§ 2056b. Mandatory toy safety standards

(a) In general

Beginning 180 days after August 14, 2008, the provisions of ASTM International Standard F963–07 Consumer Safety Specifications for Toy Safety (ASTM F963), as it exists on August 14, 2008 (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 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) shall be considered to be consumer product safety standards issued by the Commission under section 2058 of this title.

(b) Rulemaking for specific toys, components and risks

(1) Evaluation

Not later than 1 year after August 14, 2008, the Commission, in consultation with representatives of consumer groups, juvenile product manufacturers, and independent child product engineers and experts, shall examine and assess the effectiveness of ASTM F963 or its successor standard (except for section 4.2 and Annex 4), as it relates to safety requirements, safety labeling requirements, and test methods related to—

(A) internal harm or injury hazards caused by the ingestion or inhalation of magnets in children’s products;
(B) toxic substances;
(C) toys with spherical ends;
(D) hemispheric-shaped objects;
(E) cords, straps, and elastics; and
(F) battery-operated toys.

(2) Rulemaking

Within 1 year after the completion of the assessment required by paragraph (1), the Commission shall promulgate rules in accordance with section 553 of title 5 that—

(A) take into account other children’s product safety rules; and
(B) are more stringent than such standards, if the Commission determines that more stringent standards would further reduce the risk of injury of such toys.

(c) Periodic review

The Commission shall periodically review and revise the rules set forth under this section to ensure that such rules provide the highest level of safety for such products that is feasible.

(d) Consideration of remaining ASTM standards

After promulgating the rules required by subsection (b), the Commission shall—

(1) in consultation with representatives of consumer groups, juvenile product manufacturers, and independent child product engineers and experts, examine and assess the effectiveness of ASTM F963 (and alternative health protective requirements to prevent or minimize flammability of children’s products) or its successor standard, and shall assess the adequacy of such standards in protecting children from safety hazards; and

(2) in accordance with section 553 of title 5, promulgate consumer product safety rules that—

(A) take into account other children’s product safety rules; and
(B) are more stringent than such standards, if the Commission determines that more stringent standards would further reduce the risk of injury associated with such toys.
(e) Prioritization

The Commission shall promulgate rules beginning with the product categories that the Commission
determines to be of highest priority, until the Commission has promulgated standards for all such
product categories.

(f) Treatment as consumer product safety standards

Rules issued under this section shall be considered consumer product safety standards issued by the
Commission under section 2058 of this title.

(g) Revisions

If ASTM International (or its successor entity) proposes to revise ASTM F963–07, or a successor
standard, it shall notify the Commission of the proposed revision. The Commission shall incorporate
the revision or a section of the revision into the consumer product safety rule. The revised standard
shall be considered to be a consumer product safety standard issued by the Consumer Product Safety
Commission under section 2058 of this title, effective 180 days after the date on which ASTM
International notifies the Commission of the revision unless, within 90 days after receiving that notice,
the Commission notifies ASTM International that it has determined that the proposed revision does
not improve the safety of the consumer product covered by the standard. If the Commission so notifies
ASTM International with respect to a proposed revision of the standard, the existing standard shall
continue to be considered to be a consumer product safety rule without regard to the proposed revision.

(h) Rulemaking to consider exemption from preemption

(1) Exemption of State law from preemption

Upon application of a State or political subdivision of a State, the Commission shall, after
notice and opportunity for oral presentation of views, consider a rulemaking to exempt from the
provisions of section 2075 (a) of this title (under such conditions as it may impose in the rule) any
proposed safety standard or regulation which is described in such application and which is designed
to protect against a risk of injury associated with a children’s product subject to the consumer
product safety standards described in subsection (a) or any rule promulgated under this section.
The Commission shall grant such an exemption if the State or political subdivision standard or
regulation—

(A) provides a significantly higher degree of protection from such risk of injury than the
consumer product safety standard or rule under this section; and

(B) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision standard or regulation on
interstate commerce, the Commission shall consider and make appropriate (as determined by the
Commission in its discretion) findings on the technological and economic feasibility of complying
with such standard or regulation, the cost of complying with such standard or regulation, the
geographic distribution of the consumer product to which the standard or regulation would apply,
the probability of other States or political subdivisions applying for an exemption under this
subsection for a similar standard or regulation, and the need for a national, uniform standard under
this Act for such consumer product.

(2) Effect of standards on established State laws

Nothing in this section or in section 2075 of this title shall prevent a State or political subdivision of
a State from continuing in effect a safety requirement applicable to a toy or other children’s product
that is designed to deal with the same risk of injury as the consumer product safety standards
established by this section and that is in effect on the day before August 14, 2008, if such State or
political subdivision has filed such requirement with the Commission within 90 days after August
14, 2008, in such form and in such manner as the Commission may require.

(i) Judicial review
The issuance of any rule under this section is subject to judicial review as provided in section 2060 (g) of this title, as added by section 236 of this Act.


References in Text

Section 2060 (g) of this title, as added by section 236 of this Act, referred to in subsec. (i), is section 2060 (g) of this title, as added by section 236 of Pub. L. 110–314.

Codification
Section was enacted as part of the Consumer Product Safety Improvement Act of 2008, and not as part of the Consumer Product Safety Act which comprises this chapter.

Amendments
2011—Subsec. (a). Pub. L. 112–28 inserted “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” after “or by statute”.

Definition
For definition of “Commission” used in this section, see section 2(a) of Pub. L. 110–314, set out as a note under section 2051 of this title.