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SELECTING “PROMOTIONAL” AND “INCENTIVE” PRODUCTS

The California Department of Toxic Substance Control (DTSC) has prepared this Fact Sheet to assist California State agencies in selecting promotional/incentive items from manufacturers and suppliers. This Fact Sheet offers some recommendations to consider when making purchasing decisions, provides information about how to evaluate products for toxic substances, and concludes with a summary of some of the laws that regulate toxic substances in products. This guidance does not supersede existing State purchasing and procurement procedures (<http://www.pd.dgs.ca.gov/polproc/default.htm>) or replace existing State requirements for “Environmentally Preferable Purchasing” (<http://www.green.ca.gov/EPP/Introduction/default.htm>).

BACKGROUND

Public awareness and concern about toxic substances in consumer products has never been higher. In response to these concerns, various federal and State laws have been enacted to limit the content of toxic substances in products. It is important for State agencies to assure that the products they purchase for distribution to members of the public and their employees do not contain toxic substances at levels that exceed federal or State standards.

PRODUCT LIABILITY / MANAGING RISK

As a matter of general policy, DTSC recommends that State agencies purchase products certified by their manufacturers to be free of toxic substances and compliant with all applicable federal and State laws and regulations.

DTSC recommends that State agencies institutionalize, within their procurement processes, requirements for disclosure statements and/or liability indemnification agreements with suppliers and manufacturers to assure compliance with federal and State standards.

Some manufacturers have voluntarily begun to provide information about toxic substances in the products they produce. As prospective purchasers, State agencies should request information about toxic substances in promotional or incentive products before procuring products. If these data are not available, State agencies should reject the product(s), or request that the manufacturer or supplier have samples tested by an **accredited laboratory using the analytical procedures specified below**. By having products tested prior to purchase, State agencies limit the possibility of buying products that do not comply with existing standards. If the manufacturer refuses to provide the data requested, or if the data show that the product is not compliant with federal and State laws that regulate toxic substances in products, State agencies should reject the product.

A summary of existing requirement for products is included in the Table on the next page. “PPM” means “parts per million.”





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IF PRODUCT IS A ...	APPLICABLE LAW(S) & REQUIREMENTS
<p>Package carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags, tubs and bottles</p>	<p>Toxics in Packaging¹</p> <ul style="list-style-type: none"> • Intentional introduction of lead, cadmium, mercury, or hexavalent chromium (“regulated metals”) is prohibited. • Lead in paint or applied ceramic decoration must be less than 600 ppm. • Sum of incidental regulated metals is limited to no more than 100 ppm total. • A Certificate of Compliance must be provided by the manufacturer and /or supplier to the purchaser.
<p>Tableware plate(s), cup(s) or mug(s)</p>	<p>Food, Drug and Cosmetic Act²</p> <ul style="list-style-type: none"> • Restricts lead concentrations to 0.5 ppm if product is being used for food service. • Items unsuitable for food use must either be (1) permanently labeled with a logo or statement that they are unsuitable for food use, or (2) made incapable of holding liquid.³ <p>Proposition 65⁴</p> <ul style="list-style-type: none"> • Cups or mugs exceeding 0.1ppm or plates exceeding .226 ppm lead must carry a warning in California.
<p>Jewelry anklet, arm cuff, bracelet brooch, chain, crown, cuff link, decorated hair accessories, earring, necklace, pin, ring, body piercing jewelry and any bead chain, link pendant or other component of an ornament specified</p>	<p>Lead in Jewelry⁵</p> <p>Children’s Jewelry:</p> <ul style="list-style-type: none"> • Metallic components must contain less than 600 ppm lead. • Other materials must contain less than 200 ppm lead. • Rubber and plastic must contain less than 600 ppm after September 1, 2007 and less than 200 ppm after August 31, 2009. • Glass and crystal decorative components cannot weigh more than one gram, unless they contain less than 200 ppm lead and have no “intentionally-added” lead. • Printing ink and ceramic glaze must contain less than 600 ppm lead. <p>Other jewelry⁶ must be made from a Class 1, 2 and 3 material as defined in statute.</p>
<p>Toy an article designed and made for the amusement of a child or for his or her use in play</p>	<p>U.S. Consumer Product Safety Act⁷</p> <ul style="list-style-type: none"> • All toys must be labeled with the name and place of business of the manufacturer, distributor, or importer in the United States. • Lead paint above 600 ppm is banned in toys. <p>Lead and Soluble Metals in Children’s Toys⁸</p> <ul style="list-style-type: none"> • Paint and lacquers may not contain more than 600 ppm lead. • Toys must contain less than 0.1 percent (1,000 ppm) soluble compounds of antimony, arsenic, cadmium, mercury, selenium or barium.⁹
<p>Toy means all products designed or intended by the manufacturer to be used by children when they play</p> <p>Child care articles means all products designed or intended by the manufacturer to facilitate sleep, relaxation, or the feeding of children, or to help children with sucking or teething</p>	<p>Phtalates in products for young children¹⁰</p> <p>On and after January 1, 2009</p> <ul style="list-style-type: none"> • Prohibits the manufacturing, selling, or distribution of any toy or child care article that contains di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), or benzyl butyl phthalate (BBP), in concentrations exceeding 0.1 percent (1000 ppm). • Prohibits the manufacturing, selling, or distribution of any toy or child care article intended for use by a child under three years of age if that product can be placed in the child’s mouth and contains diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DnOP), in concentrations exceeding 0.1 percent (1,000 ppm) after Jan.
<p>Miscellaneous T-shirts, caps, art materials¹¹ i.e. pencils, pens, rulers, crayons, paints, art brushes</p>	<p>U.S. Consumer Product Safety</p> <p>Under federal law, toys or other articles intended for use by children may not contain lead paint that exceeds 600ppm.¹²</p> <p>Federal Hazardous Substance Act¹³</p> <p>A product that contains a hazardous substance¹⁴ and that is not specifically intended for use by children but which creates a risk of substantial personal injury or illness due to customary or reasonably foreseeable handling or use requires precautionary labeling.</p>





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SCREENING PRODUCTS

The appearance of a product does not form a basis for deciding whether the product is safe and compliant. The burden of assuring compliance should be shifted to the product's supplier and manufacturer whenever possible.

DTSC strongly recommends that State agencies require prospective suppliers to provide certification that products under consideration conform to applicable federal and State standards. Ideally, that certification should be accompanied by a report from an **accredited laboratory** which shows that levels of regulated constituents do not exceed regulatory limits.

Here are some steps that you can independently take to determine whether there might be a problem with a particular product:

- Check for recall notices published by the U.S. Consumer Product Safety Commission (CPSC) at <http://www.cpsc.gov/cpsc/pub/prerel/prerel.html> (the corresponding website for Canada is http://www.hc-sc.gc.ca/cps-spc/index_e.html).
- Check for recall notices issued by other governmental agencies at <http://www.usrecallnews.com/> and <http://www.recalls.gov/?ccm=as|3539>. These are websites that point to recall notices issued not only by the CPSC, but also by other governmental agencies such as Food and Drug Administration.
- Check the Household Products Database at <http://hpd.nlm.nih.gov/> for general information about household product safety. This website was developed by the U.S. Department of Health and Human Services.
- Check for safety information on products such as toys at http://healthytoys.org/product_using.php, developed by Ecology Center, a nonprofit environmental organization based in Ann Arbor, Michigan.¹⁵
- Request laboratory reports for all toxic substances of concern in the product(s) being purchased. If the manufacturer or supplier of a product is unable to provide a copy of a laboratory report for a product,
 - ✓ select another manufacturer or supplier,
 - ✓ select another product, or
 - ✓ request that the manufacturer or supplier have the product tested by an accredited laboratory at the manufacturer's expense

In California, the Department of Public Health, Environmental Laboratory Accreditation Program (ELAP) provides evaluation and accreditation of environmental testing laboratories. ELAP recognizes accreditation of environmental laboratories granted by other States or U.S. government agencies, such as the National Environmental Laboratory Accreditation Program (NELAP). For a list of accredited labs log on to <http://www.cdph.ca.gov/certlic/labs/Pages/ELAP.aspx>

Located on the next page are the components to look for and the corresponding test methods that should be used:





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SUBSTANCE OF CONCERN	PRODUCT / COMPONENT	DIGESTION METHODS	ANALYSIS METHOD	Regulatory Limit
Antimony	Toys	3050B ⁱ /3051/3152	6010B /6020A or 7041/7062	Non Detectable
Arsenic	Toys	3050B /3051/3152	6010B /6020A or 7041/7061A	Non Detectable
Barium	Toys	3050B /3051/3152	6010B /6020A or 7080A /7081	Non Detectable
Cadmium	Toys	3050B /3051/3152	6010B /6020A or 7130 /7131A	Non Detectable
Chromium (Hexavalent)	Packaging / Bottles	3060A	7196A/7199	100 ppm ^{ii, iii}
Lead	Cups/Mugs	3050B	6010B	0.1 ppm ^{iv} 0.5 ppm
	Jewelry: Metallic Components	3050B	6010B	600 ppm
	Jewelry: Other Components			200 ppm
	Packaging / Bottles	3050B	6010B	100 ppm ^{i, ii}
	Paints	3050B (solids) 3010A (liquids)	6010B	600 ppm
	Toys	3050B /3051/3152	6010B	600 ppm
Mercury	Toys	3050B /3051/3152	6010B/ or 7471B	Non Detectable
Selenium	Toys	3050B /3051/3152	6010B/6020A or 7740/7741A/7742 or 7742	Non Detectable
DEHP	Toys: 0-3 yrs Child care Articles: 0-3 yrs	3540	8061A	0.1% (1,000ppm)
DBP	Toys: 0-3 yrs Child care Articles: 0-3 yrs	3540	8061A	0.1% (1,000) ppm
BBP	Toys: 0-3 yrs Child care Articles: 0-3 yrs	3540	8061A	0.1% (1,000) ppm

ⁱ Method may not work for all matrices. Lab must validate performance of test procedure.

ⁱⁱ Incidental

ⁱⁱⁱ Combined

^{iv} Requires Proposition 65 notification

SELECTING AND MAKING SAFER CHOICES

DTSC strongly encourages those agencies that purchase promotional and incentive products to select products that do not contain toxic substances. In cases where one has to decide between two products that contain toxic substances, DTSC recommends that the product with the lower concentration be selected. In no case should a State agency purchase a product that contains a toxic substance in a form or concentration that exceeds a federal or State standard.





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California stakeholders have unanimously said that the State procurement process should lead and pave the way for consumers in California to address the goals and objectives of the Green Chemistry Initiative (<http://www.dtsc.ca.gov/PollutionPrevention/GreenChemistryInitiative/index.cfm>). Changes and demands in purchasing preferences by the State can create a market and provide a financial incentive for companies to produce less toxic alternatives.

THINGS TO AVOID	THINGS TO USE
Metallic Components PVC products and components Vinyl Rubberized Components Items with paints or coatings originating outside the U.S.	Wood, bamboo Cotton Recycled Paper Soy based inks

SUMMARY OF APPLICABLE LAWS

1. Federal Ban on Lead in Paint and specified consumer products¹⁶

In 1977, the U.S. Consumer Product Safety Commission issued a ban on lead-containing paint on toys and furniture coated with such paint in order to reduce the risk of lead poisoning in children. The limit for lead in paint and other similar coating materials used in toys, articles intended for children and furniture is 600 ppm. http://www.access.gpo.gov/nara/cfr/waisidx_04/16cfr1303_04.html

In addition, the U.S. Food and Drug Administration (FDA) banned the use of lead in pottery intended for food services at any concentration above 0.5 ppm. The FDA has labeling requirements for ornamental or decorative ceramics that are not intended for food use. These items must either be (1) permanently labeled with a logo or statement that they are unsuitable for food use; or (2) made incapable of holding liquid.¹⁷ <http://www.cfsan.fda.gov/~lrd/fcf109.html>.

2. Proposition 65

In November 1986, California voters approved the “Safe Drinking Water and Toxic Enforcement Act” (Proposition 65)¹⁸ to address growing concern about exposures to toxic chemicals. Under Proposition 65, a business is required to warn a person before “knowingly and intentionally” exposing that person to a chemical that is on the Proposition 65 list. The warning must be “clear and reasonable.” The warning must: (1) clearly make known that the chemical involved is known to cause cancer, birth defects, or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. The Proposition 65 list contains a wide range of chemicals, including dyes, solvents, pesticides, drugs, food additives, and byproducts of certain processes such as welding and cutting. For a list of chemicals covered by Proposition 65 see: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

State agencies are exempt from the requirement to provide Proposition 65 warnings. The manufacturers whose products State agencies purchase and distribute are not exempt from the warning requirement unless the manufacturer employs fewer than ten employees. State agencies should assure that manufacturers whose products contain substances on the Proposition 65 list comply with the warning requirement if applicable.





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3. Toxics in Packaging

The “Toxics in Packaging Prevention Act”¹⁹ bans the intentional introduction of lead, cadmium, mercury or hexavalent chromium (“regulated metals”) by a manufacturer of packaging or packaging components in any amount and limits the incidental presence of the sum total of these metals to 100 ppm. The act also prohibits a person from offering for sale or for promotional purposes in this State, a product in a package that includes those intentionally introduced regulated metals in the package. In addition, the Act requires that the manufacturer and/or supplier provide a copy of a certificate of compliance to the purchaser indicating that the package comports with the Toxics in Packaging Prevention Act.

4. Lead in Jewelry

In 2006, requirements regarding lead-containing jewelry were enacted into State law. These requirements prohibit persons from manufacturing, shipping, selling, or offering jewelry for retail sale in California if the jewelry contains lead above specified levels. “Jewelry” is defined as any of the following ornaments worn by a person: anklet; arm cuff; bracelet; brooch; chain; crown; cuff link; decorated hair accessories; earring; necklace; pin; ring; body piercing jewelry; and any bead chain, link pendant or other component of an ornament specified. Effective September 1, 2007, the law prohibited the sale of “children’s jewelry” (intended for use by children aged six and younger) if it exceeded specified lead levels. The law also prohibits a person, on and after March 1, 2008, from manufacturing, shipping, selling, or offering for sale jewelry for retail sale in the State, unless the jewelry is made entirely from specified materials.

5. Toxic Materials in Toys

A promotional item that is designed or intended by the manufacturer to be used by children²⁰ when they play is a “toy.”²¹ Under Health and Safety Code sections 108550-108585, a person is prohibited from manufacturing, selling, or exchanging, having in his or her possession with intent to sell or exchange, or expose or offer for sale or exchange to any retailer, any toy that is contaminated with any toxic substance. A toy may not be coated with paint or lacquer that contains compounds of lead in excess of 600 ppm, or contains soluble compounds of antimony, arsenic, cadmium, mercury, selenium or barium. In addition, a toy may not be produced, prepared, packed, shipped, stuffed, padded, or lined with materials or held under unsanitary or other conditions whereby it may become contaminated with filth or hazardous materials that are toxic or that would otherwise be hazardous if ingested, inhaled, or contacted.

For More Information

California Department of Toxic Substances Control
1001 I Street
P.O. Box 806
Sacramento, CA 95812-0806

The mission of DTSC is to provide the highest level of safety and to protect public health and the environment from toxic harm. For information concerning toxics in products, lead in jewelry, or hazardous waste management requirements Telephone 800-728-6942 or send an e-mail to RAO@dtsc.ca.gov. For information about the California Green Chemistry Initiative and other information regarding DTSC <http://www.dtsc.ca.gov>.

U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

For general information call Telephone (301) 504-7923 M-F 8:00 am - 4:30 pm ET,
or visit <http://www.cpsc.gov/>





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U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

For general information call Toll Free (877) 696-6775 or Telephone (202) 619-0257,
or visit <http://www.hhs.gov/>

U.S. Environmental Protection Agency
U.S. EPA Region 9
75 Hawthorne Street
San Francisco, CA, 94105

For general environmental information call Toll Free (866)-EPA-WEST or (415) 947-8000,
or visit <http://www.epa.gov/region09/>

California Office of Environmental Health Hazard Assessment
1001 I Street
P.O. Box 2815
Sacramento, CA
95812-2815

For questions related to Proposition 65 Telephone (916) 445-6900,
or visit <http://www.oehha.ca.gov/index.html>

California Department of Public Health
850 Marina Bay Parkway, Bldg. P, 1st Floor, MS 0511
Richmond, CA 94804

For information about certified laboratories Telephone (510) 620-3155,
or visit <http://www.cdph.ca.gov/certlic/labs/Pages/ELAP.aspx>

¹ Health and Safety Code sections 25214.11-25214.21

² <http://www.fda.gov/opacom/laws/fdact/fdctoc.htm>

³ Title 21 Code of Federal Regulations section 109.16

⁴ Health and Safety Code sections 25249.5 through 25249.13

⁵ Health and Safety Code sections 25214.1-25214.4

⁶ Health and Safety Code sections 25214.1-25214.4 also provides specific standards for body piercing jewelry.

⁷ <http://www.cpsc.gov/businfo/cpsa.html>

⁸ Health and Safety Code sections 108550-108585

⁹ Dissolved by 5 percent hydrochloric acid after stirring for 10 minutes at room temperature.

¹⁰ Health and safety Code section 108935

¹¹ Title 15 United States Code section 1277

¹² Title 16 Code of Federal Regulations sections 1500.14 & 1500.17

¹³ Title 15 United States Code sections 1261-1278

¹⁴ Title 15 United States Code section 1261

¹⁵ DTSC is not affiliated with Ecology Center in any way, and our reference to its website does not constitute and endorsement of the organization's views or activities. We think the website is a useful screening tool that may help to inform purchasing decisions and we point to the site solely for that reason.

¹⁶ Title 16 Code of Federal Regulations section 1303

¹⁷ Title 21 Code of Federal Regulations section 109.16

¹⁸ Health and Safety Code sections 25249.5 through 25249.13

¹⁹ Health and Safety Code sections 25214.11-25214.21

²⁰ Health and Safety Code section 1596.75

²¹ Health and Safety Code sections 108550 & 108935

