

CPSC'S EXPANDED PROHIBITION ON PHTHALATES IN CHILDREN'S PRODUCTS SET TO TAKE EFFECT

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The Consumer Product Safety Commission's (CPSC) [final rule](#) expanding phthalate restrictions in children's toys and child care articles takes effect this week, on April 25, 2018. The rule renews the ban on DEHP, DBP and BBP, makes the interim ban on DINP permanent, and adds four new phthalates to the list of banned phthalates in children's products.

Phthalates are a group of chemicals typically used to soften vinyl and other plastics and make them pliable and easier to grip and are found in numerous household products. The final rule comes nearly a decade after CPSC first began to regulate phthalates over concerns that phthalates can act as endocrine disruptors.

To recap, in 2008, Congress passed the Consumer Product Safety Improvement Act of 2008 (CPSIA), which prohibited toys and child care items containing the following three phthalates:

- di(2-ethylhexyl) phthalate (DEHP);
- dibutyl phthalate (DBP); and
- butyl benzyl phthalate (BBP) .

The CPSIA also imposed an interim ban on the following three additional phthalates pending an investigation by the Chronic Hazard Advisory Panel (CHAP) into their health effects:

- diisononyl phthalate (DINP);
- di-n-octyl phthalate (DNOP); and
- diisodecyl phthalate (DIDP).

In July 2014, the CHAP published a report recommending that the CPSC ban five phthalates, including making the interim ban on DINP permanent. After an extended public comment period, the CPSC voted on October 18, 2017 to issue a final rule.

After three years of public comments, the long anticipated final rule:

1. restates the CPSIA's permanent prohibition of DEHP, DBP, and BBP in concentrations greater than 1000 ppm (0.1%);
2. makes the interim ban on DINP in concentrations greater than 0.1% permanent and expands that restriction to prohibit it in all children's toys (not just the original category of mouthable products);
3. lifts the interim ban on DNOP and DIDP; and
4. prohibits diisobutyl phthalate (DIBP), di-n-pentyl phthalate (DPENP), di-n-hexyl phthalate (DHEXP), and dicyclohexyl phthalate (DCHP) in concentrations greater than 0.1%.

Starting on April 25, any children's toy or child care article that contains one of the listed phthalates in excess of the allowed concentration will constitute a violation of the CPSC rules. Children's toys are defined under CPSIA as consumer products that have play value and are designed or intended by the manufacturer for a child 12 years of age or younger. Child care articles are consumer products 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.

Compliance is required of all manufacturers, importers, or private labelers of products that fit the above descriptions. Importantly, the rule applies to all products manufactured or *imported* after the effective date, regardless of when the product was manufactured.

Noncompliance carries hefty civil penalties in the amount of \$100,000 per violation (with a cap of \$15 million) and criminal penalties can be assessed where there is a knowing and willful violation after receipt of a notice of noncompliance. Enforcement actions can be brought by the CPSC as well as the state attorneys general in all 50 states.

In sum, the final rule places significant regulatory compliance burdens on businesses involved with the commerce of children's products. Retailers should ensure they comply in order to reduce potential liability under the CPSIA.

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