

SAFE GUARDS

SGS CONSUMER TESTING SERVICES

HARDLINES, SOFTLINES

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CPSIA UPDATES PART 20 CPSC OFFERS PRACTICAL GUIDANCE ON PHTHALATES AND SEEKS PUBLIC COMMENT

CPSC published guidance to assist manufactures, importers, retailers and consumers to determine what products are covered by the phthalates requirements. The effective date for phthalates was February 10, 2009

On February 5, 2009, a District Court for the Southern District of New York decided that the ban on phthalates in the Consumer Product Safety Improvement Act of 2008 (CPSIA) is retroactive ¹. This decision overturned an earlier legal opinion of the General Counsel of the US Consumer Product Safety Commission (CPSC) and the CPSC indicated that they will abide by the court ruling. From February 10, 2009, certain children's toys and childcare articles are prohibited to be sold, offered for sale, manufactured or imported for sale into the US if they exceed the 0.1 % threshold level for 6 forms of phthalates.

On February 12, 2009, the CPSC published some practical guidance to assist manufactures, importers, retailers and consumers to determine what products are covered by the phthalates requirement ². Until the draft guidance is finalized, the CPSC intends to focus its enforcement efforts on products that are most likely to pose a risk of phthalate exposure to children. Highlights on the draft guidance regarding which children's products are subject to the phthalates requirements (CPSIA section 108) are summarized below.

Consumer Product

1. Food, cosmetics and medical devices are generally not considered as consumer products and are regulated by other federal agencies.
2. Infant bottles and cups are consumer products and are regulated by CPSC and the US Food and Drug Administration (FDA).



¹ Memorandum Opinion and Order, 08 Civ. 10507 (PGG) , National Resources Defense Council, Inc and Public Citizen against US Consumer Product Safety Commission, February 5, 2009, Southern District of New York , United States District Court, <http://www.cpsc.gov/about/cpsia/nrdcopinion.pdf>

[Safeguard 27/09 'US District Court Rules Against the CPSC's General Counsel's Advisory Opinion Letter – Court Holds that the Phthalate Ban is Retroactive'](http://www.cpsc.gov/about/cpsia/nrdcopinion.pdf)

² CPSC Developing Practical Guidance for Meeting Phthalates Requirements in new Child Safety Law; Public Input Sought, Release #09-130, US Consumer Product Safety Commission, February 12, 2009 and references therein <http://www.cpsc.gov/cpsc/pub/prerelease/09/09130.html>

Notice of Availability of Draft Guidance Regarding Which Children's Products are Subject to the Requirements of CPSIA Section 108: Request for Comments and Information, February 12, 2009, <http://www.cpsc.gov/about/cpsia/draftphthalatesguidance.pdf>

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Children's Toys

The standard ASTM F 963 excludes the following from the definition of a toy

1. Bicycles and Tricycles
2. Sling shots and sharp-pointed darts
3. Playground equipment
4. Non-powder guns
5. Kites
6. Art materials, model kits, and hobby items in which the finished products are not primarily of play value [art and craft materials are subject to the requirements of Labeling of Hazardous Art Materials Act (LHAMA)]
7. Sporting goods, camping goods, athletic equipment, musical instruments and furniture, unless such products are toy versions
8. Powered models of aircraft, rockets, boats and land vehicles

Balls and Books

1. Regulation-size baseballs, basketballs, footballs and soccer balls are athletic equipment and excluded from ASTM F963. Accordingly, if they are designed or sized for use by children, the staff's proposed approach would exclude them from the phthalates requirements.
2. General purpose balls are regarded as toys and subject to the phthalates requirements.
3. A toy version of actual athletic equipment (e.g. baseball glove with foam ball) would be considered as a toy.
4. Plastic bat and ball used by small children would be considered as toys.
5. Small balls handed out as promotional items may be considered as toys.

6. Ordinary books, including books for small children, are generally not regarded as toys.
7. Novelty books such as plastic books marketed as bath toys, or books that incorporate sounds, may be regarded as toys under ASTM F963 and CPSIA section 108 (phthalates).

Miscellaneous Toys

The following may be subject to the phthalates requirements

1. Bath toys
2. Pool toys
3. Toddler wading pools
4. Dolls
5. Action figures
6. Costumes
7. Masks and balloons.

Inflatable Toys and Toys that can be Placed in the Mouth

1. These are
 - a. Any part of the toy that can be brought to the mouth and kept in the mouth
 - b. Any part of toy is < 5 cm in any dimension
2. The 5 cm criterion for inflatable toys such as pool toys and beach balls are considered in their deflated form
3. General purpose balls that are permanently inflated by the manufacturer are considered in their inflated (normal) form
4. Inflatable regulation-size athletic equipment such as basketballs, footballs and soccer balls excluded by ASTM F963 are not considered as toys

Childcare Articles

A childcare article is a consumer product designed or intended by the manufacturer to facilitate sleep or the feeding of children 3 years and younger, or to help such children with sucking or teething. Products associated with other aspects of childcare such as bathing and diapering are not subject to the phthalates requirements. To determine whether a product is a childcare article, the staff considers the level of involvement or proximity of the child and product during the feeding, sleeping, sucking or teething processes.

1. Proposed primary products such as teethingers, pacifiers, bibs, baby blankets, high chairs, sipper cups, feeding bottles and crib teething rails are intended to be placed in the mouth of a child and so these products are subject to the regulation.
2. Products that may or may not be considered to facilitate sleep are cribs, crib mattresses, toddler mattresses, mattress covers or mattress pads. These products are not necessarily in direct contact with the child.
3. Secondary products are those that are used by the parent and have no contact with the child would not be subject to the phthalates requirements. Examples of such products are bottle warmers, bottle cleaning products, breast pumps, nursing shield / pads, highchair floor mats, bouncers, swings and some strollers.
4. Some manufacturers may advertise their products as facilitating sleep and may be subject to the phthalates requirements. For example, a reclining stroller intentionally designed to facilitate sleep may be regarded as a childcare article.
5. Food contact articles such as infant bottles, cups and eating utensils are under the jurisdiction of both the CPSC and FDA. These products are regarded as childcare articles and are subject to the phthalates requirements.

As part of the guidance, comments are also being sought from the general public to determine whether certain consumer products such as crib sheets, play sand, decorated swimming goggles and shampoo bottles in animal or cartoon character shapes should be classified as toys or childcare articles. For further details, please refer to the draft guidance document ².



SGS is committed to keeping our clients informed as developments on CPSIA and other international legislations occur.

Throughout our global network of laboratories, we are able to provide a range of services, including analytical testing and consultancy for lead, phthalates and other heavy metals in a comprehensive range of children's products and other consumer products for the US and worldwide markets. Please do not hesitate to contact us for further information.

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WHEN YOU NEED TO BE SURE

