toy Safety*,¹ shall be considered a mandatory consumer product safety standard issued by CPSC. 15 U.S.C. 2056b(a). Since then, there have been five revisions to the ASTM F963 standard: ASTM F963-08, ASTM F963-11, ASTM F963-16, ASTM F963-17, and ASTM F963-23. Currently, the provisions of ASTM F963-17 are considered a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (CPSA), with an exception stated in 16 CFR 1250.2(c) that ASTM F963-17's provision for testing sound-producing toys is not incorporated. 16 CFR 1250.2; 82 FR 57119 (Dec. 4, 2017).

Under section 106(g) of the CPSIA, ASTM must notify the Commission when it revises ASTM F963. 15 U.S.C. 2056b(g). The revised standard shall be considered a consumer product safety standard issued by CPSC under section 9 of the CPSA (15 U.S.C. 2058), effective 180 days after the date on which ASTM notifies the Commission of the revision, unless, within 90 days after receiving that notice, the Commission notifies ASTM that it has determined that the proposed revision does not improve the safety of toys covered by the standard.

On October 23, 2023, ASTM notified CPSC of ASTM's approval and publication of revisions to ASTM F963-17 in a revised standard, ASTM F963-23, *Standard Consumer Safety*

¹ Except for section 4.2 and Annex 4 of the voluntary standard or any provision that restates or incorporates an existing mandatory standard or ban promulgated by the Commission or by statute.

Specification for Toy Safety. The Commission published in the *Federal Register* a notice of availability regarding the revised voluntary standard and sought comments on the effect of the revisions on the safety of the standard for toys. 88 FR 75280 (Nov. 2, 2023). Two comments were submitted. The Consumer Federation of America and Kids in Danger submitted a joint comment stating that the revision to ASTM F963 should be accepted as the mandatory standard and urging continued efforts to address emerging hazards, including expanding materials in toys, to make the standard more protective of safety.

The Swiss company Société Générale de Surveillance (SGS) submitted a comment stating that the requirements for expanding materials in section 4.40 of ASTM F963-23 could be more stringent. While SGS's comment does not address whether the current revision in ASTM F963-23 improves safety compared to the requirements of F963-17, Commission staff continues to work with ASTM to improve the safety requirements for expanding materials in ASTM F963 for any future update to the standard. Specifically, CPSC's Fiscal Year 2024 Operating Plan² directs staff to develop a notice of proposed rulemaking under section 106 of the CPSIA to further improve the standard for water beads, which are "expanding materials" under the voluntary standard.

As discussed below, the Commission will allow the revised voluntary standard to become the mandatory standard because it improves the safety of toys.³ Accordingly, by operation of law under section 106(g) of the CPSIA as of April 20, 2024, ASTM F963-23 will become the mandatory consumer product safety standard for toys. 15 U.S.C. 2056b(g). This direct final rule

² Available at: https://www.cpsc.gov/s3fs-public/FY2024OperatingPlan.pdf?VersionId=N46Kg9oFJtn_SlYs4cdzuQYza29oFynS

³ The Commission voted ~~X-X~~ to approve publication of this notice.

updates 16 CFR part 1250 to incorporate by reference the revised voluntary standard, ASTM F963-23. The rule also updates the existing NOR for ASTM F963 in 16 CFR part 1112.

II. Revisions in ASTM F963-23

The ASTM F963 toy standard includes performance requirements and test methods, as well as requirements for warning labels and instructional literature, to reduce or prevent death or injuries to children from mechanical, chemical, and other hazards subject to the standard.

The 2023 revisions to the voluntary standard include new performance requirements, clarifications, and corrections that will increase toy safety and reduce test burden. Additionally, the standard includes changes that do not affect safety, but instead enhance the clarity and utility of the standard or reduce the burden of performance testing. Numerous editorial changes were also made throughout the standard, including formatting and numbering changes that do not impact safety. The Commission finds the revisions to ASTM F963-23 to be an improvement to the safety of toys, or to not impact safety. Below is a brief description of the revisions and the Commission's assessment of their impact on safety.

A. Revisions that Impact Safety

1. Battery Accessibility

Section 4.25 of ASTM F963 addresses the safety of battery-operated toys. The requirements are intended to address hazards related to battery overheating, leakage, explosion, and fire, and choking or swallowing batteries. ASTM F963-17 specifically addresses the hazard of choking or swallowing batteries in sections 4.25.4 and 4.25.5. Section 4.25.4 addresses the accessibility of batteries in toys for children less than three years old; section 4.25.5 addresses the accessibility of small part batteries (batteries that fit within the small parts cylinder described in 16 CFR 1501.4, including button cell or coin batteries and AAA batteries). Both sections of

ASTM F963-17 require that batteries remain inaccessible without the use of a “coin, screwdriver, or other household tool” before and after the use and abuse testing specified in sections 8.5-8.10.

ASTM F963-23 also incorporates changes to definitions, safety requirements, and labeling requirements that strengthen the battery accessibility requirements:

- Section 3.1.17 of the 2023 standard changes the defined term “tool” (previously in section 3.1.90) to “common household tool,” and clarifies that common household tools include straight-blade or Phillips-type screwdrivers, pliers, coins, or other objects “commonly found in most households.”
- Section 8.6 of the standard continues to specify that “[u]nless otherwise specified, none of the abuse testing . . . applies to toys intended for children over 96 months of age.” New Note 22 to section 4.25.4.2, however, clarifies the test parameters used to conduct use and abuse testing (in accordance with sections 8.5 – 8.10) on toys containing small part batteries for children over 96 months (eight years) of age. These toys are now subject to use and abuse requirements using the test parameters for children above age 36 months up to age 96 months; because previous versions of ASTM F963 did not specify test parameters for toys containing small part batteries for children over 96 months, these toys were not required to be abuse tested per the standard. Note 22 thus extends use and abuse test requirements so that they apply to all toys with small part batteries in scope of the standard, which improves the security of battery compartments.
- Section 4.25.4.3 adds a new requirement that fasteners used to secure battery compartments shall remain attached to the toy or battery compartment cover before and after use and abuse testing.

- Section 4.25.4.4 allows specialty fasteners, such as screws that use a Torx or hex drive, as an alternative to common household tools if the appropriate tool is included with the toy and instructional material conforming to section 6.9 is included (see below).
- Section 6.9 adds a new requirement that instructional literature for toys that require a manufacturer-supplied specialty or custom tool to access the battery shall direct parents to retain the tool for future use, store the tool where the child cannot access it, and state that the tool is not a toy.

The changes related to battery accessibility generally result in more secure battery compartments or streamline existing requirements in the standard without impacting safety. In particular, the addition of Note 22 means that toys with small part batteries for children over 96 months of age are now required to undergo the use and abuse testing in sections 8.5 – 8.10. Further, the addition of section 4.25.4.3 means that fasteners such as screws used to secure batteries are less likely to be removed or lost, meaning that fasteners are more likely to be used effectively and will likely result in fewer incidents of unintended battery access, thus improving safety.

The changes allowing for the use of “specialty fastener[s]” in section 4.25.4.4 of the ASTM F963-23 standard are consistent with their use for other toys (see section 4.17 of the standard), and their use provides children less opportunity to gain access to the battery compartment using a substitute common household tool. Special tools do introduce potential additional risks. The consumer must store and keep track of an additional tool; if the tool is lost or not passed along or sold with the toy for secondhand use, caregivers can no longer access the compartment as intended, which may lead to battery leakage (if never removed) or damaged or ineffective battery compartments (if the consumer attempts to access the compartment using the

inappropriate tool). The new section 6.9 mitigates these possible hazards introduced by section 4.25.4.4 by requiring that instructional literature for toys that require a manufacturer-supplied specialty or custom tool to access the battery shall direct parents to retain the tool for future use and store the tool where the child cannot access it and shall state the tool is not a toy.

Additionally, a battery compartment that is inaccessible due to a lost tool is a safer alternative than a battery compartment that is easily opened. Therefore, the changes allowing for specialty fasteners are, overall, an improvement to safety.

2. Expanding Materials

ASTM F963-16 added new definitions, performance requirements, a test methodology, and a test fixture to address gastrointestinal (GI) blockage from expanding materials. Expanding materials are defined in ASTM F963 as “any material used in a toy which expands greater than 50% in any dimension from its as-received state.” New Annex A14.6 explains the basis for the new requirements for expanding materials. Since the time of the ASTM F963-16 revision, items have been identified in the marketplace that are not small parts as received by the consumer, and therefore fall outside the scope of the original requirement but present the same GI blockage hazard. The revisions in ASTM F963-23 are intended to increase the scope of the standard to cover these products.

Below is a summary of changes made in ASTM F963-23 that may apply to expanding materials.

- Section 3.1.28 removes the time intervals for conditioning and instead refers to the test method section, where the same time intervals are already stated.
- Section 3.1.73 adds a definition of a “removable component,” as “a component of a toy which is intended or likely to be removed by the child during normal use.”

- Section 4.40 adds “removable” to components as defined. It also removes conditions identifying the expanding materials, and instead directly references the definition and relevant test method in section 8.30.8. Section 4.40.1 increases the scope to include the following:
 - Section 4.40.1.1 – components of toys which are small parts but encased in an outer shell that is not a small part and intended to be dissolved, opened, or broken to access the expanding component; and
 - Section 4.40.1.2 – components sold in an expanded state, which are not small parts, but could contract to yield a re-expandable small part.

The expanded scope of the ASTM F963-23 standard represents an improvement in toy safety that should help reduce the hazard of potentially fatal intestinal blockages caused by ingestion of toys and toy components made of superabsorbent materials. The changes to the provisions for expanding materials are an improvement in safety, as noted above. However, as noted, the Commission also has directed staff to develop a notice of proposed rulemaking under section 106 of the CPSIA to further improve the safety standard for water beads.

3. Sound-Producing Toys

In 2017, the Commission incorporated ASTM F963-17 into the mandatory toy standard at 16 CFR part 1250 with one exception related to sound-producing toys, codified at 16 CFR 1250.2(c). The requirements for sound-producing toys in section 4.5 of ASTM F963 are intended to reduce the risk of hearing loss caused by exposure to sound produced by toys. When it adopted the exception, the Commission rejected one clause in the sound-producing toys test method in section 8.20.1.5 (5) of ASTM F963–17 that functionally exempted push or pull toys

from an 85 dB A-weighted maximum sound pressure level (L_{AFmax}) requirement.⁴ The Commission concluded that this clause, which had been added without ballot during the 2017 ASTM process, decreased safety because it exempted push or pull toys from a previously applicable sound limit. 82 FR 57119 (Dec. 4, 2017). With the Commission's rejection of the relevant clause, as stated in 16 CFR 1250.2(c), the mandatory toy standard based on ASTM F973-17 retained the same level of safety for push or pull toys as was provided by ASTM F963-16.

As explained below, ASTM F963-23 provides a new sound limit for push or pull toys that eliminates the deficiency in ASTM F963-17 and provides the same level of safety as the sound limit in ASTM F963-16. Therefore, because the incorporation of ASTM F963-23 maintains the same level of safety as ASTM F963-16, the exception to ASTM F963-17 that is made by 1250.2(c) is no longer needed, and the Commission is removing that exception by deleting 1250.2(c).

Specifically, section 4.5.1.6(1) of ASTM F963-23 adds a 94 dB A-weighted sound limit (L_{AFmax}) for push or pull toys in user-propelled modes (the child is moving the toy), where the sound is caused as a result of translational motion imparted on the toy by the user (for example, a mechanism attached to the wheel of a push toy that clicks when the wheel rotates).⁵ Push or pull toys are defined in ASTM F963-23 as, "a toy with a cord, tether, or handle attached to the toy and where the toy is intended for use on the floor or ground with the child in a standing/upright position, typically walking, while using pushing or pulling the toy." CPSC Age Determination Guidelines state that push toys with high upright handles or rigid rods with large, attached

⁴ A-weighting or C-weighting is typically applied to sounds to represent more accurately the frequency response of the human ear by reducing the contribution of lower and higher frequencies in calculation of overall sound level.

⁵ Push or pull toys in stationary or self-propelled modes are still subject to the 85 dB A-weighted sound limit, as in previous versions of the standard.

handles are appropriate for children starting at 12 months old, and pull toys with cords are appropriate for children starting at 19 months old because they do not provide support, so they require more advanced walking and body skills to operate.⁶

Sound level generally decreases with increasing distance from the sound source; a quieter toy used closer to a child's ear can produce the same sound exposure as a louder toy used farther from the child's ear. The previously applicable 85 dB(A) sound-limit for push or pull toys in ASTM F963-16 was based on a 25 cm sound exposure distance (assumed distance from the sound source to the child's ear) for tabletop, floor and crib toys.⁷ The 94 dB(A) sound limit for push or pull toys in ASTM F963-23 is based on a sound exposure distance of 63.5 cm that more accurately reflects the distance between the sound-producing element of a push or pull toy and a standing child's ear. Based on anthropometric data, staff estimate that the fifth percentile ear height for a 19-24 month old child is 66.7 cm.⁸ For a push toy with a sound source located 5 cm from the floor and 15 cm horizontally from the ear, which is an estimate for a sound source located on a rear wheel of a push toy, the estimated distance from the sound source to a fifth percentile 19-24 month old standing child's ear is 63.5 cm.

Using the standard equations for the distance-related decrease of sound level in a free field sound environment,⁹ with the 63.5 cm sound exposure distance, the 50 cm measurement distance (distance from the sound source or surface of the toy to the microphone during testing),

⁶ Age Determination Guidelines 2020, p. 47. Available at <https://www.cpsc.gov/content/2020-Age-Determination-Guidelines>.

⁷ See Annex A9.2 in ASTM F963-23 for more information.

⁸ Based on ear to top-of-head distance and stature data from Schneider, L. W., Lehman, R. J., Pflug, M. A., & Owings, C. L. (1986). (rep.). *Size and Shape of the Head and Neck from Birth to Four Years* (p. 111). Ann Arbor, MI: University of Michigan.

⁹ See Annex A14.4.2 in ASTM F963-23 for more information.

and an allowable sound exposure at the ear of 92.3 dB(A),¹⁰ the allowable sound level at the measurement distance is 94.4 dB(A), which rounds to 94 dB(A), the sound limit in ASTM F963-23.

Table 1 shows the A-weighted sound limit, measurement distance, sound exposure distance, and sound level at the ear by toy category in ASTM F963. This table shows that the new sound limit for push or pull toys produces a similar sound level at the ear to the other toy limits in the toy standard and is below the generally applicable limit of 92.3 dB at the ear.

Table 1. A-Weighted Sound Limit, Measurement Distance, Sound Exposure Distance, and Sound Level at the Ear by Toy Category

Toy category	A-weighted sound limit	Measurement distance	Sound exposure distance	Sound level at the ear
Close-to-the ear toys	65 dB (LAeq)	50 cm	2.5 cm	91.02 dBA
Hand-held toys	85 dB (LAeq)	50 cm	25 cm	91.02 dBA
Tabletop, Floor, or Crib Toys in stationary or self-propelled modes	85 dB (LAeq)	50 cm	25 cm	91.02 dBA
Tabletop, Floor, or Crib Toys in user-propelled modes	85 dB (LAFmax)	50 cm	25 cm	91.02 dBA
Push or Pull Toys in stationary or self-propelled modes	85 dB (LAeq)	50 cm	25 cm	91.02 dBA
Push or Pull Toys in user-propelled modes	94 dBA (LAFmax)	50 cm	63.5 cm	91.92 dBA

¹⁰ This is the allowable sound exposure based on the National Institute for Occupational Safety and Health 85 dB(A) recommended exposure limit and 3 dB exchange rate for an assumed 1.5 hours of play, as described in Annex A9.2 in ASTM F963-23. Note that 92.3 dB(A) is higher than the 90 dB(A) used to calculate the 85 dB(A) sound limit but is one of the listed recommended values (Annex A9.2.1.4). More information on the recommended exposure limit and noise dose calculations can be found in Centers for Disease Control and Prevention (1998). *Occupational noise exposure; criteria for a recommended standard*. Available at [Occupational noise exposure; criteria for a recommended standard \(cdc.gov\)](https://www.cdc.gov/noise/).

Although the revised 94 dB(A) sound limit for push or pull toys is higher than the 85 dB(A) sound limit in ASTM F963-16, the change does not negatively impact safety because the sound exposure distance on which the revised limit is now based more accurately reflects the expected distance between the push or pull toy sound source and the child's ear when the child is using the toy, and because the 94 dB(A) sound limit is within the margin of safety based on the assumptions used in the sound-producing toys section of the standard. This revision in ASTM F963-23 thus resolves the issue that required the Commission to provide the exception in 16 CFR 1250.2(c). Therefore, the direct final rule removes the codified text in 16 CFR 1250.2(c) because it is no longer necessary.

B. Revisions Not Impacting Safety

ASTM F963-23 contains numerous non-substantive changes, including editorial changes such as correcting typographical errors, reformatting, renumbering, and restructuring provisions, that do not impact the safety of toys. Below is a discussion of those revisions.

1. Sound-Producing Toys

In addition to the substantive change discussed above, the revisions for sound producing toys reflected in ASTM F963-23 also include changes to sound-producing toy definitions, performance requirements, and test methods to improve clarity. Most of the changes clarify categories of toys, applicable requirements, and the relationship between the definitions in section 3, the requirements in section 4, and the test methods in section 8.

- Clarifying changes were made to improve the precision of definitions related to sound-producing toys and provide additional examples—for example in sections 3.1.14, 3.1.37, 3.1.69, and 3.1.89. Clarifying changes were also made to sections 4.5, 4.5.1, 4.5.1.1, and 4.5.1.7.

- New language based on existing section 4.5 was added to sections 4.5.1.2 (Hand-held toys), 4.5.1.3 (Rattles), 4.5.1.4 (Stationary or Self-propelled Tabletop, Floor, or Crib Toys), 4.5.1.5 (User-propelled Tabletop, Floor, or Crib Toys), and 4.5.1.6 (Push or Pull Toys).
- A new Note 13 relating to modes of tabletop, floor, or crib toys was added to section 4 of the standard.
- Both clarifying and editorial changes were made to the test methods in section 8.20, 8.20.1, 8.20.1.1, 8.20.1.2, 8.20.1.3, 8.20.1.4, 8.20.1.5, 8.20.1.6, 8.20.2.1, 8.20.2.4, 8.20.2.5, and 8.20.2.6 of the standard. Sections 8.20.2.2 (Hand-held Toys) and 8.20.2.3 (Rattles) were moved, in addition to such clarifying and editorial changes.
- Note 52, concerning use and abuse testing, was added to the test methods section.
- ASTM F963-23 also contains a new Annex A14.4 that explains the technical basis for the revision to the A-weighted sound limit for push or pull toys, and rationale for the other changes to the sound-producing toys section.

The changes to the sound-producing toy definitions, performance requirements, and test methods improve clarity but do not affect the scope of toys covered by the standard, the performance requirements for these toys, or the test methods applicable to these toys. In addition, these clarifying changes will likely increase consistency in testing of sound-producing toys between test laboratories, which could improve safety.

2. Drop Test Floor Specification

Section 8.7 of ASTM F963-23, which is unchanged from the 2017 version of the standard, describes a drop test in which a toy is dropped a certain number of times in random orientations from heights based on the ages and expected heights of certain children, onto a

specified impact surface. After testing, the toy is examined for mechanical hazards such as hazardous sharp points and sharp edges, and for ingestion hazards such as small, liberated components, chips, or fragments. In ASTM F963-17 and previous versions of the standard, the impact surface was specified in a referenced federal standard SS-T-312B, *Tile, Floor: Asphalt, Rubber, Vinyl, Vinyl-Asbestos*. The SS-T-312B standard, however, has been withdrawn and replaced with ASTM F1066, *Specification for Vinyl Composition Floor Tile*. The impact medium now specified in ASTM F1066 is the same one formerly specified in SS-T-312B. Accordingly, while ASTM F963-23, section 2 Referenced Documents has been revised to replace the standard SS-T-312B with ASTM F1066, there is no change to the test method or subsequent results. Therefore, this change does not impact safety.

3. Toxicology

Section 4.3 addresses the safety of substances and materials used in toys. Below is a brief description of the non-substantive changes to the following provisions.

a. Section 4.3.5.2 – Toy Substrate Materials

Section 4.3.5.2 of ASTM F963-23 addresses requirements and test methods for specified chemical substances in the substrate materials of toys, where substrate refers to the materials used in toys other than the paints and surface coatings. Changes were made to improve the text's clarity and flow and to update references to CPSC regulations. Among the clarifications is a new section, 4.3.5.2(1)(e), which indicates that paper and paperboard are not included in the scope of the requirements of section 4.3.5.2. The information in this new section was previously included in Note 5 in the F963-17 standard. Thus, the change is a non-substantive rearrangement of the existing text and is not a change in any requirements.

b. Section 4.3.8 – Phthalates

Section 4.3.8 of ASTM F963-23 was retitled “Phthalates” from the previous “DEHP(DOP)” and updates the provision to be consistent with the requirements for specified phthalates contained in 16 CFR part 1307. The revised section also references the current CPSC test method and Commission determinations related to requirements for third-party testing. The changes reflect current regulation and practice. While the revisions are intended to avoid stakeholder confusion by providing an up-to-date description of CPSC’s mandatory phthalates requirements, revised section 4.3.8 and the accompanying notes are restatements of existing CPSC rules. Under section 106(a) of the CPSIA, restatements of other CPSC regulations are not considered to be part of the mandatory toy standard and thus are not part of the section 106 standard-revision process.

c. Section 4.3.6.1 – Most Recent version of USP 35

Section 4.3.6.1 provides information on the bacteriological standards for water used in the manufacturing and filling of toys. This section references USP 35, which is the current version of the standard established by United States Pharmacopeial Convention (USP) General Chapter 1231 (identified in the standard as USP <1231>). ASTM F963-23 revises section 4.3.6.1 to allow for the use of the current version of the USP standard (USP 35) or the most recent version of USP <1231>, if the USP standard is updated to a version beyond USP 35. Because USP <1231> addresses water used for pharmaceutical purposes, any future revisions should continue to provide a high level of safety for toys. Should a future update to USP <1231> result in a reduction to toy safety, the Commission has authority under sections 106(c) and (d) of the CPSIA to address such an issue.

4. Section 5.1.2 – Tracking Labels

ASTM F963-23 adds a new section 5.1.2, restating CPSC regulations for tracking labels and adding Notes 26 and 27 restating CPSC guidance regarding tracking labels. While this addition assists stakeholders in understanding the applicable policies, under section 106(a) of the CPSIA it is a restatement of existing Commission requirements and not considered to be part of the mandatory toy standard.

5. Section 8.3.2.1 – Apparatus Metal Sieve

ASTM F963 calls for the use of a metal sieve consisting of stainless-steel wire mesh held in a round metal frame, as a screen tool. Section 8.3.2.1 requires the use of a 0.5 mm (500 μm) standard sieve, also known as a No. 35 sieve (U.S. Alternative). Revised section 8.3.2.1 in ASTM F963-23 corrects a typographical error regarding the nominal wire diameter and the maximum size deviation for an individual opening of a No. 35 sieve, which are both listed incorrectly in units of micrometers (μm) in ASTM F963-17. Revised section 8.3.2.1 uses millimeters (mm)—the correct unit of measurement. Because the No. 35 sieve was specified previously and remains specified, this correction does not impact safety.

6. Section 8.14 – Projectile Toys

Several changes were made to the test method for projectile toys in section 8.14 of ASTM F963-23. Section 8.14.3 reorders the conditions of the bow used for testing, placing the 70 cm pullback distance condition ahead of the 150 Newtons (N) pull force condition when stretching the bow to determine the velocity of the arrow. Section 8.14.5.4 reorders the test conditions to determine the velocity of the projectile in a more logical sequence. Sections 8.14.5.4 and 8.14.5.5 of ASTM F963-17 have been renumbered to sections 8.14.5.5 and 8.14.5.6 in ASTM F963-23. Section 8.14.6.2 also places the 70 cm pullback distance condition ahead of the 150 N pull force condition when stretching the bow to determine the velocity of the arrow.

These changes do not change the substantive performance requirements or otherwise affect toy safety.

III. Incorporation by Reference

Section 1250.2 of the direct final rule incorporates by reference ASTM F963-23. The Office of the Federal Register (OFR) has regulations regarding incorporation by reference. 16 CFR part 51. Under these regulations, agencies must discuss in the preamble to a final rule, how the material the agency incorporates by reference is reasonably available to interested parties. In addition, the preamble to the final rule must summarize the material. 16 CFR 51.5(b).

In accordance with the OFR regulations, Section II of this preamble summarizes the major provisions of ASTM F963-23 that the Commission incorporates by reference into 16 CFR part 1250. Until the direct final rule takes effect, a read-only copy of ASTM F963-23 is available for viewing, at no cost, on ASTM's website at: www.astm.org/CPSC.htm. Once the rule takes effect, a read-only copy of the standard will be available for viewing, at no cost, on the ASTM website at: www.astm.org/READINGLIBRARY/. Interested parties can also schedule an appointment to inspect a copy of the standard at the Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone: (301) 504-7479; e-mail: cpSC-os@cpSC.gov. Interested parties can purchase a copy of ASTM F963-23 from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959, telephone: (610) 832-9500; website: www.astm.org.

IV. Certification

Section 14(a) of the 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, rules issued under section 106 of the CPSIA are "consumer product safety standards." 15 U.S.C. 2056b(f). Thus, they are subject to the testing and certification requirements of section 14 of the CPSA.

Because toys are children's products, a CPSC-accepted third-party conformity assessment body must test samples of the products. Products subject to part 1250 also must comply with all other applicable CPSC requirements, such as the lead content requirements in section 101 of the CPSIA (15 U.S.C. 1278a), the tracking label requirements in section 14(a)(5) of the CPSA (15 U.S.C. 2063(a)(5)), and the consumer registration form requirements in section 104(d) of the CPSIA (15 U.S.C. 2056a(d)). ASTM F963-23 makes no changes to ASTM F963-17 that would impact any of these existing requirements.

V. Notice of Requirements

In accordance with section 14(a)(3)(B)(vi) of the CPSA, the Commission has previously published four NORs for accreditation of third-party conformity assessment bodies for testing toys. *See* 76 FR 46598 (Aug. 3, 2011); 78 FR 15836 (Mar. 12, 2013); 82 FR 8989 (Feb. 2, 2017); 82 FR 57119 (Dec. 4, 2017). The 2013 NOR provided the criteria and process for the Commission's acceptance of accreditation of third-party conformity assessment bodies for testing toys to ASTM F963-11. The two updates published in 2017 addressed the revisions in ASTM F963-16 and ASTM F963-17. The current NOR for ASTM F963-17 is listed in the Commission's rule, "Requirements Pertaining to Third Party Conformity Assessment Bodies." 16 CFR part 1112.

The previous NOR for the toy safety standard addressed testing to 37 provisions of ASTM F963. The Commission will require third party testing for the same 37 provisions. To that end, this rule revises sections 1112.15(b)(32), 1112.15(b)(32)(ii), and 1112.15(c)(1) (iii) of part 16 CFR part 1112 by updating the incorporations by reference to reflect the numbering in ASTM F963-23. Additionally, section 1112.15(b)(32)(ii)(C) is revised to include “Items of Avian Feather Origin” in the title for section 4.3.6 of the voluntary standard, which was inadvertently not included in the previous NOR in part 1112.

Some of the revised sections of ASTM F963 include changes to test methods discussed in section II of the preamble. These changes do not involve a change in scientific discipline or significant increases in complexity. Therefore, CPSC will accept testing to support product certifications for sections in ASTM F963-23 if the test laboratory is already CPSC-accepted to the corresponding provisions in ASTM F963-17. Test laboratories that conduct testing to support product certifications to ASTM F963-23 must show in their test reports “ASTM F963-23” and the specific section numbers in the standard to which the product was evaluated.

When test laboratories seek CPSC acceptance for one or more ASTM F963-23 sections, they will be required to update their accreditation scope. CPSC will open the application process for all sections of ASTM F963-23 when this document is published in the *Federal Register*. To be CPSC-accepted for sections in ASTM F963-23, a test laboratory’s scope of accreditation must include the reference to “ASTM F963-23” and a specific reference to one or more of the 37 sections listed in the NOR. Test laboratories that are currently accepted to ASTM F963-17 are instructed to update their accreditation scope to include ASTM F963-23 sections as soon as possible and submit their ASTM F963-23 application for CPSC acceptance within two years. Test laboratories that were not previously CPSC-accepted to sections of ASTM F963-17 and that

wish to request CPSC acceptance to ASTM F963-23 should work with their accreditation bodies to include “ASTM F963-23” sections in their scope of accreditation. This approach will avoid disruption to third party testing to the toy safety standard and allow for a practicable transition from ASTM F963-17 to ASTM F963-23 for testing laboratories, the toy industry, consumers, and other interested parties.

VI. 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.” 5 U.S.C. 553(b)(B).

Under the process set out in section 106(g) 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 becomes the new CPSC standard by operation of law, unless the Commission determines that ASTM’s revision does not improve the safety of the product. The Commission is allowing ASTM F963-23 to become CPSC’s new standard because its provisions improve product safety. This rule updates the Code of Federal Regulations so that it reflects the version of the standard that takes effect by statute, but under the terms of the CPSIA, ASTM F963-23 would take effect as the new CPSC standard for toys even if the Commission did 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 106(g) of the CPSIA. Under these circumstances, notice and comment are unnecessary under the APA.

In Recommendation 95-4, the Administrative Conference of the United States (ACUS) endorses direct final rulemaking as an appropriate procedure to expedite rules that are noncontroversial and 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 notification, the rule will become effective on April 20, 2024. In accordance with ACUS’s recommendation, the Commission considers a significant adverse comment to be “one where the commenter explains why the rule would be inappropriate,” including an assertion challenging “the rule’s underlying premise or approach” or a claim that the rule “would be ineffective or unacceptable without a change.” 60 FR 43108, 43111 (Aug. 18, 1995). As noted, this rule merely updates the CFR to reflect a change that occurs by statute, and public comments should address this specific action.

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

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601-612) generally requires agencies to review proposed and final rules for their potential economic impact on small entities, including small businesses, and to prepare regulatory flexibility analyses. The RFA applies to any rule that

is subject to notice and comment procedures under section 553 of the APA. 5 U.S.C. 603, 604.

As discussed in section VI 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 by operation of CPSIA section 106.

VIII. Paperwork Reduction Act

The current mandatory standard for toys includes requirements for marking, labeling, and instructional literature that constitute a “collection of information” as defined in the Paperwork Reduction Act (PRA; 44 U.S.C. 3501-3521). The Office of Management and Budget (OMB) has approved the collection of information for ASTM F963-17 under OMB Control No. 3041-0159. ASTM F963-23 updates the requirement for instructional literature to add an instruction for toys that require a manufacturer-supplied specialty or custom tool to access batteries, which directs parents to retain the tool for future use, to store it where the child cannot access it, and state that the tool is not a toy. This change to the instructional literature is within the scope of the information collection approved by OMB in 2022.

IX. Effective Date

Under the procedure set forth in section 106(g) of the CPSIA, when ASTM revises ASTM F963, 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. In accordance with this provision, this rule establishes an effective date that is 180 days after the Commission received notification from ASTM of revisions to the standard. As discussed in section VI of this preamble, this is a direct final rule. Unless we receive a

significant adverse comment within 30 days, the rule will become effective on April 20, 2024. The effective date for the NOR is likewise April 20, 2024, the same date that the provisions of ASTM F963-23 become effective.

X. Preemption

Section 26(a) of the CPSA provides that where a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. 15 U.S.C. 2075(a). Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to CPSC for an exemption from this preemption under certain circumstances. Section 106(f) of the CPSIA deems rules issued under that provision “consumer product safety standards.” Therefore, once a rule issued under section 106 of the CPSIA takes effect, it will preempt in accordance with section 26(a) of the CPSA.

XI. Environmental Considerations

Commission rules are categorically excluded 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.

XII. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801-808) states that before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The CRA submission

must indicate whether the rule is a “major rule.” The CRA states that the Office of Information and Regulatory Affairs determines whether a rule qualifies as a “major rule.”

Pursuant to the CRA, OMB’s Office of Information and Regulatory Affairs has determined that this rule is not a “major rule,” as defined in 5 U.S.C. 804(2). To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General.

List of Subjects

16 CFR Part 1112

Administrative practice and procedure, Audit, Consumer protection, Incorporation by reference, Reporting and recordkeeping requirements, Third party conformity assessment body.

16 CFR Part 1250

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 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY

ASSESSMENT BODIES

1. Revise the authority citation for part 1112 to read as follows:

Authority: 15 U.S.C. 2063.

2. Amend § 1112.15 by:

- a. Revising the introduction to paragraph (b)(32);
- b. revising the introduction to paragraph (b)(32)(ii);

- d. revising paragraph (b)(32)(ii)(C); and
- e. revising paragraph (c)(1)(ii).

The revisions and additions read as follows:

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

* * * * *

(b) * * *

(32) 16 CFR part 1250, safety standard for toys. CPSC only requires certain provisions of ASTM F963-23 to be subject to third party testing; therefore, CPSC only accepts the accreditation of third-party conformity assessment bodies for testing under the following toy safety standards:

* * * * *

(ii) ASTM F963-23:

* * * * *

(i) * * *

(C) Section 4.3.6, Cleanliness of Liquids, Pastes, Putties, Gels, and Powders, and Items of Avian Feather Origin (except for cosmetics and tests on formulations used to prevent microbial degradation)

* * * * *

(c) * * *

(1) * * *

(ii) ASTM F963-23, "Standard Consumer Safety Specification for Toy Safety," August 1, 2023.

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3. Revise part 1250 to read as follows:

PART 1250 – SAFETY STANDARD MANDATING ASTM F9623 FOR TOYS

3. Revise the authority citation for part 1250 to read as follows:

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

4. Revise § 1250.2 to read as follows:

§ 1250.2. Requirements for toy safety.

- (a) Each toy must comply with all applicable provisions of ASTM F963-23 *Standard Consumer Safety Specification for Toy Safety*, approved on August 1, 2023. 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. This incorporation by reference (IBR) material is available for inspection at the U.S. Consumer Product Safety Commission and at the National Archives and Records Administration (NARA). Contact the U.S. Consumer Product Safety Commission at: Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone (301) 504-7479, e-mail cpsc-os@cpsc.gov. For information on the availability of this material at NARA, e-mail fr.inspection@nara.gov, or go to: www.archives.gov/federal-register/cfr/ibr-locations.html. A read-only copy of the standard is available for viewing on the ASTM website at <https://www.astm.org/READINGLIBRARY/>. You may obtain a copy from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959; telephone (610) 832-9500; www.astm.org.
- (b) Pursuant to section 106(a) of the Consumer Product Safety Improvement Act of 2008, section 4.2 and Annex 5 or any provision of ASTM F963 that restates or incorporates an existing mandatory standard or ban promulgated by the Commission or by statute or any provision that restates or incorporates a regulation promulgated by the Food and Drug Administration or any

statute administered by the Food and Drug Administration are not part of the mandatory standard incorporated in paragraph (a) of this section.

Alberta E. Mills, Secretary
Consumer Product Safety Commission