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## ECONOMIC AND FISCAL IMPACT STATEMENT

### GENERAL COMMENTS

**The Standard Form 399 (Std. Form 399) and the Economic and Fiscal Impact Statement are not adequate and do not comply with the Administrative Procedure Act (APA).**

**Comments:** 1-1, 1-3, 1-4, 1-5, 1-6, 1-7, 1-8, 1-9, 1-10, 1-11, 1-12, 2-1, 2-2, 2-3, 2-7, 3-1, 3-2, 3-3, 3-4, 3-6, 3-7, 3-13, 3-14, 4-1, 4-2, 4-3, 4-5, 4-6, 4-9, 4-16, 4-20, 5-1, 5-3, 5-4, 5-6, 5-7, 5-8, 5-9, 7-10, 8-2, 9-1, 12-1, 12-2, 12-3, 12-7, 13-1

Comments Summary:

The above comments assert the Department of Toxic Substances Control (DTSC) failed to comply with the APA because DTSC failed to conduct a genuine look at all the costs; ignored significant areas of cost; has failed to show costs associated with implementing the entire Safer Consumer Products (SCP) program; has failed to show the cost-benefit of the regulations and alternatives, and has indicated that many of the impacts are “unknowable.” Some comments specifically state that DTSC failed to comply with Senate Bill (SB) 617 (Ch. 496, Stats. 2011) that established new requirements for conducting Economic and Fiscal Impact Statements. In general, the comments state the Std. Form 399:

- Fails to analyze the economic impact of the regulation on a number of factors, including:
  - The total number of businesses impacted
  - The total number of small businesses impacted
  - Jobs created or eliminated
  - California Economic competitiveness
  - The direct costs imposed on California businesses
  - The industries impacted
  - The cost of housing
  - The benefits created by the regulation
- Fails to analyze the fiscal or economic impacts of any alternatives
- Fails to consider performance standards, as required by law.

Response:

DTSC respectfully disagrees with these comments. DTSC has complied with the APA and SB 617 (Ch.496, Stats. 2011). Under Government Code section 11342.535 “Cost impact’ means the amount of reasonable range of direct costs, or **a description of the type and extent** of direct costs, that a representative private person or business necessarily incurs in reasonable compliance with **the proposed action.**” (Emphasis added) The proposed regulations establish a list of Candidate Chemicals that DTSC is required to post on its website 30 days after the regulations are adopted; specify and describe the processes that DTSC will use to evaluate candidate chemicals in products in order to identify Priority Products; the processes that responsible entities are required to follow if one of their products is listed as a Priority Product; and, the actions DTSC may take once businesses conduct Alternative Analyses of their Priority Products. The **only action** a business may need to take under the proposed SCP regulations is to provide information, upon DTSC’s request, if the business chooses to do so. On the Std. Form 399, DTSC indicated that the cost to businesses to provide the information would be “minimal.” Attachment 1 to the Std. Form 399 describes in more detail **the type and extent of costs** businesses might incur in providing the information to DTSC. DTSC **clearly states** on the Std. Form 399 that no businesses or jobs will be created or eliminated, that California’s competitiveness will not be impacted and that there will be no impact to housing if the proposed regulations are adopted. Further, whenever a question on the Std. Form 399 was answered with “Unknowable,” DTSC provided additional information in Attachment 1 to explain the response. DTSC actually exceeded the requirements of the APA by also describing the **type and extent of costs** businesses could expect to incur when Priority Product regulations are adopted. When the Priority Product regulations are adopted, businesses will be required to comply with the processes described in the proposed Safer Consumer Products regulations.

DTSC is making no changes to the regulations in response to these comments.

**Comments:** 4-5, 4-6, 4-14, 4-15, 5-12, 5-18, 7-11, 7-12

Comments Summary:

These comments express the concern that the Std. Form 399 and its attachments do not meet the definition of an economic impact statement pursuant to Government Code section 11346.3(e):

“Analyses conducted pursuant to this section are intended to provide agencies and the public with tools to determine whether the regulatory proposal is an efficient and effective means of implementing the policy decisions enacted in statute or by other provisions of law in the least burdensome manner.

Regulatory impact analyses shall inform the agencies and the public of the

economic consequences of regulatory choices, not reassess statutory policy. The baseline for the regulatory analysis shall be the most cost-effective set of regulatory measures that are equally effective in achieving the purpose of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation.”

Some comments conclude that at best the Std. Form 399 and its attachments are a cost-benefit analysis, but that a cost-benefit analysis does not meet the requirements of Government Code section 11346.3(e).

Response:

DTSC respectfully disagrees that DTSC has failed to meet the requirements of Government Code section 11346.3(e). DTSC acknowledges that it did not provide any dollar estimates on the other approaches that it considered. However, DTSC has provided reasons for excluding various options, including, for some of the options descriptive fiscal impacts, for not proposing a different regulatory system.

Attachment 1 to the Std. Form 399 discusses DTSC’s rationale for not adopting the other alternatives. For one of the most meritorious alternatives-- “Products and Chemical Hazard Categories Prioritization Process to Develop Safer Consumer Products”-- DTSC held many meetings with stakeholders, received and evaluated numerous written comments and ultimately this alternative was transformed into the chosen alternative. DTSC believes that through all the discussions with stakeholders, review and analysis of comments, and revisions to the initial draft released in September 2010, DTSC has released an Economic and Fiscal Impact Statement justifying the chosen option that meets the intent of Government Code section 11346.3(e). DTSC is making no changes to the regulations in response to these comments.

**Comments:** 1-2, 3-4, 3-5, 4-3, 4-4, 4-5, 4-6, 4-7, 4-8, 4-17, 4-18, 7-2, 8-3, 8-8, 8-30

Comments Summary:

The above comments assert that DTSC has not issued process regulations or that there is no such thing as process regulations. Some commenters state that allowing DTSC to issue process regulations would be precedent setting and thwart the requirements of the APA. Other commenters state that DTSC should be required to calculate the full cost of implementing the Safer Consumer Products program and that adopting the SCP process in steps is in conflict with the APA.

Response:

DTSC respectfully disagrees with these comments. As authorized by Assembly Bill (AB) 1879 (Ch. 559, Stats. 2008), Health and Safety Code section 25252 (a) specifically requires DTSC to adopt regulations “**to establish a process** to identify and prioritize those chemicals or those chemical ingredients in consumer products that may be considered a chemical of concern...” (Emphasis added). Health and Safety Code section 25253 (a)(1) specifically requires DTSC to adopt regulations “that **establish a process** for evaluating chemicals of concern in consumer products, and their potential alternatives...” (Emphasis added)

Government Code section 11342.600 defines “regulation” to mean “every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.” Furthermore, pursuant to Government Code section 11340.5(a) “No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.”

DTSC is clearly complying with the authorizing legislation by proposing “process” regulations for the Safer Consumer Products program. Further, the Safer Consumer Products process meets the definition of a “regulation” under the APA. Adopting the proposed SCP regulations as “process” regulations is not precedent setting under the APA. Also, the fact that the regulations describe steps that DTSC and businesses must take is not in conflict with the APA. The nature of the Safer Consumer Products program requires that implementation be done in steps. Businesses cannot prepare Alternatives Analyses until DTSC first lists Priority Products. DTSC cannot list Priority Products until it first evaluates candidate chemical/product combinations. The proposed regulations establish a list of Candidate Chemicals that DTSC is required to post on its website 30 days after the regulations are adopted; specify and describe the processes that DTSC will use to evaluate candidate chemicals in products in order to identify Priority Products; the processes that responsible entities are required to follow if one of their products is listed as a Priority Product; and, the actions DTSC may take once businesses conduct Alternative Analyses of their Priority Products. Subsequent rulemakings will implement the Safer Consumer Products process.

Finally as stated above, DTSC is not required to provide an Economic and Fiscal Impact Statement for the entire Safer Consumer Products program. The Government Code requires state agencies to provide an Economic and Fiscal Impact Statement for each regulatory action it proposes. DTSC has provided an Economic and Fiscal Impact Statement for this rulemaking. DTSC is making no change to the regulations in response to these comments.

## **ESTIMATED PRIVATE SECTOR COST IMPACTS**

**Check the appropriate box(es) below to indicate whether this regulation:**

- a. Impacts businesses and/or employees**
- b. Impacts small businesses**
- c. Impacts jobs or occupations**
- d. Impacts California Competitiveness**
- e. Imposes reporting requirements**
- f. Imposes prescriptive instead of performance (standards)**
- g. Impacts individuals**
- h. None of the above**

**Comment:** 5-19

Comment Summary:

Commenter states that DTSC did not check boxes c-g of the Std. Form 399, identified above, indicating that the regulation impacts those areas, and the Std. Form 399 is incomplete and needs to be revised and resubmitted for public comment.

Response:

DTSC respectfully disagrees with this comment. DTSC did not check boxes c-g because the regulations do not impact jobs or occupations, do not impact California competitiveness, do not impose reporting requirements, do not impose prescriptive instead of performance standards, and do not impact individuals. The proposed regulations establish a list of Candidate Chemicals that DTSC is required to post on its website 30 days after the regulations are adopted; specify and describe the processes that DTSC will use to evaluate candidate chemicals in products in order to identify Priority Products; the processes that responsible entities are required to follow if one of their products is listed as a Priority Product; and, the actions DTSC may take once businesses conduct Alternative Analyses of their Priority Products. The only direct

impact to businesses from these regulations is that DTSC may request information from businesses and the businesses must decide whether or not to provide existing information and/or whether or not to generate new information. If the requested information is not provided and the business cannot prove to DTSC that they do not have the information or that it would be too costly to produce the information, DTSC will identify the business as failing to provide the information and the business' name will be on the public "Response Status List."

On the Std. Form 399, DTSC indicated that zero (0) businesses would be created, zero (0) businesses would be eliminated, zero (0) jobs would be created and zero (0) jobs would be eliminated. DTSC answered "No" to the question "Will the regulation affect the ability of California to compete with other states by making it more costly to produce goods or services here?." DTSC answered "N/A" (Not Applicable) to the request to provide the annual costs of a typical business to comply with mandated reporting requirements. DTSC answered "No" to the question "Will this regulation directly impact housing?." To the question "Were performance standards considered to lower compliance costs?," DTSC responded "No," explaining, "The statute requiring the promulgation of these regulations requires that the regulations establish processes." In addition to the responses on the Std. Form 399, Attachment 1 expands upon the answers on the Std. Form 399 including providing information on "Impacts that can/will be more specifically identified and evaluated as part of future APA rulemaking processes for the proposed listing of product-chemical combinations as Priority Products". DTSC is making no change to the regulations in response to this comment.

### **Total Businesses Impacted, Types of Businesses Impacted, Number or percentage of total businesses impacted that are small businesses**

**Comments:** 3-12, 5-20, 7-4

Comments Summary:

These comments expressed concern that DTSC has ignored the differences between small and large businesses and has made no assessment of how small businesses will comply with the regulations.

Response:

DTSC is unable to quantify the number of businesses that will be impacted by the regulations and is also unable to quantify the number or percentage of those businesses that would be small businesses. DTSC does describe in Attachment 1 the

types of businesses from which DTSC may request information. In Attachment 1, DTSC explains the reasons that it cannot estimate the number of businesses or the number of businesses that will be small businesses. As stated in Attachment 1, the regulations allow DTSC to request one or more chemical or product manufacturers, importers, assemblers, and/or retailers to provide existing information or generate new chemical or product information on a schedule developed by DTSC. DTSC may also obtain or review information in the public domain. Since DTSC has not yet determined all the information chemical or product information that it needs, DTSC cannot determine what information is currently available in the public domain and/or what information it may seek from businesses. Once DTSC knows what chemical or product information it needs, DTSC can determine what, if any, information it would need from businesses.

DTSC cannot estimate the number or percentage of businesses that will be small businesses for the same reasons it cannot determine how many businesses the regulations will impact. For the proposed Safer Consumer Product regulations, which only allow DTSC to request information from businesses, but not to compel the submittal of the information, DTSC does not believe that there would be any significant differences in costs between small and large businesses in providing existing information to DTSC. If the businesses have the information the only cost that the business would incur to provide the information to DTSC is the salary of any staff person used to collect the information and the cost to transmit the information to DTSC.

In Attachment 1, DTSC acknowledges that both large and small businesses may be requested to develop new information to respond to an information request from DTSC and would incur costs to develop the information. DTSC believes that it may be more costly in some cases for a smaller business to generate new information than it would be for a larger business because larger businesses are more apt to have in-house staff or data systems capable of generating the information. However, if a business does not have the information and explains to DTSC's satisfaction why it cannot generate the data, DTSC will indicate on the "Response Status List" that the business has demonstrated to DTSC's satisfaction that it was unable to provide or generate the data. DTSC is making no change to the regulations in response to these comments.

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**Number of businesses that will be created or eliminated/Number of jobs that will be created or eliminated.****Comment: 5-21**

## Comment Summary:

This comment expressed concern that DTSC did not identify on the Std. Form 399 the number of businesses created or eliminated or the number of jobs that will be created or eliminated. The commenter states that DTSC should be required to revise the Std. Form 399 to identify the number of businesses or jobs created or eliminated and resubmit the Std. Form 399 for public comment.

## Response:

DTSC respectfully disagrees with the comment. DTSC did identify the number of businesses/jobs created or eliminated on the Std. Form 399. On the Std. Form 399, DTSC indicated that zero (0) businesses would be created, zero (0) businesses would be eliminated, zero (0) jobs would be created and zero (0) jobs would be eliminated. Attachment 1 to the Std. Form 399 explains that because the proposed regulations are process regulations no businesses or jobs will be created or eliminated. DTSC is making no change to the regulations in response to this comment.

**Geographic Impact of the Regulations****Comment: 3-11**

## Comment Summary:

This comment expresses the opinion that DTSC should have to quantify the nationwide costs of these regulations.

## Response:

DTSC respectfully disagrees with this comment. The APA only requires DTSC to indicate whether the regulations impact all of California or just a local area. DTSC indicated that the proposed Safer Consumer Products regulations impact all of California. In addition, Attachment 1 indicates that the regulations actually extend beyond California since the regulations allow DTSC to request information from businesses outside of California. DTSC is making no change to the regulations in response to this comment.

**Will the regulation affect California's ability to compete by making it more costly to product goods or services here?****Comments:** 5-11, 5-15, 5-22

## Comments Summary:

These comments express the opinion that DTSC has failed to acknowledge that the regulations will make California businesses less able to compete with other states by making it more costly to produce goods or services in the state. The commenter notes that on the Std. Form 399 that DTSC has checked the "No" box indicating that the regulation will not make it more costly to produce goods or services here. However, the commenter notes that in Attachment 2, "Economic Analysis of California's Green Chemistry Regulations for Safer Consumer Products" the author says that California's competitiveness will change, which is contradictory to the Std. Form 399. The commenter states that DTSC should have to revise the Std. Form 399 to be consistent with Attachment 2 or withdraw Attachment 2.

## Response:

DTSC respectfully disagrees with these comments. These regulations are process regulations and nothing in these regulations directly impacts the manufacturing of products. The proposed regulations establish a list of Candidate Chemicals that DTSC is required to post on its website 30 days after the regulations are adopted; specify and describe the processes that DTSC will use to evaluate candidate chemicals in products in order to identify Priority Products; the processes that responsible entities are required to follow if one of their products is listed as a Priority Product; and, the actions DTSC may take once businesses conduct Alternative Analyses of their Priority Products. Attachment 1 to the Std. Form 399 explains the reason the box on the Std. Form 399 is checked "No" and provides additional information on "Impacts that can/will be more specifically identified and evaluated as part of future APA rulemaking processes for the proposed listing of product-chemical combinations as Priority Products." Under this heading on impacts of future regulations, DTSC refers to Attachment 2 and the discussion on California competitiveness where the author discusses factors that may make California businesses more competitive. DTSC disagrees that the Std. Form 399 and Attachment 2 are contradictory and is not revising the documents. DTSC is not withdrawing Attachment 2 for the reasons discussed in one of the responses under the heading "Miscellaneous." DTSC is making no change to the regulations in response to this comment.

**Comments:** 6-3, 6-8

## Comments Summary:

The comment supports the opinion in Attachment 2, "Economic Analysis of California's Green Chemistry Regulations for Safer Consumer Products" that these regulations will stimulate the market and California businesses could be more competitive due to the ability of California businesses to innovate more quickly and the availability of venture capital.

## Response:

DTSC concurs with this comment that when the Priority Product List regulations are promulgated that there is a potential for California businesses to be at a competitive advantage. DTSC will cover the potential positive impact to California businesses in the Economic and Fiscal Impact Statement for the Priority Products List regulations. DTSC is making no change to the regulations in response to this comment.

**ESTIMATED COSTS****Comment:** 5-5

## Comment Summary:

This comment expresses concern that DTSC has ignored available information including a report prepared on behalf of the California Foundation for Commerce and Education that by using accepted principles of economics developed estimates based on the "prudent" person test showing adoption of the regulations could approach \$150 billion and will directly affect 123,000 jobs in California at the peak of implementation.

## Response:

DTSC respectfully disagrees with this comment. The proposed regulations establish a list of Candidate Chemicals that DTSC is required to post on its website 30 days after the regulations are adopted; specify and describe the processes that DTSC will use to evaluate candidate chemicals in products in order to identify Priority Products; the processes that responsible entities are required to follow if one of their products is listed as a Priority Product; and, the actions DTSC may take once businesses conduct Alternative Analyses of their Priority Products. Implementation of the proposed SCP regulations will not result in businesses incurring \$150 billion in costs. Implementation

of the Priority Product List regulations will impose significant costs on businesses. However, Implementation of the Priority Product List regulations will also result in significant public health and environmental benefits. The exact cost of these future Priority Product List regulations cannot be determined without knowing numerous factors such as the number of businesses, the availability of alternatives, the impact of the chemical on public health or the environment, etc. that are currently not known. The conclusion in the report that costs of this program could approach \$150 billion and directly affect 123,000 jobs in California is not based on any facts related to the actual implementation of the Safer Consumer Products program.

DTSC refers the commenter to Economic and Fiscal Impact Statement portion of the Response to Comments for the July 2012 version of the proposed regulations. In the section “Alternatives to the Regulation,” there is a discussion on DTSC’s concerns on the conclusions concerning cost identified in the California Foundation for Commerce and Education’s report. DTSC is making no change to the Std. Form 399 or its attachments in response to this comment. DTSC is making no change to the regulations in response to this comment.

**Comments:** 2-4, 3-3, 3-6, 3-8, 4-3, 4-9, 4-10, 4-11, 4-12, 5-23, 5-24, 9-2, 9-3, 9-4, 9-5, 10-2, 10-5, 10-6, 13-4, 13-5

Comments Summary:

These comments all express the opinion that the costs of the regulations are not “minimal.” Several of the comments note specific reasons for why the costs of the proposed Safer Consumer Products regulations are not minimal. Below, DTSC has grouped the specific comments and DTSC’s responses together because the comments and the responses overlap and DTSC believes it will be easier to understand the response if the response is provided after the specific reason.

Comment:

The regulations are not just process regulations and DTSC has ignored the costs to businesses of submitting priority product notifications, determining the type of and performing alternative analyses and implementing any regulatory responses.

Response:

These proposed regulations provide for a four-step continuous, science-based, iterative **process** to identify safer consumer product alternatives. When the regulations are adopted, **DTSC is required** to: post on DTSC’s website an informational list of

Candidate Chemicals within 30 days of the effective date of the regulations (See section 69502.3(a) of the proposed regulations) and release for public comment the Initial List of Proposed Priority Products no later than 180 days after the effective date of the regulations (See section 69503.6(c) of the proposed regulations). “The Priority Products list shall be established and updated through rulemaking under the Administrative Procedure Act (commencing with Government Code section 11340).” (See section 69503.5(a)(2) of the proposed regulations).

The **regulations specify the requirements** that responsible entities must follow, such as determining if a Chemical of Concern is in one of its products that has been listed as a Priority Product, notifying DTSC that its product is a Priority Product, conducting an Alternatives Analysis, complying with any regulatory response imposed by DTSC, etc. if the responsible entities’ product is listed as a Priority Product. Since all Priority Products must be identified in regulations adopted under the APA process, responsible entities do not need to comply with the requirements identified in these regulations until the Priority Products List regulations are adopted.

Section 69501.4 of the proposed Safer Consumer Products regulations addresses **Chemical and Product Information**. Under this section, DTSC **may request** one or more businesses to make existing information available to DTSC (See section 69501.4(a)(1)(C) of the proposed regulations) or **request** one or more businesses to generate new information and provide it to DTSC, in accordance to a schedule specified by DTSC (See section 69501.4(a)(1)(D)). Providing chemical and product information to DTSC is **not a requirement**; DTSC may only **request** the information. **DTSC is required** to maintain a **Response Status List** to provide notice that a business receiving a request has: 1) made the information available to DTSC, 2) failed to make the information available to DTSC, or 3) demonstrated to DTSC’s satisfaction that the business does not have and is unable to provide the **requested** information. Thus, the only cost that businesses might incur under these regulations is to provide information to DTSC. The cost to businesses of submitting Priority Product notifications and preparing Alternatives Analyses will be included when the Priority Products List regulations are promulgated.

In reviewing the proposed Safer Consumer Products regulations, readers need to ask what will be **required** once these regulations are adopted. It is clear that until the Priority Products List regulations are adopted in the future, there are no **requirements** on any entity but DTSC. If businesses’ products are not listed as Priority Products, businesses will never have any **requirements** to comply with the processes in the proposed SCP regulations. DTSC is making no change to the regulations in response to this comment.

## Comment:

DTSC has ignored the costs businesses will incur when the Candidate Chemicals List is adopted and DTSC posts the information on its website.

## Response:

When the Candidate Chemicals List is posted on DTSC's website, the regulations do not place any **requirements on businesses**. The comment addresses costs a business would incur due to the failure of a business to move forward with producing a product with a Candidate Chemical or a downstream business stops purchasing or selling a product that the downstream business knows contains a Candidate Chemical. The Candidate Chemicals are chemicals that DTSC *may* at some point determine are Chemicals of Concern. Estimating potential actions and the potential costs to a business to stop using a Candidate Chemical or stop buying or selling a product because it contains a Candidate Chemical-- because DTSC may someday designate it as a Chemical of Concern-- would be purely speculative. State agencies are not required to provide estimates for purely speculative consequences of proposed regulations.

Further, within 180 days after the Safer Consumer Product regulations are adopted, DTSC must issue the proposed Initial List of Priority Products; so, businesses will know which chemicals DTSC is addressing first. Finally, within a year after the regulations are adopted, DTSC is required to prepare a work plan identifying the product categories it will be evaluating over the next three years to identify product-chemical combinations to be added to the Priority Products list. In preparing the work plan, DTSC must provide a general explanation of why the product categories were selected. This work plan and its subsequent revisions will provide businesses with certainty on what product categories DTSC will be evaluating. DTSC is making no change to the regulations in response to this comment.

## Comment:

DTSC has ignored the compliance cost to downstream businesses if the manufacturer fails to comply with the regulations.

## Response:

As stated in the first response above, these proposed regulations are process regulations, and do not impose any requirements on any businesses. The Safer Consumer Products regulations do identify the **requirements** a responsible entity must comply with if its product is listed as a Priority Product. Once a Priority Product List is adopted, if the manufacturer fails to comply with the requirements identified in the Safer Consumer Product regulations, downstream businesses will have specific responsibilities to comply. Section 69501.2 (a) of the proposed regulations specifies businesses that have a duty to comply; when that duty may be triggered, and what the scope of the duty to comply is. More specifically, assemblers and retailers, as defined, do not have the same duties as manufacturers and importers.

Rather, assemblers and retailers have various opt out provisions from the duty to conduct an AA that manufacturers and importers do not have. DTSC included these alternate means of compliance for assemblers and retailers in recognition of their more limited role in product design and specifications than manufacturers and importers. Downstream businesses, such as retailers, do not have a requirement to furnish information requested of a manufacturer by DTSC if the manufacturer fails to comply because the duty to comply (see section 69501.2(a)) only applies to **requirements** not **requests** as stated in section 69501.4 of the proposed regulations. DTSC is making no change to the regulations in response to this comment.

Comment:

DTSC has ignored costs businesses will incur if they fail to respond to an information request from DTSC. These comments expressed concern that the costs to provide the information requested by DTSC was not “minimal” because DTSC did not factor in the cost to the business of businesses or individuals not buying a product because the business was listed on the “Response Status List” as failing to provide the information to DTSC. One comment stated that DTSC had underestimated the cost of providing information to DTSC because DTSC failed to include the cost of regulatory responses DTSC could impose if the businesses failed to provide data on the Chemical of Concern’s function in the Priority Product. The comment urged DTSC to revise the Std. Form 399 to indicate that business would see an increase in costs.

Response:

DTSC did consider the effect that a status of failing to respond to information would have on a business. It is possible that by failing to provide information to DTSC a business could lose sales. DTSC believes that a business from which DTSC requested information would evaluate the potential for lost sales if they do not provide the information to DTSC. The purpose of the “Response Status List” is to encourage

businesses to provide the information requested. If a business is asked to generate new data and the business cannot generate the data or it is too expensive to generate the data, DTSC believes the motivation to be shown positively on the "Response Status List" will enable the business to satisfy DTSC that the information cannot be generated. DTSC notes that the regulatory responses that DTSC could impose would only occur when the Priority Product Listing regulations are adopted; DTSC cannot impose regulatory responses for businesses failing to provide requested chemical and product information as described in these regulations. Further, DTSC has indicated that these regulations will impose costs on businesses and there is no need to revise the Std. Form 399 to indicate the businesses may see increased costs. DTSC is making no change to the regulations in response to this comment.

Comment:

DTSC incorrectly states that compliance with the regulations is optional and failed to acknowledge the penalties DTSC has the authority to assess.

Response:

If a responsible entity for a Priority Product fails to comply with **a requirement** described in these regulations once the Priority Product Listing regulations are adopted, DTSC has the authority in accordance with article 8 of chapter 6.5 of division 20 of the Health and Safety Code to initiate enforcement action, including imposition of fines and penalties. However, DTSC does not have the authority to assess fines or penalties for a business failing to provide information upon **request** of DTSC, as is the structure of the information request provisions in these regulations. The only regulatory consequence of failing to respond to a request for information is that the lack of response is posted on DTSC's "Response Status List." In the first response above, DTSC has explained why a **request for information is not a requirement** under the proposed regulations. DTSC is making no change to the regulations in response to this comment.

Comment:

DTSC has not included the cost to businesses of providing existing information. The comment expressed concern that DTSC had not accounted for the cost the business had already incurred in preparing the information when providing existing information to DTSC.

Response:

The only cost DTSC considered for providing existing information to DTSC was the cost to collect the information and transmit it to DTSC. DTSC did not consider the cost to the business of generating the *existing data* because the business would have already incurred the cost, and generating that data was not done due to these regulations. DTSC is making no change to the regulations in response to this comment.

**Comments:** 7-1, 8-1, 8-10, 8-11, 8-12, 10-7, 13-3, 13-7

Comments Summary:

These comments express concern that DTSC has underestimated the costs of conducting Alternatives Analyses due to a variety of reasons. These include: DTSC's approach to conducting Alternatives Analyses is much more expensive than the United States Environmental Protection Agency's Design for the Environment; that the industry does not incorporate Alternatives Analyses in their design process (thus the Alternative Analyses will be more expensive than DTSC estimates); and DTSC did not consider the cost of an Alternative Analysis that would need to ensure that the selected alternative addressed other regulatory agency requirements as well as the Chemical of Concern.

Response:

DTSC notes that the Std. Form 399 only provides a cost estimate for businesses to provide information requested by DTSC because that is the only impact to businesses from adoption of the proposed regulations. However, DTSC contacted various practitioners to ascertain the cost of conducting Alternatives Analyses and found that there is a range of costs from thousands to hundreds of thousands of dollars. DTSC appreciates input on other factors related to the Alternatives Analyses that may need to be considered when DTSC prepares the Economic and Fiscal Impact Statement for the Priority Product List regulations.

DTSC is making no change to the regulations in response to this comment.

**Comments:** 7-4, 7-5, 8-9, 12-10

Comments Summary:

These comments express concern that DTSC has underestimated the cost of forming consortia, especially the legal costs of ensuring that antitrust concerns are addressed and confidential business information is protected.

**Response:**

DTSC notes that the Std. Form 399 only provides a cost estimate for businesses to provide information requested by DTSC because that is the only impact to businesses from adoption of the proposed regulations. A discussion on the costs of implementing Priority Products Listing regulations was provided only for informational purposes. However, businesses do create consortia to address business needs. For example, Semiconductor Manufacturing Technology (SEMATECH) is a not-for-profit consortium of member companies that performs research and development in chip technology. Many credit SEMATECH's research and development work in the late 1980s and '90s with restoring the U.S. semiconductor business sector to a competitive global position. DTSC appreciates input on other factors related to consortia that may need to be considered when DTSC prepares the Economic and Fiscal Impact Statement for the Priority Product List regulations. DTSC is making no change to these regulations in response to this comment.

**Comments:** 5-25, 7-7, 7-8, 11-1, 13-2, 13-11

**Comments Summary:**

These comments express concern that DTSC has underestimated the cost of the regulations because DTSC has not recognized the true cost of replacing chemicals or changing labeling. DTSC has failed to include costs of reporting or has underestimated reporting costs. DTSC does not understand that the cost of substituting one chemical is not cheap or easy and in fact can cost billions of dollars. DTSC cannot say that the costs of these regulations are minimal because these are new regulations and there are no comparable federal regulations.

**Response:**

DTSC notes that the Std. Form 399 only provides a cost estimate for businesses to provide information requested by DTSC because that is the only impact to businesses from adoption of the proposed SCP regulations. DTSC responded "N/A" (not applicable) on the Std. Form 399 as to the annual cost of reporting. On Attachment 1 to the Std. Form 399, DTSC stated that the SCP regulations do not impose any annual or other on-going reports on businesses. DTSC explained that when the Priority Product Listing regulations are promulgated later that there would be reporting requirements on businesses.

DTSC recognizes that it will need to estimate the cost of reporting when the Economic and Fiscal Impact Statement is prepared for future Priority Product Listing regulations. DTSC respectfully disagrees that these regulations have to be costly because there are no comparable federal regulations. The fact that no comparable federal regulations exist does not change the cost to provide information to DTSC. DTSC appreciates the data provided on the cost of labeling and what an industry as a whole incurred in costs and effort in just substituting one chemical in a product. This type of information is helpful as DTSC considers the costs of implementing future Priority Product regulations. DTSC is making no change to the regulations in response to these comments.

**Comment: 6-7**

Comment Summary:

This comment states that it is important to recognize that the costs to some companies that are slow or unable to adapt and comply with the regulations will in many ways be offset by the benefits that will accrue to companies that realize greater profits because of their ability to innovate and bring less toxic products to the market.

Response:

DTSC concurs that when the Priority Product Listing regulations are adopted some companies may realize greater profits by bringing less toxic products to the market faster than other companies. This is a factor DTSC will try to estimate when it prepares the Economic and Fiscal Impact Statement for Priority Product Listing regulations. DTSC is making no change to the regulations in response to this comment.

**Comments: 7-6, 8-5, 8-23, 12-4, 12-5, 12-7, 12-9**

Comments Summary:

These comments express concern that DTSC has underestimated the costs to businesses and California competitiveness from the loss of trade secrets or has made no attempt to quantify the fiscal and economic impact of the loss of trade secrets. DTSC does not provide any data to support the claim that the probability of the loss of trade secrets is low. And DTSC has limited experience with protecting trade secrets. DTSC does not understand trade secrets and, therefore, underestimates the cost to businesses of the loss of trade secrets.

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**Response:**

DTSC respectfully disagrees with these comments. DTSC has previously responded to the concern that DTSC downplays the costs of trade secrets (See July 2012 Response to Comments, Economic and Fiscal Impact Statement, Estimated Costs). DTSC recognizes the importance of trade secrets and that the loss of such information could have a significant impact to businesses.

DTSC did not provide estimates on the cost of the loss of trade secrets because estimating the loss or the potential for loss would be purely speculative until such time as DTSC makes a request for information under the proposed Safer Consumer Product regulations or the required information is provided when the future Priority Product List regulations are promulgated. However, DTSC does have experience receiving and protecting trade secret information in the context of regulated parties' hazardous waste handling and disposal activities (see Health & Safety Code section 25173), and specific statutory provisions both govern DTSC's sharing of such information with authorized parties, and impose criminal liability for the knowing or willful dissemination of protected information. (See Health & Safety Code section 25358.2.) DTSC additionally has written policies that alert employees to the importance of maintaining trade-secret confidentiality, and identify applicable laws and regulations. (See *DTSC Policy for Conducting Inspections, Enforcement and Emergency Response Program*, dated Jan. 30, 2009, at p. 21; see also *DTSC Public Records Act Policy*, dated Oct. 8, 2003, at pp. 8-9.) Further, section 69509(d) of the proposed regulations requires the submitter, at the time of submission, to conspicuously mark each page containing claimed trade secret information with the words "Trade Secret." The requirement for conspicuous marking makes clear to DTSC staff the claimed trade-secret status of each individual page, which will inform proper document handling and reduce the chance of inadvertent disclosure.

This section also specifies that if no claim of trade secret protection is made at the time of submission, DTSC may make the submitted information available in full to the public without further notice. This provision is also necessary to make clear to the submitter the consequences of not making a claim of trade secrecy at the time of submission, *i.e.*, potential public disclosure as specified in Health and Safety Code section 25257(c). DTSC's experience with trade secrets and the provisions of Article 9 are the basis for DTSC's belief that the probability of release of trade secret data is low. DTSC's history with trade secrets is also why the statement that DTSC has limited experience with trade secrets is incorrect.

The July 2012 Article 10 and the January 2013 Article 9 responses to comments provide a detailed discussion of trade secret issues. DTSC is making no changes to the regulations in response to these comments.

**Comments:** 12-6, 12-7

Comments Summary:

These comments expressed concern that DTSC did not quantify the economic impact of inadequate protection of confidential business information despite the availability of data on the subject. The comments included information on data leakage to support their comments.

Response:

DTSC agrees that it did not place a monetary value on the potential economic impact of the loss of trade secret data. Without knowing what specific information DTSC will be requesting from businesses and without knowing what specific Priority Products are being proposed for listing, any monetary quantification of the economic loss would be purely speculative. DTSC readily acknowledges that the loss of trade secret data could in some circumstances irreparably harm a business. DTSC believes that the economic value of a trade secret claim is properly addressed during implementation of both these regulations and the future Priority Product listing regulations. To that end, and to be consistent with the body of law addressing trade secrets, DTSC has included language in these regulations that requires businesses claiming a trade secret to make an effort to characterize the value derived from preventing disclosure of the information at issue. Proposed section 69509(a)(3) through section 69509(a)(8) require businesses to submit information on the extent to which the trade secret information is known within and outside of the company, the estimated value of the trade secret information including the amount of money the business incurred in developing the information, and the measures taken by the business to restrict access to and safeguard the information.

As to the data provided, the comment quotes information from an InfoWatch Research Center report "Global Data Leakages & Insider Threat Report, 2012" including "Government and municipal organizations accounted for a higher share of leaks at 29% (9% higher than 2011)"<sup>1</sup>. In reviewing the report, DTSC notes that commercial enterprises accounted for the highest percentage of leaked information-- 41%-- albeit a decrease of 4% from 2011. Thus in 2012, based on the data available to InfoWatch, commercial enterprise accounted for 12% more leaks than government and municipal

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<sup>1</sup> <http://infowatch.com/analytics/reports/2674>

organizations. Additionally as noted by InfoWatch, the majority of the leaks-- 89.4%-- involved personal data. Commercial secrets accounted for just 6.0% of the leaks. The comment noted that 22.3% of the leaks were of hard copy documents. DTSC believes that the requirements for businesses to conspicuously mark each page containing information claimed to be trade secret with the words "Trade Secret" will significantly reduce the chance of an inadvertent leak of information. DTSC is making no changes to the regulations in response to these comments.

**Comment: 5-26**

Comment Summary:

The comment expresses concern that DTSC failed to indicate that the regulations would have an impact on housing costs and the Std. Form 399 should be revised and resubmitted for comment.

Response:

DTSC respectfully disagrees with this comment. On the Std. Form 399, DTSC appropriately marked the "No" box when responding to the question "Will this regulation directly impact housing costs?". On Attachment 1 to the Std. Form 399 goes beyond requirements of the APA and explains what impacts on housing will be evaluated when the future Priority Product Listing regulations are promulgated. DTSC is making no changes to the regulations in response to this comment.

**ESTIMATED BENEFITS**

**Comments: 5-14, 5-15, 5-27, 10-3**

Comments Summary:

These comments express concern that if there are no direct physical impacts to public health or environmental from adopting these regulations then the benefits should be "none." According to the comment, this statement is contradicted by the Std. Form 399 that says the impacts are "unknowable." The Std. Form 399 should be revised to address these contradictory statements. The comment further states that if the benefits are "none," then the benefits do not justify the costs. One comment expresses concern that DTSC has failed to address the total statewide benefits. One comment states that the fact that the benefits are "unknowable" is understandable because no one can justify the rationality of this regulation.

**Response:**

DTSC respectfully disagrees with these comments. DTSC concurs that there are no *direct* physical impacts to public health and the environment from adopting the Safer Consumer Products regulations. However, that fact that there are no physical impacts to public health and the environment does not mean that there cannot be any benefits from adopting the regulations. As explained in Attachment 1 to the Std. Form 399, DTSC will gain benefits from the information it receives from businesses concerning products and chemicals. The industry will gain benefits from knowing the processes that DTSC will use in implementing the Safer Consumer Products program. Industry will also benefit from the guidance DTSC is required to prepare. DTSC concurs that the Std. Form 399 indicates that the total statewide benefits are “unknowable.” However, Attachment 1 to the Std. Form 399 indicates in addition to the description of the types of benefits that the overall benefit is “minimal.” The regulations comply with the requirements of Assembly Bill 1879 (Ch.559, Stats. 2008) that DTSC promulgate regulations that establish the processes that DTSC and businesses must follow when DTSC designates Priority Products. DTSC has gone through a lengthy process to engage stakeholders in designing the processes required by the authorizing legislation. DTSC believes that these regulations are a rational approach to ensure Safer Consumer Products in California. DTSC does not agree that the Std. Form 399 is contradictory or that DTSC has failed to assess statewide benefits and will not be making any changes to the Std. Form 399 or its attachments in response to these comments. DTSC is making no changes to the regulations in response to these comments.

**Comments:** 6-2, 6-4, 6-5, 6-6

**Comments Summary:**

These comments identify benefits that will accrue from the adoption of these regulations. These include: improvement to public and environmental health due to the reduction to exposures of dangerous chemicals, closing the information gap about Chemicals of Concern in consumer products and production of safer chemicals and products. The comments include benefits that businesses will achieve from adoption of the regulations such as information about their supply chains of which they were not aware, understanding of hazards their products may pose, reduction in costs as research and development related to chemicals in their products may result in new efficiencies, and development of business skills that increase their competitiveness.

**Response:**

These comments are consistent with impacts DTSC will be considering and evaluating as part of future Priority Products Listing regulations. DTSC is making no changes in the regulations in response to these comments.

**Comment: 6-9****Comment Summary:**

The comment expresses concern that DTSC has not fully explored the economic and fiscal impact of the occupational health benefits of the Safer Consumer Products program.

**Response:**

DTSC agrees that occupational health benefits have not been quantified in these regulations. DTSC will be evaluating the potential for economic and fiscal impacts due to occupational health factors as part of future Priority Product Listing regulations. DTSC is making no changes in the regulations in response to this comment.

**ALTERNATIVES TO REGULATION****Comments: 5-28, 5-29, 10-1, 10-4****Comments Summary:**

These comments express concern that if there are no direct physical impacts to public health or environmental from adopting the SCP regulations then the benefits should be “none” contradicting the Std. Form 399 that says “unknowable” and the Std. Form 399 should be revised to address the contradictory statements. These comments also express the concern that DTSC has failed to assess the fiscal impact of the regulations or alternatives to these proposed regulations. The comments also express concern that DTSC has not shown the cost/benefit of the regulations and DTSC should perform a cost/benefit analysis before the regulations are adopted.

**Response:**

As stated above, the fact that there are no *direct* physical impacts to public health and the environment does not mean that there cannot be any benefits from the adopting these regulations. Attachment 1 to the Std. Form 399 identifies the direct benefits that will result from the adoption of the proposed regulations. DTSC acknowledges that it

did not project a dollar amount for the cost of implementing the regulations. However, DTSC did indicate that the costs were expected to be minimal and why the costs were expected to be minimal. DTSC agrees that it did not provide a dollar estimate for the benefits or costs of any of the alternatives. However, in Attachment 1 of the Std. Form 399, DTSC did provide a list of factors that have been included in the proposed regulations specifically to minimize costs to businesses. Some of these factors were based on comments received from the business community. In addition, Attachment 1 includes a lengthy discussion of alternatives considered and a description of the changes made to the proposed regulations since they were first introduced. DTSC is making no changes to the Std. Form 399 or its attachments as a result of these comments. DTSC is making no changes to the regulations in response to these comments.

**Comment:** 5-30

Comment Summary:

The comment expresses concern that DTSC has failed to consider performance standards as required by law, and claims that the Std. Form 399 needs to be revised and resubmitted for public comment to address this failing.

Response:

DTSC agrees that on the Std. Form 399, DTSC has marked the “No” box indicating that DTSC did not consider performance standards. DTSC provided a short explanation on the Std. Form 399 explaining that the statute requires DTSC to adopt regulations establishing processes. DTSC could not opt to use performance standards instead of requiring specific processes or actions because the authorizing statute requires DTSC to establish the processes for identifying and prioritizing Chemicals of Concern in products. DTSC has done this with its Candidate Chemicals, Chemicals of Concern and Priority Products processes. DTSC further describes the various processes in the regulations and acknowledges that the regulations do prescribe specific actions that businesses must take if their products are listed as Priority Products. However, the regulations provide a great deal of flexibility that businesses may take in performing the actions. The regulations do not require that businesses use any specific equipment or technologies. DTSC is making no changes to the Std. Form 399, its attachments or the regulations in response to this comment.

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## MAJOR REGULATIONS

**Comments:** 3-3, 4-3, 4-8, 4-9, 8-8, 9-5, 13-6

Comments Summary:

These comments express the concern that DTSC has inaccurately projected that these regulations will not exceed \$10 million. The comments included statements that the regulations were not process regulations. The comments identified specific activities that businesses will have to perform such as Alternatives Analyses and regulatory responses that will exceed \$10 million. The comments included statements that DTSC could not consider these landmark regulations and at the same time say the costs would be minimal.

Response:

DTSC has previously provided in this document an explanation and rationale for the fact that the proposed regulations are process regulations (See the response to the second set of comments and the first response to comments under the section “Estimated Costs”). In stating that the regulations will not exceed \$10 million, DTSC was estimating only the cost to businesses of providing the product or chemical information that DTSC may **request** businesses to provide. DTSC believes that the cost to businesses to provide the information will be minimal. DTSC continues to believe that these regulations in describing the processes that DTSC and businesses must follow are indeed landmark regulations. While the actions and the resulting benefits will not occur until DTSC identifies and promulgates Priority Product Listing regulations, without these landmark process regulations, there would be no Safer Consumer Products Program to implement. DTSC is making no change to the regulation in response to these comments.

**Comment:** 8-13

Comment Summary:

This comment expressed the opinion that DTSC’s stating that it could not estimate the cost of the future Priority Product regulations and therefore could not determine if the cost of the regulations would exceed \$10 million, was tantamount to saying the cost of the future Priority Product Regulations would be less than \$10 million.

Response:

DTSC respectfully disagrees with this comment. By stating that DTSC could not determine if future Priority Product Listing Regulation would exceed \$10 million does not mean that future Priority Product Listing Regulations will always have less than \$10 million in costs imposed. Each Priority Product Listing regulation will need to be evaluated on its own merits to determine what the economic and fiscal impact is to businesses. DTSC can envision a situation where there are numerous safer alternatives for the product on the market, publicly available Alternative Analyses, and relatively few manufacturers that have not yet adopted the safer alternative. In such an instance, it is quite possible the costs to businesses would not exceed \$10 million. DTSC can also envision scenarios where there are numerous manufacturers of the Priority Product and no publicly available Alternatives Analyses and thus the costs could exceed \$10 million. DTSC is making no change to the regulations in response to this comment.

**Comment:** 5-31

Comment Summary:

This comment expresses concern that in the “Major Regulations” section of the Std. Form 399, DTSC has failed to assess the fiscal impact of any solution or alternative. DTSC should have to revise and resubmit the Std. Form 399 for public comment to address this failure.

Response:

DTSC respectfully disagrees with this comment. In the “Major Regulations” section of the Std. Form 399, the first question asks, “Will the estimated costs of the regulation to California businesses exceed \$10 million?”. Respondents completing the Std. Form 399 then have to choose one of two boxes—the “Yes” Box or the “No (if No, skip the rest of this section)” Box. DTSC checked the “No” Box and thus no additional information, including the description of each alternative for which a cost-effectiveness analysis was performed and identifying the overall costs and the cost-effectiveness ratio for the regulation and the alternatives. DTSC is making no changes to the Std. Form 399 or the regulations as a result of this comment.

## FISCAL IMPACT STATEMENT

### **Comment:** 5-32

#### Comment Summary:

This comment expresses the concern that DTSC describes but fails to assess the potential impact on local governments. DTSC should have to revise and resubmit the Std. Form 399 for public comment to address this failure.

#### Response:

DTSC respectfully disagrees with this comment. DTSC correctly indicated that the proposed regulations have no fiscal impact on local government, since the regulations pose no requirements on local governments. Further, no actions of DTSC or businesses will impact local governments upon adoption of these regulations. DTSC went beyond the requirements of the APA and provided, in Attachment 1 to the Std. Form 399, information on potential impacts to local governments when the Priority Product Listing regulations are promulgated. DTSC is making no changes to the Std. Form 399 or the regulations as a result of this comment.

### **Comments:** 2-6, 9-2

#### Comments Summary:

These comments express concern that DTSC has not included a revised Attachment 3, Estimated Costs for DTSC to implement the Safer Consumer Products Regulations, with the revised Std. Form 399.

#### Response:

DTSC acknowledges that it did not include a revised Attachment 3 with the revised Std. Form 399. DTSC does not believe a revised Attachment 3 was necessary since Attachment 1 to the Std. Form 399 describes the budgeted amount DTSC has to implement these regulations. DTSC is making no changes to the Std. Form 399 or the regulations as a result of these comments.

### **Comments:** 5-10, 5-15, 5-16, 5-17, 5-33, 5-34

#### Comments Summary:

These comments express concern that DTSC has failed to report the expenditure impact to DTSC on the Std. Form 399; yet, Attachment 1 to the Std. Form 399 indicates that DTSC has redirected 39 positions and \$6.2 million in permanent, annual spending on the regulations. The comments express concern that DTSC does not have the authority to redirect resources without submitting a Budget Change Proposal to the Legislature. Further, DTSC may have violated the State Constitution and Government Code section 19130 by permanently liquidating funds to augment contracting. DTSC must submit its contracts regarding its Safer Consumer Products to the State Personnel Board for review to ensure that it is consistent with provisions of the State Constitution as it pertains to the civil service and Government Code section 19130, as appropriate. DTSC needs to clarify the contradictions in its Std. Form 399 and resubmit a revised Std. Form 399 for public comment. DTSC must submit a Budget Change Proposal for the redirection of the personnel and contract authority, as appropriate.

Response:

DTSC respectfully disagrees with these comments. The Std. Form 399 has four (4) boxes that respondents must check, as appropriate, and attach information on calculations and assumptions. The 4 boxes are:

1. Additional expenditures of approximately (departments insert a dollar amount) in the current Fiscal Year. It is anticipated that State agencies will: a) be able to absorb these additional costs within their existing budgets and resources or b) request an increase in the currently authorized budget level for the (departments insert a fiscal year) fiscal year.
2. Savings of approximately (departments insert a dollar amount) in the current State Fiscal Year.
3. No fiscal impact exists because this regulation does not affect any State agency or program.
4. Other

DTSC checked the "Other" box because no state agencies would be incurring additional expenditures, no state agencies would have any savings, and because the regulation does impact DTSC.

In Attachment 1 to the Std. Form 399, DTSC provided information that the proposed regulations did not impact State agencies in general and DTSC described the budgetary and personnel resources DTSC had redirected to implement the Safer Consumer Products program. In addition, DTSC explained the potential impacts on State agencies when the Priority Product Listing regulations are adopted.

The comment is correct that State agencies need to have budgetary approval through the Legislature and the Budget Act to redirect resources on a permanent basis. DTSC submitted Finance Letter 2 (essentially a Budget Change Proposal that is submitted in the Spring instead of the Fall when Budget Change Proposals are submitted) in the Spring of 2012 to permanently redirect the 39 positions and the personnel and operating expenses to fund a \$6.2 million annual budget for the Safer Consumer Products program. The Legislature and the Governor approved the Finance Letter, and DTSC has the appropriate budget authority to annually spend the identified resources on the program.

In response to the concern about DTSC's permanent liquidation of funds for contracts and the potential for violation of the State Constitution and Government Code section 19130, no liquidation of funds can cause the displacement of civil service employees. The term "displacement" means the demotion, involuntary transfer to a new class, involuntary transfer to a new location requiring a change in residence and time base reductions. Displacement does not include changes in shifts or days off, nor does it include reassignment to other positions within the same class and general location. DTSC requested authority to permanently redirect the personnel services budget for 4.5 vacant positions to its contracts line item. The redirection did not violate Government Code section 19130. As DTSC procures contracts it will follow required statutes and regulations pertaining to its contracts. DTSC is making no changes to the Std. Form 399 or the regulations in response to these comments.

## **MISCELLANEOUS**

### **Comment: 2-5**

#### Comment Summary:

This comment expresses the concern that DTSC does not have the legal authority it believes it has to ask questions about any product.

#### Response:

This comment is outside of the scope of this public comment period because this comment pertains to the substance of the regulatory text and not the Economic and Fiscal Impact Statement. Nevertheless, DTSC refers the commenter to the discussion of Chemical and Production Information in Article 1 in the response to comments to the

April 2013 version of the proposed regulations. DTSC is making no change to the regulations in response to this comment.

**Comment:** 3-10

Comment Summary:

The comment expresses the concern that Attachment 2, “Economic Analysis of California’s Green Chemistry Regulations for Safer Consumer Products”, to the Std. Form 399 states, “Manufacturers that are found to produce products that contain Chemicals of Concern are likely to suffer sales losses when this information becomes public knowledge.” The commenter’s concern is that this statement in Attachment 2 seems to be in direct conflict DTSC’s contention that the proposed Safer Consumer Products regulations are process regulations and have no significant impact.

Response:

DTSC respectfully disagrees with these comments. As described above, the proposed Safer Consumer Products regulations are process regulations. DTSC will not be identifying Priority Products until it releases its proposed Initial Priority Products List within 180 days after these regulations are adopted. If DTSC failed to release the Priority Products Listing regulations, no such sales losses would occur. Additionally, DTSC in its Attachment 1 to the Std. Form 399 states that the “Economic Analysis of California’s Green Chemistry Regulations for Safer Consumer Products” is attached but that it discusses the impacts of the entire Safer Consumer Products program including the factors impacting the costs and benefits of future Priority Product Listing regulations. Finally, the commenter has failed to quote the statement in Attachment 2 in its entirety. Below is the complete discussion.

“Manufacturers which are found to produce products that contain priority chemicals are likely to suffer sales losses when this information becomes public knowledge. However, claims that such losses represent social costs of regulation are false since this shifting consumer demand represents a transfer to other firms that produce safer alternatives and will gain sales as consumers substitute toward safer products.”

DTSC is making no change to the regulations in response to this comment.

**Comment: 4-17**

## Comment Summary:

This comment expresses the concern that DTSC cannot do an economic analysis because it does not know what the program will look like.

## Response:

DTSC respectfully disagrees with this comment. The Safer Consumer Products regulations comply with the mandate of Assembly Bill 1879 (Ch.559, Stats. 2008) that DTSC promulgate regulations that establish the processes that DTSC and businesses must follow when DTSC identifies and prioritizes Chemicals of Concern and designates Priority Products. DTSC has gone through a lengthy process to engage stakeholders in designing the processes required by the statute. The proposed regulations clearly outline the processes DTSC and businesses must follow as Priority Products are listed. DTSC is making no changes to the regulations in response to this comment.

**Comment: 4-19**

## Comment Summary:

This comment expresses the concern that DTSC is so wedded to the approach outlined in this regulation that it will not change the regulations no matter what it learns about the true costs and economic impacts of the proposed regulations.

## Response:

DTSC respectfully disagrees with this comment. Throughout the processes, the responsible entity and DTSC have to consider the economic feasibility of specific actions taken. Further, an important factor of the proposed regulations is that they limit the initial Priority Product List to five Priority Products. This limitation allows DTSC to evaluate the processes in the proposed regulations and if there are cost efficiencies or other changes that would improve upon the implementation of the regulations, those changes could be incorporated into amendments to these proposed regulations. Perhaps more importantly, DTSC has made numerous changes to the proposed regulations in response to stakeholder input. These changes have resulted in a proposed rulemaking that is clearer, more flexible, and easier to comply with than prior iterations. DTSC is making no change to the regulations in response to this comment.

**Comment: 5-2**

## Comment Summary:

This comment expresses the concern that DTSC has stated that it cannot meet its statutory responsibility to estimate impacts to California's businesses, small businesses, jobs, competitiveness and/or individuals due to the number of "unknowable" factors in the Safer Consumer Products Program. DTSC ignores the readily available data in other jurisdictions and from industry despite DTSC statements that the Safer Consumer Products Program is largely comparable to other programs.

## Response:

DTSC respectfully disagrees with this comment. As stated in the first response to the initial set of comments in this document as well as the first response to the initial set of comments in DTSC's Response to Comments on the July 2012 Economic and Fiscal Impact Statement, DTSC has fully met the requirements under the APA to assess the economic and fiscal impact of these regulations. Further, DTSC has looked at other programs, both federal and international, and consulted with industry on the cost impacts of these regulations.

DTSC acknowledges that there are still some unknowable factors related to implementation of the proposed Safer Consumer Products regulations. However, as stated in Attachment 1 to the Std. Form 399,

"These regulations allow DTSC to request from one or more chemical or product manufacturers, importers, assemblers, and/or retailers to provide existing information or to generate new information based on a schedule developed by DTSC. The information requested may be any information about any chemical or product, not just those products that are covered by the regulations, that DTSC determines is necessary to implement the regulations. DTSC is also required to seek chemical and product information that is already available in the public domain. Because DTSC has not determined the extent of chemical and product information needed to implement these regulations or determined what is available in the public domain, DTSC cannot know the number of businesses or the percentage of the businesses that are small businesses from which it may request information."

However, when DTSC releases the Priority Product Listing proposed regulations for public comment, many of the specifics that DTSC needs to prepare the initial Economic and Fiscal Impact Statement for those regulations will be known. Therefore, DTSC's

initial Economic and Fiscal Impact Statement for the Priority Product Listing regulations will be more precise. Further, DTSC is expecting that public comments from industry and other stakeholders will enable DTSC to improve upon the Economic and Fiscal Impact Statement attached to the final Priority Product Listing Regulations. DTSC is making no changes to the regulations in response to this comment.

**Comments:** 8-6, 8-7

Comments Summary:

These comments express concern that nothing in the April 2013 version of the regulations state that DTSC must follow the APA requirements for conducting an Economic and Fiscal Impact Statement for the Priority Product Listing regulations. Additionally, the comments state that the April 2013 version exempts the initial Priority Product Listing from the APA.

Response:

DTSC respectfully disagrees with these comments. Section 69503.5(a)(2) of the proposed regulations states “The Priority Products list shall be established and updated through rulemaking under the Administrative Procedure Act (commencing with Government Code Section 11340).” This statement requires DTSC to follow the APA process in its entirety. The APA process requires State agencies to prepare Economic and Fiscal Impact Statements. DTSC will follow all of the regulations that the Office of Administrative Law and the Department of Finance adopt related to requirements under the APA, including the Economic and Fiscal Impact Statement requirements.

The second sentence in section 69503.5(a)(2) of the proposed regulations states “Except as provided in section 69503.6, the Department shall hold one or more public workshop(s) to provide an opportunity for comment on candidate product-chemical combinations prior to issuing a proposed Priority Products list.” This provision requires DTSC to hold a public workshop on product-chemical combinations DTSC is considering for possible listing as Priority Products. This allows interested stakeholders to comment on the product-chemical combinations **before** DTSC proposes Priority Product List regulations for public comment. The only exception to the requirement to provide an opportunity for public comment on the product-chemical combinations before DTSC adopts the proposed Priority Products List Regulations is for the Initial Proposed Priority Products List. DTSC is allowed to public notice through the APA process the Initial Priority Product List, including an Economic and Fiscal Impact Statement, without having a public workshop on product-chemical combinations being considered. This is

not a violation or exception to the APA. DTSC is making no changes to the regulations in response to these comments.

**Comments:** 3-9, 4-13, 5-11, 5-13, 7-3, 7-9, 8-5, 8-37, 13-10

Comments Summary:

These comments express concern with Attachment 2, the “Economic Analysis of California’s Green Chemistry Regulations for Safer Consumer Products” by Matthew E. Kahn, Ph.D., University of California, March 2012. The comments claim that it is irrelevant, old, outdated, contradicts statements in Attachment 1 and therefore should be eliminated from the Economic and Fiscal Impact Statement; revised to address the time it may take for manufacturers to transition to safer consumer products due to the need to meet other regulatory agency requirements; or totally revised to articulate risks, produce a range of possible outcomes, noting both the potential “optimistic” upside of the policy as well as costs should such a rosy scenario fail to occur.

Response:

DTSC agrees that certain elements of the “Economic Analysis of California’s Green Chemistry Regulations for Safer Consumer Products” are outdated. In Attachment 1 to the Std. Form 399, DTSC includes the following:

“...In preparing the Std. Form 399, DTSC has indicated the private sector impacts of the proposed SCP [Safer Consumer Products] regulations. This Attachment 1 provides additional information concerning those responses as well as provides factors that will affect the private sector when Priority Products are listed in subsequent rulemakings.

Attachment 2 to the Std. Form 399, “Economic Analysis of California’s Green Chemistry Regulations for Safer Consumer Products,” is a report containing a detailed discussion of the Economic Impacts of the entire Safer Consumer Products Program, including subsequent rulemakings.”

Attachment 1 clearly informs the reader that Attachment 2 provides information related to the future Priority Product Listing regulations. Further, DTSC attempted to identify those aspects of Attachment 2 that were outdated. For example, under the heading “A.3. Number of businesses created or eliminated, A.5. Number of jobs created or eliminated and the types of jobs or occupations impact”, in the discussion “Impacts that can/will be more specifically identified and evaluated as part of future APA rulemaking

processes for the proposed listing of product-chemical combinations as Priority Products”, DTSC stated:

“The requirement for certified assessors and accreditation bodies has been eliminated. Therefore, all information associated with accredited third-party assessors should be disregarded in Section 3.4 ‘Costs of Alternatives Analysis’, ‘Economic Analysis of California’s Green Chemistry Regulations for Safer Consumer Products’, Attachment 2.”

DTSC does not concur with the request that Attachment 2 be updated to reflect the current regulation. Attachment 2 provides factors that would affect the economic impact of the entire Safer Consumer Products Program. With a few minor exceptions, many of these factors are still applicable. DTSC sees no benefit in having Attachment 2 updated to discuss just the economic factors related to the proposed Safer Consumer Products regulations because DTSC believes that the Std. Form 399 and the accompanying Attachment 1 adequately address the requirements of the APA.

While Attachment 2 could be updated to make minor changes to terminology and delete a few sections to be consistent with the proposed version of the regulations, there would not be sufficient benefit to justify the cost. When DTSC releases for public comment the initial Priority Product List regulations, the Economic and Fiscal Impact Statement accompanying that regulation package will be much more specific than Attachment 2 could ever be because many of the “unknowable” facts now will be known when the proposed Priority Product listing regulations are noticed and adopted. For the same reasons, DTSC does not see a benefit in revising Attachment 2 to address perceived inadequacies in the document in its description of the factors that will impact costs of future Priority Product List regulations.

DTSC does not concur that Attachment 2 should be deleted from the Economic and Fiscal Impact Statement for these regulations because along with the additional information in Attachment 1, Attachment 2 helps to explain the entire Safer Consumer Products program. The overview of the entire Safer Consumer Products program could be especially beneficial to those parties that have not been following the proposed regulations closely. DTSC is making no change to the Economic and Fiscal Impact Statement or the proposed regulations in response to these comments.

**Comment:** 13-8

Comment Summary:

This comment expresses concern that the Std. Form 399 does not specifically reference Attachment 2 and that Attachment 2 should be formally referenced on the Std. Form 399.

Response:

DTSC respectfully disagrees with this comment. DTSC did not specifically reference Attachment 2 on the Std. Form 399 because the specific responses on the Std. Form 399 are directly related to the Safer Consumer Products proposed regulations and further explained in Attachment 1. DTSC referenced Attachment 2 in Attachment 1 because Attachment 1 exceeds the requirements of the APA by providing information on the potential impacts of the future Priority Product Listing regulations, and Attachment 2 has a more thorough discussion of the future impacts of the Safer Consumer Products regulations. DTSC is making no changes to the Std. Form 399 or its attachments in response to this comment. DTSC is making no changes to the regulations in response to this comment.

**Comment: 6-1**

Comment Summary:

This comment expresses the opinion that the Std. Form 399 and its attachments have put the many “unknowable” factors into context and the commenter concurs with economic analysis in Attachment 2.

Response:

DTSC appreciates the comment and believes the Std. Form 399 and its attachments have done a good job of overviewing both the economic and fiscal impacts of the proposed Safer Consumer Products regulations as well as the factors that will need to be evaluated when the Priority Product List regulations are released for comment. DTSC is making no changes to the regulations in response to this comment.

**Comment: 11-2**

Comment Summary:

This comment concurs that the “Economic and Fiscal Impact” costs to industry cannot be described today for these regulations. As DTSC has indicated on the Std. Form 399, once a Product/Chemical combination is identified as Priority Product, there can be

many foreseeable and unforeseeable costs and risks in any substitution, even “simple” and “cheap” ones. At this time, costs should be assessed, but this must be done with people with deep knowledge of industry, manufacturing, and the impact of material change for meaningful numbers to be arrived at.

Response:

DTSC appreciates the information provided on what a “simple” substitute cost the electronics industry when the European Union adopted the “Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS) Directive. This report outlined numerous factors that DTSC will need to evaluate when preparing and Economic and Fiscal Impact Statement for the Priority Product List regulations. DTSC appreciates the recommendation on the qualifications we will need to seek in choosing someone to prepare the analysis. DTSC will be making no changes to the regulations as a result of this comment.

### **COMMENTS OUTSIDE OF THE SCOPE OF THIS COMMENT PERIOD PREVIOUSLY ADDRESSED IN THE RESPONSE TO COMMENTS FOR THE JULY 2012 VERSION OF THE REGULATIONS**

**Comments:** 8-4, 8-14, 8-16, 8-17, 12-8

Comments Summary:

The comments express concern that Attachment 2 to the Std. Form 399 negatively portrays industry with unsubstantiated generalizations that characterize industry as “profit seeking” with “agendas” based on the supposition that industry does not take responsibility for and knows little of the composition and safety of its products.

Response:

These comments are outside the scope of this public comment period because DTSC has not made any changes to Attachment 2, “Economic Analysis of California’s Green Chemistry Regulations for Safer Consumer Products” since the version issued with the proposed regulations in July 2012. Nevertheless, DTSC directs the commenters to the discussion “Other Economic and Fiscal Impact Statement Comments”, “Economic Analysis is Biased towards Industry,” in the Response to Comments on the July 2012 version of the regulations. DTSC is making no change to the regulations in response to this comment.

**Comments:** 8-36

Comment Summary:

This comment reminds DTSC that the European Union filed comments critical of the proposed regulation as well as a Technical Barrier to Trade (TBT) petition with the World Trade Organization.

**Response:**

This comment is outside the scope of this public comment period because DTSC has not made any changes to Attachment 2, "Economic Analysis of California's Green Chemistry Regulations for Safer Consumer Products" since the version issued with the proposed regulations in July 2012. Attachment 2 is the only document that discusses the import of goods. Nevertheless, DTSC directs the commenter to the discussion "Comments Outside Of The Scope Of This Comment Period Not Addressed In The Response To Comments For The July 2012 Version Of The Regulations," "The regulations impose burdens on the import of goods into California" in the Response to Economic and Fiscal Impact Statement Comments on the January 2013 version of the regulations."

For a detailed discussion of the Interstate Commerce implications of the proposed regulations, please refer to the "Procedural, Legal and Overarching Issues" portion of the Response to Comments document for the July 2012 version of the regulations. The heading "Interstate Commerce" identifies the pertinent portion. DTSC is making no change to the regulations in response to this comment.

**Comment:** 8-15, 12-11, 12-14

**Comment Summary:**

These comments express concern that numerous times throughout Attachment 2, there is a reference to "new rules of the game" suggesting that it is not already incumbent upon manufacturers to manufacture products that are safe for their intended use. What will be new is a regulatory framework that allows regulators to choose winners and losers in the marketplace.

**Response:**

These comments are outside the scope of this public comment period because DTSC has not made any changes to Attachment 2, "Economic Analysis of California's Green Chemistry Regulations for Safer Consumer Products" since the version issued with the proposed regulations in July 2012. Nevertheless, DTSC directs the commenter to the discussion, "Other Economic and Fiscal Impact Statement Comments," "Regulations allow regulators to pick winners and losers" in the Response to Comments for the July

2012 version of the proposed regulations. DTSC is making no change to the regulations in response to these comments.

**Comments:** 8-19, 8-28

Comment Summary:

These comments express concern that Attachment 2 makes a presumption that more information from a “trusted source” about product safety will drive consumers to make behavioral changes. This comment disagrees with the presumption that consumers will change behavior and identifies warning labels on cigarettes and alcohol and information on fast food as examples of consumers not heeding health and safety information.

Response:

These comments are outside the scope of this public comment period because DTSC has not made any changes to Attachment 2, “Economic Analysis of California’s Green Chemistry Regulations for Safer Consumer Products” since the version issued with the proposed regulations in July 2012. Nevertheless, DTSC directs the commenter to the discussion, “Estimated Benefits,” “Briefly summarize the benefits that may result from these regulations and who will benefit” in the Response to Comments for the July 2012 version of the regulations. DTSC is making no change to the regulations in response to these comments.

**Comments:** 8-21, 8-22, 12-9

Comments Summary:

These comments express concern that Attachment 2 ignores the fact that since intellectual property, confidential business information and trade secrets are not adequately protected, the regulations are a disincentive to innovation not an incentive as Attachment 2 suggests. The comments also express concern that Attachment 2 downplays the likelihood of the loss of trade secrets.

Response:

These comments are outside the scope of this public comment period because DTSC has not made any changes to Attachment 2, “Economic Analysis of California’s Green Chemistry Regulations for Safer Consumer Products” since the version issued with the

proposed regulations in July 2012. Nevertheless, DTSC directs the commenter to the discussions:

- “Estimated Costs”, “What are the total statewide costs that businesses and individuals may incur to comply with this regulation over its lifetime” in the Response to Comments for the July 2012 version of the regulations.
- “Estimated Benefits”, “Briefly summarize the benefits that may result from these regulations and who will benefit” in the Response to Comments for the July 2012 version of the regulations.
- The response on trade secrets in “Estimated Costs” discussed earlier in this document.

DTSC is making no change to the regulations in response to these comments.

**Comment:** 8-24, 12-13, 12-14

Comments Summary:

These comments express concern that Attachment 2 suggests that higher short run costs are justified by lower long run costs. Attachment 2 fails to recognize that companies that cannot tolerate the short run financial impact will not benefit from lower long run costs because such companies will no longer be in business.

Response:

These comments are outside the scope of this public comment period because DTSC has not made any changes to Attachment 2, “Economic Analysis of California’s Green Chemistry Regulations for Safer Consumer Products” since the version issued with the proposed regulations in July 2012. Nevertheless, DTSC directs the commenter to the discussion, “Estimated Private Sector Cost Impacts,” “What are the total statewide costs that businesses and individuals may incur to comply with this regulation over its lifetime” in the Response to Comments on the July 2012 version of the regulations. DTSC is making no change to the regulations in response to these comments.

**Comment:** 8-25

Comment Summary:

This comment expresses concern that Attachment 2 contradicts itself when it states impacts will be minimal because most manufacturing takes place out of California, yet California businesses will have an advantage in gaining market share.

**Response:**

This comment is outside the scope of this public comment period because DTSC has not made any changes to Attachment 2, "Economic Analysis of California's Green Chemistry Regulations for Safer Consumer Products" since the version issued with the proposed regulations in July 2012. Nevertheless, DTSC directs the commenter to the discussion, "Estimated Private Sector Cost Impacts," "Number of businesses that will be created or eliminated/Number of jobs that will be created or eliminated" in the Response to Comments on the July 2012 version of the regulations. DTSC is making no change to the regulations in response to this comment.

**Comments:** 8-26, 8-27, 8-28**Comments Summary:**

These comments express concerns that none of the factors identified in Attachment 2 (how well DTSC prioritizes chemicals, how many Priority Products DTSC identifies and how quickly they do so, how motivated firms are to test their products and develop safer alternatives, whether consumers will use the new risk information to reduce exposures) are well conceived in the proposed regulations and thus none of the purported societal or economic benefits conceived in Attachment 2 will likely occur.

**Response:**

These comments are outside the scope of this public comment period because DTSC has not made any changes to Attachment 2, "Economic Analysis of California's Green Chemistry Regulations for Safer Consumer Products" since the version issued with the proposed regulations in July 2012. Nevertheless, DTSC directs the commenter to the discussion, "Estimated Benefits," "Briefly summarize the benefits that may result from these regulations and who will benefit" in the Response to Comments on the July 2012 version of the regulations. DTSC is making no change to the regulations in response to these comments.

**Comments:** 8-29, 8-30, 12-12, 12-13**Comments Summary:**

These comments express concern that parallels drawn in the "Economic Analysis of California's Green Chemistry Regulations for Safer Consumer Products" between

Regulation, Evaluation, Authorization, and Restriction of Chemical Substances (REACH) and the proposed regulations are inaccurate and that the author lacks an understanding of REACH. Thus, any mitigation of the economic impacts of proposed regulations based on these flawed assumptions should be negated. Further, the comments express concerns that DTSC has stated that the costs to implement the proposed Safer Consumer Products regulations are “minimal” when small and medium business enterprises consider REACH one of the 10 most burdensome pieces of European Union legislation and these proposed regulations include the potential for full, robust Alternatives Analysis.

Response:

These comments are outside the scope of this public comment period because DTSC has not made any changes to Attachment 2, “Economic Analysis of California’s Green Chemistry Regulations for Safer Consumer Products” since the version issued with the proposed regulations in July 2012. Nevertheless, DTSC directs the commenter to the discussion, “Other Economic and Fiscal Impact Statement Comments,” “Flawed Comparison of the Regulations to the European Union’s REACH Program” in the Response to Comments on the July 2012 version of the regulations. Additionally, DTSC refers the commenter to the discussion in this document under “Estimated Costs” that discusses why the costs of the proposed SCP regulations are minimal. DTSC is making no changes to the regulations in response to these comments.

**Comment:** 8-31

Comment Summary:

This comment expresses concern that DTSC’s regulations allow concentration limits to be set on a case-by-case basis as opposed to REACH where 1.0% and 0.1% de minimis concentrations are applied. Thus, the assumption that compliance with REACH will equal compliance with the proposed regulations and would mitigate the economic impact is incorrect.

Response:

This comment is outside the scope of this public comment period because DTSC has not made any changes to Attachment 2, “Economic Analysis of California’s Green Chemistry Regulations for Safer Consumer Products” since the version issued with the proposed regulations in July 2012. Nevertheless, DTSC directs the commenter to the discussion, “Other Economic and Fiscal Impact Statement Comments,” “Flawed

Comparison of the Regulations to the European Union’s REACH Program” in the Response to Comments on the July 2012 version of the regulations. DTSC is making no change to the regulations in response to this comment.

**Comment:** 8-32

Comment Summary:

This comment explains that the obligation to comply related to Substances of Very High Concern (SVHC) in the case of the import of articles into Europe is to provide information to the consumer about the presences of the SVHC upon request if the SVHC is at levels above 0.1%.

Response:

This comment is outside the scope of this public comment period because DTSC has not made any changes to Attachment 2, “Economic Analysis of California’s Green Chemistry Regulations for Safer Consumer Products” since the version issued with the proposed regulations in July 2012. Nevertheless, DTSC directs the commenter to the discussion, “Other Economic and Fiscal Impact Statement Comments,” “Flawed Comparison of the Regulations to the European Union’s REACH Program” in the Response to Comments on the July 2012 version of the regulations. DTSC is making no change to the regulations in response to this comment.

**Comment:** 8-33, 12-15

Comments Summary:

The REACH framework allows for the demonstration for of the negative exposure even where Substances of Very High Concern may be known to be present in a finished article. This is in stark contrast to the proposed regulations where the mere presence of a substance in a product is presumed to result in exposure and triggers an Alternatives Analysis.

Response:

These comments are outside the scope of this public comment period because DTSC has not made any changes to Attachment 2, “Economic Analysis of California’s Green Chemistry Regulations for Safer Consumer Products” since the version issued with the proposed regulations in July 2012. Nevertheless, DTSC directs the commenters to the discussion, “Other Economic and Fiscal Impact Statement Comments,” “Flawed

Comparison of the Regulations to the European Union’s REACH Program” in the Response to Comments on the July 2012 version of the regulations. DTSC is making no change to the regulations in response to these comments.

**Comment:** 8-34

Comment Summary:

The comment expresses concern that the Economic Impact Analysis includes a presumption that “drop-in” alternatives are readily available from within the European market. The comment also expresses concern that the proposed regulations do not provide similar shared responsibility by the end user as is provided under REACH and that this responsibility under REACH plays a significant role in mitigating human and environmental exposure concerns.

Response:

This comment is outside the scope of this public comment period because DTSC has not made any changes to Attachment 2, “Economic Analysis of California’s Green Chemistry Regulations for Safer Consumer Products” since the version issued with the proposed regulations in July 2012. Nevertheless, DTSC directs the commenter to the discussion, “Other Economic and Fiscal Impact Statement Comments,” “Flawed Comparison of the Regulations to the European Union’s REACH Program” in the Response to Comments on the July 2012 version of the regulations. DTSC is making no change to the regulations in response to this comment.

**Comment:** 8-35

Comment Summary:

The comment expresses concern that REACH is a risk-based approach versus the strictly hazard based approach that is contemplated by the proposed regulations. REACH allows a hazardous substance to be retained in a product if over the life cycle of the product the risk of exposure to the hazardous substance is acceptable.

Response:

This comment is outside the scope of this public comment period because DTSC has not made any changes to Attachment 2, “Economic Analysis of California’s Green Chemistry Regulations for Safer Consumer Products” since the version issued with the

proposed regulations in July 2012. Nevertheless, DTSC directs the commenter to the discussion, "Other Economic and Fiscal Impact Statement Comments," "Flawed Comparison of the Regulations to the European Union's REACH Program" in the Response to Comments on the July 2012 version of the regulations. DTSC is making no change to the regulations in response to this comment.

**COMMENTS OUTSIDE OF THE SCOPE OF THIS COMMENT PERIOD NOT  
ADDRESSED IN THE RESPONSE TO COMMENTS FOR THE JULY 2012 OR THE  
JANUARY 2013 VERSION OF THE REGULATIONS**

**Comment: 8-18**

Comment Summary:

This comment expresses concern that Attachment 2 makes an unsubstantiated assumption that there will be an economic benefit to the State of California and consumers if industries, as a result of the proposed Regulations, are forced to understand the composition of their products better than they do today. According to the comment, most manufacturers already have a good understanding of what is in their products and use this information to provide information to consumers for the safe handling and use of the product.

Response:

This comment is outside the scope of this public comment period because DTSC has not made any changes to its Economic and Fiscal Impact documents since the version issued with the proposed regulations in July 2012.

However, DTSC respectfully disagrees that there will be no economic benefits to the State of California if manufacturers are "forced" to understand the composition of their products better than they do today. Assembly Bill 1879 (Ch. 559, Stats. 2008) and the proposed regulations are in response to the results of a study the Senate Environmental Quality Committee and the Assembly Committee on Environmental Safety and Toxic Materials commissioned from the University of California (U.C.) to investigate the current legal and regulatory structure for chemical substances and to report on how a California chemicals policy could address environmental and health concerns about chemical toxicity, build a long-term capacity to improve the design and use of chemicals, and understand the implications of European policy on the California chemical market.

The regulations are among the first comprehensive, state-level efforts to find safer alternatives to hazardous chemicals and are viewed as a potential national model for chemicals policy reform. The rulemaking is a preemptive strategy that reduces 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 a safer workplace. Healthier air quality, cleaner drinking water, and a safer workplace will convey economic benefits to California. The rulemaking also promotes transparency by compelling chemical manufacturers to provide sufficient information for businesses, consumers and public agencies to choose viable safer alternatives to hazardous chemicals used in consumer products. The future Priority Product List regulations will include more specific benefits, as the potential hazards from the use of the Priority Products will be known. DTSC is making no change to the regulations in response to this comment.

**Comment:** 8-20

Comment Summary:

This comment expresses concern that Attachment 2 incorrectly states that economic benefits will occur if the Priority Product reduces exposures to workers in the workplace. The comment states that the focus of the regulations is on the potential exposures to workers during the upstream manufacture of the consumer products. The comment expresses concern that no facts are presented to support this conclusion, that encompassing workplace exposures borders on inappropriate regulatory duplication and that no economic benefits will occur because such protections already exist.

Response:

This comment is outside the scope of this public comment period because DTSC has not made any changes to its Economic and Fiscal Impact documents since the version issued with the proposed regulations in July 2012.

However, DTSC notes the following sections of the regulations addressing products in the workplace support the discussion in Attachment 2. Section 69503.3 Adverse Impact and Exposure Factors addresses the factors that DTSC must consider when evaluating a product-chemical combination for potential listing as a Priority Product. Section 69503.3(b)(3) identifies, as one of the factors DTSC shall evaluate, “the household and workplace presence of the product...”. Section 69503.3(b)(4)(D)(3) addresses potential exposures to the Candidate Chemical(s) during the life cycle of the product including

uses of the product by “workers, customers, clients, and members of the general public who use, or otherwise come in contact with, the product or releases from the product in homes, schools, workplaces, or other locations.”

Further, the Safer Consumer Product regulations do not allow DTSC to address a consumer product that is already regulated by one or more federal or State programs that address the same potential adverse impacts, potential exposure pathways, and potential adverse and end-of-life effects that would be the basis for DTSC listing the product as a Priority Product. DTSC may list such a product as a Priority Product if the existing regulations do not provide the level of public health and environmental protection that is equivalent to or greater than the level of protection that would be potentially provided if the product were listed as a Priority Product. (See proposed section 69503.2(b)(2).)

Finally, all potential benefits from identifying a product as a Priority Product will be more specifically determined in the Economic and Fiscal Impact Statement accompanying the Priority Product List regulations. DTSC is making no changes to the regulations in response to this comment.

**Comment:** 13-9

Comment Summary:

This comment expresses concern that Attachment 2 has not considered the fiscal impact to manufacturers that have direct retail stores. Attachment 2 indicates, “retailers of products are unlikely to be significantly affected by the SCP [Safer Consumer Product] regulations because they can substitute and sell products that have not been regulated by DTSC.” Direct retail operations do not have the option to substitute and sell products that are not regulated by the Safer Consumer Product regulations. These retailers may have lost profits if DTSC seeks regulatory action to ban the use of a chemical in a product or require labeling of a product.

Response:

This comment is outside the scope of this public comment period because DTSC has not made any changes to its Economic and Fiscal Impact documents since the version issued with the proposed regulations in July 2012.

However, DTSC appreciates the input on the manufacturer direct retail stores. DTSC notes that while a manufacturer direct retail store may not have the option to substitute

and sell a safer comparable product and will lose sales; consumers will have the option of purchasing the safer comparable product at another retail establishment. The loss of sales to the direct retailer is an increase in sales to a non-direct retailer. Therefore there is not necessarily a loss of sales to the economy as a whole; instead there is a shift from one retailer to another. As needed, DTSC may need to address this issue in the Economic and Fiscal Impact Statement for a future Priority Product List regulation. DTSC is making no change to the regulations in response to this comment.



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