

California's Green Chemistry Puts Burden on Manufacturers

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California is one of the largest consumer markets in the United States. When it comes to environmental regulations, California can be the tail that wags the dog. It is not difficult for manufacturers, importers and retailers to inadvertently run afoul of California's comprehensive environmental regulations. Those regulations just got a little more comprehensive.

On October 1, 2013, California implemented its Safer Consumer Product, "Green Chemistry" Regulations. The regulations target a wide range of consumer products containing chemicals the Department of Toxic Substance Control ("DTSC") classifies as Candidate Chemicals.

California expects manufacturers to work to remove these Candidate Chemicals from what it deems Priority Products and replace them with alternative chemicals that are considered safer for consumers and the environment.

The regulations provide the DTSC wide latitude in identifying Priority Products from which Candidate Chemicals should be removed. The initial list of Candidate Chemicals includes those identified under Prop. 65 as well as certain chemicals listed with the EPA, the USDHHS Public Health Services, the European Commission, and the International Agency for Research on Cancer.

The DTSC is to identify Priority Products based on criteria such as the potential adverse impact posed by the product-chemical combination and the combination's potential exposure during the lifecycle of the product. Product waste can also be included as a Priority Product for enforcement under the regulations.

The regulations require self-reporting. Compliance falls mainly to manufacturers, however, if the manufacturer does not comply, the DTSC can then require the importer to comply. The DTSC can also notify and require retailers to comply if the manufacturer and reporter fail to do so.

Once a product-chemical combination is targeted, responsible entities - manufacturers, importers, assemblers, and/or retailers of those products - need to undertake a multi-step process of reporting, analysis, and approval. This includes researching and evaluation of "available information that identifies existing possible viable alternatives" to the Candidate Chemicals.

The interplay between these and other existing regulations creates a further gray area. If a chemical is already effectively regulated within California by state law, federal law, or enforceable international treaty, the DTSC may only list the product-chemical combination as a Priority Product if it determines that the listing would "meaningfully enhance protection of public health."

It is unclear, as of yet, how the DTSC will enforce these 72 pages of regulations. The regulations are to be phased in over the next few years. What is clear, however, is that California's Green Chemistry regulations



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represent a complex and involved structure that responsible entities will need to monitor.

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