Statement of Policy: Testing of Component Parts With Respect To Section 108 of the Consumer Product Safety Improvement Act

A. Background

The Consumer Product Safety Improvement Act (CPSIA) was enacted on August 14, 2008 (Pub. L. 110-314). Section 108 of the CPSIA permanently prohibits the sale of any "children's toy or child care article" containing concentrations of more than 0.1 percent of three specified phthalates.[1, 2] Section 108 also prohibits, on an interim basis, the sale of "any children's toy that can be placed in a child's mouth or child care article" containing concentrations of more than 0.1 percent of three additional phthalates pending the recommendation of a Chronic Hazard Advisory Panel (CHAP).[3, 4] The CHAP will recommend to the Commission whether to make the interim ban permanent and whether other phthalates or phthalate alternatives should be declared banned hazardous substances. The terms "children's toy," "children's toy that can be placed in a child's mouth," and "child care article" are defined in section 108 of the CPSIA. These prohibitions became effective on February 10, 2009.

To gather comments and information about implementation of this section of the CPSIA, the Commission published a "Notice of Availability of Draft Guidance Regarding Which Children's Products are Subject to the Requirements of CPSIA section 108; Request for Comments and Information," on February 23, 2009 (74 FR 8058). Comments in response to the Notice demonstrate that many questions and concerns exist about the requirement that products comply with the phthalates limits of section 108 of the CPSIA and, specifically, the testing procedures used to determine the percentage of phthalates in such products.

In the present statement of policy, the Commission describes its current position on component part testing with respect to section 108 of the CPSIA. It does not create or confer any rights for or on any person and does not operate to bind CPSC or the public beyond the existing statutory requirements of the CPSIA. You can use an alternative approach if the approach satisfies the requirements of the CPSIA.

B. Purpose of Section 108 of the CPSIA

The purpose of section 108 of the CPSIA, generally, is to ensure that children are not exposed to certain specified phthalates while playing, sleeping, or eating. In general, phthalates are chemicals that are added to plastic to make the plastic more flexible or resilient, and concerns have been raised about possible adverse health effects resulting from exposure to phthalates.

In March of 2009, the Commission staff sought comment on a method for testing phthalate content as a percentage of the entire toy or child care article. Given that testing the phthalate

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1 Di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), and benzyl butyl phthalate (BBP).

2 Section108(a) of the CPSIA.

3 Diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), and di-*n*-octyl phthalate (DnOP).

4 Section108(b)(1) of the CPSIA.

content of an entire children's toy or child care article presents certain difficulties, may lead to dilution of the phthalate concentrations compared to that in one or more of its component parts, differs from similar regulations issued by other jurisdictions, and can be prohibitively expensive, the Commission believes that phthalate testing should be limited to those plastic parts or other product parts which could conceivably contain phthalates ("plasticized component parts"). Testing component parts to the phthalates limits established in section 108 is more protective of human health and effectuates the intent of Congress to limit children's exposure to phthalates. The benefits of the component approach are two-fold, in addition to providing more protection for children, it also may significantly reduce the testing costs for manufacturers in certain circumstances.

In addition, requiring component part testing is supported by the statutory language. The CPSIA permanently bans the sale of any children's toy or child care article containing concentrations of more than 0.1% of DEHP, DBP or BBP. A "children's toy" is defined in 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."[5] The term "child care article" is defined in the CPSIA 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." Both definitions use the term "consumer product," which section 3 of the Consumer Product Safety Act (CPSA) defines, in part, as:

> any article, *or component part thereof*, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise . . . (Emphasis added.)

This definition of consumer product also applies to the more limited definition of "children's toy that can be placed in a child's mouth" to which the interim ban on DINP, DIDP and DnOP applies.

Because the term consumer product includes components of an article, the Commission believes that the phthalate limits in section 108 of the CPSIA apply to each component part of any article. The Commission has developed a method to test component parts for the specified phthalates and will only require testing of plasticized component parts as defined above.

Therefore, when testing for phthalates in children's toys and child care articles subject to section 108 of the CPSIA, CPSC staff will use test method CPSC-CH-C1001-09.2, which is published separately and in conjunction with this Policy. This test method can be found on our website at http://www.cpsc.gov/about/cpsia/CPSC-CH-C1001-09.2.pdf

[5] Section 108(e) of the CPSIA.

C. Testing: How to Identify Component Parts That May Require Testing.

Phthalates are primarily used as plasticizers (softeners) in polyvinyl chloride (PVC) plastics. PVC is used in many products, including, toys, floor and wall coverings, household furnishings, building materials, wire and cable insulation, footwear, rainwear, and automobile interiors. Phthalates may be used as plasticizers in other plastics including polyvinyl acetate (PVA), polyvinylidene chloride (PVDC), and polyurethane (PU).[6, 7] Phthalates also are used as solvents and/or plasticizers in paints, inks, adhesives, sealants, air fresheners, and scented products. Phthalates are more likely to be used in paints, adhesives, or sealants when the finished product must be flexible, such as a printed design on apparel or other flexible substrates.

Not all plastics, however, contain phthalates. Certain plastics, such as polyethylene and polypropylene, generally do not require plasticizers. However, surface coatings and adhesives may contain phthalates. In addition, phthalates could be used in some plastics even though they are not required. Phthalates might also be used in some elastomers or synthetic rubbers. Most natural and synthetic fibers and textiles are not expected to contain phthalates,[8] except for PVC and related materials. Printed designs, coatings, surface treatments, and elastic components may contain phthalates.

Examples of materials that <u>may</u> contain phthalates are:

- Polyvinyl chloride (PVC) and related polymers, such as polyvinylidene chloride (PVDC) and polyvinyl acetate (PVA). These materials should always be tested.
- Soft or flexible plastics, except polyolefins.
- Soft or flexible rubber, except silicone rubber and natural latex.
- Foam rubber or foam plastic, such as polyurethane (PU).
- Surface coatings, non-slip coatings, finishes, decals, and printed designs.
- Elastic materials on apparel, such as sleepware.
- Adhesives and sealants.
- Electrical insulation.

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[6] Report to the U.S. Consumer Product Safety Commission of the Chronic Hazard Advisory Panel on Diisononyl Phthalate (DINP). June 2001.

[7] Letter from Carter Keithley, President, Toy Industry Association to Cheryl Falvey, General Counsel and Gib Mullan, Assistant Executive Director for Compliance and Field Operations. January 12, 2009. Comments in response to "Prohibition on the Sale of Certain Products Containing Specified Phthalates; Section 108 of the Consumer Product Safety Improvement Act, Request for Comments and Information. U.S. Consumer Product Safety Commission. November 13, 2008. http://www.cpsc.gov/about/cpsia/108rfc.pdf

[8] Survey of Chemicals in Consumer Products, No. 23. Survey of Chemical Compounds in Textile Fabrics. Danish Environmental Protection Agency. 2003. http://www.mst.dk/English/Chemicals/Consumer_Products/Surveys-on-chemicals-in-consumer-products.htm

Examples of materials that do not normally contain phthalates and, therefore, might not require testing or certification are:

- Unfinished metal.
- Natural wood, except for coatings and adhesives added to wood.
- Textiles made from natural fibers, such as cotton or wool, except for printed decorations, waterproof coatings or other surface treatments, back coatings, and elastic materials (especially sleepwear).
- Textiles made from common synthetic fibers, such as polyester, acrylic, and nylon, except for printed decorations, waterproof coatings or other surface treatments, and elastic materials. However, any textiles containing PVC or related polymers must be tested.
- Polyethylene and polypropylene (polyolefins).
- Silicone rubber and natural latex.
- Mineral products such as play sand, glass, and crystal.

D. Who Is Responsible for Deciding Whether to Test for Phthalates?

Manufacturers either know or should know what materials and components go into the products they make, and if the product or its components contain one of the plasticizers specified in section 108 of the CPSIA, the manufacturer or importer certifying the product must test the component or product to ensure that it complies with the CPSIA. Failure to comply with section 108 of the CPSIA is a prohibited act under section 19 of the Consumer Product Safety Act (CPSA) and can result in civil and criminal penalties. Likewise, failure to have a product subject to section 108 of the CPSIA tested by an accredited third-party laboratory and have the appropriate certification for that product is also a prohibited act under section 19 (CPSA).

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