



U.S. CONSUMER PRODUCT SAFETY COMMISSION
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DeWane Ray
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March 31, 2017

Via First Class Mail and Electronic Mail (akaufman@toyassociation.org)

Alan P. Kaufman
Sr. Vice-President, Technical Affairs
Toy Industry Association, Inc.
1200 G Street, N.W., #200
Washington, D.C. 20005

Re: ASTM F963-16
Enforcement Discretion – § 4.21.2.3 (Projectile Toys with Stored Energy)

Dear Mr. Kaufman:

BACKGROUND

Thank you for your letter dated March 6, 2017 on behalf of the Toy Industry Association, Inc. (“TIA”) and the U.S. Toy Industry requesting that the U.S. Consumer Product Safety Commission (CPSC) or its staff take action to address a drafting error by the F15.22 subcommittee when that subcommittee last updated the ASTM F963 standard (ASTM F963-16 was published by ASTM in October 2016). As stated in your letter, TIA’s concern relates to a new requirement placing a limit on the kinetic energy density (“KED”) of projectiles launched from stored-energy discharge mechanisms, which was added to § 4.21.2.3 (Projectile Toys with Stored Energy). Specifically, the 2016 revision of the ASTM F963 standard requires the following:

4.21.2.3 Projectiles shall not have a kinetic energy per unit area of contact, also known as Kinetic Energy Density (KED) greater than 2500 J/m² when tested according to 8.14.6.

According to your letter, “[t]he intention was that this requirement only be applied to projectiles with a kinetic energy (“KE”) exceeding 0.08 joules However, through an administrative oversight . . . this phrase was inadvertently omitted.” Your letter provides support for the proposition that the omitted exemption was and still is fully supported by the F15.22

subcommittee and the full F15 committee, as the types of projectiles covered by the omitted exemption “have been common in the market for many decades without a history of injury.”

Pursuant to Section 106 of the Consumer Product Safety Improvement Act of 2008, Pub. L. No. 110-314, 122 Stat. 3016 (August 14, 2008) (“CPSIA”), ASTM F963-16 will become a mandatory consumer product safety standard on April 30, 2017. This mandatory standard will, by law, include the text of § 4.21.2.3 *without* the omitted exemption for projectiles with KE less than or equal to 0.08 joules. TIA argues that this will result in significant financial hardship to its members and diminish product availability to the public with no corresponding safety benefit. Therefore, as the April 30, 2017 date is fast approaching, TIA seeks relief from CPSC from these negative consequences until such time as F963 is amended to fix the omission.¹

ENFORCEMENT DISCRETION

CPSC staff has reviewed your request, and, based on the information currently available to it, CPSC staff *will* exercise its enforcement discretion with respect to § 4.21.2.3 by applying the KED requirements only to projectiles with energies greater than 0.08 J. This enforcement discretion extends to testing and certification requirements, under Section 14 of the Consumer Product Safety Act (“CPSA”), 15 U.S.C. § 2063, so that testing would not be required for projectiles with energies less than or equal to 0.08 J.

This interpretation is based solely on the information currently available to CPSC staff. If additional facts come to our attention, the interpretation could change.

EFFECTIVE DATE

This enforcement discretion will go into effect immediately, and it will remain effective until further notice.² CPSC staff retains the right to modify or suspend its enforcement discretion at any time. CPSC staff intends, however, to provide at least 30 days notice, before making any changes to its enforcement discretion. In addition, the views in this letter could be changed or superseded by the Commission.

¹ Your letter states that the ASTM F15.22 subcommittee has recently balloted an updated version of ASTM F963 that adds the omitted phrase to § 4.21.2.3. Additionally, you state that this ballot is set to close on March 30, 2017; and, if approved as anticipated, it will be incorporated into a new version of ASTM F963 in April 2017. If the CPSC concurs following the process outlined in Section 106 of the CPSIA, the new version of ASTM F963 would then become a mandatory consumer product safety standard 180 days after ASTM notifies the CPSC of the revision.

² Should ASTM F963 be amended to add the omitted phrase to § 4.21.2.3 and should it become mandatory following CPSC concurrence, it is unlikely that there will be any need to keep this enforcement discretion in effect.

CONTACT INFORMATION

If you seek assistance or if you have any questions, please contact the Office of Compliance and Field Operations, as follows:

Mary Toro, Director
Regulatory Enforcement Division
Office of Compliance and Field Operations
Telephone: 301-504-7586
E-mail: mtoro@cpsc.gov

Sincerely,

A handwritten signature in blue ink, appearing to read "DeWane Ray". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

DeWane Ray
Deputy Executive Director