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Californian Court Announces Proposition 65 Settlement for Lead in Fashion Accessories



A Californian court recently announced a Proposition 65 settlement with more than 40 major retailers and vendors alleged to have sold fashion accessories that contained excessive amounts of lead.

The settlement requires that all fashion accessories sold after 1 December 2010 meet prescribed lead limits (see Table A). The deadline for footwear and belts, however, is 1 December 2011. Retailers and brands not party to the original settlement may "opt-in" to the Judgment by reformulating their products and making a monetary payment. In addition, products manufactured before 1 December 2010 that do not meet the lead limits may be sold after 1 December 2011 on the condition that they carry a warning label.

Although federal U.S. law requires that children's products contain no more than 300 parts per million (ppm) of lead, there is no equivalent law for lead content in products such as totes, handbags, purses, clutches, wallets, footwear and belts (collectively referred to as "fashion accessories"). Lead is listed as both a carcinogen and reproductive

toxicant, and has been linked to higher infertility rates in women, an increased risk of heart attacks, strokes and high blood pressure. Scientists are increasingly concerned about lead exposure among pregnant women and young children, and a recent study concluded that lead exposure during pregnancy could have "lasting and possibly permanent effects" on a child's IQ¹.

THE PROPOSITION 65 WARNING LABEL

The Californian court's decision came after the Centre for Environmental Health (CEH) found that hundreds of leather-and-vinyl fashion accessories sold in the state contained dangerously high levels in violation of Proposition 65. In addition to lead, however, Proposition 65 also lists over 850 other chemicals² believed to cause cancer or reproductive toxicity. And, while the California Office of Environmental Health Hazard Assessment (OEHHA) provides guidelines on safe levels for some of the chemicals, the Office does not do so for all of them.

¹Reduced intellectual development in children with prenatal lead exposure", by the National Institute of Perinatology, Mexico (<http://www.ncbi.nlm.nih.gov/pubmed/16675439>)

²The complete list may be downloaded from http://oehha.ca.gov/prop65/prop65_list/Newlist.html.

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It is not practical for manufacturers and retailers to test their products for all of the chemicals listed in Proposition 65. As such, products that carry exposure risks that exceed these safe levels are required to carry a Proposition 65 warning label in the form of "WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm." This labelling requirement stands even if the OEHHA has not specified a safe level for a chemical. The only exception to this rule would be if the business is able to show that the exposure risks associated to its product would be below the levels specified in Proposition 65 and its accompanying regulations.

HOW TÜV SÜD CAN SUPPORT OUR CUSTOMERS

Determining the legal toxicity of products due to the known and unknown presence of chemicals in fashion accessories requires both technical expertise and a keen understanding of regulations like California's Proposition 65. TÜV SÜD's consultants and state-of-the-art laboratories can help retailers and manufacturers of these products better understand Proposition 65's complex labelling requirements and meet the prescribed lead limits. ■

TABLE A: DATES OF EFFECT FOR PRESCRIBED LEAD LIMITS

| Product | Lead limit (ppm) | Date of effect | |
|---|------------------|--|--|
| | | Totes, handbags, purses, clutches, wallets | Footwear and belts |
| Surface coatings (e.g. lead in paint) | 90 | 1 Dec 2010 | 1 Dec 2011 |
| Leather | 600 | 1 Dec 2010 (Drops to 300 ppm on 1 Dec 2011) | 1 Dec 2011 (Drops to 300 ppm on 1 Dec 2012) |
| PVC | 300 | 1 Dec 2010 (Drops to 200 ppm on 1 Dec 2011) | 1 Dec 2011 (Drops to 200 ppm on 1 Dec 2012) |
| All other components (except crystals and/or rhinestones) | 300 | 1 Dec 2010 | 1 Dec 2011 |

Canadian Government Reintroduces Consumer Product Safety Act as Bill C-36

The Canadian government has reintroduced the Canada Consumer Product Safety Act as Bill C-36¹, the third time the Act has been tabled in the Canadian Parliament. It follows Bill C-52 in April 2008 and Bill C-6 in January 2009, and is intended to replace Part 1 of the Hazardous Products Act.

ALL CONSUMER PRODUCTS AFFECTED

Administered by Health Canada, Bill C-36 builds upon its predecessor Bill C-6 with some amendments. It seeks to "beef up Canada's out-of-date product safety laws and deliver stronger, more effective protection for Canadian consumers and their families"² and will raise Canada's product safety regime to be in line with those of its major trading partners.

All consumer products made in or sold in Canada will come under the purview of the new Canada Consumer Product Safety Act. This includes children's products, household products (including electronic appliances, fire prevention equipment, furniture, household chemicals and kitchen and houseware goods),



and softlines products which contain textile fibres intended for use as apparel. Infant products such as teething rings, pacifiers and baby bottle nipples will also be affected by the new regulations.

NEW REGULATIONS AND TRACEABILITY REQUIREMENTS

The new laws will give the Minister of Health the power to order product recalls and issue directives to stop the manufacture and sale of products deemed unsafe for use. In addition, industry will be required to quickly inform the government when they discover one of their products to be linked to a serious product safety issue. The Act will also make it an offence to package or label consumer products that make deceptive health or safety claims.

In an effort to facilitate product traceability measures, manufacturers, importers, advertisers and sellers of consumer products will be required to comply to documentation requirements, although in most cases, these are likely to already be part of normal business practice. Test results of products must also be produced at the request of the Government.

HOW TÜV SÜD CAN SUPPORT YOU

Besides providing customers with regulatory updates and developments, TÜV SÜD can also offer end-to-end solutions that fulfill the new requirements of Bill C-36. With a global network of laboratories and highly trained experts, TÜV SÜD's inspection and quality evaluation services can minimise the risks of non-compliance. ■

¹ The complete bill may be viewed at <http://www2.parl.gc.ca/House-Publications/Publication.aspx?DocId=4606148&Language=e&Mode=1&file=32%20-%201>.

² "Government of Canada Delivers on Commitment for Tougher Consumer Product Safety", by Health Canada (http://www.hc-sc.gc.ca/ahc-asc/media/nr-cp/_2010/2010_97-eng.php).

Updates from the Consumer Product Safety Commission

Final Mandatory Rule on Infant Baby Walkers announced

- **Summary:** The CPSC has announced its final mandatory rule to ensure the compliance of all infant walkers with the provisions of the standard ASTM F 977 07 "Standard Consumer Safety Specification for Infant Walkers".

- **In detail:** With the CPSC's announcement, all infant walkers that do not meet the specified safety criteria will be banned under CPSC 16 CFR 1500.18(a)(6) and 1500.86(a)(4).

Baby-walkers, baby-bouncers, walker-jumpers and "any other similar article" intended to support very young children while "sitting, walking, bouncing, jumping, and/or reclining" must be tested by an accredited third-party conformity assessment body. This move will ensure the compliance of these products with all applicable CPSC requirements of Section 101, 108 14(a)(5) of the CPSA and the consumer registration from requirements in section 104, and will include the testing of infant walkers' parking brakes (if present) to assure that they work properly.

- **Date of Effect:** 21 December 2010
- **Effect on Businesses:** The rule effectively turns the ASTM F 977 07 voluntary standard into a mandatory standard that demands full compliance. The CPSC only accepts compliance reports from accredited test laboratories like TÜV SÜD, which can perform the necessary tests in accordance with the CPSC's requirements. TÜV SÜD also offers businesses exporting infant walkers to the U.S. with local language support and can provide regular updates and advice on CPSC developments.

CPSC issues a Notice of Proposed Rulemaking (NPR) to revise ASTM Standards for Infant Bouncer Seats and Bassinets/Cradles.

- **Summary:** The CPSC proposes to modify and adopt the ASTM F2194 07a as a mandatory standard for bassinets and cradles in an effort to reduce suffocations and entrapments.
- **In detail:** The CPSC has issued a Notice of Proposed Rulemaking (NPR) for Bassinets and Cradles that will incorporate the voluntary standard ASTM F2194 07a with certain additions and modifications aimed at reducing the incidence of suffocation and entrapment of infants.

The proposed changes to the ASTM F2194 07a standard include:

- Limiting the rocking/swinging angle and rest angle of certain rocking/swinging cradles
- Reducing the probability of fabric-sided products from forming a bounded area which may suffocate infants
- Requiring a flatness angle performance requirement for the sleep support surface
- Prohibiting restraint systems that require action from the caregiver to secure
- **Effect on Businesses:** Businesses will have to ensure that their products comply with the new requirements of the ASTM F2194 07a standard or risk being locked out of the American market. Manufacturers and importers of bassinet and cradles are advised to get their products tested by an Accredited Third Party Testing laboratory such as TÜV SÜD.

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