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## Department of Toxic Substances Control

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**Gavin Newsom**  
Governor

### **45-DAY PUBLIC NOTICE AND COMMENT PERIOD**

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

**Department of Toxic Substances Control reference number: 2019-01R**

**NOTICE IS HEREBY GIVEN** that the Department of Toxic Substances Control (DTSC) proposes to amend the California Code of Regulations, title 22, division 4.5, chapter 55, section 69511, and adopt section 69511.8. This proposed amendment pertains to identification of a Priority Product under the Safer Consumer Products (SCP) regulations, approved by the Office of Administrative Law (OAL) and filed with the Secretary of State on August 28, 2013 (effective date: 10/01/2013; OAL Regulatory Action Number: Z-2012-07170-04).

#### **WRITTEN COMMENT PERIOD**

The written comment period will close on 12/31/2023. Only comments received at the DTSC office or postmarked on or before that date will be considered. Any interested person(s) or their authorized representative(s) may submit written comments relevant to the proposed regulatory action to DTSC in either electronic or hard-copy formats.

Written comments may be submitted electronically through the SCP Information Management System, CalSAFER at: <https://calsafer.dtsc.ca.gov/>. Please direct questions or concerns about CalSAFER to Michael Ernst at (916) 322-3385 or [michael.ernst@dtsc.ca.gov](mailto:michael.ernst@dtsc.ca.gov). While DTSC prefers that comments be submitted through the CalSAFER system, interested persons may also submit their comments in an email to: [SaferConsumerProducts@dtsc.ca.gov](mailto:SaferConsumerProducts@dtsc.ca.gov) or through the DTSC regulations email address at [regs@dtsc.ca.gov](mailto:regs@dtsc.ca.gov). Please include the DTSC reference number for this regulation in the subject of your message. Direct hard-copy written comments to Office of Legislation and Regulatory Review, as specified below.

## **PUBLIC HEARING**

A public hearing has not been scheduled for this rulemaking. However, DTSC will conduct a hearing if a written request for a public hearing is received from any interested person, or his or her duly authorized representative, no later than 15 days prior to the close of the written comment period, pursuant to Government Code Section 11346.8. Submit a written request for a public hearing in an email to [SaferConsumerProducts@dtsc.ca.gov](mailto:SaferConsumerProducts@dtsc.ca.gov) or to the Office of Legislation and Regulatory Review, as specified below.

### **Notice Pertaining to Accessibility and Reasonable Accommodation**

All documents related to these regulations can be made available in alternate format (i.e., Braille, large print, etc.) or in another language, as requested, in accordance with State and Federal law. Further, to ensure the public has equal access to all available services and information, DTSC will provide disability-related reasonable accommodations and/or translator/interpreter needs, upon request. For assistance, please contact the staff person below. Note: the range of assistive series available may be limited if requests are made less than 10 business days prior a public hearing.

Office of Legislation and Regulatory Review  
Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, California 95812-0806  
Fax Number: (916) 324-1808  
TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

## **AUTHORITY & REFERENCE**

### **Authority**

This regulation is being adopted under the following authorities:

- Health and Safety Code (HSC) section 25252 authorizes and requires DTSC to adopt regulations to establish a process to identify and prioritize those chemicals or chemical ingredients in consumer products that may be considered a Chemical of Concern. This section also directs DTSC to reference and use available information from various sources but does not limit DTSC to use only this information.
- HSC section 25253 authorizes and requires DTSC to adopt regulations that establish a process for evaluating Chemicals of Concern in consumer products, and their potential alternatives, to determine how best to limit exposure to or to reduce the level of hazard posed by a Chemical of Concern.

- HSC section 58012 (added by Gov. Reorg. Plan No. 1, §146, eff. July 17, 1991) grants DTSC authority to adopt regulations to execute its duties.

## Reference

This regulation implements, interprets, or makes specific the following statutes:

- HSC sections 25252 and 25253.

## INFORMATIVE DIGEST

### Policy Statement Overview:

Background and Effect of the Proposed Regulatory Action:

The SCP regulations were adopted in October 2013 to meet the statutory requirements outlined in HSC sections 25252 and 25253. The regulations outline a science-based process for evaluating Chemicals of Concern in consumer products and safer alternatives by:

- Establishing a list of Candidate Chemicals and specifying criteria by which these may be designated Chemicals of Concern;
- Establishing a process to identify and prioritize product and Candidate Chemical combinations that may be listed as Priority Products;
- Requiring manufacturers of a product listed as a Priority Product to notify DTSC within 60 days of the listing regulation's effective date;
- Requiring manufacturers of a Priority Product to determine how best to reduce exposures to the Chemical(s) of Concern in the product;
- Allowing DTSC to identify and require implementation of Regulatory Responses following completion of an Alternatives Analysis, if needed; and
- Creating a process for persons to petition DTSC to add chemicals to the Candidate Chemicals list, add or remove Candidate Chemicals lists in their entirety, or to add or remove a product-chemical combination from the Priority Products List.

DTSC proposes to amend section 69511 and add section 69511.8 to Article 11 of the SCP regulations. The proposed action will add laundry detergents containing nonylphenol ethoxylates (NPEs) as a Priority Product to the Priority Products List.

This listing applies to any product that is placed into commerce in California that contains NPEs, and that may be marketed, sold, or offered for sale as a chemical substance 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.

Following extensive review of the scientific literature and analysis of the known hazard traits of NPEs, DTSC determined there is potential for the aquatic environment to be exposed to NPEs and their degradation products through the use of laundry detergents and there is potential for one or more exposures to cause or contribute to significant or widespread adverse impacts to aquatic organisms. NPEs and their degradation products can impair growth, development, reproduction, and survival in fish, aquatic invertebrates, and algae species. DTSC based this determination on an evaluation of available, reliable scientific information pertinent to the regulatory criteria.

### **Benefits of the Proposed Regulatory Action:**

A primary goal of the SCP regulations is to prevent or reduce potential adverse health and environmental impacts to the State of California. By listing laundry detergents containing NPEs as a Priority Product, DTSC requires manufacturers selling these products into California to evaluate whether NPEs are necessary in laundry detergents or whether there are functionally safer alternatives that would reduce exposure to NPEs during manufacturing and use of laundry detergents. A reduction in NPEs would result in 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.

DTSC cannot pre-determine the alternatives that each manufacturer 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.

### **Existing Laws and Regulations:**

The SCP regulations established a unique approach to regulating Chemicals of Concern in consumer products that grants DTSC authority to take actions to protect people and the environment when such actions are outside the scope of other regulatory programs. There are no equivalent federal or state regulations that require product manufacturers to determine if the chemical in their product is necessary and whether there is a safer alternative, with the goal of protecting consumers and the environment from adverse effects associated with a product throughout its lifecycle.

DTSC has assessed all applicable state and federal laws and regulations, as well as international treaties or agreements with the force of domestic law, related to the proposed Priority Product and the Candidate Chemical in the product. DTSC has determined that no

state or federal regulations overlap or conflict with this proposal to list laundry detergents containing NPEs as a Priority Product.

### **Related State Laws and Regulations:**

No California state laws or regulations currently address the use of NPEs in laundry detergents. DTSC consulted with the California State Water Resources Control Board (State Water Board), which has regulatory responsibility for protecting water quality in California, to ensure that this rulemaking is in accordance with State Water Board regulations. DTSC has determined that no regulations overlap or conflict with the proposal to list laundry detergents containing NPEs as a Priority Product.

### **Comparable Federal Regulation or Statute:**

These regulations are not based on, identical to, or in conflict with any federal regulations.

### **U.S. EPA's Limited Regulatory Actions:**

Section 5 of Toxic Substances Control Act (TSCA) authorizes U.S. EPA to issue Significant New Use Rules (SNURs) for new or existing chemicals used in a significantly new way. A SNUR requires companies to notify U.S. EPA at least 90 days prior to manufacturing, importing, or processing substances for a significant new use, and to submit a notification including information about the chemical's identity, physical characteristics, processing and use, and available toxicity data. U.S. EPA has 90 days to evaluate the new use and can request more data, prohibit, or limit the manufacture, or allow the use.

Under the Toxic Substances Control Act (TSCA), U.S. EPA proposed a Significant New Use Rule (SNUR) for specific nonylphenols and nonylphenol ethoxylates in 2014, but has yet to finalize it. 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's.

## **OTHER APPLICABLE REQUIREMENTS PRESCRIBED BY STATUTE**

### **California Environmental Quality Act (CEQA) Compliance**

DTSC has determined that this rulemaking would be exempt from CEQA (Public Resources Code Section 21000, et seq.) under the "feasibility or planning study" and "data collection"

exemptions outlined in California Code of Regulations, title 14, section 15262 and 15306, respectively. The project would also be exempt under the common sense exemption. (Cal. Code Regs., tit. 14, § 15061, subd. (b)(3).) A draft Notice of Exemption (NOE) is available for review during the public comment period upon request and will be filed with the State Clearinghouse if the regulation is finalized.

### **California Environmental Policy Council Review**

Under the provisions of Health and Safety Code section 25252.5, the California Environmental Policy Council (CEPC) reviewed the framework SCP regulations prior to their adoption in October 2013 (the CEPC Resolution may be viewed at: <http://www.calepa.ca.gov/cepc/>). Under HSC Section 25252.5(f), the CEPC determined that the proposed regulations would not have any significant adverse impact on public health or the environment and could be adopted by DTSC without undergoing a multimedia life cycle evaluation.

DTSC determined that further review by the CEPC is not warranted for this rulemaking because the requirements of HSC section 25252.5 apply only to the creation of the SCP program and not regulations that may be required to implement this program.

### **Peer Review**

DTSC requested and obtained an external scientific peer review of the scientific basis of the proposed regulation pursuant to Health and Safety Code section 57004. The result of the external scientific peer review is posted to DTSC's rulemaking website at: <https://dtsc.ca.gov/regs/>.

### **MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

DTSC has determined that adoption of this regulation will not impose a local mandate or result in costs subject to state reimbursement pursuant to part 7 of division 4, commencing with section 17500, of the Government Code or other nondiscretionary costs or savings to local agencies.

### **COST OR SAVINGS TO STATE OR LOCAL AGENCIES, OR SCHOOL DISTRICTS SUBJECT TO REIMBURSEMENT**

DTSC determined that adoption of this regulation will not result in costs or savings for any local agency or school district required to be reimbursed pursuant to Part 7 of Division 4, commencing with section 17500 of the Government Code, or other nondiscretionary costs or savings imposed on local agencies.

### **Costs or Savings to Any State Agency:**

DTSC will absorb additional costs associated with reviewing Notifications, Abridged AA Reports, or two-stage AA Reports submitted by manufacturers of laundry detergents containing NPEs by reallocating staff to this new task. DTSC estimates that the total fiscal costs to state government for reviewing all Notifications, Abridged AA Reports, or two-stage AA reports submitted by manufacturers will range from \$362,081 - \$825,302.

**Local Agencies:**

DTSC determined that adoption of this regulation will not impose a local mandate or result in costs or savings for any local agency subject to reimbursement pursuant to Part 7 of Division 4, commencing with section 17500, of the Government Code or other nondiscretionary costs or savings to local agencies.

**School Districts:**

DTSC determined that adoption of this regulation would not result in costs or savings for any school district required to be reimbursed pursuant to Part 7 of Division 4, commencing with section 17500 of the Government Code.

**Federal Funding to the State:**

DTSC determined that adoption of this regulation would not result in cost or savings in federal funding to the state. DTSC determined that no fiscal impact to federal funding or state programs exists.

**DETERMINATION OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT**

DTSC determined the proposed regulatory action has no significant statewide adverse economic impact directly affecting business. Following a review of available laundry detergent market data and survey of affected manufacturers and industry organizations, DTSC determined the proposed regulation is not a major regulation and is unlikely to have a significant adverse impact on business.

Types of Businesses Affected: Manufacturers of laundry detergents containing NPEs have the principal duty to comply with the notification and reporting requirements.

Projected Reporting, Recordkeeping, or other Compliance Requirements: In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), DTSC found that the reporting requirements of the proposed regulatory action, which apply to businesses, are necessary for the health, safety, and welfare of the people of the State of California. The specific reporting requirements and forms are:

- Priority Product Notification [section 69503.7]
- Removal/Replacement Notifications:
  - Chemical of Concern Removal Intent Notification [section 69505.2]
  - Chemical of Concern Removal Confirmation Notification [section 69505.2]
  - Product Removal Intent Notification [section 69505.2]
  - Product Removal Confirmation Notification [section 69505.2]
  - Product-Chemical Replacement Intent Notification [section 69505.2]
  - Product-Chemical Replacement Confirmation Notification [section 69505.2]
  - Product Cease Ordering Notification [section 69501.2(b)(2)(B)]
- AA Notifications and Reports:
  - AA Threshold Notification [section 69505.3]
  - AA Extension [section 69505.1(c)]
  - Preliminary AA Report [section 69505.4(a)(2), section 69505.5, section 69505.1(b)(2)(A), section 69505.7]
  - Final AA Report [section 69505.4(a)(3), section 69505.6, section 69505.1(b)(2)(B), section 69505.7]
  - Abridged AA Report [section 69505.4(b)]
  - Alternate AA Work Plan [section 69505.4(c)]
  - Previously completed AA [section 69505.4(d)]

The reports and forms that a manufacturer must submit depends on several factors including the Priority Products produced, the availability of viable alternatives, and business decisions made by the manufacturer.

The reporting requirements applicable to responsible entities may be fulfilled by a consortium, trade association, public-private partnership, or other entity acting on behalf of, or in lieu of, one or more manufacturer. This does not apply to the Priority Product Notification or Alternatives Analysis Threshold Exemption Notification requirements [section 69501.2(a)(2)].

DTSC has made an initial determination that the adoption of this regulation will not exert a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. DTSC has considered proposed regulatory alternatives that would lessen any adverse economic impact on business and invites interested parties to submit proposals. Submissions may include the following considerations:

- i. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- ii. Consolidation or simplification of compliance and reporting requirements for businesses.
- iii. The use of performance standards rather than prescriptive standards.
- iv. Exemption or partial exemption from the regulatory requirements for businesses.



## **COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES**

DTSC relied on a variety of sources to estimate the number of manufacturers potentially impacted by this proposed regulation. DTSC searched detergent manufacturers listed in the State Water Board Stormwater Multiple Application and Report Tracking System and analyzed a list of manufacturers that was provided in Hoovers by Dun & Bradstreet (a private data vendor). DTSC then searched manufacturers' websites and Safety Data Sheets (SDS) for laundry detergents containing NPEs.

Based on the data collected from these data sources, DTSC estimates there are 11 manufacturers of laundry detergents in California that would be potentially affected by DTSC regulation. DTSC estimates that costs could range from \$5,280 to \$10,560 for individual manufacturers to fulfill the SCP regulatory requirements to submit a Priority Product Notification and complete a Product-Chemical Replacement Intent and/or Confirmation Notification. Total estimated costs to California-based manufacturers of laundry detergents containing NPEs range from \$58,080 to \$116,160.

## **RESULTS OF THE ECONOMIC IMPACT ASSESSMENT**

### **Creation of New Businesses or Elimination of Existing Businesses:**

DTSC determined that it is:

- Unlikely that this proposal will eliminate or create businesses or jobs in manufacturing of laundry detergents;
- Possible that this proposal could create an unknown number of businesses to assist manufacturers of laundry detergents containing NPEs in meeting regulatory obligations including consulting services, chemical and material science research services, and product development support;
- Possible that this proposal could create an unknown number of public or private sector jobs in consulting services, product research and design, chemical and material science research and support and marketing.

### **Expansion of Businesses Currently doing Business:**

DTSC determined that it is possible that this proposal could result in the expansion of businesses currently doing business within the state, particularly those engaged in regulatory consulting services, chemical and material science research and support, product research and design and marketing.

### **Effect on Housing Costs:**

DTSC has determined that the proposed regulation will have no significant effect on housing costs.

**Effect on Small Businesses:**

DTSC made an initial determination that the adoption of this regulation may affect small businesses. DTSC estimates that nine of the 11 potentially impacted manufacturers are small businesses. Costs to submit Priority Product Notifications and Product-Chemical Replacement Intent and/or Confirmation Notifications are expected to be the same for all impacted businesses. Moreover, DTSC estimates that it will take each manufacturer 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 total of \$10,560. These are one-time notifications and therefore, there are no ongoing costs. Manufacturers reported they anticipate replacing NPEs in their laundry detergents and do not anticipate conducting an Alternatives Analysis.

**Benefits of the Regulation on the Health and Welfare of California Residents, Worker Safety, and the State’s Environment:**

DTSC made an initial determination that the adoption of this regulation may positively affect the health and welfare of the State’s environment. A reduction in exposure to NPEs could benefit the health of California’s wildlife. The development of safer alternatives benefits California’s environment. DTSC cannot predetermine the alternatives that each manufacturer 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, marketing, research, and product development.

**CONSIDERATION OF ALTERNATIVES**

DTSC must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of DTSC would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. DTSC’s consideration of alternatives is available in the Initial Statement of Reasons included as part of this proposed regulation.

## **CONTACT PERSONS**

Inquiries regarding technical aspects of the proposed regulation or CEQA documents may be directed to Michael Ernst of DTSC at 916-322-3385 or [michael.ernst@dtsc.ca.gov](mailto:michael.ernst@dtsc.ca.gov), or if unavailable, Nancy Ostrom of DTSC at 916-445-3077, or [nancy.ostrom@dtsc.ca.gov](mailto:nancy.ostrom@dtsc.ca.gov). However, such oral inquiries are not part of the rulemaking record.

A public comment period for the rulemaking has been established commencing on November 10, 2023, and closing on December 31, 2023. Statements, arguments, or contentions regarding the rulemaking and/or supporting documents must be submitted in writing or presented orally or in writing at a public hearing, if a hearing is requested, in order for them to be considered by DTSC before it adopts, amends, or repeals these regulations.

DTSC will accept statements, arguments or contentions, and/or supporting documents regarding this rulemaking submitted in writing either through CalSAFER or by mail, or they may be presented orally or in writing at a public hearing, if a hearing is requested.

## **AVAILABILITY OF TEXT OF PROPOSED REGULATIONS, INITIAL STATEMENT OF REASONS, AND OTHER RULEMAKING DOCUMENTS**

Copies of the Notice of Proposed Action, Initial Statement of Reasons, all the information upon which this proposal is based, and the express terms of the proposed regulation (also known as the proposed regulatory text) are posted to DTSC's Internet website at <https://dtsc.ca.gov/regs/>.

After the close of the comment period, DTSC may adopt the proposed regulation. If substantial, sufficiently related changes are made to the regulatory text, the modified full text (with the changes clearly indicated) will be made available for comment for at least 15 days prior to adoption. Only persons who request the specific proposed regulation, attend a public hearing, if a hearing is requested, or provide written comments on this specific regulation will be sent a copy of the modified text if substantial, sufficiently related changes are made.

Once DTSC finalizes the regulatory text, DTSC will prepare a Final Statement of Reasons that updates the Initial Statement of Reasons, summarizes how DTSC addressed comments, and includes other materials. A copy of the Final Statement of Reasons will also be posted on DTSC's Internet site at <https://dtsc.ca.gov/regs/>, along with the date the rulemaking is filed with the Secretary of State and the effective date of the regulation.

## **ALL OTHER QUESTIONS/COMMENTS/INQUIRIES/UPDATES**

Please direct all written comments, procedural inquiries, and requests for documents by mail, e-mail, or fax to the Office of Legislation and Regulatory Review, as specified above. To be

included in this regulation package's mailing list and to receive updates of this rulemaking, please visit <https://dtsc.ca.gov/dtsc-e-lists/> and subscribe to the applicable E-List or e-mail: [regs@dtsc.ca.gov](mailto:regs@dtsc.ca.gov).