



Non-CPSC Consumer Product Requirements

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Overview

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- Federal Trade Commission requirements
 - Fair Packaging and Labeling Act
 - Substantiation of claims
 - Environmental marketing claims (Green Guides)
 - Warranty statements
- Chemical management requirements
 - Toxic Substances Control Act
 - California's Proposition 65
- Chemical-specific requirements
 - Volatile organic compounds
 - Bittering agents
 - Phosphates



FTC: Fair Packaging and Labeling Act

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FPLA: Statement Identifying Commodity

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- Identity name required by any applicable Federal law or regulation; or
- Common or usual name of the commodity; or
- The generic name or descriptive term which includes a statement of function
- Must be on the principle display panel
- Cannot be false, misleading, or deceptive



FPLA: Name and Place of Business

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- Use corporate name
 - May add corporate division if desired
 - If company does not manufacture the product, must use a qualifier
 - Manufactured for
 - Distributed by
- Place of business
 - May use principle place of business vs. place of manufacture
- Include full address, unless address may be found in a current city directory



FPLA: Net Qty. of Contents Declaration

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- Must appear on principal display panel (“PDP”)
 - Conspicuous
 - Legible, boldface, contrasting type
- Must be separated from other text on label
 - Above and below by space equal to height of lettering
 - Left or right by space equal to twice the width of the letter “N”



FPLA: Net Qty. of Contents Declaration

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- Within the bottom 30% of the bottom area of label
- Placement is not applicable when PDP is ≤ 5 square inches
- Cannot use qualifying terms
 - Full gallon
 - When packed
- Type size is determined by the area of the principal display panel
 - Cylinders: 40% of the height times the circumference
 - Square or rectangle container: use area of side that would be the PDP
 - Other shaped containers: 40% of total surface of container
- Separation, location, and type size are waived for variety and combo packages



Net Qty. of Contents: Method of Expression

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- Must be expressed in terms of weight, mass, measure, numerical count or a combination of count and weight or mass, size, or measure
- Liquids must be indicated in terms of fluid measure
- Solids, semi-solids, or viscous products, in terms of weight or mass
- Where there is an established trade custom, the general rules may be deviated from
 - Aerosol products



Net Qty. of Contents: Units of Weight or Mass and Measure

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- Statements of weight or mass shall be in terms of both avoirdupois pound and ounce and SI metric kilograms, grams, or milligrams
- Statements of fluid measure shall be in terms of both U.S. gallon, quart, pint, and fluid ounces and SI metric liters or milliliters
- Linear measures shall be in terms of both yards, feet, and inches and SI metric measures
- Statements of area, dry measures, and cubic measures must also use Imperial measures and SI measures



Net Qty. of Contents: Expression of Units – Weight or Mass

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- Use of terms such as “Net,” “Net Weight,” or “Net Contents” is not mandatory
- If less than 1 pound:
Net Wt. 12 oz. (340 g) or
Net Mass 340 g (12 oz.)
- If at least 1 pound but less than 4 pounds:
Net Wt. 1 lb. 8 oz. (680 g) or
24 oz. (1½ lb.) (680 g)
- If 4 pounds or more:
Net Wt. 5 pounds 4 ounces (2.38 kg) or
Net Wt. 5.25 lbs. (2.38 kg)



Net Qty. of Contents: Expression of Units – Fluid Measure

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- Use of terms such as “Net” or “Net Contents” is not mandatory
- If less than 1 pint:
Net Contents 8 fl. oz. (236 mL) or
8 fl. Oz. (236 mL)
- If at least 1 pint but less than 1 gallons:
Net Contents 1 qt. 1 pt. 8 fl. oz. (1.65 L) or
1 qt. (946 mL)
- If 1 gallon or more:
Contents 2½ gal. (9.46 L) or
2 gallons 2 quarts (9.46 L)



Net Qty. of Contents: Expression of Units – Count

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- For products such as wipes
30 wipes, 8½ in. x 10 in. (21.5 x 25.4 cm)



Net Qty. of Contents: Multiunit, Variety, and Combination Packages

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- Multiunit packages: contain 2 or more units of the same product
 - 2 bottles 1 qt. (946 mL) each
- Variety packages (contain similar but not identical products):
 - 1 bottle Contents 1 qt. (946 mL)
 - 1 bottle Contents 4 fl. oz. (118 mL)
- Combination packages:
 - 2 sponges each 4 in. x 6 in. x 1 in. (10.1 x 15.2 x 2.5 cm)
 - 1 bottle cleaner 1 qt. (946 mL)



FPLA: Slack Fill

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- Fair Packaging & Labeling Act gives FTC the authority to promulgate regulations
 - 16 C.F.R. §§ 502.300 to -.399 have been reserved for nonfunctional-slack-fill regulations
- FPLA (15 U.S.C. § 1454(c)) defines slack fill as follows:

“... a package shall be deemed to be non-functionally slack-filled if it is filled to substantially less than its capacity for reasons other than (A) protection of the contents of such package or (B) the requirements of machines used for enclosing the contents in such packaging.”



California: Slack Fill

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- California Business and Professions Code also includes a provision for slack fill
 - Law was amended in 1997 to include exemptions
 - Protection of the contents of the package
 - Unavoidable product settling during shipping and handling
 - The need to provide adequate space for the presentation of mandatory labeling information
 - Facilitating the handling of the product, or allowing secondary packaging
 - Where the actual size of the product is visible through the packaging
 - Where the packaging contains a product delivery device, if such device is visible to the consumer



FTC: Substantiation of Claims

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- Types of claims made by companies
 - Puffery: “Surfaces will sparkle like the sun”
 - Performance: “Cleans soap scum”
 - Comparative: “Cleans better than the leading brand”
- Claims that are not puffery must be supported
 - Claim substantiation must be developed prior to making the claim



FTC: Environmental Marketing Claims

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- First issued in 1992 and revised in 1998 and 2012
- Apply to all forms of marketing and services
 - Labels
 - Advertising
 - Digital and electronic medias
- They are not enforceable regulations
 - Do not have the force and effect of law
- Conduct inconsistent with the guides may result in corrective action by the Commission under section 5 of the Federal Trade Commission Act



FTC: Environmental Marketing Claims

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- Guides contain general principles
- Prohibit generalized statements
 - Environmentally friendly
 - Essentially non-toxic
 - Icons that imply environmental benefits
- Degradable/biodegradable/photodegradable
 - Claims may be used if substantiation has been completed
 - Must consider fate of the product when claims are made



FTC: Environmental Marketing Claims

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- Recyclable
 - Unqualified claim cannot be made
 - Use of the Society of Plastics Industry (“SPI”) code in a prominent manner would violate the guides unless facilities exist to substantial population
 - Use of SPI code on package bottom is OK
 - Recyclable where facilities exist (unqualified)
 - Acceptable only when significant number of facilities are available
- Recycled Content
 - Claim can only be made for materials recovered or diverted from waste stream



FTC: Environmental Marketing Claims

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- Recycled Content
 - Claim can only be made for materials recovered or diverted from waste stream
 - Distinctions may need to be made between pre and post consumer materials.
 - Unqualified claims may only be made if the entire package/product is made from recycled material (less incidental components)
- Ozone safe/friendly
 - General claim not allowed



FTC: Environmental Marketing Claims

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- 2012 update addressed several issues
 - Unqualified degradable claims
 - Clarified guidance on compostable, ozone, recyclable, recycled content, and source reduction claims
 - New sections on certifications and seals of approval, carbon offsets, free-of claims, non-toxic claims, made with renewable energy claims, and made with renewable materials claims
- Green Guides do not presently address use of the terms “sustainable,” “natural,” or “organic”



FTC: Warranty Statements

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- Two basic types of warranties: express and implied
 - Implied: merchantability, fitness for a particular use
- Warranties are governed mostly by U.S. state law
- States can adopt Uniform Commercial Code provisions
 - Section 2-313: express warranties
 - Section 2-314: implied warranty, merchantability, usage of trade
 - Section 2-315: implied warranty, fitness for a specific purpose
 - Section 2-316: exclusion or modification of warranties
- You cannot sell consumer products “as is” and avoid implied warranties in some states: AL, CT, DC, KS, ME, MD, MA, MN, MS, NH, VT, WA, WV



FTC: Warranty Statements

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- Federal law is limited: Magnuson-Moss Warranty Act
 - Goals: ensure consumers have complete terms and conditions, facilitate comparisons, promote competition, resolve disputes
 - Does not require but does apply to written warranties on consumer products
 - Excludes oral warranties, warranties on services (e.g., repair without parts), resold products, commercial products
 - FTC has three implementing rules: Disclosure Rule, Pre-Sale Availability Rule, Dispute Resolution Rule



Magnuson-Moss Warranty Act

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- Three basic requirements
 - Written warranty must be designated “full” or “limited”
 - Written warranty must state certain information about its coverage (Disclosure Rule)
 - What does the warranty cover/not cover?
 - What is the period of coverage?
 - What will you do to correct problems?
 - How can the customer get warranty service?
 - How will state law affect your customer's rights under the warranty?
 - Specific statements with optional terms and conditions
 - Written warranty must be available to consumer prior to purchase, where the product is sold (Pre-Sale Availability Rule)



Magnuson-Moss Warranty Act

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- Prohibitions
 - Disclaimer or modification of implied warranties on consumer products where written warranty is offered or service contract on the product is sold
 - “Tie-in sales” provisions, e.g., requires a purchaser to buy an item or service in order to use the consumer product's warranty
 - But the warranty need not cover use of replacement parts, repairs, or maintenance that is inappropriate for your product
 - Deceptive or misleading terms, e.g., appears to provide coverage but in fact provides none
- FTC Act: Guides for Advertising Warranties & Guarantees



Chemical Management: Toxic Substances Control Act

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- Regulates the manufacture/importation, processing, distribution/export, use, and disposal of “chemical substances”
 - All manufactured/imported chemical substances must be on the TSCA Inventory or have valid premanufacture notice exemption
 - Also must check for chemical-specific rules, orders, and actions
 - Importation requires a certification statement to U.S. Customs (40 C.F.R. § 707.20; 19 C.F.R. § 12.121)
 - “I certify that all chemical substances in this shipment comply with all applicable rules or orders under TSCA and that I am not offering a chemical substance for entry in violation of TSCA or any applicable rule or order under TSCA.”
- OR
- “I certify that all chemicals in this shipment are not subject to TSCA.”



Chemical Management: California's Proposition 65

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- Safe Drinking Water & Enforcement Act of 1986
- Obligation to warn
 - Carcinogens or reproductive toxins
 - Applies to components, byproducts, and trace amounts of chemicals
- Chemical lists are administered by the Office of Environmental Health Hazard Assessment
- List is revised and updated annually
 - To be based on authoritative bodies
- Contains a bounty hunter provision



Chemical Management: California's Proposition 65

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- Companies conduct a risk assessment
 - Determine if chemical exceeds No Significant Risk Level
- No significant risk level (“NSRL”)
 - Lifetime cancer risk < 1 per 100,000 people
 - Reproductive toxin: no observable effect at 1000 times the NSRL
- If there is a significant risk, must provide warning
 - Carcinogens: “WARNING: This product contains a chemical known to the State of California to cause cancer.”
 - Repro. Toxin: “WARNING: This product contains a chemical known to the State of California to cause birth defects or other reproductive harm.”



Volatile Organic Compounds: Clean Air Act Regulations

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- Federal regulation (40 C.F.R. § § 59.201 to -.214)
 - Effective December 10, 1998
 - 24 product categories
 - One-time notification (§ 59.209(d))
 - Maintain records for three years
- Two ways to comply
 - Formulate to the standard
 - Use Innovative Products Exemption



Volatile Organic Compounds: California

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- Contains over 200 limits in approximately 90 categories
 - Limits vary by product forms
- Three ways to comply
 - Formulate to meet standard
 - Innovative Product Exemption
 - Alternative Control Plan



Volatile Organic Compounds: Ozone Transport Commission (“OTC”)

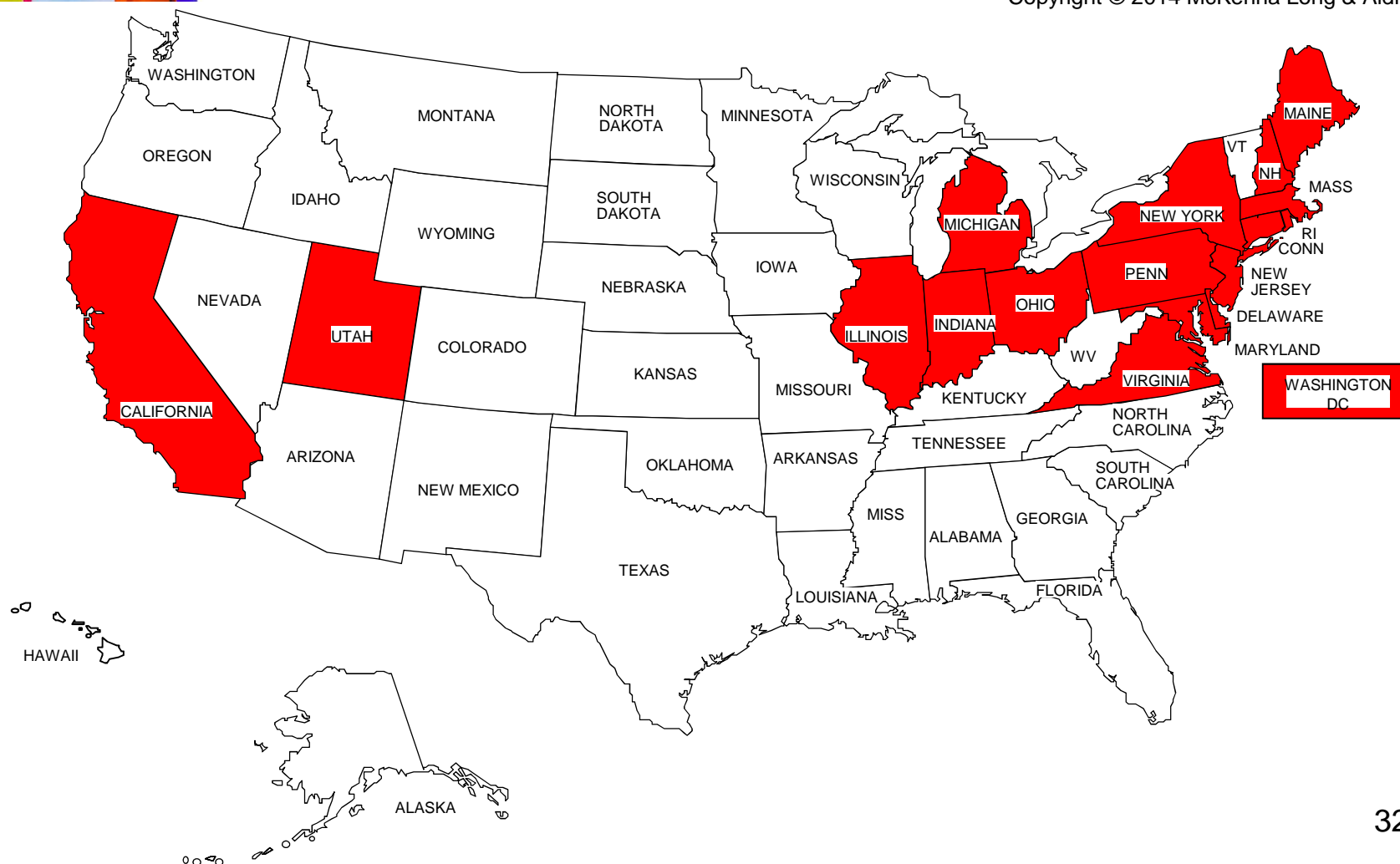
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- 14 OTC members
 - Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virginia
 - EPA
- Established a model consumer product rule (Model Rule 2009-12)
 - Based on California Air Resources Board's rules
- Model rule also is used in non-member States



Chemical-Specific: Volatile Organic Compounds

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Chemical-Specific: Bittering Agents

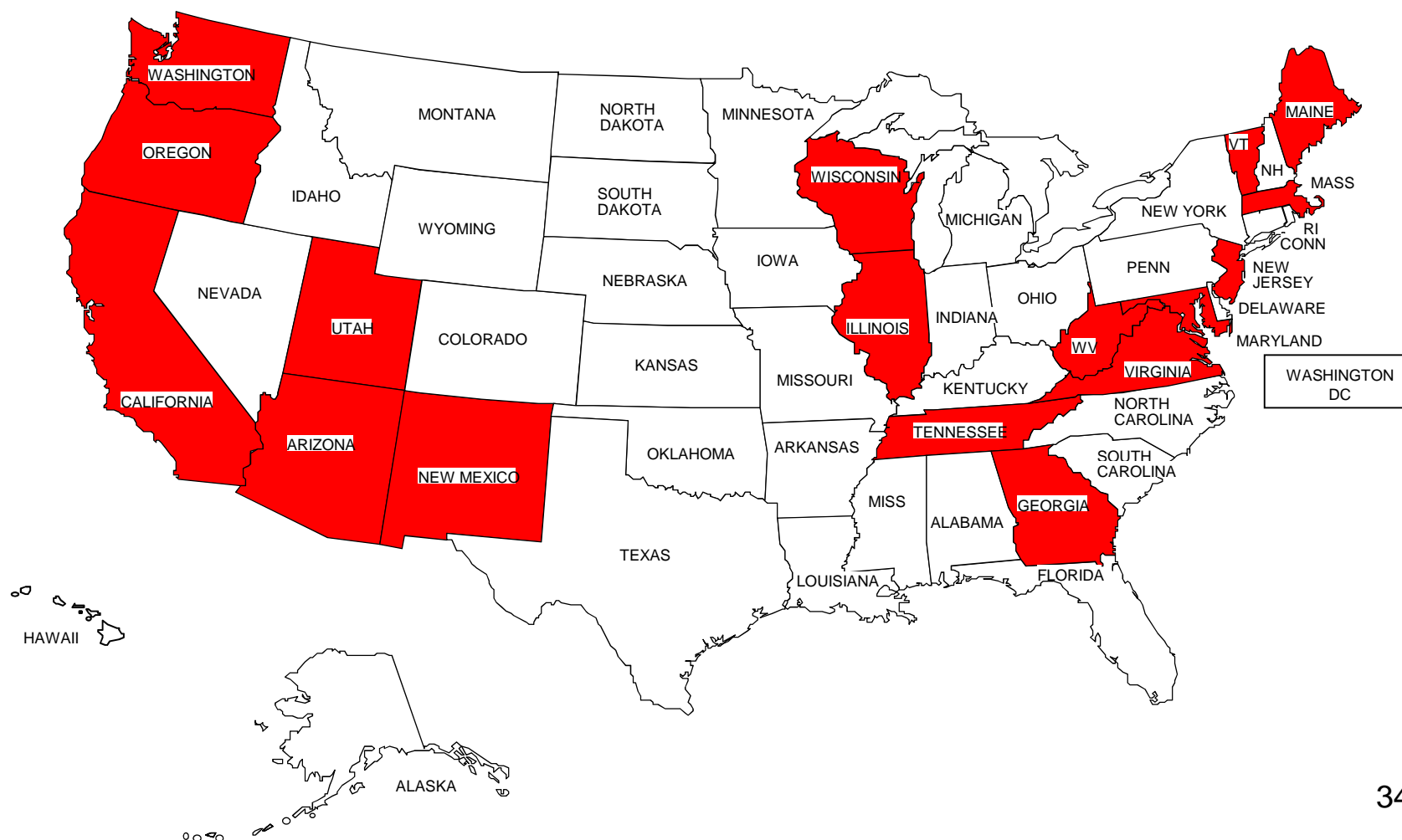
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- Seventeen states have requirements for the use of a bittering agent (often, denatonium benzoate) in antifreeze
 - California includes 14 substances in its law including
 - Ethylene glycol at 10% or more and
 - Methanol at 4% or more
- Oregon also includes a provision for windshield washer fluids that contain 4% or more methyl alcohol



Chemical-Specific: Bittering Agents

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Chemical-Specific: Phosphates

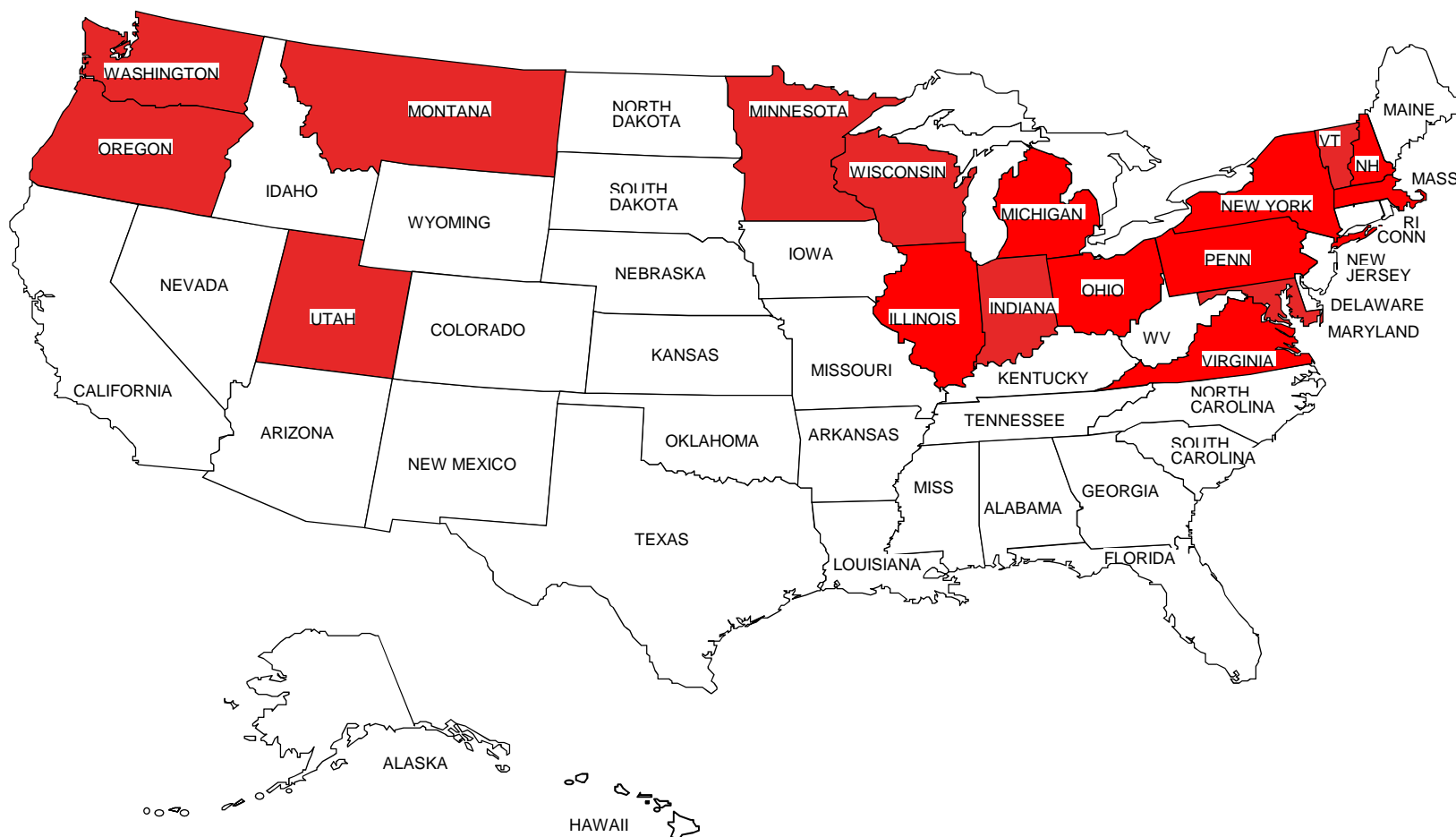
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- Bans and limitations in states and municipalities
- Detergents, cleaning products and automatic dish detergents
 - Automatic dish detergent limit of 0.5% became effective July 1, 2010
 - 17 states have adopted this limit
- New York State requires labeling
 - Cleaning products without elemental phosphorus must state so on the label



Chemical-Specific: Phosphates

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Thank You!

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