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DIVISION 4.5, TITLE 22, CALIFORNIA CODE OF REGULATIONS
CHAPTER 55. SAFER CONSUMER PRODUCTS

OUTLINE FORMAT

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NOTE: References in these informal draft regulations to Chapter 54 and its sections (69401 through 69407.2) refer to OEHHA's draft regulations titled "Green Chemistry Hazard Traits for California's Toxics Information Clearinghouse" (dated October 7, 2011).

1 **Add** California Code of Regulations, title 22, division 4.5, chapter 55 to read:

2
3 **Chapter 55. Safer Consumer Products**

4
5 **Article 1. General**

6
7 **§ 69501. Purpose and Applicability.**

8 (a) This chapter specifies the process for identifying chemicals as Chemicals of Concern,
9 and the process for prioritizing consumer products containing Chemicals of Concern
10 and identifying potential alternatives for Priority Products to determine how best to limit
11 potential exposures or the level of potential adverse impacts posed by the Chemical of
12 Concern in the product. This chapter also specifies the regulatory responses that will
13 be imposed by operation of article 6 or may be required by the Department following
14 completion of an alternatives assessment.

15 (b) (1) Except as provided in paragraphs (2) through (4), this chapter applies to all
16 consumer products placed into the stream of commerce in California.

17 (2) This chapter does not apply to any product that is exempted from the definition of
18 “consumer product” specified in Health and Safety Code section 25251, or to any
19 product that is placed into the stream of commerce in California solely for the
20 manufacture of one or more of the products exempted from the definition of
21 “consumer product” specified in Health and Safety Code section 25251.

22 (3) This chapter does not apply to any consumer product manufactured or stored in, or
23 transported through, California solely for use outside of California.

24 (4) (A) This chapter does not apply to a consumer product that the Department
25 determines is regulated by one or more federal and/or other California State
26 regulatory program(s), and/or applicable international trade agreements ratified
27 by the United States Senate, that, in combination:

- 28 1. Address the same adverse public health and environmental impacts and
29 exposure pathways that would otherwise be the basis for the product being
30 listed as a Priority Product; and
31 2. Provide a level of public health and environmental protection that is equivalent
32 to or greater than the protection that would potentially be provided if the
33 product was listed as a Priority Product.

34 (B) The Department may re-evaluate a determination previously made pursuant to
35 this paragraph and rescind the determination if the Department finds that the
36 facts and/or assumptions upon which the determination was based were not, or
37 are no longer, valid.

38
39 **§ 69501.1. Acronyms.**

40 CEPA Canadian Environmental Protection Act

41 CRNR California Regulatory Notice Register

1	DOT	Department of Transportation (US)
2	EC	European Commission
3	ECHA	European Chemicals Agency
4	EINECS	European Inventory of Existing Commercial Chemical Substances
5	ELINCS	European List of Notified Chemical Substances
6	EPA	Environmental Protection Agency (US)
7	IUBMB	International Union of Biochemistry and Molecular Biology
8	IUPAC	International Union of Pure and Applied Chemistry
9	MITI	Ministry of International Trade and Industry (Japan)
10	NLP	No Longer Polymers
11	OECD	Organization of Economic Cooperation and Development
12	OEHHA	Office of Environmental Health Hazard Assessment
13	OSPAR	Convention for the Protection of the Marine Environment for the Northeast Atlantic
14	REACH	Registration, Evaluation, Authorisation and Restriction of Chemicals, Regulation
15		(EC) No. 1907/2006 of the European Parliament and the Council
16	RTECS	Registry of Toxic Effects of Chemical Substances
17	TSCA	Toxic Substances Control Act
18	UN	United Nations
19	US	United States

20

21 **§ 69501.2. Definitions.**

22 (a) When used in this chapter, the following terms have the meanings specified in this

23 section:

24 (1) "Accreditation body" means an organization that meets the requirements of section

25 69508.2 and administers a program designed to train, evaluate, assist, and certify

26 assessors.

27 (2) "Adverse air quality impacts" means air emissions of any of the air contaminants

28 listed below:

29 (A) California Toxic Air Contaminants;

30 (B) Greenhouse gases, which means any of the following gases:

- 31 1. Carbon dioxide;
- 32 2. Hydrofluorocarbons;
- 33 3. Methane;
- 34 4. Nitrogen trifluoride;
- 35 5. Nitrous oxide;
- 36 6. Perfluorocarbons;
- 37 7. Sulfur hexafluoride;

38 (C) Nitrogen oxides;

39 (D) Particulate matter, with an aerodynamic diameter of ten (10) micrometers or less;

40 (E) Stratospheric ozone-depleting compounds;

41 (F) Sulfur oxides; or

- 1 (G) Tropospheric ozone-forming compounds.
- 2 (3) "Adverse ecological impacts" means any of the following direct or indirect effects on
- 3 living organisms and their environments:
- 4 (A) Acute or chronic toxicity to aquatic, avian, or terrestrial animal or plant species;
- 5 (B) Adverse impacts on aquatic and terrestrial ecosystems;
- 6 (C) Deterioration or loss of environmentally sensitive habitats;
- 7 (D) Impacts that cause population loss, reductions in biodiversity, or changes in
- 8 ecological communities;
- 9 (E) Impacts that cause vegetation contamination or damage;
- 10 (F) Impairment of the ability of an endangered or threatened species to survive or
- 11 reproduce; or
- 12 (G) Any other impact specified in article 4 of chapter 54.
- 13 (4) "Adverse environmental impacts" means any of the following:
- 14 (A) Adverse air quality impacts;
- 15 (B) Adverse ecological impacts;
- 16 (C) Adverse soil quality impacts; or
- 17 (D) Adverse water quality impacts.
- 18 (5) "Adverse public health impacts" means impacts that directly or indirectly cause any
- 19 of the toxicological effects on public health listed in articles 2 and 3 of chapter 54.
- 20 (6) "Adverse soil quality impacts" means any of the following effects on soil function or
- 21 soil chemical, physical, or biological characteristics or properties:
- 22 (A) Biological contamination;
- 23 (B) Chemical contamination;
- 24 (C) Compaction or other structural changes;
- 25 (D) Erosion;
- 26 (E) Loss of organic matter; or
- 27 (F) Soil sealing, meaning the covering of the soil surface with a layer of impervious
- 28 material or changing the nature of the soil so that it behaves as an impermeable
- 29 medium.
- 30 (7) "Adverse waste and end-of-life impacts" means adverse impacts associated with any
- 31 of the following:
- 32 (A) The amount of waste and byproducts generated, and any special handling
- 33 required for the waste and byproducts, during the life cycle of the Priority Product
- 34 and each alternative being considered;
- 35 (B) Disposal, treatment, or use of waste and byproducts, including solid waste,
- 36 wastewater and storm water discharge streams; or
- 37 (C) Disposal of the Priority Product in the trash, down the sewer, or down the storm
- 38 drain that interferes with the proper operation of solid waste, wastewater, or
- 39 storm water treatment facilities, and that may result in the release of Chemicals
- 40 of Concern to the environment.

- (8) "Adverse water quality impacts" means any of the following adverse effects on the beneficial uses, as specified in Water Code section 13050(f) or adopted in a Water Quality Control Plan pursuant to article 3 of chapter 3 and/or article 3 of chapter 4 of division 7 of the Water Code, of the waters of the State, which include groundwater, fresh water, brackish water, marsh lands, wetlands, or coastal bodies or systems:
- (A) Increase in biological oxygen demand;
 - (B) Increase in chemical oxygen demand;
 - (C) Increase in temperature;
 - (D) Increase in total dissolved solids; or
 - (E) Introduction of, or increase in, any of the following:
 - 1. Chemicals identified as priority toxic pollutants for California pursuant to section 303(c) of the federal Clean Water Act;
 - 2. Pollutants listed by California or the United States Environmental Protection Agency for one or more water bodies in California pursuant to section 303(d) of the federal Clean Water Act;
 - 3. Chemicals for which primary Maximum Contaminant Levels (MCLs) have been established under the federal Safe Drinking Water Act;
 - 4. Pollutants requiring monitoring and reporting in waste discharges to land that have Notification Levels (NLs) specified under the Waste Discharge and Water Reuse Requirements (WDRs/WRRs) of the Porter-Cologne Water Quality Control Act; or
 - 5. Chemicals for which OEHHA has published public health goals for drinking water.
- (9) "Alternative" means any of the following:
- (A) Removal of Chemical(s) of Concern in a Priority Product, with or without adding or increasing the concentration of a substitute chemical;
 - (B) Reformulation or redesign of a product and/or manufacturing process to reduce or eliminate the concentration of Chemical(s) of Concern in the Priority Product;
 - (C) Redesign of the product and/or manufacturing process, using different materials to reduce the potential for public health and/or environmental exposures to Chemical(s) of Concern in Priority Product; or
 - (D) Any other change to a Priority Product or a manufacturing process that reduces the potential for adverse public health and/or environmental impacts or exposures associated with the Chemical(s) of Concern in the Priority Product.
- (10) "Alternatives assessment" or "AA" means an evaluation and comparison of a product and alternative products, pursuant to article 5.
- (11) "Aqueous hydrolysis half-life" means the time required for the concentration of a chemical to be reduced to one-half of its initial concentration after being introduced into water.

- (12) "Assembled product" means a heterogeneous product consisting of two or more components.
- (13) "Atmospheric oxidation rate" means the rate of change or degradation of a chemical through the interaction with oxygen in the atmosphere.
- (14) "Bioaccumulation" means the accumulation of a chemical substance in an organism, or an individual component of the environment, which absorbs the chemical at a rate greater than that at which the chemical is lost.
- (15) "Certified assessor" means an individual that is qualified by education, experience, and examination, and has been issued a certificate by an accreditation body, pursuant to article 8, to perform one or more of the functions or procedures used to conduct or audit an AA, or verify an AA Report.
- (16) "Chemical" means any organic or inorganic substance of a particular molecular identity, including any combination of such substances occurring, in whole or in part, as a result of a chemical reaction or occurring in nature, and any element or uncombined radical.
- (17) "Chemical identification and description information" means all of the following:
- (A) Substance identification information;
 - (B) Information on the purity of the chemical and identification of known impurities and additives in the chemical;
 - (C) Physicochemical properties; and
 - (D) Environmental fate properties.
- (18) "Chemical ingredient" means a chemical in a consumer product.
- (19) "Chemical of Concern" means a chemical identified as a Chemical of Concern under section 69502.2(a), or a chemical listed by the Department pursuant to section 69502.3.
- (20)(A) "Component" means a uniquely identifiable part, piece, assembly or subassembly, system, or subsystem of a consumer product that:
- 1. Is required to complete or finish an item;
 - 2. Performs a distinctive and necessary function in the operation of a system; or
 - 3. Is intended to be included as a part of a finished item.
- (B) "Component" does not include a chemical ingredient in a formulated consumer product.
- (21) "Consumer product" or "Product" means any of the following:
- (A) A "consumer product" as defined in Health and Safety Code section 25251;
 - (B) A component that meets the definition of a "consumer product" as defined in Health and Safety Code section 25251; or
 - (C) A component that is identified, pursuant to section 69503.3(a)(2)(C), as the minimum required focus of an AA.

- 1 (22) "Contact information" means mailing and electronic address, headquarters location,
2 phone number(s), title(s) if applicable, and website address.
- 3 (23) "Day" means calendar day. Periods of time are calculated by excluding the first
4 day and including the last; except that the last day is excluded if it is a Saturday,
5 Sunday, or other holiday specified in Government Code section 6700.
- 6 (24) "De Minimis Exemption Notification" means a notification submitted to the
7 Department pursuant to section 69503.5.
- 8 (25) "De minimis level" means a concentration equal to whichever of the following is
9 applicable:
- 10 (A) 0.01% by weight for chemicals exhibiting any of the following hazard traits or
11 environmental or toxicological endpoints specified by OEHHA pursuant to title 22,
12 California Code of Regulations, division 4.5, chapter 54:
- 13 1. Bioaccumulation;);
- 14 2. Carcinogenicity, as defined in section 69402.1, that meets one or more of the
15 criteria in section 69402.2(a);
- 16 3. Developmental toxicity, as defined in section 69402.3, that meets one or more
17 of the criteria in section 69402.4(a);
- 18 4. Endocrine toxicity, as defined in section 69403.3, that meets one or more of
19 the criteria in section 69403.17(a);
- 20 5. Genotoxicity, as defined in section 69403.5, that meets one or more of the
21 criteria in section 69403.17(a);
- 22 6. Immunotoxicity, as defined in section 69403.8, that meets one or more of the
23 criteria in section 69403.17(a);
- 24 7. Neurotoxicity, as defined in section 69403.12, that meets one or more of the
25 criteria in section 69403.17(a);
- 26 8. Persistence; or
- 27 9. Reproductive toxicity, as defined in section 69402.5, that meets one or more of
28 the criteria in section 69402.6(a).
- 29 (B) 0.1% by weight for chemicals that do not exhibit any of the hazard traits or
30 environmental or toxicological endpoints listed in subparagraph (A).
- 31 (C) The de minimis level concentration specified by the Department pursuant to
32 section 69503.4(c).
- 33 (26) "Department" means the Department of Toxic Substances Control.
- 34 (27) "Economic impacts" means an increase or decrease in any of the following:
- 35 (A) Capital investments;
- 36 (B) Cost of goods to consumers;
- 37 (C) Cost of marketing;
- 38 (D) Energy costs;
- 39 (E) Jobs or businesses;
- 40 (F) Operation and maintenance costs;

- 1 (G)Resource costs; or
2 (H) Waste disposal and/or treatment costs.
- 3 (28) "Economic interest" in an entity means that an individual, or that individual's spouse
4 or dependent child:
5 (A) Has a direct or indirect investment worth two thousand dollars (\$2,000) or more
6 in the entity;
7 (B) Is a director, officer, partner, trustee, or employee, or holds a position of
8 management in the entity;
9 (C) Receives a source of income from the entity; or
10 (D) Has an economic interest, as defined in subparagraphs (A) through (C), in a
11 business entity that is a parent or subsidiary, as defined in section 18703.1(d) of
12 Title 2 of the California Code of Regulations, of, or is otherwise related to, the
13 entity.
- 14 (29) "End-of-life" means the point when the product is discarded by the consumer or the
15 end of the useful life of the product, whichever occurs first.
- 16 (30) "Energy efficiency" means the reduction of energy usage while maintaining a
17 comparable level of service.
- 18 (31) "Environment" means the land, air, water, soil, minerals, flora, and fauna.
- 19 (32) "Environmental fate properties" means all of the following:
20 (A) Aerobic and anaerobic soil and sediment half-lives;
21 (B) Aqueous hydrolysis half-life;
22 (C) Atmospheric oxidation rate;
23 (D) Bioaccumulation in organs and tissues;
24 (E) Biodegradation;
25 (F) Mobility among and between individual components of the environment;
26 (G) Persistence; and
27 (H) Photodegradation.
- 28 (33) "Environmental or toxicological endpoint" means any environmental or toxicological
29 endpoint identified by OEHHA, pursuant to Health and Safety Code section
30 25256.1, and specified in chapter 54.
- 31 (34) "Failure to Comply List" means the list prepared by the Department pursuant to
32 section 69501.3(d).
- 33 (35) "Failure to Respond List" means the list prepared by the Department pursuant to
34 section 69501.5.
- 35 (36) "Financial guarantee" means any mechanism to ensure that adequate funding is
36 available to pay for future end-of-life management costs for products placed into
37 the stream of commerce in California.
- 38 (37) "Formulated product" means a homogeneous product, often, but not always,
39 intended to be consumed through use.

- (38) “Functionally acceptable ” means that a product that has been altered by a chemical or component substitution, or that has replaced another product, substantially equals or exceeds the performance and functionality of the original product.
- (39) “Green chemistry principles” means the twelve principles of green chemistry specified in “Green Chemistry: Theory and Practice” (Anastas, P.T. and Warner, J.C.; Oxford University Press: New York, 1998, p. 30).
- (40) “Hazard trait” means any hazard trait identified by the OEHHA, pursuant to Health and Safety Code section 25256.1, and specified in chapter 54.
- (41) “Import” means to bring, or arrange to bring, a consumer product into the United States for purposes of placing the product into the stream of commerce. “Import” includes reimporting a consumer product manufactured or processed, in whole or in part, in the United States.
- (42) “Importer” means a person who imports a consumer product into the United States.
- (43) “Information” means data, documentation, records, graphs, reports, or any other depiction of specific pieces of knowledge.
- (44) “Inventory recall” means to cause the return, directly or indirectly, of a consumer product that has not been sold at retail back to the responsible entity or the manufacturer or importer of the consumer product.
- (45) “Legal requirements” means specifications and/or performance standards that a product is required to meet by federal or California law.
- (46) “Life cycle” means the sum of all activities in the course of a consumer product’s entire life span, including raw materials extraction, resource inputs and other resource consumption, intermediate materials processes, manufacture, packaging, transportation, distribution, use, operation and maintenance, waste generation and management, reuse and recycling, and end-of-life disposal.
- (47) “Life cycle thinking” means the examination and consideration of public health and environmental impacts over a product’s entire life cycle.
- (48) “Listserv” means an electronic mailing list that a person may subscribe to on the Department’s website in order to automatically receive electronic notification of the posting of documents and other information on that website.
- (49) “Manufacture” means to make, produce, or assemble. “Manufacture” does not include any of the following actions, unless the action results in the addition, or increased concentration, of a Chemical of Concern, or replacement of a Chemical of Concern, in a product:
- (A) Repair or refurbishment of an existing consumer product;
 - (B) Installation of standardized components to an existing consumer product; or
 - (C) Making non-material alterations to an existing consumer product.
- (50) “Manufacturer” means any person who manufactures a product, or any person that controls the specifications and design of, or use of materials in, a product.

- 1 (51) "Market presence information" means all of the following:
- 2 (A) Statewide sales by volume;
- 3 (B) Statewide sales by number of units; and
- 4 (C) Intended product use(s), and types and age groups of targeted customer
- 5 base(s).
- 6 (52)(A) "Materials and resource consumption" means the consumption of renewable
- 7 and nonrenewable resources that are used for a consumer product during its life
- 8 cycle.
- 9 (B) Except as specified in subparagraph (C)2., a renewable resource is a resource
- 10 that is capable of being replaced by natural processes at a rate equal to or faster
- 11 than its consumption rate. Renewable resources include solar and wind energy,
- 12 timber, agriculture, and water.
- 13 (C) Both of the following are nonrenewable resources:
- 14 1. An inherently finite resource that is formed over long periods of geologic time.
- 15 This includes petroleum, coal, metals (mined and recycled), minerals, and
- 16 other finite resources; and
- 17 2. A resource that meets the definition of a renewable resource, specified in
- 18 subparagraph (B), but the resource is consumed at a rate that exceeds the
- 19 rate at which it is replaced such that its continued use may drive the resource
- 20 to exhaustion.
- 21 (53) "Materials and resource consumption impacts" means all of the following:
- 22 (A) Energy consumption and efficiency;
- 23 (B) Production, in-use, and transportation energy inputs;
- 24 (C) Reusability and recyclability; and
- 25 (D) Consumption and conservation of renewable and nonrenewable resource.
- 26 (54) "Mode of action" means the mechanism by which a chemical produces an effect on
- 27 a living organism or in an environmental compartment.
- 28 (55) "Persistence" means the propensity for a chemical substance to exist in the
- 29 environment in an unchanged form.
- 30 (56) "Person" has the same meaning as in Health and Safety Code section 25118.
- 31 (57) "Physical chemical hazards" means physical hazard traits specified in article 6 of
- 32 chapter 54.
- 33 (58) "Physicochemical properties" means the physicochemical properties specified in
- 34 section 69407.2.
- 35 (59)(A) "Place into the stream of commerce in California" means to sell, offer for sale,
- 36 distribute, supply, or manufacture a consumer product for use in California.
- 37 (B) "Sale or offer for sale" means any transfer or offer to transfer for consideration of
- 38 title or the right to use, by lease or sales contract, including transactions
- 39 conducted and offers made through sales outlets, catalogs, or the Internet, or
- 40 any other similar electronic means.

- 1 (60) "Priority Product" means a product listed by the Department pursuant to section
2 69503.3.
- 3 (61) "Processing agent" means a chemical used in a product manufacturing process to
4 promote chemical or physical changes.
- 5 (62) "Product function and performance" means the principal use(s) or application(s) of
6 a product by a consumer, as intended by the manufacturer, including function and
7 performance attributes, and legal requirements.
- 8 (63) "Purity" means the relative freedom from extraneous matter in a product.
- 9 (64) "Recycled material" means a material that has been separated from a waste
10 stream for the purpose of recycling the material as feedstock.
- 11 (65) "Release" means an intentional or unintentional liberation, emission, or discharge
12 of a chemical into the environment.
- 13 (66) "Reliable information" means well-conducted scientific studies, as defined in
14 section 69401.2, or any other information that meets one or more of the following
15 criteria:
- 16 (A) Relied on or used by an authoritative organization, as defined in section 69401.2,
17 to protect public health or the environment;
- 18 (B) Generated using one of the following:
- 19 1. US Food and Drug Administration Good Laboratory Practices (Part 58 of Title
20 21 of the Code of Federal Regulations);
- 21 2. US EPA's Office of Chemical Safety and Pollution Prevention Harmonized
22 Test Guidelines;
- 23 3. TSCA (Chapter 1 of Title 40 of the Code of Federal Regulations);
- 24 4. TSCA Testing Guidelines (Parts 798 and 799 of Title 40 of the Code of
25 Federal Regulations);
- 26 (C) Published in scientifically peer reviewed reports or other literature;
- 27 (D) Published in a report of the US National Academies;
- 28 (E) Published in reports by international, federal, state and local agencies that
29 implement laws and programs governing chemicals;
- 30 (F) Developed, or reviewed and accepted, by an international organization, federal
31 agency, state agency, or local agency for compliance or other regulatory
32 purposes; or
- 33 (G) Developed according to valid accepted testing protocols in which the test
34 parameters documented are based on specific testing guidelines, or in which all
35 parameters described are comparable to a guideline method, including:
- 36 1. OECD Guidelines for Testing of Chemicals;
- 37 2. OECD Series on Principles of Good Laboratory Practice and Compliance
38 Monitoring;
- 39 3. OECD Manual for Investigation of High Production Volume Chemicals;

1 4. REACH/ECHA Guidance on Information Requirements and Chemical Safety
2 Assessment and Regulation (EC) No. 440/2008 of the European Parliament
3 and the Council; or

4 5. CEPA Guidelines for the Notification and Testing of New Substances:
5 Chemicals and Polymers.

6 (67) "Reliable information demonstrating the occurrence, or potential occurrence, of
7 exposures to a chemical" means any of the following that are established by
8 reliable information:

9 (A) Monitoring data that shows the chemical to be present in household dust, indoor
10 air, or drinking water, or on interior surfaces;

11 (B) Monitoring data that shows the chemical to be present in, or released from,
12 products used in or present in the home;

13 (C) Environmental monitoring data, or environmental modeling results, that indicate
14 environmental accumulation of a chemical;

15 (D) California Environmental Contaminant Biomonitoring Program data, Center for
16 Disease Control's National Health and Nutrition Evaluation Survey biomonitoring
17 data, or other biomonitoring data, that show the chemical to be present in
18 human organs, tissues, or fluids;

19 (E) Reliable information that provides evidence that a chemical exhibits the
20 lactational or transplacental transfer hazard trait specified in section 69405.5;

21 (F) Environmental monitoring data that shows the accumulation of the chemical in
22 aquatic, avian, animal, or plant species;

23 (G) Exposure modeling that indicates exposure point concentration(s) associated
24 with adverse public health or environmental impacts; or

25 (H) Monitoring data indicating the presence of a chemical or its degradation products
26 in California solid waste, wastewater, or storm water streams collected or
27 managed by California State or local agencies in concentrations or volumes
28 that:

29 1. Present potential adverse public health or environmental impacts;

30 2. May require the expenditure of public funds to mitigate potential adverse public
31 health or environmental impacts;

32 3. Increase the costs of reusing or recycling materials containing the chemical; or

33 4. Interfere with the proper operation of solid waste, wastewater, or storm water
34 treatment systems and may result in the discharge of the chemical to the
35 environment.

36 (68) "Responsible entity" means any of the following:

37 (A) The manufacturer of a consumer product.

38 (B) The importer of a consumer product.

39 (C) The retailer of a consumer product.

- 1 (69) "Retailer" means a person to whom a consumer product is delivered or sold for
2 purposes of sale or distribution by the person to a consumer.
- 3 (70) "Safer alternative" means an alternative that, in comparison with the existing
4 Priority Product, reduces, avoids, or eliminates the use of, and/or potential
5 exposures to, one or more Chemical(s) of Concern, so as to reduce potential
6 adverse public health and environmental impacts.
- 7 (71) "Sales outlet" means any place at which consumer products are sold, supplied, or
8 offered for sale directly to consumers in California.
- 9 (72) "Sensitive subpopulations" means subgroups that comprise a meaningful portion of
10 the general population that are identifiable as being at greater risk of adverse
11 health effects when exposed to one or more chemicals that exhibit a hazard trait or
12 toxicological endpoint, including, but not limited to, infants, children, pregnant
13 women, elderly individuals, and individuals with a history of serious illness that
14 renders them as being at greater risk of adverse health effects when exposed to
15 chemicals.
- 16 (73) "Substance identification information" means all of the following that are applicable:
17 (A) Chemical abstract services number;
18 (B) Structural formula;
19 (C) Molecular weight;
20 (D) Synonyms;
21 (E) IUPAC name;
22 (F) EC number;
23 (G) RTECS number;
24 (H) IUBMB number;
25 (I) MITI number;
26 (J) Number assigned by the UN Experts on the Transport of Dangerous Goods;
27 (K) North America DOT number;
28 (L) EINECS number;
29 (M) ELINCS number;
30 (N) NLP number; and
31 (O) Other commonly recognized substance identification system numbers.
- 32 (74) "Technologically and economically feasible alternative" means an alternative
33 product or chemical for which:
34 (A) The current technological knowledge, equipment, materials, and other resources
35 available to the manufacturer are sufficient to develop and implement the
36 alternative;
37 (B) The manufacturer may earn a reasonable rate of return over a reasonable period
38 of time after the alternative has been implemented; and
39 (C) The alternative does not increase aggregate externalized costs to consumers,
40 public health, and the environment.

(75) "Trade secret" means a "trade secret" as defined in Government Code section 6254.7(d).

(76) "Useful life" means the period of time during which a product can be used for its intended use, expressed in terms of a single use, number of applications, or days, months, or years of use.

§ 69501.3. Duty to Comply and Consequences of Non-Compliance.

(a) Duty to Comply.

(1) A manufacturer has the principal duty to comply with requirements applicable to a responsible entity. In the event a manufacturer does not comply, it shall be the duty of the importer, if any, to comply. A retailer is required to comply with the requirements applicable to a responsible entity only if the manufacturer and the importer, if applicable, have failed to comply and the Department notifies the retailer of the manufacturer's and the importer's, if applicable, non-compliance by posting the information on the Failure to Comply List, pursuant to subsection (d)(4)(C).

(2) The requirements of this chapter applicable to a responsible entity may be fulfilled by a consortium, trade association, public-private partnership, or other entity acting on behalf of, or in lieu of, the responsible entity.

(b) (1) Manufacturer or Importer Option.

A responsible entity that is the manufacturer or importer of a product shall not be held responsible for complying with the requirements of this chapter applicable to a responsible entity if the manufacturer or importer provides a notice to the Department containing information demonstrating to the Department's satisfaction that the product is no longer placed into the stream of commerce in California. The notice shall include all of the following:

- (A) The name of, and contact information for, the manufacturer or the importer;
- (B) The name of, and contact information for, all persons in California, other than the final purchaser or lessee, to whom the manufacturer or importer directly sold the product within the prior twelve (12) months;
- (C) Identification and location of the manufacturer's or the importer's retail sales outlets where the manufacturer or importer sold, supplied, or offered for sale the product in California, if applicable; and
- (D) Information describing the product, including the brand name(s) and product name(s) under which the product was placed into the stream of commerce in California.

(2) If the manufacturer or importer places into the stream of commerce in California a product that replaces, in terms of use and customer bases, the removed Priority Product and that contains the same or different Chemical(s) of Concern, the manufacturer or importer shall provide a notice to the Department at the same time as the notice required pursuant to paragraph (1) or within thirty (30) days after the

1 replacement product is first placed into the stream of commerce in California,
2 whichever is later. The notice shall include all of the following information:

3 (A) The manufacturer's or importer's name and contact information;

4 (B) The name of, and contact information for, all persons in California, other than the
5 final purchaser or lessee, to whom the manufacturer or importer directly sold the
6 product within the prior twelve (12) months;

7 (C) Identification and location of the manufacturer's or the importer's retail sales
8 outlets where the manufacturer or importer sold, supplied, or offered for sale the
9 product in California, if applicable;

10 (D) Information describing the Priority Product that is replaced by the new product,
11 including the brand name(s) and product name(s) under which the Priority
12 Product was placed into the stream of commerce in California; and

13 (E) Information describing the new product that replaces the Priority Product,
14 including the brand name(s) and product name(s) under which the product is
15 placed into the stream of commerce in California, and the Chemical(s) of
16 Concern in the new product.

17 (3) Paragraph (2) does not apply to a replacement product first placed into the stream of
18 commerce in California prior to the issuance of the applicable proposed Priority
19 Products list, unless there is a two-fold or greater increase in the sales of the
20 replacement product in California within one year after the date of the notice
21 required pursuant to paragraph (1).

22 (c) Retailer Option.

23 A retailer of a consumer product for which the Department has provided notice pursuant
24 to subsection (a), shall not be held responsible for complying with the requirements
25 specified in the notice if:

26 (1) The manufacturer or importer complies with the requirement specified in the
27 Department's notice, or fulfills the requirements of subsection (b), within sixty (60)
28 days after the Department issues the notice; or

29 (2) The retailer complies with both of the following requirements:

30 (A) The retailer ceases ordering the product no later than sixty (60) days after the
31 Department has provided notice pursuant to subsection (a)(1); and

32 (B) No later than sixty (60) days after the Department has provided notice pursuant
33 to subsection (a)(1), the retailer notifies the Department that it has ceased
34 ordering the product, and provides the following information to the Department:

35 1. The retailer's name and contact information;

36 2. The manufacturer's and the importer's, if applicable, name and contact
37 information;

38 3. Identification and location of the retailer's sales outlets where the product is
39 sold, supplied, or offered for sale in California;

- 1 4. The name of, and contact information for, the person immediately upstream
2 from the retailer in the supply chain for the product;
3 5. Information describing the product, including the brand name(s) and product
4 name(s) under which the retailer placed the product into the stream of
5 commerce in California; and
6 6. A statement certifying that the retailer will not re-initiate ordering the product
7 unless and until information posted on the Department's website indicates that
8 the non-compliance has been remedied.
- 9 (d) Failure to Comply List.
- 10 (1) (A) If the Department determines that one or more requirements of this chapter have
11 not been complied with for a specific product, the Department shall issue a notice
12 of non-compliance to the manufacturer and the importers, if applicable, for the
13 product.
14 (B) A notice of non-compliance shall describe the nature of the non-compliance and
15 the Department's intent to place information concerning the determination of non-
16 compliance on the Failure to Comply List on its website pursuant to paragraph
17 (4).
- 18 (2) If the non-compliance has not been remedied to the satisfaction of the Department,
19 the Department shall post information concerning the determination of non-
20 compliance on the Failure to Comply List on its website pursuant to paragraph (4).
21 The Department shall post the information on the Failure to Comply List not less
22 than 45 days and not later than 90 days after issuing the notice of non-compliance.
23 The non-compliance shall be deemed to be remedied if the Department determines
24 that the requirements of subsection (b)(1) have been fulfilled, or that the condition of
25 non-compliance has been fully remedied.
- 26 (3) Paragraph (2) does not apply if there is pending dispute under article 7 concerning
27 the notice of non-compliance.
- 28 (4) The Department shall post and maintain on its website a Failure to Comply List that
29 includes all of the following information for each product covered by a notice of non-
30 compliance:
- 31 (A) Information identifying and describing the product, including the brand name(s)
32 and product name(s) under which the product is placed into the stream of
33 commerce in California;
34 (B) The requirement(s) of this chapter, and the applicable due date(s), that are the
35 basis for the notice of non-compliance;
36 (C) A statement placing retailers of the product on notice of the failure to comply by
37 the manufacturer(s) and the importer(s), if applicable, pursuant to subsection
38 (a)(1), including identification of the requirement with which the retailer shall
39 comply and the timeframe for compliance, which shall be no less than sixty (60)
40 days after the notice is posted on the Department's website;

(D) The Chemical(s) of Concern known to be in the product;

(E) The name of and, if known, the contact information for the person listed on the product label as the manufacturer and the person, if any, listed as the distributor;

(F) The name of, and contact information for, any manufacturer or importer that has been notified by the Department, pursuant to paragraph (1);

(G) The name of, and contact information for, retailers of the product known to the Department who have not fully complied with the requirements of subsection (c); and

(H) The date the product is first listed on the Failure to Comply List.

(5) The Department shall remove a product, and the associated information, from the Failure to Comply List if the Department determines that the condition of non-compliance has been fully remedied, or that the requirements of subsection (b)(1) have been fulfilled.

(6) The Department shall remove information concerning a retailer who is a responsible entity from the Failure to Comply List if the Department determines that the retailer has fully complied with the applicable requirements of subsection (c).

§ 69501.4. Information Submission and Retention Requirements.

(a) All information required to be submitted to the Department by a responsible entity pursuant to the chapter must be signed by the responsible individual in charge of preparing or overseeing the preparation of the information and by the owner, or an officer of the company, or an authorized representative. All information submitted to the Department must be in English, and must be generated and submitted in a manner and in an electronic format specified by the Department.

(b) All De Minimis Exemption Notifications, Preliminary and Final AA Reports, Priority Product Notifications, and submissions of information claimed to constitute trade secrets must include the following certification statement, signed by the owner or an officer, or authorized representative, of the entity submitting the document and by the responsible individual in charge of preparing, or overseeing the preparation of, the information:

“I certify under penalty of perjury that this document and all attachments were prepared or compiled under my direction or supervision to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person(s) directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that submitting false information or statements is a punishable offense.”

(c) A person who is subject to a requirement to obtain or prepare information, but who is not required to submit the information to the Department or has not yet been requested to submit information to the Department, shall retain the information for a period of three

1 (3) years following the date the person was required to obtain or prepare the
2 information.

3
4 **§ 69501.5. Chemical and Product Information.**

5 (a) The Department shall seek to obtain and/or review information that it determines is
6 necessary to implement this chapter using one or more of the following approaches:

7 (1) Obtain and/or review information in the public domain that is readily available in a
8 usable format, without a subscription or other charge;

9 (2) Obtain and/or review information in the public domain that is readily available in a
10 usable format, with a subscription or other charge, to the extent resources are
11 available to pay the required costs;

12 (3) Request a responsible entity or a chemical manufacturer or importer to make
13 existing information available to the Department, in accordance with a schedule
14 specified by the Department; and/or

15 (4) Request a responsible entity or a chemical manufacturer or importer to generate
16 new information and provide it to the Department, in accordance with a schedule
17 specified by the Department.

18 (b) The Department may request that information be made available to it pursuant to this
19 section by either or both of the following methods:

20 (1) Correspondence sent to an individual responsible entity or chemical manufacturer
21 electronically or by United States mail. Copies of the correspondence shall be
22 posted on the Department's website; and/or

23 (2) Information call-ins that, unless otherwise specified, apply to all responsible entities
24 and/or all chemical manufacturers and importers of a specific chemical or product or
25 group of chemicals or products. The Department shall post information call-ins on
26 its website, provide notice to individuals on the listservs established by the
27 Department related to this chapter, and provide notice in the CRNR.

28 (c) The Department shall post on its website on the Failure to Respond List a notice that a
29 responsible entity or a chemical manufacturer or importer has not made the requested
30 information available to the Department, if that person, or person acting on behalf of or
31 in lieu of that person, does not make the requested information available by the date
32 specified by the Department, unless the responsible entity or the chemical manufacturer
33 or importer demonstrates to the Department's satisfaction that it does not have and is
34 unable to produce the requested information. The Department shall also post
35 information identifying the responsible entity or the chemical manufacturer or importer,
36 and the chemical or product that is the subject of the request. The Department shall
37 remove this information from its website upon determining that the responsible entity, or
38 the chemical manufacturer or importer, or another person has fulfilled the request for
39 information.
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