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China - Restriction of Substances, DfE and Product Stewardship

EIA Special Report

Update on China's Draft Regulation to Eliminate Certain Chemical Substances Contained in Electronic Products

In our EIA Special Report dated March 17, 2003, we alerted EIA members that China's Ministry of Information Industry (MII) is in the process of preparing a regulation provisionally entitled "Management Methods for Pollution Prevention and Control in the Production of Electronic Information Products" [电子信息产品生产污染防治管理办法] (hereinafter "MII Methods"). Among other requirements, the draft MII Methods provide that listed chemical substances should be eliminated and eventually banned from certain electronic information products.

In light of the substantial interest in the draft MII Methods that has been expressed by EIA member representatives throughout the globe, we have engaged in additional consultations with senior Chinese officials involved in or guiding the MII drafting process. We undertook these consultations to provide EIA members with an update on the draft MII Methods. The individuals we consulted include senior officials in the Environmental Protection and Resource Conservation Committee of the National People's Congress (NPC), the State Council, the MII, the State Development and Reform Commission (SDRC), and the State Environmental Protection Administration (SEPA)..

Through our consultations and research, we have the following key findings to report on the current status of the MII Methods and related issues.

1. The MII law drafters are deliberating whether to include certain exemptions during the next revision of the draft MII Methods. As of this writing, the Chinese officials responsible for drafting the MII Methods have not included any exemptions. However, the MII drafters stated that they understand that the European RoHS Directive (2002/95/EC) incorporates certain exemptions. They also confirmed that they have received "huge numbers" of contacts from regulated community members concerning the apparent lack of exemptions in the draft MII Methods. The MII officials commented, helpfully, that they are further "studying" the European RoHS Directive and "considering" the general concerns of industry members with respect to the lack of exemptions in the draft MII Methods. It is possible that the drafters may include certain exemptions, based on their understanding of the European RoHS Directive, during the next revision of the draft MII Methods. In this respect, however, we note that it is not likely that the MII drafters have a comprehensive/sufficient understanding of how the exemptions would practically apply to industry operations and products in China. We will continue to monitor developments concerning the incorporation of exemptions in the MII Methods or related initiatives for our continued reports to EIA.

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2. The MII expands the scope of the draft MII Methods in the latest draft. In our Special Report dated on March 17, 2003, we indicated that the focus of the MII Methods was to eliminate and ban six chemical substances. We also indicated that it was possible that the MII would include other product stewardship measures within the draft MII Methods. The most recent version of the draft MII Methods confirms that the drafters have expanded the scope of the Methods to include provisions concerning recycling, take back, material marking, and other issues that would likely affect EIA members with operations and products in China.
3. The MII Methods will likely consist of a comprehensive regulation on product stewardship that is followed by a number of implementing measures. Based on the current version of the draft MII Methods (i.e., the “comprehensive regulation”), key measures would include the requirement to affix to the product or product packaging a label indicating the “time limit for safe use” of the covered electronic product. After this time limit expires, the product manufacturers would no longer warrant the product’s quality or safe use, but would be responsible for take-back or recycling of the end-of-life product. As is typical in the Chinese rulemaking process, the details concerning this labeling requirement would be set forth in subsequently developed implementing rules. Additionally, the latest draft indicates that manufacturers of covered electronic products would be required to pay a fee to support the recycling, take back and treatment of their end-of-life products. As is the case with the proposed labeling provisions, details concerning this fee regime would be provided in subsequently drafted implementing measures. The fee measures would likely be jointly promulgated by the MII and the Ministry of Finance. Of course, EIA members may have significant concerns with these and other proposed measures in the draft MII Methods. In that regard, please note the caveats and observations set forth below concerning industry engagement of the MII and other Chinese agencies on the draft MII Methods.
4. A number of government agencies, in addition to the MII, are involved in the preparation and review of the draft MII Methods. As described in our Special Report dated March 17, 2003, the MII leads the drafting process and will be the official promulgating agency for the MII Methods. Consistent with rulemaking protocol in China, the agency that prepares a draft regulation (e.g., MII in this case) solicits comments and suggestions from other agencies that have overlapping or similar administrative responsibilities. With respect to electronic products and the electronic industries, in addition to the MII, the SDRC and SEPA have overlapping regulatory authority. Senior officials at the SDRC and SEPA with whom we consulted indicated that their agencies are in the process of reviewing the MII Methods and have significant comments, particularly concerning the allocation of administrative responsibility for various aspects of the draft MII Methods. The senior MII officials we spoke with commented that they would carefully review the comments of their colleagues at peer agencies. That being understood, the

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inter-agency review process in this matter may significantly shape the promulgation schedule and content of the MII Methods. Key affects of the inter-agency review may include: (a) the need for numerous, additional revisions of the draft MII Methods; (b) delays in promulgation of the MII Methods; (c) inter-agency compromises on regulatory language resulting in increased ambiguities (as opposed to greater specificity); and (d) additional burdens on limited MII resources that may delay work on implementing measures associated with the MII Methods.

5. Officials at the MII and other agencies are becoming increasingly aggravated in response to what they perceive as a growing, critical regulated-community voice concerning the draft MII Methods. As noted earlier in this writing, the MII and associated governmental agencies have received numerous contacts from regulated community members concerning the draft MII Methods. While we have witnessed certain positive results from such contacts, (for instance, the MII has recently acknowledged that it is considering exemptions as they appear within the European RoHS Directive), it is important for EIA members to understand the potentially negative consequences of uncoordinated, inconsistent, and less-strategic engagement of the MII and other government agencies on this matter.

Based on the above findings, EIA members may wish to note the following observations regarding concerns and options for industry engagement of the MII related to the draft MII Methods. The MII and other Chinese government agencies have not officially authorized the distribution outside the Chinese government of the draft MII Methods for comment. With this in mind, Chinese government officials will remain highly sensitive to external criticism of an unofficially circulated draft. In the past, the Chinese government has “retired” senior agency officials for unauthorized “leaking” of draft laws and has taken legal action against individuals for the distribution of “state secrets” (which include unofficially circulated draft laws).

It is generally true that Chinese government agencies may become more resistant, as opposed to more receptive, to private-sector input on rulemaking initiatives if this input originates from many points at once, is largely negative, and/or becomes politicized through connections with intergovernmental disputes. Further, it is possible that uncoordinated engagement may result in a less-than-comprehensive understanding within the agencies of the nature and importance of the issues to the industry as a whole. As a general matter, coordinated, consistent, and strategic engagement of the MII and other relevant agencies under a widely representative and relevant umbrella organization or group, such as EIA, has proven effective in the past as a means to address emerging regulatory concerns in China.

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For questions or further information on the information in this Special Report Update, please do not hesitate to contact Richard (“Tad”) Ferris or Hongjun Zhang using the contact information below.

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