



## Chemical & Product Regulation ADVISORY ■

**MARCH 13, 2014**

### California Announces the First Three Priority Products to Regulate under Its Safer Consumer Product Program

On March 13, 2014, the California Department of Toxic Substances Control (DTSC) announced its first set of [Initial Proposed Priority Products](#) as part of the [Safer Consumer Products](#) (SCP) regulations. This initial Priority Product list features three product-chemical combinations:

- [Spray Polyurethane Foam \(SPF\) Systems](#) containing unreacted diisocyanates. SPF Systems are commonly used for building insulation, weatherization, sealing and roofing.
- [Children's Foam Padded Sleeping Products](#) containing TDCPP (chlorinated Tris), which is a flame retardant.
- [Paint and Varnish Strippers and Surface Cleaners](#) with Methylene Chloride.

Manufacturers, distributors and retailers ("Responsible Entities") of these Priority Products will be subject to an unprecedented exercise that could result in disclosure of confidential business information, a duty to reformulate a product, possible loss of market share and perhaps a ban on the sale of a product in the State of California.

#### ***What Is Next? A Public Participation Rulemaking Process***

DTSC's announcement of the initial Priority Products list commences a rulemaking process for each product category. Prior to the formal commencement of the rulemaking procedures under both the Administrative Procedures Act (APA) and the California Environmental Quality Act (CEQA), DTSC will hold three workshops in May and June. DTSC has stated that the goals of these workshops will be to gain further understanding about the use, manufacture and sale of these products, as well as emerging science. The DTSC director has stated that by beginning this informal and formal public participation process, "[w]e are starting a conversation with manufacturers."

This public "conversation" will include a thorough analysis of the economic impacts of listing each product category. The analysis will look at, among many topics, the competitive advantages for business within the state, potential creation or elimination of businesses in the state, and impact on investment in the state.

This public "conversation" will also include a thorough analysis of the potential environmental impacts caused by the sale of each product category in the state. The environmental impact report will look at, among many topics, all the traditional impact areas for facilities and apply it to sales of products, such as impacts on air quality, water quality, exposure pathways of the chemical in the product and cumulative impacts of the introduction of the chemical in the product vis-à-vis all other sources of that chemical in California.

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***Some Key Issues to Be Decided in the Rulemaking***

Many key decisions will be made during this rulemaking process. The scope of the product categories may be broadened or narrowed depending on the testimony provided. The de minimis level or threshold levels for determining whether the chemical is present in the product, and hence the compliance obligations are triggered, will be decided. For example, it will be decided whether the threshold level for each product should be 1000 ppm, 100 ppm, the practical quantitation limit or some other level. Also, this rulemaking will determine the acceptable test methods manufacturers can use.

At this time, the rulemaking is projected to be concluded and final by April 2015. At that time, the final list of priority products will occur and the compliance obligations under the Safer Consumer Product regulations will begin.

For some more general background on the Safer Consumer Product program and its regulatory program:

Program Basics Overview, see <http://www.alston.com/news/gorsen-interviewed-npr-KQED/>.

Chemical Lists, see <http://www.alston.com/environmentalandlandblog/blog.aspx?entry=5074>.

Final Statement of Reasons, Text of Regulations, see <http://www.alston.com/files/docs/Final-Statement-of-Reasons-SCP.pdf>.

Major Compliance Steps, see <http://www.alston.com/advisories/safer-consumer-products-compliance-2013/>.

Compliance Cost Impact, see <http://www.alston.com/Files/Publication/27a67c20-6d20-451b-a613-7a85de3b290a/Presentation/PublicationAttachment/5fa2ced9-4d4a-4965-a14b-c7f12fa57707/California-Green-Chemistry-Regulations-Impact-Sheet.pdf>.

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For more information on the detailed content of these regulations, to discuss compliance strategies or to begin preparing for what will be required, feel free to call any member of the Chemical & Product Regulation team listed below.

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