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Media Contact: Alex Booze | [abooze@wlf.org](mailto:abooze@wlf.org) | 202-588-0302

## WLF's Comments Illustrate Flaws in Consumer Product Safety Commission's Proposed Phthalates Rule

**“CPSC’s cumulative risk assessment does not accurately reflect the far less significant risk the phthalate DINP poses. Banning DINP because it contributes to risk when added to (already banned) DEHP is like saying that LeBron James and I together scored 50 points in last night’s basketball game, so we must make a dangerous pair.”—Mark Chenoweth, WLF General Counsel**

**WASHINGTON, DC**—Washington Legal Foundation filed comments with the U.S. Consumer Product Safety Commission (CPSC) yesterday raising concerns with the Commission’s proposed phthalates rule. Phthalates are widely used chemicals that soften plastics. In the Consumer Product Safety Improvement Act of 2008 (CPSIA), Congress banned three phthalates (*e.g.*, DEHP) in children’s toys and child care articles. The same Act *temporarily* banned three other phthalates (*e.g.*, DINP), instructing CPSC to study their harmfulness and then promulgate a rule lifting the temporary ban or making it permanent, and banning other phthalates if necessary.

CPSC convened a Chronic Hazard Advisory Panel (CHAP) of experts to help it sort through the phthalates issues. The CHAP’s final report arrived 27 months late—more than four years after the CHAP’s appointment and nearly six years after the CPSIA was signed into law. Despite this inexcusable tardiness (and the availability of at least two more recent data sets), the CHAP based its recommendations on outdated exposure data from 2005-06.

As WLF’s comments point out, by relying on the old data, the CHAP based its estimate of future phthalates exposure on data that included exposure to phthalates (like DEHP) that Congress permanently banned in 2008. But the ban necessarily means that post-ban exposure to the prohibited phthalates will be less than the level of exposure that occurred pre-ban. Thus, basing an estimate of future exposure to phthalates on such data is not reasonable. For similar reasons, the CHAP’s cumulative risk assessment concluding that DINP poses a risk when added to the background risk created by DEHP is flawed. Nearly all the cumulative risk comes from DEHP, and that risk is decreasing since DEHP was already banned. Citing WLF’s recently published WORKING PAPER by Lawrence Kogan on the subject, WLF’s comments explain how the Information Quality Act could provide a legal basis to challenge such an ill-founded rule.

After filing its comments, WLF issued a statement by General Counsel Mark Chenoweth:

“CPSC’s cumulative risk assessment does not accurately reflect the far less significant risk the phthalate DINP poses. Banning DINP because it contributes to risk when added to (already banned) DEHP is like saying that LeBron James and I together scored 50 points in last night’s basketball game, so we must make a dangerous pair. The Information Quality Act binds federal agencies to regulate based on sound data, and it may provide legal relief from CPSC’s mistake.”

*WLF is a public interest law firm and policy center that regularly advocates in defense of sound science and against regulatory proposals that harm consumers by not assessing risk accurately.*