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Softlines

New California Proposition 65 requirements on clothing

California Proposition 65 (CA Prop 65) requires products containing hazardous chemical(s) to have proper warning labels. However, manufacturers of such products often fail to provide the required warning labels and risk being sued by professional Prop 65 litigants or various NGOs. Once settlements are reached in these lawsuits, manufacturers are required to reformulate their products to meet certain limits and/or to provide warning labels for their products.

Products involved in CA Prop 65 court cases thus far include handbags, purses, footwear, belts, apparel, fashion accessories, jewellery, kitchenware, brass products, and sport products. A recent [CA Prop 65 court case](#)¹ on fashion jackets reached its consent judgment on 14 October 2011. In this court case (San Francisco, Case No. CGC-11-509211), the manufacturer failed to provide clear and reasonable warning on their fashion jackets, which are composed of material containing

¹ Download the full text of the court judgement in the US - Superior Court of the State of California, County of San Francisco, Case No. CGC-11-509211 from <http://proposition65.doj.ca.gov/PDF/2010/2010-00580J1427.pdf>

Table A: Lead Requirements for Clothing

Effective Date	Court Case	Products	Requirement
14 October 2011	San Francisco CGC-11-509211	Clothing (e.g. fashion jackets)	Materials or other components that may be handled, touched, or mouthed by a consumer should: <ul style="list-style-type: none"> Yield less than 1.0ug of Lead (by NIOSH 9100), AND Yield less than 300ppm Lead (by EPA 3050B and 6010B or equivalent); Otherwise, a warning label will be required as follows: <p style="text-align: center;">WARNING: This product contains LEAD, a chemical known to the State of California to cause birth defects and other reproductive harm.</p> Related test reports must be kept for 18 months after the date of testing.

lead. A summary of the case and the lead requirements referred to are shown in Table A.

The court also ordered that, after six months from the effective date, the specific manufacturer sued in this case should discontinue all sales of any fashion jackets that do not meet the above requirements regardless whether a warning label is present.

The manufacturer is also required to destroy these non-compliant products after nine months.

Manufacturers and/or importers of products entering California should ensure their products bear a CA Prop 65 warning label or does not contain excess level of any hazardous chemicals to avoid any legal issues. For more information on how California Proposition 65 requirements affects your products, please contact any one of our global TÜV SÜD offices. ■

Softlines, Hardlines, Toys & Children Products

CPSC publishes rules for product certification and component part testing

When the CPSIA was first enacted, it required the Consumer Product Safety Commission (CPSC) to establish a rule for testing and labeling requirements pertaining to product certification. Along with this rule, the CPSC

also worked on a component part testing rule for both children's and non-children's products to allow certifications based on component part test results under certain conditions. On 8 November 2011, the CPSC published these two

final rules on [Testing and Labeling Pertaining to Product Certification](#), and on [Component Part Testing](#). The details of the two final rules are summarised in Table B and C on the following page.

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Table B: Testing and Labeling Pertaining to Product Certification

Requirements for Testing and Labeling Pertaining to Product Certification – 16 CFR 1107

Effective on 8 February 2013. Applies to products manufactured after the effective date.

The full rule may be downloaded from <http://www.gpo.gov/fdsys/pkg/FR-2011-11-08/pdf/2011-27678.pdf>

Certification of Children's Products

- Sufficient number of samples to be submitted for testing to ensure high degree of assurance (HDoA)
- Component part testing (16 CFR 1109) may be used to support certification testing requirement
- When a product sample fails its certification testing, even though other samples have passed the same certification test, the manufacturer must investigate the reasons for the failure before certifying the product.
- All manufacturers of children's products must conduct periodic testing by a third party conformity assessment body within certain time intervals:
 - At least once a year for manufacturers with periodic testing plans; or
 - At least once every 2 years for manufacturers with production testing plans; or
 - At least once every 3 years for manufacturers that test their products for compliance after certification by an ISO/IEC 17025:2005(E) accredited testing laboratory. This testing laboratory, which may be a third party testing laboratory, must be accredited by an ISO/IEC 17011:2004(E) accredited accreditation body.

Material Change

Manufacturers must submit samples for third party testing if there is any material change in their product design or manufacturing process. A new certificate for the product can only be issued when it meets all applicable requirements. If the material change is limited to a component part and does not affect the rest of the product, manufacturers may test the component part to its applicable requirements and certify the product based on earlier third party test results and test results of the changed component parts.

Undue Influence

Manufacturers must establish procedures to prevent any undue influence by them on a third party testing laboratory.

Recordkeeping

Manufacturers must maintain the following records for at least 5 years:

- Copies of Children's Product Certificate for each product;
- Records of each third party certification test;
- Records of periodic test results and its periodic testing plan, production testing plan, or ISO/IEC 17025:2005(E) laboratory testing results;
- Records of descriptions of all material changes in product design, manufacturing process, sourcing of component parts, and the certification tests run and the test values;
- Records of the undue influence procedures, including training records.

Consumer Product Labeling Program

- Manufacturers and private labelers of a consumer product that is certified to comply with all applicable CPSC product safety rules, bans, standards or regulations may label their products with the following statement:

Meets CPSC Safety Requirements

- Manufacturers and private labelers may also include any additional labels on the product as long as they do not imply that the CPSC has tested, approved, or endorsed the product.

Table C: Component Part Testing Rule

Conditions and Requirements for Relying on Component Part Testing or Certification, or Another Party's Finished Product Testing or Certification, to Meet Testing and Certification Requirements – 16 CFR 1109

Effective on 8 December 2011.

The full rule may be downloaded from <http://www.gpo.gov/fdsys/pkg/FR-2011-11-08/pdf/2011-27677.pdf>

- A component part manufacturer / supplier / certifier, or a finished product certifier may procure component part testing when fulfilled the following:
 - Testing of the component part is sufficient to assess compliance of the consumer product;
 - The component part tested is identical in all material aspects to the component parts used in the finished product.
- While a component part or finished product is in its custody, it is the responsibility of the certifier or testing party to exercise due care in ensuring that proper management and control of all raw materials, component parts, and finished products is established and maintained, and to prevent contamination in the manufacturing process.
- Component part testing may not be used to fulfill regulations that require testing of the finished product.
- A certifier must not rely on component part or finished product testing procured by a testing party or another certifier unless such component parts or finished products are traceable.
- Each certifier or testing party must provide documentation according to 16 CFR 1109.5(g) to the certifier relying on these documents for the issuance of a product certificate.
- Each certifier or testing party must maintain the documentation for 5 years. The records can be maintained in languages other than English if the certifier or testing party can translate them accurately into English within 48 hours on the CPSC's request.
- Conditions and requirements for component part testing for paint, lead content in children's products, and phthalates in children's toys and child care articles are listed in 16 CFR 1109.11, 16 CFR 1109.12 and 16 CFR 1109.13.
- Composite testing of paint and component parts is allowed so long as test procedures are followed to ensure that no failure of compliance will go undetected.

Toys & Children Products

EU publishes new harmonised standard on Toy Safety EN 71-8:2011

On 19 October 2011, a new EU Toy Safety Directive (TSD) standard, *EN 71-8:2011 Safety of toys - Part 8: Activity toys for domestic use*, was published in the Official Journal of the European Union¹. This new version can now be used to demonstrate compliance with those relevant essential requirements in the TSD.

Some of the major changes in the new standard are:

- Entrapment of fingers: Holes, slots and gaps in any rigid material that are within the reach of a child during use of the toy shall not allow:
 - A 7 mm diameter rod to be inserted to a depth of 10 mm or more, unless a 12 mm diameter rod can also be inserted when an activity toy is intended for children not under 36 months;
 - A 5 mm diameter rod to be inserted to a depth of 10 mm or more, unless a 12 mm diameter rod can also be inserted when an activity toy is intended for children under 36 months.
 - Static strength of activity toys other than swings and paddling pools: Calculating the number of users, based on a minimum surface for a child of 0.36 m².
 - Sliding section of the slide shall not exceed an angle of inclination of 60° to the horizontal at any point.
 - A new load weight is introduced to simulate the use of swing seats made with flexible materials, in connection with certain tests.
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- Geometry and design of swing elements:
 - Potential impact surfaces of swing elements shall be designed with a repelling geometry and smooth surfaces in the direction of movement, having a width of at least 10 mm including a radius of at least 15 mm, edge radii of at least 3 mm, and angles between adjacent surfaces of not less than 75°.
 - For tubes of swing devices, the diameter shall be at least 25 mm.
 - All air-inflation inlets on paddling pools with inflatable walls shall comply with the requirements for inflatable toys specified in EN 71-1.
 - The structure of paddling pools with non-inflatable walls shall not present any hazardous sharp edges or hazardous sharp points, or any small parts which fit entirely in the small parts cylinder when applying 25 kg load vertically to the least favorable point of structure for 5 minutes.

¹ Download the latest list of EU harmonised standards for the TSD from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:307:0003:0004:EN:PDF>

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