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CONTENTS

- ▶ Proposition 65 Settlement Reached Involving DEHP in Handbags, Belts, Footwear and Other Accessories 1
- ▶ CPSC Approves Final Interpretative Rule for the Definition of "Children's Product" 2
- ▶ Other Updates Affecting Children's Products 3

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Proposition 65 Settlement Reached Involving DEHP in Handbags, Belts, Footwear and Other Accessories



A recent Proposition 65 settlement that establishes the limit for DEHP content in adult fashion accessories has been reached in California. The agreement follows a similar settlement involving 40 manufacturers earlier this year which established lead limits in similar products ranging from 90 to 600 ppm.

Under the settlement, the defendants must comply with a Di(2-ethylhexyl) phthalate (commonly known as DEHP) content limit of 1000 parts per million (ppm). This applies to the "accessible components" in the following adult fashion accessories:

- Wallets, coin or bill holders;
- Handbags, purses, clutches, or totes;
- Jewelry;
- Belts and footwear;
- Apparel, including gloves and headwear;
- Key holders, keychains, and key caps;
- Luggage tags and ID cases;
- Bag charms and zipper pulls;
- Covering cases for electronic devices;
- Cosmetics and toiletry cases and bags

"Accessible component" in this sense is taken to mean a polyvinyl chloride (PVC) or other soft plastic, vinyl, or synthetic leather component that could be touched by a person during reasonably foreseeable use. Products primarily intended for children under 12 years of age and sauna suits were excluded from the agreement.

THE OPT-IN PROGRAMME

Under the settlement, defendants and opt-ins are not permitted to use labelling as a way of nullifying their obligations. They must reformulate the product to be within the DEHP content limit of 1000 ppm. The effective date of compliance to this limit is 15 December 2011.

Companies interested in joining the settlement through the opt-in programme must do so by 31 January 2011. Manufacturers of adult fashion accessories are therefore advised to determine whether their products meet the DEHP content limit in order to decide whether or not to participate in the opt-in programme. At the same time, they should also ensure that their goods meet the lead limits announced earlier this year¹.

In view of the short deadline, manufacturers are encouraged to approach TÜV SÜD's technical experts to assess their products for DEHP content as soon as possible. At the same time, our team of technicians can also test manufacturers' products for the presence of lead and other regulated substances. ■

¹ See the 13 July 2010 issue of Softlines E-ssentials at https://www.tuv-sud.in/APMKT/pdf/Softlines_E-ssentials_13_July_2010.pdf

CPSC Approves Final Interpretative Rule for the Definition of “Children’s Product”



The Consumer Product Safety Commission (CPSC) has issued its final interpretative rule¹ on the term “children’s product” as it is used in the Consumer Product Safety Improvement Act (CPSIA) of 2008.

The rule was published to help interested parties understand how the CPSC will determine whether a particular consumer product is primarily intended for a child 12 years of age or younger. In the rule, the CPSC said it would consider four factors when deciding whether an item is indeed a “children’s product”:

- A statement by a manufacturer about the intended use of such product, including a label on such product. However, this factor can only hold true if such a statement is reasonable. The manufacturer’s label is thus not considered to be determinative by itself, especially if the product uses decorations or embellishments that invite use by the child or is of a size evidently intended for a child’s use.
- Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger. Such representations may be express or implied, including the location of sale.

- Whether the product is commonly recognised by consumers as being intended for use by a child 12 years of age or younger. Sales data, market analyses, focus group testing, and other marketing studies may be used to support an analysis regarding this factor.
- The Age Determination Guidelines² issued by the Commission staff in September 2002. The product’s appeal to different age groups and the capabilities of those age groups may be considered when making determinations about the appropriate user groups for products.

GENERAL USE PRODUCTS

In issuing the rule, the CPSC also clarified its interpretation of products intended for “general use”, i.e., consumer products that are not “designed or intended primarily for use by children 12 years old or younger”. These are generally thought of as products which a child would not likely interact with, such as:

- Products with which consumers older than 12 would be as likely, or more likely, to interact.
- Products that incorporate requirements for child resistance since they are designed specifically to ensure that children cannot access the product’s contents.

- Products specifically not intended for children 12 years of age or younger such as cigarette lighters, candles and fireworks.

However, if a product has a declining appeal for teenagers, then it is nonetheless likely to be considered a children’s product.

HOW TÜV SÜD CAN HELP

The CPSC has made it clear that all products will be assessed on a case-by-case basis, and that all four factors and not just manufacturer intention will be considered in making a children’s product determination. The interpretive rule will also clarify how the CPSIA may be applied in regulatory enforcement, especially with regards to substance safety regulations that specify different exposure limits for adult products and children’s products. Manufacturers must be able to define their primary target consumers within the CPSC’s guidelines and meet those different limits accordingly.

According to the CPSC, the regulations that apply to children’s products include those for younger children as specified in 16 CFR Part 1501 (small parts regulations) as well as products intended for children up to 8 years old which are subject to 16 CFR 1500.48 through 1500.49 (sharp points and edges tests) and 16 CFR 1500.50 through 1500.53 (use and abuse tests). Children’s products must also comply with the requirements applicable to children’s products under the Federal Hazardous Substances Act, ASTM F963, “Standard Consumer Safety Specification for Toy Safety,” and the Consumer Product Safety Improvement Act of 2008.

This means that children’s products must not contain excessive levels of lead and be tested and certified as compliant. In addition, products must also contain tracking information so that they can be effectively recalled should they prove hazardous to children. With our CPSC-accredited lab facility, TÜV SÜD’s technical experts can help manufacturers meet these and other regulatory requirements. ■

¹ Download the full rule from <http://www.cpsc.gov/businfo/fnotices/fr10/childproduct.pdf>

² Download the guidelines from <http://www.cpsc.gov/BUSINFO/adg.pdf>

Other Updates Affecting Children's Products

<p>CPSC Requests Public Comments on Technological Feasibility of 100 ppm for Lead Content in Children's Products.</p>	<p>In brief: The CPSC has requested public comments and information regarding the technological feasibility of meeting a 100 ppm lead content limit for children's products.</p> <p>In detail: As of 11 August 2011, children's products may not contain more than 100 ppm of lead unless the CPSC determines that it is not technologically feasible. When an independent study in July 2010 showed that testing to this level of confidence led to highly inconsistent results among the 20 laboratories engaged for the experiment, the CPSC issued a notice for public comments regarding the feasibility of meeting the proposed limit. The comment period ended on 27 September 2010.</p> <p>Date of Effect: N/A.</p> <p>Effects on business: The independent study showed that while it may be possible to make products with a lead content of 100 ppm or less, not all laboratories have the requisite skills or experience to test materials to that level of confidence. Manufacturers should therefore only engage testing laboratory partners that are accredited to the ISO 17025 standard like TÜV SÜD to ensure that their test results are accurate and reliable.</p> <p>More information: View the draft and the comments it has received at http://www.regulations.gov/search/Regs/home.html#docketDetail?R=CPSC-2010-0080</p>
<p>CPSC Proposes to Conduct Survey on Durable Nursery Products Exposure.</p>	<p>In brief: The CPSC has proposed to conduct a survey regarding the ownership and use characteristics of durable infant or toddler products.</p> <p>In detail: In August 2010, the CPSC announced its intention to collect certain information through a survey regarding the ownership characteristics, the life cycle of the products, and consumer behaviours and perceptions regarding durable nursery products. Under the Paperwork Reduction Act of 1995, The CPSC is required to allow 60 days for public comment in response to the notice. The comment period ended on 18 October 2010.</p> <p>Date of Effect: N/A.</p> <p>Effects on business: If the CPSC's proposal is accepted, the data collected from the survey will provide the agency valuable information and insight into the use of durable nursery products. The information will also allow the CPSC to formulate more effective and consumer-friendly regulations for children's products.</p> <p>More information: View a draft of the survey at http://www.cpsc.gov/library/foia/foia10/brief/babyprodsurvey.pdf</p>
<p>New California Law Limits Cadmium in Children's Jewellery.</p>	<p>In brief: California has passed a law that will limit cadmium in jewellery for children of six years of age or younger.</p> <p>In detail: California has joined Connecticut, Illinois and Minnesota by enacting a law that limits the use of cadmium in children's jewellery to no more than 300 ppm by weight. The state's new regulation also provides the California Department of Toxic Substances Control the authority to further lower the limit in the future.</p> <p>Date of Effect: 1 January 2012.</p> <p>Effects on business: Manufacturers that rely on cadmium as a substitute for lead must ensure that their products meet the prescribed content limits by the time California's new law goes into effect.</p> <p>More information: Download the complete bill at http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0901-0950/sb_929_bill_20100927_chaptered.pdf</p>

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