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the staff determined that these products violated the FHSA because they presented a risk of chemical poisoning and/or chemical pneumonia from aspiration. This determination resulted in recalls or in the replacement of those products with substitutes, as well as in agreements with the manufacturers to discontinue the use of hazardous chemicals in liquid-filled children's products in future production. The Commission believes that these hazardous substances pose a risk to young children and, consequently, manufacturers should not have included them in the product design or manufacturing process.

(3) Therefore, the Commission considers the use of hazardous chemicals in children's products such as those described above to be ill-advised and encourages manufacturers to avoid using them in such products. Further, the Commission recommends that, before purchasing such products for resale, importers, distributors, and retailers obtain assurances from the manufacturers that liquid-filled children's products do not contain hazardous liquid chemicals.

[63 FR 70648, Dec. 22, 1998]

§ 1500.232 Statement on animal testing policy.

(a) *Summary*. (1) The U.S. Consumer Product Safety Commission issues this statement of policy on animal testing and alternatives to animal testing of hazardous substances regulated under the Federal Hazardous Substances Act (FHSA). The FHSA requires appropriate cautionary labeling on certain hazardous household products to alert consumers to the potential hazard(s) that the products may present. Among the hazards addressed by the FHSA are toxicity, corrosivity, sensitization, and irritation.

(2) In order to determine the appropriate cautionary labeling, it is necessary to have objective criteria by which the existence of each hazard can be determined. Hazards such as toxicity, tissue corrosiveness, eye irritancy, and skin irritancy result from the biological response of living tissue and organs to the presence of the hazardous substance. One means of characterizing these hazards is to use animal testing as a proxy for the human reaction. In fact, the FHSA defines the hazard category of ''highly toxic'' in terms of animal toxicity when groups of 10 or more rats are exposed to specified amounts of the substance. The Commission's regulations under the FHSA concerning toxicity and irritancy allow the use of animal tests to determine the presence of the hazard when human data or existing animal data are not available.

(3) Neither the FHSA nor the Commission's regulations requires animal testing. The FHSA and its implementing regulations only require that a product be labeled to reflect the hazards associated with that product. If animal testing is conducted, Commission policy supports limiting such tests to a minimum number of animals and advocates measures that eliminate or reduce the pain or discomfort to animals that can be associated with such tests. The Commission has prepared this statement of policy with respect to animal testing to encourage the manufacturers subject to the FHSA to follow a similar policy.

(4) In making the appropriate hazard determinations, manufacturers of products subject to the FHSA should use existing alternatives to animal testing whenever possible. These include: prior human experience (*e.g.*, published case studies), *in vitro* or *in silico* test methods that have been approved by the Commission, literature sources containing the results of prior animal testing or limited human tests (*e.g.*, clinical trials, dermal patch testing), and expert opinion (*e.g.*, hazard assessment, structure-activity analysis). If a manufacturer or other entity performs a hazard test for FHSA labeling purposes that has not been previously approved by the Commission, CPSC staff will consider the data on a case-by-case basis and, upon review, determine whether to post the test method on the animal testing Web site. The Commission recommends resorting to animal testing only when the other information sources have been exhausted. At this time, the Commission recommends use of the most humane procedures with the fewest animals possible to achieve reliable results. Recommended

procedures are summarized in the following statement and can be accessed on the Commission's Web page at: *http://www.cpsc.gov/library/animaltesting.html*. If a manufacturer or other entity performs a hazard test for FHSA labeling purposes that has not been previously approved by the Commission (*e.g.*, an ICCVAM-recommended test method or one of the tests described in the current version of the FHSA), CPSC staff will consider the data on a case-by-case basis and, upon review, determine whether to post the test method on the animal testing Web site.

(b) *Statement of policy on animal testing*. (1) Neither the FHSA nor the Commission's regulations requires animal testing. Reliable human experience always takes precedence over results from animal data. In the cases where animal tests are conducted, the Commission prefers test methods that reduce stress and suffering in test animals and that use fewer animals while maintaining scientific integrity. To this end, the Commission reviews recommendations on alternative test methods developed by the scientific and regulatory communities. Current descriptions of test method recommendations approved by or known to the Commission can be accessed via the Internet at: *http://www.cpsc.gov/library/animaltesting.html*. The Commission strongly supports the use of scientifically sound alternatives to animal testing. The following parts of this section outline some of these alternatives. Testing laboratories and other interested persons requiring assistance interpreting the results obtained when a substance is tested in accordance with the methods described here, or in following the testing strategies outlined in the section, should refer to the Commission's animal testing Web page at: *http://www.cpsc.gov/library/animaltesting.html*.

(i) *Acute toxicity*. The traditional FHSA animal test for acute toxicity determines the median lethal dose (LD50) or lethal concentration (LC50), the dose or concentration that is expected to kill half the test animals. Procedures for determining the median LD50/LC50 are described in section 2(h)(1) of the Act and supplemented in §1500.3(c)(1) and (2) and the test method outlined in §1500.40. The Commission recommends *in vitro* alternatives over *in vivo* LD50/LC50 tests, or using modifications of the traditional LD50/LC50 test during toxicity testing that reduce the number of animals tested whenever possible. Data from *in vitro* or *in silico* test methods that have not been approved by the Commission may be submitted to the Commission for consideration of their acceptability. Commission-approved testing alternatives are identified on the Web site at: *http://www.cpsc.gov/library/animaltesting.html* and include:

(A) *In vitro* and *in vivo* test methods that have been scientifically validated and approved for use in toxicity testing by the Commission;

(B) Valid *in vitro* methods to estimate a starting dose for an acute *in vivo* test;

(C) A sequential version of the traditional LD50/LC50 tests described in §1500.3(c)(1) and (2) and the test method described in §1500.40, in which dose groups are run successively rather than simultaneously;

(D) A limit-dose test where the LD50/LC50 is determined as a point estimate, which can still be used to categorize a hazard, although it gives no information on hazard dose-response. In the limit test, animals (10 rats) each receive a single dose of product at 5g per kilogram of body weight. If not more than one animal dies in 14 days, the product is considered to have an LD50 of greater than 5g/kg, and thus, deemed to be nontoxic. Only if two or more animals die is a second group of 10 rats tested (at a lower dose). This procedure reduces the number of animals tested from the 80 to 100 animals involved in a full LD50 test to, typically, 10 to 20 rats per product. This reduction in the number of animals tested is justified because an exact LD50 is not required by either the FHSA or the regulations. The FHSA requires only a categorical determination that the toxicity is greater than 5g/kg, between 50 mg/kg and 5g/kg, or less than 50 mg/kg.

(ii) *Dermal irritation/corrosivity*. An acceptable *in vitro* test method or weight-of-evidence analysis is recommended before *in vivo* dermal irritation testing is considered to determine appropriate

cautionary labeling. The weight-of-evidence analysis should incorporate any existing data on humans and animals, validated *in vitro* or *in silico* test results (valid tests are identified on the Commission's animal testing Web site at: *http://www.cpsc.gov/library/animaltesting.html*), the substance's dermal toxicity, evidence of corrosivity/irritation of one or more structurally related substances or mixtures of such substances, data demonstrating low or high pH (≤2 or ≥11.5) of the substance, and any other relevant physicochemical properties that indicate the substance might be a dermal corrosive or irritant. If there is any indication from this analysis that the substance is either corrosive or irritating to the skin, the substance should be labeled appropriately. If the substance is not corrosive *in vitro*, but no data exist regarding its irritation potential, human patch testing should be considered. If *in vitro* data are unavailable, human patch testing is not an option, and there are insufficient data to determine the weight-of-evidence, a tiered *in vivo* animal test is recommended.

(A) In a tiered *in vivo* dermal study, a single rabbit is tested initially. If the outcome is positive for corrosivity, testing is stopped, and the substance is labeled appropriately. If the substance is not corrosive, two more rabbits should be patch-tested to complete the assessment of skin irritation potential.

(B) If a tiered test is not feasible, the Commission recommends the test method described in §1500.41. Note that in any *in vivo* dermal irritation test method, the Commission recommends using a semiocclusive patch to cover the animal's test site and eliminating the use of stocks for restraint during the exposure period, thereby allowing the animal free mobility and access to food and water.

(iii) *Ocular irritation.* A weight-of-evidence analysis is recommended to evaluate existing information before any *in vivo* ocular irritation testing is considered. This analysis should incorporate any existing data on humans and animals, validated *in vitro* or *in silico* test data (identified on the Commission's animal testing Web site at: *http://www.cpsc.gov/library/animaltesting.html*), the substance's dermal corrosivity/irritation (primary skin irritants and corrosives are also usually eye irritants and therefore do not need to be tested in the eye), evidence of ocular irritation of one or more structurally related substances or mixtures of such substances, data demonstrating high acidity or alkalinity of the substance, and any other relevant physicochemical properties that indicate the substance might be a dermal corrosive or irritant or ocular irritant.

(A) When the weight-of-evidence is insufficient to determine a substance's ocular irritation, a Commission-approved *in vitro* or *in silico* assay for ocular irritancy should be run to assess eye irritation potential and determine labeling. Examples of Commission-validated *in vitro* assays are identified on the Commission's animal testing Web site at: *http://www.cpsc.gov/library/animaltesting.html*). If no valid *in vitro* test exists, the test strategy for determining dermal corrosion/irritation outlined in paragraph (b)(1)(ii)(B) of this section can be followed to determine ocular irritation.

(B) If the dermal test strategy outlined in section paragraph (b)(1)(ii)(B) of this section leads to a conclusion of not corrosive, a tiered *in vivo* ocular irritation test should be performed, in which a single rabbit is exposed to the substance initially. If the outcome of this initial test is positive, testing is stopped, and the substance is labeled an eye irritant. If the outcome of this initial test is negative, one to two more rabbits are tested for ocular irritation, and the outcome of this test will determine the label. If a tiered test is not feasible, the Commission recommends the test method described in §1500.42.

(C) When any ocular irritancy testing on animals is conducted, including the method described in §1500.42, the Commission recommends a threefold plan to reduce animal suffering: The use of preemptive pain management, including topical anesthetics and systemic analgesics that eliminate or reduce suffering that may occur as a result of the application process or from the test substance itself (an example of a typical preemptive pain treatment is two applications of tetracaine ophthalmic

anesthetic, 10–15 minutes apart, prior to instilling the test material to the eye); post-treatment with systemic analgesics for pain relief; and implementation of humane endpoints, including scheduled observations, monitoring, and recording of clinical signs of distress and pain, and recording the nature, severity, and progression of eye injuries. The specific techniques that have been approved by the Commission can be found at: *http://www.cpsc.gov/library/animaltesting.html*.

(iv) *Dermal sensitization*. An acceptable *in vitro* test method (examples of valid *in vitro* tests are identified on the Commission's animal testing Web site at: *http://www.cpsc.gov/library/animaltesting.html*), or weight-of-evidence analysis is recommended before *in vivo* animal sensitization testing is considered to determine appropriate cautionary labeling. The weight-of-evidence analysis should incorporate any existing data on humans and animals, validated *in vitro* or *in silico* test results, and any relevant physicochemical properties that indicate the substance might be a dermal sensitizer. If there is any indication from this analysis that the substance is sensitizing to the skin, the substance should be labeled appropriately.

(2) [Reserved]

[77 FR 73288, Dec. 10, 2012]

EFFECTIVE DATE NOTE: At77 FR 73288, Dec. 10, 2012, §1500.232 was added, effective Jan. 9, 2013.

IMPORTS

§ 1500.265 Imports; definitions.

For the purposes of the regulations prescribed under section 14 of the act:

(a) The term *owner or consignee* means the person who has the rights of a consignee under the provisions of the Tariff Act of 1930 (secs. 483, 484, 485, 46 Stat. 721 as amended; 19 U.S.C. 1483, 1484, 1485).

(b) The term *area office director* means the director of the area office of the Consumer Product Safety Commission having jurisdiction over the port of entry through which a hazardous substance is imported or offered for import, or such officer of the area office as he may designate to act in his behalf in administering and enforcing the provisions of section 14 of the act.

§ 1500.266 Notice of sampling.

When a sample of a hazardous substance offered for import has been requested by the director of the area office, the collector of customs having jurisdiction over the hazardous substance shall give to the owner or consignee prompt notice of delivery of, or intention to deliver, such sample. Upon receipt of the notice, the owner or consignee shall hold such hazardous substance and not distribute it until further notice from the area office director or the collector of customs of the results of examination of the sample.

§ 1500.267 Payment for samples.

The Consumer Product Safety Commission will pay for all import samples that are found to be in compliance with the requirements of the act. Billing for reimbursement should be made by the owner or consignee to the Commission area office headquarters in the territory of which the shipment was offered for import. Payment for samples will not be made if the hazardous substance is found to be in violation of the act, even though subsequently brought into compliance under the terms of an authorization to bring the article into compliance.

§ 1500.268 Hearing.

(a) If it appears that the hazardous substance may be subject to refusal of admission, the area office director shall give the owner or consignee a written notice to that effect, stating the reasons therefor. The notice shall specify a place and a period of time during which the owner or consignee shall have an opportunity to introduce testimony. Upon timely request, giving reasonable grounds therefor, such time and place may be changed. Such testimony shall be confined to matters relevant to the admissibility of the hazardous substance, and may be introduced orally or in writing.

(b) If such owner or consignee submits or indicates his intention to submit an application for authorization to relabel or perform other action to bring the hazardous substance into