

TITLE 15 - COMMERCE AND TRADE
CHAPTER 47 - CONSUMER PRODUCT SAFETY**§ 2057c. Prohibition on sale of certain products containing specified phthalates****(a) Prohibition on the sale of certain products containing phthalates**

Beginning on the date that is 180 days after August 14, 2008, it shall be unlawful for any person to manufacture for sale, offer for sale, distribute in commerce, or import into the United States any children's toy or child care article that contains concentrations of more than 0.1 percent of di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), or benzyl butyl phthalate (BBP).

(b) Prohibition on the sale of additional products containing certain phthalates**(1) Interim prohibition**

Beginning on the date that is 180 days after August 14, 2008, and until a final rule is promulgated under paragraph (3), it shall be unlawful for any person to manufacture for sale, offer for sale, distribute in commerce, or import into the United States any children's toy that can be placed in a child's mouth or child care article that contains concentrations of more than 0.1 percent of diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DnOP).

(2) Chronic Hazard Advisory Panel**(A) Appointment**

Not earlier than 180 days after August 14, 2008, the Commission shall begin the process of appointing a Chronic Hazard Advisory Panel pursuant to the procedures of section 28 of the Consumer Product Safety Act (15 U.S.C. 2077) to study the effects on children's health of all phthalates and phthalate alternatives as used in children's toys and child care articles.

(B) Examination

The panel shall, within 18 months after its appointment under subparagraph (A), complete an examination of the full range of phthalates that are used in products for children and shall—

- (i)** examine all of the potential health effects (including endocrine disrupting effects) of the full range of phthalates;
- (ii)** consider the potential health effects of each of these phthalates both in isolation and in combination with other phthalates;
- (iii)** examine the likely levels of children's, pregnant women's, and others' exposure to phthalates, based on a reasonable estimation of normal and foreseeable use and abuse of such products;
- (iv)** consider the cumulative effect of total exposure to phthalates, both from children's products and from other sources, such as personal care products;
- (v)** review all relevant data, including the most recent, best-available, peer-reviewed, scientific studies of these phthalates and phthalate alternatives that employ objective data collection practices or employ other objective methods;
- (vi)** consider the health effects of phthalates not only from ingestion but also as a result of dermal, hand-to-mouth, or other exposure;
- (vii)** consider the level at which there is a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals and their offspring, considering the best available science, and using sufficient safety factors to account for uncertainties regarding exposure and susceptibility of children, pregnant women, and other potentially susceptible individuals; and
- (viii)** consider possible similar health effects of phthalate alternatives used in children's toys and child care articles.

The panel's examinations pursuant to this paragraph shall be conducted de novo. The findings and conclusions of any previous Chronic Hazard Advisory Panel on this issue and other studies conducted by the Commission shall be reviewed by the panel but shall not be considered determinative.

(C) Report

Not later than 180 days after completing its examination, the panel appointed under subparagraph (A) shall report to the Commission the results of the examination conducted under this section and shall make recommendations to the Commission regarding any phthalates (or combinations of phthalates) in addition to those identified in subsection (a) or phthalate alternatives that the panel determines should be declared banned hazardous substances.

(3) Permanent prohibition by rule

Not later than 180 days after receiving the report of the panel under paragraph (2)(C), the Commission shall, pursuant to section 553 of title 5, promulgate a final rule to—

(A) determine, based on such report, whether to continue in effect the prohibition under paragraph (1), in order to ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety; and

(B) evaluate the findings and recommendations of the Chronic Hazard Advisory Panel and declare any children's product containing any phthalates to be a banned hazardous product under section 8 of the Consumer Product Safety Act (15 U.S.C. 2057), as the Commission determines necessary to protect the health of children.

(c) Treatment of violation

A violation of subsection (a) or (b)(1) or any rule promulgated by the Commission under subsection (b)(3) shall be treated as a violation of section 19(a)(1) of the Consumer Product Safety Act (15 U.S.C. 2068 (a)(1)).

(d) Treatment as consumer product safety standards; effect on State laws

Subsections (a) and (b)(1) and any rule promulgated under subsection (b)(3) shall be considered consumer product safety standards under the Consumer Product Safety Act [15 U.S.C. 2051 et seq.]. Nothing in this section or the Consumer Product Safety Act (15 U.S.C. 2051 et seq.) shall be construed to preempt or otherwise affect any State requirement with respect to any phthalate alternative not specifically regulated in a consumer product safety standard under the Consumer Product Safety Act.

(e) Definitions

(1) Defined terms

As used in this section:

(A) The term "phthalate alternative" means any common substitute to a phthalate, alternative material to a phthalate, or alternative plasticizer.

(B) The term "children's toy" means 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.

(C) The term "child care article" means 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.

(D) The term "consumer product" has the meaning given such term in section 3(a)(1) of the Consumer Product Safety Act (15 U.S.C. 2052 (a)(1)).

(2) Determination guidelines

(A) Age

In determining whether products described in paragraph (1) are designed or intended for use by a child of the ages specified, the following factors shall be considered:

- (i) A statement by a manufacturer about the intended use of such product, including a label on such product if such statement is reasonable.
- (ii) Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children of the ages specified.
- (iii) Whether the product is commonly recognized by consumers as being intended for use by a child of the ages specified.
- (iv) The Age Determination guidelines issued by the Commission staff in September 2002 and any successor to such guidelines.

(B) Toy that can be placed in a child’s mouth

For purposes of this section a toy can be placed in a child’s mouth if any part of the toy can actually be brought to the mouth and kept in the mouth by a child so that it can be sucked and chewed. If the children’s product can only be licked, it is not regarded as able to be placed in the mouth. If a toy or part of a toy in one dimension is smaller than 5 centimeters, it can be placed in the mouth.

(Pub. L. 110–314, title I, § 108, Aug. 14, 2008, 122 Stat. 3036.)

References in Text

The Consumer Product Safety Act, referred to in subsec. (d), is Pub. L. 92–573, Oct. 27, 1972, 86 Stat. 1207, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2051 of this title and Tables.

Codification

Section was enacted as part of the Consumer Product Safety Improvement Act of 2008, and not as part of the Consumer Product Safety Act which comprises this chapter.

Definition

For definition of “Commission” used in this section, see section 2(a) of Pub. L. 110–314, set out as a note under section 2051 of this title.