

**California Department of Toxic Substances Control**  
**Green Chemistry Regulations for Safer Products**  
**Frequently Asked Question (FAQs)**  
**June 23, 2010**

**Q1. Why is this regulation necessary?**

A1. First, this regulation is required by State law that became effective last year. Second, more and more consumers are demanding safer products. The President's Cancer Panel's recently released report identified safer product regulation as a critical and emerging need in protecting the health of Americans.

Yet, as other countries, such as those in the European Union and Canada, impose regulations, California as the eighth largest economy in the world, becomes a primary market for manufacturers and distributors of toxic products unwanted elsewhere. This regulation and the Green Chemistry Initiative signed by Governor Schwarzenegger in 2008, are designed to ensure that the state does not become a dumping ground for unsafe products.

**Q2. At the highest level, how will this regulation work?**

A2. The draft regulation calls for three phases. The first is the prioritization process in which DTSC will identify and prioritize chemicals of concern and products that contain them. These priority products will be the subject of the second phase – an alternatives assessment, conducted by manufacturers of these products, to identify safer alternatives. In the third phase, DTSC will impose various regulatory response actions to address any remaining concerns raised by the alternatives selected by manufacturers for implementation, and to move manufacturers toward designing safer products.

**Q3. How will DTSC prioritize chemicals and products that pose the greatest risk?**

A3. The draft regulation is designed to first identify chemicals that pose public health and environmental threats and are most prevalent in the consumer products we find in the marketplace. These "Chemicals under Consideration" will be further narrowed down to a priority list of chemicals ("Chemicals of Concern") that pose the greatest threat to the public and our environment.

Once the Chemicals of Concern list is established by DTSC, two product lists will be created. The first is the "Products under Consideration" List which includes products that pose public health and environmental threats because they contain Chemicals of Concern. From that list DTSC will identify and list as "Priority Products" those products that are of the highest priority based on the relative degree of public health and environmental threats posed by the product due to the Chemical of Concern contained in the product. A number of factors will be used to make this determination including the chemical in the product, current use, distribution, end-of-product-life issues and potential use by and exposure to the public, including sensitive subpopulations.

**Q4. How will DTSC know if products contain Chemicals of Concern?**

A4. As DTSC develops and updates the list of Chemicals of Concern, manufacturers will be required to submit to DTSC information describing the types, categories and classes of products containing these Chemicals of Concern. This information will be supplemented by market research DTSC will conduct.

**Q5. How will retailers and the public know which products contain Chemicals of Concern?**

A5. Providing easily accessible information to the public is critical. DTSC will post on its web site the list of Chemicals of Concern, the priority product list, and the list of manufacturers that are required to perform alternatives assessments for each listed product. DTSC will create an online database providing data on chemical toxicity and hazard traits. It will also publish on its web site a list of manufacturers and their product types that are out of compliance with the regulation. Manufacturers will be required to notify retailers if DTSC has determined that their product cannot be sold in California.

**Q6. What steps must be taken when a product is identified as a priority product?**

A6. Once a product is identified as a priority product, the manufacturer must perform an alternatives assessment, a process that evaluates toxicity and other information concerning the Chemicals of Concern in the product, and compares that data to alternative chemicals or product redesigns that may make that product safer. After the alternatives assessment is complete, if the product alternative selected by the manufacturer still contains a chemical of concern, and DTSC determines there is a safer alternative that is functionally equivalent, and technologically and economically feasible, a sales ban will be imposed on that product within two years. The manufacturer would first have a one-year opportunity to submit a revised alternatives assessment.

**Q7. How does the alternatives assessment process work?**

A7. Manufacturers of products listed as a priority product will be required to perform an alternatives assessment. Generally two documents will be created: an alternatives assessment work plan outlining how the assessment will be performed and an alternatives assessment report. Both documents must be prepared under the direction of a Lead Assessor employed by a qualified third-party assessor or a qualified "in-house" assessor. The alternatives assessment report will include a product life cycle analysis that takes into account product function and performance; human health and environmental impacts; materials and resource consumption; economic impacts; and other information as needed. The assessment will compare this data for the priority product and each alternative considered. This comparison will include an analysis of the chemical traits and physical properties of the Chemical of Concern, and any chemicals being considered as alternatives to the Chemical of Concern. The assessment will

identify the alternative that the manufacturer has selected, and the rationale for that selection. It will also include a demonstration that the production, use and disposal of the selected alternative, when compared to the existing priority product, would have no significant adverse impacts on public health and the environment. Guidance on how to develop the work plan and report, and perform an alternatives assessment, will be placed on DTSC's web site.

**Q8. Who will conduct the alternative assessments?**

A8. All alternative assessments must be conducted by an accredited "Lead Assessor." The lead assessor must have a thorough understanding of product life cycles, including the ability to predict how chemicals within that product will impact humans and the environment. If the lead assessor works for the manufacturer, the alternative assessment must be verified by an independent lead assessor who has not been previously involved in the work related to the assessment.

**Q9. Can a manufacturer receive an exemption from the requirement to perform an alternatives assessment on a priority product?**

A9. A manufacturer may submit an exemption request for DTSC to consider. The request must be based on a demonstration that the manufacturer's product contains no more than a de minimis amount (0.1%) of the Chemical of Concern, and must include data that supports the request. This may include product sampling data. DTSC will review the exemption request and inform the manufacturer of its decision within 60 days. Decisions will be posted on DTSC's web site.

**Q10. How will DTSC handle confidentiality and "trade secrets"?**

A10. Information provided to DTSC under this regulation will be made public unless the submitting party clearly claims the information as confidential business information and provides substantiation for the claim. Under California law, information may be held confidential for a variety of reasons, including trade secret status. If there is a Public Records Act request for information claimed as confidential, then the claim will be evaluated by DTSC. In the case of trade secrets, if DTSC finds that claimed information should be released to the public, DTSC will give notice to the submitting party and provide an opportunity for appeal. Trade secret claims will be evaluated on a number of factors, including the extent of efforts to keep the information secret and the potential economic and competitive damage to the submitter from inappropriate disclosure. DTSC's receipt of confidential information from other governmental agencies is permitted and DTSC will maintain the confidentiality of this information.

**Q11. How will this regulation affect small businesses?**

A11. All manufacturers falling under this regulation are required to comply. However, the draft regulation will enable DTSC to give small businesses longer time periods to comply with various provisions of the regulation (for example, completion of alternatives assessments). DTSC will create and post on its web site guidance to assist those conducting alternative assessments. In addition, DTSC will provide reimbursable consultative services to small businesses subject to this regulation.

**Q12. What is the purpose of the Chemicals under Consideration list?**

A12. The Chemicals under Consideration list will include chemicals that pose public health or environmental threats, but are not of as a great a concern as the threats posed by chemicals listed as chemicals of concern. The availability and nature of scientific information to substantiate the threats posed by a chemical will also be a factor that determines whether a chemical is listed as a Chemical under Consideration or a Chemical of Concern. The list of Chemicals under Consideration will encourage many manufacturers to proactively seek safer alternatives for products that contain these chemicals, knowing that these chemicals may eventually move to the Chemicals of Concern category.

**Q13. Will manufacturers be able to sell products that contain Chemicals under Consideration or Chemicals of Concern?**

A13. The draft regulation will not preclude or limit the sale of products containing Chemicals under Consideration. Products containing Chemicals of Concern also can continue to be sold in California while the chemical and product are going through the prioritization and alternatives assessment phases of the regulation, as long as the manufacturer remains in compliance with the regulatory requirements that apply to the product, as specified. However, once the alternatives assessment is complete, if the product alternative selected by the manufacturer still contains a Chemical of Concern, and DTSC determines there is a safer alternative that is functionally equivalent, and technologically and economically feasible, a sales ban will be imposed on that product within two years. The manufacturer would first have a one-year opportunity to submit a revised alternatives assessment.

**Q14. How do this regulation affect workers in manufacturing plants?**

A14. The exposure of workers who come into contact with products containing a Chemical of Concern in the workplace is a factor considered during the product prioritization process. However, highest priority will be given to those products that are available to consumers, and pose public health threats, as finished products. Additionally, occupational health impacts are one of the many factors that manufacturers must consider during the alternatives assessment process. However, processes and requirements contained in

this regulation will not duplicate or conflict with CalOSHA and other existing regulatory programs designed to protect worker safety.

**Q15. How did DTSC develop this regulation?**

A15. DTSC followed a process that embraced transparency and active public and stakeholder involvement. In January 2009, when Green Chemistry legislation signed by Governor Schwarzenegger went into effect, DTSC began a series of meetings with stakeholders to identify regulatory concepts. An online “wiki” was used to collect initial ideas from the public and stakeholders. Numerous informal meetings and public workshops played a critical role in collecting additional concepts. A legislatively mandated Green Ribbon Science Panel was formed to provide DTSC advice on scientific matters, chemical policy recommendations and implementation strategies. A “straw” proposal for the rules was released in late 2009. After additional input was received, DTSC released a draft conceptual flowchart and held discussions regarding the proposed regulatory framework. That was followed by the release of a detailed outline for the draft regulation. Finally, DTSC released the draft Regulation for Safer Consumer Products on June 23, 2010. This regulation was developed from the outline as well as from feedback received from a variety of stakeholders and the Green Ribbon Science Panel. The informal rule development process will continue with two planned half-day public workshops on July 7<sup>th</sup> and 8<sup>th</sup>, 2010 where DTSC will receive additional comments and recommendations. Anyone wishing to submit comments for consideration prior to release of the second draft of the regulation should do so by July 15, 2010. Comments may be sent to: [gcregs@dtsc.ca.gov](mailto:gcregs@dtsc.ca.gov) or mailed to: Heather Jones, Office of Legislation & Regulatory Policy, California Department of Toxic Substances Control, 1001 I Street, Sacramento, CA 95814.

After the workshops, DTSC will issue revised draft regulation, and that release will begin the formal Administrative Procedures Act (APA) rulemaking process. The draft regulation will be placed on the DTSC web site, allowing for electronic submission of comments.

**Q16. How can the regulation preserve the environment and improve our economy at the same time?**

A16. The regulation motivates manufacturers of consumer products containing chemicals of concern to seek safer alternatives. This will in turn lead to safer products, fewer exposures to dangerous chemicals and a healthier environment. It is anticipated that competition in the marketplace coupled with consumer demand for safer “green” products will stimulate innovative technologies and processes that will in turn stimulate the creation of new industries and economic growth. Job growth is anticipated as demand for those with backgrounds in green product assessment, chemistry and product engineering increases.

**Q17. What are some examples of companies that have taken steps to develop or market safer products?**

A17. Many manufacturers have already found markets for safer products. Retailers and end-users are also demanding that their distributors deliver products that are safer for consumers as well as employees. Some examples:

- CleanWell, a personal care products company based in Redwood City, develops products made from less toxic ingredients.
- Method Products, a San Francisco-based world leader in sustainable cleaning and personal care products, embraces green chemistry concepts as a fundamental part of their business model. Method's innovative efforts have spawned an entire industry based on products with reduced toxicity.
- Apple Computer and Hewlett-Packard have shown the world that green is profitable by eliminating toxic chemicals from many of their computer and electronic products, and requiring suppliers to voluntarily report on chemicals of concern.
- Kaiser Permanente based in Oakland, is actively promoting a healthy environment for patients and those who work in its hospitals by requiring its vendors to disclose environmental data on products such as tubing, monitors, bandages and hospital beds. Kaiser is installing carpets that do not contain a chemical believed to pose a danger to embryonic development. Kaiser has effectively leveraged its mass purchasing power to create a safer alternative product that is now being marketed to other health care institutions.
- Walmart, the world's largest retailer, has launched several groundbreaking green initiatives. Walmart requires its suppliers to provide information about the environmental impact of their products and distill the data into sustainability ratings.