



AHFA Webinar on General Certificates of Conformity

November 27, 2023

Matt Howsare
Shawn Skolky

attorney advertisement

Copyright © Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304. The content of this packet is an introduction to Cooley LLP's capabilities and is not intended, by itself, to provide legal advice or create an attorney-client relationship. Prior results do not guarantee future outcome.

General Certificates of Conformity

What are they?

Written certifications that products comply with applicable product safety standards. When related to children's products, they are called Children's Product Certificates (CPCs).

Who Needs to Furnish GCCs?

- Domestic Manufacturers
- Importers

How to Furnish a GCC

- GCCs must "furnish" GCCs to distributors and retailers or provide them (within 24 hours) upon request by CPSC or CBP.
- Electronic GCCs permissible via website link. GCC must be available to the retailer/distributor.

GCCs for Clothing Storage Units

What Do I Need to Test to for non-children's CSUs?

- STURDY Act Compliance (16 CFR Part 1261) (not third-party required)
- Lead Paint for General Use Movable Furniture Articles (16 CFR Part 1303)
 - 90 PPM limit
- **Note: While TSCA Title VI compliance is required, that is not required to be listed in GCCs. GCCs are specific to CPSC regulations.**

What Do I Need to Test to for children's CSUs?

- **Third Party Testing Required**
- STURDY Act Compliance (16 CFR Part 1261)
- Lead Paint for Children's Products (16 CFR Part 1303)
- Lead content for children's products (15 USC 1278a).
 - 100 PPM
 - All **accessible** component parts of children's products must be tested to demonstrate compliance. If someone could touch it, you need to test it unless exempted (e.g., stainless steel).

What is a Children's CSU?

Children's Products

- A consumer product **designed or intended primarily** for children 12 years of age or younger. CPSC considers:
 - Statement regarding intended use of the product, including labelling;
 - Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger;
 - Whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger; and
 - Other factors contained within CPSC's Age Determination Guidelines:
 - Presence of bright colors, cartoon characters, sports themes, etc.
- Focus on embellishments with children's themes, are sized for children. Examples:
 - Hooks that appear to be "pirate hooks"
 - Smaller size desks or chairs
- Products intended for use from birth through college are likely deemed children's products

Reasonable Testing Program

What is a Reasonable Testing Program?

CPSC proposed regulations from 2010 (not enacted) are instructive. Include:

- (1) The existence of a product specification.
- (2) Initial certification tests prior to issuance of a GCC, performed on samples that are identical to the finished products – Number of samples must be sufficiently high. **Must perform new testing upon material changes.**
- (3) A Production Testing Plan that provides for regular testing at specified intervals – the interval must be short enough to ensure that untested products manufactured during the interval will all comply with the applicable rule.
 - **Note: this testing program should be in writing.**
- (4) A remedial action plan to describe what steps must be taken to the extent a testing failure is identified – how will the company investigate and address a failing test result?
- (5) maintenance of records.

Practical Advice: Have a written program. Perform testing on a regular basis (potentially with every batch, every six months, or in no event less than once per year). Test with any design changes that would affect test results.

Please note that for children's products, periodic testing is mandatory, at mandatory 1-3 year intervals depending on essentially the rigor of a testing program. Specific regulations at 16 CFR 1107.21.

Penalties for Failure to Furnish GCCs for Clothing Storage Units

Can I Be Penalized for Not Providing GCCs?

- Failure to furnish a GCC (or furnishing a false GCC) is a violation of the CPSA.
- Violations are subject to civil penalties
 - \$120,000 per violation, up to \$17.15 million for a series of violations.
- Civil penalties have not been assessed simply for failure to provide GCCs.
 - More concerning, and carrying greater risk of civil penalty, is manufacturing, importing, and/or selling non-compliant product (paired with failure to furnish a GCC)