

Client Alert

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Toxics in Consumer Products: California Implements Safer Consumer Product Regulations

By Peter Hsiao and William Tarantino

Today, California's Safer Consumer Product Regulations became law as the state's latest attempt to regulate the chemical composition of a broad range of consumer products. The regulations contain detailed procedures to implement California's Green Chemistry Initiative, requiring product manufacturers to examine whether they can replace existing chemical ingredients with alternatives that are deemed safer for consumers and the environment. For many consumer product companies, the regulations will require major investments in compliance and changes to product design planning and supply chain management.

The regulations (discussed in further detail in our prior updates, which you can access [here](#) and [here](#)) establish a four-step regulatory process in which the state Department of Toxic Substances Control (DTSC) (i) identifies candidate chemicals of concern ("Candidate Chemicals"); (ii) develops a list of priority products containing those Candidate Chemicals ("Priority Products"); (iii) requires manufacturers of Priority Products to notify DTSC and analyze possible product alternatives; and (iv) imposes a regulatory response, which can include a reformulation requirement or California sales ban. Although the regulations impose the "principal duty to comply" on the manufacturer and, secondarily, on the importer, retailers must also comply (or cease ordering the Priority Product) if the manufacturer fails to do so.

DTSC also released an informational list of candidate chemicals of concern that are potentially subject to regulation. These chemical lists include a broad list of chemicals of concern and a shorter, more refined list of informational "initial" candidate chemicals. This shorter list narrows the potential chemicals that, along with a product category, will be the first to be subject to the regulations.

The final regulations, however, still have an important missing piece. On August 28, 2013, the California Office of Administrative Law disapproved two provisions of the regulations intended to provide protection for trade secrets of the regulated parties. In one instance, Section 69509.1(c) was disapproved because of impermissible vagueness in the "substantive criteria" that DTSC will apply to determine whether to designate submitted materials as trade secrets. Section 69509.1(a) was also disapproved because of uncertainty over when the trade secret designation would be made, and whether DTSC has discretion to decline to make such a determination. DTSC prepared revised regulations to address these objections, although these revisions have not yet been approved by the Office of Administrative Law.

The new regulations and chemical lists can be found at the [Morrison & Foerster Green Chemistry Web page](#). Within six months, DTSC is expected to identify the initial five product/chemical combinations for regulation. At that point, the nation's newest experiment in consumer product regulation will go into full force.

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Morrison & Foerster has one of the largest Cleantech groups in the nation. We represent retailers, consumer product manufacturers, chemical companies and some of the leading biochemistry research and development companies. We are closely watching and participating in the development of Green Chemistry regulations and can provide additional information about this important process upon request.

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