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CPSC Announces Changes to the Stay of Enforcement of Testing and Certification Requirements

The Consumer Product Safety Commission (CPSC) announced on 28 December 2009 changes to the "stay" of enforcement of certain testing and certification provisions of section 14 of the Consumer Product Safety Act (CPSA) as amended by section 102(a) of the Consumer Product Safety Improvement Act of 2008 (CPSIA).

Originally, the "stay," which was announced on 9 February 2009, was to remain in effect until 10 February 2010. It covered sections 14(a)(1), (a)(2), and (a)(3) of the CPSA that establish testing and certification requirements for most consumer products, including children's products.

BACKGROUND TO CPSA, CPSIA & STAY

The Consumer Product Safety Act (CPSA), enacted in 1972, empowers CPSC to develop a standard to reduce or eliminate the risk of injury associated with a consumer product. It also gives CPSC the authority to pursue recalls for products that present a substantial product hazard.

The Consumer Product Safety Improvement Act (CPSIA), enacted by U.S. Congress in August 2008, sets out new compliance, testing and certification requirements for children's products. It includes limits on lead and phthalates in children's products, mandatory toy standards, and mandatory third-party testing and certification requirements.

The "stay" established by CPSC back in February 2009 provided a limited relief to manufacturers and importers of children's products from the testing and certification requirements for new total lead content limits, phthalates limits and mandatory toy standards. The "stay," however, did not exempt

manufacturers and importers to comply with the lead and phthalates limits, mandatory toy standards and other requirements as stipulated in the Consumer Product Safety Improvement Act of 2008 (CPSIA).

WHO ARE AFFECTED AND HOW?

Manufacturers and importers who deal with children's products need to take note of CPSC's notice¹ titled, "Consumer Product Safety Act: Notice of Commission Action on the Stay of Enforcement of Testing and Certification Requirements." The notice, issued on 28 December 2009, addresses the following two key questions:

- When the stay will lift with regard to certain testing and certification requirements?
- How the testing and certification requirements will be implemented or otherwise become effective with regard to specific products?



Table A shows the status of stay of the third-party testing and certification requirements for various products.

TABLE A: THIRD-PARTY TESTING AND CERTIFICATION REQUIREMENTS

Status of Stay on Third-party Testing and Certification Requirements	Affected Products
Stay continues until 10 Feb 2011	Total lead content in accessible metal and non-metal children products
Stay continues until further notice	<ul style="list-style-type: none"> ▪ Carpets and rugs ▪ Wearing Apparel ▪ Children's sleepwear ▪ Vinyl plastic film ▪ Caps and toy guns ▪ Phthalates ▪ Baby walkers ▪ Bath seats ▪ Electronic toys ▪ Durable infant products
Third-party testing and certification required NOW	<ul style="list-style-type: none"> ▪ Lead Paint/Coating on children's products ▪ Small parts (products for children under 3 years) ▪ Lead in metal components of children's metal jewelry

HOW CAN TÜV SÜD SUPPORT YOU?

Equipped with CPSC accredited laboratories, TÜV SÜD is capable of issuing the Children's Product Certificate based on Accredited Third Party Testing requirement under the CPSC regulations.

Rigid product safety reforms under the CPSC regulations may affect your operations and business continuity. TÜV SÜD is able to assist customers in eliminating regulatory confusion by offering complete, end-to-end solutions to the challenges posed by the latest regulation. ■



ECHA Expands REACH Candidate List to include Acrylamide

On 30 March 2010, the European Chemicals Agency (ECHA) announced to include Acrylamide to the Candidate List of Substances Very High Concern (SVHC) for Authorisation². The inclusion of acrylamide was temporarily suspended by the General Court of the European Union when ECHA confirmed 14 SVHCs in January 2010³. The President of the General Court of the European Union dismissed the application for interim measures on 26 March 2010 requesting for the inclusion of Acrylamide in the Candidate List.

As the communication obligation applies as

soon as an SVHC is included on the Candidate List, manufacturers and importers dealing with this substance need to immediately check for their potential obligations. Table B shows the new SVHC (acrylamide) that has been included in the Candidate List.

The Candidate List, therefore, currently comprises of 30 SVHCs. The decision as to whether Acrylamide needs to be subjected to authorisation will be taken later. For more information regarding the updated Candidate List, visit: http://echa.europa.eu/chem_data/authorisation_process/candidate_list_table_en.asp

HOW CAN TÜV SÜD SUPPORT AFFECTED CUSTOMERS?

To help retailers, manufacturers and importers comply with the new legislation and offer reassurance to customers that the products that they are purchasing are safe, TÜV SÜD has developed methods to screen and verify articles and their components for high risk chemicals, such as Acrylamide. Access to global knowledge on current and upcoming quality and safety market requirements enables TÜV SÜD to provide expert information and tailor-made solutions to companies so that they can competently and cost-effectively achieve REACH compliance. ■

TABLE B: THE NEW SVHC ON THE CANDIDATE LIST, PUBLISHED BY THE ECHA ON 30 MARCH 2010

Substance Name	CAS Number	EC number	Proposed Classification**	Possible Application for Softlines Products
Acrylamide	79-06-1	201-173-7	Carcinogen, category 2; Mutagen, category 2	The compounds of Acrylamide can be used as resins and adhesives, and also as finishing agents for better appearance in textiles and leather products.

¹ Further information about the notice is available at: <http://www.cpsc.gov/businfo/frnotices/fr10/stay.pdf>

² The announcement is available on ECHA's website at: http://echa.europa.eu/doc/press/pr_10_05_acrylamide_20100330.pdf

³ Further information about the 14 SVHCs published in January 2010 can be found Softlines E-essentials January 2010 Issue: https://www.tuv-sud.in/APMKT/pdf/Softlines_E-essentials_Jan2010.pdf

California's Proposition 65: Latest Updates



Softlines manufacturers and retailers should pay special attention to the following two updates on California's Safe Drinking Water and Toxic Enforcement Act of 1986, known as Proposition 65⁴:

Update 1: Recent Notices of Violation target footwear and belts

Update 2: Addition of two new chemicals to the list of toxic chemicals⁵

BACKGROUND

Proposition 65 was enacted in 1986 in the state of California to protect its population from exposure to toxic chemicals. The Office of Environmental Health Hazard Assessment (OEHHA) administers the Proposition 65 program. The key provisions of Proposition 65 include:

- The State needs to publish a list of chemicals that are known to cause cancer, birth defects or other reproductive harm. This list must be updated at least once a year; currently, it includes 800 chemicals.
- Businesses that cause chemical exposures greater than the safe harbor level (levels of exposure that trigger the warning requirement) must provide Proposition 65 warnings. OEHHA has established safe harbor levels for some, but not all, listed chemicals.
- If there is no safe harbor level for a chemical, businesses that knowingly expose individuals to that chemical would generally be required to provide a Proposition 65 warning.
- Proposition 65 also prohibits California businesses from knowingly discharging significant amounts of listed chemicals into the sources of drinking water.

UPDATE 1: NOTICES OF VIOLATIONS TARGET FOOTWEAR AND BELTS

The California Attorney General's Office is the lead agency for the enforcement of Proposition 65. Recently, Notices of Violation have been issued for cases like lead in footwear and belts, and presence of Di(2-ethylhexyl) phthalate in children's shoes.

Softlines manufacturers and retailers should be mindful of the high stakes involved as a Notice of Violation can lead to lawsuit against each of the alleged violators unless they agree to: (1) recall the products already sold; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the lead exposure; and (3) pay an appropriate civil penalty.

UPDATE 2: EXPANDED CHEMICALS LIST⁵

In October 2009, California Office of Environmental Health and Hazard Assessment (OEHHA) proposed adding two new chemicals to the California Proposition 65 regulated chemical list.

Diisononyl phthalate: Diisononyl phthalate (DINP) belongs to a class of compounds known as phthalates that are commonly used as a softener for plastics. Phthalates are often found in plastisol prints on garments, PVC based materials used for coating, PVC-based apparel and shoe accessories. Phthalates are known to result in serious health problems, such as cancers, and reproductive and developmental impairments.

Perfluorooctanoic acid: Perfluorooctanoic acid (PFOA) is used for surface treatment applications as it provides water, oil and soil repellency as well as a soft feeling. Commonly applied in textiles used in rainwear, bed linens, upholstery fabric, curtain material, etc., PFOA is considered by the United States Environmental Protection Agency to be carcinogenic and a chemical that induces breast tumors in animals.

HOW CAN TÜV SÜD SUPPORT SOFTLINES CUSTOMERS?

Determining health risks due to toxic chemicals is a complex process, and it's important for softlines businesses affected by Proposition 65 to consult experts, such as TÜV SÜD. TÜV SÜD is at the forefront of regulatory developments in the US and can be relied on for regular updates and interpretation of California Proposition 65 and other governmental regulations and industry standards. ■



⁴ Further information about Proposition 65 is available at: <http://www.oehha.ca.gov/prop65/background/p65plain.html>

⁵ Further information about the announcement is available at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html



TÜV SÜD NEWS

TÜV SÜD Signs an Agreement With Spanish Shoe Manufacturer's Association

TÜV SÜD has signed an exclusive agreement with the Spanish shoe manufacturers' association, FICE (Federación de Industrias del Calzado Español), to offer testing and certification services to its members. FICE represents over 700 companies, which account for about 90 per cent of the production and export in Spain's shoe industry.

TÜV SÜD's services to FICE members include not only product testing, on-site production inspection and pre- and post-shipment inspection, but also company auditing and certification. It's a win-win agreement that enables TÜV SÜD to make a strategic expansion in Europe, while allowing FICE members to leverage on TÜV SÜD's expertise and its international network to reach global markets.

EU Ban on DMF Extended

In March 2010, the European Commission passed Commission Decision 2010/153/EU⁶, to extend the validity of the Decision 2009/251/EC⁷, which requires Member States to ensure that products containing the biocide dimethylfumarate (DMF) are not placed or made available on the market. The validity of this Decision was restricted to a period not exceeding 1 year but allowed additional periods to be extended, none of which exceeds 1 year.

In light of the absence of a permanent measure addressing DMF in consumer products, the restriction was extended to 15 March 2011. Member States are required

to take the necessary measures to comply with this Decision by 15 March 2010.

HOW CAN TÜV SÜD SUPPORT AFFECTED CUSTOMERS?

TÜV SÜD has developed an analytical testing for the measurement and identification of DMF, utilising a detection limit of 0.1mg/kg as specified under the regulation. In addition to analytical testing on DMF, TÜV SÜD provides a comprehensive range of chemical, quality and performance tests that is required to meet both regulatory and non-regulatory requirements of all key regions and countries in the world and gain access to new markets. ■

AAFA Publishes its Latest Restricted Substances List

The American Apparel & Footwear Association (AAFA) has published its latest Restricted Substances List⁸ (RSL) covering apparel, footwear and home textiles. The RSL serves as a credible reference for softlines manufacturers and retailers for information on regulations and laws that restrict or ban certain chemicals and substances in finished home textile, apparel and footwear products.

HOW CAN TÜV SÜD SUPPORT YOU?

TÜV SÜD is a member of AAFA, and has state-of-the-art facilities and the technical know-how to test products for all the chemicals listed in the updated RSL. With effective usage of this tool, TÜV SÜD is able to assist companies navigate complex domestic and international regulations, which is imperative to remain competitive in the global marketplace. ■

⁶ The Commission Decision 2010/153/EU is available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:063:0021:0021:EN:PDF>

⁷ Further information about the Commission Decision 2009/251/EC can be found Softlines E-ssentials April 2009 Issue: https://www.tuv-sud.in/APMKT/pdf/Softlines_E-ssentials_Apr_2009.pdf

⁸ For the updated RSL, visit: <http://www.apparelandfootwear.org/Resources/restrictedsubstances.asp>

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