

**State of California  
Office of Administrative Law**

**In re:**  
**Department of Toxic Substances Control**

**Regulatory Action:**

**Title 22, California Code of Regulations**

**APPROVED:**

**Adopt section:** 69511.6(a) through (g)

**Amend section:** 69511

**DISAPPROVED:**

**Adopt section:** 69511.6(h)

**NOTICE OF APPROVAL IN PART AND  
DISAPPROVAL IN PART OF REGULATORY  
ACTION**

**Government Code Section 11349.3**

**OAL Matter Number: 2022-0930-02**

**OAL Matter Type: Regular (S)**

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Existing regulations in Chapter 55 of Division 4.5 of Title 22 of the California Code of Regulations establish a process for identifying and prioritizing Priority Products and their Chemicals of Concern. These existing regulations also establish a process for identifying and analyzing alternatives to determine how best to eliminate or reduce potential exposures to, or the level of potential adverse impacts posed by, the Chemical(s) of Concern in Priority Products. In this regular rulemaking, the Department of Toxic Substances Control is adding nail products containing toluene as a Priority Product on the Priority Products list.

OAL approves the sections listed as APPROVED above pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 1/1/2023.

OAL disapproves the section listed as DISAPPROVED above for the following reasons: clarity and necessity.

Within seven (7) calendar days of the date of this notice, the Office of Administrative Law will send the adopting agency a written decision detailing the reasons for disapproval of this regulatory filing.



**Date:** November 14, 2022

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**Steven J. Escobar**  
Senior Attorney

**Original:** Meredith Williams, Director  
**Copy:** Jackie Buttle

**For:** Kenneth J. Pogue  
Director



# FINAL REGULATORY TEXT

## SAFER CONSUMER PRODUCTS REGULATIONS – Listing Nail products Containing Toluene as a Priority Product

Department of Toxic Substances Control reference number: R-2019-04  
Office of Administrative Law Reference Number: 2021-0921-06

Amend section 69511 and adopt section 69511.6, to article 11, chapter 55, division 4.5 of title 22 of the California Code of Regulations, to read as follows:

### § 69511. General.

(a) This article specifies product-chemical combinations listed as Priority Products pursuant to section 69503.5.

(b) The following product-chemical combinations are listed as Priority Products:

(1) Children's foam-padded sleeping products containing tris(1,3-dichloro-2-propyl) phosphate (TDCPP) or tris(2-chloroethyl) phosphate (TCEP);

(2) Spray polyurethane foam systems containing unreacted methylene diphenyl diisocyanates;

(3) Paint or varnish strippers containing methylene chloride;

(4) Carpets and rugs containing perfluoroalkyl or polyfluoroalkyl substances; ~~and~~

(5) Treatments containing perfluoroalkyl or polyfluoroalkyl substances for use on converted textiles; and

(6) Nail products containing toluene.

Note: Authority cited: Sections 25252, 25253 and 58012, Health and Safety Code.  
Reference: Sections 25252 and 25253, Health and Safety Code.

### § 69511.6. Nail Products Containing Toluene.

(a) "Nail products containing toluene" means nail products containing toluene, including nail coatings and nail polish thinners that contain toluene as an added ingredient, contaminant, or residual.

(1) "Nail coating" means any clear or colored paint, polish, lacquer, enamel, or gel product marketed or sold for application to fingernails or toenails, including:

(A) "Solvent-based nail coatings." "Solvent-based nail coatings" are clear or colored nail coatings that form a hard coating on nails upon evaporation of their solvents, including:

1. "Nail polish." "Nail polish" is a varnish or paint applied to the fingernails or toenails to color them or make them shiny.

2. "Lacquer." "Lacquer" is a coating that dries by means of solvent evaporation. "Lacquer" is also known as "enamel."

3. "Base coat." "Base coat" is a clear or milky-colored coating that is used before applying other coatings to the nail. It may be marketed for strengthening or protecting the nail, restoring moisture to the nail, or helping other coatings to adhere to the nail. "Base coat" is also known as "undercoat."

4. "Top coat." "Top coat" is a clear coating that is used after applying other coatings to the nail. It may be used to protect underlying coatings or to add shine, gloss, or matte to the nail.

5. "Gel nail polish." "Gel nail polish" is a gel varnish coating with a look and feel similar to UV gel nail coatings but that does not require an ultraviolet (UV) or a light-emitting diode (LED) lamp to dry. Gel nail polish typically contains color but can also be a clear nail coating. "Gel nail polish" is also known as "gel polish."

(B) "UV gel nail coatings." "UV gel nail coatings" are clear or colored gel nail coatings that are cured or hardened on nails using a UV or an LED lamp rather than solvent evaporation, including:

1. "UV gel nail polish." "UV gel nail polish" is a premixed coating that is hardened using a UV or an LED lamp. UV gel nail polish typically contains color but can also be a clear coating. "UV gel nail polish" is also known as "UV gel" or "Gel" or "nail gel."

2. "UV gel base coat." "UV gel base coat" is a clear coating that is used before applying other UV gel coatings to the nail; it is cured using a UV or an LED lamp.

3. "UV gel top coat." "UV gel top coat" is a clear coating that is used after applying other UV gel coatings to the nail; it is cured using a UV or an LED lamp.

4. "Hard gel." "Hard gel" is a premixed coating with high solvent resistance; it is hardened using a UV or an LED lamp. It can be applied directly onto natural nails to provide additional strength or sculptured using nail enhancements.

5. "Shellac." "Shellac" is the brand name for a nail product created by Creative Nail Design. It is a hybrid which is a combination of nail polish and gel. Shellac is applied directly onto natural nails, and it is cured through UV light.

(C) "Nail art paint." "Nail art paint" is any decorative paint including various solvent-based or UV gel nail coating overlays of nail polish, UV gel, or hybrid coatings like Shellac or airbrush paint applied to fingernails, toenails, or both by any technique. This definition includes "Airbrush nail art paint," which is a nail art paint that is designed or intended to be sprayed onto the nail by a device using compressed air. This product may also be labeled as ink, polish, paint, or pigment for airbrush nail art.

(2) "Nail polish thinner" means any liquid product that is marketed or sold for the use of reducing viscosity of nail coatings. It may be marketed for the use of increasing the fluidity or restoring the consistency of nail coatings.

(b) Candidate Chemical. For purposes of this chapter, the following Candidate Chemical is identified as the basis for the product defined in subsection (a) being listed as a Priority Product:

(1) Toluene, Chemical Abstract Services Registry Number: 108-88-3.

(c) Hazard traits associated with toluene include:

(1) Neurotoxicity,

(2) Developmental toxicity,

(3) Neurodevelopmental toxicity,

(4) Respiratory toxicity,

(5) Nephrotoxicity,

(6) Dermatotoxicity,

(7) Immunotoxicity,

(8) Ocular toxicity, and

(9) Ototoxicity.

(d) Toxicological endpoints associated with exposure to toluene include:

(1) Dizziness, fatigue, headache, decreased manual dexterity, and chronic degenerative brain disorder,

(2) Decreased birth weight or retarded skeletal development,

(3) Impaired cognitive function,

(4) Respiratory tract irritation,

(5) Increased kidney weight or metabolic acidosis,

(6) Skin irritation,

(7) Decreased thymus weight or dose-dependent effects on suppression of antibody response,

(8) Vision effects or optic nerve damage, and

(9) Hearing loss.

(e) For purposes of this chapter, the Candidate Chemical identified in subsection (b) is designated as the Chemical of Concern for the product defined in subsection (a).

(f) A responsible entity shall submit a Priority Product Notification within 60 days of the effective date of this regulation or no later than 60 days after the Priority Product is first placed into the stream of commerce in California. The Preliminary Alternatives Analysis Report for this Priority Product shall be submitted within 180 days after the effective date of this regulation, unless the manufacturer submits an Alternatives Analysis Threshold Notification pursuant to section 69505.3, which may be submitted concurrently with the Priority Product Notification or shall be submitted no later than the due date for the Preliminary Alternatives Analysis Report for the Priority Product.

(g) The Alternatives Analysis Threshold for toluene in nail products is set at 100 parts per million (ppm).

Note: Authority cited: Sections 25252, 25253 and 58012, Health and Safety Code.  
Reference: Sections 25252 and 25253, Health and Safety Code.