

SAFEGUARDS

SGS CONSUMER TESTING SERVICES

HARDLINES, SOFTLINES, ELECTRICAL & ELECTRONICS

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CPSIA PART 12: CONTROVERSY AND CONFUSION CONTINUE IN REGARDS TO THE REQUIREMENTS OF CPSIA AND TO THE PREEMPTION OF SOME STATE LAWS

Manufacturers and attorneys continue to question the implementation details of the CPSIA requirements and the preemption of some state regulations. Numerous letters have been sent to CPSC requesting clarification of the lead restrictions particularly as it affects materials that may not be considered hazardous or may be considered accessible.



CPSC has been trying to respond to these questions and has posted responses on its website under the CPSIA section¹ and the Frequently Asked Questions (FAQ) page.

A major cause of confusion among the companies relates to the difference in position taken by the Counsel General of CPSC and California State Attorney General on when the phthalates ban comes in to effect and the treatment of products already in commerce under Federal and CA law respectively. The California AG

¹ <http://www.cpsc.gov/about/cpsia/cpsia.html>

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assertion that its state law AB 1108 bill banning certain phthalates² is still valid and applies to all toys and child care articles containing excessive levels of phthalates starting January 1, 2009, no matter when or where they were manufactured. The CA State also takes the position that no federal pre-emption exists for its restriction of phthalates. CPSC has not explicitly addressed this issue pursuant to release of California AG position, many industry groups are contending that the CPSIA does preempt the state bill, potentially leaving the answer in the hands of the courts. In the meantime, this dilemma leaves manufacturers to determine what course of action they should take.

Numerous enquiries have been asked of CPSC regarding lead testing of items like books and testing of various apparel items for phthalates. CPSC has issued several responses and these can be found on their website. These responses certainly highlight what may be considered inconsistencies in the CPSIA; for instance the CPSC opinion that lead requirements affect inventories of product at the date of compliance but that it does not affect inventories with regard to phthalates, may seem appropriate given the recognized hazard of lead compared to the more controversial issues with phthalates. In contrast the CPSIA makes provision for excluding certain electronic components and inaccessible items even though they contain lead in excess of the limits, but based on a CPSC FAQ response there is no exclusion for inaccessible parts of a children's toy for the restricted phthalates.



SGS experts continue to monitor the CPSC and other websites to keep up to date on the emerging details of the CPSIA and state legislation status. Keep in touch with your local SGS office and subscription to these Safeguards bulletins for the latest news.

² Please refer to [SafeGuards 108/08](#)

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