

Phthalate ban in children's products now in force in California

January 2 2009, By Suzanne Bohan

Despite recent saber-rattling between state and federal officials, anew California law took effect Thursday that effectively bans the sale of toys and other children's products containing phthalates.

These goods now may not contain more than 0.1 percent of phthalates, a colorless, oily chemical used in thousands of consumer products to impart flexibility and durability. The law, which narrowly passed the Legislature and received a tepid endorsement from Gov. Arnold Schwarzenegger before he authorized it in 2007, sets the strictest standard nationwide for phthalates in consumer products.

But in November, the U.S. Consumer Product Safety Commission issued a legal opinion stating that the federal ban on children's products, which sets the same limits on phthalate levels as the state, applied only to goods manufactured on or after Feb. 10, the date the federal law takes effect.

In response, California Attorney General Jerry Brown in December told the commission that the federal government had no authority to preempt California's stricter version.

"As long as you got it off the assembly line in time, you could sell it for the next five years," said Ed Weil, a supervising deputy attorney general with the Office of the Attorney General in Oakland, describing the chief objection to the federal version of the phthalate ban.

A spokesman for the product safety commission suggested it won't stand

in the way of California's more-comprehensive ban.

"The Consumer Product Safety Commission respects the law as passed in California, and its implementation starting this week," said Scott Wolfson, the commission spokesman.

During the past decade, phthalates have come under fire for their threat to the developing human reproductive system, particularly in young boys. Phthalates can slowly leach from products, and children typically ingest them by hand-to-mouth contact, or by chewing on a toy.

With the ban in place, California consumers should now be able to buy safer toys and products that help children sleep, eat, get clean and teethe.

The same law applies to online retailers shipping products into the state. Weil noted that most large retailers pledged last year to cease selling products with phthalates by Jan. 1; some phased them out in advance. Major retailers such as Wal-Mart, Toys "R" Us and Target last year began removing children's products with phthalates from their shelves nationwide.

"The regulatory loop has been closing on these products for about three years," Weil noted. "And companies have known this. So they've been acting."

Specifically, the law bans the use of six types of phthalates found in some children's toys containing plastic and in "child-care articles" intended "to facilitate sleep, relaxation, or the feeding of children, or to help children with sucking or teething."

The law also requires that phthalate substitutes be less toxic.

The San Francisco Department of the Environment throughout 2008

tested toys made with polyvinyl chloride - which often contains high phthalate levels - bought in city stores.

About half had the chemical, said Debbie Raphael, who manages the department's toxics reduction program. In one case, she noted, a brand name toy pony had none, but a copy version of it contained 40 percent.

Weil said he's more concerned about deep discount stores, which typically buy older inventory from other retailers, and are thus more likely to sell products with high levels of phthalates.

Major retailers said they would stick to California's standards for children's products they sell nationwide.

But the fight isn't over in other states over the Consumer Product Safety Commission giving retailers the option to continue selling children's products exceeding the new phthalate standards, as long as they were made before the federal ban that takes effect Feb. 10.

Sen. Barbara Boxer, D-Calif., who in 2008 co-sponsored the federal legislation banning phthalates, scathingly rebuked the commission's position, calling it a "blatant disregard for the law" and "a pathetic and transparent attempt to avoid enforcing this law." Boxer is challenging the commission's position, stating it was not Congress' intent to allow the continued sale of older inventory of children's products with phthalates.

The Natural Resources Defense Council and Public Citizen on Dec. 4 also sued to block the exemption, stating that it harms individuals exposed to phthalates and it confuses consumers.

But to the American Chemistry Council, the contentious debate is brouhaha over a class of chemicals that it said no one has proven actually harms humans.

"This law flies in the face of good science and good government," said Jack Gerard, president of the chemistry council.

A December report from the National Research Council, which does research for the National Academy of Sciences and the National Academy of Engineering, found that "few human studies on the health effects of phthalates are available." But it detailed a number of health consequences in lab animals after phthalate exposure, such as infertility and other defects of the male reproductive system. Gerard, however, criticized the "chemical-by-chemical attack strategy" of policymakers and health advocates.

He called for "comprehensive approaches, such as California's Green Chemistry Initiative, which encourages or mandates manufacturers to formulate chemicals that are less poisonous and degrade more quickly. Schwarzenegger also supported a broader approach.

"I do not believe that addressing this type of concern ... on a chemical by chemical, product by product basis is the best or most effective way to make chemical policy," Schwarzenegger wrote in an October 2007 message to the Assembly before signing the bill.

"I strongly believe there needs to be a systematic way to address these types of concerns," he stated.

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