UNOFFICIAL

TEXT OF PROPOSED REGULATIONS --- POST-HEARING CHANGES

November 2010

This version reflects post-hearing changes to the text as originally proposed. All of the text is new language to be added to the California Code of Regulations.

NOTE: This "clean" version of the revised proposed regulations, which does not show which text has been added and deleted, is being made available as courtesy copy only. It is not the official version of the post-hearing changes. The official version is provided separately, and shows deleted text with strikeouts and added text with underlines. Also, for ease of reading and referencing the proposed regulations, line numbers and table of content page numbers are added, but are not part of the actual regulatory text.

DIVISION 4.5, TITLE 22, CALIFORNIA CODE OF REGULATIONS
CHAPTER 53. SAFER CONSUMER PRODUCT ALTERNATIVES

Amend the Table of Contents by adding chapter 53, articles 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, and sections 69301, 69301.1, 69301.2, 69301.3, 69301.4, 69301.5, 69301.6, 69302, 69302.1, 69302.2, 69302.3, 69303, 69303.1, 69303.2, 69303.3, 69303.4, 69304, 69304.1, 69305, 69305.1, 69305.2, 69305.3, 69305.4, 69305.5, 69306, 69306.1, 69306.2, 69306.3, 69306.4, 69306.5, 69306.6, 69306.7, 69306.8, 69306.9, 69307, 69307.1, 69307.2, 69307.3, 69307.4, 69307.5, 69307.6, 69307.7, 69308, 69309, 69309.1, 69309.2, and 69310 to division 4.5 of California Code of Regulations, title 22, to read:

Table of Contents

***

Chapter 53. Safer Consumer Product Alternatives

Add California Code of Regulations, title 22, division 4.5, chapter 53 to read:

Chapter 53. Safer Consumer Product Alternatives

Article 1. General

§ 69301. Purpose and Applicability.

(a) This chapter describes the process by which chemicals and chemical ingredients that are contained in consumer products and that may be considered Chemicals of Concern will be identified and prioritized, and the process for evaluating Chemicals of Concern in consumer products and their potential alternatives to determine how best to limit exposure or the level of hazard posed by the Chemical of Concern. This chapter also specifies the regulatory responses that will be or may be required following completion of such an alternatives assessment.

(b)(1) Except as provided in paragraphs (2) through (6) , this chapter applies to all consumer products placed into the stream of commerce in California.

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

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

(4)(A) Except as provided in subparagraph (B),the requirements of this chapter that pertain to consumer products or to chemicals or chemical ingredients contained in consumer products do not apply when the chemical or chemical ingredient contained in the product is an unintentionally added chemical or chemical ingredient.

(B) Subparagraph (A) does not apply if the source of the chemical or chemical ingredient is a recycled feedstock, component or processing agent, unless the manufacturer of the product does not become aware of the presence of the chemical or chemical ingredient after taking reasonably feasible steps to obtain knowledge of any chemical or chemical ingredient that might reasonably be expected to be present in the recycled feedstock, component or processing agent.

(C) If the manufacturer has knowledge of the presence of one or more unintentionally added chemicals or chemical ingredients in a recycled feedstock, component or processing agent used to produce a consumer product, the manufacturer shall provide the information, upon request, to the Department.

(5) The requirements of this chapter do not apply to a chemical or consumer product that the Department has determined is regulated by one or more federal and/or other California State regulatory program(s), and/or applicable international trade agreements ratified by the United States Senate, that, in combination, address the same public health and environmental threats and exposure pathways that would otherwise be the basis for the chemical being listed

as a Chemical of Concern or the basis for the product being listed as a Priority Product. The Department may, at its discretion, re-evaluate a determination previously made pursuant to this paragraph and rescind that determination if the Department finds that the facts and/or assumptions upon which the determination was based were not, or are no longer, valid.

(6)(A) The requirements of this chapter pertaining to consumer products containing Chemicals of Concern do not apply if the Department has determined that there is no exposure pathway by which the Chemical of Concern contained in the product might pose a threat to public health or the environment in California during the useful life or the end-of-life management of the product. A determination made pursuant to this subparagraph shall be based upon an evaluation of reasonably foreseeable uses, misuses and abuses of the product, and reasonably foreseeable proper and improper end-of-life management of the product. The Department may, at its discretion, re-evaluate a determination previously made pursuant to this subparagraph and rescind that determination if the Department finds that the facts and/or assumptions upon which the determination was based were not, or are no longer, valid.

(B) Any person requesting the Department to make a determination pursuant to subparagraph (A) shall bear the burden to prove by clear and convincing evidence to the Department's satisfaction that subparagraph (A) applies to the product in question. The evidence shall include, to the extent available, the results of any applicable use and abuse tests, including the assumptions and testing methodologies, conducted for purposes of and pursuant to a federal and/or California State regulatory program.

NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code. Reference: Sections 25251, 25252, and 25253, Health and Safety Code.

§ 69301.1. Definitions.

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

(1) "AA Report" means a report that is required to be prepared for an AA pursuant to section 69305.1(a)(2), and that meets the requirements of section 69305.4.

(2) "AA verification statement" means the statement required to be prepared for a Tier II AA pursuant to section 69305.1(c)(3).

(3) "AA Work Plan" means a work plan that is required to be prepared for an AA pursuant to section 69305.1(a)(2), and that meets the requirements of section 69305.2.

(4) "Adverse air quality impacts" means air emissions of any of the air contaminants listed below:

(A) Nitrogen oxides,

(B) Toxic air contaminants,

(C) Sulfur oxides,

(D) Greenhouses gases,

(E) Stratospheric ozone-depleting compounds,
(F) Other ozone-forming compounds, or
(G) Particulate matter, with an aerodynamic diameter of ten (10) micrometers or less.

(5) “Adverse ecological impacts” means all of the following adverse effects on living organisms and their non-living environments:
(A) Acute or chronic toxicity in aquatic, avian, animal or plant species,
(B) Adverse impacts on aquatic and terrestrial ecosystems,
(C) Loss or deterioration of environmentally sensitive habitats,
(E) Impacts adversely affecting the ability of an endangered or threatened species to survive or reproduce,
(F) Impacts that directly or indirectly cause population loss, decline in population diversity, or changes in historical communities, and
(G) Impacts that directly or indirectly cause vegetation contamination or damage.

(6) “Adverse public health impacts” means impacts that directly or indirectly cause any of the following effects on human health:
(A) Acute toxicity,
(B) Carcinogenicity,
(C) Developmental toxicity,
(D) Reproductive toxicity,
(E) Epigenetic toxicity,
(F) Genotoxicity, or
(G) Organ, tissue or cellular toxicity not otherwise described above.

(7) “Adverse soil quality impacts” means all of the following adverse affects on soil function or soil chemical, physical or biological characteristics or properties:
(A) Chemical contamination,
(B) Biological contamination,
(C) Loss of biodiversity,
(D) Loss of organic matter,
(E) Erosion,
(F) Compaction or other structural changes, and
(G) Soil sealing.

(8) “Adverse water quality impacts” means all 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 total dissolved solids,
(D) Increase in thermal pollution, and
(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 and listed in section 131.38 of Title 40 of the Code of Federal Regulations published in the Federal Register May 18, 2000,
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 identified as contaminants that have primary Maximum Contaminant Levels (MCLs) under the federal Safe Drinking Water Act, and
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.

(9) “Alternatives assessment” or “AA” means an evaluation and comparison of a product or its component(s) and alternative products or components that conforms to the applicable requirements of section 69305.3.

(10) “Bioaccumulation” means the net accumulation of a chemical substance in an organism or part of an organism, or an environmental compartment, that absorbs the chemical at a rate greater than that at which the chemical is lost.

(11) “Carcinogen or reproductive toxin” means a chemical listed as a carcinogen or a reproductive toxin, or both, pursuant to one or more of the following:
(A) Health and Safety Code section 25249.8;
(B) The National Toxicology Program Report on Carcinogens that lists chemicals known and reasonably anticipated to be human carcinogens;
(C) United States Environmental Protection Agency chemicals classified as Known or Likely (Group A, B1 or B2), as maintained on its Integrated Risk Information System, or equivalent weight-of-evidence classifications that result from subsequent revisions to its “Guidelines for Carcinogen Risk Assessment”;
(D) The International Agency for Research on Cancer Group I and 2A chemicals;
(E) The International Agency for Research on Cancer Group 2B chemicals where there exists sufficient evidence of carcinogenicity in animals, even if evidence of carcinogenicity in humans is inadequate; and
(F) The listings of Category 1A or 1B carcinogens and/or Category 1A or 1B reproductive toxicants in Annex VI to Regulation (EC) No. 1272/2008 of the European Parliament and the Council.

(12) “Chemical” means either of the following that is contained in a consumer product that has been placed into the stream of commerce in California:

(A) A chemical substance; or
(B) A chemical mixture.

(13) “Chemical ingredient” means a chemical contained in a consumer product or component.

(14) “Chemical Hazard Assessment” means the evaluation and comparison of a product or component, and the alternatives selected for consideration, using pertinent factors specified in section 69305.3(b).

(15) “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 any know impurities and additives contained in the chemical;
(C) Physico-chemical properties; and
(D) Environmental fate properties.

(16) “Chemical mixture” means any combination of two or more chemical substances if the combination does not occur in nature and is not, in whole or in part, the result of a chemical reaction; except that such term does include any combination which occurs, in whole or in part, as a result of a chemical reaction if none of the chemical substances comprising the combination is a new chemical substance and if the combination could have been manufactured without a chemical reaction.

(17) “Chemical of Concern” means a chemical listed by the Department pursuant to section 69302.2.

(18) “Chemical Removal Notice” means a notice submitted to the Department pursuant to section 69303.2(d)(2).

(19) “Chemical substance” means any organic or inorganic substance of a particular molecular identity, including any combination of such substances occurring, in whole or part, as a result of a chemical reaction or occurring in nature, and any element or uncombined radical.

(20) “Children’s product” means a consumer product designed or intended primarily for children twelve (12) years of age or younger, as determined by one or more of the following factors:
(A) A statement by a manufacturer about the intended use of the product;
(B) Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children twelve (12) years of age or younger; or

(C) Whether the product is commonly recognized by consumers as being intended for use by a child twelve (12) years of age or younger.

(21)(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; or
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.

(22)(A) "Consumer product" or "Product" means either of the following:

1. A "consumer product" as defined in Health and Safety Code section 25251; or
2. A component that meets the definition of a "consumer product" as defined in Health and Safety Code section 25251.

(B) "Consumer product" does not include either of the following:

1. A product that is no longer being placed into the stream of commerce by any person in California as of the date that it would otherwise become subject to one or more requirements of this chapter; or
2. A chemical that meets the definition of a "consumer product", as defined in Health and Safety Code section 25251, but that is not packaged, and placed into the stream of commerce in California, as an individual chemical.

(23) "Contact information" means mailing and electronic address, headquarters location, phone number(s), and website address.

(24) "Day" means calendar day. Periods of time are calculated by excluding the first day and including the last. Except, if the last day is a Saturday, Sunday or other holiday specified in Government Code section 6700 it is excluded.

(25) "De Minimis Exemption Notification" means a notification submitted to the Department pursuant to section 69303.2(d)(3).

(26) "De minimis level" means a concentration less than or equal to the lower of:

(A) 0.1% by weight; or

(B) If applicable, the hazardous waste regulatory threshold specified for the chemical pursuant to Health and Safety Code section 25141.

(27) "Department" means the Department of Toxic Substances Control.

(28) “Detectable amount” means an amount above the detection limit. “Detection limit” means the lowest concentration of a chemical that can be determined to be statistically different from an analytical blank.

(29) “Economic Impact Analysis” means the evaluation and comparison of a product or component, and the alternatives selected for consideration, using pertinent factors specified in section 69305.3(f).

(30) “Economic impacts” means an increase or decrease in one or more of the following:
(A) Jobs or businesses,
(B) The costs of doing business,
(C) The cost of goods to consumers,
(D) Capital investments,
(E) Resource costs,
(F) Energy costs,
(G) Operation and maintenance costs,
(H) Waste disposal and treatment costs, or
(I) Other relevant financial investments or liabilities not listed above.

(31) “Economic interest” means that a person, or that person’s spouse of dependent child:
(A) Has a direct or indirect investment worth two thousand dollars ($2,000) or more in the responsible entity;
(B) Is a director, officer, partner, trustee, employee, or holds a position of management in the responsible entity;
(C) Has an economic interest, as defined in subparagraph (A) or (B), in a business entity that is a parent or subsidiary of, or is otherwise related to, the responsible entity, as defined in section 18703.1(d) of Title 2 of the California Code of Regulations; or
(D) Receives a source of income from the responsible entity, other than income received in compensation for verifying an AA and AA Report for the responsible entity pursuant to section 69305.1(c).

(32) “End-of-life” means the point when the product is discarded by the consumer or the end of the useful life of the product, whichever occurs first.

(33) “Energy efficiency” means the reduction of energy usage while maintaining a comparable level of service.

(34) "Environment" means the land, air, water, soil, minerals, flora and fauna.

(35) “Environmental fate properties” mean all of the following:
(A) Biodegradation,

(B) Photodegradation,
(C) Hydrolysis half-life,
(D) Aerobic and anaerobic soil and sediment half-lives,
(D) Fate and transport among environmental compartments, and
(E) Bioaccumulation in organs and tissues.

(36) “Environmental impact” means any change to the environment, whether adverse or beneficial, wholly or partially resulting from an activity, product or service.

(37) “Exposure Potential Assessment” means the evaluation and comparison of a product or component, and the alternatives selected for consideration, using pertinent factors specified in section 69305.3(c).

(38) “Failure to Comply List” means the list prepared by the Department pursuant to section 69301.3(d)(3).

(39) “Failure to Respond List” means the list prepared by the Department pursuant to section 69301.5(d)(3).

(40) “Financial guarantee” means a mechanism or mechanisms to ensure that adequate funding is available to pay for future end-of-life management costs for the manufacturer’s products placed into the stream of commerce in California.

(41) “Functionally equivalent” means that a product that has been altered by a chemical or component substitution, or that has replaced another product, meets or exceeds the intended performance and functionality of the original product.

(42) “Greenhouse gas” means all of the following gases:
(A) Carbon dioxide.
(B) Methane.
(C) Nitrous oxide.
(D) Hydrofluorocarbons.
(E) Perfluorocarbons.
(F) Sulfur hexafluoride.
(G) Nitrogen trifluoride.

(43) “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).

(44)(A) "Hazard trait" means:

1. Hazard traits as identified by the Office of Environmental Health Hazard Assessment ("OEHHA") pursuant to Health and Safety Code section 25256.1;

2. Until OEHHA promulgates its initial list of hazard traits, "hazard trait" means all of the following:

a. Carcinogenicity or reproductive toxicity. Chemicals with these traits are those meeting the definition of carcinogen or reproductive toxin.

b. Mutagenicity. Chemicals with this trait are those listed as having mutagenic properties in the European Union Category 1A or 1B under Annex VI, part 3 of the Regulation (EC) No. 1272/2008.

c. Chemicals that have been determined by the United States Environmental Protection Agency to be Persistent Bioaccumulative Toxic chemicals.

d. Chemicals identified as priority toxic pollutants for California pursuant to section 303(c) of the federal Clean Water Act and listed in section 131.38 of Title 40 of the Code of Federal Regulations published in the Federal Register May 18, 2000.

e. 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.

f. Chemicals included on the United States Environmental Protection Agency's Existing Chemicals Action Plan list.

(B) Identification of hazard traits shall be based on criteria developed by the Department or OEHHA for determining when a chemical exhibits a hazard trait, to the extent such criteria are made available by the Department or OEHHA. If relevant criteria have not yet been provided by the Department or OEHHA, reliable information shall be used to determine if the chemical exhibits a hazard trait.

(45) "Household cleaning products" means the following products intended or labeled for use in or around the home: glass cleaners, general purpose cleaners, degreasers, lime and scale removers, washroom cleaners, tub and shower cleaners, toilet cleaners, kitchen cleaners, sink and countertop cleaners, stove top and hood cleaners, oven and grill cleaners, carpet cleaners, metal cleaners and polishers, furniture polishes, floor care products, laundry detergents and stain removers, fabric softeners, drain cleaners, hard surface cleaners, dishwashing products, hand soaps, disinfectants, and odor abatement or enhancing products. "General purpose cleaners" are cleaners intended or labeled for more than one of the cleaning uses listed above.

(46) "Intentionally added chemical or chemical ingredient" means a chemical or chemical ingredient that is deliberately used in the formulation or assembly of product where the continued presence is desired in the final consumer product to provide a specific characteristic, appearance, or quality.

(47) "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 of the consumer product.

(48) "Life cycle" means the activities in the course of a consumer product's life span, which are its design, raw materials mining, resource inputs and other resource consumption, intermediate materials processes, manufacture, packaging, transportation, distribution, marketing, use, operation and maintenance, waste generation and management, reuse and recycling, and end-of-life disposal.

(49) "Life cycle thinking" means examining environmental sustainability over a product's entire life cycle.

(50) "Listserv" means an electronic mailing list that persons may subscribe to on the Department's website in order to automatically receive electronic notification concerning the posting of documents and other information on the Department's website.

(51) "Manufacturer" means the person that produces a product that is placed into the stream of commerce in California.

(52) "Market presence information" means all of the following:
(A) Statewide sales by volume in the past calendar year;
(B) Statewide sales by number of units in the past calendar year; and
(C) Intended product use(s) and types of targeted customer base(s).

(53)(A) "Materials and resource consumption" means renewable and nonrenewable resources that are used for a consumer product during its life cycle.
(B) A renewable resource is a resource that is replaced by natural processes at a rate that is equal to or faster than its consumption rate and includes solar, wind, timber, agriculture and water. A renewable resource may become a nonrenewable resource if the rate at which it is consumed exceeds the rate at which it is produced such that its continued use may drive the resource to exhaustion.
(C) A nonrenewable resource is a resource that is formed over long periods of geologic time and includes petroleum, coal, metals (mined and recycled), minerals, and exhausted resources.

(54) "Materials and resource consumption impacts" means all of the following:
(A) Water consumption and conservation,
(B) Production, in-use, and transportation energy inputs,
(C) Energy consumption and efficiency, and
(D) Reusability and recyclability.

(55) "Multimedia Life Cycle Evaluation" means the evaluation and comparison of a product or component, and the alternatives selected for consideration, using pertinent factors specified in section 69305.3(d).

(56) "Persistence" means the length of time a chemical substance is able to exist in an environment in an unchanged form.

(57) "Person" has the same meaning as in Health and Safety Code section 25118.

(58) "Personal care product" means a consumable product that is intended to be used in the topical care and/or grooming of the body and hair and that is rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to a body for cleansing, beautifying, promoting attractiveness, or altering the appearance without affecting the body's structure or functions.

(59) "Physical chemical hazards" means all of the following:
(A) Flammability,
(B) Flash point,
(C) Explosivity limits,
(D) Auto-flammability temperature, and
(E) Oxidizing properties.

(60) "Physico-chemical properties" means all of the following:
(A) Physical state and form,
(B) Decomposition and/or melting point temperatures,
(C) Boiling point temperature,
(D) Relative density,
(E) Vapor density,
(F) Vapor pressure,
(G) Partition coefficient,
(H) Surface tension,
(I) Viscosity, and
(J) Water Solubility.

(61)(A) "Place into the stream of commerce in California" means the sale, offer for sale, distribution, supply or manufacture of a consumer product for use in the state of California.
(B) "Sale or offer for sale" means any transfer or offer to transfer for consideration of title or the right to use, by lease or sales contract, including transactions conducted and offers made through sales outlets, catalogs, or the Internet, or any other similar electronic means.

(62) "Priority Product" means a product listed by the Department pursuant to section 69303.2.

(63)(A) "Produce" means to make a product.

(B) "Produce" does not include any of the following actions, unless the action results in the addition of a Chemical of Concern to, or replacement of a Chemical of Concern in, a product:

1. Repair or refurbishment of an existing consumer product,
2. Installation of standardized components to an existing consumer product, or
3. Making non-material alterations to an existing consumer product.

(64) "Product function and performance" means the principal use(s) or application(s) of a product by a consumer, as intended by the manufacturer, including function and performance attributes, and safety and environmental standards required by federal or California law.

(65) "Product Function and Performance Analysis" means the evaluation and comparison of a product or component, and the alternatives selected for consideration, using pertinent factors specified in section 69305.3(e).

(66) "Public health impacts" means effects on the health of the general population or sensitive subpopulations.

(67) "Purity" means relative freedom from extraneous matter in the finished product, whether or not the extraneous matter is harmful to the user or deleterious to the product.

(68) "Recycled material" means a material that has been separated from a waste stream for the purpose of recycling the material as feedstock.

(69) "Release" means an intentional or unintentional liberation, emission or discharge of a chemical into the environment.

(70) "Reliable information" means data, studies and other information that have been:

(A) Scientifically peer-reviewed; or

(B) Generated using one of the following:

1. United States Food and Drug Administration Good Laboratory Practices (Part 58 of Title 21 of the Code of Federal Regulations),
2. United States Environmental Protection Agency's Office of Chemical Safety and Pollution Prevention Harmonized Test Guidelines,
3. Federal Toxic Substances Control Act (TSCA) (Chapter 1 of Title 40 of the Code of Federal Regulations), and
4. TSCA Testing Guidelines (Parts 798 and 799 of Title 40 of the Code of Federal Regulations); or

(C) Published in scientifically peer reviewed literature; or

(D) Published in final state or federal scientific reports; or
(E) Published in a final report of the National Academy of Sciences, National Academy of Engineering, Institute of Medicine, or National Research Council; or
(F) Published in final reports from the agencies that implement the laws and programs described in section 69301.5(c)(2); or
(G) Developed, or reviewed and accepted, by a federal agency or a California State or local agency for compliance or other regulatory purposes; or
(H) Generated according to valid accepted testing protocols in which the test parameters documented are based on specific testing guidelines or in which all parameters described are comparable to a guideline method, including:
1. Organization for Economic Cooperation and Development (OECD) Guidelines for Testing of Chemicals,
2. OECD Series on Principles of Good Laboratory Practice and Compliance Monitoring,
3. OECD Manual for Investigation of High Production Volume Chemicals,
4. REACH/ECHA Guidance on Information Requirements and Chemical Safety Assessment and Regulation (EC) No. 440/2008 of the European Parliament and the Council, and
5. Canadian Environmental Protection Act (CEPA) Guidelines for the Notification and Testing of New Substances: Chemicals and Polymers.

(71) "Reliable information demonstrating the occurrence, or potential occurrence, of public health and/or environmental exposures" means all of the following that met the definition of reliable information:
(A) Monitoring data that shows the chemical to be present in household dust, indoor air, drinking water, or on interior surfaces;
(B) Monitoring data that shows the chemical to be present in, or released from, products used in or present in the home;
(C) Environmental monitoring data, or environmental modeling results, that indicate environmental accumulation of a chemical;
(D) California Environmental Contaminant Biomonitoring Program data, or other biomonitoring data, that show the chemical to be present in human organs, tissues or fluids;
(E) Environmental monitoring data that shows the accumulation of the chemical in aquatic, avian, animal or plant species;
(F) Exposure modeling that indicates exposure point concentration(s) associated with adverse public health or environmental impacts; and
(G) Monitoring data indicating the presence of a chemical or its degradation products in California solid waste, wastewater or storm water streams collected or managed by California State or local agencies in concentrations or volumes that:
1. Present public health or environmental threats,
2. Require the significant expenditure of public funds to mitigate public health or environmental threats,

3. Significantly increase the costs of reusing or recycling materials containing the chemical, or

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

(72) “Responsible entity” means either of the following:

(A) The manufacturer of a consumer product.

(B) The retailer of a consumer product.

(73) “Retailer” means a person who sells, supplies, or offers for sale, directly to a consumer in California, a consumer product not produced by that person.

(74) “Safer” means a net reduction of projected public health and environmental adverse impacts.

(75) “Sales outlet” means any place at which consumer products are sold, supplied, or offered for sale directly to consumers in California.

(76) “Selected alternative” means the alternative that is selected to replace a Priority Product or component, including, if applicable, reformulating the product or component using an alternative chemical, and is identified pursuant to section 69305.4(j).

(77) “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, including, but not limited to, infants, children, pregnant women, elderly individuals, and individuals with a history of serious illness that renders them as being at greater risk of adverse health effects when exposed to chemicals.

(78) “Soil sealing” means the covering of the soil surface with a layer of impervious material or changing the nature of the soil so that it behaves as an impermeable medium.

(79) “Substance identification information” means all of the following:

(A) Chemical abstract number,

(B) Structural formula,

(C) Molecular weight,

(D) Synonyms, and

(E) IUPAC name.

(80)(A) "Technologically and economically feasible alternative" means an alternative product, component, or chemical for which:

1. The current technological knowledge, equipment, materials and other resources available to the manufacturer are sufficient to develop and implement the alternative;
2. The manufacturer may earn at least a comparable rate of return on the alternative product, as compared to the rate of return earned on the Priority Product or component, over a reasonable period of time after the alternative has been implemented; and
3. The manufacturer and the product impose no significant increase in externalized aggregate costs to the consumer and to public health and the environment.

(B) As part of a determination of whether a "technologically and economically feasible alternative" exists, consideration shall be given to all of the following to the extent applicable:
1. The extent to which a functionally equivalent alternative is currently available in the marketplace;
2. The affordability of any currently available functionally equivalent alternative; and
3. The purchase price differential between the Priority Product or component and the alternative.

(81) "Threat" means a potential to cause an adverse impact.

(82) "Toxic" means a substance may cause an adverse biological effect.

(83) "Trade secret" means a "trade secret" as defined in subdivision (d) of section 3426.1 of the Civil Code.

(84) "Unintentionally added chemical or chemical ingredient" means a chemical or chemical ingredient that is present in a consumer product but is not an intentionally-added chemical or chemical ingredient.

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

(86) "Waste and end-of-life impacts" means impacts associated with all of the following:
(A) The amount of waste and byproducts generated, and any special handling required for the waste and byproducts, during the life cycle of the Priority Product or component and each alternative being considered;
(B) Disposal, treatment or use of waste and byproducts, including solid waste, wastewater and storm water discharge streams; and
(C) Disposal of the Priority Product in the trash, down the sewer, or down the storm drain that interferes with the proper operation of solid waste, wastewater or storm water treatment facilities, and that may result in the discharge of Chemicals of Concern to the environment.

(87) "Water conservation" means reducing water consumption throughout the life cycle of a product.

NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code. Reference: Sections 25251, 25252, 25253, and 25257, Health and Safety Code, Section 1060, Evidence Code, and Sections 3426 through 3426.11, inclusive, Civil Code.

§ 69301.2. Acronyms.

AA	Alternatives Assessment
CEPA	Canadian Environmental Protection Act
CRNR	California Regulatory Notice Register
ECHA	European Chemicals Agency
IEC	International Electrotechnical Commission
IUPAC	International Union of Pure and Applied Chemistry
NAICS	North American Industry Classification System
OECD	Organization of Economic Cooperation and Development
OEHHA	Office of Environmental Health Hazard Assessment
REACH	Registration, Evaluation, Authorisation and Restriction of Chemicals, Regulation (EC) No. 1907/2006 of the European Parliament and the Council
TSCA	Toxic Substances Control Act

NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code. Reference: Sections 25252 and 25253, Health and Safety Code.

§ 69301.3. Duty to Comply and Consequences of Non-Compliance.

(a) Duty to Comply.

(1) The duty to comply with the requirements of this chapter applicable to responsible entities lies principally with the manufacturer. A retailer is required to comply with these requirements only if the manufacturer has failed to comply and the Department notifies the retailer of the manufacturer's non-compliance by posting the information on the Failure to Comply List. The notice shall specify the requirement with which the retailer shall comply and the timeframe for compliance.

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

(b) Manufacturer Option.

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

(1) The manufacturer's name and contact information;

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

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

(4) Information describing the product, including the brand name(s) under which the product was placed into the stream of commerce in California.

(c) Retailer Option.

A responsible entity that is a retailer, but not the manufacturer, of a consumer product for which the Department has provided notice pursuant to subsection (a), shall not be held responsible for complying with the requirements specified in the notice if the manufacturer fulfills the requirements of subsection (b), or if the retailer complies with both of the following requirements:

(1) The retailer ceases ordering the product no later than thirty (30) days after the Department has provided notice pursuant to subsection (a).

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

(A) The retailer's name and contact information;

(B) The manufacturer's name and contact information;

(C) Identification and location of the retailer's sales outlets where the product is sold, supplied or offered for sale in California;

(D) Name of, and contact information for, the person immediately upstream from the retailer in the supply chain for the product; and

(E) Information describing the product, including the brand name(s) under which the retailer placed the product into the stream of commerce in California.

(d) Failure to Comply List.

(1)(A) When the Department determines that one or more requirements of this chapter have not been complied with for a specific chemical or product, the Department shall issue a notice of non-compliance to all responsible entities for the product known to the Department.

(B) A notice of non-compliance issued pursuant to subparagraph (A) shall describe the nature of the non-compliance and the Department's intent to place information concerning the determination of non-compliance on the Failure to Comply List on its website pursuant to paragraph (3).

(2) No sooner than forty-five (45) days and no later than ninety (90) days after issuing a notice of non-compliance pursuant to paragraph (1), if the non-compliance has not been remedied to the satisfaction of the Department, and there is no pending dispute under article 7 concerning the notice of non-compliance, the Department shall post information concerning the determination of non-compliance on the Failure to Comply List on its website pursuant to paragraph (3). The non-compliance shall be deemed to be remedied if the Department determines that the requirements of subsection (b) have been fulfilled.

(3) The Department shall post and maintain on its website a Failure to Comply List that includes all of the following information for each product covered by a notice of non-compliance:

(A) Information identifying and describing the product, including the brand name(s) under which the product is placed into the stream of commerce in California;

(B) The requirement(s) of this chapter, and any applicable due date(s), that are the basis for the notice of non-compliance;

(C) Any Chemical(s) of Concern known to be contained in the product;

(D) 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;

(E) The name of and contact information for any responsible entity that has been notified by the Department, pursuant to paragraph (1), except that the Department shall not include any responsible entity that the Department has determined has fully complied with the requirements of subsection (c); and

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

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

(5) The Department shall remove information concerning a retailer who is a responsible entity from the Failure to Comply List upon a determination by the Department that the retailer has complied with the applicable requirements of subsection (c).

NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code. Reference: Sections 25252 and 25253, Health and Safety Code.

§ 69301.4. Information Submission and Retention Requirements.

(a) All documents and other information submitted to the Department pursuant to this chapter shall be signed by the owner or an officer of the company, or an authorized representative, and by the person(s) in charge of preparing or overseeing the preparation of the document or information. All documents, data and information shall be submitted in English, and shall be generated and submitted in a manner and in an electronic format specified by the Department at:

http://www.dtsc.ca.gov/PollutionPrevention/GreenChemistryInitiative/SaferConsumerProductAlternativesRegs.cfm

(b) All De Minimis Exemption Notifications, Chemical Removal Notices, AA Work Plans, AA Reports, AA verification statements, and trade secret justification documentation submitted pursuant to section 69309.1 shall include the following certification statement, signed by an officer of the entity submitting the document and by the responsible individual in charge of preparing 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 gather and evaluate the information submitted. Based on my inquiry of the person or persons directly responsible for gathering the information, the information submitted is, to be the best of my knowledge and belief, true, accurate, and complete. I am aware that submitting false information or statements is punishable under all applicable provisions of law."

(c) Any information or documentation required to be obtained or prepared, but that is not required to be submitted to the Department or has not yet been requested to be submitted to the Department, shall be retained by the person to whom the requirement applies for a period of three (3) years following the date the person was required to obtain or prepare the information or documentation.

NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code. Reference: Sections 25252 and 25253, Health and Safety Code.

§ 69301.5. Chemical and Product Information.

(a)(1) This section specifies the process for the Department to review and/or obtain data and other information concerning chemicals and products that the Department determines is necessary to implement article 14 of chapter 6.5 of division 20 of the Health and Safety Code and/or this chapter.

(2) Notwithstanding paragraph (1), nothing in this section precludes the Department from reviewing and/or obtaining data and other information through any other means available to the Department.

(3) The provisions of this section requiring a person to provide or make available data or other information to the Department may be complied with by either:

(A) Submitting the requested data or information to the Department in a format specified by, or acceptable to, the Department, or

(B) Providing the Department with electronic access to the data or information in a format specified by, or acceptable to, the Department, unless the Department specifically requests that the data or information be submitted to the Department.

(b) In seeking to review and/or obtain data and other information that the Department determines is necessary to implement article 14 of chapter 6.5 of division 20 of the Health and Safety Code and/or this chapter, the Department shall use the following sequential steps, with each subsequent step being used only to review and/or obtain data and information that could not be reviewed and/or obtained by use of the preceding step(s):

(1) Review and/or obtain needed data and other information readily available, without a subscription or other charge, in a usable format in the public domain;

(2) Review and/or obtain needed data and other information readily available, with a subscription or other charge, in a usable format in the public domain, to the extent resources are available to the Department to pay the required costs;

(3) Request and require a responsible entity to make available to the Department, to review and/or obtain, existing data and other information that is needed by the Department, in accordance with a schedule specified by the Department; and

(4) Request and require a responsible entity to generate and make available to the Department, to review and/or obtain, data and other information that is needed by the Department, in accordance with a schedule specified by the Department.

(c)(1) The following types of data and other information may be requested and required to be made available to the Department to review and/or obtain pursuant to this section:

(A) Chemical and product data and information specified in sections 69302.3 and 69303.3;

(B) Available and applicable chemical identification and description information;

(C) Information describing the types, categories and classes of products that contain Chemicals of Concern;

(D) Identification of intentionally added chemicals and chemical ingredients in specified products, and quantities of the chemical in the entire product or component;

(E) Market presence information;

(F) Description of end-of-life management program(s) for a product, if any; and

(G) Standard analytical chemistry protocols, if available, for the detection and measurement of a chemical in products and in environmental and biological media.

(2) Requests and requirements for making available the data and information described in paragraph (1) may, to the extent applicable, be fulfilled by making available to the Department data and information that has been provided under the REACH, TSCA, or CEPA programs.

(d)(1) Data and other information requested and required to be made available to the Department, pursuant to subsections (b)(3) and (b)(4), shall be limited to data and information that is pertinent to either products placed into the stream of commerce in California or chemicals contained in such products, and that the Department determines is necessary to implement article 14 of chapter 6.5 of division 20 of the Health and Safety Code and/or this chapter.

(2) When requesting and requiring the availability to the Department of data and other information pursuant to subsections (b)(3) and (b)(4), the Department shall briefly state the purpose of the request and shall make reasonable efforts to avoid requesting the same information from multiple parties, unless the Department determines there is reason to do so.

(3) In addition to subsections (b)(3) and (b)(4), the Department may also request any data and information that is pertinent to chemicals contained in products placed into the stream of commerce in California, and that the Department determines is necessary to implement article 14 of chapter 6.5 of division 20 of the Health and Safety Code and/or this chapter, directly from the manufacturer of the chemical. If the chemical manufacturer, or a consortium, trade association, public-private partnership, or other entity acting on behalf of the chemical manufacturer, does not make the requested information available to the Department by the date specified by the Department, the Department shall post on its website on the Failure to Respond List the request and a notice that the chemical manufacturer has not made the

requested information available to the Department, along with information identifying the manufacturer and the chemical that is the subject of the request. The Department shall remove this information from its website upon determining that the manufacturer or another person has fulfilled the request for data or other information.

(e) The Department may request and require that data and other information be made available to it pursuant to this section by either or both of the following methods:

(1) Correspondence sent to an individual responsible entity or other person electronically or by United States mail.

(2) Data and information call-ins that, unless otherwise specified, apply to all responsible entities, or chemical manufacturers, of a specific chemical or product or group of chemicals or products. Data and information call-ins shall be posted on the Department's website, noticed to persons on any listservs established by the Department related to this chapter, and noticed in the CRNR.

(f) Any responsible entity or other person may at any time make reliable information regarding a chemical or product available to the Department for consideration in the chemical prioritization or product prioritization process. Such information may be made available in support of comments calling for a chemical or product to be included in, or excluded or removed from, the chemical list or product list. The Department shall give good faith consideration to the data or other information made available pursuant this subsection.

NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code. Reference: Sections 25252 and 25253, Health and Safety Code.

§ 69301.6. Availability of Information on the Department's Website.

(a) The Department shall post on its website, and update as needed, all of the information and documents listed below, subject to article 9. The availability of these documents and information, including the availability of updates to the information and documents, shall be noticed in the CRNR and to persons on any listserv(s) that the Department establishes related to this chapter.

(1) The Failure to Comply List prepared pursuant to section 69301.3(d);

(2) The Failure to Respond List prepared pursuant to section 69301.5(d)(3);

(3) Requests for data and information made pursuant to section 69301.5(e);

(4)(A) Exemption determinations made pursuant to section 69301(b)(5) and (b)(6), and the rationale supporting those determinations;

(B) Determinations, made pursuant to section 69301(b)(5) and (b)(6), rescinding previously made exemption determinations;

(5) Proposed and final Chemical of Concern lists, and supporting rationale and documentation, prepared pursuant to section 69302.2, copies of all written comments received during the public comment period for the proposed list, and copies of any written responses the Department provides to the comments;

(6) Proposed and final Priority Product lists, and supporting rationale and documentation, prepared pursuant to section 69303.2, copies of all written comments received

during the public comment period for the proposed list, and copies of any written responses the Department provides to the comments;

(7) Petitions designated as complete pursuant to section 69304(b), and notices of decision and statements of basis prepared by the Department pursuant to section 69304.1(d);

(8) A list of, and copies of, Chemical Removal Notices submitted to the Department;

(9) For each AA Work Plan, the due date for the AA Report;

(10) A list of extension requests approved, pursuant to section 69305.1(b), for submission of AA Work Plans and AA Reports;

(11) A list of, and copies of, De Minimis Exemption Notifications submitted to the Department;

(12) AA Report notices of completeness issued pursuant to section 69305.5;

(13) Proposed and final regulatory response determination notices issued by the Department pursuant to article 6, copies of all written comments received during the public comment period for a proposed notice, and copies of any written responses the Department provides to the comments;

(14) A list of regulatory response exemption requests submitted to the Department pursuant to section 69306.7(a), and copies of all notifications issued by the Department granting, denying or rescinding an exemption pursuant to sections 69306.7(c) and 69306.7(f); and

(15) Copies of all disputes and petitions for review filed with the Department pursuant to article 7, and copies of all Department decisions issued in response to such disputes and petitions.

(b) The Department shall also post on its website, and update as needed, but not less frequently than quarterly, all of the following information and documents, subject to article 9:

(1) Information concerning notices submitted to the Department pursuant to section 69301.3 (b) and (c);

(2) Guidance documents prepared by the Department pursuant to section 69305(a);

(3) AAs available in the public domain pursuant to section 69305(b);

(4) A list of all AA Work Plans that have been submitted to the Department pursuant to article 5, and a full or redacted copy of each AA Work Plan, including both the originally submitted AA Work Plan and the AA Work Plan approved by the Department, if different;

(5) A list of all AA Reports that have been submitted to the Department pursuant to article 5, the executive summary for each AA Report, the AA verification statement, if applicable, and a full or redacted copy of each AA Report, including both the originally submitted AA Report and the AA Report approved by the Department, if different;

(6) The Regulatory Response Report prepared and updated pursuant to section 69306.9(d);

(7) Links to product stewardship plans provided to the Department pursuant to section 69306.4(c); and

(8) Findings of audits conducted by the Department pursuant to section 69308.

(c) All documents and information posted on the Department's website pursuant to this chapter shall include the date the document or information is first posted and the date(s) of any revised postings.

NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code. Reference: Sections 25252, 25253, and 25257, Health and Safety Code.

Article 2. Chemical Prioritization Process

§ 69302. General.

(a) This article specifies the process by which the Department shall identify and prioritize Chemicals of Concern.

(b) The Department may use information reviewed and/or obtained pursuant to section 69301.5 to perform its duties under this article.

(c) The Department is not limited to using the information reviewed and/or obtained pursuant to subsection (b) in performing its duties under this article.

NOTE: Authority cited: Sections 25252 and 58012, Health and Safety Code. Reference: Section 25252, Health and Safety Code.

§ 69302.1. Applicability.

Except as provided otherwise in section 69301(b),this article applies to all chemicals that exhibit a hazard trait and are reasonably expected to be contained in products placed into the stream of commerce in California.

NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code. Reference: Sections 25252 and 25257.1, Health and Safety Code.

§ 69302.2. Chemicals List.

(a) The Department shall prepare a list of Chemicals of Concern, using the factors specified in section 69302.3.

(b) Prior to finalizing the Chemicals of Concern list, the Department shall make the proposed list available on its website, for public review and comment, along with supporting documentation, including the Department's rationale, data and data sources, subject to article 9. The supporting information shall include an identification of the hazard trait(s) exhibited by, and potential exposure pathways for, each listed chemical. The Department shall hold one or more public workshops to provide an opportunity for the public to comment orally on the proposed list. The Department shall publish in the CRNR, send to persons on any listserv(s) that the Department establishes related to this chapter, and post on its website a notice regarding the availability of the proposed list and supporting documentation. The notice shall include:

(1) The time period during which the public may submit written comments, which may include comments in support of adding or removing a chemical from the Chemicals of Concern list;

(2) The method(s) for submitting comments to the Department on the proposed list; and

(3) The date, time and location of the public workshop(s).

(c) After review and consideration of public comments on the proposed list, the Department shall finalize and post on its website the final Chemicals of Concern list. The Department may, at its discretion, respond to some or all public comments received.

(d) The initial Chemical of Concern list shall be finalized no later than December 31, 2011.

(e) Using the procedures specified in this section, the Department shall update the Chemical of Concern list as needed. Revisions may include additions and deletions to the prior list(s).

NOTE: Authority cited: Sections 25252 and 58012, Health and Safety Code. Reference: Sections 25252 and 25257, Health and Safety Code.

§ 69302.3. Chemicals of Concern Prioritization.

(a) The Department shall list as Chemicals of Concern those chemicals that are determined to be of highest priority based on consideration of the following factors:

(1) The relative degree of threat posed by each chemical to public health or the environment based on consideration of pertinent factors listed below:

(A) Physical chemical hazards;

(B) Adverse public health impacts;

(C) Adverse ecological impacts;

(D) Adverse air quality impacts;

(E) Adverse water quality impacts; and

(F) Adverse soil quality impacts.

(2) The potential for consumers or environmental receptors to be exposed to the chemical in quantities that can result in adverse public health or environmental impacts.

(3) The availability of reliable information to substantiate the threat(s) posed by the chemical, and the potential for exposures to the chemical.

(4) The scope of federal and/or California State regulatory programs, and any applicable international trade agreements ratified by the United States Senate, under which the chemical is regulated, and the extent to which these other regulatory requirements address the same public health and environmental threats and exposure pathways that are being considered as a potential basis for the chemical being listed as a Chemical of Concern.

(5) The availability of Department resources.

(b)(1) In evaluating the relative degree of threat and potential for exposures, pursuant to subsections (a)(1) and (a)(2), the Department shall seek to identify and give priority to those chemicals that pose the greatest threat of adverse public health and environmental impacts, are most prevalently distributed in commerce and contained in products used by consumers,

and for which there is the greatest potential for consumers or environmental receptors to be exposed to the chemical in quantities that can result in adverse public health or environmental impacts..

(2) The Department shall begin the chemical prioritization process by evaluating chemicals based on the factors specified in subsection (a)(1) in conjunction with subsection (a)(3). Secondly, the Department shall adjust this initial prioritization based upon consideration of subsection (a)(2) in conjunction with subsection (a)(3). Having identified the threats and potential exposures for each chemical, the Department shall then determine which of these threats and exposures are addressed by consideration of subsection (a)(4), and adjust the prioritization accordingly. The chemicals assigned the highest priority at the conclusion of these three steps shall be listed as Chemicals of Concern, except that the list shall be limited in number based upon the availability of Department resources to evaluate consumer products containing these chemicals.

(3) In evaluating the potential for harm that could result from potential exposures, the Department shall consider, based upon reliable information, the type and severity of potential adverse impact(s) and the potency of the chemical(s) associated with the adverse impact(s) for all of the following:

(A) Children, pregnant women and other sensitive subpopulations;

(B) Environmental receptors, in particular, environmentally sensitive habitats and endangered and threatened species.

(4) In evaluating the potential for exposure, the Department shall consider all of the following:

(A) Reliable information demonstrating the occurrence, or potential occurrence, of public health and environmental exposures;

(B) Information concerning the presence of the chemical in products commonly found in households, including the number of such of products, the frequency of use, and the concentration of the chemical in those products; and

(C) Information showing how widely used the chemical is in products placed into the stream of commerce in California.

(c) A chemical that exhibits no hazard trait other than causing carcinogenicity or reproductive toxicity, or both, shall not be placed on the list of Chemicals of Concern unless the chemical is a carcinogen or reproductive toxin, or both.

(d) In preparing the initial list of Chemicals of Concern, pursuant to subsection (a), the Department shall only consider chemicals that are one or more of the following:

(1) Chemicals that are carcinogens or reproductive toxins, or both.

(2) Chemicals that are listed as Category 1A or 1B mutagens in Annex VI to Regulation (EC) No. 1272/2008 of the European Parliament and the Council.

(3) Chemicals that have been determined by the United States Environmental Protection Agency to be persistent bioaccumulative toxic chemicals.

(e) Subsection (d) does not apply to any list of Chemicals of Concern issued after the initial list.

NOTE: Authority cited: Sections 25252 and 58012, Health and Safety Code. Reference: Sections 25252 and 25257.1, Health and Safety Code.

Article 3. Product Prioritization Process

§ 69303. General.

(a) This article identifies the process by which the Department shall identify and prioritize products containing Chemicals of Concern.

(b) The Department may use information reviewed and/or obtained pursuant to section 69301.5 to perform its duties under this article.

(c) The Department is not limited to using the information reviewed and/or obtained pursuant to subsection (b) in performing its duties under this article.

NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code. Reference: Sections 25252 and 25253, Health and Safety Code.

§ 69303.1. Applicability.

Except as provided otherwise in section 69301(b),this article applies to all products that contain a Chemical of Concern, and that are reasonably expected to be placed into the stream of commerce as a consumer product in California.

NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code. Reference: Sections 25251, 25252, 25253, and 25257.1, Health and Safety Code.

§ 69303.2. Products List.

(a)(1) The Department shall prepare a list of products that, when they contain a Chemical of Concern, will be designated as Priority Products, using the factors specified in section 69303.3.

(2) For each listed Priority Product, the Department shall specify in the listing both of the following:

(A) The Chemical(s) of Concern that is the basis for the product being listed as a Priority Product; and

(B) For each listed assembled product, the component(s) of the Priority Product to which the de minimis concentration applies, and which is the required minimum focus of the AA. This shall be the component(s) that is the basis for the product being listed as a Priority Product.

(b) Prior to finalizing the Priority Product list, the Department shall make the proposed list available on its website, for public review and comment, along with supporting documentation, including the Department's rationale, data and data sources subject to article 9. The supporting information shall include an identification of the hazard trait(s) exhibited by and the potential exposure pathways for each Chemical of Concern that is the basis for a product being listed as a Priority Product. The Department shall hold one or more public workshops to provide an opportunity for the public to comment orally on the proposed list. The

Department shall publish in the CRNR, send to persons on any listserv(s) that the Department establishes related to this chapter, and post on its website a notice regarding the availability of the proposed list and supporting documentation. The notice shall include:

(1) The time period during which the public may submit written comments, which may include comments in support of adding or removing a product from the Priority Product list;

(2) The method(s) for submitting comments to the Department on the proposed list; and

(3) The date, time and location of the public workshop(s).

(c) After review and consideration of public comments on the proposed list, the Department shall finalize and post on its website the final Priority Product list. The Department may, at its discretion, respond to some or all public comments received.

(d)(1) An individual manufacturer's product that is of a product type listed by the Department on the Priority Product list prepared pursuant to this section shall be considered to be a Priority Product, and, except as provided in paragraphs (2) and (3), an AA shall be required for that product, if the component(s) that are the basis for the listing of the product contain any known or detectable amount of the Chemical(s) of Concern that is the basis for that product type being placed on the Priority Product list. In the case of a formulated product, the term component as used in this paragraph refers to the entire product.

(2) An individual manufacturer's product that is of a product type listed on the Priority Product list and that, as of the date of the applicable Priority Product listing, contained a Chemical of Concern that is the basis for the Priority Product listing shall not be subject to the AA requirements of article 5 if the manufacturer provides a Chemical Removal Notice to the Department within one hundred and eighty (180) days after the Priority Product listing that contains all of the following information:

(A) A statement certifying that any and all Chemicals of Concern that are the basis for the Priority Product listing have been removed from the product or component, whichever is applicable, or reduced to a level that meets the criteria specified in paragraph (3)(D), without adding another chemical or increasing the concentration of a chemical already contained in the product or component to compensate for the removal or reduction of the Chemical(s) of Concern;

(B) The manufacturer's name and contact information;

(C) Information identifying and describing the product, including the brand name(s) under which the product is placed into the stream of commerce in California, and, if applicable, information specifically identifying the component(s) that is the basis for the product being listed as a Priority Product;

(D) The Chemical(s) of Concern that have been removed from the product; and

(E) If the Chemical(s) of Concern are retained in the product, but at a concentration that meets the criteria specified in paragraph (3)(D), the notice shall also specify the hazard traits exhibited by each Chemical of Concern and the concentration data specified in paragraph (3)(A)4.

(3)(A) The AA requirements of article 5 do not apply to a product meeting the criteria specified in subparagraph (D) if the manufacturer of the product has submitted a De Minimis Exemption Notification to the Department that contains all of the following information:

1. The manufacturer's name and contact information;
2. Information identifying and describing the product, including the brand name(s) under which the product is placed into the stream of commerce in California, and, if applicable, information specifically identifying the component(s) that is the basis for the product being listed as a Priority Product;
3. The Chemical(s) of Concern that are the basis for the product being listed as a Priority Product, and the hazard traits exhibited by each of these Chemicals of Concern; and
4. Whichever of the following is applicable:

a. For a formulated product, the maximum concentration in the product of each Chemical of Concern that is a basis for the Priority Product listing, and a description of all data and other information used by the manufacturer to determine and substantiate this concentration.

b. For an assembled product, the maximum concentration in each component that is a basis for the Priority Product listing of each Chemical of Concern that is a basis for the Priority Product listing, and a description of all data and other information used by the manufacturer to determine and substantiate this concentration.

(B) If any of the information listed in subparagraph (A) significantly changes, the manufacturer shall submit a revised De Minimis Exemption Notification to the Department within thirty (30) days.

(C) If the product no longer meets the criteria for a de minimis exemption, the manufacturer shall notify the Department of this change within thirty (30) days, and shall submit an AA Work Plan to the Department within one hundred and eighty (180) days.

(D) A de minimis exemption only applies to products meeting one of the following criteria as of the date of the applicable Priority Product listing or the date the product is first placed into the stream of commerce in California, whichever is later:

1. For a formulated product, the maximum total concentration in the product of all Chemicals of Concern that are a basis for the Priority Product listing and that exhibit the same hazard trait shall not exceed the de minimis level.
2. For an assembled product, the maximum total concentration in each component, that is a basis for the Priority Product listing, of all Chemicals of Concern that are a basis for the Priority Product listing and that exhibit the same hazard trait shall not exceed the de minimis level.

(e) The initial Priority Product list shall be finalized no later than December 31, 2012.

(f) Using the procedures specified in this section, the Department shall update the Priority Product list as needed. Revisions may include additions and deletions to the prior list.

NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code. Reference: Sections 25252, 25253, and 25257, Health and Safety Code.

§ 69303.3. Priority Products Prioritization.

(a) The Department shall list as Priority Products those products that are determined to be of highest priority based on consideration of the following factors:

(1) The relative degree of threat posed by each product, due to the Chemical of Concern that is contained in the product, to public health or the environment based on the evaluation of the Chemical of Concern pursuant to subsections (a)(1) and (a)(3) of section 69302.3, and consideration of pertinent factors listed below:

(A) The estimated volume of the product placed into the stream of commerce in California and the product's estimated contribution to the volume of the Chemical(s) of Concern placed into the stream of commerce in California, based on both of the following, as applicable:

1. The statewide sales by volume in the past calendar year, and
2. The statewide sales by number of units in the past calendar year.

(B) The potential for the public or the environment to be exposed to the Chemical(s) of Concern contained in the product, during the useful life of the product and end-of-life disposal or management of the product, considering the following factors:

1. Containment of the chemical within the product, including the long-term integrity of the containment mechanism or system,
2. Engineering and administrative controls,
3. Federal and California State regulatory restrictions that reduce the potential for exposure, and
4. Frequency and duration of exposure for each use scenario and end-of-life scenario.

(C) The types and extent of consumer uses that could result in public exposure to the Chemical(s) of Concern contained in the product, which in turn could result in adverse public health impacts, considering the following factors:

1. Household use.
2. Sensitive subpopulation potential use or exposure at:

a. Home,
b. Schools, child day care facilities, and other areas frequented by children on a regular basis,
c. Health care facilities, and
d. Recreational areas and facilities.

3. Consumers who purchase, use, or otherwise come in contact with the product.
4. Persons who come in contact with the product while providing or receiving a service.
5. Customers, clients and members of the general public who come in contact with the product or releases from the product in a workplace.

(D) Product uses or management or disposal practices that could result in releases to the environment of the Chemical(s) of Concern contained in the product, which in turn could result in any of the adverse impacts specified in section 69302.3 (a)(1)(C) through (a)(1)(F), considering the following factors:

1. Use, storage, transportation, and end-of-life management practices and locations.
2. Potential for release into, migration from, or distribution across environmental media, and potential for accumulation, persistence or toxicity in biological or environmental compartments or systems of the Chemical of Concern or its degradation products.

(2) Availability of reliable information to substantiate the threat(s) posed by the product.

(3) Scope of federal and/or other California State regulatory programs, and any applicable international trade agreements ratified by the United States Senate, under which the product is regulated, and the extent to which these other regulatory requirements address the same public health and environmental threats and exposure pathways that are being considered as a potential basis for the product being listed as a Priority Product.

(4) The availability of an AA posted on the Department's website pursuant to section 69305(b) that is relevant for the product or the Chemical of Concern in the product that substantially meets the requirements of article 5 pertaining to AAs, and

(5) The availability of Department resources.

(b)(1) In evaluating the relative degree of threat, pursuant to subsection (a)(1), the Department shall seek to identify and give priority to those products that contain Chemicals of Concern that pose the greatest threat of adverse public health and environmental impacts, are most prevalently distributed in commerce and used by consumers, and for which there is the greatest potential for consumers or environmental receptors to be exposed to the Chemical of Concern in quantities that can result in adverse public health or environmental impacts.

(2) The Department shall begin the product prioritization process by evaluating products based on the factors specified in subsection (a)(1) in conjunction with subsection (a)(2). Having identified the threats and potential exposures for each product and its Chemical(s) of Concern, the Department shall then determine which of these threats and exposures are addressed by consideration of subsection (a)(3), and adjust the prioritization accordingly. The products assigned the highest priority at the conclusion of these two steps shall be listed as Priority Products, except that the list shall be limited in number based upon the availability of Department resources to review AA Work Plans and AA Reports and make regulatory response determinations for these products.

(3) In evaluating the potential for exposure, the Department shall consider all of the following:

(A) Market presence information for the product;

(B) Reliable information demonstrating the occurrence, or potential occurrence, of public health and environmental exposures to the Chemical(s) of Concern contained in the product or component(s), whichever is applicable; and

(C) Information concerning the household presence of the product, and other products containing the same Chemical of Concern that is the basis for the Priority Product listing, including the number of such of products, how common their household presence is, the frequency of use, and the concentration of the chemical in those products.

(4) In evaluating the potential for harm that could result from potential exposures to the Chemical of Concern contained in the product, the Department shall utilize the evaluation conducted for the Chemical of Concern pursuant to section 69302.3(b)(3).

(c)(1) In evaluating products for potential listing as Priority Products, the Department shall only consider the following product categories:

(A) Children's products.

(B) Personal care products.

(C) Household cleaning products.

(2) Paragraph (1) does not apply to any product listing proposed on or after January 1, 2016.

NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code. Reference: Sections 25252, 25253, and 25257.1, Health and Safety Code.

§ 69303.4. Priority Product Notification.

(a) Within sixty (60) days after a product is listed as a Priority Product, each responsible entity for such a Priority Product shall notify the Department that its product is a Priority Product. For Priority Products that are first manufactured, or first placed into the stream of commerce in California, subsequent to the date the product is listed as a Priority Product, the responsible entity shall provide this notice within thirty (30) days after the product is first placed into the stream of commerce in California. The notification shall include all of the following:

(1) The responsible entity's name and contact information;

(2) The type and brand name of the Priority Product and, if applicable, information specifically identifying the component(s) that is the basis for the product being listed as a Priority Product; and

(3) The name of, and contact information for, the person that will be complying with the requirements of article 5 on behalf of the responsible entity, if that person is someone other than the responsible entity.

(b) If the Department determines that the notice requirements specified in subsection (a) have not been fulfilled for a particular product that is a Priority Product, the Department shall post this information on the Failure to Comply List pursuant to section 69301.3(d).

(c) As the following information becomes available to the Department, the Department shall add this information to the Priority Products list posted on its website for each product that is a Priority Product and shall maintain and update this information for as long as the Priority Product continues to be placed into the stream of commerce in California:

(1) Product brand names;

(2) Product manufacturer(s), except for those manufacturers that have complied with the requirements of section 69301.3(b);

(3) Other responsible entities for each product, except for those responsible entities that have complied with the requirements of section 69301.3(c);

(4) The identity of the person that has been identified as being the person that will fulfill the requirements of article 5; and

(5) The due dates for, and the dates of receipt of, the AA Work Plan and the AA Report.

NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference: Section 25253, Health and Safety Code.

Article 4. Petition for Inclusion of a Chemical or Product in the Prioritization Process

§ 69304. Applicability and Petition Contents.

(a) Any person, hereafter known as the petitioner, may petition the Department to evaluate a chemical or a product that contains a chemical using the chemical prioritization and/or product prioritization processes specified in articles 2 and 3 of this chapter. The petition shall be submitted to the Department in accordance with section 69301.4, and shall include all of the following:

(1) Name of, and contact information, for both of the following persons:

(A) The petitioner, and

(B) The person responsible for the contents of the petition, if different from the person identified in subparagraph (A), and the affiliation of this person with the petitioner,

(2) Description of the chemical and/or product which is the subject of the petition,

(3) Uses and applications of the chemical and/or product which is the subject of the petition,

(4) Basis for the petition,

(5) Reliable information supporting the basis for the petition, and

(6) Identity of any known manufacturers of the chemical or product.

(b) Within sixty (60) days after receiving a petition, the Department shall review the petition and shall designate the petition complete if it contains the items specified in paragraphs (1) through (6) of subsection (a). If the Department determines that a petition is complete, the Department shall notify the petitioner that the petition will undergo a technical review to determine whether to grant or deny the petition. If the Department determines that the petition is incomplete, it shall notify the petitioner of this determination and shall specify the basis for the determination.

(c) The fact that the Department designates a petition complete pursuant to this section does not prohibit the Department from requesting additional information during the technical review conducted pursuant to section 69304.1.

NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code. Reference: Sections 25252 and 25253, Health and Safety Code.

§ 69304.1. Technical Review of Petitions.

(a) The Department shall prioritize the technical review of petitions determined to be complete based on the comprehensiveness of the petitions and the availability of resources. Highest priority shall be given to petitions by federal and other California State regulatory programs that relate to the petitioning agency's statutory and/or regulatory mandates.

(b) The Department shall conduct a technical review of each petition determined to be complete to determine whether to grant or deny the petition based on:

(1) The comprehensiveness of the data and information submitted in support of the petition that pertains to the prioritization factors specified in sections 69302.3 and/or 69303.3, as applicable;

(2) The quality of the data and information submitted in support of the petition; and

(3) The availability of data and information, other than the data and information submitted with the petition, for the Department to:

(A) Determine hazard traits exhibited by the chemical, and

(B) Evaluate the chemical and/or the product, based on the prioritization factors specified in sections 69302.3 and/or 69303.3, as applicable.

(c) The Department may request the petitioner to provide additional information to complete the technical review. The petitioner shall provide, to the extent available, such additional requested information within the timeframe specified by the Department.

(d) After completing the technical review, the Department shall do both of the following:

(1) Prepare a notice of decision to grant or deny the petition and a statement of basis explaining the basis for the decision, and

(2) Notify the petitioner of the decision.

(e) After granting a petition, the Department shall evaluate and, if applicable, prioritize the chemical and/or the product in accordance with the prioritization processes specified in articles 2 and/or 3.

NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code. Reference: Sections 25252 and 25253, Health and Safety Code.

Article 5. Alternatives Assessments

§ 69305. Guidance Materials.

(a) Before finalizing the initial list of Chemicals of Concern pursuant to section 69302.2, the Department shall prepare, and make available on its website, guidance materials to assist persons in performing AAs in accordance with the requirements of this article. The Department shall periodically revise and update the guidance materials.

(b) The Department shall also post on its website AAs that are available in the public domain, at no cost, and are supported by reliable information. The posting shall indicate, for each AA, the name of the entity that prepared the AA.

NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference: Sections 25252 and 25253, Health and Safety Code.

§ 69305.1. Alternatives Assessments: General Provisions.

(a)(1) Except as otherwise provided in subsection (d), a responsible entity for a product that is listed as a Priority Product, or a person acting on behalf of or in lieu of the responsible entity, shall perform an AA for the Priority Product, or the component(s) listed pursuant to section 69303.2(a)(2)(B), and comply with all applicable requirements of this article.

(2) A responsible entity subject to the requirements of paragraph (1), or a person fulfilling these requirements on behalf of or in lieu of the responsible entity, shall prepare, sign and submit to the Department an AA Work Plan meeting the requirements of section 69305.2 and an AA Report meeting the requirements of section 69305.4, as follows:

(A) The AA Work Plan shall be submitted no later than one hundred and eighty (180) days following the date that the applicable final Priority Product listing is posted on the Department's website, except as provided in subsection (b).

(B) The AA Report shall be submitted by the date specified by the Department pursuant to section 69305.2(b)(4), except as provided pursuant to subsection (b).

(b)(1) A responsible entity, or a person fulfilling the requirements of this article on behalf of or in lieu of the responsible entity, may request a one-time extension to the submission deadline for the AA Work Plan and/or the AA Report. The extension request must be received by the Department no later than sixty (60) days before the applicable due date.

(2) The extension request shall include:

(A) The name of, and contact information for, the person filing the extension request,

(B) The name of, and contact information for, the person(s) on whose behalf the AA Work Plan and AA Report will be submitted,

(C) If different from (A) and (B), the name of, and contact information for, the manufacturer of the product,

(D) Information identifying and describing the Priority Product and, if applicable, the component(s), including the brand name(s) under which the Priority Product is placed into the stream of commerce in California,

(E) The due date for AA Work Plan or AA Report, as applicable,

(F) The amount of time requested, not to exceed the maximum extension timeframes specified in paragraph (3), and

(G) The reason the extension is needed.

(3) The Department shall approve or deny in whole or in part the extension request, and notify the person submitting the extension request of the decision, within thirty (30) days of receipt of the extension request. The one-time extension for an AA Work Plan shall not exceed ninety (90) days, and the one-time extension for an AA Report shall not exceed twelve (12) months.

(c)(1) Each AA performed by, and AA Report prepared by, a responsible entity or by a consortium, trade association, public-private partnership, or similar organization with which the responsible entity is affiliated, shall be reviewed and verified by a third-party that has no economic interest in the responsible entity.

(2) The third-party verifier shall do all of the following:

(A) Verify compliance with the requirements of this article;

(B) Verify the accuracy of the analysis of the product's or component's life cycle;

(C) Verify the appropriate application of life cycle assessment tools and methodologies;

(D) Attest to the accuracy of the reported data; and

(E) Perform a final quality assurance review of the AA and AA Report, and of the data on which the AA is based.

(3) The third-party verifier shall prepare an AA verification statement documenting the verification process and findings.

(4) The third-party verifier shall base the AA verification statement solely on the factors listed in paragraphs (2)(A) through (2)(E). The selected alternative, or the decision not to

select an alternative to the Priority Product or component, as identified in the AA Report pursuant to section 69305.4(j), shall not be a consideration factor in verifying the AA or preparing the AA verification statement.

(d) The requirements of subsection (a) may be fulfilled by submitting to the Department a report for a previously completed AA for the Priority Product or component, if the Department determines that the report is substantially equivalent to the requirements of section 69305.4 and that the report contains sufficient information to identify the most appropriate regulatory response pursuant to article 6.

(1) The report submitted pursuant to this subsection shall be submitted no later than one hundred and eighty (180) days following the date that the applicable final Priority Product listing is posted on the Department's website, except that a one-time extension may be requested pursuant to subsection (b).

(2) An existing report submitted pursuant to this subsection may be supplemented with additional information to render the report substantially equivalent to the requirements of section 69305.4.

(e) Any person performing an AA, pursuant to subsection (a), shall consider all relevant information made available on the Department's website and any additional information or technical assistance the Department may provide regarding alternatives assessments. These efforts shall be briefly summarized in the AA Report.

(f) Notwithstanding any other provision of this chapter, failure of the Department to make a completeness determination within sixty (60) days from receipt of the applicable document, or failure of the Director to respond to a request for further review under section 69307.2 within sixty (60) days, shall not cause an AA Work Plan or AA Report to be deemed complete.

NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference: Sections 25252 and 25253, Health and Safety Code.

§ 69305.2. Alternatives Assessment Work Plan.

(a) The AA Work Plan submitted to the Department pursuant to section 69305.1(a)(2) shall be adequate to ensure that the AA and the AA Report will provide sufficient detail to support the selection of an alternative, or a decision to retain the existing Priority Product or component(s) in lieu of an alternative, and selection of appropriate regulatory response(s), if any, upon completion of the AA. In addition, the AA Work Plan shall include sufficient information for the Department to determine compliance with this chapter and section 25253(a) of the Health and Safety Code, and to assess the appropriateness of the submission date for the AA Report proposed pursuant to paragraph (6). The AA Work Plan shall include all of the following information:

(1) Preparer and Manufacturer Information.

(A) The name, of and contact information for, the person submitting the AA Work Plan;

(B) If applicable, the name of, and contact information for, all persons on whose behalf the AA Work Plan is being submitted;

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

(D) The name of, and contact information for, the manufacturer of the product.

(2) Product Information. Information identifying and describing the Priority Product and, if applicable, component(s) that are the subject of the AA Work Plan, including all of the following:

(A) The brand name(s) under which the product is placed into the stream of commerce in California;

(B) If applicable, the component(s) that will be the focus of the AA. The AA shall, at a minimum, focus on the component(s) specified in section 69303.2(a)(2)(B), but may be expanded to include additional components or the entire product; and

(C) Identification of the Chemical(s) of Concern that are the basis for the product being listed as a Priority Product.

(3) AA Goal and Scope of Alternatives. The AA Work Plan shall identify the goal of the AA and summarize the types of alternatives it is anticipated will be assessed during the AA.

(4) Scope of Life Cycle Segments. The AA Work Plan shall identify which life cycle segments it is anticipated will be evaluated and compared for the product and all alternatives.

(5) Approach and Methodology. The AA Work Plan shall briefly describe the approach and methodology that is anticipated to be used for each of the following major AA tasks:

(A) Identifying alternatives to be evaluated,

(B) Determining which of the factors listed in section 69305.3 are pertinent to, and are anticipated to be used to evaluate and compare, the Priority Product or component(s) and the alternatives,

(C) Gathering and analyzing data and other information,

(D) Using the data and information to evaluate and compare the Priority Product or component(s) and all alternatives being considered,

(E) Making the decision to select an alternative or retain the Priority Product or component(s), and

(F) Preparing the AA Report.

(6) Schedule and Deliverables. The AA Work Plan shall include a proposed schedule for completion of each major AA task identified in the AA Work Plan. The schedule shall specify the proposed submission date for the AA Report pursuant to section 69305.4. If the Priority Product list identifies more than one component that must be included in the AA, separate submission dates may be proposed for each component.

(b)(1) Within sixty (60) days of receiving an AA Work Plan, the Department shall review the AA Work Plan for completeness and compliance with the requirements of this section, and issue a notice of its findings with either a notice of deficiency or a notice of completeness.

(2) The Department shall specify in the notice of deficiency the areas of deficiency and a date, not to exceed sixty (60) days from the date of the notice of deficiency, for submitting the necessary information to complete the AA Work Plan. The person who submitted the original AA Work Plan shall submit a revised AA Work Plan within the time specified and address the areas of deficiency.

(3) Within sixty (60) days of receipt of the requested additional information, the Department shall issue either a notice of completeness or a notice disapproving the AA Work Plan. If the AA Work Plan is disapproved, the Department shall explain the basis for the disapproval in the notice. A disapproved AA Work Plan shall be considered non-compliant with the requirements of 69305.1(a)(2).

(4) If the AA Work Plan is determined to be complete, the Department shall specify in the notice of completeness the date for submitting the AA Report. In assigning the due date, the Department shall consider the complexity of the planned AA and the scope of alternatives to be considered.

(5) All notices issued by the Department pursuant to this subsection shall be issued to the person who submitted the AA Work Plan, and a copy of the notice shall be sent by the Department to all persons identified in the AA Work Plan pursuant to subsection (a)(1)(B) and (D).

(c) If there is a significant change to the information contained in an approved AA Work Plan, a notification shall be provided to the Department by the person who submitted the AA Work Plan, or by the person on whose behalf the AA Work Plan was submitted, that identifies the change(s) and briefly explains the rationale for the change(s).

NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference: Sections 25252 and 25253, Health and Safety Code.

§ 69305.3. AA Evaluation and Comparison Process and Factors.

(a)(1) Each AA, required pursuant to section 69305.1(a), shall include all of the following:

(A) A Chemical Hazard Assessment,

(B) Except as provided otherwise in paragraph (2)(B), an Exposure Potential Assessment,

(C) A Multimedia Life Cycle Evaluation,

(D) Product Function and Performance Analysis, and

(E) Economic Impact Analysis.

(2)(A) A Chemical Hazard Assessment shall be performed to evaluate and compare the chemicals contained in the Priority Product or component(s) and all alternatives identified for consideration.

(B) An Exposure Potential Assessment shall be performed to evaluate and compare the potential for exposures to the chemicals contained in the Priority Product or component(s) and any alternative being considered that contains a chemical that exhibits one or more hazard traits. An Exposure Potential Assessment is not required if none of thealternative being considered contain a chemical that exhibits a hazard trait.

(C) Concurrent with, or following completion of, the Chemical Hazard Assessment and Exposure Potential Assessment, if applicable, a Multimedia Life Cycle Evaluation shall be performed to evaluate and compare the multimedia impacts of the Priority Product or component(s) and all alternatives being considered during each life cycle segment identified for consideration.

(D) The results of the Chemical Hazard Assessment or, if applicable, the Exposure Potential Assessment, or both, may be used to screen out alternatives to be considered in the Multimedia Life Cycle Evaluation. Likewise, the results of the Chemical Hazard Assessment, Exposure Potential Assessment, and/or Multimedia Life Cycle Evaluation may be used to screen out alternatives to be considered in the Product Function and Performance Analysis and the Economic Impact Analysis.

(3) The Priority Product, or component(s), and all alternatives being considered shall be evaluated and compared for the same set of life cycle segments. The same methodologies, and a consistent set of factors, shall be used to evaluate and compare the Priority Product, or component(s), and all alternatives being considered. In identifying the list of factors to be used for this evaluation and comparison, the list of factors specified in subsections (b) through (f) shall be reviewed to determine which factors are pertinent to, and will be used for, the evaluation and comparison. Consideration may also be given to any applicable safeguards provided by other federal or California State regulatory programs.

(b) Chemical Hazard Assessment. The following factors shall be reviewed to determine if they are pertinent for inclusion in the Chemical Hazard Assessment evaluation and comparison of the chemicals contained in the Priority Product or component(s) and all alternatives being considered:

(1) Physical chemical hazards,

(2) Adverse public health impacts,

(3) Adverse ecological impacts,

(4) Adverse air quality impacts,

(5) Adverse water quality impacts, and

(6) Adverse soil quality impacts.

(c) Exposure Potential Assessment. The following factors shall be reviewed to determine if they are pertinent for inclusion in the Exposure Potential Assessment evaluation and comparison of the potential for exposures to the chemicals contained in the Priority Product or component(s) and all alternatives that are being considered:

(1) Chemical quantity information.

(A) Quantities of the Chemical of Concern or alternative chemical(s) necessary to manufacture the Priority Product or component(s), or alternative, and

(B) Estimated volume and/or mass of the Chemical of Concern or substitute chemical that is or would be placed into the stream of commerce in California as a result of the product or component(s) or potential alternatives.

(2) Exposure limitation factors listed in section 69303.3(a)(1)(B).

(3) Consumer use factors listed in section 69303.3(a)(1)(C).

(4) Environmental release factors listed in section 69303.3(a)(1)(D).

(d) Multimedia Life Cycle Evaluation. The following factors shall be reviewed to determine if they are pertinent for inclusion in the Multimedia Life Cycle Evaluation and comparison of the multimedia impacts of the Priority Product or component(s) and all alternatives that are being considered:

(1) Materials and resource consumption impacts,

(2) Adverse air quality impacts,
(3) Adverse water quality impacts,
(4) Adverse soil quality impacts, and
(5) Waste and end-of-life impacts.

(e) Product Function and Performance Analysis. The following factors shall be reviewed to determine if they are pertinent for inclusion in the Product Function and Performance Analysis of the Priority Product or component(s) and all alternatives that are still under consideration following completion of the Chemical Hazard Assessment, Exposure Potential Assessment, and Multimedia Life Cycle Evaluation.

(1) Function and performance factors attributed to the Chemical of Concern in the Priority Product or component(s), and any essential function and performance attributes that must be met by any potential alternatives,
(2) Useful life, expressed in single use or number of applications, days, months or years, of the Priority Product or component(s), and that of the potential alternatives,
(3) Functional equivalency of each alternative relative to the Priority Product or component(s), and
(4) Technological and economic feasibility of each alternative.

(f) Economic Impact Analysis. The economic impacts specified in section 69301.1(a)(30) shall be reviewed to determine if they are pertinent for inclusion in the Economic Impact Analysis of the Priority Product or component(s) and all alternatives that are still under consideration following completion of the Chemical Hazard Assessment, Exposure Potential Assessment, and Multimedia Life Cycle Evaluation. Evaluation and comparison of economic impacts shall take into account both internalized and externalized costs during the life cycle of the Priority Product or component and all alternatives being considered, and shall include an evaluation of the range of projected costs. Evaluation and comparison of externalized costs shall include costs to government agencies, the public, businesses, and consumers.

NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference: Sections 25252 and 25253, Health and Safety Code.

§ 69305.4. Alternatives Assessment Reports.

The AA shall be completed and the AA Report submitted to the Department by the date specified pursuant to section 69305.24(b)(4), unless an extension has been requested and approved pursuant to section 69305.1(b). The AA Report shall include all of the following:

(a) Preparer Information.
(1) The name of, and contact information for, the person submitting the AA Report;
(2) If applicable, the name of, and contact information for, all persons on whose behalf the AA Report is being submitted; and
(3) The names of the parties that were involved in funding, directing, overseeing, preparing or reviewing the AA, and any organizations and individuals that provided expert guidance or review for the AA.

(b) Supply Chain Information.

(1) The name, contact information, and physical headquarters location of the manufacturer(s) shall be provided. If the AA Report is prepared on behalf of a consortium of manufacturers or other persons in the product's supply chain, a list of the participants shall be provided along with their corresponding contact information;

(2) The name of, and contact information for, the person identified on the product label as the manufacturer, and the person, if any, identified as the distributor, if different from paragraph (1);

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

(4) Identification and location of the manufacturer's retail sales outlets where the manufacturer sold, supplied or offered for sale the product in California, if applicable.

(c) Facility Description and Location. A description and location of the facility(ies) where the Priority Product or component(s) is produced shall be included. This description shall also indicate the proximity to raw or recycled materials that directly or indirectly influences the type and amount of Chemical of Concern contained in the Priority Product or component(s).

(d) Product Information. The following information identifying and describing the Priority Product or component(s) that is the subject of the AA Report shall be included:

(1) The brand name(s) under which the product is placed into the stream of commerce in California;

(2) If applicable, the component(s) that is the focus of the AA. The AA shall, at a minimum, focus on the component(s) specified in section 69303.2(a)(2)(B), but may be expanded to include additional components or the entire product; and

(3) Identification of the Chemical(s) of Concern contained in the product or component(s), whichever is applicable, that are the basis for the product being listed as a Priority Product, and any other Chemical(s) of Concern that are, or reasonably should be, known to be in the Priority Product or component(s), whichever is applicable.

(e) Supporting Information. All reference materials, studies, data and other information used as supporting information in performance of the AA and preparation of the AA Report shall be cited in the AA Report and made available to the Department, upon request. The AA Report shall include a brief summary of the information reviewed and considered pursuant to section 69305.1(e).

(f) AA Goal and Scope of Alternatives. The AA Report shall identify the goal of the AA, identify and briefly describe the alternatives chosen to be evaluated and compared, and explain the rationale for selecting these alternatives. If the scope of alternatives considered differs from the scope identified in the AA Work Plan, the AA Report shall note and explain the reason(s) for the change.

(g) Scope of Life Cycle Segments. The AA Report shall identify which life cycle segments were chosen for evaluation and comparison of the product or component(s) and all alternatives. If not all life cycle segments listed in section 69301.1(a)(48) were evaluated and compared, the AA Report shall explain the rationale for the omissions, including an explanation of why an evaluation of the omitted life cycle segments is not necessary to comply with the

requirements of Health and Safety Code section 25253(a). If the scope of life cycle segments considered differs from the scope identified in the AA Work Plan, the AA Report shall also note and explain the reason(s) for any changes.

(h) Approach and Methodology. The AA Report shall identify and describe the assessment tools, models, or software used to conduct the AA, and discuss any limitations of these tools, models and software. The AA Report shall also identify any published methodologies or guidelines used, and any deviations taken from the published methodologies or guidelines. The AA Report shall also identify, and briefly describe the approach and methodology used for each of the major AA tasks listed in section 69305.2(a)(5).

(i) Assessment and Comparison of Alternatives. The AA Report shall include the following information for the Chemical Hazard Assessment, Exposure Potential Assessment, Multimedia Life Cycle Evaluation, Product Function and Performance Analysis, and Economic Impact Analysis:

(1) Identification of the factors listed in section 69305.3(b), (c), (d), (e) or (f), as applicable, that were used to evaluate and compare the Priority Product, or component(s), and all alternatives considered, and the rationale for the selection of the evaluation and comparison factors.

(2) A comparative matrix, or other format, that provides the reviewer with an easily understood visual comparison, organized in conformance with section 69305.3(b) through (f), that presents both of the following:

(A) The data collected for each factor evaluated and compared, and

(B) The comparative results of evaluating the data presented pursuant to subparagraph (A).

(3) Data relied on for any determination that one or more alternatives being considered do not exhibit a hazard trait. This information is not required for any alternative that was evaluated using an Exposure Potential Assessment.

(4) A discussion, if applicable, of how safeguards provided by other federal and California State regulatory programs were considered in the AA, including identification of those programs and safeguards considered.

(j) Selected Alternative. The AA Report shall identify and describe the alternative, if any, selected, and the rationale for the selection decision. This shall include an assessment that evaluates and compares the selected alternative against the Priority Product or component(s) and a detailed list and explanation of the reasons for the selection decision, or, alternatively, for the decision not to select and implement an alternative to the Priority Product or component(s), whichever is applicable. The AA Report shall also include all of the following:

(1) The information specified in paragraphs (3) and (4) of section 69305.3(e) for the selected alternative. If no alternative is selected, this information shall be provided for each alternative considered.

(2) A demonstration that the production, use and disposal of the selected alternative, in conjunction with any regulatory response(s) proposed pursuant to subsection (l), will have no greater significant adverse impacts on public health or the environment than the impacts associated with the Priority Product. For purposes of this paragraph, “environment”, as it

pertains to California's environment, means "environment" as defined in section 21060.5 of the Public Resources Code.

(3) A list of all chemical ingredients contained in the selected alternative that differ from the chemical ingredients in the Priority Product or that are present in the selected alternative at a higher concentration than in the Priority Product, and both of the following for those chemicals:

(A) All available and applicable chemical identification and description information; and

(B) Hazard trait information for any of those chemicals for which hazard trait information has not already been provided to the Department pursuant to this chapter.

(k) Implementation Plan. A detailed plan, including key milestones and dates, for implementing the selected alternative, if applicable, shall be presented in the AA Report. The implementation plan shall include any steps necessary to ensure compliance with applicable federal, state or local laws.

(l) Proposed Regulatory Responses. Identification of any regulatory response(s), that the person submitting the AA Report wishes to propose that would best limit the exposure to, or reduce the level of adverse public health and environmental impacts posed by, any Chemical of Concern that will be contained in the selected alternative or that is contained in the Priority Product or component(s), if the decision resulting from the AA is to retain the Priority Product or component(s).

(m) If applicable, a third-party AA verification statement prepared pursuant to section 69305.1(c).

(n)(1) The AA Report shall be accompanied by an executive summary. The executive summary shall be sufficient to convey to the public a general understanding of the scope, goals and results of the AA, and allow a technically qualified person to make an independent assessment of the findings presented in the AA Report.

(2)(A) The executive summary shall be organized in conformance with the organization of the AA Report and shall include, for each section of the AA Report, a reiteration or detailed summary of the information presented in the AA Report, but the preparer shall not include in the executive summary any information claimed as confidential pursuant to article 9.

(B) If the Department subsequently rejects a claim of confidentiality, the preparer shall, at the Department's request, submit a revised executive summary within thirty (30) days of the request to add any information for which a confidentiality claim is rejected and which the Department determines, and specifies in its request, shall be included in the executive summary.

NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference: Sections 25252, 25253 and 25257, Health and Safety Code.

§ 69305.5. Department Review and Determination for AA Reports.

(a) Within sixty (60) days of receiving an AA Report, the Department shall review the AA Report for completeness and compliance with the requirements of Health and Safety Code

section 25253(a) and this article, and shall notify the person submitting the AA Report of the Department's finding with either a notice of deficiency or a notice of completeness.

(b) The Department shall specify in any notice of deficiency the areas of deficiency and the due date for submitting the necessary information to complete the AA Report, which shall be no later than ninety (90) days after the notice of deficiency is issued.

(1) The revised AA Report shall be submitted within the time specified and shall address all areas of deficiency. If requested, the Department may, at its discretion, approve a one-time extension not to exceed sixty (60) days for submission of the revised AA Report to correct the deficiencies.

(2) Within sixty (60) days of receipt of the requested additional information, the Department shall notify the submitter of the information if the information submitted renders the AA Report compliant with the requirements of Health and Safety Code section 25253(a) and this article, and issue either a notice of completeness or a notice of deficiency.

(3) If the Department again disapproves the AA Report, the Department in the second notice of deficiency shall grant no more than thirty (30) days for resubmission of the requested information.

(4) If the submitter of the AA Report fails to adequately and timely respond to two (2) notices of deficiency, the product shall be placed on the Failure to Comply List pursuant to section 69301.3(d).

(c) If the AA Report is determined to be complete, the Department shall notify the person who submitted the AA Report of its determination. A copy of the notice shall be sent to all persons identified in the AA Report pursuant to section 69305.4(a)(1), (a)(2), (b)(1), (b)(2) and (b)(3).

(1) In the completeness determination notice, or a subsequent notice sent to the manufacturer and all responsible entities known to the Department, the Department shall provide notice of the Department's proposed determination whether one or more of the regulatory responses specified in sections 69306.5 or 69306.6 is required.

(2) If a regulatory response is required under section 69306.6, the Department shall specify the proposed due date for implementation of the regulatory response.

(3) In assigning a deadline for completing a regulatory response required by the Department under section 69306.6, the Department shall consider the complexity of implementing the regulatory response.

NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference: Section 25253, Health and Safety Code.

Article 6. Regulatory Responses

§ 69306. Applicability.

The requirements of this article shall apply to any alternative selected pursuant to section 69305.4(j) that is placed into the stream of commerce in California. These requirements shall also apply, as applicable, to the Priority Product or component if an alternative is not selected,

or if the Priority Product or component will remain in commerce pending development and distribution of the selected alternative.

NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference: Section 25253, Health and Safety Code.

§ 69306.1. AA Report Supplemental Information Requirements.

The Department may at any time request any information supplementary to the AA Report that the Department determines is necessary to determine and ensure implementation of one or more regulatory responses imposed pursuant to this article. This information shall be provided, within the time period specified by the Department, by the person who is the responsible entity for the Priority Product or component that is the subject of the AA Report.

NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference: Section 25253, Health and Safety Code.

§ 69306.2. No Regulatory Response Required.

No regulatory response shall be required for a selected alternative, if all of the following are demonstrated to the satisfaction of the Department in the AA Report:

(a) The selected alternative does not contain a Chemical of Concern in a concentration exceeding the de minimis level. If the selected alternative contains multiple Chemicals of Concern, the total concentration of all Chemicals of Concern exhibiting the same hazard trait shall not exceed the de minimis level.

(b) The selected alternative does not present a significant threat to public health or the environment.

(c) The Priority Product, which was the subject of the AA, will be completely removed from commerce in California, and an inventory recall in California will be completed, within three (3) years after the date the Department issues a notice of completeness for the AA Report.

NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference: Section 25253, Health and Safety Code.

§ 69306.3. Product Information for Consumers.

(a) For a selected alternative that contains a Chemical(s) of Concern in exceedance of the level specified in section 69306.2(a), or for a Priority Product or component for which an alternative is not selected, the responsible entity shall ensure that all of the following information is made available to the consumer:

(1) Manufacturer's name;

(2) Brand name and description of the product;

(3) A list of the Chemicals of Concern contained in the product;

(4) Identification of any end-of-life management program for this product;

(5) Any safe handling procedures needed to protect public health or the environment during the useful life of the product and proper end-of-life disposal or management; and

(6) The manufacturer's website address where the consumer can obtain additional information about the product, the public health and environmental threats posed by the product, and proper end-of-life disposal or management of the product.

(b) The requirements of subsection (a) may be met by including an information sheet in the product packaging, printing the required information on the product packaging, printing the information in a prominent place in the product manual if a hard copy manual is packaged with the product, or posting the information in a prominent place at the point of product display for products that are not packaged. In all cases, the information shall be easily seen, legible, and understandable to the consumer.

(c) In addition to the requirements of subsections (a) and (b), unless precluded by the type or size of the product, a product subject to the requirements of subsection (a) shall be permanently marked or labeled, in a manner that is easily seen, legible, and understandable to the consumer, with as much of the information specified in subsection (a) as the size of the product permits.

(d) A responsible entity that has a product or component subject to the requirements of subsections (a) through (c), shall ensure that these requirements are fully implemented for that product or component no later than twelve (12) months after the Department issues a notice of completeness for the AA Report for the product or component.

NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference: Section 25253, Health and Safety Code.

§ 69306.4. End-of-Life Management Requirements.

(a) Except as provided in section 69306.2, a responsible entity for a selected alternative, or a Priority Product for which the an alternative is not selected, which is sold or otherwise made available to consumers as a finished product and is required to be managed as a hazardous waste at the end of its useful life, shall ensure that both of the following requirements are met:

(1) Consumer product information, as required by section 69306.3, shall be provided for the product or component. Additionally, the product information shall state that the product or component must be disposed of or otherwise managed as a hazardous waste at the end of its useful life.

(2) No later than two (2) years after the Department issues a notice of completeness for the AA Report for the product or component, an end-of-life management program for the product or component shall be funded, established and maintained. The program shall comply with all of the following requirements:

(A) A comprehensive product stewardship plan shall be developed and maintained, and shall include all of the following:

1. A list of, and contact information for, participating manufacturers and, if applicable, other participating persons.

2. The scope of products to be covered by the plan.
3. The roles and responsibilities for manufacturers, retailers, consumers and government throughout the life cycle of the product.
4. Identification and description of collection systems that will be used.
5. End-of-life management information, including what steps will be taken to ensure environmentally-sound management that complies with all applicable federal and California State and local laws, and addresses any adverse multimedia impacts.
6. Anticipated resource needs and a description of the financing mechanism to implement and sustain the plan, including identification of any third-party product stewardship organization collecting and administering a fee to fund the stewardship program. The responsible entity of the product shall provide a financial guarantee mechanism for a sustainable end-of-life management program for the product. Multiple responsible entities may form a third-party product stewardship organization, funded by participating manufacturers and responsible entities, to provide local services to collect, recycle, or otherwise appropriately manage the designated products.
7. Program performance measures for:
a. Increasing the capture rate of the products covered at the end-of-life, and
b. Increasing recyclability;
8. Public education, outreach and communications plans;
9. Public and stakeholder consultation activities during preparation, and periodic review and updating, of the plan; and
10. Reporting and evaluation procedures.

(B) The product stewardship program and plan for collecting and, if applicable, recycling the product shall be developed in consultation with California retailers and potential collection sites. The collection program shall include one or both of the following:
1. Collection mechanisms, and
2. Compensation to retailers and other persons who agree to administer or participate in the collection program.

(C) The responsible entity for a product subject to the requirements of this section shall, every two (2) years from the date the end-of-life management program is required to be implemented, ensure that a report is provided to the Department which shall include both of the following:
1. The amount of products placed into the stream of commerce in California over the previous two-year period, by total tonnage, and
2. The amount of products recovered over the same two-year period, by total tonnage.

(b) Upon request, the product stewardship plan required under this section shall be submitted for review by the Department to ensure compliance with the requirements of this section.

(c) A copy of the product stewardship plan required under this section shall be posted on the website of the responsible entity. A link to the posting shall be provided to the Department for posting on the Department's website.

(d) A responsible entity subject to the requirements of this section may request the Department's approval to substitute an alternative end-of-life management program that achieves to the maximum extent feasible the same results as the program required by this section.

(e) A responsible entity subject to the requirements of this section may request an exemption by demonstrating to the Department's satisfaction in the AA Report that an end-of-life management program cannot feasibly be implemented for the product that is subject to the requirements of this section.

NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference: Section 25253, Health and Safety Code.

§ 69306.5. Product Sales Prohibition.

(a) Except as provided in section 69306.2 and subsection (c), the requirements of subsection (b) shall apply to a selected alternative that contains a Chemical of Concern, or a Priority Product or component for which an alternative is not selected, if the Department determines, and notifies the responsible entity pursuant to section 69306.8, that a safer alternative exists that does not contain a Chemical of Concern and is both functionally equivalent and technologically and economically feasible.

(b) Effective one (1) year after the Department issues a notification pursuant to subsection (a), the product or component that is the subject of the notification shall cease to be placed into the stream of commerce in California, and the responsible entity shall ensure that an inventory recall program for the product or component is implemented and completed within three (3) years after the notification is issued by the Department.

(c) A product or component that is the subject of a notification issued by the Department pursuant to subsection (a) shall not be subject to the requirements of subsection (b) if both of the following requirements are met:

(1) Within sixty (60) days after the notification is issued by the Department, the responsible entity notifies the Department of its intent to submit a revised AA Report that selects an alternative that does not contain a Chemical of Concern, and

(2) Within one (1) year after the notification is issued by the Department, the Department receives an AA Report that selects an alternative that does not contain a Chemical of Concern and that fully meets the requirements of section 69305.4.

(d)(1) A request may be submitted to the Department for a one-time extension of the due date for submitting the revised AA Report pursuant to subsection (c)(2). The extension request shall be received by the Department no later than sixty (60) days before the due date for the revised AA Report, and shall include all of the following:

(A) The name of, and contact information for, the person filing the extension request,

(B) The name of, and contact information for, the person(s) on whose behalf the revised AA Report will be submitted,

(C) If different from (A) and (B), the name of, and contact information for, the manufacturer of the product,

(D) The amount of time requested, not to exceed ninety (90) days,
(E) The reason the extension is needed, and
(F) A copy of the notice issued by the Department pursuant to subsection (a), and a copy of the notice of intent submitted to the Department pursuant to subsection (c)(1).
(2) Within thirty (30) days of receipt of the extension request, the Department shall approve or deny the extension request, and notify the person submitting the extension request of its decision. The one-time extension for the revised AA Report shall not exceed ninety (90) days.
(3) If an extension is approved by the Department, one of the following requirements shall be met by the due date specified by the Department in the extension approval:
(A) A revised AA Report meeting the requirements of subsection (c)(2) shall be submitted to the Department, or
(B) The requirements of subsection (b) shall be implemented.

NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference: Section 25253, Health and Safety Code.

§ 69306.6. Other Regulatory Responses.

(a) In addition to the regulatory responses specified in sections 69306.1 and 69306.3 through 69306.5, and except as provided in section 69306.2, the Department may impose any of the following regulatory responses that the Department determines are necessary to limit exposure to, and reduce the level of adverse public health or environmental impacts posed by, a selected alternative, or a Priority Product or component for which an alternative is not selected:
(1) The Department may apply any of the regulatory responses described in sections 69306.3 through 69306.5 to scenarios other than those already identified in sections 69306.3 through 69306.5;
(2) The Department may apply any of the following regulatory responses to any scenario, including those scenarios listed in sections 69306.3 through 69306.5:
(A) Requiring engineered safety measures to control access to or limit exposure to the Chemical of Concern in the product;
(B) Placing restrictions on the use of the Chemical of Concern that is contained in the product;
(C) Requiring the responsible entity to initiate a research and development project or fund a challenge grant that is pertinent to the Priority Product or component and that uses green chemistry principles, if the AA Report for the product or component did not identify any alternatives; and
(D) Requiring a new AA to be performed, and an AA Report to be submitted to the Department in a time period specified by the Department, which shall be no less than three (3) years after the date the prior AA Report for the product or component was submitted to the Department, if either of the following applies:

1. The prior AA Report did not identify or did not select an alternative product or component, or

2. The Department becomes aware of a safer alternative that is both functionally equivalent and technologically and economically feasible.

(b) In accordance with the process specified in section 69306.8, the Department shall notify affected responsible entities, known to the Department, of regulatory response determinations made pursuant to this section, along with the implementation due date for the regulatory response and the rationale for the regulatory response determination.

(c) The Department shall periodically re-evaluate each regulatory response imposed under this section to determine if any changes are needed based on any significant changes in science, technology or other relevant information or facts that have occurred since the regulatory response was selected.

NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference: Section 25253, Health and Safety Code.

§ 69306.7. Exemption from Regulatory Response Requirements.

(a) A selected alternative, or a Priority Product or component for which an alternative is not selected, shall be exempt from the requirements of this article, if the responsible entity requests, and the Department grants, an exemption. The exemption request shall be submitted to the Department no later than whichever of the following dates is applicable:

(1) Sixty (60) days after the responsible entity is notified by the Department that a selected alternative, or a Priority Product or component, is subject to a regulatory response pursuant to section 69306.6 or a determination under section 69306.5, or

(2) Sixty (60) days after the Department issues a notice of completeness for an AA Report for a product or component subject to section 69306.3 or 69306.4.

(b) An exemption request submitted pursuant to subsection (a) shall include all of the following:

(1) The name of, and contact information for, the person filing the exemption request,

(2) The name of, and contact information for, the person(s) on whose behalf the exemption request is being submitted,

(3) If different from paragraphs (1) and (2), the name of, and contact information for, the manufacturer of the product,

(4) The name of, and contact information for, any other responsible entity for the product, to the extent known to the person submitting the exemption request,

(5) Information identifying and describing the product, including the brand name(s) under which the product is placed into the stream of commerce in California, and information specifically identifying the component, if applicable, and

(6) Clear and convincing evidence that demonstrates to the Department's satisfaction that either or both of the following apply:

(A) The required regulatory response would conflict with a requirement of another California or federal regulatory program or an international trade agreement ratified by the

United States Senate, in such a way that the responsible entity cannot reasonably be expected to comply with both requirements.

(B) The required regulatory response substantially duplicates a requirement of another California or federal regulatory program or an international trade agreement ratified by the United States Senate.

(c) Within sixty (60) days of receiving an exemption request, the Department shall issue a notice to the person who submitted the request granting or denying the exemption request. A notice granting or denying an exemption request shall include the basis for the Department's decision. A copy of the notice shall also be sent to any responsible entity known to the Department.

(d) An exemption request submitted pursuant to subsection (a) shall be denied if the request fails to demonstrate to the satisfaction of the Department that one or both of the criteria specified in subsection (a)(6) apply to the product or component.

(e) If the exemption request or the Department's granting of the exemption is based solely on the criteria specified in subsection (a)(6)(A), the Department may, at its discretion, require implementation of a modified regulatory response that resolves the conflict that is the basis for the exemption.

(f) An exemption granted pursuant to this section shall be rescinded if the Department determines that the facts and/or assumptions that the Department relied upon in granting the exemption were not, or are no longer, valid. If the Department rescinds an exemption, the Department shall notify the person who submitted the exemption request and any responsible entity known to the Department.

(g) All notices issued under this section granting, denying or rescinding an exemption shall include a statement of basis for the Department's decision.

NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference: Sections 25253 and 25257.1, Health and Safety Code.

§ 69306.8. Regulatory Response Determination Process.

(a) Prior to issuing a final regulatory response determination notice pursuant to sections 69306.5(a) or 69306.6(b), the Department shall notify all responsible entities known to the Department of the proposed regulatory response(s) pursuant to paragraphs (1) through (3) of section 69305.5(c), and make the proposed regulatory response determination notice available on its website, for public review and comment. The Department shall hold one or more public workshops to provide an opportunity for the public to comment orally on the proposed regulatory response determination notice. The Department shall publish in the CRNR, send to persons on any listserv(s) that the Department establishes related to this chapter, and post on its website a notice regarding the availability of the proposed regulatory response determination notice. This notice shall include:

(1) The time period during which the public may submit written comments,

(2) The method(s) for submitting comments to the Department on the proposed regulatory response determination notice, and

(3) The date, time and location of the public workshop(s).

(b) After review and consideration of public comments on the proposed regulatory response determination notice, the Department shall finalize and send to any responsible entities known to the Department the final regulatory response determination notice. The Department may, at its discretion, respond to some or all public comments received.

(c) All proposed and final regulatory response determination notices shall include all of the following:

(1) A description of the required regulatory response,

(2) The Department's determination(s) that is the basis for the required regulatory response,

(3) Subject to article 9, the rationale, data and data sources, supporting the Department's determination(s), and an analysis of potential multimedia life cycle impacts, if any, associated with the required regulatory response, and

(4) The implementation due date for any regulatory response imposed pursuant to section 69306.6.

NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference: Sections 25253 and 25257, Health and Safety Code.

§ 69306.9. Regulatory Response Report and Notifications.

(a) A responsible entity of a product or component subject to a regulatory response pursuant to this article, except for the regulatory responses specified in subparagraphs (C) and (D) of section 69306.6(a)(2), shall ensure that a notice is sent to retailers who sell the product or component in California, informing the retailers of the applicability of the regulatory response to the product or component. The notice shall be sent to the retailers, and a copy sent to the Department, no later than whichever of the following dates is applicable:

(1) Thirty (30) days after receiving a final regulatory response determination notice, pursuant to section 69306.8(b), for a product or component subject to section 69306.5(a) or 69306.6(b), or

(2) Thirty (30) days after the Department issues a notice of completeness for an AA Report for a product or component subject to section 69306.3 or 69306.4.

(b) The notice required pursuant to subdivision (a) shall include all of the following:

(1) The manufacturer's name and contact information,

(2) The responsible entity's name and contact information, if different than the manufacturer,

(3) Information identifying and describing the original Priority Product or component, and the selected alternative, including the brand name(s) under which the product or component is placed into the stream of commerce in California, and the name(s) of any persons identified as the manufacturer and/or distributor on the product label,

(4) A description of the required regulatory response and the due date for implementing the regulatory response.

(c) The responsible entity shall notify the Department upon completing implementation of the required regulatory response(s) and, if applicable, upon completing development and introduction into the California market of the selected alternative. The notification shall include information describing how the regulatory response(s) was implemented. If requested by the Department, the responsible entity shall provide periodic implementation status reports regarding the selected regulatory response(s). The information provided to the Department pursuant to this subsection shall also be posted on the website of the responsible entity.

(d)(1) The Department shall prepare and post on its website, and update at least quarterly, a Regulatory Response Report that identifies the regulatory response or responses for each selected alternative for a Priority Product. The Regulatory Response Report shall contain all of the following information, subject to article 9:

(A) The manufacturer's name and contact information,

(B) The names of, and contact information for, any other responsible entities known to the Department,

(C) Information identifying and describing the original Priority Product or component, and the selected alternative, including the brand name(s) under which the product or component is placed into the stream of commerce in California,

(D) The due date and actual date for completing development and introduction into the California market of the selected alternative, if any,

(E) The regulatory response(s), if any,

(F) The applicable section in this article specifying the regulatory responses,

(G) The implementation due date, and the actual implementation date, for the regulatory response, and

(H) Any other information provided to the Department pursuant to subsection (b).

(2) The Department shall also include in the Regulatory Response Report the information specified in subparagraphs (A) through (D) of paragraph (1) for each exemption granted by the Department pursuant to section 69306.7.

NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference: Sections 25253 and 25257, Health and Safety Code.

Article 7. Dispute Resolution Processes

§ 69307. Dispute Resolution.

(a) This article applies to any responsible entity or manufacturer that wishes to dispute a decision made by the Department pursuant to this chapter that applies to the responsible entity or manufacturer or the responsible entity's or manufacturer's chemical or product.

(b) The procedures set out in this article are the required administrative procedures for resolving disputes arising under this chapter. If the responsible entity or manufacturer fails to follow the procedures contained in this article for disputes subject to this article, it shall have waived its right to further contest the disputed issue administratively.

(c) Any requirement imposed by the Department pursuant to this chapter on a responsible entity or manufacturer, and any posting on the Failure to Comply list pursuant to section 69301.3(d) concerning that requirement, shall be stayed during the pendency of a dispute or petition for review filed, pursuant to this article, concerning that requirement.

NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code. Reference: Sections 25252, 25253, and 25257.1, Health and Safety Code.

§ 69307.1. Informal Dispute Resolution Procedures.

(a) For any dispute arising from a decision made by the Department pursuant to the provisions of this chapter, other than sections 69306.5, 69306.6, and 69306.7, the responsible entity or manufacturer may, within fifteen (15) days following the notice or website posting of the Department's decision, request that the Department informally resolve the dispute. The Department shall provide the responsible entity or manufacturer with an opportunity to resolve the dispute informally within thirty (30) days of receiving the request for dispute resolution. If a request for informal dispute resolution is not received within the specified time limit, the Department's decision is final and shall not be subject to additional dispute resolution.

(b) If the responsible entity or manufacturer disagrees with the Department's decision following completion of the informal dispute resolution process pursuant to subsection (a), the responsible entity or manufacturer may appeal to the Department's Director as specified in section 69307.2.

NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code. Reference: Sections 25252, 25253, and 25257.1, Health and Safety Code.

§ 69307.2. Request for Further Review by the Director.

(a) A responsible entity or manufacturer wishing to seek review of the Department's decision following completion of the informal dispute resolution process, pursuant to section 69307.1, shall submit information stating the basis for seeking further review and the reasons why the decision does not comport with the requirements of this chapter, or is otherwise unreasonable. The responsible entity or manufacturer shall also provide:

(1) The original statement of dispute;

(2) Supporting documents; and

(3) Copies of any responses prepared by the Department's employees involved with the dispute.

(b) The request for further review shall be made to the Director of the Department within thirty (30) days after completion of the informal dispute resolution process under section 69307.1.

(c) The Director or the Director's designee shall issue a decision granting or denying the relief sought in whole or in part within sixty (60) days after receipt of the request under this section. If the relief sought is denied, the decision shall specify the date by which the responsible entity or manufacturer shall comply with the requirements of this chapter that were

the subject of the dispute. A decision issued pursuant to this subsection is the Department's final decision and is not subject to additional administrative dispute resolution.

NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code. Reference: Sections 25252, 25253, and 25257.1, Health and Safety Code.

§ 69307.3. Formal Petition for Review Procedures.

For all disputes arising under sections 69306.5, 69306.6, or 69306.7, the procedures specified in sections 69307.4 through 69307.7 shall apply in lieu of the procedures set forth in sections 69307.1 and 60307.2.

NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference: Sections 25253 and 25257.1, Health and Safety Code.

§ 69307.4. Time Lines for Petitions for Review.

Within thirty (30) days of a responsible entity or manufacturer receiving a determination from the Department that section 69306.5, 69306.6, or 69306.7 applies to one or more of its products or selected alternative, the responsible entity or manufacturer may submit a petition for review to the Department to review such determination. If a petition of review is not filed within this time period, the Department's determination is final and shall not be subject to additional administrative dispute resolution.

NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference: Sections 25253 and 25257.1, Health and Safety Code.

§ 69307.5. Contents of Petition for Review.

A petition for review filed pursuant to section 69307.4 shall include a statement of the reasons supporting that review, and as applicable, a showing that the determination is based on:

(a) Facts, assumptions, or other information or approaches or conclusion of law that is clearly erroneous, or

(b) An exercise of discretion or an important policy consideration which the Department should, in its discretion, review.

NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference: Sections 25253 and 25257.1, Health and Safety Code.

§ 69307.6. Department Review of Petitions.

(a) Within sixty (60) days following the filing of the petition for review pursuant to section 69307.4, the Department shall issue an order either granting or denying the petition for review.

(b) An order granting review shall specify a schedule for briefing of the issues by the responsible entity or manufacturer and the Department.

(c) An order denying review shall constitute the Department's final decision and shall not be subject to additional administrative dispute resolution. The decision shall be effective on the date of the order. The order denying review shall specify the date by which the responsible entity or manufacturer shall comply with the requirements of this chapter that were the subject of the petition for review.

(d) Following consideration of the information provided during the briefing period, the Department shall issue an order specifying its decision on the merits of the petition. This order shall be issued within one hundred and eighty (180) days from the date the Department issues the order granting the petition for review.

(1) If the final order upholds the Department's decision under this chapter the order shall be the Department's final decision and shall not be subject to additional administrative dispute resolution. An order upholding the Department's original decision shall specify the date by which the responsible entity or manufacturer shall comply with the applicable requirements of this chapter.

(2) If the final order grants the relief sought by the responsible entity, in whole or in part, the order shall remand the decision that is the subject of the petition for review back to the responsible program for re-evaluation and shall specify the date by which the re-evaluation shall be completed, which shall be no more than ninety (90) days from the date of the order. The order may also provide guidance or criteria for the re-evaluation.

NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference: Sections 25253 and 25257.1, Health and Safety Code.

§ 69307.7. Procedures for Department Review of Petitions.

(a) In addition to the procedures specified in section 69307.6, in reviewing a petition for review filed pursuant to section 69307.4, the Department shall also comply with this section.

(b) No Departmental staff that participated in the decision that is the subject of the petition for review filed under section 69307.4 may participate in decision-making or review of decisions made under section 69307.6.

(c) No Departmental staff participating in decision-making or review of decisions made under section 69307.6 may have communications about the petition for review with any Department staff that participated in the decision that is the subject of the petition for review filed under section 69307.4, unless the Department staff simultaneously communicates with the responsible entity or manufacturer or its representative regarding the issues under discussion with Department staff.

NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference: Sections 25253 and 25257.1, Health and Safety Code.

Article 8. Audits

§ 69308. Audit of Alternatives Assessments and Regulatory Responses.

(a) The Department shall randomly audit AAs as resources permit.
(b) The scope of the audit shall include an examination of:
(1) Compliance with article 5 requirements;
(2) Compliance with the scope and objective of the AA Work Plan during the conduct of the AA;
(3) Data quality and adequacy of analysis;
(4) Implementation of the selected alternative, if applicable; and
(5) Compliance with the applicable regulatory response(s) imposed pursuant to article 6;
(c) Upon completion of an audit, the Department shall:
(1) Notify the responsible entity of the audit findings, and
(2) Inform the responsible entity of the process to dispute audit findings.

NOTE: Authority cited: Sections 25253, and 58012, Health and Safety Code. Reference: Article 8 of Division 4.5 of Chapter 20 and Section 25253, Health and Safety Code.

Article 9. Confidentiality of Information

§ 69309. Assertion of a Claim of Confidential Information.

(a) Any person who wishes to claim information as confidential information shall, at the time of submission, do one of the following:
(1) Assert a claim that certain information is a trade secret by identifying the portion of the information subject to the trade secret claim, and making specific reference in separate correspondence to Health and Safety Code section 25257 and any other relevant code section(s) relied upon;
(2) Assert a claim that certain information, while not a trade secret is otherwise confidential and exempt from disclosure under the California Public Records Act by identifying the portion of the information subject to the claim, and making specific reference in separate correspondence to the factual or legal authority, privilege, or California Public Records Act provision relied upon.
(b) Any person who asserts a claim of confidential information shall also, at the time of submission, provide the Department with both of the following:
(1) A complete copy of the documentation being submitted, which shall include the claimed confidential information, and
(2) A redacted copy of the documentation being submitted, which shall exclude the claimed confidential information, and which the Department may make available to the public at its discretion.
(c) Any person who asserts a claim of confidential information shall make such assertion at the time of submission by marking the words "Trade Secret" and/or “Confidential”, as appropriate, conspicuously on each page containing the information claimed to be confidential. If no claim of confidential information is made at the time of submission, the Department may make the submitted information available in full to the public without further notice.

(d) For purposes of this article, the term “confidential information” shall mean all information for which trade secret protection, confidentiality, privilege, or other form of exemption from public disclosure is provided under Health and Safety Code section 25257, any other applicable California statute, this chapter or the California Public Records Act.

NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code. Reference: Sections 25252, 25253, and 25257, Health and Safety Code, and Sections 6250 through 6270, inclusive, Government Code.

§ 69309.1. Support of a Claim of Trade Secret Protection.

(a) Any person who asserts a claim of trade secret protection and receives a request from the Department to support a trade secret claim shall, within ten (10) days of receipt of a request for support or within a longer period negotiated with the Department, provide the Department with all of the following substantiating information:

(1) A brief description of the information for which trade secret protection is being claimed;

(2) The extent to which the information is known by employees or others involved with the person’s business;

(3) The extent to which the information is known outside of the person’s business;

(4) The extent of measures taken by the person to guard the secrecy of the information;

(5) The value of the information to the person and to the person’s competitors;

(6) The amount of effort or money expended by the person in developing the information; and

(7) The ease or difficulty with which the information could be properly acquired or duplicated by others.

(b) The substantiating information required in subsections (a)(1) though (a)(7) shall be provided for each individual trade secret claim, although such information may be incorporated by reference to apply to multiple claims, as appropriate.

(c) If the substantiating information contains information that is itself subject to a claim of trade secret protection, such substantiating information shall also be separately supplied in both complete and redacted form as required by section 69309(b), and marked as required by section 69309(c), but shall not itself require further support in order to comply with this section. Such substantiating information shall be separate from any documentation used to comply with the other provisions of this chapter.

NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code. Reference: Sections 25252, 25253, and 25257, Health and Safety Code.

§ 69309.2. Hazard Trait Submissions.

(a) In accordance with Health and Safety Code section 25257(f), no hazard trait submissions, which term is synonymous with “hazardous trait submissions” as used in that

section, made pursuant to article 14 of chapter 6.5 of division 20 of the Health and Safety Code and/or this chapter may be claimed as a trade secret.

(b) For purposes of this section, a “hazard trait submission” means information submitted to the Department pertaining to a hazard trait of any chemical or chemical ingredient.

NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code. Reference: Sections 25252, 25253, and 25257, Health and Safety Code.

Article 10. Severability

§ 69310. Severability.

If any provision(s) of this chapter, or the application thereof to any person or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to that end the provisions of this chapter are severable.

NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code. Reference: Sections 25252 and 25253, Health and Safety Code.

Article 11. [Reserved]

§§ 69311 -- 69399. [Reserved]