

## Legal Updates & News

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#### Proposed Federal Legislation Could Restrict Materials Commonly Used in Many Electronics and Electrical Power Products

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by [Robert L. Falk](#), [Peter Hsiao](#), [Susan P. Linden](#)

New legislation being considered in the United States Congress could dramatically affect how many electronics and electrical power products are manufactured in the future. The “Environmental Design of Electrical Equipment (EDEE) Act”(H.R. 2420), introduced by Michael Burgess (R-TX) on May 14, 2009, would amend the Toxic Substances Control Act of 1976 (15 U.S.C. Sec. 2605) to restrict the use of certain substances, including lead, mercury, cadmium, hexavalent chromium, and PBB and PBDE in “electroindustry” products.

The EDEE Act has wide implications because “electroindustry products” are very broadly defined in the proposed legislation as products or equipment: (1) directly used to facilitate the transmission, distribution, or control of electricity, (2) that use electrical power for arc welding, lighting, signaling protection, and communication, (3) medical imaging, or (4) electrical motors and generators.

The restrictions are similar to those in the European Union’s (EU’s) Restriction of Hazardous Substance (RoHS) Directive that became effective in the EU in 2004. Numerous U.S. states have since enacted, or are in the process of enacting, their own legislation regulating the use of certain heavy metals and chemicals in electronics and their presence in electronics-related “e-waste” streams. H.R. 2420 is therefore being looked upon favorably by trade associations affiliated with the electrical industry because it is relatively consistent with RoHS requirements and intended to establish uniform national standards.

As currently drafted, H.R. 2420 prohibits the manufacture of any electroindustry product after July 1, 2010, that contains more than 0.1% by weight of lead, mercury, hexavalent chromium, polybrominated biphenyls (PBB) and polybrominated diphenyl ethers (PBDE) as measured in any homogeneous material contained in the electroindustry product. Cadmium concentrations cannot exceed a much more restrictive limit of 0.01%. “Homogeneous material” is defined as a material of uniform composition throughout that cannot be mechanically disjoined into different material.

The EDEE Act, as proposed, contains certain exceptions to these general limits. For example, the limits

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would not apply to specified products containing lead, mercury, cadmium, hexavalent chromium, PBB, and PBDE, including products or equipment designed for high-voltage (300V or more) use; signaling protection and communication systems and products (including healthcare communications and emergency call systems); various transportation information and medical diagnostic equipment; and electrical metering and power generation equipment.

The bill, if adopted, would also exempt specified amounts of lead in steel, aluminum, and copper alloys and in solders with high melting temperatures. In addition, there are exemptions for cadmium, hexavalent chromium, and mercury in certain specified uses.

The EDEE Act is currently pending in the U.S. House of Representatives Committee on Energy and Commerce. Should the legislation be signed into law, the U.S. Environmental Protection Agency would have one year to promulgate guidelines establishing test procedures to determine concentrations of regulated chemicals in products.

Morrison & Foerster LLP is a leading commercial and intellectual property legal advisor to many electronics and electrically-powered product manufacturers and, among other things, has assisted clients with respect to RoHS, e-waste, and TSCA issues for many years. For assistance or additional information, please contact Peter Hsiao in our Los Angeles office at 213-892-5731 ([phsiao@mofo.com](mailto:phsiao@mofo.com)) or Robert Falk in our San Francisco office at 415-268-6294 ([rfalk@mofo.com](mailto:rfalk@mofo.com)).