

Revised California "Green Chemistry" Rule Could Mean Big Problems for Lead Batteries

November/December 2011

The California Department of Toxic Substances Control (DTSC) released a draft revised version of its prior "Green Chemistry" proposal — now called the Safer Consumer Products rule — on October 31. If adopted, the rule could have significant impacts on product manufacturers and, eventually, sales.

The draft rule specifies the process for DTSC to use to identify "Chemicals of Concern" and "Priority Consumer Products" containing such Chemicals of Concern. Car battery manufacturers likely would be affected, for example, as both lead and sulfuric acid are already on several of the regulatory lists that automatically would trigger Chemicals of Concern classification. Also impacted would be manufacturers of any other consumer product containing Chemicals of Concern.

Manufacturers and importers of listed products would be required to notify DTSC and conduct an exhaustive Alternatives Assessment for the product. DTSC, based on the results of the Alternatives Assessment, would have the authority to require manufacturers to provide consumer warnings, mandate end-of-life product management or even prohibit sales of certain Priority Products.

While the proposal includes a process for seeking exemptions, the standard for obtaining exemptions could be quite onerous. It would require manufacturers to establish that their product is already regulated by one or more federal and/or other California state regulatory program(s), and/or applicable international trade agreements ratified by the United States Senate, that does the following:

"[A]ddress[es] the same adverse public health and environmental impacts and exposure pathways that would otherwise be the basis for the product being listed as a Priority Product; and provide[s] a level of public health and environmental protection that is equivalent to or greater than the protection that would potentially be provided if the product was listed as a Priority Product."

Written comments on the draft proposal are due December 30, preceded by a December 5 public workshop. Further meeting details and the draft rule are available at <http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/upload/SCP-Workshop-Notice-10312011.pdf> and <http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/upload/SCP-Regulations-Informal-Draft-10312011.pdf>.