



15 March 2017

European Commission: AFIRM follow-up comments on technical workshop on a possible restriction of hazardous substances (CMR 1A and 1B) in textile articles and clothing for consumer use under Article 68(2) of Regulation EC No 1907/2006 (REACH)

Introduction

The Apparel and Footwear International RSL Management (AFIRM) Group would like to thank the European Commission (EC) for the opportunity to participate in the Technical workshop on the Restriction of CMR 1A and 1B substances in textiles under EC 1907/2006 REACH and for continuing participation in the overall consultation process. AFIRM representatives who attended the workshop thought it was well-organized and productive, and we appreciate that the EC is carefully considering our feedback based on years of experience managing restricted substances in the apparel and footwear supply chain.

We are submitting these follow-up comments at the request of the EC and to provide additional information, insight, and recommendations on several outstanding issues discussed during the workshop. We anticipate providing another round of comments when the next version of the proposed restriction is released for consultation before summer as projected by the EC.

Technical Workshop: Scope and Derogations

In previous rounds of comments submitted by AFIRM and other industry stakeholders, we expressed concerns about the apparent disregard for risk and socioeconomic considerations throughout the process. During the workshop, it became abundantly clear that these considerations are necessarily part of any discussion concerning feasibility of implementation and enforcement. Outstanding issues raised during the workshop that we seek to clarify and provide recommendations on include the following:

Limits and Test Methods for all Restricted Substances Necessary

- We would like to reiterate that for any substance included in the restriction (to be assessed on a “restriction by restriction basis”), a limit and test method capable of reliably detecting that limit are essential for apparel and footwear brands to properly manage compliance across their complex and distributed supply chains, and to inform and train their suppliers in the sourcing countries respectively. This includes a current or potential ability of global commercial lab networks to reliably perform these methods at high volume and without significant costs.

Non-Textile Parts should be Exempted as Originally Intended

- Both prior to and during the workshop, AFIRM requested clarity on the scope of inclusion for non-textile parts. Document CA/46/2016 (21st Meeting of the Competent Authorities for REACH and CLP (CARACAL)) was explicit that clothing accessories (buttons, zippers, etc.) would be excluded from scope, however this exclusion was subsequently limited to just metal accessories (parts) in the workshop preparation document. AFIRM recommends conforming to CARACAL's original exclusion for non-textile parts in apparel and footwear since the focus of this test case of the fast track process is textile materials.

Include Minor Textile Parts in Articles Made of Otherwise Exempted Materials

- Prior to the workshop AFIRM requested clarity on whether minor textile parts of articles made from real leather, natural fur or hides are within scope (example: a natural leather jacket with textile lining in pockets). AFIRM recommends that these be treated the same as they would if found in textile articles for consistency.

Limits Should Apply to Components or Parts Made of Homogenous Materials

- During the workshop, there was discussion on whether limits should apply to components (presumably of homogeneous material) or whole articles. AFIRM strongly recommends applying limits to components made of homogenous materials since this is how brand RSL (restricted substances list) programs normally operate and is consistent with existing legislation both in Europe and other parts of the world.

Clarity Needed on Scope of Footwear Inclusion

- The scope of the inclusion of footwear is still in need of clarification. We ask the EC to provide clear language regarding the scope of any footwear inclusion. In addition, if all footwear components are to be included in the restriction, we also ask that the EC provide evidence that parts of footwear that do not touch the skin are a risk to the consumer. At a broader level, the inclusion of all footwear components in the scope suggests that other categories of articles – which industry might naturally expect to be outside of the scope of the restriction – could be included. This underscores an issue of legal certainty.

Exhaustive List of Articles in Scope Needed, Otherwise Sell-Through and Transitional Periods Needed

- There was significant discussion and disagreement about how to best define the scope of inclusion of non-clothing textile articles and whether the concept of “direct and prolonged” was too difficult to apply. As previously submitted to the EC and discussed at the workshop, AFIRM recommends that the EC publish an exhaustive list of articles covered by the restriction from the outset to provide as much clarity on the scope of articles covered as possible. If the EC intends to maintain a non-exhaustive list, adequate sell-through provisions and transitional periods for articles added later would provide industry with much-needed certainty since this is such an extensive restriction.

Refer to Existing Guidance on Direct and Prolonged Skin Contact

- If the EC decides to define direct and prolonged skin contact without an exhaustive or non-exhaustive list of articles in scope, as was pointed out at the workshop by AFIRM and FESI, ECHA has published [guidance](#) on this term for purposes of complying with the nickel restriction (Entry 27 of Annex XVII to REACH). AFIRM recommends aligning with this definition for regulatory consistency.

Ongoing Exemption Process for Recycled Materials

- The issue of whether and how to provide exemptions for recycled materials is extraordinarily complex and will continue to come up as additional chemical restrictions are enacted and circular economy initiatives accelerate in Europe and across industry. The fact that the recycling industry has asked for a general exemption from the proposed CMR restriction is indicative of the challenges it faces meeting restrictive chemical limits while seeking new and innovative techniques for reprocessing used materials. Establishing strict restrictions on substances (for instance the EU restriction on PAHs under Entry 50 of Annex XVII to REACH), often has unintended effects upstream since it affects manufacturers' ability to reprocess materials. In the case of PAHs, manufacturers are now forced to use more virgin materials for such things as footwear outsoles since reprocessing of rubber and similar materials often generates PAHs above restricted limits due to thermal decomposition.

Given these challenges, both existing and anticipated in the future, AFIRM recommends that the EC establish a process to allow exemptions to chemical restrictions for recycled products on a case by case basis. The EC could employ a similar approach to what it has suggested for defining the scope of the restriction for non-clothing articles: as the need for exemptions are discovered by the recycling industry, they could be added to a non-exhaustive list over time. In the alternative, a system for applying for authorization could be established that would be analogous to the one utilized for substances in certain applications that are listed on REACH Annex XIV.

Technical Workshop: Substances and Limit Values

Many of the substances proposed for restriction are already restricted in apparel and footwear products under REACH Annex XVII. AFIRM advises against relisting these substances within Annex XVII with separate or distinct limits, scope of products and materials covered, or test methods, since this will generate substantial confusion for regulated industries. In addition, AFIRM would like to reiterate support for extractable metal limits since total content will not provide accurate information regarding exposure potential and could result in unnecessary restrictions with no added health benefit. Specific recommendations for individual substances include the following:

Chromium-VI

- AFIRM recommends aligning the limit for chromium-VI in textiles with the existing regulated limit of 3ppm in leather. This is the lowest level that can be reliably measured in leather due to high levels of residual chromium-III from the chrome tanning process used by most tanneries worldwide. Chromium-VI compounds can migrate from leather to textile materials, so a 3ppm limit is consistent and pragmatic.

Polar Aprotic Solvents (DMF, DMAC, NMP):

- As suggested by workshop attendees, lower limits for these solvents are achievable in finished articles, however this means using substantially more water and energy to remove them with no net reduction of their use in manufacturing. Until safer and more environmentally friendly alternatives are widely available, AFIRM recommends maintaining the proposed limits. This is another example of where attempts to achieve smaller and smaller concentrations of restricted substances can interfere with broader efforts to conserve natural resources and mitigate other environmental problems such as global warming.

Dibutyltin Dichloride (DBTC)

- As discussed prior to and during the workshop, there is already a legal restriction on DBT compounds (including DBTC) under Entry 20 of Annex XVII to REACH. AFIRM does not believe that DBTC itself can be reliably measured and recommends utilizing DIN ISO/TS 16179: 2012-08 to detect DBT compounds generally. The Oeko-Text limit of 2ppm for DBT compounds is feasible, but well below the existing regulated limit.

Quinoline

- As discussed during the workshop, there is significant uncertainty about the use and presence of quinoline within the apparel and footwear industry. Beyond knowing that it can exist as an impurity in certain dyestuffs, AFIRM does not have sufficient knowledge about why it may be present, its necessity, or whether it presents an unacceptable risk in the concentrations potentially found in apparel and footwear products. Until proposed for restriction by the EC as part of this test case of the fast track process, AFIRM members never had any indication that quinoline could pose risk in apparel or footwear products. As such, AFIRM believes further analysis is required and therefore suggests the Articles 69 through 73 procedure as envisaged by the criteria and procedure for implementation of Article 68(2) of REACH outlined in the CARACAL document CA/102/2014 flowchart found on page 7.

We would again like to thank the EC for continuing engagement on this important initiative. As globally responsible and leading companies in our industry-sector, we welcome efforts to improve consumer and environmental protection that are science and risk-based with pragmatic implementation timelines. We look forward to continuing participation in the consultation process.

Regards,

Nathaniel Sponsler
Director, AFIRM Group
nsponsler@phylmar.com
www.afirm-group.com