



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

This document has been electronically
 approved and signed.

DATE: November 15, 2017

BALLOT VOTE SHEET

TO: The Commission
 Alberta E. Mills, Acting Secretary

THROUGH: Patricia M. Hanz, General Counsel
 Patricia H. Adkins, Executive Director

FROM: Patricia M. Pollitzer, Assistant General Counsel
 David M. DiMatteo, Attorney, OGC

SUBJECT: Proposed Revision of ASTM F963 Mandatory Toy Standard

BALLOT VOTE DUE: Tuesday, November 21, 2017

Attached is a staff briefing package recommending that the Commission allow revisions in ASTM F963-17 to become mandatory, with one exception. ASTM notified the Commission of these revisions on September 1, 2017. Under section 106(g) of the Consumer Product Safety Improvement Act of 2008, the revised standard shall be considered a consumer product safety standard issued by the Commission, unless the Commission notifies ASTM that the Commission has determined that the proposed revision does not improve safety. The Commission must decide by November 30, 2017, whether to allow ASTM F963-17 to go into effect. If the Commission allows ASTM F963-17 to become the new mandatory standard, it would become effective on February 28, 2018. As discussed in the briefing package, staff recommends that the Commission allow ASTM F963-17 to become the CPSC mandatory standard, with the exception of exemption language in Section 8.20.1.5 (5). Staff also recommends that the Commission publish a direct final rule amending the toy standard at 16 C.F.R part 1250 to update the reference to ASTM F963, and amend the notice of requirements in 16 C.F.R. part 1112 to reflect the revisions in ASTM F963. A draft *Federal Register* notice for that purpose is attached.

Please indicate your vote on the following options:

- I. Allow ASTM F963-17 (with the exception of exemption language in Section 8.20.1.5 (5)) to become CPSC’s mandatory standard, and approve publication in the *Federal Register* of the draft direct final rule, as drafted.

 Signature

 Date

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

II. Allow ASTM F963-17, with changes as specified by the Commission, to become CPSC's mandatory standard, and approve publication in the *Federal Register* of the draft direct final rule with revisions to reflect the Commission's changes (please specify changes).

Signature

Date

III. Do not allow ASTM F963-17 to become CPSC's mandatory standard, and do not approve publication in the *Federal Register* of the draft direct final rule.

Signature

Date

IV. Take other action (please specify).

Signature

Date

Attachment: Staff Briefing Package, Notice of Revision to the Toy Standard, ASTM F963
Standard Consumer Safety Specification for Toy Safety

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC-2017-0010]

16 CFR Parts 1112 and 1250

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 F963-07 ϵ 1, *Standard Consumer Safety Specification for Toy Safety*, a mandatory consumer product safety standard. That section also provides procedures for revisions to the standard. In accordance with these procedures, the Commission (CPSC or Commission) recently allowed the update to ASTM F963, ASTM F963-17, *Standard Consumer Safety Specification for Toy Safety* (ASTM F963-17), to become the mandatory toy standard, with one exception. This direct final rule incorporates by reference ASTM F963-17, with one exception, and updates the existing notice of requirements (NOR) that provides the criteria and process for Commission acceptance of accreditation of third party conformity assessment bodies for testing for ASTM F963 pursuant to the Consumer Product Safety Act (CPSA).

DATES: The rule is effective on February 28, 2018, unless we receive significant adverse comment by **[insert date 30 days after publication in the FEDERAL REGISTER]**. If we receive timely significant adverse comment, we will publish notification 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 February 28, 2018.

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

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 www.regulations.gov.

Submit written submissions in the following way:

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, including any personal identifiers, contact information, or other personal information provided, to <http://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

FOR FURTHER INFORMATION CONTACT: For information related to the toy standard, contact: Carolyn T. Manley, Lead Compliance Officer, Office of Compliance

and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814-4408; telephone: 301-504-7607; email: cmanley@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

Section 106 of the Consumer Product Safety Improvement Act of 2008.

Section 106(a) of the CPSIA mandated that beginning on February 10, 2009, ASTM F 963–07¹, *Standard Consumer Safety Specifications for Toy Safety*¹, shall be considered a mandatory consumer product safety standard issued by the CPSC. Pub. L. 110–314. Since ASTM F963 was first mandated in 2009, there have been three revisions, ASTM F963–08, ASTM F963-11, and ASTM F963-16. Currently, the provisions of ASTM F 963–16 are considered consumer product safety standards issued by the Commission under section 9 of the CPSA. Under section 106(g) of the CPSIA, if ASTM proposes revisions to ASTM F963, ASTM must notify the Commission. The revised standard shall be considered to be a consumer product safety standard issued by the 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.

Codification of Safety Standard Mandating ASTM F963 for Toys. As stated above, the CPSIA mandated provisions of ASTM F963 as a consumer product safety standard. Because this action took place by statute, the standard did not appear in the

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

Code of Federal Regulations. On February 2, 2017, the Commission published a direct final rule notifying the public that the Commission had allowed ASTM F963-16 to become the new CPSC standard and also incorporated that standard by reference at 16 CFR part 1250. 82 FR 8989. Thus, when revisions of F963 become the new CPSC standard, the Commission will amend 16 CFR part 1250 to revise the reference to the ASTM standard. As explained below, the Commission is amending 16 CFR part 1250 to incorporate by reference ASTM F963-17, except for one provision.²

Notification of Revisions. On September 1, 2017, ASTM notified the CPSC of ASTM's approval and publication of revisions to ASTM F963-17 in a revised standard approved on May 1, 2017, ASTM F963-17, *Standard Consumer Safety Specification for Toy Safety*. On [INSERT DATE OF COMMISSION VOTE], the Commission voted to allow the provisions of ASTM F963-17 to become the CPSC mandatory toy standard, with one exception. As discussed below, the Commission has reviewed the differences between ASTM F963-16 and ASTM F963-17 (the revised toy standard).

B. Revisions to the ASTM Standard

ASTM F963-17 contains various grammatical corrections, editorial corrections, and substantive changes to provisions concerning projectiles and sound-producing toys. The 2017 revision was published less than 1 year after ASTM F963-16 to correct some of the drafting errors found in ASTM F963-16. In particular, ASTM notified CPSC staff of negative consequences of a 2016 drafting error. In response, CPSC used enforcement

² 16 CFR part 1250 continues to exclude from CPSC's mandatory standard certain provisions of ASTM F963 that the CPSIA excluded by statute.

discretion in March 2017, regarding testing and certification requirements in one section of ASTM F963-16 that concerned low-energy projectiles with stored energy.

The changes from ASTM F963-16 to ASTM F963-17 are summarized below:

- **Scope:** Minor editorial changes only.
- **Referenced documents:** Nine new references were added that were mostly related to microbiological guidelines.
- **Terminology:** One definition was removed, one definition was clarified, and one definition was changed editorially.
- **Safety Requirements:** One substantive clarification was made to section 4.21.2, Projectiles Toys with Stored Energy; one non-substantive clarification was made to section 4.21.3, Projectiles Toys without Stored Energy; and one clarification was made to section 4.21.3, Projectiles Toys without Stored Energy. One of the three clarifications (section 4.21.2) had been balloted and approved by the ASTM F15 Committee for Consumer Products for inclusion in the 2016 version, but the wording in section 4.21.2.3 was inadvertently omitted in the test method associated with kinetic energy (KE) of stored energy projectiles in the ASTM F963-16 revision.
- **Labeling Requirements:** Minor editorial changes only.
- **Instructional Literature:** Minor editorial changes only.
- **Test Methods:** An additional sentence was added to the sound-producing toys test method in Section 8.20.1.5 (5). This sentence functionally exempts pull/push toys from the A-weighted maximum sound pressure level (L_{AFmax})

requirement. As explained below, the Commission is not including this language in the mandatory standard.

- **Annex:** The rationale was added addressing the new language in 4.21.2.3 for projectiles with stored energy.

The majority of the editorial revisions changed the word “must” to “shall,” which brings the revised standard in line with ASTM’s current preferred language. In addition, new reference documents, references to tables/figures, and other editorial corrections were completed to fix known grammatical errors and incorrect references in the ASTM F963-16 version.

Two changes were substantive in nature. The first change, relating to requirements for projectile toys (Section 4.21), was a clarification that will neither increase, nor decrease, safety. The Commission had anticipated this change. However, the second change, relating to sound-producing toys, is substantive and reduces safety. This item was not balloted and was not reviewed by CPSC staff before ASTM published ASTM F963-17. ASTM added a sentence to the sound-producing toys test method in Section 8.20.1.5 (5) of ASTM F963-17 that functionally exempts push/pull toys from the A-weighted maximum sound pressure level (L_{AFmax}) requirement. The L_{AFmax} is a measurement of continuous sound. Without the L_{AFmax} requirement, push/pull toys will only be subject to the L_{Cpeak} requirement, a requirement that is based on noise limits for impulse sounds (*e.g.*, gun shots), not the continuous sounds, such as regular popping or clacking, which would be expected from push/pull toys. The Commission’s interpretation that the L_{AFmax} requirement applied to push/pull toys in ASTM F963-16 is based on the text of the standard.

The additional text added in ASTM F963-17 is a substantial change that reduces safety, because the additional text in Section 8.20.1.5 (5) provides an exemption for push/pull toys to the L_{AFmax} requirement, which did not exist in ASTM F963-16. If such toys are exempt from the L_{AFmax} requirement, they would be allowed on the market, even though their continuous sound level is greater than the standard permits for other floor toys. The Commission finds that the addition of text in Section 8.20.1.5(5) related to sound-producing toy requirements will decrease safety by allowing toys that produce sound levels that exceed noise exposure limits by the National Institute of Occupational and Health (NIOSH).³ Staff concludes that the L_{AFmax} exemption has a negative impact on safety. Additionally, the exemption will reduce harmonization with EN-71. *See* Tab A of the staff briefing package [\[INSERT LINK\]](#) for a more detailed discussion regarding the exemption's effect on safety.

Because addition of the text in Section 8.20.1.5(5) of ASTM F 963-17 would not improve the safety of toys, the Commission determined that this provision should not be allowed to become part of CPSC's mandatory toy standard. The other changes are either editorial non-substantive changes that will not affect safety, or they are substantive changes that will improve safety. Thus, the Commission accepts all changes in ASTM F963-17, with the exception of the addition of text in Section 8.20.1.5 (5) because it reduces safety.

³ ASTM F963 sound limit calculations are based on occupation exposure limits recommended by NIOSH.

C. Incorporation by Reference

Although ASTM F963-17 is mandatory by operation of statute, the Commission has incorporated by reference ASTM F963 in the Code of Federal Regulations (CFR) to indicate that ASTM F963 is a CPSC mandatory standard.

The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble to the final rule, ways that the materials the agency incorporates by reference are reasonably available to interested persons and how interested parties can obtain the materials. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR's requirements, section B of this preamble summarizes the ASTM F963-17 standard that the Commission incorporates by reference into 16 CFR part 1250. The standard is reasonably available to interested parties, and interested parties may purchase a copy of the standard from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959 USA; phone: 610-832-9585; <http://www.astm.org/>. A copy of the standard can also be inspected at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923.

D. Certification

Section 14(a) of the CPSA imposes the requirement that 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, be certified as complying 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 on a sufficient number of samples by a third party conformity assessment body accredited by the Commission to test according to the applicable requirements. As noted in the preceding discussion, standards issued under section 106(f)(1)(B) are "consumer product safety standards." Thus, they are subject to the testing and certification requirements of section 14 of the CPSA.

Because toys are children's products, samples of these products must be tested by a third party conformity assessment body whose accreditation has been accepted by the Commission. These products also must comply with all other applicable CPSC requirements, such as the lead content requirements of section 101 of the CPSIA, the phthalates prohibitions of section 106 of the CPSIA, and the tracking label requirement in section 14(a)(5) of the CPSA.

E. Notice of Requirements

In accordance with section 14(a)(3)(B)(vi) of the CPSA, the Commission has previously published three NORs for accreditation of third party conformity assessment bodies for testing toys (76 FR 46598 (Aug. 3, 2011), 78 FR 15836 (March 12, 2013), and 82 FR 8989 (February 2, 2017)). The last NOR provided the criteria and process for our acceptance of accreditation of third party conformity assessment bodies for testing toys to ASTM F963-16. The NOR for ASTM F963-16 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 included 37 sections from ASTM F963-16 that required third party testing.

Certain provisions of ASTM F963-17 do not require third party testing as was the case in the previous NORs issued for ASTM F963. The ASTM F963-17 provisions that do not require third party testing are in the following areas:

- Any provision of ASTM F963 that section 106 of the CPSIA excepted from being a mandatory consumer product safety standards issued by the Commission. The CPSIA also excepted from ASTM F963, any provision that restates or incorporates an existing mandatory standard or ban promulgated by the Commission or by statute. In addition, the CPSIA excepted provisions from ASTM F963 that restate or incorporate a regulation promulgated by the Food and Drug Administration or any statute administered by the U.S. Food and Drug Administration. Section 4, Public Law 112-28, Aug 12, 2011.
- Those sections of ASTM F963–17 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).
- Those provisions of ASTM F963-17 with requirements for labeling, instructional literature, or producer’s markings.
- Those provision in ASTM F963–17 that sets a limit for a DI (2-ethylhexyl) phthalate in pacifiers, rattles, and teethers. This section is excepted from third party testing because section 108 of the CPSIA sets limits for this and other phthalates that are more stringent than this requirement in ASTM F963-17.

This latest revision of the toy safety standard, ASTM F963-17, had a much shorter period between revisions than is typical. In the earlier revisions, the transition period for CPSC acceptance of laboratory accreditation and the certification effective

dates allowed adequate time for laboratories to update their accreditations to the latest standard. The revisions in earlier versions of the standard typically included several substantive changes in test requirements and testing methods. This is not the case when comparing ASTM F963-17 to ASTM F963-16. In response to the directions in the ASTM F963-16 NOR, testing laboratories began working with their accreditation bodies to update their scope of accreditation to include references to ASTM F963-16.

Since issuance of the ASTM F963-16 NOR, the CPSC has accepted applications from more than 100 testing laboratories for sections in ASTM F963-16 and posted the information for each laboratory on the CPSC website. However, there are still more than 100 CPSC-accepted laboratories that are listed only for ASTM F963-11 and have not yet updated their accreditation scope to include ASTM F963-16. Many of these laboratories may be in the process of updating their accreditation scope to ASTM F963-16. Other laboratories may be waiting on Commission action regarding adoption of ASTM F963-17 and the NOR for ASTM F963-17.

To address the transition just described, the Commission is permitting acceptance of testing that supports ASTM F963-17 certification, and acceptance of laboratory accreditation that take into account testing laboratories that are already CPSC-accepted for testing to relevant sections in ASTM F963-16, ASTM F963-11, and ASTM F963-07^{e1} Section 4.27, as described below.

1. CPSC Automatically Accepts Laboratories for ASTM F963-17, if the Laboratories Are CPSC-accepted to ASTM F963-16

The CPSC's online laboratory application and website listing for testing laboratories that have been CPSC-accepted to sections in ASTM F963-16 will be

modified to show CPSC-acceptance to “ASTM F963-16/ASTM F963-17.” For example, CPSC-accepted laboratories currently listed on the CPSC website for:

- 4.6 (ASTM F963-16), Small Objects
- 4.7 (ASTM F963-16), Accessible Edges
- 4.8 (ASTM F963-16), Projections

will be changed on the CPSC website to read:

- 4.6 (ASTM F963-16/ASTM F963-17), Small Objects
- 4.7 (ASTM F963-16/ASTM F963-17), Accessible Edges
- 4.8 (ASTM F963-16/ASTM F963-17), Projections

This will accommodate laboratories that updated their accreditation scope and received CPSC acceptance shortly after issuance of the ASTM F963-16 NOR.

For laboratories that are accredited to ASTM F963-11 and that have not yet updated their scope to later versions, they may elect scope revisions to reflect ASTM F963-16 or ASTM F963-17, or both. When these laboratories apply to the CPSC, the CPSC will accept references to either the -16 or -17 version, and the lab will be listed on the CPSC website for “4.x (ASTM F963-16/ASTM F963-17).”

This will provide an equitable approach for all the third party laboratories that applied and were CPSC-accepted for sections in ASTM F963-16 and for testing laboratories that are currently working with their accreditation bodies to update the ASTM F963 references in their accreditation scope. In addition, this will allow laboratories that are CPSC-listed for “ASTM F963-16/ASTM F963-17” to conduct testing to support certification to the -16 and -17 versions ASTM F963.

2. Maintain the Interim Allowance for Laboratories Accredited to ASTM F963-11 to Test for ASTM F963-16 and ASTM F963-17

The NOR for ASTM F963-16 that was issued on February 2, 2017 (82 FR 8989), provided a transition period for CPSC-accepted labs to support certification testing to ASTM F963-16. During the transition period, CPSC will accept ASTM F963-16 testing results by test laboratories that are CPSC-accepted to ASTM F963-11 sections, or ASTM F963-07^{ε1} section 4.27 for toy chests, for a period not to exceed 2 years. The 2-year period ends on February 4, 2019. This allowance was to provide adequate time for testing laboratories to work with their accreditation bodies, make official updates to their accreditation scope to include ASTM F963-16 sections, and submit applications to the CPSC. The ASTM F963-17 NOR will continue the transition period provided in the ASTM F963-16 NOR. The CPSC will accept ASTM F963-17 testing results by laboratories that are CPSC-accepted to ASTM sections in F963-11 (or 4.27 of ASTM F963-07^{ε1}) until February 4, 2019.

The CPSC will open the application process for all sections of ASTM F963-17 when this direct final rule is published in the *Federal Register* as an amendment to 16 CFR part 1112. The CPSC is providing notice of these requirements through this direct final rule and through direct email to all current CPSC-accepted laboratories and their accreditation bodies. This process will avoid disruption to continuous third party testing to the toy safety standard and allow for a practicable transition from ASTM F963-11 to ASTM F963-16 to ASTM F963-17 for testing laboratories, the toy industry, and other interested parties.

F. Direct Final Rule Process

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA) generally requires notice and comment rulemaking, section 553 of the APA provides an exception when the agency, for good cause, finds that notice and public procedure are “impracticable, unnecessary, or contrary to the public interest.” The Commission concludes that notice and comment is unnecessary because ASTM F963 automatically becomes a consumer product safety standard by operation of law. The Commission has voted to allow ASTM F963-17 to become the mandatory CPSC standard. Even without the incorporation by reference, ASTM F963-17, except for Section 8.20.1.5 (5) and provisions the CPSIA excluded, will take effect as the new mandatory CPSC standard pursuant to section 106(g) of the CPSIA. This rule amends 16 CFR part 1250 to reflect the standard that CPSC has allowed under section 106(g) of the CPSIA. Because this document merely incorporates by reference a standard that takes effect by operation of statute, public comment could not affect the changes to the standard or the effect of the revised standard as a consumer product safety standard under section 106(g) of the CPSIA. The rule also updates the corresponding provisions of the NOR for ASTM F963 in part 1112 to reflect the revision to the standard. The amendment to part 1112 does not establish substantive requirements, but updates the criteria and process for CPSC’s acceptance of accreditation of third party conformity assessment bodies for testing toys under the revised ASTM F963 standard. Therefore, the Commission concludes that public comment is not necessary.

The Commission believes that issuing a direct final rule in these circumstances is appropriate. In Recommendation 95-4, the Administrative Conference of the United

States (ACUS) endorsed direct final rulemaking as an appropriate procedure to expedite promulgation of rules that are noncontroversial and that are not expected to generate significant adverse comment. *See* 60 FR 43108 (August 18, 1995). ACUS also recommended using direct final rulemaking when an agency uses the “unnecessary” prong of the good cause exemption to notice and comment rulemaking. Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule because we do not believe comment is necessary and do not expect any significant adverse comments to the direct final rule.

Unless we receive a significant adverse comment within 30 days, the rule will become effective on February 28, 2018. In accordance with ACUS’s recommendation, the Commission considers a significant adverse comment to be one where the commenter explains why the rule revising the incorporation by reference would be inappropriate. We note that comments on the underlying substantive provisions of ASTM F963-17 are not considered significant adverse comments because those provisions are mandatory by operation of the statute, and therefore, the Commission cannot change them in response to comments. The Commission could only make changes to the way the incorporation by reference appears in the CFR.

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

G. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that agencies review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603 and 604. 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 and 604. As explained above, the Commission has determined that notice and comment is not necessary for this direct final rule. We also note the limited nature of this document. The incorporation by reference of ASTM F963-17 and the update to the notice of requirements in part 1112 will not result in any substantive changes to the standard. Thus, the rule does not create new substantive obligations for any entity, including any small entity. Rather, with this action, the CFR will reflect the mandatory CPSC standard that takes effect under the CPSIA and will update the corresponding NOR provisions in 16 CFR part 1112.

H. Paperwork Reduction Act

The toy standard contains information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). OMB has approved the collection of information for ASTM F963 under OMB Control No. 3041-0159.

I. Environmental Considerations

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

exclusion, so no environmental assessment or environmental impact statement is required.

J. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a “consumer product safety standard under [the CPSA]” is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury, unless the state requirement is identical to the federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances.

Section 106(f) of the CPSIA states that rules issued under that section “shall be considered consumer product safety standards issued by the Commission under section of the Consumer Product Safety Act” thus, implying that the preemptive effect of section 26(a) of the CPSA would apply. Therefore, a rule issued under section 106 of the CPSIA will invoke the preemptive effect of section 26(a) of the CPSA when it becomes effective.

K. 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 we received notification from ASTM of revisions to the standard. As discussed in section F 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 February 28, 2018. Additionally, the effective date for the NOR is February 28, 2018, the same date that the provisions of ASTM F963-17 become effective.

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, 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. The authority citation for part 1112 is continues to read as follows:

Authority: 15 U.S.C. 2063; Pub. L. 110–314, section 3, 122 Stat. 3016, 3017 (2008).

2. Amend § 1112.15 by:

- a. Revising the introductory text to paragraph (b)(32);
- b. Revising (b)(32)(ii); and

c. Revising paragraph (c)(1)(ii).

The revisions 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. The CPSC only requires certain provisions of ASTM F963-17 to be subject to third party testing; and therefore, the CPSC only accepts the accreditation of third party conformity assessment bodies for testing under the following toy safety standards:

* * * * *

(ii) ASTM F963-17:

* * * * *

(c) * * *

(1) * * *

(ii) ASTM F963-17, “Standard Consumer Safety Specification for Toy Safety,” May 1, 2017.

* * * * *

PART 1250—SAFETY STANDARD MANDATING ASTM F963 FOR TOYS

3. The authority citation for part 1250 continues to read as follows:

Authority: Pub. L. 110–314, sec. 106, 122 Stat. 3016 (August 14, 2008); Pub. L. 112–28, 125 Stat. 273 (August 12, 2011).

4. Amend § 1250.2 by:

- a. Revising paragraph (a); and
- b. Adding paragraph (c).

The revisions and additions read as follows:

§ 1250.2 Requirements for toy safety.

(a) Except as provided for in paragraphs (b) and (c) of this section, toys must comply with the provisions of ASTM F963-17, Standard Consumer Safety Specification for Toy Safety, approved May 1, 2017. The Director of the Federal Register approves the incorporation by reference listed in this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of this ASTM standard from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959 USA; phone: 610-832-9585; <http://www.astm.org/>. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to:

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

* * * * *

(c) Instead of complying with section 8.20.1.5(5) of ASTM F963-17, comply with the following:

(1) Floor and tabletop toys that move, where the sound is caused as a result of the movement imparted on the toy (for example, a noise making mechanism attached to an axle of a toy vehicle) shall be tested using the method for push and pull toys. In addition

DRAFT November 15, 2017

to the C-weighted peak measurement maximum A-weighted sound pressure level, L_{AFmax} , shall be made and compared to the requirements of 4.5.1.2.

(2) [Reserved]

Dated:

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