



**RUBBER**  
manufacturers  
association

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June 30, 2014

Department of Toxic Substances Control  
1001 I Street  
P.O. Box 806  
Sacramento, CA 95812-0806

Re: Priority Products Draft Regulatory Concepts and Topics for Stakeholder Input

## **I. Introduction**

RMA is the national trade association representing major tire manufacturers that produce tires in the United States, including Bridgestone Americas, Inc., Continental Tire the Americas, LLC; Cooper Tire & Rubber Company; The Goodyear Tire & Rubber Company; Michelin North America, Inc.; Pirelli Tire North America; Toyo Tire Holdings of Americas Inc. and Yokohama Tire Corporation. RMA members thank the Department of Toxic Substances Control (DTSC) for your consideration of these comments on the Priority Products Draft Regulatory Concepts and Topics for Stakeholder Input (“Stakeholder Input Document”) (dated May 22, 2014).

RMA has been actively engaged in the rulemaking process for the California Safer Consumer Products Regulations. The questions asked in the Stakeholder Input Document raise concern regarding how DTSC is interpreting sections of the final Safer Consumer Products regulations (SCP regulations). In the Stakeholder Input Document, DTSC asks for comments on three areas: priority product description, chemical(s) of concern and alternatives, and market information. RMA offers the following comments on each of these topics.

## **II. Topic 1: Priority Product description**

### **1. Are the definition and terms clear and unambiguous as to which related products are included or excluded?**

RMA has concern that adding products to the list of products covered under a priority product definition, after the priority product has been announced, sets a bad administrative precedent because it creates a timing disadvantage for complying with the final SCP regulations. For example, in the “Draft Regulatory Concept for the Initial Priority list,” DTSC mentions in footnote 1, for “Children’s Foam Padded Sleeping Products and Containing Tris (1,3-dichloro-2-propyl) Phosphate (TDCPP), that Co-Sleepers were “not listed as a children’s foam padded sleeping product in the Priority Product Profile, but was later found to meet DTSC’s intent for this Priority Product.”

If DTSC expands the products included in a priority product listing, it creates uncertainty as to which products must comply with the regulations. Additionally, adding a product under the priority product listing description, after the listing, creates a disadvantage for the newly included product because they will have a shorter amount of time to comply with the SCP regulations. RMA recommends that for products that are listed after announcing a priority product profile, DTSC should provide additional time to these products to comply with the SCP regulations requirements.

**2. Are there GPC GS1 brick codes that would be helpful in characterizing this product?**

RMA recommends that DTSC should not require the use of GPC GS1 brick codes for all products. Some products may not have these types of categories and the use of GPC GS1 brick codes does not make sense for all products. RMA recommends that DTSC should use brick codes only where applicable for certain priority products. For products where brick codes are not applicable, DTSC should leave open the opportunity for the industries covered under the priority product listing to recommend a code or methodology for identifying the products.

**III. Topic 2: Chemical(s) of Concern and alternatives**

**1. Are there other Candidate Chemicals in this product that you suggest be considered?**

RMA has concern that this question opens up the priority product process to significantly expand the scope of the SCP regulations. We are not aware that prior drafts of the SCP regulations or the final SCP regulations envisioned a process by which DTSC, or others, could add consideration of additional Candidate Chemicals for priority products. RMA recommends that DTSC should not ask whether there are other Candidate Chemicals in a product that should be considered after a priority product has been listed.

Under the SCP regulations, DTSC will identify and prioritize products containing Candidate Chemicals. §69503. Section 69503.2 in the final rule sets out the prioritization factors for any product-chemical combination identified and listed as a priority product. For example, section 69503.2 requires that there is exposure to a Candidate Chemical in the product and the exposure has the potential to contribute to or cause significant widespread adverse impacts. This section provides DTSC the discretion to identify and list as a Priority Product one or more product-chemical combinations that it determines to be of high priority. However, this section requires that DTSC's decision to list product-chemical combinations be based on "an evaluation of the product-chemical combination to determine its associated potential adverse impacts, potential exposures, and potential adverse waste and end-of-life effects." Id.

This section does not specify consideration of other candidate chemicals that will be considered for an alternatives evaluation after DTSC has listed a Priority Product. RMA recommends that DTSC should not consider the evaluation of other Candidate Chemicals contained in Priority Products after a Priority Product has been added to the Priority Products list.

## **2. Are there functionally acceptable alternatives to this Priority Product?**

RMA has concern as to how DTSC will determine whether an alternative chemical is functionally acceptable since DTSC is not an expert on the functionality of all consumer products available for sale in the state. We have concern that if the responsibility is on DTSC to determine whether an alternative chemical is functionally acceptable in a Priority Product, that this creates a process where DTSC is essentially redesigning consumer products.

This is of particular concern for tires which are highly engineered products. The National Highway Traffic Safety Administration (NHTSA) requires that all tire manufacturers self-certify that tires sold in the U.S. meet Federal Motor Vehicle Safety Standards (FMVSS). Any change in the composition of tires typically requires feasibility studies and lengthy, multiple tests to ensure that the tires continue to meet FMVSS. The chemical ingredients in tires are present because they impart critical functions to meet FMVSS and the composition of tires cannot be modified without great care. Changes in tire composition could affect critical attributes such as stopping distance, tire wear, tire fuel efficiency and other safety-related components. RMA recommends that the determination of whether an alternative chemical is functionally acceptable in a product, should be made by the manufacturer not DTSC or members of the public.

### **d. Are any potential replacement chemicals listed as Candidate Chemicals?**

RMA has concern that DTSC may interpret the final SCP regulations to require the use of alternative chemicals that are not on the Candidate Chemicals List. There will be very few alternative chemicals available to choose from if manufacturers are unable to select an alternative chemical that is not on the Candidate Chemicals List. We understand that DTSC seeks to reduce regrettable substitutions; however RMA recommends that DTSC is still able to accomplish this objective and allow the use of replacement chemicals from the Candidate Chemicals list.

## **IV. Topic 3: Market information**

RMA recommends that DTSC should not use the market presence of a product alone to determine whether there is exposure to a chemical of concern contained in the product. Section 69503.3 outlines the various factors that must be considered in evaluating a product-chemical combination for possible listing as a Priority Product. One of the factors DTSC will consider is the market presence of a product.

How widely a product is used does not provide information regarding exposure to a chemical of concern. For example, the process of manufacturing tires involves vulcanization, which changes the chemical composition of the chemicals formulated into the tire in the initial stages of the process. Therefore the chemical ingredients in tires may no longer be present following vulcanization. Thus, the widespread use of tires does not provide evidence that there is exposure to chemical ingredients in tires which may no longer be present following vulcanization. We recommend that DTSC should not focus on the market presence of a product

as the main criteria for assessing exposure for Priority Products. Instead, we recommend that DTSC consider all of the factors outlined in section 69503.3 of the final SCP regulations.

**1. What is the market presence of the Priority Product?**

RMA also has concern that market presence data may be proprietary information and must be protected as confidential business information by DTSC. If this information is required to be made public, it may result in competitive disadvantage to a manufacturer. RMA recommends that DTSC should only consider market presence data that is publically available rather than require manufacturers to submit market presence data to DTSC.

**2. How is the Priority Product marketed and/or sold?**

Again, RMA recommends that DTSC utilize only public information regarding how a Priority Product is marketed or sold. We have concern that this question is susceptible to broad inquiries from DTSC regarding how a Priority Products is marketed or sold. RMA recommends that DTSC narrow the focus of this inquiry and provide additional information as to the relevance of this information as it relates to the final SCP regulations.

**3. What types of businesses are involved in the supply chain for manufacturing the Priority Product?**

RMA recommends that DTSC utilize information regarding what types of businesses are involved in the supply chain for manufacturing a priority product that is available in the public domain. Information regarding suppliers for RMA members is confidential business information. Again, we question the relevance of this information as it relates to the final SCP regulations.

**V. Other Issues**

**1. Regulatory Response Process**

At the May 7<sup>th</sup> Priority Products Workshop, DTSC mentioned in introductory remarks that regulatory responses could be company specific rather than industry specific. RMA has concern that providing company specific rather than industry specific regulatory responses is not consistent with the final rule. The final SCP regulation does not mention that DTSC may make regulatory responses for specific companies rather than for an entire industry. Throughout the development of the SCP regulation DTSC did not specify in the draft regulations that regulatory responses may be company specific verses industry specific. RMA recommends that DTSC issue regulatory responses that are industry specific rather than company specific.

**2. Information on Priority Product Profiles**

RMA recommends that DTSC specify that initial Priority Product profile documents should specify that these are draft documents and are subject to change. The initial Priority

Product profile documents for the three initial priority products DTSC do not specify that they are draft documents and subject to change.

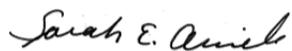
Additionally, in these documents DTSC recommends the use of alternative products to the listed Priority Products. The initial Priority Products profile documents appear to send a signal to consumers that the Priority Products are not safe and that consumers should use alternative products to reduce exposure to candidate chemicals contained in the product. Because these documents are draft or initial documents, RMA strongly recommends that DTSC should not mention the use of an alternative product to reduce exposure to the candidate chemicals in a product.

**VI. Conclusion**

DTSC's interpretation of the final SCP regulations, as applied to the three initial priority products, has broad implications for all consumer products covered under the SCP regulations. RMA again thanks DTSC for this opportunity to comment on the Stakeholder Input Documents and ask that additional opportunities for comment are provided as they relate to DTSC interpreting sections of the final SCP regulations for the first time.

Please contact me at (202) 682-4836 if you have questions or require additional information.

Respectfully Submitted,



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