

Economic and Fiscal Impact Analysis
Attachment to STD 399
November 2023

**SAFER CONSUMER PRODUCTS REGULATIONS: Listing Laundry Detergents
Containing Nonylphenol Ethoxylates as a Priority Product**

Department of Toxic Substances Control Reference Number: 2019-01R

This document details the background of the economic and fiscal impacts of the Department of Toxic Substances Control's (DTSC) proposal to amend section 69511 and add section 69511.8 to Article 11, Chapter 55 of Division 4.5 of Title 22 of the California Code of Regulations.

Note: This document only includes sections of the Form 399 for which an explanation could not fit in the space provided. As such, the section headings and titles are intentionally written to match the corresponding sections of the form and may not be in consecutive order.

Summary: The Department of Toxic Substances Control (DTSC) prepared this economic impact analysis to support the designation of Laundry Detergents Containing Nonylphenol Ethoxylates as a Priority Product under the Safer Consumer Products (SCP) regulations (Chapter 55 of Division 4.5 of Title 22 of the California Code of Regulations (commencing with section 69501)). For the purposes of this regulation, DTSC defines "laundry detergents containing nonylphenol ethoxylates" as any product intended to clean or remove soil or unwanted deposits from laundered clothes and textile products, such as sheets and tablecloths. This includes but is not limited to laundry detergents of any form, including granules, liquids, powders, tabs, crystals, or pods, that are used in washing machines, for hand washing, or as part of a laundry system. Detergents intended for use as a pre-soak or pre-spotter or with fabric or color protection properties are also included.

Nonylphenol ethoxylates (NPEs) are a class of surfactants (compounds in detergents that increase cleaning efficiency) used for their cleaning properties in a variety of consumer products. Despite international concern for NPEs in the aquatic environment, several consumer products continue to be formulated with NPEs, as they are low-cost, highly effective surfactants. The use of NPEs has been voluntarily phased-out of the household and industrial laundry markets, however laundry detergents containing NPEs continue to be marketed to on-premises launderers like hotels and hospitals, which can discharge significant amounts of NPEs to wastewater treatment plants. Nonylphenol, the most frequently analyzed degradation product of NPEs, has been detected in California surface waters, sediments, and wastewater-related media, including influent, effluent, sludge, and biosolids. The wide use of laundry

detergents containing NPEs creates potential for significant adverse effects from exposure to NPEs in the aquatic environment.

Findings: DTSC estimated that there are up to 11 manufacturers of laundry detergents containing NPEs based in California¹ that could be impacted by this proposed regulation. DTSC estimates that costs could range from **\$58,080** to **\$116,160** for California-based manufacturers to fulfill the SCP regulatory requirements to submit a Priority Product Notification and Removal/Replacement Notifications.

This economic impact assessment is based on the assumption that manufacturers of laundry detergents containing NPEs will comply with the SCP regulations by submitting Priority Product Notifications and Removal/Replacement Notifications in lieu of Alternatives Analysis (AA) Reports to DTSC by the dates specified in regulation as discussed in more detail below. Manufacturers of laundry detergents containing NPEs that do not submit a Removal/Replacement Notification in lieu of an Alternatives Analysis Report or complete the Alternatives Analysis process may remove their product from the market in California.² If a manufacturer fails to comply with the regulation and DTSC provides notice of this noncompliance, the requirements for importers, retailers, or assemblers, as applicable, call for importers to cease placing the product into the stream of commerce in California, and for retailers and assemblers to cease ordering the product.

Manufacturers and trade association representatives contacted by DTSC indicated that alternatives to NPEs are readily available and most manufacturers have already removed NPEs from their laundry detergents. All of the manufacturers DTSC contacted that were still using NPEs indicated they were likely to replace NPEs with a different chemical in their laundry detergent products instead of submitting a two-stage AA Report. Trade association representatives also indicated that chemical replacement was the most likely scenario. Based on this information, DTSC does not expect any manufacturers to submit a two-stage AA or an abridged AA.

Background: Following the designation of a Priority Product, manufacturers must submit a Priority Product Notification and may conduct an AA to determine if there are any safer alternatives to the use of the chemical of concern in the Priority Product. In lieu of submitting an AA Report, a manufacturer could also remove the chemical of concern from their products, replace the chemical of concern in their products, or stop selling their products in California. If

¹ The DTSC SCP Division considers a business 'California-based' if the business is incorporated or headquartered in California or employs over 50 percent of its employees in California.

² See California Code of Regulations, title 22, section 69505.2.

a manufacturer elects to remove or replace the chemical of concern from the Priority Product, it must submit a Removal/Replacement Notification in lieu of an AA Report.

If manufacturers of Priority Products cannot be identified or contacted in a reasonable manner, DTSC traces the supply chain to identify a responsible entity in the compliance hierarchy. Other responsible entities include importers, assemblers, or retailers, in descending order of responsibility.³

I. ECONOMIC IMPACT STATEMENT

The following information supplements statements in the Economic and Fiscal Impact Statement (STD 399) for the rulemaking proposal titled “Safer Consumer Products Regulations – Listing Laundry Detergents Containing Nonylphenol Ethoxylates as a Priority Product.” The section headings and numbers shown below correspond to sections in the Economic Impact Statement portion of the STD 399 that require additional information.

A) Estimated Private Sector Cost Impacts

3. Total Number of Businesses Impacted

Through internet research and consultation with industry representatives, DTSC staff estimates there are at most 11 California-based manufacturers of laundry detergents containing NPEs that would be required to comply with this regulation. All of these types of manufacturers must submit Notifications and/or AA reports. Costs incurred by out-of-state businesses, however, fall outside the scope of the Economic Impact Analysis. The DTSC SCP program considers a business “California-based” if the business is incorporated or headquartered in California or employs over 50 percent of its employees in California.

Types of Businesses

These businesses are manufacturers of laundry detergents containing NPEs that make and sell their products in California.

Number or Percentage of Total Businesses Impacted that are Small Businesses

Under California Rulemaking Law, Government Code section 11342.610, a small business is defined as being both independently owned and operated and not dominant in its field of operation. California Government Code 11346.3(b)(4) adds an additional criterion to the small business definition: a small business must have fewer than 100 employees. Many of the potentially impacted manufacturers are non-public companies and do not publish information about employee size, ownership, or management of their organizations. DTSC relied on Dun & Bradstreet to provide estimates of employee size for each potentially impacted manufacturer.

³ See California Code of Regulations, title 22, Section 69501.2.

Based on this information and the limited information that is available on company websites, DTSC estimates that nine of the 11 potentially impacted manufacturers are small businesses.

4. Number of Businesses Created or Eliminated

DTSC determined that this proposal is unlikely to result in the elimination of any manufacturers of laundry detergents containing NPEs. DTSC anticipates zero ongoing costs associated with this proposed regulation. DTSC expects that the one-time costs associated with the Priority Product Notifications and Removal/Replacement Notifications are low enough for all potentially impacted manufacturers to comply without eliminating their businesses.

6. Number of Jobs Created or Eliminated

DTSC estimates no jobs will be created or eliminated due to this regulation.

B) Estimated Costs

DTSC estimates the costs to responsible entities to complete a Priority Product Notification and Product-Chemical Replacement Intent and/or Confirmation Notification in lieu of a two-stage AA or abridged AA report. Responsible entities that elect to remove or replace the Chemical of Concern in the Priority Product may incur additional costs or cost savings. The additional costs or cost savings associated with these decisions are not calculable because they are dependent on the specific factors relevant to each responsible entity's Alternatives Analysis. DTSC cannot pre-determine the outcome of any Alternatives Analysis or the subsequent actions of any responsible entity.

1.a. Small Business Costs

DTSC estimates that it will take each manufacturer of laundry detergent containing NPEs a maximum of 176 hours at \$60/hour to complete a Priority Product Notification and Product-Chemical Replacement Intent and/or Confirmation Notification, or a maximum total of \$10,560. These are one-time notifications and reporting requirements that manufacturers are expected to complete within one year of adoption of the proposed regulation; therefore, there are no ongoing costs. Nine out of the 11 impacted California businesses are small businesses, however, and DTSC assumes that each business, regardless of size, will incur the same costs of regulatory compliance.

Table 1: Estimated Total Costs to Manufacturers

Manufacturer AA-Related Tasks	Individual Manufacturer Cost Range	CA Industry-Wide Cost Range
Priority Product Notification	\$480 - \$960	\$5,280 – 10,560
Product-Chemical Replacement Intent and/or Confirmation Notification	\$4,800 - \$9,600	\$52,800 – 105,600
Combined Tasks	\$5,280 – \$10,560	\$58,080 - \$116,160

1.b. Typical Business Costs

See section '1.a.', which immediately precedes this section. DTSC estimates that costs for each business will be the same regardless of size.

1.c. Individual Costs

There are no anticipated costs to individuals.

3. Reporting Requirement Costs

There are no annual ongoing reporting costs because Priority Product Notifications and Removal/Replacement Notifications are one-time reporting requirements.

5. Federal Regulations

The SCP program established a unique approach to regulating chemicals of concern in consumer products that allows DTSC to take a precautionary approach to protecting people and the environment when other regulatory programs or protective standards are lacking. There are no equivalent federal regulations that require product manufacturers to determine if the chemical in their product is necessary and if there is a safer alternative and to take steps to protect human health and the environment.

Under the Toxic Substances Control Act (TSCA), U.S. EPA proposed a Significant New Use Rule (SNUR) for specific nonylphenols and NPEs in 2014. If the proposed SNUR were to be adopted, manufacturers and importers would have to report any new uses of the chemicals. Since 2015, when the public comment period closed, U.S. EPA has not released any updated information on the status of the proposed SNUR. DTSC decided to move forward with this proposed rulemaking because it is unknown when or if the U.S. EPA's proposed rule will be finalized and because the NPEs identified in the U.S. EPA's proposed rule are limited and only represent a few of the NPEs that are included in the scope of DTSC's proposal. DTSC's

proposed rule will regulate NPEs through a regulatory framework that is fundamentally different from TSCA.

This proposed regulation is an important effort to protect the aquatic environment of California from harmful exposures to NPEs in laundry detergents.

C) Estimated Benefits

A primary goal of the SCP regulations is to protect California's valuable and limited water resources and aquatic ecosystems from consumer product-derived chemical contamination. By listing laundry detergents containing NPEs as a Priority Product, DTSC sets in motion a strategy to reduce environmental exposure to NPEs from the use of this product. A reduction in NPEs means healthier aquatic ecosystems. A reduction in exposure to NPEs could assist in the conservation of threatened and endangered species, reduce wastewater treatment costs, and increase the use of recycled water. A full description of the potential adverse impacts of nonylphenol ethoxylate and factors related to potential exposure to nonylphenol ethoxylate is presented in DTSC (2022) *Product-Chemical Profile for Nonylphenol Ethoxylates in Laundry Detergents*, a reference listed in the Initial Statement of Reasons.

DTSC cannot predetermine the alternatives that each manufacturer of laundry detergents containing NPEs will propose; therefore, it is impossible to accurately predict or quantify the full range of potential benefits associated with their development. DTSC's process encourages the use of alternatives of least concern and prefers those that provide the greatest level of inherent protection. In general, economic benefits to California workers and business owners may include expanded employment opportunities in the fields of consulting, worker and consumer education, and marketing. Additional benefits may accrue because of increased research and product development collaboration between manufacturers and California-based research entities. Institutional and corporate financial support of chemical and material science programs focused on developing safer laundry detergents could advance the field. These research initiatives could provide manufacturers with employees that are highly skilled in the research and design of safer products for newly emerging global markets.

D) Alternatives to the Regulation

The DTSC analysis found that no reasonable alternative to the selected alternative (the proposed regulation) would be either more effective in carrying out the purpose for which the action is proposed or would be less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

D.1. Alternatives Considered

DTSC considered the following alternatives to the proposed regulation:

Regulation: List laundry detergents containing NPEs as a Priority Product:

This option was selected due to potential serious ecological risks from exposure to NPEs in laundry detergents products.

1) Alternative 1: Wait for the U.S. Environmental Protection Agency (U.S. EPA) to regulate the use of laundry detergents containing NPEs under TSCA.

DTSC did not select this alternative because it is unclear if or when the U.S. EPA's proposed rule will be finalized. DTSC's proposed rule will regulate NPEs using a regulatory framework that is fundamentally different from TSCA. DTSC has chosen to move forward with its proposed rulemaking to protect the aquatic environment of California.

2) Alternative 2: List hand and body washes containing triclosan as a Priority Product.

Triclosan is a well-known aquatic toxicant that when used as an antimicrobial in hand and body washes can enter the aquatic environment. Concern has been raised by wastewater treatment plants and water recycling systems over the level of triclosan in their treated effluents and biosolids. DTSC decided not to list hand and body washes containing triclosan at this time because its use in over-the-counter hand and body wash applications is no longer allowed via FDA rule ("Safety and Effectiveness of Consumer Antiseptics; Topical Antimicrobial Drug Products for Over-the-Counter Human Use, 81 Federal Register 172 (final September 6, 2016), pp 61106-61130 (to be codified at 21 CFR Part 1308)," 2016).

D.2. Costs of Alternatives

DTSC did not attempt to quantify costs or benefits associated with any of the Alternatives since none of the Alternatives would have yielded health and environmental benefits approximating the health and environmental benefits provided by including laundry detergents containing nonylphenol ethoxylates in the Priority Product designation. With Alternative 1 the scope of the U.S. EPA's proposed rule may significantly change before it is made final. With Alternative 2 FDA's rule has effectively removed triclosan in hand and body washes from the market.

E) Major Regulations

DTSC estimates that additional costs to manufacturers associated with the proposed requirements for laundry detergents containing NPEs will be significantly less than the threshold amounts for a "major" regulation cited in Section 11346 of the Government Code and Section 57005 of the Health and Safety Code. Accordingly, DTSC is not required to prepare,

and submit for approval, a "Standardized Regulatory Impact Assessment" because the estimated costs incurred by manufacturers of laundry detergents containing NPEs will be less than \$50 million in the first year. Consequently, DTSC is not required to conduct macro-economic modeling for the proposed rulemaking pursuant to Section 11346 of the Government Code. Similarly, the estimated additional costs for the proposed regulation will be less than the \$10 million CalEPA-specific threshold pursuant to Section 57005 of the Health and Safety Code.

II. FISCAL IMPACT STATEMENT

The following information supplements statements in the Economic and Fiscal Impact form (Std. 399) for the rulemaking proposal titled "Safer Consumer Products Regulations – Listing Laundry Detergents Containing Nonylphenol Ethoxylates as a Priority Product." The section headings and numbers shown below correspond to sections in the Fiscal Impact Statement portion of the Std. 399 form that require additional information.

A) Fiscal Effect on Local Government

No fiscal impact exists.

B) Fiscal Effect on State Government

DTSC estimates that the state fiscal impact of adopting this regulation will range from **\$363,904** to **\$845,942** in DTSC staff costs for reviewing all Notifications. Resources will be drawn from the Toxic Substances Control Account. This calculation uses job classification rates for the State of California Civil Service Pay Scale.

Table 2: Estimated Fiscal Cost to State Government

	Low	High
Individual Notification	\$2,459	\$5,716
Total of all Notifications	\$363,904	\$845,942

DTSC estimates these one-time⁴ costs would be absorbed within DTSC's existing budget. Existing DTSC staff and managers will perform the reviews, and no new personnel resources will be needed to complete these tasks. Existing DTSC staff and managers will perform the reviews, and no new personnel resources will be needed to complete these tasks.

All estimates assume DTSC will receive 148 Priority Product Notifications and Product-Chemical Replacement Intent and/or Confirmation Notifications and that DTSC will review

⁴ These activities will likely fall within FY 2022-23, depending on the precise timing of regulatory milestones.

revisions to 50% of the Notifications. The lower estimate assumes that reviews can be completed by entry level staff with each review taking an average of three days. The higher estimate assumes reviews will be conducted by senior level staff with each review taking an average of four days.

Estimates include costs of review by a variety of technical staff including environmental scientists, toxicologists, engineers, economists, and attorneys. The primary sources of uncertainty in this estimate are as follows: the precise number of manufacturers of laundry detergents containing NPEs, how many manufacturers will prepare a Product-Chemical Replacement Intent and/or Confirmation Notification in lieu of an AA Report, the number of hours it will take DTSC to review an individual Notification, and whether any of the 148 identified responsible entities are not manufacturers but assemblers (which would not be required to submit a Priority Product Notification or conduct an AA under SCP regulations).

C) Fiscal Effect on Federal Funding of State Programs

No fiscal impact exists.