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Softlines, Hardlines and Toys & Children's Products

## Updates on recent Prop. 65 settlements

Recent judgements under California's Proposition 65 thus far in 2011 have set several important precedents for the regulatory environment in the United States. These include new restrictions on the content of the phthalates DEHP, BBP and DBP as well as strict limits for cadmium and lead.

### New limits established for lead and cadmium

The first settlement of the year came in February 2011 when two bounce house manufacturers agreed to reformulate the vinyl used in their products so that they contain no more than 0.01% (100 ppm) lead<sup>1</sup>. The lawsuit was filed by the Center for Environmental Health (CEH) in August 2010 against 15 manufacturers of inflatable structures made of polyvinyl chloride such as bounce houses, slides, ball ponds and obstacle courses. No judgement has yet been reached for the other 13 defendants named in the suit.

The judgement against the two bounce house makers was closely followed by an agreement with a major national retailer of children's jewellery in March 2011. The US\$45,000 nationwide settlement requires the retailer to reformulate its products so that the cadmium limit of each material or component does not exceed 0.03% (300 ppm). This is the first legally binding nationwide agreement<sup>2</sup> to limit cadmium in children's and adult jewellery since the CEH first discovered children's jewellery containing over 2,300 times more cadmium than maximum exposure limits in February 2010. The CEH has challenged at least 40 other retailers with evidence of unsafe cadmium levels in their children's jewellery products, and the US\$45,000 settlement may be expected to set a precedent for future judgements.

### Limit on DEHP extended to include BBP and DBP

Further evidence of the tightening regulatory environment in the U.S. emerged in March 2011, when a September 2010 settlement involving DEHP<sup>3</sup> in various kinds of fashion accessories was amended to include limits for BBP and DBP.

While the original judgement only established a  $\leq 0.1\%$  (1,000 ppm) limit for Bis(2 ethylhexyl)phthalate (DEHP; CAS No. 117-81-7), the same limit was extended to Benzyl butyl phthalate (BBP; CAS No. 85-68-7) and Dibutyl phthalate (DBP; CAS No. 84-74-2). The limits apply to each accessible component made of polyvinyl chloride (PVC) or other soft plastic, vinyl, or synthetic leather on a wide range of fashion accessories (see table).

<sup>1</sup> Read about the settlement at [http://www.ceh.org/index.php?option=com\\_content&task=view&id=489&Itemid=166](http://www.ceh.org/index.php?option=com_content&task=view&id=489&Itemid=166)

<sup>2</sup> Read about the agreement at [http://www.ceh.org/index.php?option=com\\_content&task=view&id=490&Itemid=16](http://www.ceh.org/index.php?option=com_content&task=view&id=490&Itemid=16)

<sup>3</sup> Read about the original judgement in the 21 October 2010 issue of Softlines E-ssentials [https://www.tuv-sud.in/APMKT/pdf/Softlines\\_E-ssentials\\_21\\_October\\_2010.pdf](https://www.tuv-sud.in/APMKT/pdf/Softlines_E-ssentials_21_October_2010.pdf)

Defendants and settling defendants are required to reformulate their products by 15 December 2011, and manufacturers are not allowed to use labelling to notify consumers of the hazard of their products.

### Next steps for manufacturers

With our ISO 17025-accredited laboratories, TÜV SÜD's testing services can help businesses avoid being subject to long and expensive legal battles. Customers are therefore advised to have their products tested by our laboratories immediately to ensure that they meet the substance limits established by these judgements. ■

Table A: New limits of selected substances

Substance	Affected products	Limit
<ul style="list-style-type: none"> <li>■ DEHP (CAS No. 117-81-7)</li> <li>■ BBP (CAS No. 85-68-7)</li> <li>■ DBP (CAS No. 84-74-2)</li> </ul>	"Fashion Accessories" includes (but is not limited to): <ul style="list-style-type: none"> <li>■ Wallets, handbags, purses, cosmetic bags and totes;</li> <li>■ Belts and footwear;</li> <li>■ Coverings for eyeglasses and mobile electronic devices;</li> <li>■ Apparel, including gloves and headwear (but excluding sauna suits);</li> <li>■ Jewellery;</li> <li>■ Key holders and key chains;</li> <li>■ Luggage tags, bag charms, ID cases and zipper pulls.</li> </ul>	$\leq 0.1\%$ (1,000 ppm) for each phthalate
Cadmium	All components of children's and adult's jewellery except those made of cubic zirconia, glass, rhinestone and vitrified ceramic materials intended for children over six years old.	$\leq 0.03\%$ (300 ppm)
Lead	Vinyl inflatable structures such as bounce houses, combos, games, slides, ball ponds and obstacle courses.	$\leq 0.01\%$ (100 ppm)

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# Canada Consumer Product Safety Act (CCPSA) to come into force on 20 June 2011



Health Canada has announced that the new Canada Consumer Product Safety Act (CCPSA)<sup>1</sup> will come into effect on 20 June 2011, effectively replacing Part I and Schedule I to the Hazardous Products Act (HPA). However, Part II and Part III of the HPA will not be affected by CCPSA and will remain in force.

Under the CCPSA, manufacturers, importers, distributors and retailers will become subject to two new key obligations:

- **Mandatory Reporting:** Businesses will be required to report to Health Canada any incident related to health and safety caused by a consumer product; and
- **Record Retention:** Retailers will be required to keep records that provide enough details to know which suppliers they purchased products from and also where and when products were sold. Meanwhile, suppliers who manufacture, import, advertise, sell or test consumer products will be required to keep records to indicate from whom they obtained the product and the businesses to whom they sold it.

It is hoped that these records and reports will provide the Canadian government with timely information about important product safety issues that will enable the authorities to act swiftly against potential health hazards to consumers. These actions may include instituting product recalls and bans or imposing fines and penalties on errant businesses. The new law applies to a wide variety of products including children's toys, household products and sporting goods. However, it will not apply to consumables such as cosmetics and food, which are protected by other laws.

TÜV SÜD can help businesses keep abreast of the rapid developments in Canada's product safety regulations. With our global network of laboratories and extensive knowledge services, our technical experts can help ensure that companies do not lose their competitive edge in Canada's increasingly complex regulatory environment. ■

<sup>1</sup> View the Health Canada information page on the CCPSA at <http://www.hc-sc.gc.ca/cps-spc/legislation/acts-lois/ccpsa-lcspc/indust/notice-avis-eng.php>

**Table B: Regulatory changes under the CCPSA**

<b>New regulations made under the CCPSA*</b>	<ul style="list-style-type: none"> <li>▪ Candles Regulations</li> <li>▪ Children's Jewellery Regulations</li> <li>▪ Face Protectors for Ice Hockey and Box Lacrosse Players Regulations</li> <li>▪ Ice Hockey Helmet Regulations</li> <li>▪ Textile Flammability Regulations</li> </ul>
<b>Existing regulations under the Hazardous Products Act (HPA) that will be replaced by the CCPSA*</b>	<ul style="list-style-type: none"> <li>▪ Hazardous Products (Booster Cushions) Regulations and Hazardous Products (Child Restraint Systems) Regulations to be replaced by "Restraint Systems and Booster Seats for Motor Vehicles Regulations".</li> <li>▪ Hazardous Products (Children's Sleepwear) Regulations to be replaced by "Children's Sleepwear Regulations".</li> <li>▪ Hazardous Products (Toys) Regulations to be replaced by "Toys Regulations".</li> </ul>
<b>Regulations to be transferred to CCPSA without amendment</b>	<ul style="list-style-type: none"> <li>▪ Carbonated Beverage Glass Containers Regulations</li> <li>▪ Carriages and Strollers Regulations</li> <li>▪ Corded Window Covering Products Regulations</li> <li>▪ Cribs and Cradles Regulations</li> <li>▪ Glass Doors and Enclosures Regulations</li> <li>▪ Glazed Ceramics and Glassware Regulations</li> <li>▪ Hazardous Products (Carpets) Regulations</li> <li>▪ Hazardous Products (Cellulose Insulation) Regulations</li> <li>▪ Hazardous Products (Charcoal) Regulations</li> <li>▪ Hazardous Products (Expansion Gates and Expandable Enclosures) Regulations</li> <li>▪ Hazardous Products (Infant Feeding Bottle Nipple) Regulations</li> <li>▪ Hazardous Products (Kettles) Regulations</li> <li>▪ Hazardous Products (Matches) Regulations</li> <li>▪ Hazardous Products (Mattresses) Regulations</li> <li>▪ Hazardous Products (Pacifiers) Regulations</li> <li>▪ Hazardous Products (Tents) Regulations</li> <li>▪ Lighters Regulations</li> <li>▪ Playpens Regulations</li> <li>▪ Residential Detectors Regulations</li> <li>▪ Science Education Sets Regulations</li> </ul>

\* These regulations have not yet come into force and will do so on 20 June 2011.

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# EU extends ban on DMFu to 2012

The European Commission has extended the temporary ban<sup>1</sup> on dimethyl furmarate (DMFu, CAS 624-49-7) for the second time to 15 March 2012 by the Commission Decision 2011/135/EU. As of 1 May 2009, any product containing DMFu at concentration above 0.1 mg/kg, including its presence in an anti-mould pouch as part of the packaging, are prohibited from entering the European Union market. Those products that are already available on the market must be withdrawn from the market, while those already sold to consumers must be recalled, together with supplying these customers with adequate information on the risk posed by such products.

DMFu has been widely used as an anti-moulding agent for leather goods such as footwear and furniture to prevent the products from deterioration during storage and transportation in a humid climate. It is a white crystalline powder that is often contained in small pouches or sachets labelled "fungicide" or "mould-proof" and placed inside the packaging such as shoe boxes. For larger products such as furniture, sometimes the anti-moulding agent is sprayed directly onto the product.

DMFu works by impregnating the products through sublimation (going directly from a solid to gaseous state) in hot conditions. Since it is a potent skin sensitiser, only a minute quantity of DMFu that has penetrated through clothing is enough to cause painful skin contact dermatitis with itching, irritation, redness, and burns. In some cases, acute respiratory troubles have been reported. Ironically, the sublimation property that makes DMFu such an effective anti-moulding agent is also what makes it particularly prone to cross-contaminating other materials.

The DMFu issue was first reported in the European Union in 2008 with imported leather sofas from Asia. However, the range of products found with this chemical has since included footwear, toys, helmets, jeans and

<sup>1</sup> Read the full Decision on the extension at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:057:0043:0043:EN:PDF>



luggage. The majority of the reported cases were of leather footwear, but products made with other natural and synthetic materials have also been detected and reported.

The temporary ban on DMFu was an emergency measure taken by the European Commission to deal with the sudden large number of DMFu-related cases reported. In 2010, France proposed to place DMFu on a permanent ban<sup>2</sup> under the REACH regulation. That proposal is currently undergoing its second consultation stage. The DMFu ban is expected to become permanent before the temporary ban ends in March 2012. ■

<sup>2</sup> Download the full Annex XV report at [http://echa.europa.eu/doc/restrictions/annex\\_xv\\_restriction\\_report\\_DMFu\\_en.pdf](http://echa.europa.eu/doc/restrictions/annex_xv_restriction_report_DMFu_en.pdf)

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