

**Editorial Notes**

## REFERENCES IN TEXT

Section 2060(g) of this title, as added by section 236 of this Act, referred to in subsec. (b)(3), is section 2060(g) of this title, as added by section 236 of Pub. L. 110-314.

The Paperwork Reduction Act of 1980, referred to in subsec. (d)(1), is Pub. L. 96-511, Dec. 11, 1980, 94 Stat. 2812, which was classified principally to chapter 35 (§3501 et seq.) of Title 44, Public Printing and Documents, prior to the general amendment of that chapter by Pub. L. 104-13, §2, May 22, 1995, 109 Stat. 163. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 101 of Title 44 and Tables.

This Act, referred to in subsec. (d)(3), is Pub. L. 110-314, Aug. 14, 2008, 122 Stat. 3016, known as the Consumer Product Safety Improvement Act of 2008. For complete classification of this Act to the Code, see Short Title of 2008 Amendment note set out under section 2051 of this title and Tables.

## 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. (b)(4). Pub. L. 112-28, §3(a), added par. (4).

Subsec. (c)(3), (4). Pub. L. 112-28, §3(b), added par. (3) and redesignated former par. (3) as (4).

**Statutory Notes and Related Subsidiaries**

## DEFINITIONS

For definitions of “Commission” and “appropriate Congressional committees” used in this section, see section 2(a) of Pub. L. 110-314, set out as a note under section 2051 of this title.

**§ 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.

(Pub. L. 110-314, title I, §106, Aug. 14, 2008, 122 Stat. 3033; Pub. L. 112-28, §4, Aug. 12, 2011, 125 Stat. 280.)

**Editorial Notes**

REFERENCES IN TEXT

This Act, referred to in subsec. (h)(1), is Pub. L. 110-314, Aug. 14, 2008, 122 Stat. 3016, known as the Consumer Product Safety Improvement Act of 2008. For complete classification of this Act to the Code, see Short Title of 2008 Amendment note set out under section 2051 of this title and Tables.

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”.

**Statutory Notes and Related Subsidiaries**

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.

**§ 2056c. Sulfur content in drywall standard**

**(a) Rule on sulfur content in drywall required**

Except as provided in subsection (c), not later than 2 years after January 14, 2013, the Consumer Product Safety Commission shall promulgate a final rule pertaining to drywall manufactured or imported for use in the United States that limits sulfur content to a level not associated with elevated rates of corrosion in the home.

**(b) Rule making; consumer product safety standard**

A rule under subsection (a)—

(1) shall be promulgated in accordance with section 553 of title 5; and

(2) shall be treated as a consumer product safety rule promulgated under section 2058 of this title.

**(c) Exception**

**(1) Voluntary standard**

Subsection (a) shall not apply if the Commission determines that—

(A) a voluntary standard pertaining to drywall manufactured or imported for use in the United States limits sulfur content to a level not associated with elevated rates of corrosion in the home;

(B) such voluntary standard is or will be in effect not later than two years after January 14, 2013; and