# Chapter 53: Safer Consumer Product Alternatives

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**Article 1. General**

**Section 69301. Applicability and Severability.**

(a)(1) Except as provided in paragraphs (2) and (3) of this subsection, this chapter applies to all consumer products made available for use in California.

(2) This chapter does not apply to any product that is exempted from the definition of consumer product specified in section 25251 of the Health and Safety Code.

(3) This chapter does not apply to any consumer product manufactured in California solely for shipment and use outside of California. In establishing whether or not a product is manufactured solely for shipment and use outside of California, the burden of proof shall be on the manufacturer.

(b) If any provisions 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 which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are severable.

**Section 36301.1. Guiding Precepts.**

In fulfilling their respective requirements and responsibilities under this chapter, the Department and manufacturers shall base their analyses and determinations on the best scientific principles and practices, and shall be guided by the following fundamental precepts:

(a) Adverse impacts on public health and the environment that may result from the production, use or end-of-life management of consumer products and consumer product ingredients should be significantly reduced or eliminated.

(b) Adverse public health and environmental impacts of chemicals used in commerce, as well as the overall costs of those impacts on the State's society, should be significantly reduced, by encouraging the redesign of consumer products and manufacturing processes and approaches.

(c) Chemical and consumer product prioritization processes should seek to identify and give priority to those chemicals, and the consumer products that contain them, that pose the greatest public health and environmental threats, 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 in quantities that can result in public health or environmental harm.

(d) Green Chemistry Principles and life cycle thinking should be considered throughout implementation of the regulations in this chapter.

**Section 69301.2. Definitions.**

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

"Bioaccumulation" is 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.

"Chemical" means any of the following:

(1) A material produced by a physical process or reaction involving changes in atoms or molecules;

(2) A chemical substance, chemical mixture, chemical compound, chemical ingredient, or element. Chemical substance means any organic or inorganic substance of a particular molecular identity, including any combination of such substances occurring in whole or in part as a result of a chemical reaction or occurring in nature, and any chemical element or uncombined radical;

(3) Materials or substances manufactured or engineered at the nanoscale, which contains nanostructures, or is considered to be a nanomaterial.

"Consumer Product" means a "consumer product" as defined in Health and Safety Code section 25251.

"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.

"De minimis" means a concentration less than or equal to 0.1%.

"Department" means the Department of Toxic Substances Control.

"Distributor" means any person, other than a manufacturer or retailer, who sells or resells, or otherwise places into the stream of commerce, a product.

"Economic impacts" means an increase or decrease in: (1) jobs or businesses; (2) the cost of doing business; or (3) the cost of goods to consumers. "Economic impacts" include, but are not limited to, those specified in section 69305.3(c)(13).

"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.

"Energy efficiency" means the reduction of energy usage while maintaining a comparable level of service during the manufacturing process or the use of the consumer product.

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

"Environmental impact" means any change to the environment, whether adverse or beneficial, wholly or partially resulting from an activity, product or service. Environmental impacts include, but not limited to, those listed in section 69305.3(c)(12).

"Extended Producer Responsibility" (EPR) and "Product Stewardship" (PS) means the extension of the responsibility of manufactures and all entities involved in the product chain, to reduce the life cycle impacts of a product. The primary responsibility lies with the producer or private label manufacturer, who makes the product design and marketing decisions. This includes, but is not limited to, take back programs or other means a manufacturer uses to manage a product.

"Financial guarantee" means that the manufacturer provides a mechanism or mechanisms to ensure that adequate funding is available to pay for future collection and recycling of products newly placed on the market, and other end-of-life costs.

"Functionally equivalent" means a chemical or product component that can be effectively substituted for the COC that is, or that is contained in, the Priority Product, or a product that can be effectively substituted for the Priority Product, in a manner that substantially satisfies the intended performance and functionality of the Priority Product.

"Greenhouse gas emissions" means the emission of any one or more of the following gases:

(1) Carbon dioxide.
(2) Methane.
(3) Nitrous oxide.
(4) Hydrofluorocarbons.
(5) Perfluorocarbons.
(6) Sulfur hexafluoride.
(7) Nitrogen trifluoride.

"Green Chemistry Principles" means:

(1) Prevention of waste rather than treating it or cleaning it up,
(2) Incorporation of all materials used in the manufacturing process in the final product,
(3) Use of synthetic methods that generate substances with little or no toxicity to people or the environment,
(4) Design of chemical products to be effective, but reduce toxicity,
(5) Phase-out of solvents and auxiliary substances when possible,
(6) Use of energy efficient processes, at ambient temperature and pressure, to reduce costs and environmental impacts,

(7) Use of renewable raw materials for feedstocks,
(8) Reuse of chemical intermediates and blocking agents to reduce or eliminate waste,
(9) Selection of catalysts that carry out a single reaction many times instead of less efficient reagents,
(10) Use of chemicals that readily break down into innocuous substances in the environment,
(11) Development of better analytical techniques for real-time monitoring to reduce hazardous substances, and
(12) Use of chemicals with low risk for accidents, explosions and fires.

"Hazard trait" means one of the following:
(1) Hazard traits as identified and defined by the Office of Environmental Health Hazard Assessment ("OEHHA") pursuant to Health and Safety Code section 25256.1;
(2) Until OEHHA specifies its initial list of hazard traits, "hazard trait" is limited to all of the following:
(a) Carcinogenicity or reproductive toxicity. Chemicals with these traits are those listed pursuant to Health and Safety Code section 25249.8.
(b) Mutagenicity. Chemicals with this trait are those classified as such in the European Union Category 1A or 1B under Annex VI, part 3 of the Regulation.
(c) Chemicals that are persistent in the environment, bioaccumulate and are toxic, as determined by the United States Environmental Protection Agency.

"Historic product" means a product that is manufactured or produced prior to the date the product is listed as a Priority Product.

"Importer" means a person who brings, or arranges to bring, a consumer product into California for sale or distribution.

"Intermediate manufacturing process" means:
(1) The primary processing of raw materials into industrial materials, and
(2) The secondary processing of industrial raw materials including, casting and molding, forming, separating, conditioning, further refining, assembling and finishing processes to manufacture consumer products.

"Life cycle" means the activities in the course of a product's life span, including its design, raw materials, resource inputs, manufacture, transportation for distribution, use, operation, resource consumption, waste generation, maintenance, and ultimate disposition.

"Life cycle thinking" means examining the environmental sustainability over a product's entire life; that is, from raw material selection, manufacturing, transportation, use and end-of-life disposal or reuse and waste management.

"Make available for use in California" means that a person sells, offers for sale, distributes, leases, offers to lease, supplies, or otherwise transfers control over the disposition of a consumer product directly to a California consumer; or to another person without maintaining sufficient control over the distribution, sale, lease, supply, or other transfer of the consumer product by that person to prevent the use of the consumer product by a California consumer. "Sell 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, but not limited to, transactions conducted through sales outlets, catalogs, or the Internet, or any other similar electronic means.

"Manufacturer" means both of the following:

(1) The person who produces a consumer product; and

(2) The first person who makes the consumer product available for use in California, which includes any of the following as applicable:

(a) The producer of the consumer product.

(b) The private label manufacturer of the consumer product.

(c) The importer of the consumer product.

"Materials and resource consumption" means renewable and nonrenewable resources that are used for a consumer product during its life. 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, agricultural 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. 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 renewable resources.

"Nanomaterial" means any form of an engineered chemical, substance or material that is composed of a discrete nanostructure, which has one or more dimensions at the nanoscale.

"Nanoscale" means one or more dimensions of the order of 1000 nanometers or less.

"Nanostructure" means any engineered structure or feature that is composed of discrete functional parts, either internally or at the surface at nanoscale.

"Open Source" means methods, materials, references, models and approaches that are publicly available and not proprietary, trade secret or otherwise confidential.

"Orphan product" means a product whose end-of-life is longer than that of the manufacturer or producer who introduced the product into commerce.

"Persistence" means the ability of a chemical substance or its degradation products to remain in an environment in an unchanged state thereby increasing the potential for human or environmental exposure.

"Person" shall have the same meaning as provided in Health and Safety Code section 25118.

"Private label manufacturer" means a person who is not the producer of a product but is the owner or licensee of the trademark under which the product is sold or distributed in California, whether or not the trademark is registered.

"Producer" means the entity that makes physical or chemical modifications to material(s) to produce a product.

"Product component" means a uniquely identifiable part, piece, assembly or subassembly, system or subsystem that (1) is required to complete or finish an item; (2) performs a distinctive and necessary function in the operation of a system; or (3) is intended to be included as a part of a finished item.

"Product function or performance" means the principal use(s) or application(s) of a product by a consumer.

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

"Recall" means to cause the return, directly or indirectly, to the manufacturer of a consumer product.

"Recycled material" means a material that has been separated from solid waste for the purpose of recycling the material as a feedstock including paper, plastic, wood, glass, ceramics, metals, and other materials.

"Retailer" means a person who (1) sells or offers for sale, a consumer product that is purchased by a consumer, (2) takes title to a consumer product or consumer product component, produced either domestically or in a foreign country, that is purchased for resale or promotional purposes.

"Release" means an intentional or unintentional process that liberates or discharges a chemical that is, or that is contained in, a consumer product into the environment and includes, but is not limited to any release which results in exposure to persons during any phase of the product's life cycle. This includes releases of chemicals, heat, and ionizing and non-ionizing radiation.

"Selected alternative" means the alternative that is selected by the manufacturer to replace a Priority Product or Priority Product component, and is identified pursuant to section 69305.8(b)(5).

"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.

"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.

"Technologically and economically feasible alternative" means an alternative 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 a positive rate of return on the product over a reasonable period of time after the alternative has been implemented; and (3) the manufacturer and the product impose the same or fewer externalized aggregate costs to the consumer and to public health and the environment.

"Toxics Information Clearinghouse" means the system for the collection, maintenance and distribution of chemical hazard trait and environmental and toxicological end point data specified in Health and Safety Code section 25256.

"Trade Secret" means information including a formula, pattern, compilation, program, device, method, technique, or process that: (1) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

"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.

"Water conservation" means reducing water usage throughout the life cycle of a product.

"Water quality impacts" means any effect upon beneficial uses as specified in Water Code section 13050, and includes impacts that may occur in groundwaters or surface waters, including fresh water, brackish water, marsh lands, wetlands, or coastal bodies or systems.

**Section 69301.3. Acronyms.**

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| AA | Alternatives Assessment |
| CEPA | Canadian Environmental Protection Act |
| COC | Chemical of Concern |
| CUC | Chemical under Consideration |
| CRNR | California Regulatory Notice Register |
| NAICS | North American Industry Classification System |
| OEHHA | Office of Environmental Health Hazard Assessment |
| REACh | Registration, Evaluation, Authorisation and Restriction of Chemical |
| TSCA | Toxic Substances Control Act |

**Section 69301.4. Duty to Comply.**

(a) The producer, private label manufacturer, and importer of a consumer product, who are not one and the same entity, shall be jointly and severally responsible for complying with the requirements of this chapter that are applicable to a manufacturer of that product.

(b) A private label manufacturer or an importer of a consumer product shall be deemed to be in compliance with this chapter, with respect to that product, to the extent the producer of the consumer product is in compliance.

(c) A producer of a consumer product shall be deemed to be in compliance with this chapter, with respect to that product, to the extent the private label manufacturer or importer of the product is in compliance.

**Section 69301.5. Products Listed on Failure to Comply List.**

(a) When the Department determines that a manufacturer has failed to comply with one or more requirements of this chapter, the Department shall notify the manufacturer of this determination. If no dispute has been filed by the manufacturer, pursuant to Article 7, or if the Department's determination stands following completion of the dispute process:

(1) The Department shall post information concerning this finding on its website pursuant to subsection (b) of this section; and

(2) If the failure to comply is specifically associated with one or more of the manufacturer's Priority Products, the manufacturer shall do all of the following:

(A) Notify retailers that the Priority Product cannot be sold in California, and in the notice specifically identify the product by brand name and bar code;

(B) Recall the Priority Product and provide a take back mechanism for retailers;

(C) Place a notice of the Department's determination on the manufacturer's website; and

(D) Demonstrate to the Department's satisfaction that retailers have been notified.

(b) The Department shall post and maintain on its website an up-to-date list of manufacturers that are not currently in compliance with one or more of the requirements of this chapter. This Failure to Comply list shall include the manufacturer's name and the requirements with which the manufacturer has failed to comply. If the failure to comply is specifically associated with one or more of the manufacturer's Priority Products, the information posted on the Department's website shall also include the product type and the date that this information is first posted on the Department's website.

(c) Within 60 days after a manufacturer's consumer product has been placed on the Failure to Comply list due to the manufacturer's failure to comply with one or more of the Priority Products requirements in Article 5 or Article 6, no person shall make that consumer product available for use in California.

(d) Within 120 days after a manufacturer's consumer product has been placed on the Failure to Comply list due to the manufacturer's failure to comply, with respect to that product, with any requirement of this chapter other than Article 5 or Article 6, no person shall make that consumer product available for use in California.

(e) The provisions of subsections (c) and (d) shall not apply for a period of three (3) years for products produced or imported prior to the date the product is listed on the Failure to Comply list. The burden of proof for establishing a date of production or import shall be on the manufacturer, and such proof shall be provided along with the manufacturer's notification that its consumer product is a Priority Product pursuant to section 69303.5.

**Section 69301.6. Information Submission Requirements.**

All documents and other information submitted to the Department pursuant to this chapter shall be signed by an officer of the company and by the person(s) in charge of preparing or overseeing the preparation of the document or information. All documents and information shall be in English, in an electronic format or other electronic media and suitable for inclusion in the Department's website, and the Toxics Information Clearinghouse. The electronic documents or electronic media shall be submitted via certified mail or electronically to either:

Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806
Attention: Green Chemistry

Email at: safer.alternatives@dtsc.ca.gov

**Section 69301.7. Submission of Manufacturer Chemical and Product Information.**

(a) Upon request from the Department, the manufacturer of a chemical or a consumer product shall submit, in accordance with a schedule specified by the Department, the following information:

(1) Chemical information previously submitted pursuant to the Registration, Evaluation, Authorisation and Restriction of Chemicals ("REACh") program, the Toxic Substances Control Act (Title 15, United States Code commencing with section 2601 "TSCA"), and the Canadian Environmental Protection Act of 1999 ("CEPA").

(2) Hazard and environmental data and information generated or compiled since the submittals specified in subsection (a).

(3) The Robust Summaries provided pursuant to REACh.

(4) Information describing the types, categories and classes of products manufactured by the manufacturer that are, or that contain, COCs.

(5) Identification of all intentionally added ingredients in specified consumer products, including quantities in the entire consumer product or consumer product component.

(6) Chemical and consumer product market data, including:

(A) Volume or units sold in California;

(B) Description of sales locations;

(C) The intended uses of the product; and

(D) Description of end-of-life management program, if any.

(7) Chemical and consumer product data and information specified in sections 69302.3 and 69303.3, including chemical, physical, or quantum properties and description or data specific to a given nanomaterial.

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

(b) Requests by the Department for information pursuant to subsection (a) may include both correspondence sent to an individual manufacturer electronically or by mail, and information call-ins posted on the Department's website that may apply to all manufacturers of a specific chemical or consumer product or group of chemicals or consumer products.

(c) A manufacturer, or any other individual or entity, may at any time provide data or other information based on scientifically peer-reviewed studies to the Department regarding a chemical or consumer product that may be considered in the chemical prioritization or product

prioritization process. The Department shall give good faith consideration to the data or other information provided.

(d) After a chemical has been listed as a CUC or COC on the proposed or final lists, if a manufacturer reformulates or redesigns a consumer product that is, or that contains, that chemical so as to remove that chemical from the consumer product, or substitutes for the original product another product that is or that contains a chemical, the manufacturer shall notify the Department of this consumer product reformulation, redesign or substitution no later than 30 days after the reformulated, redesigned or substituted consumer product is first sold, offered for sale or promotional purposes, imported or distributed in California. The notification shall include all of the following:

(1) The manufacture's name, mailing and electronic address(es), website, and physical location of the manufacturer's headquarters,

(2) The type, brand name and bar code of the product, and its intended uses,

(3) The CUC or COC removed from the product, and the reason for and the approach taken to reformulate or redesign the product so as to remove the CUC or COC, and

(4) If another chemical was substituted for the CUC or COC, identification of the hazard traits associated with the new chemical. Identification of hazard traits shall be based on the criteria developed by OEHHA for determining when a chemical exhibits a hazard trait, to the extent such criteria have been made available by OEHHA.

(e) In accordance with Health and Safety Code section 25257(b), the Department shall treat as confidential, and properly designated, any information provided to it under subsections (a)(1) through (a)(3) that is claimed as confidential in the original submission and not subsequently rejected by the receiving governmental entity. Such information may not be incorporated by reference into other documents submitted to the Department or otherwise used to comply with the provisions of subsections (a)(4) through (a)(7), (c) or (d). Any person submitting information under subsections (a)(1) through (a)(3) shall also provide any documentation concerning subsequent governmental determinations on the status of confidentiality claims.

## Article 2. Chemical Prioritization Process

### Section 69302. General.

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

(b) The Department may request and use information obtained pursuant to sections 69301.7 and 69302.3 to perform its duties under this article.

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

**Section 69302.1. Applicability.**

(a) This article applies to all chemicals that exhibit a hazard trait and are reasonably expected to be, or to be contained in, consumer products made available for use in California, unless the Department determines that the chemical meets either or both of the following criteria:

(1) The chemical is regulated by another governmental entity in a scope, manner and consistency across jurisdictions throughout California, that addresses throughout the life cycle of the chemical the public health and environmental threats posed by the chemical, or

(2) There are no exposure pathways by which the chemical might pose a threat to public health or the environment in California.

(b) In the absence of a determination by the Department to the contrary, it shall be presumed that subsections (a)(1) and (a)(2) do not apply to any chemical that exhibits a hazard trait and is reasonably expected to be, or to be contained in, consumer products made available for use in California. This presumption shall affect the burden of proof required pursuant to subsection (c).

(c) Any person requesting the Department to make a determination specified in subsection (a)(1) or (a)(2), or both, shall bear the burden to prove to the Department's satisfaction that subsection (a)(1) or (a)(2), or both, applies to the chemical in question.

**Section 69302.2. Chemical Lists.**

(a) The Department shall prepare two proposed lists:

(1) A list of Chemicals under Consideration as specified in section 69302.3, and

(2) A list of Chemicals of Concern as specified in section 69302.4.

(b) Prior to finalizing the CUC and COC lists, the Department shall make the proposed lists available on its website, for public review and comment, along with supporting documentation, including, but not limited to, the Department's rationale, data and data sources, subject to the provisions of Article 10. The Department shall publish in the CRNR and post on its website a notice regarding the availability of the proposed lists and supporting documentation. This notice shall include:

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

(2) The method(s) for submitting comments to the Department on the proposed lists.

(3) Notification of any workshops, if the Department determines one or more workshops are necessary.

(c) The Department shall finalize and post on its website the CUC and COC lists after review and consideration of public comments on the proposed lists. The Department may, at its discretion, respond to some or all public comments received. The Department shall post on its website all written public comments received, and any written responses that the Department chooses to provide to the comments.

(d) The Department shall publish in the CRNR a notice indicating that the CUC and COC lists have been finalized and are available on the Department's website.

(e) The Department shall review and revise the CUC and COC lists based on the availability of resources, but no less frequently than once every three (3) years. Revisions may include additions and deletions to the prior lists.

**Section 69302.3. Chemicals Under Consideration.**

The Department shall prepare a list of Chemicals under Consideration using the following prioritization factors:

(a) Chemical properties.

(b) Physical properties.

(c) Dispersive volume of the chemical in commerce made available in California.

(1) Projected annual sales based on volume, including:

(A) Annual regional distribution volumes, and

(B) Marketing and customer targeted volumes;

(2) Volume of the chemical in current use;

(3) Annual estimated volume of the chemical use in consumer products and products; and

(4) Controlled distribution systems, if any.

(d) Public health toxicity and toxicological endpoints associated with the chemical, including, but not limited to:

(1) Acute or chronic toxicity,

(2) Bioaccumulation in humans,

(3) Carcinogenicity,

(4) Developmental toxicity,

(5) Effect of electromagnetic radiation that includes ionizing radiation and non-ionizing radiation,

(6) Endocrine disruption,

(7) Epigenetic effects,

(8) Genotoxicity,

(9) Immunotoxicity,

(10) Neurotoxicity,

(11) Organ or tissue system toxicity,

(12) Persistence,

(13) Reproductive toxicity,

(14) Adverse impacts upon respiratory function capacity or system, and

(15) Any other hazard traits that relate to adverse impacts on public health.

(e) Adverse health impacts on sensitive subpopulations.

(f)(1) Potential for the public to be exposed to the chemical when the chemical is, or is contained in, consumer products,

(2) Existence of scientifically peer reviewed biomonitoring data showing the chemical to be present in human bodily tissues or fluids, and

(3) Existence of scientifically peer reviewed data showing the chemical to be present in household dust, indoor air, drinking water, or elsewhere in the indoor household environment.

(g) Adverse impacts on the environment. Factors to be considered include, but are not limited to:

(1) Estimate of releases into the environment of the chemical when the chemical is, or is contained in, a consumer product. Factors to be considered include, but are not limited to, the potential to migrate or distribute across environmental media, and the potential to accumulate or persist in biological or environmental compartments or systems. Information sources to consider shall include, but are not limited to:

(A) Scientifically peer reviewed monitoring data showing the chemical to be present in the environment, including aquatic, avian or terrestrial organisms, and

(B) Environmental modeling of potential fate and transport, including but not limited to:

1. Fugacity modeling,

2. Field studies,

3. Measurements and observations,

4. Microcosm studies, and

5. Environmental or biological presence may be estimated by using either a point source or market-wide source term calculation, modeling or measurement. Environmental presence may also be estimated by a combination of the latter options.

(2) Air quality impacts,

(3) Ecotoxicity, including but not limited to, acute or chronic toxicity in aquatic, avian or terrestrial organisms, population loss, decline in population diversity or adverse changes in historical communities,

(4) Adverse impacts on environmentally sensitive habitats, including but not limited to, habitat loss or deterioration,

(5) Adverse impacts that affect the ability of an endangered or threatened species to survive or reproduce, including adverse impacts on habitats essential to the continued existence of an endangered or threatened species,

(6) Vegetation contamination or damage, including phytotoxicity,

(7) Soil contamination,

(8) Water quality impacts, including, but not limited to, degradation of the beneficial uses of the water of the state and whether the chemical is:

(A) A chemical identified as a priority toxic pollutant for California pursuant to section 303 (c) of the federal Clean Water Act, or

(B) A pollutant requiring monitoring and reporting for one or more water bodies in California pursuant to section 303 (d) of the federal Clean Water Act in California; and

(9) Any other hazard traits that relate to adverse impacts on the environment.

(h) Scope, and consistency across jurisdictions, of other governmental regulatory programs, and the extent to which these other programs address the public health and

environmental threats specified in this section posed by the chemical throughout the life cycle of the chemical and any consumer product that is, or that contains, the chemical.

(i) Data and other relevant criteria that may be considered, include, but are not limited to:

(1) Data showing that other chemical species are formed during breakdown of the chemical, including transformation in an environmental setting, or when the chemical is combined with other chemicals, and that such chemical species exhibit one or more hazard traits.

(2) Results of computational modeling for structural activity relationships or short term in vitro bioassays.

(3) Whether the chemical is required to be managed as a hazardous waste in California at the end of its useful life.

(4) Data that indicate whether the chemical is showing up in California solid waste or waste water streams collected or managed by State or local agencies in concentrations or volumes that present public health or environmental threats, or that require the significant expenditure of public funds to mitigate public health or environmental threats, or that significantly increase the costs of reusing or recycling materials containing the chemical.

(5) Computational modeling data that informs any element of this section.

(j) The Department shall place chemicals on this list based upon the prioritization factors in this section.

**Section 69302.4. Chemicals of Concern.**

(a) From the list of Chemicals under Consideration, the Department shall prepare a list of Chemicals of Concern that are determined to be of highest priority based on consideration of the following factors:

(1) The relative degree of threat posed by the chemical to public health or the environment based on consideration of the factors specified in section 69302.3.

(2) Availability of scientifically peer reviewed data to substantiate the threats posed by the chemical, including, but not limited to, data:

(A) Generated using established federal guidelines, including, but not limited to, Good Laboratory Practices (GLP),

(B) Published in scientifically peer reviewed literature,

(C) Published in final state or federal scientific reports,

(D) Published in a final report of the National Academy of Sciences, National Academy of Engineering, Institute of Medicine, or National Research Council, or

(E) Published in final reports from the agencies that implement the laws and programs described in section 69301.7(a)(1).

(3) Availability of Department resources.

(b) A chemical that has no hazard trait other than causing carcinogenicity or reproductive toxicity, or both, shall not be placed on the Chemicals of Concern List unless the chemical is listed pursuant to Health and Safety Code section 25249.8.

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

(1) Chemicals that cause cancer or reproductive toxicity or both and are listed pursuant to Health and Safety Code section 25249.8.

(2) Chemicals that cause mutagenic effects, and are classified as such in the European Union Category 1A or 1B under Annex VI, part 3 of Regulation.

(3) Chemicals that are persistent in the environment, bioaccumulate and are toxic, as determined by the United States Environmental Protection Agency.

(d) Subsection (c) does not apply to any subsequent lists of Chemicals of Concern.

## Article 3. Product Prioritization Process

### Section 69303. General.

(a) This article identifies the process by which the Department shall identify and prioritize Priority Products.

(b) The Department may request and use information obtained pursuant to sections 69301.7 and 69303.3 to perform its duties under this article.

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

### Section 69303.1. Applicability.

(a) This article applies to all consumer products that are, or that contain, a COC, and that are reasonably expected to be made available for use in California, unless the Department determines that either or both of the following criteria apply to the consumer product:

(1) The consumer product is regulated by other governmental entities in a scope, manner and consistency across jurisdictions throughout California, that addresses throughout the life cycle of the product the public health and environmental threats posed by the COC that is, or that is contained in, the product.

(2) There are no exposure pathways by which the COC that is, or that is contained in, the consumer product might pose a threat to public health or the environment in California.

(b) In the absence of a determination by the Department to the contrary, it shall be presumed that subsections (a)(1) and (a)(2) do not apply to any consumer product that is, or that contains, a COC. This presumption shall affect the burden of proof required pursuant to subsection (c).

(c) Any person requesting the Department to make a determination specified in subsection (a)(1) or (a)(2), or both, shall bear the burden to prove to the Department's satisfaction that subsection (a)(1) or (a)(2), or both, applies to the product in question.

**Section 69303.2. Products Lists.**

(a) The Department shall prepare two proposed lists:

(1) A list of products that, when they are a COC or when they contain a COC, will be designated as Products under Consideration pursuant to section 69303.3; and

(2) A list of products that, when they are a COC or when they contain a COC, will be designated as Priority Products pursuant to section 69303.4. This list shall include both of the following:

(A) 1. The proposed concentration units for any de minimis exemptions for the product, or

2. If applicable, the Department's proposed determination that a de minimis exemption, pursuant to 69305.1, shall not be allowed for one or more Priority Products. Subject to the provisions of Article 10, the Department shall include the supporting rationale, data, and data sources for this determination. In no case, shall the de minimis exemption be allowed for chemicals, materials, or substances manufactured or engineered at the nanoscale, which contain nanostructures, or are considered to be a nanomaterial.

(B) If applicable, the proposed component of the Priority Product to which the de minimis concentration applies, and which is the focus of the AA.

(b) Prior to finalizing the two lists, the Department shall make the proposed lists available on its website, for public review and comment, along with supporting documentation, including but not limited to, the Department's rationale, data and data sources subject to the provisions of Article 10. The Department shall publish in the CRNR a notice regarding the availability of the proposed lists and supporting documentation. This notice shall include:

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

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

(3) Notification of any workshops, if the Department determines one or more workshop is necessary.

(c) The Department shall finalize and post on its website the finalized Products under Consideration and Priority Products lists after review and consideration of public comments on the proposed lists. The Department may, at its discretion, respond to some or all public comments received. The Department shall post on its website all written public comments received, and any written responses that the Department chooses to provide to the comments.

(d) The Department shall publish in the CRNR a notice that the lists have been finalized and are available on the Department's website.

(e) The finalized lists shall include:

(1) The list of products that, when they are a COC or when they contain a COC, will be designated as Products under Consideration; and

(2) The list of products that, when they are a COC or when they contain a COC, will be designated as Priority Products. The list of Priority Products shall include all of the following:

(A) The applicable de minimis concentration units for the COC in each Priority Product, or the Department's determination that the de minimis exemption shall not be allowed for the product,

(B) If applicable, the component(s) of the Priority Product to which the de minimis concentration applies, and which is the required minimum focus of the AA, and

(C) For each Priority Product, the date by which each manufacturer of that product shall submit an Alternatives Assessment (AA) Work Plan and Detailed Executive Summary to the Department, pursuant to sections 69305.3 and 69305.4.

(f) The Department shall review and revise the Products under Consideration and Priority Products lists based on the availability of resources, but no less frequently than once every three (3) years. Revisions may include additions and deletions to the prior lists.

**Section 69303.3. Products Under Consideration.**

The Department shall prepare a list of Products under Consideration that are, or that contain, a COC, using the following prioritization factors:

(a) Potential for the public or the environment to be exposed to the COC that is, or that is contained in, the product, during the useful life of the product and end-of-life management of the product. Factors to be considered include, but are not limited to:

(1) Containment of the chemical within the product, including the long-term integrity of the containment mechanism or system;

(2) Controlled access to the product; and

(3) Frequency and duration of exposure for each use scenario and end-of-life scenario.

(b) Dispersive volume, including, but not limited to:

(1) Projected or actual unit sales;

(A) Regional distribution volumes and

(B) Marketing and customer targeted volumes

(2) Volume in current use;

(3) Controlled distribution systems, if any; and

(4) Percentage of products estimated to be, or to contain, the COC.

(c) Types and extent of consumer uses that could result in public exposure to the COC that is, or that is contained in, the product, and could result in adverse public health impacts as specified in section 69302.3 (d) through (f). Factors to be considered include, but are not limited to:

(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,

(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) Workers, customers, clients and members of the general public who come in contact with the product or releases from the product in the workplace, including:
(A) Business sector locations;
(B) Retail sector locations; and
(C) Service sector locations.
(6) The availability of the product to consumers as a finished material or product or part of a product that does not require further processing or assembly. Lower priority will be given to materials, products and parts of products that are solely or primarily marketed for use in, or used in, an intermediate manufacturing process.
(d)(1) Existence of scientifically peer reviewed biomonitoring data showing the chemical to be present in human bodily tissues or fluids, and
(2) Existence of scientifically peer reviewed data showing the chemical to be present in household dust, indoor air, drinking water, or elsewhere in the indoor household environment.
(e) Product uses or management practices that could lead to releases to the environment of the COC that is, or this is contained in, the product, and result in adverse environmental impacts specified in section 69302.3(g). Factors to be considered include, but are not limited to:
(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 or persistence in biological or environmental compartments or systems of the COC. Information sources to consider shall include, but are not limited to:
(A) Scientifically peer reviewed monitoring data showing the chemical to be present in the environment, including aquatic, avian or terrestrial organisms, and
(B) Environmental modeling of potential fate and transport, including but not limited to:
1. Fugacity modeling,
2. Field studies,
3. Measurements and observations,
4. Microcosm studies, and
5. Environmental or biological presence may be estimated by using either a point source or market-wide source term calculation, modeling or measurement. Environmental presence may also be estimated by a combination of these methods.
(f) Scope, and consistency across jurisdictions in California, of other governmental regulatory programs, and the extent to which these other programs address the public health and environmental threats posed by the COC that is, or that is contained in, the consumer product throughout the life cycle of the product.
(g) Whether the consumer product is required to be managed as a hazardous waste in California at the end of its useful life.
(h) Whether the chemical is showing up in California solid waste or waste water streams collected or managed by State or local agencies in concentrations or volumes that

present public health or environmental threats, or that require the significant expenditure of public funds to mitigate public health or environmental threats, or that significantly increase the costs of reusing or recycling materials containing the chemical.

(i) The availability and relevance of an open source AA for the consumer product or the COC in the consumer product that substantially meets the requirements of Article 5 has been completed and provided to the Department.

**Section 69303.4. Priority Products.**

From the list of Products under Consideration, the Department shall prepare a list of Priority Products that are determined to be of highest priority based on consideration of the following factors:

(a) The relative degree of threat posed by the product due to the COC that is, or that is contained in, the product, to public health or the environment based on consideration of the factors specified in section 69303.3;

(b) The availability of Department resources.

**Section 69303.5. Manufacturer Priority Product Notification.**

(a) Except as provided in subsection (b) of this section, within 30 days after a Priority Product has been listed by the Department, any manufacturer of a listed Priority Product shall notify retailers who sell the Priority Product in California and the Department that their consumer product is a Priority Product.

(b) For Priority Products that are first manufactured or first made available for use in California, subsequent to the listing date, the manufacturer shall provide this notice within 30 days after the product is first made available for use in California.

(c) The notification shall include:

(1) The manufacturer's name, physical location, mailing and electronic addresses, website address, contact information, and applicable NAICS code(s).

(2) The type, brand name, and bar code of the Priority Product; and information specifically identifying the pertinent product component, if applicable,

(3) The date when an AA Work Plan is due for the Priority Product;

(4) Whether the manufacturer will seek the Department's concurrence under section 69305.1 that the concentration of the COC in the Priority Product is no greater than the de minimis concentration, if applicable, and

(5) The method for identification of products manufactured prior to their listing as a Priority Product.

(d) The notification shall be made available to retailers through one or more methods which may include, but are not limited to:

(1) Electronic notification,

(2) Written notification, including but not limited to:

(A) Notification by certified mail,

(B) Bills of lading,
(C) Packing slips,
(D) Contracts,
(E) Purchase documents, or
(F) Website notification.

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

**Section 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 is, or that contains, a chemical using the Chemical of Concern or Priority Product prioritization processes specified in sections 69302.4 and 69303.4. The petition shall be submitted to the Department in accordance with section 69301.6 and shall include all of the following:

(1) Name, mailing address, telephone number, and e-mail address of the:
(A) Petitioner filing the petition,
(B) Person responsible for the contents of the petition, if different from the person identified in paragraph (A), and
(C) The affiliation of the Petitioner with the person identified in paragraph (B), if applicable,
(2) Description of the chemical or product, or both, which is the subject of the petition,
(3) Uses and applications of the chemical or product, or both, which is the subject of the petition,
(4) Basis for the petition,
(5) Supporting information, including, but not limited to, scientific data, for the basis of the petition, and
(6) Identity of any known manufacturers of the chemical or product.

(b) Within 60 days of 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) of this section.

(c) Upon designation that a petition is complete, the Department shall:
(1) Notify the Petitioner that the petition will undergo a technical review,
(2) Post the petitions designated as complete on the Department's website, and
(3) Publish in the CRNR a notice of the availability of the petition on the Department's website.

(d) 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.

**Section 69304.1. Technical Review of Petitions.**

(a) The Department shall prioritize the technical review of completed petitions based on the comprehensiveness of the petitions and the availability of resources.

(b) The Department shall conduct a technical review of the petitions based on the:

(1) Comprehensiveness of the information supporting the petition based on the factors specified for Chemicals Under Consideration in section 69302.3 and for Products Under Consideration in section 69303.3;

(2) Quality of data to support the petition, including, but not limited, to data from scientifically peer-reviewed sources specified in section 69302.4(a)(2); and

(3) Availability of data, other than the data submitted with the petition for the Department to:

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

(B) Evaluate the chemical or the product that is, or that contains, the chemical, based on the factors specified in sections 69302.3 and 69303.3 for the prioritization processes.

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

**Section 69304.2. Notice of Decision.**

After completing the technical review, the Department shall do all of the following:

(a) Approve or deny the petition,

(b) Prepare a Notice of Decision and a Statement of Basis explaining the rationale for the decision,

(c) Notify the Petitioner of the decision,

(d) Post the Notice of Decision and the Statement of Basis on its website, and

(e) Publish in the CRNR a notice of the availability the items specified in subsection (b) of this section on the Department's website.

**Section 69304.3. Approved Petitions.**

After approving a petition, the Department will evaluate and, if applicable, prioritize the chemical or the product that is, or that contains, the chemical in accordance with the prioritization processes specified in Article 2 or Article 3, as applicable.

**Article 5. Alternatives Assessments**

**Section 69305. General.**

(a)(1) Prior to finalizing the initial list of COCs, the Department shall prepare, and make available on its website, guidance materials to assist manufacturers in performing Alternative Assessments (AA), on a voluntary basis or as required by this article.

(2) The Department shall also post on its website open source AAs that are supported by scientifically peer-reviewed data and analysis. The posting shall indicate, for each open

source AA, the name of the entity that prepared the AA, and if the AA was prepared or verified by a Lead Assessor accredited pursuant to section 69308.2.

(b) A manufacturer of a product that is listed as a Priority Product shall perform an AA for the Priority Product, except as provided in section 69305.1.

(c) Except as provided in sections 69305.1 and 69305.2, a manufacturer of a Priority Product shall prepare, sign and submit to the Department an AA Work Plan and AA Report meeting the requirements of sections 69305.3 and 69305.8, respectively, as follows:

(1) The AA Work Plan shall be submitted by the due date specified in the Priority Products List, and

(2) The AA Report by the date specified by the Department pursuant to section 69305.5.

(d)(1) The AA shall be performed by, and the AA Work Plan and AA Report prepared by, one of the following:

(A) A Qualified Third-Party Assessment Entity designated pursuant to section 69308, or

(B) A Qualified In-House Assessment Entity designated pursuant to section 69308.1.

(2) The responsible individual in charge of preparation of the AA Work Plan and AA Report, and performance of the AA, shall be accredited as a Lead Assessor pursuant to section 69308.2 and employed by the Qualified Third-Party Assessment Entity or Qualified In-House Assessment Entity, whichever is applicable.

(3)(A) Each AA and AA Report shall be reviewed and verified by a second Lead Assessor who is accredited pursuant to section 69308.2, and is employed by a Qualified Third-Party Assessment Entity that did not participate in any way in the design or formulation of the AA Work Plan, data gathering, analysis or other aspects of the AA, or preparation of the AA Report. The verifying Lead Assessor shall do all of the following:

1. Verify the proper application of life cycle thinking;
2. Verify the appropriate use of life cycle assessment tools and methodologies;
3. Attest to the accuracy of reported data; and
4. Perform a final quality assurance review of the AA and AA Report, and of the data on which the AA is based.

(B) The verifying Lead Assessor shall prepare an AA Verification Statement documenting the verification process and findings.

(e) In lieu of complying with the requirements of subsection (c) of this section, a manufacturer may submit an existing report or study completed on a Priority Product, if the report is substantially equivalent to the requirements of Article 5 and contains sufficient information to identify the most appropriate regulatory response pursuant to Article 6.

(1) The report submitted pursuant to this section shall be submitted by the due date specified for submittal of the AA Work Plan for the Priority Product pursuant to section 69303.2.

(2) Notwithstanding any other provision of this article, a manufacturer submitting an existing report or study pursuant to this subsection shall also comply with the requirements of section 69305.4.

(3) A manufacturer submitting an existing report or study pursuant to this subsection may also choose to simultaneously submit supplemental information to render the information submitted substantially equivalent to the requirements of Article 5.

(4) If the existing report or study submitted pursuant to this subsection is not an open source report, the manufacturer shall submit documentation demonstrating that the AA and the AA Report were verified pursuant to section 69305(d)(3).

(f) In performing an AA, the manufacturer shall consider all available relevant information made public as part of the AA process specified in this article, including information posted on the Department's website and any additional information or technical assistance the Department may provide regarding alternatives.

(1) The manufacturer shall document these efforts in the AA Work Plan and AA Report and retain any documents for submission to the Department upon request.

(2) If an AA conducted by an open source that is applicable for the Priority Product is made available on the Department's website pursuant to subsection (a)(2) prior to the implementation of the AA Work Plan, the AA Work Plan shall be modified to the extent feasible and those changes reported and accounted for in the AA Report.

(g) The manufacturer shall cite all reference materials and studies used as supporting information in preparation of the AA Work Plan and AA Report, and provide such materials and studies to the Department at the time of submittal.

(h) All Exemption Determination Concurrence Requests, AA Work Plans, AA Reports, AA Verification Statements, and documentation for designation, pursuant to section 69308 or 69308.1, as a Qualified Third-Party Assessment Entity or a Qualified In-House Assessment Entity, 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 law that this document and all attachments were prepared or compiled under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those 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 also certify that in carrying out the duties above, Life Cycle Thinking and Green Chemistry Principles were considered. I am aware that submitting false information is punishable under all applicable provisions of law."

(i) The Department shall maintain, and update on at a least quarterly basis, the following website postings related to this article:

(1) A list of Priority Products, and the respective due dates for the AA Work Plans.

(2) A list of manufacturers that have submitted AA Work Plans.

(3) The Detailed Executive Summary for each AA Work Plan.

(4) The due date for each manufacturer's AA Report.
(5) A list of manufacturers that have submitted AA Reports.
(6) The Detailed Executive Summary for each AA Report.
(7) A list of Exemption Determination Concurrence Requests submitted to the Department, along with the Department's concurrence or denial of the Exemption Determination, and a list of no longer valid Exemption Determination Concurrences.
(8) A list of Extension Requests for submission of the AA Work Plan or AA Report submitted to the Department and the Department's decision.

**Section 69305.1. Exemption Determination and Department Concurrence.**

(a) A manufacturer shall be exempt from this article upon the Department's concurrence with the manufacturer's Exemption Determination specified in subsection (b) and submitted in the manner specified in subsection (c) of this section.

(b) A manufacturer shall determine if an exemption from this article is applicable. Except as provided in sections 69303.2(a)(2)(A) and 69303.2(e)(2)(A), a manufacturer is exempt if the Priority Product or Priority Product component, which has been specified by the Department in the Products List, contains no more than a de minimis amount of the COC that is the basis for the product's listing pursuant to section 69303.4.

(c) The manufacturer shall submit an Exemption Determination Concurrence Request by notifying the Department of its exemption determination and providing the following information to the Department within 60 days after the pertinent Products List is finalized:

(1) Manufacturer contact information, including, but not limited to, name, mailing address, electronic mail address, and contact person and telephone number.

(2) Data and other information that sufficiently supports the validity of the manufacturer's exemption determination, including but not limited to:

(A) The type, brand name, and bar code of the Priority Product, and information specifically identifying the product component, if applicable.

(B) The purpose of the COC in the product.

(C) Information regarding the COC in light of the materials used or product manufacturing process(es), or other information that may be substantiated regarding the presence of the COC, which may include, but are not limited to:

1. Chemical reactions leading to the presence of the COC,
2. Discussion of raw material origins which contain the COC, and
3. Mass balance calculations.

(D) The concentration of the COC in the Priority Product or the Priority Product component, whichever is applicable, either through information as described in paragraph (2)(C) or laboratory analytical testing. If laboratory testing is provided, the following information shall also be provided:

1. Product Sampling:

a. Information on the product sampling, including name and address of the firm sampling the product, and the name(s) of the individuals sampling the product,

b. Dates and locations of the product collection,

c. Description of the sampling methodology to ensure the representativeness of the product and at a minimum of four representative product samples, and

d. Product sampling and preservation procedures, including product sample integrity.

2. Testing Laboratory:

a. Information, including the name, address, and certification(s) of the laboratory that establish that the laboratory is proficient in analyzing, detecting and quantifying the presence of the COC in the product,

b. The name(s) and qualifications of the individuals testing the product,

c. The test methods used and references for the methods,

d. The product sample preparation prior to testing, and

e. Information to identify the product samples.

3. Laboratory results:

a. Testing results for the COC in the Priority Product or Priority Product component, whichever is applicable, reported in the same concentration units as listed in the de minimis level, if any,(e.g., % by weight, by mass, by volume),

b. Quality control and quality assurance data, and

c. Certification of the veracity of the laboratory information submitted, signed and dated by a person who is the responsible manager of the testing laboratory.

(F) Other information or data that the manufacturer deems relevant to verify that the COC is below the applicable de minimis concentration in the Priority Product or the Priority Product component, whichever is applicable.

(3) Certification statement specified in section 69305(h).

(d) Within 30 days of receiving the Exemption Determination Concurrence Request, the Department shall acknowledge its receipt. Within 60 days of receipt of the request, the Department shall inform the manufacturer that the Exemption Determination Concurrence Request is either approved, disapproved or that the information submitted is incomplete or inadequate and what additional information is needed.

(e) The manufacturer shall submit any additional information requested by the Department within 30 days of the date the information was requested. Failure to provide the requested information within the time shall result in the request for concurrence being deemed disapproved. The manufacturer may request an extension of up to 30 days within which the additional information shall be submitted or the request for concurrence shall be considered disapproved.

(f) Within 60 days of the receipt of additional information, the Department shall inform the manufacturer that the Exemption Determination Concurrence Request is approved or disapproved.

(g) If the Department concurs with the manufacturer's Exemption Determination, the manufacturer shall be exempt from the AA requirements for the Priority Product.

(h) If the Department does not concur with the manufacturer's Exemption Determination, the manufacturer shall submit an AA Work Plan within the time period specified by the Department in the disapproval notification.

(i) If the Department finds that a manufacturer's Exemption Determination is no longer applicable, the Department shall:

(1) Notify the manufacturer that its Exemption Determination is no longer valid;

(2) Require that the manufacturer submit an AA Work Plan and AA Report for the Priority Product;

(3) Identify the due date for the AA Work Plan to be submitted to the Department; and

(4) Require the manufacturer to notify retailers selling the consumer product in California of the change in requirements for the Priority Product.

**Section 69305.2. Extension Request.**

(a) A manufacturer may request an extension to the submission deadlines for the AA Work Plan or the AA Report. The extension request shall be received no later than 60 days before the due date for the AA Work Plan or AA Report, as appropriate.

(b) The extension request shall be submitted to the Department and shall include:

(1) Name, mailing address, telephone number, and email address of the manufacturer filing the extension request,

(2) Priority Product,

(3) Due date for AA Work Plan or AA Report, as applicable,

(4) The amount of time requested, and

(5) The reason or justification for the extension.

(c) The Department shall approve, deny or approve in part the extension request within 30 days of receipt and shall notify the manufacturer of its decision.

**Section 69305.3. Alternatives Assessment Work Plan Required Contents.**

(a) The AA Work Plan shall contain sufficient detail to convey an understanding of the scope and goal of the AA that will be performed and include any supporting information, studies, or data that are referenced in or relied upon as part of the AA Work Plan.

(b) The AA Work Plan shall contain the quality assurance plan and methodology for data collection.

(c) The AA Work Plan scope of work shall ensure that the Priority Product, or Priority Product component, and all alternatives to be considered will be compared using the same methodologies and system boundaries including, but not limited to, data quality and decisions in evaluating inputs and outputs. The scope of work set forth in the AA Work Plan shall be adequate to ensure that the AA and the AA Report will provide sufficient detail to support the selection of an alternative and appropriate regulatory response(s) upon completion of the AA.

The AA Work Plan shall be organized in a manner that is easy to understand and shall include all of the following, to the extent applicable:

(1) Acknowledgements and Certifications. The names of the parties that will be involved in funding, directing, overseeing, preparing or reviewing the assessment shall be included. Any organizations and individuals that will provide expert guidance or review for the AA shall be identified, including the name of, and qualifications and accreditation information for, the persons in charge under whose direction the AA Work Plan was prepared and the AA will be conducted and verified.

(2) Acronyms. A list of acronyms used shall be included to clarify the meanings of any abbreviated words.

(3) Name of Manufacturer. Name and physical headquarters location of the manufacturer shall be provided. If the AA Work Plan is prepared on behalf of a consortium of manufacturers, a list of the participants shall be provided and their corresponding contact information including, but not limited, to mailing and email addresses and daytime phone number.

(4) Facility Description and Location. A description and location of the facility where the Priority Product, or Priority Product component, that is, or that contains, the COC is manufactured shall be included. This description shall also indicate the proximity to raw or recycled materials that directly or indirectly influences the type of product and amount of COC contained in the Priority Product, or Priority Product component.

(5) Product Information. Product Information that identifies the Priority Product(s) by individual product and brand name, and, if applicable, the Priority Product component(s) that are the focus of the AA as identified in the Products List. The AA must at a minimum focus on the product component(s) specified for the product in the Products List, but may be expanded to include additional product components or the entire product.

(6) Objective and Scope. The AA Work Plan shall clearly specify the proposed objectives and scope of the alternatives to be considered and any necessary data that must be collected to arrive at those objectives. The AA Work Plan shall be revised, as appropriate, pursuant to section 69305(f). The selected scope shall include consideration of one or more of the following alternatives:

(A) Substitution of a different chemical for the COC that is, or that is contained in, the Priority Product, or Priority Product component;

(B) Product or product component redesign to reduce the concentration of the COC in the Priority Product, or Priority Product component.

(C) Product or product component redesign, using different materials (e.g., plastic, glass, ceramic, stainless steel) to reduce the potential for the public or the environment to be exposed to the COC in the Priority Product or Priority Product component;

(D) Product and manufacturing process redesign, which may include, but is not limited to:

1. Product redesign in a "zero waste closed loop supply chain" that will design the product for ease of dismantling for recycling and will completely reuse and recycle product at the end-of-life;

2. Use of materials that degrade to a benign material;

3. Facility upgrade or redesign to reduce the potential for the public or the environment to be exposed to the COC in the Priority Product.

(E) Other AA approach that the manufacturer demonstrates to the Department's satisfaction will meet the intent and objectives of this Article.

(7) Approach and Methodology. The AA Work Plan shall include the data gathering approach that will be used to address any data gaps and shall, at a minimum, include a summary of the data currently available. Existing data may be used if it meets the objectives and scope set forth in the AA Work Plan. The AA Work Plan shall specify which segments of the life cycle of the Priority Product, or Priority Product component, and the alternatives will be evaluated and compared. The methodology and specific guidelines relied upon, and dates of those publications, shall be included. Any planned deviation from a published methodology or guidelines shall be described. The AA Work Plan scope of work shall:

(A) Identify the segments of the product's life cycle, i.e., system boundaries, that will be evaluated for the product and all alternatives, which may include:

1. Raw materials mining,
2. Intermediary material processes,
3. Manufacturing and packaging,
4. Distribution, transportation and marketing,
5. Use,
6. Product end-of-life, and
7. Reuse and recycling.

(B) Explain any planned omissions from, and assumptions for, the life cycle stages or processes.

(C) Specify and describe assessment tools, models and software, as applicable, that will be used to conduct the AA, and discuss any limitations of these tools, models and software.

(8) Chemical Information. The AA Work Plan shall include all of the following information for the COC that is, or that is contained in, the Priority Product or Priority Product component, and for any chemical that will be considered as an alternative to the COC:

(A) Discuss pertinent chemical identity, chemical name, composition, classification and labeling information.

(B) Identify the available information on intrinsic chemical and physical properties, and any chemical information that is lacking and must be obtained during the course of the AA. At a minimum, this data shall include, to the extent applicable:

1. Density,
2. Dissociation constant,
3. Explosiveness,

4. Flammability,
5. Flash point,
6. Granularity,
7. Melting/boiling point,
8. Oxidizing properties,
9. Partition coefficient,
10. Stability in organic solvents and identity of relevant degradation byproducts,
11. Surface tension,
12. Vapor pressure,
13. Viscosity,
14. Water solubility,
15. Other physical, chemical, or quantum properties specific to nanomaterials, and
16. Standard methodology for detection and measurement of the chemical in relevant environmental and biological media.

(C) Describe the production or manufacturing process and an estimate of the quantities of the COC or alternative chemical necessary to manufacture the Priority Product, or Priority Product component, or alternative.

(9) Product Function and Performance. The AA Work Plan shall discuss the methodology that will be used for assessing and comparing the function and performance of the Priority Product, or Priority Product component, and each alternative to be considered, and shall describe the function and performance of the Priority Product, or Priority Product component, including all of the following:

(A) Performance factors attributed to the COC and any essential attributes that must be met by any potential alternatives;

(B) Useful life, expressed in single use or number of applications, days, months or years, of the product or product component that is, or that contains, the COC, and that of the potential alternatives;

(C) Concentration of the COC in the product or product component and the corresponding concentration of any chemical substitution, if known at the time that the AA Work Plan is prepared;

(D) Volume or mass or both of the COC in the product or product component and the corresponding volume or mass of any potential chemical substitution, if known at the time that the AA Work Plan is prepared; and

(E) Extrapolation of the incremental volume or mass or both of the COC in commerce as a result of the product or product component.

(10) Materials and Resource Consumption Impacts. The AA Work Plan shall discuss the methodology that will be used for collecting and assessing data on the amount of raw materials and resources consumed by the Priority Product or Priority Product component and each alternative being considered. For purposes of tabulating the materials and resources consumed, the AA Work Plan scope of work shall ensure that all of the following will be

considered in the AA for the Priority Product or Priority Product component and all alternatives to be evaluated:

(A) Water consumption and conservation;

(B) Production, in-use, and transportation energy inputs;

(C) Energy consumption and efficiency; and

(D) Reusability and recyclability.

(11) Human Health Impacts. The AA Work plan shall discuss the methodology that will be used for collecting information on, and assessing, for the Priority Product or Priority Product component and each alternative being considered, public and occupational health impacts including, but not limited to, potential impacts to sensitive subpopulations. The AA Work Plan scope of work shall ensure that toxicity and toxicological endpoints to be addressed in the AA will include impacts that may result from single, intermittent or chronic use of, or contact with, the product, considering opportunities for dermal, oral and inhalation exposures during product use or other stages in the life cycle of the product. These shall include, but not be limited to, the following, to the extent applicable:

(A) Acute or chronic toxicity,

(B) Bioaccumulation,

(C) Carcinogenicity,

(D) Developmental toxicity,

(E) Effects of electromagnetic radiation that includes ionizing radiation and non-ionizing radiation,

(F) Endocrine disruption,

(G) Epigenetic effects,

(H) Genotoxicity,

(I) Immunotoxicity,

(J) Neurotoxicity,

(K) Organ or tissue system toxicity,

(L) Persistence,

(M) Reproductive toxicity,

(N) Respiratory effects,

(O) Toxicokinetics, and

(P) Any other hazard traits that relate to adverse impacts on human health.

(12) Environmental Impacts. The AA Work Plan shall discuss the methodology that will be used for collecting information on, and assessing, for the life cycle of the Priority Product or Priority Product component and each alternative being considered, all of the following environmental impacts, to the extent applicable:

(A) Air quality impacts. The AA Work Plan scope of work shall include the collection and assessment of data to document any incremental changes in air emissions, including, but not limited to, all of the air contaminants listed below, as a result of the product and each alternative being considered:

1. Nitrogen oxides,
2. Sulfur oxides,
3. Toxic air contaminants,
4. Greenhouse gases,
5. Other ozone forming compounds, and
6. Particulate matter.

(B) Ecological impacts. The AA Work Plan scope of work shall include the collection and assessment of data to document any incremental change in ecotoxicity, for all of the following, as a result of the product and each alternative being considered:

1. Aquatic ecosystems;
2. Terrestrial ecosystems;
3. Environmentally sensitive habitats; and
4. Habitats essential to the continued existence of an endangered or threatened species, and other factors affecting the ability of an endangered or threatened species to survive or reproduce.

(C) Waste and end-of-life impacts. The AA Work Plan scope of work shall include the collection and assessment of data to document any incremental change in the amount of waste and byproducts generated, and any special handling required for the waste and byproducts, during the life cycle of the product and each alternative being considered. This shall include an assessment of disposal or use of waste and byproducts.

(D) Water quality impacts. The AA Work Plan scope of work shall include the collection and assessment of data to document any incremental change in water quality impacts, including, but not limited to, each of the water quality impacts listed below, as a result of the product and each alternative being considered:

1. Biological oxygen demand,
2. Chemical oxygen demand,
3. Total dissolved solids,
4. Chemicals identified as priority toxic pollutants for California pursuant to section 303 (c) of the federal Clean Water Act,
5. Pollutants requiring monitoring and reporting for one or more water bodies in California pursuant to section 303 (d) of the federal Clean Water Act in California, and
6. Thermal pollution or stress, and
7. Other impacts affecting the quality of surface waters and groundwaters.

(E) Soil quality impacts. The AA Work Plan scope of work shall include the collection and assessment of data to document any incremental change in soil impacts, including, but not limited to, each of the soil quality impacts listed below, as a result of the product and each alternative being considered:

1. Chemical contamination,
2. Biological contamination,
3. Loss of biodiversity,

4. Loss of organic matter,
5. Erosion,
6. Compaction or other structural changes,
7. Soil sealing,
8. Other impacts the affect or alter soil function or soil chemical, physical or biological characteristics or properties.

(F) Other environmental impacts. The AA Work Plan scope of work shall include the collection and assessment of data to document any impacts, not directly addressed under subparagraphs (A) through (E) of this paragraph, that result from a release of heat, odor, radiation, or any other hazard traits that relate to adverse impacts on the environment. For purposes of evaluating other environmental impacts, the AA Work Plan scope of work shall also ensure that the AA will include identification and assessment of the COC's intrinsic traits, and those of the alternatives being considered, including, but not limited to, a chemical's:

1. Stability,
2. Biodegradation,
3. Photodegradation,
4. Bioaccumulation,
5. Production of transformation products in environmental settings, and
6. Fate and transport among environmental compartments.

(13) Economic Impacts. The AA Work Plan shall discuss the methodology that will be used for collecting information on, and assessing, for the Priority Product or Priority Product component and each alternative being considered, any increase or decrease in jobs or businesses, costs of doing business, and the costs of goods to consumers. The economic impacts assessment shall take into account both internalized and externalized costs during the life cycle, specified in paragraph (7)(A), of the Priority Product or Priority Product component and all alternatives being considered, and shall include an evaluation of the range of projected costs. Assessment of externalized costs shall include costs to government agencies, the public, businesses, and consumers. In addressing economic impacts all of the following shall be addressed, to the extent applicable:

(A) Capital investment,
(B) Cost for resources,
(C) Energy costs,
(D) Non-compliance liability,
(E) Operations and maintenance costs,
(F) Waste disposal and treatment costs, and
(G) Other relevant financial investments or liabilities not listed above.

(14) Schedule and Deliverables. The AA Work Plan shall include a proposed schedule for implementation of all proposed activities and phases identified in the scope of work. The schedule shall specify submittal dates for any interim milestones and the anticipated completion date of the final AA Report.

(d) The AA Work Plan shall be accompanied by an AA Work Plan Detailed Executive Summary, pursuant to section 69305.4.

**Section 69305.4. AA Work Plan Detailed Executive Summary Required Contents.**

(a) In addition to the requirements of section 69305.3, the manufacturer shall provide an AA Work Plan Detailed Executive Summary, which shall provide a detailed summary of the primary objectives and methods set forth in the AA Work Plan, sufficient to convey to the public a general understanding of the scope and goal of the AA that will be performed.

(b) Except as provided in subsection (c), the Detailed Executive Summary shall, at a minimum, include or summarize information on all of the following:

(1) Acknowledgements and certifications, required pursuant to section 69305.3(c)(1),

(2) Acronyms, required pursuant to section 69305.3(c)(2),

(3) Manufacturer information, required pursuant to section 69305.3(c)(3),

(4) Facility information, required pursuant to section 69305.3(c)(4),

(5) Product information, required pursuant to section 69305.3(c)(5),

(6) Objective and scope, required pursuant to section 69305.3(c)(6),

(7) Proposed approach and methodology, required pursuant to section 69305.3(c)(7),

(8) Chemical information, required pursuant to section 69305.3(c)(8),

(9) Product function and performance information, required pursuant to section 69305.3(c)(9),

(10) Materials and resource consumption information, required pursuant to section 69305.3(c)(10),

(11) Human health impacts information, required pursuant to section 69305.3(c)(11),

(12) Environmental impacts information, required pursuant to section 69305.3(c)(12),

(13) Economic impacts information, required pursuant to section 69305.3(c)(13), and

(14) Schedule and deliverables, required pursuant to section 69305.3(c)(14).

(c) Notwithstanding subsection (b) of this section, the AA Work Plan Detailed Executive Summary shall be a public record in its entirety, and shall not include any information claimed as confidential pursuant to Article 10.

**Section 69305.5. Department's Review and Determination for the AA Work Plan.**

(a) Within 60 days of receiving an AA Work Plan, the Department shall review the AA Work Plan for completeness and compliance with the requirements of section 69305.3 and shall notify the manufacturer of its findings with either a:

(1) Notice of deficiency, or

(2) Notice of completeness.

(b) The Department shall specify in the Notice of Deficiency the areas of deficiency and a date for submitting the necessary information to complete the AA Work Plan.

(1) The manufacturer shall submit a revised AA Work Plan within the time specified and address the areas of deficiency.

(A) A manufacturer may request an extension for up to 60 days beyond the date specified in the Notice of Deficiency to submit a revised AA Work Plan.

(c) Within 60 days of receipt of the requested additional information, the Department shall notify the manufacturer if the information submitted complies with the requirements of section 69305.3, and either approve or disapprove the AA Work Plan for implementation.

(1) If the Department again disapproves the AA Work Plan, the Department shall issue a second notice of deficiency and grant the manufacturer no more than 60 days to resubmit the information requested.

(2) A manufacturer who fails to adequately and timely respond to three (3) Notices of Deficiency shall be placed on the "Failure To Comply" list posted on the Department's website.

(d) If the AA Work Plan is determined to be complete, the Department shall specify in the Notice of Completeness a date for submitting the AA Report, and at the Department's discretion, interim status reports. In assigning a deadline for the AA Report, the Department shall consider the following factors:

(1) The complexity of the planned AA, including, but not limited to, the scope of alternatives to be considered;

(2) The existence of an applicable open source or previously prepared AA posted on the Department's website that identifies a technologically and economically feasible alternative that reduces any public health or environmental impacts associated with the product.

(e) A manufacturer may dispute a Notice of Deficiency to the AA Work Plan pursuant to Article 7.

**Section 69305.6. Failure to Act Within Specified Time Frames.**

Notwithstanding any other provision of this chapter, failure of the Department to make a completeness determination within 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 60 days, shall not result in the AA Work Plan or AA Report being deemed to be complete.

**Section 69305.7. AA Work Plan Amendments.**

(a) A manufacturer shall request approval from the Department to make amendments to an approved AA Work Plan prior to the amendments being put into effect, if the amendments relate to either or both of the following:

(1) The objective and scope, pursuant to section 69305.3(c)(6), or

(2) The approach and methodology to be used, pursuant to section 69305.3(c)(7).

(b) The request shall include all of the following:

(1) Name of the individual in charge recommending the proposed amendment and contact information,

(2) The proposed amendments to the approved AA Work Plan and the rationale explaining why the amendments are necessary,

(3) Supporting information, including scientific data, for the basis of the amendment, and

(4) An explanation of the potential implications to the deadlines specified pursuant to 69305.5.

(c) Within 30 days of receipt of the request to modify the AA Work Plan, the Department shall notify the manufacturer if the information submitted justifies the request to amend the AA Work Plan and either approve or disapprove the request.

(d) If the Department determines that the request is justified and approves the AA Work Plan amendments, the Department shall specify in its response whether an extension to the deadlines specified pursuant to section 69305.5 is warranted and specify a revised deadline, if appropriate. If determined appropriate, the Department may specify different deadlines for different segments of the AA.

**Section 69305.8. Alternatives Assessment Report Required Contents.**

(a) A manufacturer shall complete the requirements of sections 69305.3 and 69305.4 and submit to the Department an AA Report by the date specified by the Department, unless the manufacturer receives approval for an extension pursuant to section 69305.2.

(b) The AA Report shall contain all of the following information:

(1) Acknowledgements and Certifications. The names of the parties involved in funding, directing, overseeing, preparing or reviewing the AA Report shall be included. Any organizations and individuals that provided guidance or review for the AA shall be identified, including name, qualifications and accreditation information for the individuals in charge under whose direction the AA was conducted and verified.

(2) Acronyms. An acronym list for the AA Report shall be included to clarify the meanings of abbreviated words.

(3) AA Work Plan Implementation. All of the following information shall be provided, and shall be organized under the relevant headings specified in sections 69305.3(c)(3) through 69305.3(c)(14):

(A) Any scope of work adjustments necessary to complete the AA, including the information identified in the AA Work Plan for collection and assessment pursuant to section 69305.3(c).

(B) A description of the assessment tools used for the AA.

(C) All data, calculations, models, assumptions, limitations in methodology and data, literature and any other information that the manufacturer used or relied on in performing the AA shall be referenced and provided. All supporting information shall be maintained by the manufacturer in electronic format and made available to the Department upon request for five (5) years after the manufacturer's selected alternative is first made available for use in California.

(4) Assessment of Priority Product and Alternatives. A comparative analysis of the data collected, pursuant to sections 69305.3(c)(8) through 69305.3(c)(13), for the Priority Product, or Priority Product component, and each alternative considered shall be provided, as follows:

(A) A detailed and systematic tabulation of the data collected for the product and alternatives analysis shall be provided. Quantitative data collected or available for the Priority Product, or Priority Product component, and the COC and all alternatives considered shall be presented in a comparative matrix or other suitable and appropriate format that provides the reviewer a visual comparison.

(B) The results of the AA shall be presented in an easy to follow format such as a comparative matrix or other suitable and appropriate format that provides the reviewer a visual comparison of the product or product component and all alternatives considered.

(C) The AA Report shall include a multimedia life cycle evaluation, for the Priority Product or Priority Product component and each alternative considered, that identifies and quantifies the impacts listed below and changes, if any, to those impacts that would be achieved through implementation of each of the alternatives considered. The evaluation shall include information on, and assessment of, the impacts and other information listed below, during the life cycle of the product or product component and each of the alternatives. The evaluation shall include a summary of the data collected pursuant to the sections of this chapter cited below:

1. Chemical information, specified in section 69305.3(c)(8),
2. Materials and resource consumption impacts, listed in section 69305.3(c)(10),
3. Human health impacts, listed in section 69305.3(c)(11), and
4. Environmental impacts, listed in section 36305.3(c)(12).

(D) The AA Report shall also include a life cycle evaluation, for the Priority Product or Priority Product component and each alternative considered, that identifies and quantifies the impacts listed below and changes, if any, to those impacts that would be achieved through implementation of each of the alternatives considered. The evaluation shall include information on, and assessment of, the impacts and other information listed below, during the life cycle of the product or product component and each of the alternatives. The evaluation shall include a summary of the data collected pursuant to the sections of this chapter cited below:

1. Product function and performance impacts, specified in section 69305.3(c)(9), and
2. Economic impacts, specified in section 69305.3(c)(13).

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

(A) A demonstration that the production, use and disposal of the selected alternative, in conjunction with any regulatory response(s) proposed by the manufacturer pursuant to paragraph (7), when compared to the Priority Product, will have no significant adverse impacts on public health or the environment. For purposes of this subparagraph, "environment", as it

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

(B) A list of all chemical ingredients contained in the selected alternative product, or alternative product component, and 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.

(6) Implementation Plan. A detailed plan, including key milestones and dates, for implementing the selected alternative, if applicable, shall be presented.

(7) Proposed Regulatory Responses. Identification of any regulatory response, that the manufacturer wishes to propose, that would best limit the exposure to, or reduce the level of hazards posed by, any COC that will be, or that will be contained in, the manufacturer's selected alternative.

(c) Each AA Report shall be accompanied by both of the following:

(1) An AA Report Detailed Executive Summary, pursuant to section 69305.9, and

(2) An AA Verification Statement prepared pursuant to section 69305(d)(3).

**Section 69305.9. AA Report Detailed Executive Summary Required Contents.**

(a) In addition to the requirements of section 69305.8, the manufacturer shall provide an "AA Report Detailed Executive Summary" which shall summarize the objectives, methods, data and conclusions of the full AA Report, prepared pursuant to section 69305.8, suitable for posting on the Department's website. The information provided shall be sufficient to allow a technically qualified person to make an independent assessment of the findings presented in the AA Report.

(b) Except as provided in subsection (c), the AA Report Detailed Executive Summary shall, at a minimum, include or summarize information on all of the following:

(1) Acknowledgements and certifications, required pursuant to sections 69305.3(c)(1) and 69305.8(b)(1),

(2) Acronyms, required pursuant to section 69305.8(b)(2),

(3) Manufacturer information, required pursuant to section 69305.3(c)(3),

(4) Facility information, required pursuant to section 69305.3(c)(4),

(5) Product information, required pursuant to section 69305.3(c)(5),

(6) Objective and scope, required pursuant to section 69305.3(c)(6),

(7) Proposed approach and methodology, required pursuant to section 69305.3(c)(7),

(8) Chemical information, required pursuant to section 69305.3(c)(8),

(9) Product function and performance information, required pursuant to section 69305.3(c)(9),

(10) Materials and resource consumption information, required pursuant to section 69305.3(c)(10),

(11) Human health impacts information, required pursuant to section 69305.3(c)(11),

(12) Environmental impacts information, required pursuant to section 69305.3(c)(12),

(13) Economic impacts information, required pursuant to section 69305.3(c)(13),
(14) AA Work Plan implementation information, required pursuant to section 69305.8(b)(3),
(15) Assessment of Priority Product and alternatives, required pursuant to section 69305.8(b)(4),
(16) Selected alternative, required pursuant to section 69305.8(b)(5),
(17) Implementation plan, required pursuant to section 69305.8(b)(6), and
(18) Proposed regulatory responses, if any, pursuant to section 69305.8(b)(7).
(c) Notwithstanding subsection (b) of this section, the AA Report Detailed Executive Summary shall be a public record in its entirety, and shall not include any information claimed as confidential pursuant to Article 10.

**Section 69305.10. Department Review and Determination for the AA Report.**
(a) In addition to the provisions of subsection (b) of this section, the provisions of section 69305.5 shall apply to the Department's AA Report review and determination, and to disputes concerning notices of deficiency for AA Reports.
(b) If the AA Report is determined to be complete, the Department shall notify the manufacturer of its determination. In the completeness determination notice, the Department shall notify the manufacturer if one or more of the regulatory responses specified in sections 69306.3(e), 69306.4(b), 69306.5 or 69306.6 is required. If a regulatory response is required under section 69306.6, the Department shall specify the due date for the manufacturer to implement the regulatory response. 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.

## Article 6. Regulatory Responses

**Section 69306. Applicability.**
The requirements of this article shall apply to any consumer product that is manufactured as the selected alternative by the manufacturer of a Priority Product subject to the requirements of Article 5. These requirements shall also apply, as applicable, to the Priority Product if the manufacturer does not select an alternative to the Priority Product or if the Priority Product will remain in commerce pending development and distribution of the alternative consumer product, or alternative consumer product component, whichever is applicable.

**Section 69306.1. AA Report Supplemental Information Requirements.**
The Department may request, and the manufacturer shall provide, within the time period specified by the Department, 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.

**Section 69306.2. No Regulatory Response Required.**

No regulatory response will be required for a selected alternative consumer product, or alternative consumer product component, if the manufacturer demonstrates to the satisfaction of the Department, at the time the AA Report is submitted, all of the following:

(a) The alternative consumer product, or alternative consumer product component, does not contain a COC in a concentration exceeding 0.1%. For a product and COC that the Department has determined the de minimis exemption does not apply, the manufacturer shall demonstrate that the alternative consumer product, or alternative consumer product component, does not contain a COC at or above detectable levels.

(b) The alternative consumer product, or alternative consumer product component, does not present a significant threat to public health or the environment due to the presence in the product or product component of one or more COCs at levels that do not exceed the applicable level specified in subsection (a) of this section.

(c) The Priority Product, which was the subject of the AA, will be completely phased out, and recalled from commerce in California, within three (3) years of the date the AA Report is submitted to the Department.

**Section 69306.3. Product Information for Consumers.**

(a) For a selected alternative consumer product, or alternative consumer product component, that is a COC, or that contains a COC at a level that exceeds the applicable level specified in section 69306.2(a), or for a Priority Product for which the manufacturer does not select an alternative, the manufacturer shall make all of the following information available to the consumer:

(1) Manufacturer's name;

(2) Brand name and description of the consumer product;

(3) A list of the COCs contained in the consumer product;

(4) Identification of any sensitive subpopulations that should avoid contact with or other exposure to the consumer product;

(5) Any safe handling procedures needed to protect public health or the environment during the useful life of the consumer 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 threats posed by the product, and proper end-of-life disposal or management of the product.

(b) Manufacturers may meet the requirements of subsection (a) of this section, by including an information sheet in the consumer product packaging, printing the required information on the product packaging, or posting the information in a prominent place at the point of sale for products that are not packaged.

(c) In addition to the requirements of subsections (a) and (b), whenever not precluded by the type or size of the product, the product shall be permanently marked or labeled with all of the following information in a manner that is easily seen, legible, and understandable to the consumer:

(1) The manufacturer's name;

(2) Brand name of the consumer product;

(3) An indication that the product is, or contains, a COC;

(4) An indication that there is an end-of-life take back program for this product; and

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

(d) A manufacturer who has a consumer product subject to the requirements of this section, shall fully implement these requirements for that product no later than twelve (12) months after submitting the applicable AA Report to the Department.

(e)(1) The requirements specified in subsections (a) through (c) shall also apply to a selected alternative consumer product, or alternative consumer product component, for which the Department makes one or more of the following determinations, and notifies the manufacturer of that determination:

(A) The information will promote significantly safer use and the public health and environmental threats posed by use of the product can be significantly mitigated by providing information to the consumer;

(B) Extended producer responsibility is necessary to address end-of-life impacts;

(C) End-of-life reclamation of the product is necessary to conserve resources and mitigate long term environmental damage as a result of ongoing virgin material extraction.

(2) A manufacturer of a consumer product, subject to the requirements of this subsection, shall fully comply with such requirements for that product no later than twelve (12) months after being notified by the Department of its determination that a manufacturer is subject to the requirements of this subsection.

**Section 69306.4. Manufacturer End-of-Life Management Requirements.**

(a) A manufacturer of a selected alternative consumer product, or alternative consumer product component, or a Priority Product for which the manufacturer does not select an alternative, which is required to be managed as a hazardous waste at the end of its useful life, shall comply with both of the following requirements:

(1) The manufacturer shall comply with the consumer product information requirements specified in section 69306.3, as applicable. However, the product information and the mark or label shall state that the product must be disposed of or managed as a hazardous waste at the end of its useful life.

(2) The manufacturer shall, no later than two (2) years after submitting the AA Report for the consumer product to the Department, establish, maintain and fund take-back programs which shall comply with all of the following:

(A) The manufacturer shall develop, maintain, and post on its website, a comprehensive Product Stewardship Plan that shall include:

1. List of participating manufacturers;

2. The scope of products to be covered by the plan, including orphan and historic products;

3. The roles and responsibilities for manufacturers, retailers, consumers and government throughout the life cycle of the product.

a. Manufacturers shall finance their stewardship programs as a general cost of doing business, through cost internalization or by recovering costs through arrangements with their distributors and retailers.

b. Manufacturers shall identify any third party product stewardship organization collecting and administering a fee to administer the stewardship program.

4. Identification of collection system information, which shall include:

a. Existing infrastructure, both regionally and statewide,

b. Needed infrastructure, not currently in place, both regionally and statewide, and

c. Minimum collection services required.

5. Processing and recycling information, including what steps will be taken to ensure environmentally-sound management;

6. Anticipated resources and a financing mechanism to implement and sustain the plan;

7. Proposed measurements for:

a. Increasing the capture rate of product at the end-of-life;

b. Increasing recyclability, and

c. Increasing product longevity for consumer use; and

d. Decreasing use and volume of packaging;

8. Public outreach and communications plan;

9. Public and stakeholder consultation activities in preparation of the plan; and

10. Reporting and evaluation procedures.

(B) The manufacturer shall develop and maintain a public education program geared towards the market for the consumer product.

(C) The manufacturer shall consult with retailers and potential collection sites in creating a recycling program for the collection and recycling of the consumer product.

(D) The recycling program shall include one or both of the following:

1. Collection mechanisms, including, but not limited to, placement of recycling bins at collection centers in visible and accessible locations for consumers; and

2. Compensation to retailer and/or centers for administration of recycling program.

(E) Financial Guarantee Mechanism:

1. The manufacturer shall provide a financial guarantee for a sustainable end-of-life management program for the consumer product.

2. Manufacturers may form a third party product stewardship organization to provide local services to take back, recycle, or otherwise appropriately manage the designated products.

(F) Manufacturers of consumer products subject to end-of-life management requirements shall every 2 years from the date the manufacturer is required to have a take back program established, provide a report to the Department which shall include both of the following:

1. The amount of products made available for use in California over the previous 2 year period by total tonnage, and

2. The amount of products recovered for recycling over the 2 year period by total tonnage.

(b)(1) The requirements specified in subsection (a) shall also apply to a selected alternative consumer product, or consumer product component, that is, or that contains, a COC, or for a Priority Product for which the manufacturer does not select an alternative, if the Department determines, and notifies the manufacturer of the determination, that one or more of the following applies:

(A) There is significant potential for improper end-of-life handling or disposal practices that pose significant adverse public health or environmental impacts;

(B) End-of-life reclamation of the product is needed to conserve resources and mitigate long term environmental damage as a result of continual virgin material extraction; or

(C) There would be significant waste management costs for local governments, ratepayers or taxpayers in the absence of a product stewardship program.

(2) Manufacturers subject to the requirements of this subsection shall establish, maintain and fund the take back program beginning no later than two (2) years after being notified of the Department's determination that is subject to the requirements under this section.

**Section 69306.5. Product Sales Prohibition.**

(a) A selected alternative consumer product, or alternative consumer product component, that is, or that contains, a COC, or a Priority Product for which the manufacturer does not select an alternative, and for which the Department determines, and notifies the manufacturer, that a safer alternative exists, that is functionally equivalent and technologically and economically feasible, shall not be made available for use in California, effective two (2) years after the manufacturer is notified of the Department's determination, unless the manufacturer submits a revised AA Report within one (1) year.

(b) The manufacturer shall implement a recall program for the consumer product subject to subsection (a), within two (2) years after the manufacturer is notified of the Department's determination, unless the manufacturer submits a revised AA Report within one (1) year .

**Section 69306.6. Other Regulatory Responses.**

(a) In addition to the regulatory responses specified in sections 69306.1 and 69306.3 through 69306.7 inclusive, 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 potential public health or environmental hazards posed by, a selected alternative consumer product, or alternative consumer product component, or a Priority Product for which the manufacturer does not select an alternative:

(1) The Department may apply any of the regulatory responses described in sections 69306.3 through 69306.5, inclusive, to scenarios other than those identified in sections 69306.3 through 69306.5;

(2) The Department may apply any of the following regulatory responses to any scenario, including those listed in sections 69306.3 through 69306.5:

(A) Requiring engineered safety measures to control access to or limit exposure to the COC in the consumer product;

(B) Placement of restrictions on the use of the COC that is, or that is contained in, the consumer product;

(C) Requiring the manufacturer to initiate a Green Chemistry research and development project or fund a Green Chemistry challenge grant; and

(D) Any other regulatory response that the Department determines is necessary to limit exposure to or otherwise reduce the level of public health or environmental hazards posed by the consumer product.

(b) The Department's regulatory response determination, along with an implementation due date, shall be posted on the Departments' website and noticed to affected manufacturers.

(c) The Department will periodically re-evaluate the selected regulatory response(s) under this section to determine if any changes are needed based on any significant changes in science or technology that have occurred since the regulatory response was selected.

**Section 69306.7. Exemption from Regulatory Response Requirements.**

A manufacturer shall be exempt from implementing a required regulatory response under sections 69306.3 through 69306.6, inclusive, if the manufacturer demonstrates to the satisfaction of the Department either or both of the following:

(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 manufacturer cannot reasonably be expected to comply with these requirements. In this case, the Department may, at its discretion, require the manufacturer to implement a modified regulatory response that resolves this conflict.

(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.

**Section 69306.8. Regulatory Response Report and Notifications.**

(a) Within 30 days after being notified by the Department that a manufacturer is subject to a regulatory response pursuant to section 69306.6 or a determination under section 69306.3(e), 69306.4(b) or 69306.5, or within 30 days after submitting to the Department an AA Report for a product subject to section 69306.3(a)-(c) or 69306.4(a), the manufacturer shall notify retailers who sell the affected consumer product in California of the applicability of the regulatory response to the consumer product. A copy of the notice shall be sent simultaneously to the Department. The notice shall include all of the following:

(1) The manufacturer's name, physical location, mailing and electronic address, and website address.

(2) Information identifying and describing the product.

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

(b) The manufacturer shall notify the Department upon completion of the implementation of the required regulatory response or responses and, if applicable, upon completion of the implementation of the selected alternative. The manufacturer shall describe in the notification how it implemented the regulatory response. If requested by the Department, the manufacturer shall provide periodic implementation status reports regarding the selected regulatory response or responses. The information provided to the Department pursuant to this subsection shall also be posted on the manufacturer's website.

(c) The Department shall post on its website, and update on at least a quarterly basis, a Regulatory Response Report that identifies the regulatory response or responses for each selected alternative for a Priority Product. The Report shall contain the following information subject to the provisions of Article 10:

(1) The manufacturer's name, physical location, mailing and electronic address, and website address.

(2) A description of the original Priority Product.

(3) A description of the selected alternative.

(4) The implementation due date, and the actual implementation date, for the alternative.

(5) The regulatory response or responses, if any.

(6) The applicable section in this article specifying the regulatory responses, and, in the case of a section 69306.6 regulatory response, the rationale for the regulatory response.

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

## Article 7. Dispute Resolution Processes

### Section 69307. Dispute Resolution.

The Department and manufacturers shall use their best efforts to resolve all disputes informally. The procedures set out in this article are the required administrative procedures for resolving disputes arising under this chapter. If the 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.

### Section 69307.1. Informal Dispute Resolution Procedures.

(a) For all disputes arising under the provisions of this chapter other than sections 69306.3(e), 69306.4(b), 69306.5, or 69306.6, the manufacturer shall first seek resolution with the Department's assigned staff member. If the dispute is not resolved after review by the assigned staff member, the manufacturer shall seek resolution of the disputed issue with the staff member's second level supervisor by presenting all of the following information within 30 days after the Department takes the action that is being disputed:

(1) The issues in dispute,

(2) The basis for the position being taken, and

(3) The remedy sought.

(b) The second level supervisor shall issue a decision with an explanation for the decision within 30 days after receipt of the submittal from the manufacturer.

(c) If the manufacturer disagrees with the second level supervisor's decision, the manufacturer may appeal to the Department's Director as specified in section 69307.2.

### Section 69307.2. Director Request for Further Review.

(a) The manufacturer wishing to seek review of the decision of the second level supervisor under section 69307.1 shall submit information stating the basis for seeking further review and the reasons why the second level supervisor's decision does not comport with the requirements of this article, or is otherwise unreasonable. The 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 30 days after the issuance of the second level supervisor's determination under section 69307.1.

(c) The Director or the Director's Designee shall grant or deny the relief sought in whole or in part within 60 days after receipt of the request under this section.

**Section 69307.3. Formal Petition Procedures.**

For all disputes arising under sections 69306.3(e), 69306.4(b), 69306.5 or 69306.6, the procedures specified in sections 69307.4 through 69307.7, inclusive, shall apply in lieu of the procedures set forth in sections 69307.1 and 60307.2.

**Section 69307.4. Time Lines for Petition.**

Within 30 days of a manufacturer receiving a determination from the Department that section 69306.3(e), 69306.4(b), 69306.5 or 69306.6 applies to one or more of its consumer products or selected alternative, the manufacturer may submit a Petition for Review to the Department to review such determination.

**Section 69307.5. Contents of Petition.**

(a) The Petition 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:

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

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

**Section 69307.6. Department Review of Petition.**

(a) Within 60 days following the filing of the Petition 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 manufacturer and the Department.

(c) An order denying review shall constitute the Department's final decision, and shall be effective on the date of the order. The order shall specify the date by which the manufacturers shall comply with the applicable requirements of Article 6.

(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 (1) year from the date the Department issues the order granting the petition for review.

(1) If the final order upholds the Department's determination under Article 6, the order shall specify the date by which the manufacturer shall comply with the applicable requirements of Article 6.

(2) If the final order grants the relief sought by the manufacturer, in whole or in part, the order shall remove the Article 6 determination back to the responsible program for re-evaluation and shall specify the date by which the re-evaluation must be completed, which shall be no more than 90 days from the date of the order. The order may also provide guidance or criteria for the re-evaluation.

(e) A final decision on the Petition for Review is a prerequisite to seeking judicial review of the Department's decision.

**Section 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 making or reviewing the determination under section 69306.3(e), 69306.4(b), 69306.5 or 69306.6 that is the subject of the Petition for Review filed under section 69307.5 may participate in decision-making or review of decisions made under section 69307.6.

(c) No Department staff participating in decision-making or review of decisions made under section 69307.6 may have communications with any Department staff that participated in making or reviewing a determination made under section 69306.3(e), 69306.4(b), 69306.5, or 69306.6 that is the subject of the Petition for Review filed under section 69307.4 about the Petition for Review unless the Department staff simultaneously communicates with the manufacturer or its representative regarding the issues under discussion with Department staff.

**Section 69307.8. Website Posting of Disputes and Petitions for Review.**

Subject to the provisions of Article 10, the Department shall post information on its website concerning disputes filed pursuant to section 69307.2 and petitions filed pursuant to section 69307.4, and the Department's decisions on such disputes and petitions.

## Article 8. Accreditation and Qualification Requirements for Performance of Alternatives Assessments

**Section 69308. Requirements for Qualified Third-Party Assessment Entities.**

(a) A entity wishing to be designated as a Qualified Third-Party Assessment Entity, shall submit all of the following to the Department:

(1) The identification of one or more Lead Assessors that have been accredited pursuant to section 69308.2.

(2) Identification of the participating individuals, including employees and subcontractors, identified by the entity as necessary to complete AAs. This information shall also identify, for each individual, his or her specific role and qualifications, which may include formal education or experience, and identification of the area or areas in which they are competent to serve as a subject matter expert.

(3) Documentation of the AA elements, inputs, assumptions, methodologies and approaches employed by the entity.

(4) Demonstration of all of the following:

(A) Independence and lack of affiliation with any manufacturer, consortium of manufacturers, or trade association;

(B) Compliance with the standards of ISO 14040, or equivalent; and

(C) Record keeping and document retention and retrieval practices and capabilities sufficient to facilitate audits by the Department pursuant to Article 9 of this chapter.

(b) The Department shall review the information submitted pursuant to subsection (a) of this section, and, based on this review, approve or disapprove the request for designation as a Qualified Third-Party Assessment Entity, within 60 days of receiving the information. The Department shall notify the entity submitting the request of its determination.

(c) If any of the information submitted pursuant to subsection (a) of this section changes, the entity shall provide updated information to the Department within 30 days of the change.

(d) A designation as a Qualified Third-Party Assessment Entity shall expire after a period of five (5) years, except that it may be renewed upon application by the entity, pursuant to subsection (a) not later than 90 days before expiration of the existing designation.

(e) The Department shall post and maintain on its website a list of entities that have been designated as Qualified Third-Party Assessment Entities.

(f) If an entity is found to be in violation of this chapter, the entity shall lose its designation as a Qualified Third-Party Assessment Entity for a period of at least ten (10) years. After this period the entity may reapply to be designated as a Qualified Third-Party Assessment Entity.

**Section 69308.1. Requirements for Qualified In-House Assessment Entities.**

(a) A manufacturer, consortium of manufacturers, or trade association wishing to be designated as a Qualified In-House Assessment Entity, shall submit all of the following to the Department:

(1) The identification of one or more Lead Assessors that have been accredited pursuant to section 69308.2.

(2) Identification of the participating individuals, including employees and subcontractors, identified by the manufacturer as necessary to complete AAs. This information shall also identify, for each individual, his or her specific role and qualifications, which may include formal education or experience, and identification of the area or areas in which they are competent to serve as a subject matter expert.

(3) Documentation of the AA elements, inputs, assumptions, methodologies and approaches employed by the manufacturer.

(4) Demonstration of both of the following:

(A) Compliance with the standards of ISO 14040, or equivalent; and

(B) Record keeping and document retention and retrieval practices and capabilities sufficient to facilitate audits by the Department pursuant to Article 9 of this chapter.

(b) The Department shall review the information submitted pursuant to subsection (a) of this section, and, based on this review, approve or disapprove the request for designation as a

Qualified In-House Assessment Entity, within 60 days of receiving the information. The Department shall notify the manufacturer submitting the request of its determination.

(c) If any of the information submitted pursuant to subsection (a) of this section changes, the manufacturer shall provide updated information to the Department within 30 days of the change.

(d) A designation as a Qualified In-House Assessment Entity shall expire after a period of five (5) years, except that it may be renewed upon application by the manufacturer, pursuant to subsection (a) not later than 90 days before expiration of the existing designation.

(e) The Department shall post and maintain on its website a list of manufacturers that have been designated as Qualified In-House Assessment Entities.

(f) If a manufacturer is found to be in violation of this chapter, the manufacturer shall lose its designation as a Qualified In-House Assessment Entity for a period of at least ten (10) years. After this period the manufacturer may reapply to be designated as a Qualified In-House Assessment Entity. During this period of disqualification, any AAs, including AA Work Plan and AA Report preparation, that the manufacturer is required to perform must be performed by an entity that is unaffiliated with the manufacturer or any consortium or trade association of which the manufacturer is a member.

(g) As used in this section, the term “manufacturer” includes “manufacturers” as defined in section 69301.2, and other entities that perform AAs on behalf of manufacturers with which the entity is affiliated, including, but not limited to, manufacturer consortiums, trade associations, and manufacturer parent corporations and subsidiaries.

**Section 69308.2. Lead Assessor Accreditation.**

(a) Based on successful demonstration of the requirements specified in subsection (b) of this section, the Department may designate an entity as an Accrediting Body to accredit Lead Assessors for AAs.

(b) In determining whether to designate an entity as an Accrediting Body, the Department shall consider, at a minimum, all of the following factors:

(1) Demonstrated ability to teach the application of life cycle thinking as it applies to consumer products;

(2) Demonstrated ability to teach the appropriate use of life cycle assessment tools and methodologies as they apply to consumer products;

(3) Demonstrated qualifications, through expertise and educational background or equivalent experience, of those individuals responsible for developing the curriculum;

(4) Disclosure of apparent or existing conflicts of interest and bias;

(5) Admission requirements and procedures;

(6) Training curriculum for accreditation applicants;

(7) Requirements and procedures for continuing education and periodic re-accreditation of Lead Assessors, including continuing education curriculum; and

(8) A program to audit completed work by Lead Assessors accredited by the accrediting body to ensure the quality and proper application of tools by the Accrediting Body.

(c) The duration of the designation of an Accrediting Body shall not exceed 5 years, except that it may be renewed upon application by the Accrediting Body not later than 90 days before expiration of the designation. Applications for renewal of designation shall extend the expiring designation until the Department makes a determination on the renewal application.

(d) An Accrediting Body shall not claim trade secret or proprietary restrictions on their admission requirements, general curriculum and educational approach. An Accrediting Body applicant may request the Department to treat specific course information or life cycle assessment tools as a trade secret or confidential pursuant to Article 10.

(e) The Department shall rescind its designation of an Accrediting Body if the designation period has lapsed, if a substantial number of individuals accredited by the Accrediting Body as Lead Assessors are found to be in violation of this chapter, or if the Accrediting Body is found to have significantly deviated from the documentation submitted to the Department pursuant to section 69308.2(a).

(f) A Lead Assessor's accreditation shall be subject to rescission by the Accrediting Body or the Department for failure to comply with the applicable requirements of this chapter.

## Article 9. Auditing and Compliance

### Section 69309. Audit of Alternatives Assessments.

(a) The Department may conduct AA Audits as resources permit and may focus the audits on specific industries or products.

(b) The scope of the AA Audit shall include, but not be limited to, examining:

(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) The Department shall conduct AA audits to enhance the knowledge base and

(1) Flag innovative solutions and disperse information; and

(2) Require future AAs to take emerging alternatives into account.

(d) Upon completion of an AA Audit, the Department shall:

(1) Notify the manufacturer(s) of the AA Audit findings,

(2) Inform the manufacturers of the process to dispute audit findings, and

(3) Post the AA Audit findings on the Department's website.

**Section 69309.1. Violations.**

(a) A person who fails to comply with any of the requirements of this chapter shall be subject to all applicable provisions of Article 8 of Chapter 6.5 of Division 20 of the Health and Safety Code, including, but not limited to, the provisions pertaining to enforcement actions and fines and penalties.

(b) Any person who intentionally or negligently makes a false statement or representation in any information or document required to be provided to the Department or any other entity pursuant to this chapter shall be subject to the fines and penalties, and other provisions, of Article 8 of Chapter 6.5 of Division 20 of the Health and Safety Code applicable to persons who make false statements or representations.

**Article 10. Confidentiality of Information**

**Section 69310. Confidentiality of Information.**

(a) Any information provided to the Department pursuant to Article 14 of Chapter 6.5 of Division 20 of the Health and Safety Code or this chapter will be made available to the public to the extent and in the manner authorized by Health and Safety Code section 25257, any other applicable California statute, this chapter, and the California Public Records Act (Government Code section 6250, et seq.) as applicable. For the purposes of clarity, the provisions of the California Public Records Act shall apply to any information provided to the Department pursuant to Article 14 of Chapter 6.5 of Division 20 of the Health and Safety Code and this chapter only to the extent that they do not conflict with Health and Safety Code section 25257 and any other applicable California statute. Written guidelines shall further govern the internal review of such requests.

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

(c) Information claimed as a trade secret that is provided to the Department in response to a request made pursuant to Health and Safety Code section 57019 shall be governed by the trade secret provisions of Health and Safety Code section 57020, and additionally by the provisions of Health and Safety Code section 25257, this chapter, and the California Public Records Act as applicable, to the extent that such provisions do not conflict with Health and Safety Code section 57020.

(d) In accordance with Health and Safety Code section 25257(a), the provisions of Government Code section 6254.7, if applicable, shall supercede any conflicting provision of Government Code section 25257 or of this chapter.

**Section 69310.1. Assertion of a Claim of Confidential Information.**

(a) Any person who asserts a claim of Confidential Information shall, at the time of submission:

(1) Assert a claim of trade secret protection pursuant to Health and Safety Code section 25257 covering part or all of that information by identifying the portion of the information subject to the trade secret claim;

(2) Assert a claim that part or all of that information is confidential or otherwise exempt from disclosure under the California Public Records Act by identifying the portion of the information subject to the claim.

(b) When a claim of trade secret protection is asserted under paragraph (1) of subsection (a) of this section, the Department shall process a request for such information pursuant to Health and Safety Code section 25257, this chapter and the California Public Records Act as otherwise applicable.

(c) Where a claim of confidentiality or other exemption from disclosure, other than a trade secret claim, has been asserted under paragraph (2) of subsection (a) of this section, the Department shall process a request for information pursuant to the applicable statute, if any, and the California Public Records Act as otherwise applicable.

(d) Any person who asserts a claim of Confidential information shall, at the time of submission of such information, provide the Department with a:

(1) Complete copy of the documentation being submitted, which shall include the claimed Confidential Information, and

(2) Redacted or edited copy of the documentation being submitted, which shall exclude the claimed Confidential Information, and which may be made available in full to the public.

**Section 69310.2. Marking and Indexing of Documents.**

(a) Any person claiming Confidential Information shall make such assertion at the time of submission by marking the words "Trade Secret" 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 information submitted available to the public without further notice.

(b) Any person who asserts a claim of Confidential Information shall, at the time of submission, provide to the Department an index describing the kind of Confidential Information for which protection is claimed, the legal basis for the claim, and the place in the submitted document where the Confidential Information was originally located. Such index may be made available in full to the public, and shall not contain information claimed to be Confidential Information.

**Section 69310.3. Safeguarding of Confidential Information.**

(a) No employee of the Department shall disclose, or use for his or her private gain or advantage, any Confidential Information which came into his or her possession, or to which he or she gained access by virtue of his or her official position or employment, except as authorized by this chapter and Government Code section 6254.5.

(b) Each employee of the Department who has custody, access, or possession of Confidential Information shall take appropriate measures to properly safeguard such information and to protect against its improper disclosure.

(c) The provisions of this section shall not apply to claims of Confidential Information that have been conclusively rejected by the Department.

(d) The Department shall develop guidelines specifying appropriate measures for the protection of Confidential Information.

**Section 69310.4. Support of a Claim of Trade Secret Protection.**

(a) Any person who wishes to assert a claim of trade secret protection and receives a request from the Department for support of trade secret claims shall, at the time of submission, provide the Department with all of the following information:

(1) The identity of the person making the claim;

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

(3) The period of time for which trade secret protection is claimed and a justification for the period selected;

(4) The extent to which the information is known by employees or others involved with the facility or business, and whether or not those individuals with knowledge are bound by non-disclosure agreements;

(5) The extent to which the information is known outside of the facility or business of the person, and whether or not individuals with such knowledge are bound by non-disclosure agreements;

(6) The measures taken to restrict access to and safeguard the information, and whether or not the person plans to continue utilizing such measures;

(7) Copies of, or references to, any pertinent confidentiality determinations previously made by the Department or other public agencies;

(8) The estimated dollar value of the claimed information to the person's facility or business, and to that person's competitors;

(9) The amount of effort or money expended by the person's facility or business in developing the information;

(10) The ease or difficulty with which the information could be properly acquired, duplicated or reverse-engineered by others;

(11) A description of the nature and extent of substantial harm that would be caused if the information were made public, including an explanation of the causal relationship between disclosure and the harmful effects claimed; and

(12) The signature of the person's general counsel or other executive with knowledge of the preparation of the substantiating information certifying under penalty of perjury, based upon the knowledge and belief of the signatory, that:

(A) The substantiating information is true, accurate, and complete,

(B) The information for which trade secret protection is claimed is not otherwise publicly available, and

(C) There is a reasonable basis to assert trade secret protection for the information so claimed.

(13) Name, mailing address, telephone number and email address of the individual to be contacted if any part of the trade secret information is requested under the California Public Records Act.

(b) If the documentation supporting a claim of trade secret protection required by this section contains information that is itself subject to a claim of trade secret protection, the support documentation shall be marked as required by section 69310.2 and be supplied in both complete and redacted form as required by section 69310.1(d), but shall not itself require further support in order to comply with this section.

(c) The Department may, at its discretion, review the supporting information for compliance with the requirements of this section. If the Department determines that the supporting information is incomplete or insufficiently responsive, the Department shall notify the person of the deficiency finding, the specific area(s) of deficiency, and the date by which the person shall submit the information necessary to correct the deficiency. If the person fails to comply with the requirements of the deficiency finding, then the trade secret claim shall be deemed out of compliance with this section. For any such claim deemed out of compliance with this section, the Department shall notify the person by certified mail that the claim remains deficient and is out of compliance with this section. Such claim will be denied 30 days from the date the notice of non-compliance is sent unless the deficiency is corrected. Any claim denied for non-compliance under this section shall be treated as a public record.

**Section 69310.5. Departmental Review of Individual Trade Secret Claims.**

(a) Independent of any request for the release of information submitted and claimed as a trade secret, the Department may, at its discretion, determine whether or not any or all of the information claimed by the submitter as a trade secret pursuant to this chapter is a properly designated trade secret.

(b) If the Department decides to review a trade secret claim, the Department shall proceed with its review of the claim pursuant to the provisions of Health and Safety Code section 25257, any other applicable California statute, this chapter and the California Public Records Act, as applicable, as if a public request for the information had been made.

**Section 69310.6. Treatment of Certain Categories of Information.**

(a) For purposes of Health and Safety Code section 25257 and this chapter, the following categories of information shall not be eligible for confidentiality as a trade secret:

(1) Health and Safety Data. Any health and safety study or data with respect to:

(A) Any chemical substance or mixture which, on the date on which such study is to be disclosed, has been offered for commercial distribution, or

(B) Any chemical substance or mixture for which testing is required under section 2613 of TSCA or for which notification is required under section 2604 of TSCA.

(2) Identity of Submitter. The identity of the person or persons who submitted the information.

(3) Presence of COC. The fact that a COC is, or is present in, a consumer product, however broadly or narrowly the consumer product is described.

(b) For purposes of this article, the following categories of information, if claimed as a trade secret and not otherwise disqualified by the provisions of section 69310.7(b) or the California Public Records Act, shall not be released to the public absent a showing by the Department of substantial need based on an urgent matter of public health, safety or the environmental protection:

(1) Manufacturing Processes and Portion Data. Data disclosing processes used in the manufacturing or processing of a chemical substance or mixture or, in the case of a mixture, data disclosing the portion of the mixture comprised of any of the chemical substances in the mixture.

(2) Customer Lists. Information explicitly identifying the customers of the person in conjunction with the product amounts and prices agreed to.

(c) In accordance with Health and Safety Code section 25257(f), no hazardous trait submission made pursuant to Article 14 of Chapter 6.5 of Division 20 of the Health and Safety Code or this chapter may be claimed as a trade secret.

**Section 69310.7. Substantive Criteria for Use in Trade Secret Determinations.**

(a) In making a determination as to whether or not information claimed as a trade secret shall be properly designated as such, the Department shall consider the following factors, although it may consider others as it deems appropriate:

(1) The extent to which the claimed information is known outside of the person's facility or business;

(2) The extent to which the claimed information is known by employees and others involved in the person's facility or business;

(3) The measures that have been taken by the person or its facility or business to guard the secrecy of the information;

(4) The value of the information to the person or its facility or business, and to the person's competitors;

(5) The amount of effort or money expended by the person or its facility or business in developing the information; and

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

(b) In making a determination as to whether or not information claimed as a trade secret shall be properly designated as such, the Department shall not designate the claimed information as a trade secret if:

(1) The claim has expired by its terms, been waived or withdrawn;
(2) The information has been released into the public domain;
(3) The person has not satisfactorily shown that it has taken reasonable measures to protect the confidentiality of the information, or that it intends to continue to take such measures;
(4) The information is, or has been, reasonably obtainable without the person's consent from other non-governmental persons by use of legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding);
(5) A California or federal statute or court order requires disclosure of the information;
(6) The person has not satisfactorily shown that disclosure of the information is likely to cause substantial harm to the person's competitive position; or
(7) Disclosure is otherwise authorized or required by law.
(c) The Department shall justify withholding any record by demonstrating that the record in question is exempt from disclosure under express provision of applicable law or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

**Section 69310.8. Information Sharing with Other Public Agencies.**

(a) If the Department receives information from a local, state, federal, tribal, or foreign agency that is claimed to contain a trade secret or other confidential information, the Department shall designate and treat as confidential any information claimed as such by the providing agency, notwithstanding the provisions of this chapter.
(b) Any claimed trade secret or other confidential information included in information received under this section may not be incorporated by reference into other documents submitted to the Department or otherwise used to comply with the provisions of this chapter, with the exception of section 69301.7(a) (1) through (3). The confidentiality afforded to information received under this section shall not negate, supersede or otherwise affect the respective confidentiality provisions that apply to similar or identical information received from another source or under different authority, including this chapter.

## Article 11. Small Businesses

**Section 69311. Applicability.**

(a) For purposes of this Article, "small business" means an independently owned and operated business which, together with affiliates, has 25 or fewer employees, and average annual gross receipts of $1,000,000 or less over the life of the business or the previous three years, whichever is shorter.
(b) The provisions of this Article apply only to a manufacturer that has demonstrated to the satisfaction of the Department that it meets the definition of a "small business", specified in subsection (a). A manufacturer seeking to qualify as a small business shall submit all of the

following to the Department no more than 60 days after a consumer product manufactured by the manufacturer is listed as a Priority Product:

(1) Copies of official government records that verify that the manufacturer employs 25 or fewer people, or a declaration or affidavit, signed by the manufacturer under perjury, that the manufacturer employs 25 or fewer people; and

(2) Tax returns that document that the average annual gross receipts of the manufacturer did not exceed $1,000,000 over the life of the business or the prior three (3) years, whichever is shorter.

**Section 69311.1. Timelines.**

For any of the time frames specified in this chapter, or that the Department specifies pursuant to this chapter, the Department may, at its discretion, allow a business that qualifies as a small business, pursuant to section 69311, a longer period of time.

**Section 69311.2. Consultation Services for Small Businesses.**

A manufacturer subject to the requirements of Article 5 that qualifies as a small business, pursuant to section 69311, may request, and the Department shall provide, consultative services to assist the manufacturer in complying with Article 5 requirements. The manufacturer shall reimburse the Department for any associated costs pursuant to section 25201.9 of the Health and Safety Code.