



LEGAL ALERT

CONSUMER PRODUCT SAFETY UPDATE

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CPSC Public Meeting on Phthalates

The Consumer Products Safety Commission ("CPSC") finally held its public meeting on Section 108 & phthalates today, March 12, 2009. Unfortunately, the meeting did not provide much new guidance. Instead, it actually appears that the CPSC staff is giving itself some room to backtrack on previous statements they have made.

The meeting started with an overview of the requirements of Section 108. The presenter reiterated that the 0.1% standard applies to individual phthalate compounds, not the total phthalate content in the product. Next, a human factors staff representative went through the definitions in Section 108: "children's toy", "toy that can be placed in the mouth", and "child care articles". Lastly, a CPSC chemist discussed the phthalate testing method developed by the CPSC.

Of particular interest (and maybe even some concern) was the staff's indication that the American Society for Testing and Materials ("ASTM") F963 definition of "toy", and the exclusions therein, may not all be applied by the CPSC to Section 108. The CPSC is still seeking comments regarding whether the items excluded under F963 should also be excluded under the Consumer Product Safety Improvement Act ("CPSIA"). They insisted that any materials they have published thus far indicating that these exemptions will be applied across the board are just guidance, and are still open



to comments and change. The CPSC's main concern is that they have come to learn that some items were exempted from F963, not because they are not toys, but because they are already covered by another ASTM standard. Therefore, they don't want to exempt something that is actually a toy from the CPSIA & Section 108.

Additionally, in regard to "child care articles", the CPSC is seeking comments about the distinction between primary and secondary products. A primary product would be a product used by the child in the mouth, while a secondary product may be a product used by the parent but that has no contact with the child. The CPSC is leaning towards excluding those secondary items from the definition of a child care article, but wants public comment on this topic.

As far as testing goes, the test methodology provided by the CPSC is obviously not mandatory at this point because third party laboratories have not been accredited yet, and third party testing is not required.

However, when laboratories are required to become accredited for third party phthalate testing, the aforementioned will most likely be utilized as the general testing method. One particular concern for laboratories and manufacturers is that many phthalates have similar chemical characteristics. Therefore, laboratories and manufacturers need to be absolutely sure that the tests correctly identify those phthalates that are in their products. It would be a shame to spend sums of money and time pulling product or switching product components only to find that the phthalate in the product was not a regulated phthalate under Section 108, but was instead a closely related non-regulated phthalate. Thus, it is important that all testing parties are aware of this issue.

The CPSC is very interested in any and all comments on the issues above, or any other issues involving Section 108. Comments are due by March 25, 2009. Comments relating to the definitions and possible exemptions under Section 108 are especially welcome, and strongly encouraged.