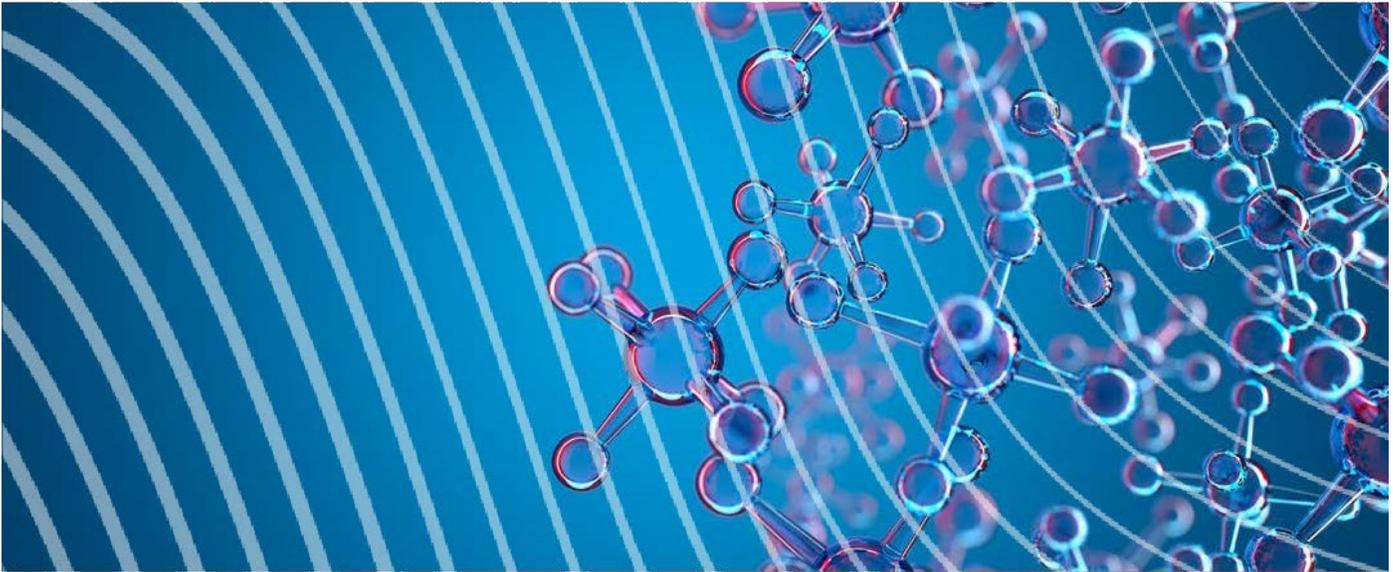


STATE REGULATIONS - CHEMICALS IN CONSUMER PRODUCTS



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OVERVIEW

In the U.S., the regulation of chemicals in consumer products at the state level is not harmonized, a patchwork approach that is challenging to all involved. This fact sheet provides a summary of the approaches that different states have taken in regulating chemicals such as banning or restricting certain chemicals or enacting mandatory reporting/notification requirements, mandatory labeling, and mandatory disclosure of certain chemicals under specific conditions.

BACKGROUND

State regulation of chemicals is not new. Whenever federal regulatory programs have been de-emphasized, states have proceeded on their own to address perceived gaps in regulatory protections. The adoption of Proposition 65 by California voters in 1986 is an excellent example of this dynamic, with proponents of the initiative arguing that federal programs provided inadequate protections against carcinogens and reproductive toxicants. As federal efforts to regulate chemicals has languished, a growing number of states (e.g., Maine, Minnesota, and Washington) identified chemicals of concern and established their own disclosure

and reporting programs. The compliance complexities created by different state level regulatory frameworks has renewed the business community's interest in a harmonized, national approach.

A broad coalition of stakeholders worked to reform the Toxic Substances Control Act (TSCA), which is the primary federal statute governing assessment and control of toxic substances. The Frank R. Lautenberg Chemical Safety for the 21st Century Act (LCSA) was passed in 2016 ushering in TSCA reform. Among other requirements, this reform mandates that the Environmental Protection Agency (EPA) conduct health and environmental based risk evaluations for certain existing and all new chemicals on a strict timeline. EPA also now has more authority to require testing, impose labeling requirements, identify use restrictions, or outright eliminate a risky chemical on a phased schedule. These changes are expected to eventually lead to improved public health and a cleaner environment.

The political coalition backing TSCA reform basically agreed to limit state's authority to regulate chemicals in exchange for a more effective federal regulatory program.

Under the reform, states are generally pre-empted from regulating chemicals more strictly than the federal government. Existing state chemical regulatory programs (adopted prior to April 22, 2016) are grandfathered in and state controls in effect on August 31, 2003 are not preempted. Because federal implementation of the TSCA reforms has proceeded more slowly than expected, states have continued to adopt regulations to fill the perceived gaps in regulating chemicals, including those found anywhere from food packaging to children's products to consumer products in general.

So how does all of this impact retailers? Depending on the jurisdiction, retailers may have to comply with state obligations on their private label brands that call for specific labeling or mandatory reporting or even prohibit use of certain chemicals for certain purposes. Even if a law does not specifically ban or restrict the use of these chemicals/chemical groups in consumer products, retailers are often under pressure from consumers to avoid stigmatized

chemicals. As a result, many retailers are adopting product curation programs that encourage suppliers to formulate away from chemicals of concern to improve their marketability and to eliminate the regulatory burden of tracking and reporting that is associated with those substances.

STATE APPROACHES

States have approached the regulation of chemicals in consumer products in a myriad of ways including mandatory disclosure or reporting, and chemical bans or restrictions.

In some cases, the regulation covers specifically named chemicals, a chemical group such as mercury compounds, a chemical class such as PFAS (per- and polyfluoroalkyl substances) or a functional class such as flame retardants. In other cases, the regulation may cover specific types of consumer products such as toys while other regulations are broader and regulate consumer products in general.

The table below provides illustrative examples of the various methods that states have employed to regulate chemicals of concern.

Jurisdiction	Product Sector	What is Regulated?	Summary of Requirements
California	Cleaning Products	Specifically named chemicals; Chemical groups	<p>Cleaning Product Right to Know Act of 2017</p> <p>Administered by California's Department of Toxic Substances Control (DTSC).</p> <p>Requires manufacturers (entity whose name appears on the label) to disclose on the product label and their website any of the listed chemicals or chemicals groups identified in the Act if used in a 'cleaning product.'</p>
California	Cosmetic Products	Specifically named chemicals	<p>Toxic Free Cosmetic Act</p> <p>Administered by California's Department of Toxic Substances Control (DTSC).</p> <p>Effective January 1, 2025, the manufacture, sale, delivery, holding or offering for sale in commerce of any cosmetic product that contains any of the 12 specifically listed intentionally added ingredients is banned.</p>

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California	Cosmetic Products	Specifically named chemicals; Chemical groups	<p>Cosmetic Fragrance and Flavor Ingredient Right to Know Act of 2020</p> <p>Administered by California's Department of Public Health (CDPH).</p> <p>Beginning on January 1, 2022, manufacturers of cosmetic products that contain certain flavor and fragrance ingredients will be required to disclose certain information about their products to California's Division of Environmental and Occupational Disease Control within the State Department of Public Health.</p>
California	Menstrual Products	Specifically named chemicals; Chemical groups	<p>Menstrual Products Right to Know Act</p> <p>Administered by California's Department of Public Health (CDPH).</p> <p>The package label for menstrual products manufactured on or after January 1, 2023 shall disclose all ingredients in the product.</p>
California	All products; Drinking water	Specifically named chemicals; Chemical groups	<p>Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65)</p> <p>Administered by California's Office of Environmental Health Hazard Assessment (OEHHA).</p> <p>Proposition 65 prohibits knowing discharge of listed chemicals into drinking water as well as requiring that "person in the course of doing business" provide warnings on products which contain listed chemicals.</p>

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Jurisdiction	Product Sector	What is Regulated?	Summary of Requirements
Hawaii	Sunscreens	Sunscreens containing Oxybenzone or Octinoxate	<p>Sale and distribution of Sunscreen containing Oxybenzone or Octinoxate, or both</p> <p>Administered by Hawaii's Department of Health (DOH).</p> <p>Statute bans the sale of sunscreen containing listed substances without a prescription.</p>
Maine	Children's Products	Specifically named chemicals; Chemical groups; Function	<p>Toxic Chemicals in Children's Products Law</p> <p>Administered by Maine's Department of Environmental Protection (DEP).</p> <p>A manufacturer or distributor of a children's product that contains a priority chemical above the de minimis level shall notify the DEP. An Alternatives Assessment (AA) may be required. The definition of manufacturer includes anyone "...whose brand name is affixed to the consumer product."</p>
Minnesota	Children's Products	Specifically named chemicals	<p>Children's Safe Products Act</p> <p>Administered by Minnesota's Departments of Health (MOH).</p> <p>Prohibits the sale of children's products containing specifically listed chemicals.</p>
New York	Consumer Products	Mercury	<p>Mercury-Added Consumer Products Law</p> <p>Administered by New York's Department of Environmental Conservation (DEC).</p> <p>Bans sale of mercury containing consumer products without the specified labeling.</p>

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Jurisdiction	Product Sector	What is Regulated?	Summary of Requirements
New York	Children's Products	Specifically named chemicals; Chemical groups	<p>Toxic Chemicals in Children's Products Act</p> <p>Administered by New York's Department of Environmental Conservation (DEC).</p> <p>Prohibits sale of children's products containing specifically identified chemicals. Regulated entities have reporting obligations and notification obligations in addition to prohibition of sale of products containing listed chemical (effective January 1, 2023). "A retailer is exempt from the requirements...unless that retailer knowingly sells a children's product containing a dangerous chemical after the effective date of its prohibition for which that retailer has received notification..."</p>
Oregon	Children's Products	Specifically named chemicals	<p>Toxic Free Kids Act</p> <p>Administered by Oregon's Health Authority (OHA).</p> <p>Manufacturers (including domestic distributors) must provide notice of children's products sold in Oregon every two years that contain intentionally added High Priority Chemicals of High Concern for Children's Health (HPCCH) at or above the practical quantification limits.</p>
Washington	Children's Products	Specifically named chemicals	<p>Children's Safe Products Act</p> <p>Administered by Washington's Department of Ecology.</p> <p>Enacts limits for specifically named chemicals as well as manufacturer reporting obligations. "For the purposes of this rule, a retailer of a children's product is not a manufacturer unless it is also the producer, manufacturer, importer, or domestic distributor of the product."</p>

WHAT DOES THE FUTURE HOLD?

The desire for safer and more sustainable consumer products is here to stay. A growing segment of consumers are demanding that suppliers move beyond compliance and ensure that chemicals in products are not just compliant with existing requirements but are 'free' of chemicals of concern. It should be no surprise that many retailers are responding to consumer preferences with product curation programs aimed at reducing the prevalence of chemicals of concern. The EPA's slow roll out of the TSCA reforms over the past several years has meant that the promise of effective and consistent federal chemical regulation remains unfulfilled. As a result, state legislators continue to respond to citizen preferences for stricter controls over toxic substances. The proliferation of state programs with different lists of chemicals of concern and different regulatory requirements continue to complicate the compliance programs of both suppliers and retailers. These trends are likely to continue, although there are some signs that the worst aspects of unconstrained state action are being mitigated. We are seeing examples of harmonization within a state (e.g., both the California cleaning product and cosmetics right-to-know statutes use a common list of chemicals of concern) as well as harmonization across states (e.g., use of common reporting systems for reportable chemicals of concern in consumer products). In the near term, however, the overall landscape is likely to remain fragmented until the TSCA reforms are fully implemented and consumer confidence in the effectiveness of federal chemical regulation is restored.

¹ Bekmagambetova, Dinara. "Two-Thirds of North Americans Prefer Eco-Friendly Brands, Study Finds." Barrons, <https://www.barrons.com/articles/two-thirds-of-north-americans-prefer-eco-friendly-brands-study-finds-51578661728>. published 10 January 2020. Accessed 12 February 2021.

² World Business Council for Sustainable Development (WBCSD). "Sustainable Consumption Facts and Trends". https://saipatform.org/uploads/Modules/Library/WBCSD_Sustainable_Consumption_web.pdf. Accessed 12 February 2021.

³ Hartmann, Sabrina and Klaschka, Ursula. "Interested Consumers' Awareness of Harmful Chemicals in Everyday Products." Environmental Sciences Europe, <https://enveurope.springeropen.com/articles/10.1186/s12302-017-0127-8>. Published 21 November 2017. Accessed 23 February 2021.

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How UL can help: Are you a Retailer who imports products into the United States? Do you have private label products? If so, click [here](#) to find out how UL can help you navigate your regulatory compliance obligations.



ABOUT THE RETAIL COMPLIANCE CENTER

The Retail Compliance Center (RCC) provides resources on environmental compliance and sustainability for all types and sizes of retailers. The RCC's goal is to develop retail-specific resources, tools and innovative solutions to help companies cost-effectively improve their compliance and environmental performance.