
FINAL STATEMENT OF REASONS
**SAFER CONSUMER PRODUCTS REGULATIONS – LISTING CHILDREN’S FOAM-
PADDED SLEEPING PRODUCTS CONTAINING TDCPP OR TCEP**
AS A PRIORITY PRODUCT
FEBRUARY 2017

Department Reference Number: R-2014-03
Office of Administrative Law Notice File Numbers:
Z-2016-0627-03 and Z-2016-0926-07

UPDATE OF INITIAL STATEMENT OF REASONS

As authorized by Government Code section 11346.9, subsection (d), the Department of Toxic Substances Control (DTSC) incorporates by reference the Initial Statement of Reasons prepared for this rulemaking.

These regulations have been noticed three times for public review and comment:

45-Day Public Review and Comment Period:

The initial 45-day public notice and comment period for this rulemaking proposal began on July 15, 2016. The public hearing on the proposed regulations was held on August 29, 2016. This public review and comment period was originally scheduled to conclude on August 29, 2016. Due to problems with the online CalSAFER system, this comment period was extended two additional days and closed on August 31, 2016.

45-Day Public Review and Comment Period:

Following review of the problems with CalSAFER, the department decided to re-open the 45-day comment period. No changes were made to the originally proposed regulatory text. This public review and comment period commenced on October 7, 2016 and concluded on November 21, 2016.

15-Day Notice of Additional Changes:

Changes were made to the rulemaking text and a public review and comment period commenced on December 28, 2016 and closed on January 12, 2017.

In addition to the regulatory text first proposed in July 2016 and subsequently revised in December 2016, this Final Statement of Reasons reflects substantive and non-substantive changes made to the regulations following the second 45-day public review and comment period. Two non-substantive changes were made after the 15-day comment period. All changes in the regulation text are summarized below.

Section 69511. The proposed regulation as originally noticed to the public did not specifically describe the product-chemical combination listed as a Priority Product under this article. The section was separated into sections 69511(a) and 69511(b) and, for clarity, was amended to include the following language: “the following product-chemical combinations are listed as Priority Products: (1) Children’s foam-padded sleeping products containing tris(1,3-dichloro-2-propyl) phosphate (TDCPP) or tris(2-chloroethyl) phosphate (TCEP).”

Section 69511.1(a). The original section was separated into subsections (a)(1) and (a)(2) and revised to clarify the description of the proposed Priority Product.

The original text in Section 69511.1(a)(1) was amended to clarify the definition of the Priority Product and its intended use as being for “children” 12 years of age or younger.

Section 69511.1(a)(2) was previously section 69511.1(e) in the original proposed text. This text was moved to directly follow the description of the Priority Product since section 69511.1(a)(2) provides a description of products that are not included in the description of the Priority Product. Subsection (a)(2)(A) was amended to clearly indicate that mattress pads and mattress sets, as defined in title 16 Code of Federal Regulations parts 1632 and 1633 of the Consumer Product Safety Commission regulations, are excluded from the definition of the Priority Product. Subsection (a)(2)(B) was amended to add the word “upholstered” to clearly show that upholstered furniture is covered by the requirements of Technical Bulletin 117-2013. The original text of subsection (a)(2)(C) was amended to clarify the referenced flammability standard by including the following citation: “title 49 Code of Federal Regulations part 571.302 - Standard No. 302; Flammability of interior materials.”

Section 69511.1(b). Non-substantive word changes were made to improve the readability of the text.

Section 69511.1(c). The originally proposed text was revised by moving the description of toxicological endpoints associated with exposure of TDCPP to section 69511(d). The words “exposure to” were deleted.

Section 69511.1(d). This section is newly added and includes the description of toxicological endpoints associated with exposure to TDCPP that were moved from section 69511.1(c) in the original proposed rulemaking text.

Section 69511.1(e). The originally proposed text was revised by moving the description of the toxicological endpoints associated with exposure to TCEP. The words “exposure to” were deleted.

Section 69511.1(f). This section is newly added and includes the description of toxicological endpoints associated with exposure to TCEP that were moved from section 69511.1(d) in the original proposed rulemaking text.

Section 69511.1(g). This section was added to clarify identification of the Chemicals of Concern.

Section 69511.1(h). Non-substantive word changes were made for internal formatting consistency.

Authority citations. Health and Safety Code citations were added by necessity to make evident DTSC's regulatory authority.

NON-SUBSTANTIVE CHANGES MADE AFTER THE 15-DAY COMMENT PERIOD

Section 69511.1(c) and Section 69511.1(e). The words "exposure to" were deleted from these sections for the sake of clarity and in order to make the sentences grammatically correct. In revising sections 69511.1(c)-(f) to discuss hazard traits and toxicological endpoints separately, DTSC inadvertently used the same language to refer to both hazard traits and endpoints, although the "exposure to" language does not apply to hazard traits.

The deletions were made to remain consistent with the definition of "hazard traits" under title 22, California Code of Regulations, chapter 54, which describes hazard traits as "properties of chemicals that fall into broad categories of toxicological, environmental, exposure potential and physical hazards that may contribute to adverse effects in exposed humans' domesticated animals, wildlife, or in ecological communities, populations or ecosystems." The phrasing of this section incorrectly referred to a hazard trait as associated with an exposure when a hazard trait is a property of a chemical that exists regardless of an exposure to that chemical. A toxicological endpoint, on the other hand, is a measured adverse effect resulting from exposure to a chemical.

These sections are purely informational, as required by section 69503.5(b)(2)(A). The changes to the regulation text were made in recognition of the necessity for improved clarity and do not impact who is subject to the regulation, nor do they alter any responsibilities of those impacted by the regulation.

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.

ALTERNATIVES DETERMINATION

DTSC determined that no reasonable alternative considered would be more effective in meeting the purpose for which the action is proposed, nor would be as effective and less burdensome to affected private persons. Equally, none of the alternatives considered would be more cost-effective to affected private persons or as effective in implementing the statutory policy or other provision of law. DTSC did not receive any proposed alternatives that would lessen the impact on small businesses.

Chosen Alternative: DTSC determined that listing Children's Foam-Padded Sleeping Products Containing Tris(1,3-dichloro-2-propyl) Phosphate (TDCPP) or Tris(2-chloroethyl) Phosphate (TCEP) as a Priority Product is the most effective and least burdensome approach to meeting the mandates specified in Health and Safety Code sections 25252, 25253 and 58012. This option was selected because it allows DTSC to quickly and effectively achieve the goal of significantly reducing children's exposures to chemical flame retardants. DTSC estimates there are 35-50 manufacturers of children's foam-padded sleeping products who make or sell their products in California and may be affected by this proposed regulation. These manufacturers could individually spend from \$1,750 to \$40,000 to comply with notification and reporting requirements.

Considered and Rejected Alternatives:

Alternative 1. DTSC considered listing TDCPP or TCEP in all flexible polyurethane foam as a Priority Product but dismissed this option due to potential conflicts with existing state or federal flame retardant standards for a wide variety of foam product types. The Priority Product was narrowed to focus on children's sleeping products because there are no regulatory requirements that warrant inclusion of flame retardants in these products. DTSC did not quantify costs or benefits associated with this alternative, although it would have affected a greater number of manufacturers and costs would have exceeded those associated with the proposed regulation.

Alternative 2. DTSC also considered listing TDCPP or TCEP in nap mats only, but this alternative was dismissed because it would not result in the reduction of flame retardant exposure nor improvements to children's safety that DTSC is working to achieve. The Priority Product was expanded to include a variety of children's foam-padded sleeping products to achieve greater impact. DTSC did not quantify costs or benefits associated with this alternative. Although this alternative could have reduced the number of affected manufacturers and resulted in lower overall costs of the regulation, the benefits would also have been reduced, as fewer children would be protected.

ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

DTSC did not receive any proposed alternatives during the public comment period that would lessen any adverse economic impacts on small businesses.

SUMMARY AND RESPONSE TO COMMENTS

This section summarizes and responds to public comments submitted to DTSC on the proposed rulemaking.

As required by Health and Safety Code section 57004(b), the proposed regulation underwent External Scientific Peer Review. The three peer reviewers all agreed that DTSC had adequately supported the conclusion that there was potential for exposure to flame retardant chemicals in children's foam-padded sleeping products and that these exposures could potentially contribute to or cause significant or widespread adverse impacts to people, especially children. For a list of the External Scientific Peer Review participants, their findings, and DTSC's response, please refer to the March 15, 2016 External Scientific Peer Review Findings and DTSC's June 28, 2016 Response to the External Peer Review of the Proposal to List Children's Foam-Padded Sleeping Products Containing TDCPP or TCEP as a Priority Product.¹

DTSC received five written comments letters on the proposed regulation during the first 45-day comment period. DTSC received three oral comments during the public hearing on August 29, 2016. The hearing was recorded and a transcript of the hearing was placed in the rulemaking file. A list of commenters, their affiliations, and the number assigned to their correspondence is included in Table 1.

Since most of the comments received included more than one topic, DTSC identified and numbered the individual comments contained in each written and oral comment and grouped similar topics together in the responses below. For example, "1-1" refers to the first comment in the written comment letter numbered 1. For the purpose of orderly presentation, the comments have been categorized by topic headings.

Table 1. List of Commenters

	Commenter Name	Affiliation
1	Kristin Power	Consumer Specialty Products Association (CSPA)
2	Karyn Schmidt	American Chemistry Council (ACC)
3	Judy Levin, et al.	Californians for Toxic-Free Fire Safety

¹ https://www.dtsc.ca.gov/LawsRegsPolicies/Regs/Childrens_Foam_Sleeping_Products.cfm

	Commenter Name	Affiliation
4	Mark S. Fellin	The Juvenile Products Manufacturers Association (JPMA)
5	Mark S. Rossi, PhD	BizNGO
PH1	Tim Shestek	American Chemistry Council (ACC)
PH2	Alvaro Casanova	Californians for Toxic-Free Fire 24 Safety
PH3	Bill Allayaud	Environmental Working Group

The following summary addresses all submitted comments.

GENERAL COMMENTS

Comments: 1-1, 2-4, 2-10, 4-1, PH1-2, PH1-2

Comments Summary:

These comments expressed neither support nor opposition to the rulemaking.

Commenters:

- Noted that manufacturers have taken action to remove TDCPP and TCEP in children’s foam sleeping mats prior to the promulgation of this proposed regulation.
- Urged DTSC to continue or increase stakeholder engagement early in the process of identifying Priority Products.
- Asked DTSC to ensure that it has updated data about California availability of product-chemical combinations before proposing a Priority Product.

Response:

Stakeholder engagement is an important part of the Safer Consumer Products (SCP) program and Priority Product identification and evaluation process. Through public workshops and consultation with industry representatives, DTSC became aware early in the rulemaking process that many U.S. manufacturers have removed the flame retardants TDCPP and TCEP from children’s foam-padded sleeping products. DTSC decided to move forward with this rulemaking due to concern that some products may still contain TDCPP and TCEP. Despite reported reductions in the use of chemical flame retardants, particularly in the U.S. and Europe, studies have detected TDCPP and TCEP in multiple children’s products. These chemicals have also been widely detected in human tissues and bodily fluids, in house and office dust, and in the aquatic environment. Manufacturers located in countries with fewer limits on the use of flame retardants or who do not participate in recognized industry associations may continue to export products containing these flame retardant chemicals. These imported products are often offered for sale at discount stores frequented by bargain shoppers and the economically disadvantaged.

DTSC hosts workshops whenever the SCP program announces a new work plan, proposes a new Priority Product in regulation, or takes other significant steps where public input may be appropriate. These workshops provide the public an opportunity to discuss the scope and content of these achievements and seek feedback, data, and information from stakeholders. DTSC regularly reaches out to individuals, businesses, NGOs, academia, and industry organizations to discuss program activities, and to solicit feedback and data. DTSC also participates in a variety of other public events for interested parties, such as describing and providing updates regarding the SCP program, hosting meetings, or speaking at technical meetings.

DTSC strives to obtain updated data about California availability of product-chemical combinations before proposing to adopt a Priority Product in regulation. However, market information on specific products is sometimes difficult to obtain or is not publically available. DSTC encourages stakeholders to provide information on product-chemical combinations to assist in DTSC's evaluation of consumer products in California. DTSC made no changes to the regulation in response to these comments.

COMMENTS IN SUPPORT OF RULEMAKING

Comments: 1-1, 3-1, 3-2, 5-1, PH2-1, PH3-1, PH3-3, PH4-3

Comments Summary:

These comments are in support of the rulemaking proposal. Commenters:

- Appreciated that the primary goal of DTSC's SCP program is "to reduce people's exposure to toxic chemicals in consumer products."
- Agreed that DTSC's proposal meets California's standards for listing a Priority Product and noted that TDCPP and TCEP have the potential to cause adverse health and environmental impacts such as cancer and additional hazard traits, a large potential exists for widespread public exposure to TDCPP and TCEP, and children are an exposed sensitive subpopulation.
- Supported DTSC's proposal to list Children's Foam-Padded Sleeping Products containing the flame retardant chemicals TDCPP or TCEP as a Priority Product.
- Noted that flame retardant chemicals are not necessary in the children's products included in the Priority Product definition.

Response:

DTSC acknowledges the support offered by these comments. DTSC made no changes to the regulation in response to these comments.

INCLUSION OF ADDITIONAL FLAME RETARDANT CHEMICALS IN PRIORITY PRODUCT DEFINITION

Comments: 3-3, PH2-2, PH3-3

Comments Summary:

DTSC should list other hazardous flame retardant chemicals, especially the entire class of brominated, chlorinated, and non-halogenated aromatic phosphate flame retardant chemicals, which are Candidate Chemicals and are associated with health concerns.

Response:

DTSC appreciates the concern shown about the presence of other potentially hazardous flame retardants in children's products.

However, Section 69503.6(a) of the SCP regulations limited the Initial Priority Products list to only products with Candidate Chemicals listed on both a hazard trait list and an exposure potential list. At the time this regulatory proposal was initiated, TDCPP and TCEP were the flame retardants currently in use in children's foam-padded sleeping products that met this requirement.

DTSC is not constrained by this requirement for future Priority Product listings and may propose product-chemical combinations as Priority Products when a Candidate Chemical is only on one type of list. Additionally, DTSC has the discretion to amend previously adopted Priority Products to designate additional Chemicals of Concern through the rulemaking process as new information about the product-chemical combination becomes available. DTSC made no changes to the regulation in response to these comments.

INCLUSION OF ADDITIONAL CHILDREN'S PRODUCT TYPES IN PRIORITY PRODUCT DEFINITION

Comments: 3-3, PH2-3

Comments Summary:

DTSC should include a broader range of children's products in the Priority Product listing, such as high chairs, changing pads, strollers, infant swings, bouncers, hook-on chairs, and more.

Response:

DTSC understands that there are many foam-based children's products, but focused on the inhalation and dust ingestion exposure pathways during the evaluation process. These exposure pathways are relevant to babies, toddlers, and children who spend many hours sleeping on these products for extended periods of time on a daily basis. DTSC made no changes to the regulation in response to these comments.

USE OF THE TERMS "WIDESPREAD" AND "SIGNIFICANT"

Comments: 2-3, 2-5, 2-6, 2-7, 2-8, PH1-1

Comments Summary:

These comments raise concerns about the terms "widespread" and "significant."

Commenters stated that:

- The meaning of "widespread and significant exposure" is unclear and should be supported with substantial evidence to show that measured exposure levels of the identified substances in Priority Products currently on the market present an identifiable and significant risk to human health or the environment.
- DTSC should offer a process of reaching a determination of "widespread and significant exposure" that is based on evidence of actual, not assumed, exposure from the consumer product at issue relative to levels that are likely to present an actual risk to human health or the environment.
- DTSC should offer meaningful, objective, and scientifically accepted definitions of both "widespread" and "significant" that further the purposes of the statute.
- DTSC should take an approach to Priority Product rulemakings that recognizes the difference between widespread and significant exposures and adverse impacts; there may be no correlation at all.
- DTSC should avoid improperly correlating "widespread and significant exposure" to adverse effects.
- DTSC should note that "widespread or significant exposure" is not the same as evidence suggesting adverse impacts in connection with use of a consumer product.

Response:

None of these comments raised specific concerns or identified any specific deficiencies with the information used by DTSC to support the selection of this Priority Product, and therefore are not specifically directed at this proposed action or the procedures followed

by DTSC in proposing or adopting this action. DTSC made no changes to the regulation in response to these comments.

The data supporting the listing of this Priority Product were subjected to the External Scientific Peer Review process and were determined to be sound by scientists unaffiliated with the SCP program. These comments take issue with terms in the framework SCP regulations that became effective October 1, 2013, they do not pertain to this rulemaking.

DTSC designed the SCP regulations to apply a new approach to the regulation of chemicals in consumer products, particularly where exposure to the chemical is a concern but data gaps exist. DTSC recognizes that traditional chemical risk assessments can quantify potential impacts from chemical exposures and offer insights on how risks may be addressed when ample data are available. However, under this paradigm, we often realize too late that the presence of a chemical in a product causes significant public health or environmental impacts, yet regulatory action to address this issue is delayed until in-depth risk assessments are available to verify this link. In contrast, the SCP regulations require DTSC to demonstrate the *potential* for exposure to the Candidate Chemical(s) in the product and the *potential* for exposure to contribute to or cause significant or widespread adverse impacts to people or the environment. The term “potential” is a critical term because the regulations incorporate not only experienced harm but also address the possibility that a chemical could contribute to or cause harm. Section 69501.1(a)(51)(A) defines “potential” as “the phenomenon described is reasonably foreseeable based on reliable information.” Reasonably foreseeable is a term of art in law that means a reasonable person would be able to predict or expect the ultimately harmful results. This ensures that assessment of adverse impacts is based on both reasonable grounds and evidence. Another criterion for the determination of “potential” is that consideration must be based on reliable scientific information, which is defined in section 69501.1 of the SCP regulations to mean scientific studies or scientific information.

As required by section 69503.2(a) all product-chemical combinations proposed as Priority Products must meet both of the following criteria: 1) there must be potential exposure to public and/or aquatic, avian, terrestrial animal or plant organism to the Candidate Chemical in the product; and 2) there must be potential for one or more exposures to contribute to or cause significant or widespread adverse impacts.

DTSC must determine whether one or more exposures to a Candidate Chemical in the product have a potential to contribute to or cause significant or widespread adverse public health and/or environmental impacts. Evaluating the potential for significant

adverse impacts might include, for example, consideration of the Candidate Chemical's toxicity profile and/or its adverse impacts on sensitive subpopulations and/or sensitive environmental receptors. Similarly, the evaluation of the potential for widespread adverse impacts could include, for example, consideration of the Candidate Chemical's mobility in different types of environmental media or how widely the product is sold or used.

In some instances, the characteristics of the Candidate Chemical in the product may drive the listing as a Priority Product even though the exposure may be relatively small. As an example, if the toxicity of the Candidate Chemical is high and the product sources of the Candidate Chemical are numerous, the resulting aggregate exposures and adverse impacts may drive the Priority Product listing. In other cases, the exposure will drive the listing of the product even though the Candidate Chemical exhibits only moderate toxicity if, for example, its market presence and concentration in the product is relatively high.

Further discussion of the use of the terms "significant" and "widespread" can be found in the Initial Statement of Reasons, Final Statement of Reasons, and Response to Comments documents for the framework SCP regulations.

EXTERNAL SCIENTIFIC PEER REVIEW

Comment: 1-3

Comment Summary:

The commenter stated concern that there was a conflict of interest with one of the peer reviewers. For future rulemakings, the commenter suggested that additional consideration of perceived conflicts be conducted of peer reviewers.

Response:

The California Environmental Protection Agency (CalEPA) and its Boards, Departments, and Offices (BDO) entered into an Interagency Agreement with the University of California, Berkeley (UCB) to obtain external scientific peer review services. As part of this agreement, UCB identifies prospective peer reviewers based on the requests submitted by the BDOs and CalEPA evaluates the prospective scientific peer reviewers for potential conflicts of interest before accepting them as participants. BDOs do not know the identities or affiliations of the approved peer reviewers until the BDO receives the final peer reviews. DTSC is satisfied that the approved peer reviewers provided us with clear and unbiased feedback. DTSC made no changes to the regulation in response to this comment.

Comment: 2-1

Comment Summary:

This commenter expressed concern regarding the External Scientific Peer Review process and stated:

- DTSC should release the basis for the review and conclusions in a manner that allows for public review and understanding.
- The external scientific peer reviewers noted unclear links between exposure to the chemicals at issue in children's foam-padded sleeping products and potential body burden. DTSC program goals cannot be achieved without a clear understanding – and documentation – of exposures to relevant California populations from Priority Products; without this connection, health risk and potential adverse impacts cannot be understood.

Response:

The external scientific peer reviews, a memo describing the peer review process, and DTSC's response to the scientific peer reviews are publicly available on DTSC's regulation website as part of the rulemaking package subject to comments.²

DTSC shares a preference for direct evidence of exposure but cannot be constrained in making public health and environmental protection decisions because of the lack of precise quantitative exposure information. DTSC will consider any available and reliable scientific evidence of potential harm, actual harm, potential exposure, and actual exposure in the prioritization process.

The external scientific peer reviewers concurred that:

- Exposure to the flame retardants, TDCPP or TCEP, may contribute to or cause significant or widespread adverse impacts to people, particularly to infants, children, pregnant women, and school and day care workers; and
- People—particularly the sensitive subpopulations noted above—may be exposed to these chemicals through normal use, handling, or disposal of children's foam-padded sleeping products that contain one or both of these chemicals.

In addition to expressing support of DTSC proposed regulation, reviewers expressed concerns regarding the lack of quantitative hazard trait and exposure data and establishment of unclear links in DTSC's technical report between exposure to and

² https://www.dtsc.ca.gov/LawsRegsPolicies/Regs/Childrens_Foam_Sleeping_Products.cfm

potential body burden of TDCPP and TCEP directly attributed to children’s foam-padded sleeping products. However, as stated in the Response to Comments regarding Use of The Terms “Widespread” And “Significant” in this document, the SCP regulations require DTSC to demonstrate the *potential* for exposure to the Candidate Chemical(s) in the product and the *potential* for exposure to contribute to or cause significant or widespread adverse impacts to people or the environment. DTSC met these criteria.

External scientific peer review is an important component of the SCP regulations as it ensures that DTSC’s decisions are based on sound science. We are confident that the result of these peer reviews clearly demonstrate that DTSC has met the requirements for listing children’s foam-padded sleeping products containing TDCPP or TCEP as a Priority Product. DTSC made no changes to the regulation in response to these comments.

NOTICE OF PROPOSED ACTION

Comments: 1-4, 1-5, 2-9, PH1-3

Comments Summary:

The following comments were made regarding the Notice of Proposed Action (NOPA). Commenters stated:

- DTSC anticipates a wide-range of potential benefits in the NOPA without any meaningful manner of measuring the benefits; and
- The NOPA would be clearer if a reference to the Economic Analysis were noted to substantiate the economic impact claims made on page 5.
- The key word search to determine the inconsistency/incompatibility with existing state regulations was inadequate; DTSC should change its approach to reaching a determination of inconsistency/incompatibility with existing state regulations.

Response:

Section 11346.5(a)(3)C) of the California Rulemaking Law under the Administrative Procedures Act states that the NOPA shall include a policy statement overview which includes the specific benefits anticipated by the proposed adoption, amendment, or repeal of a regulation, “including, to the extent possible, nonmonetary benefits such as protection of public health and safety, worker safety, or the environment ...” This section does not require or suggest that benefits be measured or quantified.

DTSC appreciates the suggestion to provide a reference to the Economic Impact Statement (Std. 399) where economic impact benefits are discussed in the NOPA on page 5. However, the Economic Impact Statement (Std. 399) is discussed under the heading “Results of the Economic Impact Analysis” beginning on page 8 of the NOPA.

An internet search for information was one approach used in DTSC’s determination of inconsistency/incompatibility with existing state regulations and was complemented by in-depth staff and legal research. DTSC made no change to the regulation in response to these comments.

ECONOMIC IMPACT STATEMENT

Comments: 1-5, 2-2

Comments Summary:

The following comments were made regarding the Economic Impact Statement (Form 399). Commenters stated:

- DTSC should make significant effort to corroborate the economic effect of future rulemakings.
- The Economic Impact Statement (EIS) should be revised and enhanced. The EIS process used reveals flawed assumptions, a lack of supporting data, and improper selection of measures, including:
 - It improperly looks at the cost of manufacturing a material instead of the cost of manufacturing the finished consumer product;
 - It fails to hold performance constant;
 - It assumes non-flame retardant products will be the result of the regulation, but fails to offer any economic or fiscal analysis of the result of this scenario; provide assumptions and conclusions unsupported by data; some manufacturers choose or may choose to offer flame retardancy as a product feature that offers consumer benefits, and those benefits must have an economic measure that can be described in an EIS.
 - It fails to address costs of testing a substitute product for performance and safety; and
 - It fails to consider costs of the policy with respect to product trade-offs and sustainability objectives, including those mandated or incentivized by state law; the economic analysis fails to consider impacts on availability of material suitable for recycling and other end-of-life considerations.

Response:

DTSC met the requirements Section 11346.3 of the Administrative Procedure Act and prepared an economic impact assessment for a non-major regulation and provided all required information in the Economic and Fiscal Impact Statement (Std. 399). Section 11346.3 states that information required from a state agency for the purpose of completing the assessment may come from existing state publications. Following an extensive review, DTSC determined that the information needed for this assessment was not available in any public or private publications. To estimate potential economic impacts of the proposed Priority Product listing, DTSC surveyed industry experts and made assumptions on the economic impacts based on information provided by these experts. It is worth noting that one of the organizations surveyed, JPMA, commented on this rulemaking proposal, but did not take issue with DTSC's Economic and Fiscal Impact Statement.

The commenter did not provide any information to contradict the assumptions made in the Economic and Fiscal Impact Statement, and did not provide additional data on which to amend the Economic and Fiscal Impact Statement. DTSC made no change to the regulation in response to these comments.

ALTERNATIVES ANALYSIS

Comments: 1-2

Comments Summary:

The commenter noted concern that DTSC did not evaluate the Alternatives Analysis (AA) process, which will be required by this listing. The commenter also expressed concern that DTSC had not yet release the second Draft Alternatives Analysis Guide for public review; this complicates stakeholders' ability to fully understand the regulatory implications of the Priority Product listing.

Response:

Based on feedback DTSC received from the children's product industry, it is assumed that responsible entitles for this Priority Product will elect to the remove the Chemical(s) of Concern and submit a Removal/Replacement Notification rather than conduct an AA. This assumption is discussed in the Attachment to the Economic and Fiscal Impact Statement (Std. 399).

Further, the SCP regulations specify the requirements for conducting an AA in Article 5. The Alternatives Analysis Guide provides useful approaches, methods, resources, tools, and examples of how these regulatory requirements may be fulfilled, but does not supersede or augment the requirements in Article 5.

We recognize that when we issued this rulemaking, only the 1st phase of the AA guide had been released. A draft of the full AA Guide was released in December 2016 for public comment. DTSC will publish the final AA Guide before this rulemaking becomes effective. DTSC made no changes to the regulation in response to these comments.

DTSC COMMUNICATION STRATEGIES

Comment: 2-11

Comment:

These comments were in reference to DTSC's communication strategies. Commenters stated:

- "DTSC should develop a communications plan to better explain that Priority Products designations do not impugn the safety or benefits of affected products or chemistries."
- DTSC "should revisit its reliance on communications to initiate "market signals...[to] motivate manufacturers...to preemptively phase out Candidate Chemicals in products..." This is inappropriate. The Alternatives Assessment process is intended to offer a mechanism to avoid regrettable substitutions; early "market signals" bypass this mechanism."

Response:

We understand the concerns as stated and will take them into consideration during the development of future SCP work plans. DTSC made no changes to the regulation in response to these comments, which are not specifically directed at this proposed action.

Comment Letters
with Individual Comments Numbered

August 29, 2016

Ms. Barbara Lee, Director
Department of Toxic Substances Control
1001 I Street
Sacramento, CA 95814
(via CalSafer Web Portal)

**RE: Proposal to List Children’s Foam-Padded Sleeping Products
Containing TDCPP or TCEP as a Priority Product**

Dear Director Lee:

The Consumer Specialty Products Association (CSPA)¹ appreciates the opportunity to provide comments on the proposal to list children’s foam-padded sleeping products containing TDCPP or TCEP as a priority product under the Safer Consumer Products Regulation. CSPA and our member companies have participated throughout the years-long regulatory development process through submission of written comments and participation in public hearings and workshops/seminars.

CSPA members are committed to manufacturing and marketing safe products that are protective of human health and the environment while providing essential benefits to consumers. As stated in previous submissions regarding the Safer Consumer Products Regulation, CSPA and our members support the broad goals of the Green Chemistry Initiative and will continue to work with the Department and other stakeholders in the state to help spur innovation and continue to ensure that products are safe.

CSPA offers the following comments on the proposal to list children’s foam-padded sleeping products containing TDCPP or TCEP as a priority product:

We appreciate that a primary goal of DTSC’s Safer Consumer Products program is “to reduce people’s exposure to toxic chemicals in consumer products.” First, we note that manufacturers have taken action to remove TDCPP and TCEP in children’s foam sleeping mats prior to the promulgation of this proposed regulation. Our comments are focused on the regulatory process as it relates to future priority products listings.

1

¹ The Consumer Specialty Products Association (CSPA) is the premier trade association representing the interests of companies engaged in the manufacture, formulation, distribution and sale of more than \$80 billion annually in the U.S. of familiar consumer products that help household and institutional customers create cleaner and healthier environments. CSPA member companies employ hundreds of thousands of people globally. Products CSPA represents include disinfectants that kill germs in homes, hospitals and restaurants; candles, and fragrances and air fresheners that eliminate odors; pest management products for home, garden and pets; cleaning products and polishes for use throughout the home and institutions; products used to protect and improve the performance and appearance of automobiles; aerosol products and a host of other products used every day. Through its product stewardship program, Product Care[®], and scientific and business-to-business endeavors, CSPA provides its members a platform to effectively address issues regarding the health, safety and sustainability of their products.

CSPA has reviewed and commented on the first of two documents which DTSC will develop as part of its effort to provide guidance to responsible entities which will or might be required to conduct an alternative assessment (AA) on a Priority Product. CSPA again notes that the guidance document is robust on the factors to be considered but lacking clarity regarding its most basic processes for evaluating decisions made by a responsible entity. With regard to this proposed priority product listing, we are concerned that the AA process which will be required by this listing was not evaluated. Further, the second of the two AA guidance documents has not been released for public review and comment complicating the ability of stakeholders to fully understand the regulatory implications of the listing.

2

CSPA notes that Heather Stapleton, one of the peer reviewers of the Summary of Technical Information, is highly qualified as her research is referenced numerous times in the Technical Report. CSPA is concerned there may be a conflict of interest as three of her articles form a significant basis of report.² For future rulemakings, CSPA suggests additional consideration of perceived conflicts of interest of peer reviewers.

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In the Notice of Proposed Action (NOPA), DTSC is anticipating a wide-range of potential benefits without any meaningful manner of measuring the benefits.

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“The principle benefit of this proposed regulation is decreased exposure to TDCPP or TCEP in children’s foam-padded sleeping products to children, families, and childcare providers. Removing TDCPP and TCEP from children’s foam-padded sleeping products will lead to decreased concentrations of these chemicals in homes, day care centers, and schools. By reducing the potential for exposure to these flame retardants, particularly to children and employees of day care centers and schools, the potential for adverse health effects such as cancer, reproductive toxicity, developmental toxicity, and neurotoxicity will also be reduced. Because people are exposed to chemical flame retardants through the use of other common household products, including furniture and consumer electronics, DTSC is unable to quantify the potential health benefits that would accrue to children, families, and employees as a result of this regulation.”

CSPA notes economic impact highlighted on page 5 of the NOPA and suggests that this section would be much more coherent if a reference to the Economic Analysis were noted to substantiate many of the claims and recommends DTSC make significant effort to corroborate the economic effect of future rulemakings.

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

² Stapleton HM, Klosterhaus S, Eagle S, et al. (2009) Detection of organophosphate flame retardants in furniture foam and U.S. house dust. *Environmental Science & Technology* 43(19):7490-5.

Stapleton HM, Klosterhaus S, Keller A, et al. (2011) Identification of flame retardants in polyurethane foam collected from baby products. *Environmental Science & Technology* 45(12):5323-31 doi:10.1021/es2007462.

Stapleton HM, Misenheimer J, Hoffman K, Webster TF (2014) Flame retardant associations between children's handwipes and house dust. *Chemosphere* doi:10.1016/j.chemosphere.2013.12.100.

Ms. Barbara Lee
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Page 3

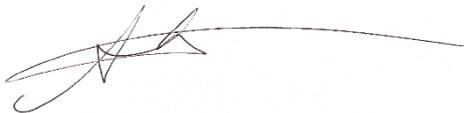
Conclusion

As DTSC moves to implement the Safer Consumer Products Regulation, we strongly recommend the Department review the lessons learned from this listing and determine where lessons learned can and should be applied.

We appreciate that DTSC has considered other programs with regulatory impact on the proposed priority products listing and urge DTSC to continue to address regulatory overlap to prevent unintended regulatory burdens on the regulated community.

Thank you for the opportunity to comment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. Bennett', with a long horizontal flourish extending to the right.

Steven Bennett, Ph.D.
Senior Director, Scientific Affairs & Sustainability

A handwritten signature in black ink, appearing to read 'Kristin Power', written in a cursive style.

Kristin Power
Vice President, State Affairs

cc: CSPA Scientific Affairs Committee Green Chemistry Task Force
CSPA State Government Affairs Advisory Committee
Nicole Quinonez, Randlett/Nelson/Madden



August 29, 2016

Mr. Benjamin Molin
Office of Legal Affairs
Department of Toxic Substances Control
1001 I Street
Sacramento, CA 95812-0806

Submitted online via CalSafer portal, <https://calsafer.dtsc.ca.gov>

RE: Comments of the American Chemistry Council on Safer Consumer Products Regulations – Listing Children’s Foam-Padded Sleeping Products Containing TDCPP or TCEP as Priority Product

Dear Mr. Molin:

The American Chemistry Council (ACC) submits the following comments on the Department of Toxic Substances Control’s (DTSC) proposal to amend the Safer Consumer Product (SCP) regulations to adopt the Priority Products list (article 11) and to add one Priority Product to that list. Our comments are directed to the rulemaking process generally, and the broader process of stakeholder engagement that informs the rulemaking process as well as selection of draft Priority Products and chemistries; we do not offer comments specific to the two flame retardants that are part of the product-chemical Priority Product designation.

The Peer Review Process Should be More Transparent.

ACC previously suggested that DTSC consider a peer-review process for Product Profiles. We view DTSC’s External Peer Review of this proposal to be a positive step. That said, DTSC should release the basis for the review and conclusions in a manner that allows for public review and understanding. The reviewers noted, for example, unclear links between exposure to the chemicals at issue in children’s foam-padded sleeping products and potential body burden, which is an important limitation in the technical record. DTSC program goals cannot be achieved without a clear understanding – and documentation – of exposures to relevant California populations from Priority Products; without this connection, health risk and potential adverse impacts cannot be understood.

1

The Economic Impact Statement Should be Revised and Enhanced.

We encourage DTSC to request a new process for preparation of the Economic Impact Statement (EIS) to ensure that SCP program objectives are met. The EIS process used here reveals flawed assumptions, a lack of supporting data, and improper selection of measures such that DTSC

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should consider requesting a revision in this rulemaking. Specific examples and discussion follow.

The EIS contains the following statement in Section A(2) (Estimated Private Sector Cost Impacts): "...it costs less to manufacture polyurethane foam without flame retardants than to produce foam with flame retardants." The Supporting Attachment offers additional detail. We are deeply concerned about the approach for such an "economic" review, which yields an inappropriate and unsupported conclusion. This approach makes several mistakes:

- **It improperly looks at the cost of manufacturing a material instead of the cost of manufacturing the finished consumer product.** The approach assumes that the cost comparison to be made in economic reviews is "material x containing chemical y" with "material x not containing chemical y." But this is not the correct comparison. To avoid loss of product function or performance, a manufacturer may need to add new components, materials, coatings, wiring, insulation, and so forth. Different product design, composition, and assembly may require more parts, more time and labor to assemble, more time to dry or cure, more or longer lab testing to ensure performance, and so forth.
- **It fails to hold performance constant.** The correct examination is between products of equivalent performance – here, children’s foam-padded sleeping products that offer equivalent fire resistance. Whether flame retardants are or are not required by regulation in these products is irrelevant for purposes of an economic and fiscal review.
- **It assumes non-flame retardant products will be the result of the regulation, but fails to offer any economic or fiscal analysis of the result of this scenario.** The EIS leaps from the statement that children’s products are not required by regulation to be flame retarded, coupled with a statement that it costs less to make foam without flame retardants than with it, to the conclusion that all manufacturers will therefore respond to the rulemaking by eliminating flame retardants. These assumptions and conclusions are unsupported in the EIS with data. Further, they make no economic sense, because some manufacturers choose or may choose to offer flame retardancy as a product feature that offers consumer benefits, and those benefits must have an economic measure that can be described in an EIS. An appropriate economic review would include this discussion.
- **It fails to address costs of testing a substitute product for performance and safety.** An alternative product formulation or design may trigger legally mandated or company required testing requirements. Cosmetics may need to be tested for function and allergies, for example. Manufacturers may need to test a new product formulation or design for consumer acceptance or appeal; if consumers do not like a new taste, smell or texture, for example, they will not buy the new formulation, which has an economic impact. New testing protocols may be lengthier and more expensive. A new design may need to be tested for safety; for example, products intended for dermal contact with people may be tested for allergic reactions.
- **It fails to include the full cost of reporting.** The economic analysis fails to take into consideration the full cost of reporting. Many products include recycled content that may have trace levels of the identified substances. Product manufacturers may face

significant testing and reporting requirements to measure the presence of the identified substances even though they may not be directly impacted.

- **It fails to consider costs of the policy with respect to product trade-offs and sustainability objectives, including those mandated or incentivized by state law.**

The economic analysis fails to consider impacts on availability of material suitable for recycling and other end-of-life considerations. Economic impact studies should consider life cycle consequences in their review. As Priority Products move through the process, there may be impacts, for example, on the availability of material on the recycling stream, or alternative products may be landfilled instead of recycled. If such considerations are not applicable, the EIS should indicate they were considered and not included in the review.

DTSC should seek revision of this specific EIS to address these issues. DTSC should consider developing tailored rules for conducting economic and fiscal reviews of subsequent Priority Product rulemakings that more closely supports the purposes of the SCP program.

The Meaning Of “Widespread And Significant Exposure” Should Be Supported With Substantial Evidence To Show That Measured Exposure Levels Of The Identified Substances In Priority Products Currently On The Market Present An Identifiable and Significant Risk To Human Health Or The Environment.

Section 25252 of the Health and Safety Code plainly states that the potential for exposure to the chemical “in a consumer product” is at the core of the program and the implementing regulations. Section 69503.2 of the implementing regulations makes clear that, for a product-chemical combination to be listed as a Priority Product, there must be potential for exposures from that product to contribute to or cause significant or widespread adverse impacts.

DTSC does present a determination that exposures to the chemicals at issue in the proposed Priority Products “may contribute to or cause significant and widespread adverse impacts.” But the underlying evidentiary basis for this determination is insufficient.

Most importantly, the EIS and Attachment state that many affected children’s product manufacturers no longer offer flame-retarded products for sale. If, as of September 2016, there are no products offered for sale in California that contain the flame retardants at issue, it is hard to see how DTSC could conclude that there is current, widespread and significant exposure to justify Priority Product designation.

DTSC also makes assumptions about the availability of flame retarded children’s products, but the agency does not present quantified data that the product-chemical combination is widely available for purchase in the U.S.; indeed, the EIS claims that many manufacturers no longer offer flame-retarded children’s products. It does not offer data specific to California product availability. Instead, it bases its determination on the “widespread detection” of the chemicals in indoor and outdoor environments with no connection made to the children’s products at issue. DTSC does not explain what “widespread detection” means. DTSC does not differentiate between the mere detection of a chemical, which can correlate to extraordinarily low levels of

human exposure (or none at all, if the route of human exposure does not correlate with the media in which environmental detection was made).

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At the end of this exercise, it is apparent that there is no factual basis presented upon which a rational conclusion can be reached that there is “widespread and significant exposure” to the chemicals at issue from children’s foam-padded sleep products in California.

Further, we are concerned that the proposal’s approach to determining “widespread and significant exposure” is so broad that it defeats the purposes of the statute; certainly the Safer Consumer Products law contemplates meaningful prioritization of chemicals, and there must be scenarios where exposure to a chemical does not implicate “widespread and significant exposure” for the SCP law to have integrity and meaning.

Aside from this immediate proposal, we urge the agency to:

- Ensure that it has updated data about California availability of product-chemical combinations immediately before proposing a priority product. This is particularly important where a market trend is underway to modify formulations or chemistries.
- Offer a process of reaching a determination of “widespread and significant exposure” that is based on evidence of actual, not assumed, exposure from the consumer product at issue relative to levels that are like to present an actual risk to human health or the environment.
- Offer meaningful, objective, and scientifically accepted definitions of both “widespread” and “significant” that further the purposes of the statute.¹
- The regulations are concerned with widespread and significant adverse impacts. DTSC should take an approach to Priority Product rulemakings that recognizes the difference between widespread and significant exposures and adverse impacts; there may be no correlation at all. DTSC should avoid improperly correlating “widespread and significant exposure” to adverse effects. Effects, or the risk of effects, should not be assumed for consumer products based on mere detection of a chemical in the environment or in biomonitoring data. Proposed rules should take account of this.
- Observe that “widespread or significant exposure” is not the same thing as where available evidence suggests that adverse impacts are not seen in connection with use of a consumer product, DTSC should take note of this.

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¹ DTSC may also wish to consider that if its definition of “widespread and significant” is so broad that everything will meet it, this could be considered an illegal delegation of legislative authority. It is axiomatic that a legislature may delegate regulatory authority to an executive branch agency as long as it specifies an “intelligible principle” to limit and guide the agency in the exercise of its discretion – but also that completely unfettered, unbounded delegations of authority do not stand.

DTSC Should Change its Approach to Reaching a Determination of Inconsistency/Incompatibility with Existing State Regulations and the Assessment of Where the Proposal May be in Conflict or Inadvertently Undermine other State Policy Objectives.

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DTSC explains that its review for “any statute regulations concerning the identification and regulation of Priority products” yielded nothing because “the only regulations concerning the identification and regulation of Priority Products are found in the SCP program.” DTSC explains that it searched California regulations using the keywords “chemicals in consumer products,” “Chemicals of Concern,” and “priority products” and the search yielded “no conflicting state regulations.” In our view, as a matter of process this keyword search looking for identical yet statutorily unique terms in other regulations is wholly inadequate. We can conceive of many cases when state regulatory programs may require or encourage, or otherwise regulate, the manufacture, use, or disposal of chemicals, materials, or products covered by a Priority Product Selection. For example:

- a chemical might be necessary for food preparation surfaces in restaurants to be able to meet sanitary standards. “Equipment food-contact surfaces and multiservice utensils shall be effectively washed to remove or completely loosen soils by the use of manual or mechanical methods necessary, such as the application of detergents containing wetting agents and emulsifiers, acid, alkaline, or abrasive cleaners, hot water, brushes, scouring pads, high pressure sprays, or ultrasonic devices.” California Retail Food Code, Part 7, 114097.
- a chemical might be necessary to meet California drinking water disinfection requirements.
- high-tech insulation products and engine oil additives might be critical to achieving policy objectives for reduction of greenhouse gases under AB 32.

Without speaking to the specific chemicals at issue, it is clear that DTSC’s process of conducting a “word search” review of generic and specialized terms contained in the primary regulations is inadequate to determine whether a proposed priority product regulation might be either inconsistent or incompatible with existing state regulations.

It is readily apparent that a key word search for “chemical of concern” would not be able to connect a specific chemical by name, category/family of chemicals, or description of the chemical by function with the relevant regulatory requirement. A more thorough and comprehensive analysis is needed.

DTSC Should Continue to Increase Industry Stakeholder Engagement.

ACC has previously recommend that DTSC engage industry stakeholders directly – particularly product manufacturers – to review and improve upon product-specific exposure and composition information prior to the release of the draft Priority Products and the associated documentation. As this proposal makes clear, it is just as important that DTSC maintain that engagement

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throughout the process. It does not serve the purposes of the statute to proceed with Priority Product rulemakings where manufacturers have phased out of chemistry. Likewise, it does not serve the purposes of the statute if exposures are not consumer product driven, but workplace related. If this engagement reveals that Priority Product designation is neither needed nor effective to “limit exposure or to reduce the level of hazard” in the consumer product, DTSC should not proceed to Priority Product rulemaking.

10 cont.

DTSC Should Develop a Communications Plan to Better Explain that Priority Products Designations Do Not Impugn the Safety or Benefits of Affected Products or Chemistries.

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The Department should revisit its reliance on communications to initiate “market signals...[to] motivate manufacturers...to preemptively phase out Candidate Chemicals in products...”² This is inappropriate. The Alternatives Assessment process is intended to offer a mechanism to avoid regrettable substitutions; early “market signals” bypass this mechanism. Scenarios may exist where California agencies ultimately want to encourage Californians and business to use particular product-chemical combinations due to health, environmental, safety, and sustainability benefits, and the SCP program should not impede that outcome.

ACC appreciates the opportunity to comment on this phase of SCP implementation. If you have any questions related to our comments, please contact me at Karyn_Schmidt@americanchemistry.com or 202-249-6130.

Sincerely,

Karyn Schmidt/SSB

Karyn Schmidt
Senior Director
Regulatory & Technical Affairs

² Background Memo: Approaches to Product Category Identification for the 3 Year Priority Products Work Plan, Green Ribbon Science Panel June 25, 2014, http://www.dtsc.ca.gov/SCP/upload/Work_Plan_Memo_GRSP_June2014.pdf

August 29, 2016

Submitted online via CalSAFER

Re: Safer Consumer Products Proposal to List Children’s Foam-Padded Sleeping Products containing TDCPP or TCEP as a Priority Product

On behalf of the undersigned organizations, thank you for the opportunity to comment on the Department of Toxic Substance Control’s Proposal to List Children’s Foam-Padded Sleeping Products containing the flame retardant chemicals TDCPP or TCEP as a Priority Product for the Safer Consumer Products Program. We have no financial interest in any of the products or chemicals which may be the subject of these comments.

Californians for Toxic-Free Fire Safety is a diverse coalition of groups dedicated to improving public health and safety by advocating for non-toxic alternatives to hazardous and untested chemicals. Our coalition participated in the recent process to update California’s furniture flammability standard. During this process, the California Bureau of Home Furnishings and Thermal Insulation (BHFTI) exempted juvenile products from flammability regulations because these products do not pose a fire hazard.¹

We support the Department’s proposal to list this product-chemical combination as a priority product. The proposal to list this particular combination is well-supported, as both potential adverse effects and potential exposure are well-established.²

However, while addressing TDCPP and TCEP in children’s foam padded sleep products is a good step forward, more work must be done. The health concerns reflected in this listing proposal are not limited either to this narrow product category or just these two flame retardant chemicals. In the future, the Department should ensure it has the ability to follow up on additional chemicals of concern in a product category that is the subject of a Priority Product rulemaking. For example, children’s sleeping products are not on the current work plan, and the Department cannot continue working on other flame retardant chemicals in children’s sleeping products unless it adds the product category to its next work plan or changes the regulations to allow for follow up. Further, the Department should also ensure that it has the ability to focus on and follow up on problematic classes of chemicals across multiple products to make best use of resources as well as make the biggest impact in protecting Californians’ health and environment.

Our comments are summarized here and more details are provided below.

- 1. We agree that the proposal meets the standards for listing a Priority Product because flame retardant chemicals have the potential to cause adverse health and environmental impacts.** Both TDCPP and TCEP are known to the State of California to cause cancer and studies find that these chemicals have additional hazard traits of concern.
- 2. We agree that the proposal meets the standards for listing a Priority Product because there is a large potential for widespread public exposure to the chemicals and children are a sensitive exposed subpopulation.** Flame retardant chemicals, including TDCPP and TCEP, are found in a wide variety of consumer products, including children’s sleeping products, and are routinely found in house dust. Sensitive sub-populations including young children are especially vulnerable.

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3. However, the problem is broader than TDCPP and TCEP in children’s sleeping products and calls for broader action. The Department should act swiftly on this product chemical combination and follow up by ensuring that they have the ability to address other hazardous flame retardant chemicals which are associated with health concerns in a broader range of children’s products.

3

DETAILED COMMENTS

1. We agree that the proposal meets the standards for listing a Priority Product because flame retardant chemicals have the potential to cause adverse health and environmental impacts.

As the Department’s proposal notes, both TDCPP and TCEP are known to the State of California to cause cancer, and research links exposure to these chemicals with additional adverse health effects, including developmental, reproductive, and neurological harm.

Chlorinated Tris or TDCPP was removed from children’s sleepwear in the 1970s because it changes DNA.³ It was listed as a carcinogen under California’s Proposition 65 in 2011.⁴ Children are more vulnerable to the toxic effects of flame retardant chemicals because their brains and bodies are still developing.

1 cont.

TDCPP and TCEP also have the potential to cause adverse environmental impacts. These chemicals have high aquatic toxicity,⁵ are found at high levels in water, and wastewater discharges are connected to indoor flame retardant uses.^{6, 7}

2. We agree that the proposal meets the standards for listing a Priority Product because there is a large potential for widespread public exposure to the chemicals and children are a sensitive exposed subpopulation.

The Department appropriately cites to a breadth of studies showing human exposures to these two toxic flame retardant chemicals. In addition, studies published after the proposal show that children have significantly higher levels of TDCPP in their bodies compared to adults, and California children have particularly high levels compared to children in other states.⁸

TDCPP and TCEP migrate out of these and other products, collect in air and dust and end up in people. As the Department notes, both TDCPP and TCEP have been widely detected in indoor air and dust, and inhalation and ingestion are major ways the chemicals enter people’s bodies. Young children have higher contact with contaminated dust because they crawl, play on the floor, and put their hands in their mouths. Further, it appears that close contact with products containing TDCPP also contribute significantly to children’s exposures.⁹

2 cont.

Thus, potential exposures to these flame retardant chemicals impact sensitive subpopulations (such as children pregnant women, infants, and day care center and school employees), which is a special regulatory consideration.¹⁰

3. Action must be broader than TDCPP and TCEP in children’s sleeping products.

First, the U.S Environmental Protection Agency identified TCEP, TDCPP, and TCPP as a “cluster” of flame retardant chemicals that have similar health hazards- including cancer and toxicity to the kidneys and liver.¹¹ This raises concerns for potential cumulative impacts, which DTSC must consider.¹²

3 cont.

In CEH’s recent nap mat testing,¹³ one mat contained a chlorinated organophosphate flame retardant compound identified as U-OPFR by Dr. Stapleton in her 2011 study on baby products.¹⁴ This flame

retardant contains TCPP as an impurity. In 2016, CEH also completed testing of 27 children's foam products including porta-crib pads, bassinet pads, crib wedges, changing pads, infant carriers (as worn by parents) and found that 25% of the products tested (7 of 27) tested contained flame retardant chemicals. Several products contained TCPP and others contained new flame retardant chemicals or mixtures for which no health data is available.

Furthermore, historically, as human health impacts of specific flame retardant chemicals have been documented, use of these harmful flame retardant chemicals has been phased out. Use then shifts to other chemically similar flame retardant chemicals, many of which present toxicity concerns and/or have inadequate testing to demonstrate they are safe.¹⁵

The entire classes of brominated, chlorinated and non-halogenated aromatic phosphate chemicals used as flame retardants are all Safer Consumer Products Candidate Chemicals, not just TDCPP and TCEP.¹⁶ Inclusion on the list reflects the chemical's public health importance in California¹⁷ and that it is "known to, or strongly suspected of, adversely impacting human health or development, based upon scientific, peer-reviewed animal, human, or in vitro studies."¹⁸

The documented substitution problem described above where one toxic flame retardant is replaced with another toxic flame retardant indicates a need for a more comprehensive approach. Moreover, there are many other products in the home, including those intended for children, which contain flame retardant chemicals.

In light of these considerations, we urge the Department to act swiftly, not only to list TDCPP and TCEP in children's foam sleeping products as a priority product-chemical combination, but to broaden the listing or to follow up on it to cover all flame retardant chemicals in children's foam sleeping products. Additionally, we recommend that DTSC expand its rulemaking or follow up on it to cover all flame retardant chemicals in a broader range of children's products, especially those products exempted from the California furniture flammability standard as of January 1, 2014. These products would include high chairs, changing pads, strollers, infant swings, bouncers, hook-on chairs and more.

Given the absence of a flammability standard for most children's products (other than car seats and mattresses), the evidence that these products do not pose a fire risk, and the fact that flame retardant chemicals have a long history of adverse environmental and human health effects, we strongly urge the Department to move to cover all flame retardant chemicals in this broader category of children's products.

The Department should take the broader, more health protective approach to comprehensively address the problem because children, especially in California, have much higher levels of flame retardant chemicals in their bodies.

One of the objectives of the Safer Consumer Products programs is to ask manufacturers to address the question "Is it necessary?" Flame retardant chemicals are not needed in children's products, and as the Department notes, flame-retardant free foam is readily available. Thus, by asking this question for the broader product category we can help eliminate the dangerous practice of toxic substitution where we learn only after decades of harmful exposure that a particular flame retardant "thought to be safe" is in fact, harmful to humans and the environment.

Again, we support the Department on this long awaited action and urge swift and decisive action. We hope this rulemaking will begin a series of important evaluations of chemical product combinations that pose health and/ or environmental threats in California.

Thank you for your consideration of these comments. We look forward to the finalization of the regulation and continuing to work with the Department.

Sincerely,

Avinash Kar, Senior Attorney
Veena Singla, Staff Scientist
Natural Resources Defense Council

Judy Levin, Pollution Prevention Director
Center for Environmental Health

Lou Paulson
President
California Professional Firefighters

Nathan Donley, Ph.D
Senior Scientist
Center for Biological Diversity

Kathryn Alcantar
Director
Californians for a Healthy & Green Economy (CHANGE)

Andria Ventura
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Clean Water Action/Clean Water Fund

Sharyle Patton
Director, Health and Environment Program
Commonweal Biomonitoring Resource Center

Bill Allayaud, California Director of Governmental Affairs
Tasha Stoiber, Ph.D. Senior Scientist
Environmental Working Group

Arlene Blum, Ph.D.
Executive Director
Green Science Policy Institute

Catharine Porter, JD
Policy Director
Healthy Nail Salon Collaborative

Russell Long, Ph.D.
Founder and President, **Sustainable San Francisco** and
Strategic Advisor, **Friends of the Earth**

Andrew McGuire
Executive Director
Trauma Foundation

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- ¹ BEARHFTI. New Flammability Standards for Upholstered Furniture and Articles Exempt from Flammability Standards: Initial Statement of Reasons. Sacramento, CA: California Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation; 2013.
- ² 22 CCR § 69504.1(b)(3)(B); § 69503.3.
- ³ Gold MD, Blum A, Ames BN. Another flame retardant, tris-(1,3-dichloro-2-propyl)-phosphate, and its expected metabolites are mutagens. *Science* (New York, NY). 1978 May 19;200(4343):785–7.
- ⁴ OEHHA. OEHHA Proposition 65 tris(1,3-dichloro-2-propyl) phosphate (TDCPP). Office of Environmental Health Hazard Assessment. 2011
- ⁵ US EPA, 2014. Flame retardants used in flexible polyurethane foam: an alternatives assessment update. US EPA Design for the Environment.
- ⁶ Schreder ED, La Guardia MJ. Flame Retardant Transfers from US Households (Dust and Laundry Wastewater) to the Aquatic Environment. *Environmental Science & Technology*. 2014
- ⁷ Wei G-L, Li D-Q, Zhuo M-N, Liao Y-S, Xie Z-Y, Guo T-L, et al. Organophosphorus flame retardants and plasticizers: Sources, occurrence, toxicity and human exposure. *Environ Pollut*. 2014 Oct 4;196C:29–46.
- ⁸ Butt, C.M. et al., 2016. Regional comparison of organophosphate flame retardant (PFR) urinary metabolites and tetrabromobenzoic acid (TBBA) in mother-toddler pairs from California and New Jersey. *Environment International*.
- ⁹ Hoffman, K. et al., 2015. High Exposure to Organophosphate Flame Retardants in Infants: Associations with Baby Products. *Environmental Science & Technology*, 49(24), pp.14554–14559.
- ¹⁰ 22 CCR § 69503.3 (a)(2)(A); see also 22 CCR § 69501.1(a)(64): “ ‘Sensitive subpopulations’ means subgroups that comprise a meaningful portion of the general population that are identifiable as being at greater risk of adverse health effects when exposed to one or more chemicals that exhibit a hazard trait and/or toxicological endpoint, including, but not limited to, infants, children, pregnant women, and elderly individuals. ‘Sensitive subpopulations’ also include individuals at greater risk of adverse health effects when exposed to chemicals because they are either individuals with a history of serious illness or greater exposures to chemicals, or workers with greater exposures to chemicals due to the nature of their occupation.”
- ¹¹ US EPA 2015. TSCA Work Plan Chemical Problem Formulation and Initial Assessment: Chlorinated Phosphate Ester Cluster Flame Retardants. EPA Document# 740-R1-5001, Office of Chemical Safety and Pollution Prevention.
- ¹² 22 CCR § 69503.3(a)(1)(C).
- ¹³ CEH, 2016. Testing finds toxic flame retardants are still used in some children’s nap mats. Available: <http://www.ceh.org/news-events/press-releases/content/frnapmats/>
- ¹⁴ Stapleton, H.M. et al., 2011. Identification of flame retardants in polyurethane foam collected from baby products. *Environmental Science and Technology*, 45(12), pp.5323–5331.
- ¹⁵ Stapleton HM, Sharma S, Getzinger G, Ferguson PL, Gabriel M, Webster TF, et al. Novel and High Volume Use Flame Retardants in US Couches Reflective of the 2005 PentaBDE Phase Out. *Environmental Science & Technology*. 2012 Nov.
- ¹⁶ 22 CCR § 69502.2(a)(2)(F).
- ¹⁷ <http://www.biomonitoring.ca.gov/chemicals/priority-chemicals>.
- ¹⁸ CA Health & Saf. Code § 105440(b)(6).



August 29, 2016

Mr. Benjamin Molin
Office of Legal Affairs
Department of Toxic Substances Control
1001 I Street Sacramento, California 95812-0806

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

Dear Mr. Molin:

The Juvenile Products Manufacturers Association (JPMA) submits the following comments on the Department of Toxic Substances Control’s (Department; DTSC) “Proposed Regulations: Proposal to List Children’s Foam-Padded Sleeping Products Containing TDCPP or TCEP as a Priority Product.” JPMA has submitted comments in the past on this topic.¹

Intro

The Juvenile Products Manufacturers Association (JPMA) is a national not-for-profit trade organization representing 95% of the prenatal industry including the producers, importers and distributors of a broad range of childcare articles that provide protection to infants and assistance to their caregivers. JPMA exists to advance the interests, growth and well-being of North American prenatal to preschool product manufacturers, importers and distributors marketing under their own brands to consumers. It does so through advocacy, public relations, information sharing, product performance certification and business development assistance conducted with appreciation for the needs of parents, children and retailers. JPMA continues to work with government officials, consumer groups and industry leaders on programs to educate consumers on the safe selection and use of juvenile products.

As the DTSC is aware, our industry has worked hand in hand with the California Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation (BEARHFTI) in the development, and implementation of the revised Technical Bulletin 117-2013 (TB117-2013) which exempts certain juvenile products from having to meet California’s strict flammability standard; which are similar to many other exempt products. These exemptions provided our manufacturers with the relief necessary to reduce the use of restricted flame retardant chemicals from many of our products, including nap mats.

¹ <https://www.dtsc.ca.gov/SCP/upload/JPMA-DTSC-Comments-Final.pdf>

Like the DTSC, we share the mutual objective of eliminating the use of hazardous chemical flame retardants in our products, and wish to be an active and forthcoming participant in this process. We note that our member's products are already highly regulated under the Federal Hazardous Substances Act ("FHSA") which restrict acute or chronic hazardous exposure to children from children's products.

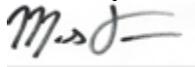
Intro cont.

As DTSC prepares for the release of subsequent Priority Products, JPMA urges the Department to continue to engage potential affected industries early-on in order to foster a mutually-beneficial dialogue. Greater industry consultation, thoughtful communications, and thorough product-chemical research will help to ensure more meaningful implementation of the Safer Consumer Products Regulation.

1

JPMA has the shared interest of ensuring that only *safe and reliable* products are available for use by the consumer. Please know that we remain committed to working with the DTSC in making our shared goals a reality. If you have any questions or concerns, please do not hesitate to contact me directly.

Sincerely,



Mark S. Fellin, MPS

Director of Regulatory and Legislative Affairs

The Juvenile Products Manufacturers Association (JPMA)

August 31, 2016

Submitted online via CalSAFER

Re: Safer Consumer Products Proposal to List Children’s Foam-Padded Sleeping Products containing TDCPP or TCEP as a Priority Product



BizNGO supports the Department of Toxic Substance Control’s Proposal to List Children’s Foam-Padded Sleeping Products containing the flame retardant chemicals TDCPP or TCEP as a Priority Product for the Safer Consumer Products Program.

1

BizNGO is a unique collaboration of business, health care, environmental, academic, and government leaders working together to promote the creation, adoption and use of safer chemicals and sustainable materials. Over 90 businesses, environmental groups, and health care providers have endorsed the BizNGO Principles for Safer Chemicals. The Principles and signatories can be found at www.bizngo.org. The second of these principles is that manufacturers should “assess and avoid hazards.”

To assess and avoid hazards, the principle states that manufacturers will determine the hazard characteristics of chemical constituents and formulations in their products, use chemicals with inherently low hazard potential, prioritize chemicals of high concern for elimination, minimize exposure when hazards cannot be prevented, and redesign products and processes to avoid the use and/or generation of hazardous chemicals. Buyers will work with their suppliers to achieve this principle. “Chemicals of high concern” include substances that have the following properties: 1) persistent, bioaccumulative and toxic (PBT); 2) very persistent and very bioaccumulative (vPvB); 3) very persistent and toxic (vPT); 4) very bioaccumulative and toxic (vBT); 5) carcinogenic; 6) mutagenic; 7) reproductive or developmental toxicant; 8) endocrine disruptor; or 9) neurotoxicant. “Toxic” (T) includes both human toxicity and ecotoxicity.

BizNGO agrees that DTSC’s proposal meets California’s standards for listing a Priority Product:

- 1. Flame retardant chemicals have the potential to cause adverse health and environmental impacts.** Both TDCPP and TCEP are known to the State of California to cause cancer, and studies find that these chemicals have additional hazard traits of concern.
- 2. A large potential exists for widespread public exposure to TDCPP and TCEP, and children are a sensitive exposed subpopulation.** Flame retardant chemicals, including TDCPP and TCEP, are found in a wide variety of consumer products, including children’s sleeping products, and are routinely found in house dust. Sensitive sub-populations including young children are especially vulnerable.

2

One objective of the Safer Consumer Products program is for manufacturers to consider whether identified chemicals are necessary to achieve a product’s function. Flame retardant chemicals are not needed in children’s products. As the Department notes, flame retardant free foam is readily available. Requiring that safer alternatives be used will both level the playing field for manufacturers and protect human and environmental health.

We urge you to move forward with the listing as proposed. Do not hesitate to contact us with questions or if we can be a resource to you or your staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark S. Rossi". The signature is fluid and cursive, with a prominent initial "M" and a long, sweeping underline.

Mark S. Rossi, PhD
Chair, BizNGO
1310 Broadway, Suite 101
Somerville, MA 02144
t) 781.391.6743 x101
e) Mark@CleanProduction.org
www.bizngo.org

Hearing Transcript
with Individual Comments Numbered

PUBLIC HEARING

STATE OF CALIFORNIA

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

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

Department Reference Number: R-2014-03

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1001 I STREET

SACRAMENTO, CALIFORNIA

MONDAY, AUGUST 29, 2016

10:00 A.M.

CALIFORNIA REPORTING, LLC
52 LONGWOOD DRIVE
SAN RAFAEL, CA 94901
415-457-4417

APPEARANCES

HEARING OFFICER

Christine Papagni, DTSC

PUBLIC TESTIMONY

Tim Shestek, American Chemistry Council

Alvaro Casanova, Californians for Toxic-Free Fire Safety

Bill Allayaud, Environmental Working Group

ALSO PRESENT

Meredith Williams, Deputy Director, Safer Products and Workplaces Program, Department of Toxic Substances Control (DTSC) (via phone)

Marcia Levinson, Covestro

Stephanie Pizzoferrato, Covestro

Robert Skoglund, Covestro

Justin Paddock, Department of Consumer Affairs, Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation

Indira Balkissoon, TechLaw, Inc.

Dawn Koepke, McHugh, Koepke & Associates

Shuo Yu, Ramboll Environ

Maureen Gorsen, Alston & Bird, LLP

Karl Palmer, DTSC

Anne Cooper Dougherty, DTSC

Hortensia Muniz-Ghazi, DTSC

Simona Balan, DTSC

Nivashni Veerasamy, DTSC

Xiaoying Zhou, DTSC

Eileen Sheehan, U.S. Environmental Protection Agency

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Alvaro Casanova, Californians for Toxic-Free Fire Safety	10
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P R O C E E D I N G S

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10:03 A.M.

HEARING OFFICER PAPAGNI: Good Morning. My name is Christine Papagni. I am with the Department of Toxic Substances Control, and I am the hearing officer for today's proceedings.

Please look around you and identify the exit closest to you. In some cases, an exit may be behind you. You may find an exit door by following the ceiling mounted exit signs. In the event of a fire alarm, we are required to evacuate this room immediately. Do not use the elevators. Please take your valuables with you, exit through the closest stairway, and proceed to the relocation site at Cesar Chavez Park across the street. Please obey all traffic signs and exercise caution crossing the street.

For the record, today is August 29th, 2016 and the time is 10:03 Pacific Standard Time.

Under the provisions of the Administrative Procedure Act, this is the time and place set for the presentation of statements, arguments, and contentions, orally or in writing, for or against the Department's proposal to amend California Code of Regulations, Title 22, Division 4.5 of Chapter 55 by adding a new article, Article 11, and Sections 69511 and 69511.1.

This amendment adds actions, which establish the

1 product-chemical combination of children's foam-padded
2 sleeping products containing tris(1,3-dichloro-2-propyl)
3 phosphate (TDCPP) or tris(2-chloroethyl) phosphate (TCEP) as
4 a Priority Product. This proposed amendment pertains to
5 identification of Priority Products under the Safer Consumer
6 Products regulations, approved by the Office of
7 Administrative Law (OAL), and filed with the Secretary of
8 State on August 28, 2013.

9 The entire proceedings will be recorded. The
10 recording, as well as any exhibits or evidence presented at
11 this hearing, will be incorporated into the rulemaking file
12 and will be reviewed prior to final approval of the
13 regulations by the Department and the Office of
14 Administrative Law.

15 The purpose of today's hearing is to accept public
16 comment. Registered persons will be heard in the order of
17 their registration. Anyone else wishing to speak at the
18 hearing will have an opportunity after all registered
19 persons have been heard. If you want to present a written
20 comment, you may also do so.

21 Persons presenting testimony at this hearing will
22 not be sworn in, nor will we engage in cross-examination of
23 those providing public comment. The Department will not
24 respond to comments made today, but we will address all
25 comments in writing and include them as part of the

1 rulemaking record available to the public. We ask that you
2 restrict your comments to the regulations being considered
3 today.

4 Persons who do not wish to speak but would like to
5 indicate their presence at this hearing can do so using the
6 participant sign-in sheet by the door or at the front of the
7 room. The participant sign-in sheet will be used to notify
8 interested parties of any post-hearing changes to the
9 proposed regulations.

10 After the close of this hearing, you may also
11 present hard copy written comments to us at 1001 "I" Street,
12 12th Floor, Sacramento, California 95814, until the close of
13 business today, at 5:00 p.m. Pacific Standard Time. Or, you
14 may submit written comments to us through the Department's
15 Safer Consumer Products Information Management System, also
16 referred to as CalSAFER, at calsafer.dtsc.ca.gov until 5:00
17 p.m. Pacific Standard Time tonight.

18 The public record of these regulations, the
19 proposed text of the regulations, and the Initial Statement
20 of Reasons, also known as the ISOR, are provided at the
21 registration table. These regulations were duly noted in
22 the California Regulatory Notice Register, and copies of the
23 notice, proposed regulation text, and the ISOR were made
24 available to interested parties who requested such notice.
25 Additional copies of these documents are available through

1 the Department's website at
2 www.dtsc.ca.gov/LawsRegsPolicies/Regs/CC-List-Amendment.cfm,
3 and at the Department's headquarter office, regional
4 offices, the State Library, and depository libraries.

5 Meredith Williams, the Deputy Director of the
6 Safer Products and Workplaces Program has called in to
7 listen to today's hearing.

8 To enable the audience to hear, and to ensure that
9 your comments are entered into the record, we ask that
10 speakers come to the table and speak directly and clearly
11 into the microphone when called. It would also be helpful
12 if you would begin by stating your name and the organization
13 you represent. Please indicate the proposed regulatory
14 section that each comment addresses.

15 With that, let's begin to hear comments on the
16 proposed regulations. The first witness who has registered
17 to testify is Tim Shestek.

Commenter PH1

18 MR. SHESTEK: Good morning, my name is Tim Shestek
19 with the American Chemistry Council. We will be submitting
20 some written comments by the deadline later today, but I did
21 want to take the opportunity to highlight just a couple of
22 points. Primarily they're process-oriented issues, well and
23 not just for this particular ruling, I think, but also
24 future proposed Priority Product listings.

25 The first issue of concern is the Department's

1

1 determination of widespread and significant exposure. In
2 reviewing some of the background documents it was difficult
3 for us to determine if the Department made a determination
4 based off of specific product data that the widespread and
5 significant exposure level was met. And in our view it
6 appears that that determination was based on the detection
7 of these chemicals in the environment, but it doesn't appear
8 information was included tying detection to those particular
9 products.

10 In fact, one of the peer reviewers in reviewing
11 their response, alluded to this point in saying -- I'll
12 quote from that reviewer -- "The exposure evidence is a
13 loosely connected string of facts rather than as a coherent
14 documentation of exposure from a specific type of consumer
15 product."

16 And the point being here is that we would
17 encourage DTSC to really take a hard look at how it
18 determined a widespread and significant exposure. As it
19 appears now the Department is taking a very broad view in
20 defining those particular terms. Essentially everything in
21 the environment or in consumer products may meet that
22 threshold. So it may be necessary to offer a meaningful,
23 objective, and scientifically defensible definition of those
24 (indiscernible) terms.

25 The second point I would like to make is that we

1 would encourage, that we have for about a year and a half or
2 so been encouraging DTSC to increase stakeholder engagement
3 in the process early. We think it is valuable, not just for
4 the regulated community, but also for the Department in
5 prioritizing for the program and for determining future
6 chemical product selections. You may have situations where
7 manufacturers from a product company may be innovating in to
8 newer chemistries. That information, if brought in may
9 reveal a determination by the Department that an identified
10 Priority Product may not be the appropriate combination to
11 effectively meet the intent of the statute.

2 cont.

12 And then the final comment I'd like to make in
13 terms of the Department's determination of whether or not
14 this regulation is consistent or inconsistent or
15 incompatible with existing state regulations. In its
16 supporting documentation the Department explains that its
17 review of "any regulations concerning the identification and
18 regulation of Priority Products" yielded nothing, because
19 "the only regulations concerning the identification and
20 regulation of Priority Products are found in the Safer
21 Consumer Products Program."

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22 In our view this key word search that was
23 undertaken to come to this conclusion, we believe this is
24 inadequate. It certainly is conceivable that there are
25 state regulatory programs and policies that may require,

1 encourage, or somehow otherwise regulate the manufacture,
2 use, or disposal of certain chemicals, materials and
3 products. For example engine oil additives or insulation
4 products may be critical to the state achieving some its
5 identified policy objectives for reducing greenhouse gas
6 emissions.

7 So we would encourage DTSC to include a more
8 thorough analysis in determining whether proposed Priority
9 Product regulations may be either inconsistent or somehow
10 incompatible with existing state regulations.

11 We certainly appreciate the opportunity to make
12 these verbal comments today. Again, we will be submitting
13 some written comments later this afternoon and we'll look
14 forward to continuing to engage with the Department about
15 this regulation and future regulations. Thank you.

16 HEARING OFFICER PAPAGNI: Thank you.

17 Our next commenter will be Alvaro Cavenaro?

18 MR. CASANOVA: Casanova.

19 HEARING OFFICER PAPAGNI: Casanova, I'm sorry,
20 couldn't read your writing.

Commenter PH2

21 MR. CASANOVA: So hello, my name is Alvaro
22 Palacios Casanova. I'm with the Center for Environmental
23 Health, Environmental Justice and Policy Advocacy. And I am
24 here representing the Californians for Toxic-Free Fire
25 Safety, which is a diverse coalition of groups dedicated to

Intro

1 improving public health and safety by advocating for non-
2 toxic alternatives to hazardous and untested chemicals.

3 In terms of widespread and significant exposures,
4 children and children of color, often have the highest
5 levels of flame retardants in their blood. Additionally,
6 children also have 3 to 15 times higher levels of flame
7 retardant exposures compared to their parents. But in terms
8 of widespread and significant exposure these flame
9 retardants do have impacts on vulnerable subpopulations.

10 We support the Department's proposal to list TDCPP
11 and TCEP in children's sleeping products as a product-
12 chemical combination Priority Product. However, the problem

13 is broader than TDCPP and TCEP in children's sleeping
14 products and we call for broader action. The Department
15 should act swiftly on this product chemical combination and
16 follow up by ensuring that they have the ability to address
17 other hazardous flame retardant chemicals, which are
18 associated with health concerns in a broader range of
19 children's products.

20 The entire class of brominated, chlorinated and
21 non-halogenated aromatic phosphate chemicals used as flame
22 retardants are all Safer Consumer Products Candidate
23 Chemicals, not just TDCPP and TCEP. Inclusion on the list
24 reflects the chemical's public health importance to
25 California and that it is, "known to, or strongly suspected

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1 of, adversely impacting human health and development based
2 upon scientific, peer-reviewed animal, human, and in vitro
3 studies."

4 Given the absence of a flammability standard for
5 most children's products, other than car seats and
6 mattresses, the evidence that these products do not pose a
7 fire risk, and the fact that flame retardant chemicals have
8 a long history of adverse environmental and human health
9 effects, we strongly urge the Department to move to cover
10 all flame retardant chemicals in the broader category of
11 children's products.

12 The Center for Environmental Health's recent nap
13 mat testing, found a nap mat that contained a chlorinated
14 organophosphate flame retardant compound identified as U-
15 OPFR by Dr. Stapleton in her 2011 study on baby products.
16 This flame retardant contains TCPP as an impurity.

17 And in 2016, CEH also tested of 27 children's foam
18 products including porta-crib pads, bassinet pads, crib
19 wedges, changing pads, infant carriers worn by parents and
20 found that 25 percent of these products tested, which is 7
21 of 27, contained flame retardant chemicals. Several
22 products contained TCPP and others contained new flame
23 retardant chemicals or mixtures for which there is no health
24 data available.

25 In light of these considerations, we urge the

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14 For the record: today is August 29th, 2016 and the
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12 section that each comment addresses.

13 With that, let's begin to hear comments on the
14 proposed regulations. The next witness who is registered to
15 testify is Bill --

16 MR. ALLAYAUD: Allayaud.

17 HEARING OFFICER PAPAGNI: Allayaud.

18 MR. ALLAYAUD: Good morning, my name is Bill Commenter PH3
19 Allayaud. I'm the California Director of Government Affairs
20 for the Environmental Working Group. I'm glad I was able to
21 get here before you closed down.

22 I'm here to comment on the Safer Consumer Product
23 Proposal to list children's foam-padded sleeping products
24 containing TDCPP or TCEP as a Priority Product.

25 I'm also speaking for and we submitted a sign-on

1 letter in July -- on August 29th -- the Natural Resources
2 Defense Council, the Center for Environmental Health, Clean
3 Water Action, Commonweal, Friends of the Earth and the
4 Trauma Foundation.

5 The comments I will give will be brief and really
6 just summarize that letter, which has more detailed
7 comments.

8 First is we strongly support that the proposal to
9 list these chemicals meets the standards for listing a
10 Priority Product under the Safer Consumer Product Program,
11 because flame retardant chemicals have the potential to
12 cause adverse health and environmental impacts. The State
13 of California knows that these chemicals cause cancer and
14 studies find they have additional hazard traits, so we
15 strongly support the listing.

16 Number two is we agree that the proposal meets the
17 standards for listing as a Priority Product, because there
18 is a large potential for widespread public exposure to the
19 chemicals and children are an exposed subpopulation. So if
20 you read the law and the regulations we feel it absolutely
21 clearly meets that level of standard and should be listed.

22 Our third comment, and this is again put in more
23 detail in our letter, is that we feel the problem is broader
24 than just TDCPP and TCEP in children's sleeping products and
25 call for broader action. This is because all flame

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1 retardant chemicals in children's foam-sleeping products are
2 a concern, not just those two. We recommend that DTSC
3 expand its rulemaking or follow up to cover all these
4 additional flame retardant chemicals to protect children's
5 health. As you know, the chemical industry plays whack-a-
6 mouse, as we call it, where one chemical gets banned so they
7 introduce another one. It's Firemaster 3000 and Firemaster
8 4000 etcetera. And we don't want to play that game with our
9 children's health or the health of adults, pregnant women,
10 and the environment as flame retardant chemicals have spread
11 through the entire earth.

3 cont.

12 Lastly, one of the objectives of the Safer
13 Consumer Products Program is to ask manufacturers to address
14 the question, "Is it necessary?" We think that flame
15 retardant chemicals are not needed in these children's
16 products and thus we ask the question, "Is it necessary? We
17 find that it's not in almost every case and urge the
18 Department to broaden this and make sure that none of these
19 harmful chemicals, whether as a carcinogenic or causing
20 reproductive harm -- both Prop 65 standards -- are
21 considered and met.

4

22 Thank you very much for the opportunity to
23 comment. Thank you.

24 HEARING OFFICER PAPAGNI: Thank you, Bill.

25 We have reached the end of our meeting, and I am

1 closing the oral testimony part of this hearing. Hard-copy
2 written comments will be accepted until the close of
3 business today, 5:00 p.m., at the Department's offices at
4 the CalEPA building and until 5:00 p.m. tonight through the
5 online CalSAFER system. Thank you for attending the meeting
6 and for sharing your thoughts with DTSC.

7 (Thereupon, the Meeting was adjourned)

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TRANSCRIBER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of September, 2016.



Myra Severtson
Certified Transcriber
AAERT No. CET**D-852