



THE EFFECT OF **PROPOSITION 65** ON THE APPAREL AND ACCESSORIES INDUSTRY

A DISCUSSION ABOUT THE IMPACT
AND CHALLENGES OF COMPLIANCE

JANUARY 2012

AUTHOR

Louann Spirito

Director of Technical Support, Softlines

SGS Consumer Testing Services

SGS

ABSTRACT

The purpose of this document is to introduce the requirements and challenges faced by the softline textile industry in complying with California Proposition 65—a law that seeks to protect consumers from toxic chemicals in the products they buy. This document is not intended as a comprehensive guide to compliance, but as a tool to help manufacturers, retailers and importers build a strategy to fulfill requirements and protect their business from costly litigation.

CONTENTS

I. EXECUTIVE SUMMARY	1
II. PROPOSITION 65 IMPACT ON THE SOFTLINE INDUSTRY.....	2
III. CHALLENGES FOR RETAILERS, MANUFACTURERS AND IMPORTERS.....	4
IV. MITIGATING THE RISKS (OR, “NOW WHAT?”)	5
V. CONCLUSION	6

I. EXECUTIVE SUMMARY

The Safe Drinking Water and Toxic Enforcement Act of 1986 (better known as Proposition 65) is a California law that states: **“no person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving a clear and reasonable warning.”**

As a result, any business selling products in California—in stores, catalogs or online—must comply with complex chemical exposure regulations in order to avoid costly fines and lawsuits. This means either ensuring chemical exposure levels are below approved limits or displaying prominent warning labels on non-compliant products.

Consumers are more aware and more concerned than ever about the safety of the products they put on their bodies—and the softline industry is becoming a growing target of litigation. It is critical that apparel, accessories and footwear companies ensure their products comply with Proposition 65 regulations to protect their business and brand image.

This paper outlines the complex requirements of Proposition 65 and discusses ways to address the challenges faced by softline manufacturers, retailers and importers in satisfying these requirements.

II. PROPOSITION 65 IMPACT ON THE APPAREL AND ACCESSORIES INDUSTRY

UNDERSTANDING PROPOSITION 65

In its simplest form, Proposition 65 is a consumer “right to know” law. Any business selling a product containing a chemical deemed by the state of California to cause cancer or reproductive toxicity must first provide a “clear and reasonable” warning. But for retailers, manufacturers and importers, the law’s complex and evolving requirements can be challenging to follow.

Proposition 65 is administered by the Office of Environmental Health Hazard Assessment (OEHHA), which publishes a list of hazardous chemicals at least once a year—a list that has grown to include nearly 900 chemicals. Once a chemical is listed, companies have 12 months to comply with warning requirements. These warnings must be placed on the product or its packaging, or displayed on prominent signage at the point of purchase (including online stores and catalogs).

Violators can face fines of up to \$2,500 per violation, per day—and each piece sold in California is considered a separate violation. If no warning is provided, anyone has the right to sue the offending business.

If a chemical on the list is in your product, there are only two instances when a warning is not required.

1. If exposure is low enough to pose “no significant risk level” (NSRL) of cancer
2. If exposure is below “maximum acceptable dose levels” (MADL) to cause birth defects or reproductive harm

These are known as “safe harbor” numbers. To assist businesses in determining whether a warning is necessary, OEHHA has provided safe harbor numbers for many of the chemicals on the list. However, most chemicals still do not have these safe harbor guidelines, and the burden is on the business to prove that the chemicals in their products fall under the NSRL or MADL exemption. This can be a daunting task, as warning requirements are dependent on daily exposure to the chemical (measured in micrograms per day) and not the actual concentration of the chemical.

To avoid liability, the business must demonstrate—typically with the help of a third-party testing company—that daily consumer exposure will not exceed levels deemed to cause cancer or reproductive harm.

WARNING!

This product contains a chemical known to the State of California to cause cancer.

This product contains a chemical known to the State of California to cause birth defects or other reproductive harm.

This product contains a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.



HOW PROPOSITION 65 AFFECTS SOFTLINES

Consumer concern over apparel and accessories containing lead, cadmium and phthalates is growing. In June 2010, a \$1.7 million settlement resulted in more than 40 major retailers and apparel-makers agreeing to limit the use of lead in handbags and other accessories to avoid costly, time-consuming litigation. This settlement was the first to establish lead concentration limits for multiple accessory items including footwear, jewelry, bags and belts.

The Center for Environmental Health continues to issue Notices of Violation to companies selling wallets, handbags, purses, clutches and totes allegedly containing lead but failing to provide clear and reasonable warnings.

PVC, a chlorinated polymer used as imitation leather and trims in textiles, footwear and handbags is particularly on the radar screens of consumers and legislators. Lead and phthalates are often found in these products, and the manufacturing of PVC often results in highly toxic waste materials that are resistant to natural breakdown.

In addition to PVC, other softline items at a high risk for lead, cadmium and phthalates include vinyl, screen prints, appliqués, metallic coatings, metal and plastic zippers, snaps, buttons, rivets and more.

So who is responsible for ensuring products are compliant with Proposition 65? The retailer, the manufacturer or the importer? The answer is all of the above.

Manufacturers are responsible for ensuring the products they create are safe and compliant. Importers must also be aware of the regulations to ensure they are not supplying hazardous products. Many end retailers sell their own private label merchandise, which makes them manufacturers as well—and ultimately responsible for compliance of those products. Retailers also have the right to ask their suppliers and importers to provide written documentation or sign an agreement stating that their products do not contain harmful substances. Even with these assurances in place, manufacturers and importers would do well to monitor products through a reasonable testing program. (footnote: referencing our Reasonable Testing White-paper)

HIGH RISK FOR LEAD & CADMIUM

PU
PVC
Vinyl
Snaps
Rivets
Clasps
Chains
Zippers
Buttons
D-Rings
Appliqués
Screen Prints
Metallic Yarns
Plastic Polymers
Metallic Coatings
Imitation Rhinestones
Paint & Surface Coatings

HIGH RISK FOR PHTHALATES

PU
PVC
Vinyl
Snaps
Appliqués
Soft Plastic
Zipper Tabs
Screen Prints
Plastic Polymers
Rubberized Buttons
Paint & Surface Coatings

Examples of concentration limits set by court settlements

LEAD	Personal carrying products eg backpacks, purses, coin purses, luggage, etc...	PVC ≤ 200 ppm, Leather ≤ 300ppm ≤ 90 ppm (exterior surface coating)
LEAD / PHTHALATE	Apparel	≤ 300 ppm lead ≤ 1,000 ppm DEHP
PHTHALATE	Novelty items made from soft plastic including but not limited to jewelry	≤ 1,000 ppm DEHP
PHTHALATE	Children's vinyl backpacks, baby bibs, vinyl zipper pulls and other children's products	≤ 1,000 ppm DEHP
PHTHALATE	Handbags, purses, wallets, clutches, totes, jewelry, apparel, and cases and bags.	≤ 1,000 ppm DEHP, BBP and DBP

III. CHALLENGES FOR RETAILERS, MANUFACTURERS AND IMPORTERS

The biggest challenge to compliance is understanding changing Proposition 65 regulations and requirements. Many companies in the softline industry are unaware of regulations that affect their business. Those who are aware often don't fully understand the regulation or simply end up with more questions:

- How do you know if your raw materials contain chemicals on the Proposition 65 list?
- If they do contain those chemicals, how do you determine daily exposure risk levels?
- Should you ask that raw materials or finished products be tested by a third party lab?
- If you require suppliers or manufacturers to provide safety certifications and test reports, how can you be sure of the accuracy?
- As an importer, how can you ensure global compliance when there is no harmony between country requirements?

One fact is certain: chemicals known to cause cancer or birth defects are in the spotlight of legislators and consumers. Manufacturers, retailers and importers now have a much greater responsibility

to ensure their products are safe—safe from health hazards, environmental harm and consumer litigation. Consider just a few of the challenges:

Determining the health risks of your products. Understanding chemical limits can be confusing, as there is not a direct relationship between exposure levels and concentration levels. Frequency of handling, type of contact and the composition of the substrate material are all factors in addition to concentration levels. Furthermore, limits also vary by substance and by product. For example, lead content cannot exceed 30ppm in clothing, but bags may contain up to 200ppm. Lead and cadmium also need to be tested for each color. Even though your blue wallet has acceptable levels of lead, that doesn't mean your red one is compliant as well.

Pre-existing requirements don't exist for all chemicals. Limits are established based on settlements resulting from litigation. If a chemical in your product is on the Proposition 65 list, but does not yet have a safe harbor limit, you must display a clear and reasonable warning unless you can prove the health risks are below acceptable levels.

Litigation is not in your favor.

A plaintiff filing a Proposition 65 lawsuit needs only to show detection of any amount of a listed chemical – not that any harm was actually caused by it. Once the plaintiff shows this detection, the burden shifts to the business to prove an exemption. If a product is found to be non-compliant, retailers have 12 months to eliminate non-compliant stock, which can result in significant loss of revenue for everyone in the supply chain. Manufacturers must then add warning labels to all future products, or develop alternative materials that comply with settlement.

Warning labels don't simply affect California.

It is likely not cost-effective to develop separate products or packaging just for California. So if you place a warning label on a product to comply with Proposition 65, that warning may be seen by all of your customers nationwide. What message does this send about your products? What does this do to your brand image?

IV. MITIGATING THE RISKS (OR, “NOW WHAT?”)

Now that you understand more about how Proposition 65 affects the softline industry, how do you protect your business? When dealing with so many complex regulations, it is advisable to partner with a knowledgeable third party to assist you in assessing and managing your risk.

HOW SGS CAN HELP

SGS has the experience and expert knowledge to support manufacturers, retailers and importers worldwide by simplifying Proposition 65 compliance. Throughout our global network of laboratories, we can provide a range of services, including:

- Product Screening
- Chemical Testing
- Risk Evaluation
- Consultation
- Strategies for Compliance
- Training & Education

We constantly monitor Proposition 65 and other regulatory issues to ensure we can help your business be proactive. We also understand that complying with Proposition 65 can be an added financial burden. We will work with you to develop a strategy for compliance that makes sense for your business.

There are nearly 900 chemicals on the Proposition 65 list, but most of these will not be present in softline products. We can help you reduce testing costs by identifying the materials you are using and assessing the risk that highly targeted chemicals are present in those materials.

By creating a customized testing program tailored to your unique products, we can ensure you don't simply comply – you comply in a smart, efficient way that works for your business.

COMPLIANCE CHECKLIST

- ☒ **IDENTIFY:** Determine if any of the high-risk materials are present in your products
- ☒ **TEST:** Test for chemical presence in materials
- ☒ **ASSESS:** Evaluate the level of chemical in your product against the recent settlement limits and reformulate if necessary
- ☒ **CONTINUE:** Implement a reasonable testing program to ensure ongoing compliance

IV. CONCLUSION

Proposition 65 has benefited the health of Californians, but it comes at a cost for companies doing business in the state. The time, labor and expense to test products, develop alternatives to listed chemicals, reduce discharges, provide warnings and otherwise comply with the law can be overwhelming. But understanding the law's requirements clearly – and developing a strategic compliance plan – is the best way to keep costs down and protect your business. Partnering with SGS is not only a proactive move to provide assurance against Proposition 65 litigation; testing and certification can also help build your company's image by showing customers that you are concerned about their health and safety and the world in which they live.

For more information on SGS services related to Proposition 65's impact on the softline industry, visit www.softlines.com/cts or email uscts.inquiries@sgs.com. To stay abreast of the developments that are currently re-shaping your industry sector, subscribe to our free publications at: **www.sgs.com/ConsumerSubscribe**

ABOUT THE AUTHOR

Louann Spirito is the Director of Technical Support, Softlines, for SGS Consumer Testing Services. She oversees all aspects of softlines testing services at SGS to ensure the company's offerings help clients meet or exceed national and international safety regulations, standards and contractual specifications.

Louann has a BS in Textile Science from the University of Rhode Island and over 20 years of experience in the Textile and Apparel industries. She began her career with SGS as Supervisor of the Care Label Laboratory. Thereafter, she worked in Quality Assurance for AMC, Calvin Klein, and Frederick Atkins.

Louann is an active member of the American Association of Textile Chemists and Colorists (AATCC) and the American Society for Testing and Materials (ASTM) and sits on several technical committees in these associations. Recently, she was elected Secretary of the D13 Executive Subcommittee of ASTM and she is on the Executive Research Committee of AATCC. She is also an active member of the Product Safety Committee of American Apparel and Footwear Association (AAFA) and has been closely involved with both Proposition 65 and CPSIA.

ABOUT SGS CONSUMER TESTING SERVICES

SGS is the world's leading inspection, verification, testing and certification company. SGS is recognized as the global benchmark for quality and integrity. With more than 64,000 employees, SGS operates a network of more than 1,250 offices and laboratories around the world.

The company's comprehensive testing, product inspection, process assessment and technical services cover the entire supply chain from product development to retailing for electrical products, wireless products, softline products, hardline products, and food products. SGS' global network and expertise provide a single and consolidated source that can help manufacturers, suppliers and retailers reduce risk, improve efficiency and product quality, and ensure compliance to both national and international standards.

WWW.SGS.COM