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Secretary for
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Department of Toxic Substances Control

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Edmund G. Brown Jr.
Governor

TITLE 22, CALIFORNIA CODE OF REGULATIONS

45-DAY PUBLIC NOTICE AND COMMENT PERIOD

SAFER CONSUMER PRODUCTS REGULATIONS – Listing Children’s Foam-Padded Sleeping Products Containing TDCPP or TCEP As a Priority Product

Department Reference Number: R-2014-03

NOTICE IS HEREBY GIVEN that the Department of Toxic Substances Control (DTSC) proposes to amend the California Code of Regulations, Title 22 (22 CCR), Division 4.5, Chapter 55 to adopt article 11 and sections 69511 and 69511.1. This proposed amendment pertains to establishing a Priority Products list and identification of a Priority Product under the Safer Consumer Products (SCP) regulations, approved by the Office of Administrative Law (OAL) and filed with the Secretary of State on August 28, 2013 (effective date: 10/01/2013; OAL reference number: Z-2012-07170-04).

PUBLIC HEARING

DTSC will hold a public hearing on the proposed regulation on August 29, 2016, at the Cal/EPA Building, located at 1001 "I" Street, Sacramento, California. The hearing will convene Training Room 1 East/West at which time any person(s) may present statements or arguments, orally or in writing, relevant to this proposal described in the Informative Digest. The public hearing will begin at 10:00 a.m. and will remain open until 12:00 p.m. or until attendees finish presenting their comments, whichever occurs first.

Representatives of DTSC will preside at the hearing. DTSC requests persons who wish to speak to register before the hearing. Pre-hearing registration is conducted at the location of the hearing from 9:00 a.m. until the hearing commences. Registered persons will be heard in the order of their registration. Anyone else wishing to speak at the hearing will have an opportunity after all registered persons have been heard.

All visitors are required to sign in prior to attending any meeting at the Visitor and Environmental Services Center, located just inside main entrance of the building, to the

left of the security guard post. Please allow adequate time to sign in and receive a visitor badge before the public hearing begins.

NOTICE PERTAINING TO ACCESSIBILITY & REASONABLE ACCOMMODATION

All documents related to these regulations can be made available in alternate format (i.e., Braille, large print, etc.) or in another language, as requested, in accordance with state and federal law. Further, to ensure the public has equal access to all available services and information, DTSC will provide disability-related reasonable accommodations, translator, or interpreter needs, upon request. For assistance, please contact the staff person below as soon as possible, no later than 10 business days prior to the scheduled hearing:

Ms. Lisa Quagliaroli
Safer Products and Workplaces Program
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806
Email: Lisa.quagliaroli@dtsc.ca.gov
Phone number: (916) 445-3077
TTY/TDD Speech-to-Speech users may dial 711 for the California Relay Service

WRITTEN COMMENT PERIOD

Any interested person or their authorized representative may submit written comments relevant to the proposed regulatory action to DTSC in either electronic or hard-copy formats.

Written comments may be submitted electronically through the Safer Consumer Products Information Management System (CalSAFER) at: <https://calsafes.dtsc.ca.gov/>. Please direct hard-copy written comments to:

Mr. Benjamin Molin
Office of Legal Affairs
Department of Toxic Substances Control
1001 I Street Sacramento, California 95812-0806
Fax Number: (916) 323-5542
Phone Number: (916) 322-4882

The written comment period will close at 5:00 p.m. PST on August 29, 2016. DTSC will only consider comments received by either means on or before this date and time or submitted during the public hearing.

AUTHORITY & REFERENCE

Authority

These regulations are being adopted under the following authorities:

Health and Safety Code (HSC) section 25252 authorizes and requires DTSC to adopt regulations to establish a process to identify and prioritize those chemicals or chemical ingredients in consumer products that may be considered a Chemical of Concern. This section also directs DTSC to reference and use available information from various sources, but does not limit DTSC to use only this information.

HSC section 25253 authorizes and requires DTSC to adopt regulations that establish a process for evaluating Chemicals of Concern in consumer products, and their potential alternatives, to determine how best to limit exposure or to reduce the level of hazard posed by a Chemical of Concern.

HSC section 58012 (added by Gov. Reorg. Plan No. 1, §146, eff. July 17, 1991) grants DTSC authority to adopt regulations to execute its duties.

Reference

These regulations implement, interpret, or make specific the following statutes:

HSC sections 25252 and 25253.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Policy Statement Overview

DTSC proposes to amend the SCP regulations (22 CCR sections 69501-69510) to adopt the Priority Products list (article 11), and to add one Priority Product to that list (sections 69511 and 69511.1).

Proposed Regulation

The proposed regulation would amend the SCP regulations (22 CCR sections 69501-69510) to adopt the Priority Products list (article 11), and to add one Priority Product to that list (sections 69511 and 69511.1). DTSC identified and prioritized children's foam-padded sleeping products containing tris(1,3-dichloro-2-propyl) phosphate (TDCPP) or

tris(2-chloroethyl) phosphate (TCEP) as a Priority Product using the processes outlined in sections 69503.2, 69503.3, 69503.5, and 69503.6 of the SCP regulations.

DTSC proposes to define “Children’s foam-padded sleeping products containing TDCPP or TCEP” as products designed for children, toddlers, babies, or infants to nap or sleep on that incorporate polyurethane foam mats, pads, or pillows that contain the chemical flame retardants TDCPP or TCEP. This proposed definition includes the following sub-products: nap mats, soft-sided portable cribs, play pens, play yards, infant travel beds, portable infant sleepers, bassinets, nap cots, infant sleep positioners, bedside sleepers, co-sleepers, and baby or toddler foam pillows. The identified sub-products are all used for sleeping, and this common attribute is the basis for their inclusion in this Priority Product. Achieving a very clear definition of the Priority Product will improve compliance with this regulation.

DTSC determined that there is potential exposure to the Chemicals of Concern (the chemical flame retardants TDCPP and TCEP) in this product, which may contribute to or cause significant or widespread adverse impacts to people, particularly to children and workers. Due to the potential for adverse impacts from exposure, DTSC is proposing to list this product-chemical combination as a Priority Product.

Benefits

The Priority Products list regulation is part of a comprehensive, state-level effort to find safer alternatives to hazardous chemicals. The Priority Products list will set in motion a preemptive strategy to reduce the use of toxic substances in the design of products and industrial processes with the aim of creating safer and sustainable products that do not threaten human health or persist in the environment. The use of fewer hazardous substances means healthier air quality, cleaner drinking water, and safer homes and workplaces. In meeting the requirements of the Priority Products listing, manufacturers may be compelled to conduct AA to identify viable safer alternatives to hazardous chemicals used in consumer products. Further, this rulemaking provides clarity to responsible entities regarding the product-chemical combinations that are a part of the Priority Product list.

The principle benefit of this proposed regulation is decreased exposure to TDCPP or TCEP in children’s foam-padded sleeping products to children, families, and childcare providers. Removing TDCPP and TCEP from children’s foam-padded sleeping products will lead to decreased concentrations of these chemicals in homes, day care centers, and schools. By reducing the potential for exposure to these flame retardants, particularly to children and employees of day care centers and schools, the potential for adverse health effects such as cancer, reproductive toxicity, developmental toxicity, and neurotoxicity will also be reduced. Because people are exposed to chemical flame

retardants through the use of other common household products, including furniture and consumer electronics, DTSC is unable to quantify the potential health benefits that would accrue to children, families, and employees as a result of this regulation.

Flame retardant-free foam is widely available, costs less, and has the same functional use as foam made with flame retardants. Additionally, there are no legal requirements for manufacturers to include chemical flame retardants in children's foam-padded sleeping products covered by the proposed regulation. Due to availability and potential cost savings, DTSC anticipates that manufacturers will choose to use flame retardant-free foam in their products rather than completing an AA. Therefore, there will also likely be some cost savings, as well as potential profit increases, for children's product manufacturers who opt to manufacture their foam-padded sleeping products using flame retardant-free foam.

Summary of Existing Statutes and Regulations

The SCP regulations, authorized by HSC section 25253, apply to all consumer products placed into the stream of commerce in California. This regulatory framework established a science-based process to:

- identify Candidate Chemicals;
- identify and prioritize product-chemical combinations as Priority Products that include Chemicals of Concern; and
- analyze alternatives for improving the safety of consumer products.

If no safer alternatives to the Chemical of Concern exist, DTSC can require responsible entities to implement a range of regulatory actions to ensure the protection of human health and the environment.

Determination of Inconsistency/Incompatibility with Existing State Regulations

DTSC determined that this proposed regulation is not inconsistent or incompatible with existing state regulations. After conducting a review for any regulations that relate to or affect this regulation, DTSC concluded that the only regulations concerning the identification and regulation of Priority Products are found in the SCP program in California. DTSC searched Titles 19 and 22 of the California Code of Regulations using the keywords "chemicals in consumer products," "Chemicals of Concern," and "priority products" via Westlaw and found no conflicting state regulations.

Determination of Inconsistency/Incompatibility with Existing Federal Regulations

As discussed below, the proposed adoption of children's foam-padded sleeping products containing TDCPP or TCEP as a Priority Product in regulation does not duplicate nor conflict with existing federal law because the sub-products of this Priority Product are not required to meet flame retardant standards.

The principle federal law related to flame retardant standards for sleeping products is administered by the U.S. Consumer Product Safety Commission (CPSC). This law regulates mattresses and mattress pads under Title 16 Code of Federal Regulations Part 1632 and Part 1633 (16 CFR 1632 and 1633). Part 1632 is the standard for the flammability of mattresses and mattress pads, while Part 1633 contains the standard for flammability (open flame) for mattress sets. Bed mattresses, including mattresses for hard-sided cribs, are covered by 16 CFR 1632 and 1633. The requirements of 16 CFR 1632 and 1633 are performance-based. The regulation does not specify the use of flame retardant chemicals to meet the requirements. The regulation allows manufacturers to choose the means of complying with the regulation, which may include the use of inherently flame resistant materials, barriers, or flame retardant chemicals, while requiring that mattresses meet strict performance requirements.

CPSC does not regulate “juvenile product pads” and provides examples of the exempt category in 16 CFR 1632.1(a)(2). Exempt products include “car bed pads, carriage pads, basket pads, infant carrier and lounge pads, dressing table pads, stroller pads, crib bumpers, and playpen pads” (16 CFR 1632). Each of these “juvenile product pads” is further defined in 16 CFR 1632.8 (16 CFR 1632). Mattresses in portable cribs with mesh or soft sides are not regulated under 16 CFR 1632.

Part 571 Federal Motor Vehicle Safety Standards, Standard No 302 specifies the flame retardant requirements for interior materials of motor vehicles including child restraint systems (i.e., car seats). Car seats have been exempted from the definition of children’s foam-padded sleeping products; therefore, there is no conflict with this standard.

DISCLOSURE REGARDING THE PROPOSED ACTION

Mandates on Local Agencies or School Districts

DTSC determined that adoption of this regulation would not impose a local mandate or result in costs subject to reimbursement pursuant to Part 7 of Division 4, commencing with section 17500, of the Government Code or other nondiscretionary costs or savings to local agencies.

Costs or Savings to State or Local Agencies, or School Districts Subject to Reimbursement

DTSC determined that adoption of this regulation will not result in costs or savings for any state or local agency, or school district that is required to be reimbursed pursuant to Part 7 of Division 4, commencing with section 17500 of the Government Code or other nondiscretionary costs or savings imposed on local agencies.

Cost or Savings in Federal Funding to the State

DTSC determined that adoption of this regulation will not result in any decrease or increase in federal funds to California.

Determination of Adverse Statewide Economic Impact

DTSC made an initial determination that the adoption of these regulations may have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. DTSC has not considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

- establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses;
- consolidation or simplification of compliance and reporting requirements for businesses;
- use of performance standards rather than the prescriptive standards; or
- exemption or partial exemption from the regulatory requirements for businesses.

Types of Businesses Affected

Manufacturers of the listed Priority Products have the principle duty to comply with the notification and reporting requirements. If manufacturers do not comply, then the importers of the listed Priority Products (if any) have the duty to comply. Retailers or assemblers of the listed Priority Products would be required to comply with the requirements only if the manufacturers and importers (if any) fail to comply, and only after DTSC posts this information to the Failure to Comply List on DTSC's website [section 69501.2(a)(1)].

Reporting Requirements

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), DTSC found that the reporting requirements of the proposed regulatory action, which apply to businesses, are necessary for the health, safety, and welfare of the people of the State of California. The specific reporting requirements and forms are:

- Priority Product Notification [section 69503.7]
- Removal/Replacement Notifications:
 - Chemical of Concern Removal Intent Notification [section 69505.2]
 - Chemical of Concern Removal Confirmation Notification [section 69505.2]
 - Product Removal Intent Notification [section 69505.2]
 - Product Removal Confirmation Notification [section 69505.2]
 - Product-Chemical Replacement Intent Notification [section 69505.2]
 - Product-Chemical Replacement Confirmation Notification [section 69505.2]
 - Product Cease Ordering Notification [section 69501.2(b)(2)(B)]

- Alternatives Analysis Notifications and Reports:
 - Alternative Analysis Threshold Notification [section 69505.3]
 - Alternative Analysis Extension [section 69505.1(c)]
 - Preliminary AA Report [section 69505.4(a)(2), section 69505.5, section 69505.1(b)(2)(A), section 69505.7]
 - Final Alternative Analysis Report [section 69505.4(a)(3), section 69505.6, section 69505.1(b)(2)(B), section 69505.7]
 - Abridged Alternative Analysis Report [section 69505.4(b)]
 - Alternate Alternative Analysis Work Plan [section 69505.4(c)]

The regulatory requirements applicable to responsible entities may be fulfilled by a consortium, trade association, public-private partnership, or other entity acting on behalf of, or in lieu of, one or more responsible entity. This provision does not apply to the Priority Product Notification or Alternatives Analysis Threshold Exemption Notification requirements [section 69501.2(a)(2)].

Results of Regulatory Economic Impact Analysis

This regulation will not result in the creation or elimination of jobs in the children's sleeping product manufacturing industry or the foam manufacturing industry. Flame retardant-free polyurethane foam is readily available for purchase and use by children's product manufacturers, and it can be used without changes to current manufacturing processes. Additionally, because it costs less than foam with flame retardants, manufacturers may experience some cost savings, as well as potential profit increases. In addition, due to DTSC's CalSAFER online information management system and streamlined reporting requirements, there will be no need for extra workers as a result of the regulatory reporting requirements.

This regulation will not result in the creation, elimination, or expansion of California businesses. Flame retardant-free polyurethane foam is readily available for purchase and use by children's product manufacturers, and it can be used without changes to current manufacturing processes. Additionally, because it costs less than foam with flame retardants, manufacturers may experience some cost savings, as well as potential profit increases.

Benefits of the Proposed Action

The broad objective of the SCP regulations, adopted in October 2013, is a comprehensive, state-level effort to find safer alternatives to hazardous chemicals. The use of fewer hazardous chemicals reduces the potential for adverse impacts to the people of California and the environment. By listing Priority Products that contain Chemicals of Concern in regulation, DTSC sets in motion a preemptive strategy to reduce the use of toxic substances in product design and industrial processes with the

aim of creating safer, more sustainable products that do not threaten human health nor persist in the environment. The use of fewer hazardous substances means healthier air quality, cleaner drinking water, and safer homes, schools, day care centers, and workplaces.

The direct benefit of this proposed regulation is decreased exposure to TDCPP or TCEP in children's foam-padded sleeping products to children, families, and childcare givers. Flame retardant-free foam is widely available, costs less, and has the same functional use as foam made with flame retardants. Additionally, children's foam-padded sleeping products are not required to meet fire safety standards. Because there are no barriers to the use of flame retardant-free foam in these products, DTSC anticipates that manufacturers will switch to flame retardant-free foam rather than completing an AA.

Removing TDCPP and TCEP from children's foam-padded sleeping products will lead to decreased concentrations of these chemicals in homes, day care centers, and schools. Reducing exposure to these flame retardants will reduce the potential for people, particularly children and the people who live and work with them, to experience adverse health effects such as cancer, reproductive toxicity, developmental toxicity, and neurotoxicity.

Flame retardant-free foam costs less than foam with flame retardants; therefore, there will likely be some cost savings, as well as potential profit increases, for children's sleeping products manufacturers who opt to use flame retardant-free foam. Since this foam has the same functional use as foam with flame retardants and is widely available, manufacturers will be able to use it without changing their manufacturing processes.

Expansion of Current California Businesses

This regulation will not result in the expansion of children's products manufacturing businesses currently within California. As noted above, DTSC believes that many manufacturers already use flame retardant-free foam in their children's products. Children's sleeping products manufacturers that do not use flame retardant-free foam will be able to easily adopt its use without changing their manufacturing processes. The potential cost savings associated with the use of flame retardant-free foam are not likely large enough to spur expansion of existing businesses. Flame retardant-free polyurethane foam is already widely available in California; therefore, DTSC does not anticipate significant expansion of current foam manufacturing business in California as a result of this regulation.

Cost Impacts on Representative Private Persons or Businesses

In developing this regulatory proposal, DTSC evaluated the potential economic impacts on representative private persons or businesses. DTSC determined that representative

private persons or businesses would incur costs for reasonable compliance with the proposed action. DTSC estimates that there are 35-50 manufacturers of children’s foam-padded sleeping products worldwide, who make or sell their products in California, who may be affected by this proposed regulation, and these manufacturers could collectively spend \$1,750 to \$40,000 to comply with the notification and reporting requirements. The low-end of the range represents businesses with few products and the high-end represents very large businesses with numerous products. Industry leaders report that many manufacturers no longer use chemical flame retardants in their children’s products; therefore, these costs are likely overestimated. If 80% of the manufacturers are exempt from notification and reporting requirements because they use flame retardant-free polyurethane foam in their products then, industry-wide compliance costs could be as low as \$350 to \$8,000 [see *Economic Analysis*]. Assuming that only 20% of children’s foam-padded sleeping products manufacturers still use foam containing TDCPP or TCEP, then there may only be 7 to 10 manufacturers impacted by these proposed regulations.

Table 1. Estimated costs to manufacturers.

Total Hours	Total Manufacturers	
	35	50
1	\$1,750	\$2,500
16	\$28,000	\$40,000

Effect on Small Businesses

DTSC determined, pursuant to California Code of Regulations, Title 1, section 4, that the proposed regulatory action would affect small businesses because small businesses are regulated parties under the existing regulations. According to the JPMA, approximately 88% of their members are small to medium-sized businesses. Of the total manufacturers potentially affected by this proposed regulation, DTSC estimates that 30-44 of them are small to medium-sized businesses with compliance costs that could range from \$1,500 to \$35,000. Industry leaders report that many manufacturers, including small to medium-sized businesses, no longer use chemical flame retardants in their children’s products; therefore, these costs are likely overestimated. If 80% of the small to medium-sized manufacturers are exempt from notification and reporting requirements because they use flame retardant-free polyurethane foam in their products, then industry-wide compliance costs for these businesses could be as low as \$300 to \$7,000.

Table 2. Estimated costs for small to medium-sized businesses.

Total Hours	Total Manufacturers	
	30	44
1	\$1,500	\$2,200
16	\$24,000	\$35,000

Effect on Housing Costs

DTSC determined that the proposed changes to the regulations would not impact housing costs.

CONSIDERATION OF ALTERNATIVES

Per Gov. Code section 11346.5(a)(13), DTSC must determine that no reasonable alternative considered by DTSC or that has otherwise been identified and brought to the attention of DTSC would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

DISCLOSURE REGARDING REASONABLE ALTERNATIVES

DTSC considered the following alternatives to the proposed regulatory action:

- 1) **Selected Alternative:** List TDCPP or TCEP in children’s foam-padded sleeping products as the Priority Product:
 - This option was selected due to the widespread presence of these products in children’s living environments. This option allows DTSC to quickly and effectively achieve the goal of significantly reducing children’s exposures to carcinogenic chemical flame retardants.

- 2) List TDCPP or TCEP in all flexible polyurethane foam as Priority Product:
 - This was considered as an alternative but dismissed as an option due to potential conflicts with existing state, federal, and international regulatory requirements for flame retardant standards for a wide variety of product types. The Priority Product was narrowed to focus on children’s sleeping products because there are no regulatory requirements to include flame retardants in these products.

3) List TDCPP or TCEP in nap mats only:

- This was considered as an alternative but dismissed, as it would not result in the reductions in flame retardant exposure and improvements to children's safety sought by DTSC. The Priority Product was expanded to include a variety of children's foam-padded sleeping products.

OTHER APPLICABLE REQUIREMENTS PRESCRIBED BY STATUTE

External Scientific Peer Review

DTSC requested an external scientific peer review of the scientific basis of the proposed regulation pursuant to Health and Safety Code (HSC) section 57004. The result of the external scientific peer review will be posted to DTSC's website at:

<http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/index.cfm>.

California Environmental Quality Act (CEQA) Compliance

DTSC determined that this rulemaking project is exempt under CEQA (Public Resources Code section 21000, et seq.). This rulemaking meets the General Rule Exemption available under 14 CCR section 15061(b)(3). A draft Notice of Exemption (NOE) is available for review with this rulemaking file and will be filed with the State Clearinghouse when the regulations are adopted.

California Environmental Policy Council Review

Under the provisions of HSC section 25252.5, the California Environmental Policy Council (CEPC) reviewed the framework SCP regulations prior to their adoption in October 2013 (the CEPC Resolution may be viewed at:

<http://www.calepa.ca.gov/cepc/>). Per HSC section 25252.5(f), the CEPC determined that the proposed SCP framework regulations would not have any significant adverse impact on public health or the environment and could be adopted by DTSC without undergoing a multimedia life cycle evaluation.

DTSC determined that further review by the CEPC is not warranted for this rulemaking because the requirements of HSC section 25252.5 apply only to the creation of the Safer Consumer Products program and not regulations that may be required to implement this program.

CONTACTS

Inquiries regarding technical aspects of the proposed regulations or CEQA documents may be directed to Ms. Lisa Quagliaroli of DTSC at 916-445-3077. However, such oral inquiries are not part of the rulemaking record. If Ms. Lisa Quagliaroli is unavailable, you

may also contact the regulations coordinator as a backup, Mr. Benjamin Molin at (916) 322-4882.

A 45-day public comment period for this rulemaking file, as described above, will commence on July 15, 2016 and close on August 29, 2016. During this time, DTSC will accept statements, arguments or contentions, or supporting documents regarding this rulemaking that must be submitted in writing, or may be presented orally or in writing at the public hearing. Comments must be received by the deadline in order for them to be considered before DTSC adopts, amends, or repeals these regulations.

AVAILABILITY OF TEXT OF PROPOSED REGULATIONS AND INITIAL STATEMENT OF REASONS

Copies of the Notice, Initial Statement of Reasons, the text of the proposed regulations, all the information upon which the proposal is based, as well as the express terms of the proposed regulations are posted to DTSC's website at:
<http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/index.cfm>.

Copies of these documents may also be obtained from Mr. Benjamin Molin, in the Office of Legal Affairs, as specified above.

After the close of the 45-day comment period, DTSC may adopt the proposed regulation. If changes are made to the regulation text, the modified full text will be made available for comment for at least 15 days prior to adoption. Only persons who specifically request copies of the modified text, attend the public hearing, provide written or oral comments at the hearing, or submit written comments to our office will be sent a copy of the modified text if substantive changes are made.

Once DTSC finalizes the regulation text, DTSC will prepare a Final Statement of Reasons that updates the Initial Statement of Reasons, summarizes how DTSC addressed comments, and includes other materials, as required by Government Code section 11346.9. A copy of the Final Statement of Reasons, along with the date the rulemaking is filed with the Secretary of State and the effective date of the regulations, will be posted on DTSC's website at:
<http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/index.cfm>.

To be included in this regulation package's mailing list and to receive updates of this rulemaking, please visit <http://www.dtsc.ca.gov/ContactDTSC/ELists.cfm> and subscribe to the applicable electronic mailing list.