

Chemicals Advisory

September 24, 2010

CALIFORNIA GREEN CHEMISTRY REGULATIONS RELEASED FOR FORMAL PUBLIC COMMENT

After two years of public workshops and informal drafts of regulatory text, the California Department of Toxic Substances Control ("DTSC") has released its proposed regulations implementing one of the Green Chemistry Initiative laws, AB 1879. The 92 pages of proposed regulations, and the accompanying 141 pages of explanatory text, in the form of DTSC's Initial Statement of Reasons, can be found [here](#).

Formal comments must be submitted by November 1, 2010. AB 1879 requires DTSC to establish a process for: (1) identifying and prioritizing chemicals of concern ("COCs") in consumer products; (2) identifying "safer" alternatives to COCs in consumer products; and (3) identifying and imposing regulatory responses, ranging from product labeling to outright bans. As reported in earlier Client Alerts, "consumer products" is a term defined broadly to include even business-to-business sales and leases of products; only specified categories of products, such as pesticides and foods, are exempted from the law.

Some key aspects of the proposed regulations include:

- Regulatory authority for DTSC to issue mandatory data call-ins requiring submission of broad arrays of information, including product ingredient and sales/marketing information;
- DTSC to post on its website all submissions received (omitting information designated as trade secret) and the fact of compliance or noncompliance by specific entities;
- DTSC to release a proposed list of "Chemicals Under Consideration" by June 2011 for public comment, from which a list of "Priority Chemicals" ultimately shall be generated;
- DTSC to generate a list of "Priority Products," i.e., a list of consumer products containing Priority Chemicals, by 2013.

CONTACTS

For further information regarding the topic discussed in this update, please contact the professionals below, or the attorney or public policy advisor with whom you regularly work.

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- An extremely complex process for “responsible persons” to undertake safer alternative assessments of Priority Products. “Responsible persons” include product manufacturers, distributors and retailers. These assessments must be undertaken either by an accredited third party assessor, as defined, or by an accredited in-house company employee. In the latter case, the assessment must be evaluated for compliance and verified by an independent third party accredited assessor;
- A *de minimis* exemption for products containing Priority Chemicals at less than the specified regulatory *de minimis* amount. The responsible party must apply for the exemption, and DTSC retains the authority to deny the exemption or to set a lower *de minimis* level for a Priority Chemical in a specific product.

Any entity whose products are sold or leased in California must evaluate closely the impact of these proposed regulations on its business, and should carefully consider what formal comments, if any, to submit by the November 1 deadline. For further information, please contact Ann Grimaldi in MLA’s San Francisco office (agrimaldi@mckennalong.com) or Michael Boucher in MLA’s DC office (mboucher@mckennalong.com).

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