



U.S. CONSUMER PRODUCT SAFETY COMMISSION
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August 5, 2011

**JOINT STATEMENT OF CHAIRMAN INEZ M. TENENBAUM, COMMISSIONER
ROBERT S. ADLER AND COMMISSIONER THOMAS H. MOORE ON THE
VOTE TO APPROVE THE NOTICE OF REQUIREMENTS FOR THE
PHTHALATES PROVISION OF THE CPSIA**

Last week, the Commission voted unanimously to establish the procedures for the accreditation of laboratories that will perform testing to ensure toys and child care articles do not violate the federally mandated phthalates bans. This is another key step forward in the quest to strengthen consumer confidence in the safety of our children's products.

Phthalates are chemicals used to make plastics and other materials more flexible. The Consumer Product Safety Improvement Act of 2008 (CPSIA) permanently banned the use of three phthalates in concentrations greater than 0.1 percent in children's toys and child care articles. The law also temporarily banned the use of three other phthalates in concentrations greater than 0.1 percent in child care articles and in children's toys that can be mouthed, sucked or chewed. Since February 2009, it has been unlawful to manufacture or import children's toys and child care articles violating the bans for these chemicals.

Guidance on Section 108

For the purposes of the phthalates ban, Congress defined "children's toy" in section 108 of the CPSIA as "a consumer product designed or intended by the manufacturer for a child 12 years of age or younger for use by the child when the child plays." Congress also defined "child care article" as "a consumer product designed or intended by the manufacturer to facilitate sleep or the feeding of children age 3 and younger, or to help such children with sucking or teething." In determining whether a children's toy or child care article is designed or intended for use by a child 12 years of age or younger or 3 years of age or younger, Congress specified that manufacturers should take the following four factors into consideration:

- (1) A statement by a manufacturer about the intended use of such product, including a label on such product if such statement is reasonable.
- (2) Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children of the ages specified.
- (3) Whether the product is commonly recognized by consumers as being intended for use by a child of the ages specified.

- (4) The Age Determination guidelines issued by the Commission staff in September 2002 and any successor to such guidelines.

In response to questions raised by some of our stakeholders regarding whether their products were toys or child care articles, the CPSC staff issued guidance¹ in February 2009 and also provided guidance on the agency's frequently asked questions² webpage. In addition, the Commission issued a Statement of Policy³ in August 2009 concerning plasticized component part testing.

February 2009 Staff Guidance: The notice of requirements specified that this staff guidance issued in February 2009 remains in effect, as a resource available for manufacturers seeking guidance regarding what constitutes a children's toy or child care article. This staff guidance emphasizes that whether a particular product falls within the ASTM F-963 toy standard (a mandatory standard) will be useful in directing a company in their determination as to whether that product is subject to the phthalates bans. We believe it is important to note that we do not interpret the staff guidance as limiting the scope of the section 108 definition of "children's toy" to only those items covered by the ASTM F-963 toy standard. The Commission may always enforce the phthalates content limits against any product that meets the definition of toy or child care article under section 108 of the CPSIA.

August 2009 Statement of Policy: In the notice of requirements the Commission reaffirmed our August 2009 Statement of Policy allowing for the use of plasticized component part testing for phthalates. Prior to this, the phthalates test method resulted in higher costs for manufacturers and diluted results for consumers because it required the entire product to be ground up and then tested. The newer approach, however, reduces phthalates testing costs while simultaneously providing a higher degree of protection for children. The Commission's reaffirmation of our plasticized component part testing policy benefits the regulated community and consumers alike and remains an important resource available as guidance to manufacturers.

August 2011 Notice of Requirements: Last week we provided clarification that because untreated/unfinished woods, metals, natural fibers, natural latex and mineral products are not expected to inherently contain phthalates, they do not need to be tested or certified (provided that they have neither been treated or adulterated with the addition of materials that could result in the addition of phthalates). We feel it is important to note that this action does not in any way expand the universe of materials and products that need to be tested or certified. To the contrary, this clarification shrinks that universe. The guidance contained in the Commission's August 2009 Statement of Policy for certain other materials, such as polyolefins, still remains in effect.

¹ <http://www.cpsc.gov/businfo/frnotices/fr09/draftphthalatesguidance.pdf>

² <http://www.cpsc.gov/about/cpsia/sect108.html#faqs>

³ <http://www.cpsc.gov/about/cpsia/componenttestingpolicy.pdf>

It has now been more than two years since the phthalates bans have gone into effect, and we believe much of the confusion expressed in the Spring of 2009 regarding whether a product is a toy or child care article has dissipated in large part due to the available staff guidance and extensive staff education and outreach. We believe the majority of manufacturers know if they are making a children's toy or child care article and that they are complying with the underlying statutory limits for the banned phthalates. Therefore for those manufacturers it should not be a difficult task to determine which products need to be third party tested for compliance because they are the exact same products that have had to be in compliance with the phthalates bans for the past two and a half years.

However, the Commission is cognizant that there still may be some who have questions regarding what constitutes a children's toy or child article or how to test for the banned phthalates. To that end, we invite questions and comments to be communicated to the staff contact person listed in the notice of requirements. CPSC staff will be updating our frequently asked questions webpage in the future to provide further guidance. In addition, the Commission seeks general comments in response to this notice of requirements and welcomes feedback from those in the regulated community.

The Stay

We have also worked diligently to provide time for relevant stakeholders to, as necessary, prepare for the testing and certification requirements related to the phthalates bans. Accordingly, the Commission unanimously agreed to support a stay of enforcement of third party testing and certification to show compliance with the phthalates bans until December 31, 2011. This date matches up with the expirations of the stays of enforcement for testing and certification of children's products to the lead content limit and children's products subject to the ASTM F-963 toy standard. We would like all consumers, as well as manufacturers of all sizes, to know that we have carefully balanced any legitimate timing and compliance concerns with our Congressional mandate to require the third party testing of children's toys and child care articles for banned phthalates. We must protect our children by ensuring only safe toys and child care articles are on the market.

Conclusion

Putting in place procedures that require meaningful, independent third-party testing for banned chemicals is a vital and necessary part of the process of providing parents and grandparents with greater peace of mind when standing in the store shopping for toys or child care articles. Three years ago, in response to a wave of unsafe and violative toys in the marketplace, such as small magnets that detached from toys, chemical contaminants in and on children's products, and detachable small parts that killed or seriously injured several children, Congress said enough was enough. By passing the CPSIA, Congress directed the Commission to implement third party testing requirements, including requirements to ensure toys and child care articles are free of banned phthalates. Since then, CPSC has been steadily improving the requirements for children's safety by, for instance, putting in place

lab accreditation requirements and having established testing requirements for lead paint, total lead content, the federal toy standard, and now phthalates as well. Last week, we fulfilled our statutory mandate to require companies to prove, through independent testing, that the products they make and sell meet the phthalates bans.