

Safer Consumer Products Regulations: One Step Closer

By

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The California Department of Toxic Substances Control (DTSC) released in July proposed Safer Consumer Products regulations, the newest iteration of the much anticipated regulatory implementation of California's Green Chemistry Initiative, available at <http://www.dtsc.ca.gov/upload/SCPPProposedRegulationsNoUnderlineJuly2012.pdf>. A summary of key elements of the proposal -- Chemicals of Concern (COC), Priority Products (PP), Alternative Assessments (AA), and Regulatory Responses -- follows.

Key Elements

“Chemicals of Concern” List: The regulations would establish a COC List, including substances that exhibit a hazard trait or an environmental or toxicological endpoint on one or more of 14 lists already selected by agencies or organizations, or is identified by one or more of eight lists of certain types of chemicals. There are a large number of sources of chemicals that other agencies or organizations have determined exhibit certain hazard traits (carcinogenicity, reproductive toxicity, mutagenicity, developmental toxicity, endocrine disruption, neurotoxicity, and/or persistent bioaccumulative toxicity) or list chemicals on exposure indicator lists for water quality, air quality, or biomonitoring.

“Priority Products” List: DTSC will prioritize products that contain COCs to develop a list of PPs for which AAs must be conducted. DTSC will evaluate the potential adverse health and environmental impacts posed by the COCs in each product based on several factors listed in the proposed regulations.

Alternative Analysis: DTSC will require responsible entities, including manufacturers, importers, and retailers that sell products in California, to notify DTSC within 60 days of a PP’s listing that its product is a PP or satisfies an exemption. Responsibilities for responsible entities are tiered, and primary responsibility will lie with the manufacturer (the person that makes the product or the person that controls the specifications and design of, or use of materials in, the products). The importer will have responsibility if the manufacturer fails to comply, and retailers will be required to comply only if the manufacturer and importer (if any) fail to comply and such information is posted on a “Failure to Comply” list on DTSC’s website.

Regulatory Response: Once DTSC determines the AA is compliant (*i.e.*, not deficient), DTSC will specify a proposed due date for implementation of the regulatory response after considering the complexity of implementing the regulatory response. Title 22, Section 69505.6(c)(2). DTSC will require implementation of regulatory responses “designed to protect public health and the environment, and maximize the use of alternatives of least concern, where such alternatives are technically and economically feasible.”

Discussion

Companies with consumer products in commerce in California will need to notify DTSC that its product is a PP (or cease to enter the product in the stream of commerce in California) or satisfy another exemption (*e.g.*, AA threshold exemption); perform an AA and prepare a Preliminary AA Report and Final AA Report; and comply with any regulatory responses applicable to its product or that DTSC determines are necessary.

In response to comment, DTSC has revised the proposed regulations. Certain controversial lists upon which the COC List could be derived have been eliminated, the prior *de minimis* exemption has been revised so that there is no default concentration, the time for responsible entities to remedy non-compliance notices regarding an AA or regulatory response is extended from 60 to 90 days, and inventory recalls have been eliminated as a regulatory response. The procedure that runs from developing a COC List to determining appropriate regulatory responses remains complicated, with many factors to be applied and evaluated. Initially, DTSC will only subject a small number of PPs to these regulations. This is good news in that it may provide interested parties with an opportunity to see how these regulations will be implemented, what AA Reports will look like, and what refinements may be needed.

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