

**Attachment to the Economic and Fiscal Impact Statement (Std. Form 399)
Safer Consumer Products Regulations
Based on the April 10, 2013 Regulations**

This document supplements the Std. Form 399 for the Safer Consumer Products (SCP) regulations by providing additional information for some of the questions on the Std. Form 399. If the answer is complete on the Std. Form 399, the response is not repeated in this attachment.

ECONOMIC IMPACT STATEMENT

The Department of Toxic Substances Control (DTSC) has significantly revised the proposed SCP regulations since they were initially drafted in September 2010. The original draft SCP regulations covered the entire SCP program from prioritizing chemicals and products to listing priority products. In the preliminary Economic and Fiscal Impact Statement, DTSC was unable to provide dollar values for the estimated impacts to the private sector or the benefits of the regulations, as too many key factors were unknowable.

As currently proposed the SCP regulations establish a process for identifying and prioritizing chemicals and product-chemical combinations and a process by which chemicals of concern in products and their potential alternatives are evaluated to determine how best to limit exposure or to reduce the level of hazard posed by a chemical of concern. The proposed SCP regulations do not require the private sector to take any actions specific to any chemicals or products and these process regulations do not have any physical impacts to public health or the environment.

Using the process and prioritization factors set forth in these SCP regulations, DTSC will adopt a list of Priority Products for which manufacturers or other responsible entities must perform an alternatives analysis or take an alternate course of action. Whenever it lists Priority Products, DTSC will go through the rulemaking process pursuant to the Administrative Procedure Act (APA) (commencing with Government Code section 11340), including completion of an Economic and Fiscal Impact Statement (Std. Form 399) for those product-chemical combinations proposed to be listed as Priority Products. At the time that DTSC proposes specific Priority Products it will have sufficient information to provide much more specific responses to the questions asked in the Std. Form 399 (e.g., private sector impacts and benefits of the regulations) than is possible for these SCP process regulations.

Under the proposed SCP regulations, the only impacts to the private sector are that DTSC may request businesses to provide existing information or generate new information necessary to implement the regulations. DTSC is required to maintain and post on its website a "Response Status List" that identifies businesses that have been requested to provide information to DTSC and whether those businesses have provided the information, failed to make the information available, or have demonstrated to DTSC's satisfaction that the information is unavailable or cannot be produced.

In preparing the Std. Form 399, DTSC has indicated the private sector impacts of the proposed SCP regulations. This Attachment 1 provides additional information concerning those responses, and discusses 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.

A. *Estimated Private Sector Cost Impacts*

The proposed SCP regulations are process regulations and do not have any significant impacts on private sector costs.

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

The attached "Economic Analysis of California's Green Chemistry Regulations for Safer Consumer Products" does not include an estimate of the number of businesses impacted by the SCP Program or the total costs to the private sector. This is because it is not possible, due to the number of unknowable factors of the SCP Program, to make those estimates until implementation is under way. As DTSC goes through the rulemaking process to list Priority Products more of the factors will be known and DTSC will be able to develop a more detailed Economic and Fiscal Impact Statement.

DTSC cannot estimate private sector cost impacts (i.e., costs to perform alternatives analyses or take an alternative course of action) until specific product-chemical combinations are identified for proposed listing as Priority Products. Even then, DTSC may not be able to **definitively** determine the private sector impacts until the list is released and manufacturers of those products submit Priority Product Notifications to DTSC. Only then will DTSC know with certainty how many and which businesses will be impacted. Once the list of Priority Products is released, each business will need to decide if they will conduct an Alternatives Analysis or stop using the chemical of concern, replace the product or remove the product from California's stream of commerce. Additionally, DTSC will not be able to estimate which or how many businesses will be subject to each type of regulatory response until the Priority Products list is adopted, the manufacturers have completed their alternatives analysis and made a selection decision, and DTSC determines the regulatory response(s) needed for each selected alternative.

A.2. *Total number and types of businesses impacted and the number or percentage of total businesses impacted that are small businesses*

As explained below, DTSC cannot estimate the total number of businesses, or the percentage of total businesses, impacted by the proposed SCP regulations that are small businesses.

These regulations allow DTSC to request 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 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.

Businesses that would receive a request from DTSC for information are not required by the regulations to provide the information. However, DTSC is required to maintain and post on its website a "Response Status List" that will identify the responses (information provided, information not provided, or business was unable to provide information) to the request and which businesses were subject to the request.

DTSC may request the information from businesses in California and outside of California including businesses located out of the country.

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

The businesses or entities responsible for complying with the priority product rulemakings include:

1. The manufacturer of a listed consumer product, including the business that controls the manufacturing process, or has the capacity to specify the use of chemicals in, a product;
2. The importer;
3. The assembler; or
3. The retailer.

The SCP regulations place the primary responsibility for complying with the future priority product regulations on the manufacturer. If the manufacturer of the consumer product does not comply, the importer of the consumer product is required to comply. Assemblers or retailers of the consumer product are only required to comply if the manufacturer or importer of the consumer product fails to comply and DTSC notifies the assemblers/retailers of the manufacturers' and importers' failure to comply. Assemblers/retailers have the option to cease ordering the product in lieu of complying with the requirements of the regulations.

The SCP regulations place requirements on these businesses in two major ways, which are described below:

- (i) The SCP regulations require that once DTSC has identified a product-chemical combination as a Priority Product, the responsible businesses must conduct an alternatives analysis for the product to identify and evaluate potential alternatives (which could be product redesign or reformulation or substituting a different product for the existing product), or take an alternate course of action. The initial list of Priority Products will be limited to no more than five (5) Priority Products. DTSC will have to adopt the final list of Priority Products with formal rulemaking. The proposed SCP regulations require DTSC to review and revise, as appropriate, the Priority Products List every three years.

DTSC cannot estimate how many or which businesses will be impacted (i.e., required to perform alternatives analyses or take an alternative course of action) until specific product-chemical combinations are identified for proposed listing as Priority Products. Even with a small initial list of Priority Products, DTSC may not be able to **definitively** determine how many businesses will be impacted until the list is released and manufacturers of those products submit Priority Product Notifications to DTSC. Only then will DTSC know with certainty how many and which businesses manufacturer listed Priority Products. Once the list of Priority Products is released, each business will need to decide if they will conduct an Alternatives Analysis or stop using the chemical of concern, replace the product or remove the product from California's stream of commerce. Additionally, DTSC will not be able to estimate which or how many businesses will be subject to each type of regulatory response until the Priority Products list is adopted, the manufacturers have completed their alternatives analysis and made a selection decision, and DTSC determines the regulatory response(s) needed for each selected alternative.

- (ii) Following completion of the Alternatives Analysis and a decision to retain or replace or redesign the Priority Product, the manufacturer of the product may be required to comply with a regulatory response specified by DTSC. Consistent with the statute, the SCP regulations identify a range of regulatory responses that DTSC may require. DTSC will not be able to estimate which or how many businesses will be subject to each type of regulatory response until the Priority Products list is adopted, the manufacturers have completed their alternatives analysis and made a selection decision, and DTSC determines the regulatory response(s) needed for each selected alternative.

In Section "4.2. Regulation's impact on existing California employment", of the Economic Analysis of California's Green Chemistry Regulations for Safer Consumer Products (Attachment 2), the author discusses the impacts to the California chemical industry from these regulations and future priority product regulations.

The businesses impacted by the SCP regulations would include businesses located outside of California that are involved in the supply chain for products sold in California. Since DTSC cannot estimate the total number of businesses impacted, DTSC cannot estimate the percentage of businesses that would be small businesses. However,

DTSC notes that businesses outside of California are treated the same as businesses located in California.

A.3. Number of businesses created or eliminated

A.5. Number of jobs created or eliminated and the types of jobs or occupations impacted

The proposed SCP regulations will not create or eliminate any businesses or jobs because these are process regulations.

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 cannot estimate the number of businesses or jobs that may be created or eliminated by the future priority product regulations for the same reasons that it cannot estimate the number of businesses impacted. See information above under A.2. Since the majority of product manufacturing takes place outside of California, the “Economic Analysis of California’s Green Chemistry Regulations of Safer Consumer Products” Report expects the short-run impacts to California businesses to be minimal. (See Attachment 2, Executive Summary.)

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

Section 4.2 “Regulations’ impact on existing California employment” and Section 4.3 “The Economic Incidence of the Regulations” of the “Economic Analysis of California’s Green Chemistry Regulations for Safer Consumer Products” Report discusses potential positive and negative impacts to jobs in California. (See Attachment 2.)

DTSC cannot estimate all the types of jobs or occupations impacted. Jobs in manufacturing have the potential to be impacted. Also, future priority product regulations have the potential to increase the demand for individuals trained in conducting alternatives analyses. Once product-chemical combinations are proposed for listing as Priority Products they will go the APA process. At that point, DTSC will be able to better quantify the number and types of jobs and occupations that will be impacted.

A.4. Geographic extent of impacts

The SCP regulations impact the entire State. However, impacts to businesses extend beyond California since the SCP regulations allow DTSC to request information from any business about any chemical or product.

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

The priority product regulations will impact businesses throughout the State. However, impacts to businesses extend beyond California since the SCP regulations definition of responsible entities extends to businesses outside of California.

A.6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

The proposed SCP regulations are process regulations and do not have any direct impacts on any chemical or product, therefore this regulation will not make it more costly to produce goods or services here.

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

Based on the definitions in the SCP regulations, priority product regulations will impact both California and non-California businesses producing goods for sale in California. Attachment 2 provides some factors on why California businesses may be more competitive than non-California businesses. (See Section 4.5 “Regulations’ impact on future job creation” of the “Economic Analysis of California’s Green Chemistry Regulations for Safer Consumer Products”, Attachment 2.)

B. Estimated Costs

B.1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime?

B.2. If multiple industries are impacted, what is the share for each industry?

DTSC is unable to estimate the total statewide dollar cost that businesses will incur in compliance with the proposed SCP regulations because too many factors are unknowable. DTSC is also unable to estimate the cost share for each industry for the same reason. However, adoption of the SCP regulations only impacts those businesses from which DTSC requests information. If a business already has the information that DTSC is requesting, then the costs to respond to the request are expected to be insignificant and would only include the costs of collecting the information and sending it to DTSC. If businesses are able to generate new data in response to information requested by DTSC, the cost to generate the data is expected to be minimal because businesses are not required to provide the information and would not do so if the costs were too high. Businesses may decide to generate the new data based on a request from DTSC if they believe there is a positive impact on their business from being listed as business responding to DTSC’s request for information on DTSC’s “Response Status List”. More information on estimated lifetime cost impacts will be available once product-chemical combinations are proposed for listing as Priority Products through the APA process.

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

Attachment 2, “Economic Analysis of California’s Green Chemistry Regulations for Safer Consumer Products”, does not include an estimate of the costs of the SCP regulations or the future priority product regulations. Attachment 2 describes factors that could increase or decrease a business’s cost of compliance with future priority products regulations.

DTSC cannot estimate the costs to businesses and individuals (i.e., costs to perform alternatives analyses or take an alternative course of action) until specific product-chemical combinations are identified for proposed listing as Priority Products. Even then, DTSC may not be able to **definitively** determine the cost impacts until the list is released and manufacturers of those products submit Priority Product Notifications to DTSC. Only then will DTSC know with certainty how many and which businesses and individuals will be impacted. Once the list of Priority Products is released, each business will need to decide if they will conduct an Alternatives Analysis or stop using the chemical of concern, replace the product or remove the product from California’s stream of commerce. Additionally, DTSC will not be able to estimate which or how many businesses will be subject to each type of regulatory response until the Priority Products list is adopted, the manufacturers have completed their alternatives analysis and made a selection decision, and DTSC determines the regulatory response(s) needed for each selected alternative.

Since the SCP program is focused on consumer products, multiple industries will be impacted. However, DTSC cannot estimate the share for each industry. Pursuant to the statute, the following consumer products are exempt from these regulations: dangerous drugs or dangerous devices, dental restorative materials, additional [medical] devices, food, pesticides, or the packaging associated with the pharmaceutical or medical and dental devices. (All of these terms have specific meanings set out in the authorizing statute.)

Due to the time allowed for firms to adapt to the proposed SCP regulations, the economic analysis states that the average firm has the opportunity to lower compliance costs. (See the “Executive Summary” and Section 5. “The Dynamics of a Firm’s Regulatory Compliance Costs” of the “Economic Analysis of California’s Green Chemistry Regulations for Safer Consumer Products”, Attachment 2.)

Section 3 “Direct Costs of this Regulation” (Attachment 2) discusses factors impacting the cost of testing chemicals of concern, the cost of testing and reporting for priority products, costs of alternatives analyses, and the costs of regulatory responses required by DTSC.

Section 4.1 “Effects on Consumers” (Attachment 2) discusses potential impacts to consumers of the SCP regulations.

Section 5.4 “Market share shifts: transfers vs. costs” (Attachment 2) includes a discussion of short run and long run impacts of the regulations on product manufacturers and consumers.

As discussed above, DTSC cannot estimate the costs to businesses and individuals until the processes (i.e., listing of priority products, completion of alternatives analyses, and determination of regulatory responses) outlined in the proposed SCP regulations are under way. However, many of the elements contained in an Alternatives Analysis (a major requirement that these SCP process regulations describe for products listed in future priority product regulations) are typically already undertaken by the manufacturers of products as part of research and development of new products or improvements to existing products.

The cost to perform an Alternatives Analysis to comply with the SCP regulations will depend on: what and how many alternatives and chemicals a responsible entity elects to consider; the scope and comprehensiveness of the analysis; the extensiveness of the testing necessary to demonstrate whether an alternative is functionally acceptable; and the availability of relevant alternative analyses available in the public domain. Additionally, the cost impact is expected to be lower if the responsible entity chooses one of the alternate means allowed in the regulations in lieu of performing an alternatives analysis using the procedures specified in the regulations. Costs to perform an alternatives analysis would also be different for responsible entities that choose to cooperate with other responsible entities and prepare a joint alternative analysis. After completing an Alternatives Analysis, the responsible entity can choose to retain, replace or redesign the existing Priority Product.

DTSC has received information from Alternatives Analysis practitioners that the costs of conducting an Alternatives Analysis would vary widely based on the scope of the Alternatives Analysis that is undertaken. A simple “single” chemical hazard analysis to look for a substitute chemical could cost as little as \$2,000 to \$3,000. A more comprehensive Alternatives Analysis involving the review of existing data without testing could cost in the tens of thousands of dollars. For example, the Toxics Use Reduction Institute (TURI) of Massachusetts performed an Alternatives Analysis for 5 chemicals: Lead, Formaldehyde, Perchloroethylene (PCE), Hexavalent chromium, di (2-ethylhexyl) phthalate (DEHP) for about \$50,000 per chemical. For each chemical, TURI identified the significant uses in manufacturing, consumer products and other applications, reviewed health and environmental effects, evaluated alternatives and their effects on employment and economic competitiveness associated with implementing the alternatives. More complicated Alternatives Analyses requiring testing could run into the hundreds of thousands of dollars. Responsible entities will be able to reduce individual manufacturer costs by participating in consortia enabling technical experts with strong experience with the products and materials of concern to collaborate to address single or multiple components or chemicals on behalf of multiple manufacturers.

B.3. If the regulation imposes reporting requirements, what are the annual costs a typical business may incur to comply with these requirements?

The SCP regulations do not require businesses to prepare reports. The regulations also do not impose any annual or other on-going reporting requirements on any businesses.

The SCP regulations do allow DTSC to request businesses to provide information to DTSC (using existing information or by developing new information), however there is no mandate for businesses to provide such information requested by DTSC.

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

Upon adoption of priority product regulations, there will be significant reporting requirements for those responsible entities that have a priority product. A responsible entity for a priority product will be required to notify DTSC that they have a priority product and provide the requested information outlined in the SCP regulations. Depending upon the course of action a responsible entity chooses to follow, the reporting requirements will vary. If a responsible entity decides to remove the chemical of concern from the priority product, cease producing the product or replace the chemical of concern with another chemical, then the responsible entity would be required to send one or more notifications including the required data and information to DTSC. If the responsible entity chooses to perform an alternative analysis there are several options that the responsible entity could choose. If DTSC determines that a regulatory response is required of the responsible entity there are additional reporting requirements depending upon the regulatory action DTSC requires. Finally, a responsible party would have information and reporting requirements to comply with in the event DTSC audits their activities or if the responsible entity disputes an action by DTSC or files a trade secret claim. For the reasons discussed under A.2 and B.1/B.2 of this attachment, DTSC cannot estimate the costs to businesses of providing requested information or reports until implementation is under way. When the proposed priority product listing regulations are released, DTSC will be required to provide an estimate of the costs to businesses of these reporting requirements.

B.4. Will this regulation directly impact housing costs?

The SCP regulations do not directly impact housing costs.

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

It is possible that a product used in housing construction would be listed as a Priority Product. However, at this time, DTSC is unable to estimate what, if any, impact the priority product regulations could have on housing costs. If a proposed priority product rulemaking has the potential to impact housing costs, the Economic and Fiscal Impact Statement for that rulemaking would identify the potential impact to housing costs.

B.5. Are there comparable Federal regulations?

There are no comparable federal regulations. The United States Environmental Protection Agency (USEPA) has some authority under the Toxic Substances Control Act (TSCA) to manage chemicals. For example, under TSCA, section 5(b)(4), USEPA has the authority to list chemical substances that present or may present unreasonable risk to health or the environment. USEPA has never exercised this specific authority in the 30 years since TSCA was enacted. A rulemaking is required to list any specific chemical substance as a priority chemical under TSCA. USEPA is developing chemical action plans for several chemicals. USEPA's chemical action plan for Bisphenol A includes considering a rulemaking under section 5(b)(4). USEPA also has the authority under TSCA, Section 6(a), to limit, prohibit, or regulate a chemical's manufacture, processing, distribution, use or disposal by a rulemaking if the chemical poses an unreasonable risk. The current USEPA Administrator has announced plans to revise and strengthen USEPA's chemicals management and risk assessment programs. USEPA has taken risk management actions for a number of chemicals including lead, mercury, and formaldehyde. USEPA is also initiating a rulemaking under section 5(a)(2) of TSCA to require prior notification to USEPA before new consumer uses of glymes.

DTSC is specifically required by statute (AB 1879, Chapter 559, Stats. 2008) to adopt regulations to establish a process for identifying and prioritizing chemicals of concern in consumer products and evaluating those chemicals and their alternatives for the purpose of making California consumer products safer.

C. Estimated Benefits

The SCP regulations only describe the processes DTSC will use to identify and prioritize priority products as required by Assembly Bill 1879 (Ch.559/Stats. 2008) as such the immediate benefits of these regulations are minimal. The direct benefits of these regulations are the information that DTSC will collect to help implement the program, the description of the processes DTSC will use in implementing the Safer Consumer Products program, and the guidance DTSC is required to develop.

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

Section 6 "Social Benefits of the Regulation" (Attachment 2) discusses various societal benefits that will occur as a result of implementing the SCP program and adopting priority product regulations. The extent of the health benefits or environmental benefits achieved depends on the potential of the chemical(s) of concern in the priority product to cause adverse public health and environmental impacts. Full implementation of the SCP program also provides an opportunity to advance environmental justice, as information on safer products will be more widely available. (See Executive Summary and Section 6, Attachment 2.)

D. Alternatives to the Regulations

D.1. List alternatives considered and describe them.

In developing the SCP regulations, DTSC has tried to minimize the impact on businesses by designing processes that:

1. Make responses to DTSC requests for information on chemicals and products optional instead of mandatory.
2. Provide options to extend compliance deadlines for priority products.
3. Allow businesses to meet the requirements for priority products through consortiums, partnerships and similar arrangements.
4. Provide guidance documents and sample alternatives analyses.
5. Provide exemptions for priority products containing contaminants below threshold amounts of chemicals of concern.
6. Provide flexibility in the alternatives analysis process.
7. Allow businesses to submit alternatives analyses that do not have all the required data. Businesses would only be required to fill data gaps if DTSC requires the additional data as a component of a regulatory response.
8. Allow businesses to avoid the alternatives analysis requirement by notifying DTSC that the chemical of concern has been removed from the product, the product has been replaced or that the product has been removed from the California stream of commerce.
9. Require DTSC to review public comments on the Final Alternative Analysis Report and only send to the responsible entity the relevant public comments for which the responsible entity is required to prepare responses in an Alternative Analysis Report Addendum.
10. Eliminate the requirement that manufacturers provide compensation to retailers and others that agree to participate in an end-of-life collection program for the priority product. Instead any potential compensation to retailers or other parties will be addressed by the affected parties as part of the agreement process for the end-of-life management program.

DTSC considered and rejected the alternatives described below:

1. *Do Nothing*. DTSC rejected this option because Health and Safety Code sections 25252 and 25253 *require* that DTSC adopt regulations to address chemicals of concern in consumer products. To do nothing would place Californians in jeopardy of continued exposure to chemicals of concern in consumer products when the average U.S. consumer already comes into contact with 100 chemicals per day.

To do nothing would also reject the California Legislature's direction to develop a broader, more comprehensive approach to chemicals policy for the State of California following the Green Chemistry Initiative's policy recommendation:

“Accelerate the Quest for Safer Products, creating a systematic, science-based process to evaluate chemicals of concern and identify safer alternatives to ensure product safety.”

Therefore, DTSC has rejected this option.

2. Products and Chemical Hazard Categories Prioritization Process to Develop Safer Consumer Products. While this alternative (described below) contains some conceptual merits that appear in the chosen alternative, DTSC has determined that this alternative, in its original form, is not viable.

To further develop this particular alternative, many meetings with stakeholders were held and DTSC evaluated numerous written comments and letters that were received in response to this alternative. This process was a continuous process between DTSC and stakeholders and in the end, transformed this alternative into the chosen alternative.

This alternative would require DTSC to identify product categories and chemical hazard categories. If a manufacturer produced a consumer product in a listed product category, the manufacturer would be required to evaluate the chemicals in the consumer product according to the chemical hazard categories and prioritize the chemical according to the scheme set out in regulations. Based on the chemical priority, the manufacturer would be required to make the chemical hazard characterization data available to its supply chain and/or conduct an alternatives analysis to develop a safer consumer product. A wide range of stakeholders objected to this approach because of its lack of specific DTSC oversight of various parts of the proposed process. Additionally, this approach did not fully comport with the requirements of the authorizing statutes.

3. Other Options Considered in Earlier Proposed Drafts of the Regulations. DTSC has released several drafts of the SCP regulations. A draft of the regulations was public noticed in September 2010, a revised version of the regulations was noticed in November 2010, an informal draft version was released in October 2011, a draft dated July 2012 was public noticed, a revised version was public noticed in January 2013, and the current version of the proposed SCP regulations was public noticed in April 2013. The following approaches contained in the originally proposed SCP regulations (September 2010) have been reconsidered by DTSC (November 2010, informal draft October 2011, draft noticed on July 2012, revised draft noticed in January 2013, and the proposed regulations noticed April 2013) and have been removed or revised for the reasons explained below:

- a. Two chemicals lists and two products lists --- The original proposed SCP regulations (draft dated September 2010) required DTSC to adopt a list of chemicals under consideration and then identify a subset of this list as priority chemicals. Subsequently, DTSC would be required to evaluate products containing priority chemicals to develop a list of products under consideration, and then identify a subset of this list as priority products for which alternatives analyses would be required. DTSC determined that adoption of two chemicals lists and two products lists is not necessary to achieve the objective of the statute authorizing and mandating these regulations. DTSC revised (November 2010) the originally proposed draft of the regulations to require DTSC to adopt one list of chemicals of concern, and then a single list of priority products from the universe of products containing chemicals of concern. In the November 2010 draft of the regulations, the list of priority products would be limited, until January 1, 2016, to children's products, personal care products, and household cleaning products. Upon adoption, the current proposed SCP regulations as well as the October 2011 informal draft regulations would establish an immediate list of approximately 1,200 chemicals based on work already done by numerous authoritative bodies. The proposed SCP regulations will enable DTSC to immediately start work on evaluation of products containing Candidate Chemicals. The current proposed regulations (drafts dated July 2012, January 2013, and April 2013) limit the initial list of Priority Products to no more than five (5) products.
- b. Notifications for early product reformulations --- The September 2010 draft of the proposed SCP regulations required that manufacturers who reformulated their products to remove chemicals of concern prior to their product being listed as a priority product provide a notification to DTSC about the chemical removal. Based on numerous comments received about this provision, DTSC determined that this requirement could have the unintended and undesirable effect of discouraging early reformulations that would lead to placing safer products into the California marketplace. However, the current proposed version (drafts dated July 2012, January 2013, and April 2013) of the SCP regulations allow notifications to be submitted for the removal of chemical, the removal of products or replacement of products in lieu of alternatives analysis once a product has been identified as a Priority Product.
- c. Detailed qualification requirements for entities and individuals allowed to perform alternatives analysis --- The September 2010 draft of the SCP regulations included detailed qualification requirements for businesses wishing to perform in-house or third-party alternatives analysis and for individuals in charge of the performance of alternatives analysis. These qualification requirements were not included in the November 2010 draft of the proposed SCP regulations because of concerns that there might not be sufficient numbers of qualified businesses and individuals to meet the demand, and that such a shortage would delay implementation of the alternatives analysis portion of the program. Drafts dated October 2011 and July 2012 of the proposed SCP regulations required that after

January 1, 2015 alternative analysis be performed by, and preliminary and final alternative analysis reports be prepared by, certified assessors. The proposed October 2011 and July 2012 draft SCP regulations also included a process by which DTSC designates entities as accreditation bodies. By providing a future date by which the alternatives analysis required preparation by a certified assessor, DTSC believed there would have been sufficient time to have qualified businesses and individuals available to meet the demand. However, DTSC has determined that the need for a certified assessor is unnecessary. The proposed SCP regulations dated January 2013 and April 2013 do not include the requirement for accredited certified assessors. DTSC believes that the alternative analyses review process coupled with the audit provisions will provide DTSC sufficient oversight over the work products that are submitted. In addition, DTSC anticipates working more closely with responsible entities in developing and amending alternative analyses. Responsible entities may conduct and prepare an in-house Alternatives Analyses and the associated reports without becoming or necessitating a certified assessor. Public review of Final Alternatives Analyses Reports and Abridged Alternatives Analyses Reports have been included in the proposed regulations to make use of stakeholder input to improve Alternatives Analyses content. DTSC will learn from the first years of implementation and adopt, if necessary, future regulations in the out years to address any training or educational requirements for individuals conducting alternatives analyses.

- d. Scope of entities responsible for compliance --- The draft dated September 2010 of the proposed SCP regulations defined “responsible entities” to include a number of businesses in the supply chain for each product (manufacturers, importers, distributors, and retailers). Both manufacturers and retailers raised a concern that this approach made it too confusing in terms of knowing who is responsible for complying with the requirements of the regulations. Commenters also expressed concerns about the length of time allowed for implementing a sales ban (if the retailer chose this option in lieu of complying with the regulatory requirements). The informal draft dated October 2011 and the July 2012 draft of the proposed SCP regulations assign primary compliance responsibility to the manufacturer or the business that controls the specifications and design of, or use of materials in, a product. If the manufacturer fails to comply, then the importer is required to comply. California retailers are only required to comply with the requirements of the regulations if the manufacturer and importers fail to comply, and only after this information is posted on the “Failure to Comply List” on DTSC’s website. A retailer may opt out by ceasing to order the product (but they may sell out any remaining inventory) and notifying DTSC that they have stopped ordering the product. The proposed SCP regulations dated January 2013 and April 2013 has eliminated assemblers from the definition of manufacturer and a new definition has been added for assembler. In the event that the manufacturer and the importer of the Priority Product component do not comply with applicable requirements, assemblers who use that component that is

listed as a Priority Product have the same option as retailers—they can comply with the requirements themselves, or cease ordering the Priority Product.

- e. Due diligence requirements for unintentionally added chemicals exclusion --- The draft dated September 2010 of the proposed SCP regulations provided an exclusion for products that contained only unintentionally added chemicals of concern. However, the September 2010 draft of the proposed SCP regulations required manufacturers to conduct a fairly rigorous due diligence effort to identify all chemicals contained in their products in order to qualify for this exclusion. Many commenters expressed the concern that the specified due diligence requirement could not practically be met, thus rendering the exclusion meaningless. The informal draft dated October 2011 and the July 2012 draft of the proposed SCP did not contain an exclusion for unintentionally added chemicals; however, these chemicals were a consideration for setting higher alternatives analysis threshold levels. The proposed SCP regulations dated January 2013 and April 2013 require that any chemical that is intentionally added to a product that is named as a chemical of concern in a Priority Product will be subject to the requirements of this regulation. However, the regulations also provide that DTSC may specify an alternatives analysis threshold for an intentionally added chemical of concern as part of the future priority product listing process.
- f. De minimis / Alternatives Analysis Threshold exemption process --- The draft dated September 2010 of the proposed SCP regulations provided an exemption for products containing only a de minimis amount of chemicals of concern, but required manufacturers to request DTSC approval in order to qualify for the exemption and to provide specified information and data in support of such an exemption request. To enable DTSC and manufacturers to focus their resources on those products and chemicals having a significant potential to cause adverse impacts to public health and the environment (i.e., those products containing chemicals of concern in excess of de minimis amounts), the informal draft dated October 2011 of the proposed SCP regulations made the de minimis exemption self-implementing, if the manufacturer notified DTSC of any products for which the manufacturer had made a de minimis determination. The July 2012 draft of the regulations changed the wording from “de minimis” to “Alternatives Analysis Threshold”. In addition, the informal draft dated October 2011 and the July 2012 draft required that the manufacturer provide substantiating documentation, including laboratory results, to DTSC as part of the exemption claim to enable DTSC to assess the validity of the claim. The proposed SCP regulations dated January 2013 and April 2013 allow the Alternative Analysis Threshold Exemption to be claimed if the chemical of concern is present in the Priority Product as a contaminant below the practical quantitation limit (PQL) and the responsible entity submits substantiating documentation, including laboratory results. Additionally, the regulations also provide that DTSC may specify as part of the future priority product listing process: (i) an alternatives analysis threshold for an

intentionally added chemical of concern; or (ii) an alternatives analysis threshold for a contaminant that is above the PQL.

- g. No exposure pathway exclusion criteria --- The draft dated September 2010 of the proposed SCP regulations provided exclusions for chemicals and products for which DTSC determined there was no exposure pathway. In the November 2010 draft, the “no exposure pathway” exclusion applied to a product if DTSC determined that there was no possible exposure pathway by which the chemical of concern in the product could result in a person or the environment being exposed to the chemical. The informal draft dated October 2011 eliminated the “no exposure pathway exclusion”, because of the difficulty of proving with certainty that absolutely no possible exposure pathway exists. However, exposure is still an important consideration in the chemical/product prioritization process.
- h. Hazard Traits --- In the November 2010 draft of the proposed SCP regulations, the chemicals that could be considered for the first chemicals of concern list would be limited to carcinogens, mutagens, reproductive toxins, and persistent bioaccumulative toxic chemicals appearing on a very short “list of lists”. For all subsequent chemicals of concern lists, consideration of carcinogens and reproductive toxins would continue to be limited to chemicals appearing on a very short list of lists. In the informal draft dated October 2011 and the July 2012 draft of the proposed SCP regulations, the list of hazard traits has been expanded to include all hazard traits and environmental and toxicological endpoints specified by the Office of Environmental Health Hazard Assessment in regulations that it adopted. Additionally, the universe of chemicals considered to be carcinogens and reproductive toxins is no longer limited to only those chemicals listed on a short list of lists. These changes were made to ensure that the program would be able to address the full range of chemicals in consumer products that pose adverse public health and environmental impacts, consistent with the intended scope and goal of the statute and the regulations. The July 2012 draft regulations establish an immediate list of chemicals using 22 existing lists that list: (i) chemicals on the basis of exhibiting at least one of seven hazard traits (carcinogenicity, reproductive toxicity, mutagenicity, developmental toxicity, endocrine disruptor, neurotoxicity, and/or persistent bioaccumulative toxicity); or (ii) chemicals that are of concern for water quality, air quality, or biomonitoring. The January 2013 and April 2013 proposed SCP regulations also establish an immediate list of chemicals with the addition of a 23rd list which lists chemicals that have been classified as respiratory sensitizers.
- i. Worker Exposure --- In the November 2010 draft of the proposed SCP regulations only service-provider worker exposures were specifically included in the product prioritization factors. The October 2011 informal draft of the proposed SCP regulations added worker exposure as a product prioritization factor. The draft dated July 2012 and the proposed SCP regulations dated January 2013 and April 2013 also include worker exposure as a product

prioritization factor, and make it clear that the term “public health” included occupational health. These changes were made to ensure that the program would be able to adequately address public health impacts for workers.

- j. Process to Evaluate Prioritization Factors --- The draft dated July 2012 and the proposed SCP regulations dated January 2013 and April 2013 added a new section to the regulations that explains the process by which DTSC is to evaluate the product prioritization factors to identify the products to include on the Priority Products List. This section was added in response to requests that there be greater clarity in the regulations as to how the product prioritization process would proceed.

D.2. Summarize the total statewide costs and benefits from this regulation and each alternative considered.

D.3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives.

The proposed SCP regulations are process regulations and there are no significant costs or benefits associated with these regulations.

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 cannot estimate the costs and benefits of future priority product regulations or alternative until specific product-chemical combinations are identified for proposed listing as Priority Products. Even then, DTSC may not be able to ***definitively*** determine the costs and benefits until the list is released and manufacturers of those products submit Priority Product Notifications to DTSC. Only then will DTSC know with certainty how many and which businesses and products will be impacted. Once the list of Priority Products is released, each business will need to decide if they will conduct an Alternatives Analysis or stop using the chemical of concern, replace the product or remove the product from California’s stream of commerce. Additionally, DTSC will not be able to estimate which or how many businesses and products will be subject to each type of regulatory response until the Priority Products list is adopted, the manufacturers have completed their alternatives analysis and made a selection decision, and DTSC determines the regulatory response(s) needed for each selected alternative.

While the alternative “Do Nothing” would not pose any additional regulatory costs, doing nothing would continue the exposure of the public and environment to harmful chemicals in products and would not fulfill the statutory mandate to adopt these regulations. Section 6 of Attachment 2 describes the factors that will impact the societal benefits of adopting the priority product regulations.

D4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs?

As required by the statute, the proposed SCP regulations are process regulations and performance standards are not applicable to this regulation.

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

Future priority product regulations would not mandate any specific technologies or equipment. The SCP regulations prescribe specific actions that responsible entities are required to perform when priority product regulations are adopted, but build in a great deal of flexibility regarding how the actions are to be performed. The regulations do include an Alternatives Analysis Threshold exemption process and chemical/product removal/replacement notification processes that exempt certain responsible entities from the requirement to perform an alternatives analysis. For those Priority Products that must undergo an alternative analysis, the regulations allow the responsible entity to use an alternate process that can be demonstrated as being equivalent to the process set forth in the regulations. However, in general, performance standards are not applicable to these regulations.

E. Major Regulations

E.1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million?

No, the proposed SCP regulations are process regulations and will not have any significant fiscal impact on business enterprises.

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 cannot estimate the costs of the future priority product regulations to California businesses (i.e., costs to perform alternatives analyses or take an alternative course of action and cost to implement regulatory responses) until specific product-chemical combinations are identified for proposed listing as Priority Products. Therefore, DTSC does not know at this time if those future regulations will result in costs to California businesses in excess of \$10 million.

These SCP regulations set forth the processes that businesses, who have a product listed in a future priority product regulation, must use to test products for chemicals of concern; conduct alternatives analyses; implement the selected alternative, if any, which could include product redesign, reformulation or substitution of a different product; and comply with any regulatory responses imposed by DTSC. Each of these requirements will impose costs on businesses.

In discussing the alternatives analysis requirements of these regulations with alternatives analysis practitioners and stakeholders engaged in conducting alternative analyses, a wide range of costs was projected depending on the complexity of the analysis. A *simple* single chemical alternatives analysis could cost as little as \$2,000 to \$3,000, a *moderately complex* alternatives analysis using existing data would be in the tens of thousands of dollars, and an alternative analysis of *greater complexity* requiring extensive testing could cost in the hundreds of thousands of dollars. The scope and complexity of the alternatives analysis that the responsible party elects to undertake will undoubtedly impact the costs as will the extent to which a responsible party is already engaged in performing alternatives analyses for its own research and development activities.

Without considering other costs associated with the future priority product regulations, overall costs for California businesses associated with the performance of alternatives analyses for the initial and subsequent lists of Priority Products could vary dramatically depending on a number of factors: (i) the number of products listed as Priority Products; (ii) the number of manufacturers of each product located in California (it is expected many will be out-of-state); and (iii) the scope and complexity of the alternatives analyses as determined by each individual manufacturer. (The costs to California businesses associated with compliance with any regulatory responses required by DTSC will also vary dramatically based on a similar set of factors.) For example:

Example #1: Two Priority Products listed – each product has 25 manufacturers – all manufacturers choose *simple* alternative analysis scope and approach
Estimated aggregate costs for all affected manufacturers*: \$125,000

Example #2: Three Priority Products listed – each product has 50 manufacturers – all manufacturers choose a moderately complex alternatives analysis
Estimated aggregate costs for all affected manufacturers*: \$7.5 million

Example #3: Four Priority Products listed – each product has 100 manufacturers – 50 manufacturers choose a moderately complex alternative analysis, and 50 manufacturers choose an alternative analysis of *greater complexity*.
Estimated aggregate costs for all affected manufacturers*: \$110 million

* *Many/most of the affected manufacturers would be non-California businesses.*

These costs would likely be greatly reduced to the extent responsible entities form consortiums to perform all or part of their alternatives analyses.

E.2. Briefly describe each equally effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed.

E.3. For the regulation and each alternative just described, provide the estimated total cost and overall cost-effectiveness ratio.

Not applicable.

FISCAL IMPACT STATEMENT

A. Fiscal Effect on Local Government

5. No fiscal impact exists because this regulation does not affect any local entity or program

The proposed SCP regulations are process regulations and will have no fiscal impact on local government.

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

The future priority product regulations address chemicals in products. Any fiscal impact from these future regulations to local agencies would likely be in the operating expense and possibly the equipment and capital outlay line items. (That is, there would be no direct costs imposed on local governments because the regulations only apply to manufacturers, importers, assemblers, and retailers of consumer products.) However, generally, DTSC does not expect the future priority product regulations to result in cost increases given the wide variety of products readily available at competitive prices. (Please see a more detailed explanation in Section B, immediately below).

Any costs incurred by local government agencies for the cost of goods would not likely be state-reimbursable because any increase in costs would not be unique to local government and would apply generally to all entities purchasing the same product.

Local governments could also be impacted if manufacturers are required to implement end-of-life management strategies for priority products. For certain products, the SCP regulations allow DTSC to require in the priority product regulations that the manufacturers of those products identify the roles and responsibilities of various parties, including government, throughout the life cycle of the product. Further, the priority product regulations require that the manufacturer of the product provide a financial guarantee mechanism for a sustainable end-of-life management program for the product. The SCP regulations allow multiple manufacturers to form a third-party product stewardship organization, funded by participating manufacturers, to provide local services to collect, recycle, or otherwise appropriately manage the product types that they manufacturer in common.

The goal is to transfer the costs of end-of-life product management programs to the manufacturers, with the understanding that manufacturers will likely pass these costs on

to consumers. Local governments implementing such programs in the future would not be required to incur any additional costs for which they are not reimbursed.

B. Fiscal Effect on State Government

4. Other

The proposed SCP regulations are process regulations that will have no fiscal effect on any other State agency other than DTSC.

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

COST OF GOODS

The future priority product regulations address chemicals in products. Any fiscal impact from these future priority product regulations to State agencies in general would likely be in the operating expense and possibly equipment and capital outlay line items.

However, generally, DTSC does not expect the priority product regulations to result in cost increases, given the wide variety of comparable safer products readily available at competitive prices. Product competition will provide the incentive for companies that redesign their products to keep prices for the redesigned products competitive. Competition will also ensure that State and local agencies, and other consumers, have a wide variety of products to choose from at competitive prices (even if a particular brand an agency or consumer is using is replaced with a higher price product).

It is important to note that nothing in the SCP regulations would force an agency to buy a particular product or to replace in-use items (e.g., carpet, furniture, or paint). Further, implementing the SCP regulations will have the benefit of making more information available for State and local agencies to inform them in making their own discretionary purchasing decisions for their environmentally preferable purchasing programs.

Even if DTSC ends up banning a product as regulatory response for a product listed in its future priority product regulations, significant cost impacts are not expected because comparable safer products should be readily available at competitive prices, and because economic feasibility is one of the key findings DTSC must make before imposing a ban on a priority product for which an alternative is not selected. In this use, economic feasibility means that there are safer alternatives to the product or product component that do not contain the chemical of concern that the manufacturer could choose without significantly impacting the manufacturer's operating margin.

Even if costs of some products do increase, products do not make up a significant proportion of most State agencies' operating budgets. Further, the benefits of using a safer product would outweigh any increase in price.

DTSC STATE OPERATIONS

DTSC has been redirecting staff and operating expenses for the past four fiscal years to develop these regulations and implement the Green Chemistry Initiative. For fiscal year 2012/2013 and ongoing, DTSC increased the amount of redirected resources so that sufficient resources are available to implement these proposed SCP regulations. DTSC has redirected a total of 39 positions as follows: 23 positions within the Pollution Prevention and Green Technology Program, 3 positions within the Environmental Chemical Laboratory, 3 positions within the Office of Legal Affairs, 4 positions within the Enforcement Program, and 6 positions within Information Technology. Total annual staff costs are \$4.8 million. DTSC also cut several vacant positions to supplement existing contract funds to budget a total of \$1.4 million for contracts and laboratory equipment required to implement the regulations. DTSC estimates its annual cost to implement these regulations will be \$6.2 million.

The fiscal impact is a conservative estimate based on a limited Priority Products List. As DTSC gains experience in implementing the regulations, resource needs could change as the Priority Product List expands and as DTSC identifies improvements and efficiencies.

C. Fiscal Effect on Federal Funding of State Programs***3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program***

The proposed SCP regulations are process regulations and will have no effect on federal funding of State programs.

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

Federal funds provide full or partial support for a wide range of programs administered by California State government. DTSC does not expect any decrease in federal funds to California as a result of implementing the priority product regulations.

Even if federal funds provided to State government agencies are used to pay for Priority Products, the future priority product regulations pose no risk/jeopardy to the receipt of federal funds. As discussed above in Section B, the implementation of the priority product regulations are not expected to increase costs or add a cost pressure since government agencies can switch to safer products of similar costs. Thus, the future priority product regulations also would not result in a redirection of federal funds from direct services to operating equipment and expenses.