

SAFER CONSUMER PRODUCTS --- INFORMAL DRAFT REGULATIONS

SIGNIFICANT CHANGES

Timeframes

Many **timeframes** have been shortened and/or made more specific; for example:

- (1) Timing of **initial Chemicals of Concern (COC) list** --- effective date of the regulations.
[November 2010 draft --- initial COC list was due 12 months after the effective date of the regulations.]
- (2) Timing of **initial Priority Products list** --- 6 months for the proposed list.
[November 2010 draft --- initial final Priority Products list was due 24 months after the effective date of the regulations.]
- (3) Both the **chemicals and products lists** will be reviewed at least once every 3 years.
[November 2010 draft --- no set time was specified for reviewing and revising the lists.]
- (4) The **Final Alternatives Assessment (AA) Report** will be due 12 months after approval of the Preliminary AA Report (unless DTSC determines a longer time period, not to exceed 24 months, is needed).
[November 2010 draft --- due dates set by DTSC, but no restrictions on those due dates.]

Chemical / Product Prioritization

- (1) The regulations will establish an *immediate* robust (~3,000) list of **COCs**, based on work already done by numerous authoritative bodies. (DTSC can add on to this list later using a narrative prioritization standard.) This approach will:
 - Send immediate signals to the marketplace
 - Enable DTSC to immediately start work on evaluating product/COC combinations to create the first Priority Products list
 - Stimulate an AA economy
 - Be much less likely to motivate early (sometimes regrettable) chemical substitutions*[November 2010 draft --- the initial and subsequent COCs lists would be much smaller, and both would be established using a narrative prioritization standard.]*
- (2) The list of **hazard traits** has been expanded to include all hazard traits and environmental and toxicological endpoints specified by OEHHA. Additionally, the universe of chemicals considered to be **carcinogens and reproductive toxins** is no longer limited to only those chemicals listed on a short list of lists.
[November 2010 draft --- consideration of chemicals for the first COC list would be limited to carcinogens, mutagens, reproductive toxins, and persistent bioaccumulative toxic chemicals appearing on a very short list of lists. For all subsequent COC lists, consideration of carcinogens and reproductive toxins would continue to be limited to chemicals appearing on a very short list of lists.]
- (3) The regulations no longer limit the product categories that DTSC can consider when listing **Priority Products** during the first 5 years.
[November 2010 draft --- for the first 5 years, DTSC would be limited to consideration of only children's products, personal care products, and household cleaning products.]
- (4) **Worker exposure** has been added as a product prioritization factor.
[November 2010 draft --- only service-provider worker exposures were specifically included in the product prioritization factors.]

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- (5) The *requirement* for responsible entities to provide **chemical and product information** during the prioritization process has been eliminated. (DTSC will *request* this information and list anyone who does not provide the information on a Failure to Respond list.)
[November 2010 draft --- providing this information when requested by DTSC would be a regulatory requirement. Any one not complying with this requirement would be listed on the Failure to Comply list and potentially subject to other consequences for non-compliance.]

Alternatives Assessments

- (1) The regulations expand the primary **responsibility for compliance** beyond the product producer to also include: (i) the person who controls the product design; and (ii) the U.S. importer.
[November 2010 draft --- primary responsibility for compliance was limited to the product producer.]
- (2) The **alternatives assessment** (AA) process is more specific and structured, but allows for flexibility.
[November 2010 draft --- required AA process was much less clearly defined, and less flexibility was provided for using an alternate process.]
- (3) There is no requirement to fill **information gaps** during the AA --- instead DTSC has the option to require this as a regulatory response (in conjunction with other appropriate regulatory responses).
[November 2010 draft --- the AA process would have essentially required the generation of new data to fill all data gaps before submitting the AA Report to DTSC.]
- (4) The **third-party verification** requirement for AAs has been eliminated --- instead AAs are required to be conducted by a **certified assessor**. Also, DTSC will play a greater role in auditing AAs.
[November 2010 draft --- third-party verification would have been required for all AAs performed in-house. The regulations did not include a certification requirement for persons performing AAs.]

Exemptions

- (1) The default **de minimis** level is 0.01% for chemicals with one of 9 specified hazard traits, and 0.1% for all other chemicals --- DTSC can set a lower or higher de minimis level.
[November 2010 draft --- the de minimis level was 0.1% (or the applicable hazardous waste threshold, if lower) for all chemicals.]
- (2) The exemption for **unintentionally-added** chemicals has been eliminated. However, these chemicals are a consideration for setting a higher de minimis level.
[November 2010 draft --- unintentionally-added chemicals were exempted from the regulations under specified conditions.]
- (3) The “**no exposure pathway**” exemption has been eliminated. However, exposure potential will still be considered during the chemical/product prioritization process.
[November 2010 draft --- the regulations did not apply to a product if DTSC determined that there was no possible exposure pathway by which the COC in the product might impose adverse impacts.]
- (4) A manufacturer can no longer avoid doing an AA by simply **removing the COC** once the product is listed as a Priority Product. Removing the product from the California marketplace and introducing another similar product containing a COC will require a notice to DTSC.
[November 2010 --- an exemption from the AA requirement was allowed if DTSC was notified that the COC was removed from the product within 180 days after the product was listed as a Priority Product.]