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If you have any questions about this alert or would like to discuss these topics further, please contact your Foley attorney or any of the following individuals:

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## California Appliance Efficiency Regulations Effective July 1, 2007

On July 1, 2007, new appliance efficiency regulations go into effect in California. The regulations were promulgated by the California Energy Commission (CEC) and address both energy and water efficiency. The appliances covered under the new regulations include: refrigerators; air conditioners; vented-gas space heaters; water heaters; gas pool heaters; plumbing fittings; plumbing fixtures; lamps; emergency lighting; traffic signals; dishwashers; clothes washers; clothes dryers; cooking products; electric motors; low-voltage, dry-type distribution transformers; and power supplies.

Although many large appliance manufacturers are likely aware of these upcoming requirements, manufacturers of products not specifically covered may not be aware of the need to comply with the power supply regulations. Under the regulations, a single-voltage external AC to DC or AC to AC power supply must comply with the regulations' energy efficiency standards. Thus, even if the main product does not have an energy efficiency requirement, the power supply may still be subject to the appliance efficiency standards established in the regulations.

### What the Regulations Require

The regulations apply to new appliances if they are sold or offered for sale in California. There are several exceptions, including appliances sold wholesale in California for final retail sale outside the state and those designed and sold exclusively for use in recreational vehicles or other mobile equipment. The regulations only apply to appliances manufactured on or after July 1, 2007.

The CEC regulations require that the covered appliance meet certain enumerated energy efficiency requirements. In addition, manufacturers are required to test their appliances using standardized testing methodologies provided in the regulations to confirm compliance with the energy efficiency levels, and provide notice of compliance to the state. The CEC has developed a database which lists appliances that comply with the new regulations, and, under the terms of the regulations, only products listed in the database can be sold or offered for sale in California. Finally, the regulations include product labeling requirements for most appliances.

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## Enforcement of the Regulations' Requirements

The CEC does not appear to have a direct administrative enforcement tool to enforce a violation of the appliance efficiency regulations. However, the CEC may request that the State Attorney General bring an enforcement action seeking injunctive relief against a manufacturer of a non-conforming product.

Moreover, it appears very likely that an action could be brought by either the Attorney General, a District Attorney, or a citizen under the California Unfair and Unlawful Business Practices Act to enjoin the sale of a non-conforming product. Under the Unfair and Unlawful Business Practices Act, the Attorney General, or a District Attorney, could seek civil penalties of up to \$2,500 per violation, with each sale being a violation. Citizen enforcers could potentially

recover damages, plus legal fees, if they can demonstrate some harm resulting from the sale of a non-conforming product.

## Additional States to Follow Suit

California appears to be a leader in a string of states that are beginning to regulate appliance efficiency. Although the list of appliances differs slightly from state to state, as do the regulations, the majority of states' appliance efficiency regulations are similar to, or specifically cross-reference, the California regulations. States with appliance efficiency regulations that become effective on January 1, 2008 include: Arizona, Connecticut, Oregon, Massachusetts, New Jersey, and Washington. In addition, Rhode Island has appliance efficiency regulations that became effective on January 1, 2007. New York also is in the process of promulgating appliance efficiency regulations.