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UNOFFICIAL
TEXT OF PROPOSED REGULATIONS – ADDITIONAL POST-HEARING CHANGES
April 2013

Changes in this version reflect changes to the text of the January 2013 post-hearing changes to the text as originally proposed in July 2012. All of the text is new language to be added to the California Code of Regulations.

NOTE: This “clean” version of the revised proposed regulations, which does not indicate which text has been added / deleted, is being made available as a courtesy copy only. It is not the official version of the April 2013 revised proposed regulations. The official version is provided separately, and shows both the January 2013 and April 2013 text insertions and deletions. Also, for ease of reading and referencing the proposed regulations, line numbers and table of content page numbers are added, but are not part of the actual regulatory text.

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

Amend the Table of Contents by adding chapter 55, articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, and sections 69501, 69501.1, 69501.2, 69501.3, 69501.4, 69501.5, 69502, 69502.1, 69502.2, 69502.3, 69503, 69503.1, 69503.2, 69503.3, 69503.4, 69503.5, 69503.6, 69503.7, 69504, 69504.1, 69505, 69505.1, 69505.2, 69505.3, 69505.4, 69505.5, 69505.6, 69505.7, 69505.8, 69505.9, 69506, 69506.1, 69506.2, 69506.3, 69506.4, 69506.5, 69506.6, 69506.7, 69506.8, 69506.9, 69506.10, 69507, 69507.1, 69507.2, 69507.3, 69507.4, 69507.5, 69507.6, 69508, 69509, 69509.1, 69510, and 69511 through 69599 to division 4.5 of title 22 of the California Code of Regulations, to read:

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

2

3 **Chapter 55. Safer Consumer Products**

4

5 **Article 1. General**

6

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

8 (a) Safer Consumer Products Regulations. This chapter specifies the process for
9 identifying and prioritizing Priority Products and their Chemicals of Concern, and identifying
10 and analyzing alternatives to determine how best to eliminate or reduce potential exposures to,
11 or the level of potential adverse impacts posed by, the Chemical(s) of Concern in Priority
12 Products. This chapter also specifies the regulatory responses that will be imposed by
13 operation of article 6 or that may be required by the Department following completion of an
14 alternatives analysis.

15 (b) Applicability and Non-Duplication.

16 (1) Except as provided in paragraphs (2) and (3), this chapter applies to all consumer
17 products placed into the stream of commerce in California.

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

20 (3)(A) This chapter does not apply to a consumer product that the Department determines
21 is regulated by one or more federal and/or California State regulatory program(s), and/or
22 applicable treaties or international agreements with the force of domestic law, that, in
23 combination:

24 1. Address the same potential adverse impacts, potential exposure pathways, and
25 potential adverse waste and end-of-life effects that could otherwise be the basis for the product
26 being listed as a Priority Product; and

27 2. Provide a level of public health and environmental protection that is equivalent to or
28 greater than the protection that would potentially be provided if the product were listed as a
29 Priority Product.

30 (B) The Department may re-evaluate a determination previously made under this
31 paragraph and rescind the determination if the Department finds that the facts and/or
32 assumptions upon which the determination was based were not, or are no longer, valid.

33 (c) Harmonization. Nothing in these regulations authorizes the Department to
34 supersede the requirements of another California State or federal regulatory program.

35

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

37 Reference: Sections 25251, 25252, 25253, and 25257.1, Health and Safety Code.

38

39 **§ 69501.1. Definitions.**

40 (a) Terminology. When used in this chapter, the following terms, unless specified
41 otherwise, have the meanings specified in this section:

42

1 (1) "AA Reports" means Preliminary AA Reports, Final AA Reports, Abridged AA
2 Reports, and/or AA Reports submitted for previously completed AAs, whichever is applicable.
3 As applicable, "AA Report" also includes the AA Report Addendum for a Final AA Report or
4 Abridged AA Report.

5
6 (2) "Adverse air quality impacts" means indoor or outdoor air emissions of any of the air
7 contaminants listed below that have the potential to result in adverse public health, ecological,
8 soil quality, or water quality impacts:

9 (A) California Toxic Air Contaminants as specified in title 17, California Code of
10 Regulations, sections 93000 through 93001;

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

12 1. Carbon dioxide;

13 2. Hydrofluorocarbons;

14 3. Methane;

15 4. Nitrogen trifluoride;

16 5. Nitrous oxide;

17 6. Perfluorocarbons;

18 7. Sulfur hexafluoride; or

19 8. Gases that exhibit the global warming potential hazard trait, as specified in section
20 69405.4;

21 (C) Nitrogen oxides;

22 (D) Particulate matter that exhibits the particle size or fiber dimension hazard trait, as
23 specified in section 69405.7;

24 (E) Chemical substances that exhibit the stratospheric ozone depletion potential hazard
25 trait, as specified in section 69405.8;

26 (F) Sulfur oxides; or

27 (G) Tropospheric ozone-forming compounds, including compounds that exhibit the
28 ambient ozone formation hazard trait, as specified in section 69405.1.

29
30 (3) "Adverse ecological impacts" means any of the following direct or indirect effects on
31 living organisms and/or their environments:

32 (A) Adverse effects to aquatic, avian, or terrestrial animal or plant organisms or
33 microbes, including:

34 1. Acute or chronic toxicity;

35 2. Changes in population size, reductions in biodiversity, or changes in ecological
36 communities; and

37 3. The ability of an endangered or threatened species to survive or reproduce;

38 (B) Adverse effects on aquatic and terrestrial ecosystems including:

39 1. Deterioration or loss of environmentally sensitive habitats;

40 2. Impacts that contribute to or cause vegetation contamination or damage; and

41 3. Adverse effects on environments that have been designated as impaired by a
42 California State or federal regulatory agency;

- 1 (C) Biological or chemical contamination of soils; or
2 (D) Any other adverse effect, as defined in section 69401.2(a), for environmental hazard
3 traits and endpoints specified in article 4 of chapter 54.

4
5 (4) "Adverse environmental impacts" means any of the following:

- 6 (A) Adverse air quality impacts;
7 (B) Adverse ecological impacts;
8 (C) Adverse soil quality impacts;
9 (D) Adverse water quality impacts; or
10 (E) Exceedance of an enforceable California or federal regulatory standard relating to
11 the protection of the environment.

12
13 (5) "Adverse impacts" means adverse public health impacts and/or adverse
14 environmental impacts.

15
16 (6) "Adverse public health impacts" means any of the toxicological effects on public
17 health specified in article 2 or article 3 of chapter 54, or exceedance of an enforceable
18 California or federal regulatory standard relating to the protection of public health. Public
19 health includes occupational health.

20
21 (7) "Adverse soil quality impacts" means any of the following effects on soil function or
22 properties:

- 23 (A) Compaction or other structural changes;
24 (B) Erosion;
25 (C) Loss of organic matter; or
26 (D) Soil sealing, meaning covering surface soil with a layer of impervious material or
27 changing the nature of the soil so that it behaves as an impermeable medium.

28
29 (8) "Adverse waste and end-of-life effects" means the waste materials and byproducts
30 generated during the life cycle of a product, and the associated adverse effects due to one or
31 more of the following:

- 32 (A) The volume or mass generated;
33 (B) Any special handling needed to mitigate adverse impacts;
34 (C) Effects on solid waste and wastewater disposal and treatment, including operation of
35 solid waste and wastewater handling or treatment facilities, and the ability to reuse or recycle
36 materials resulting from the treatment of solid waste and/or wastewater;
37 (D) Discharge(s) or disposal(s) to storm drains or sewers that adversely affects
38 operation of wastewater or storm water treatment facilities; or
39 (E) Release(s) into the environment, as a result of solid waste handling, treatment, or
40 disposal activities, or the discharge or disposal to storm drains or sewers, of chemicals
41 contained in the product.

42

1 (9) "Adverse water quality impacts" means any of the following adverse effects on the
2 beneficial uses of the waters of the State, which include groundwater, fresh water, brackish
3 water, marsh lands, wetlands, or coastal bodies or systems, as specified in Water Code
4 section 13050(f) or adopted in a Water Quality Control Plan under article 3 of chapter 3 and/or
5 article 3 of chapter 4 of division 7 of the Water Code:

6 (A) Increase in biological oxygen demand;

7 (B) Increase in chemical oxygen demand;

8 (C) Increase in temperature;

9 (D) Increase in total dissolved solids; or

10 (E) Introduction of, or increase in, any of the following:

11 1. Priority pollutants identified for California under section 303(c) of the federal Clean
12 Water Act;

13 2. Pollutants listed by California or the United States Environmental Protection Agency
14 for one or more water bodies in California under section 303(d) of the federal Clean Water Act;

15 3. Chemicals for which primary Maximum Contaminant Levels have been established
16 and adopted under section 64431 or section 64444 of chapter 15 of title 22 of the California
17 Code of Regulations;

18 4. Chemicals for which Notification Levels have been specified under Health and
19 Safety Code section 116455; or

20 5. Chemicals for which public health goals for drinking water have been published
21 under the California Safe Drinking Water Act (commencing with Health and Safety Code
22 section 116270).

23
24 (10) "Alternative" means any of the following:

25 (A) Removal of Chemical(s) of Concern from a Priority Product, with or without the use
26 of one or more replacement chemicals;

27 (B) Reformulation or redesign of a Priority Product and/or manufacturing process to
28 eliminate or reduce the concentration of Chemical(s) of Concern in the Priority Product;

29 (C) Redesign of a Priority Product and/or manufacturing process to reduce or restrict
30 potential exposures to Chemical(s) of Concern in the Priority Product; or

31 (D) Any other change to a Priority Product or a manufacturing process that reduces the
32 potential adverse impacts and/or potential exposures associated with the Chemical(s) of
33 Concern in the Priority Product, and/or the potential adverse waste and end-of-life effects
34 associated with the Priority Product.

35
36 (11) "Alternatives Analysis" or "AA" means an evaluation and comparison of a Priority
37 Product and one or more alternatives to the product under article 5.

38
39 (12) "Alternatives Analysis Threshold" means whichever of the following is applicable:

40 (A) The Practical Quantitation Limit for a Chemical of Concern that is present in a
41 Priority Product solely as a contaminant; or

1 (B) The applicable concentration, if any, specified by the Department under section
2 69503.5(c).

3
4 (13) "Alternatives Analysis Threshold Notification" means a notification submitted to the
5 Department under section 69505.3.

6
7 (14) "Aqueous hydrolysis half-life" means the time required for the concentration of a
8 chemical to be reduced by one-half after being introduced into water.

9
10 (15) "Assemble" means to fit, join, put, or otherwise bring together components to create,
11 repair, refurbish, maintain, or make non-material alterations to a consumer product.

12
13 (16) "Assembler" means any person who assembles a product containing a component
14 that is a product subject to the requirements of this chapter.

15
16 (17) "Atmospheric oxidation rate" means the rate of change or degradation of a chemical
17 through the interaction with oxygen in the atmosphere.

18
19 (18) "Bioaccumulation" means bioaccumulation, as specified in section 69405.2.

20
21 (19) "Candidate Chemical" means a chemical that is a candidate for designation as a
22 Chemical of Concern, and that is identified as a Candidate Chemical under section 69502.2.

23
24 (20)(A) "Chemical" means either of the following:

25 1. An organic or inorganic substance of a particular molecular identity, including any
26 combination of such substances occurring, in whole or in part, as a result of a chemical
27 reaction or occurring in nature, and any element, ion or uncombined radical, and any
28 degradate, metabolite, or reaction product of a substance with a particular molecular identity;
29 or

30 2. A chemical ingredient, which means a substance comprising one or more
31 substances described in subparagraph 1.

32 (B) "Molecular identity" means the substance's properties listed below:

- 33 1. Agglomeration state;
- 34 2. Bulk density;
- 35 3. Chemical composition, including surface coating;
- 36 4. Crystal structure;
- 37 5. Dispersability;
- 38 6. Molecular structure;
- 39 7. Particle density;
- 40 8. Particle size, size distribution, and surface area;
- 41 9. Physical form and shape, at room temperature and pressure;
- 42 10. Physicochemical properties;

- 1 11. Porosity;
- 2 12. Solubility in water and biologically relevant fluids;
- 3 13. Surface charge; and
- 4 14. Surface reactivity.

5
6 (21) "Chemical of Concern" means a Candidate Chemical that has been designated as a
7 Chemical of Concern under section 69503.5(b)(2)(B).

8
9 (22) "Chemical Removal Intent Notification" and "Chemical Removal Confirmation
10 Notification" mean the notifications submitted to the Department under section
11 69505.2(a)(1)(A)1.

12
13 (23)(A) "Component" means a uniquely identifiable homogeneous material, part, piece,
14 assembly, or subassembly that is a necessary or intended element of a consumer product.

15 (B) "Homogeneous material" means either of the following:

- 16 1. One material of uniform composition throughout; or
- 17 2. A material, consisting of a combination of materials, that cannot be readily disjointed
18 or separated into different materials by mechanical actions such as unscrewing, cutting,
19 crushing, grinding, or abrasive processes.

20
21 (24)(A) "Consumer product" or "Product" means any of the following:

- 22 1. A "consumer product" as defined in Health and Safety Code section 25251; or
- 23 2. When applicable, a component of an assembled "consumer product."

24 (B) "Consumer product" or "Product" does not mean a product that ceased to be
25 manufactured prior to the date the product is listed as a Priority Product.

26 (C) "Consumer product" or "Product" does not mean a product previously owned or
27 leased by someone other than the manufacturer, importer, distributor, assembler, or retailer of
28 the product.

29
30 (25) "Contact information" means mailing and electronic addresses, headquarters
31 location, phone number(s), title(s) if applicable, and website address.

32
33 (26)(A) "Contaminant" means a chemical that is not an intentionally added ingredient in a
34 product and the source(s) of the chemical in the product is/are one or more of the following:

- 35 1. A naturally occurring contaminant commonly found in raw materials that are
36 frequently used to manufacture the product;
- 37 2. Air or water frequently used as a processing agent or an ingredient to manufacture
38 the product;
- 39 3. A contaminant commonly found in recycled materials that are frequently used to
40 manufacture the product; and/or

1 4. A processing agent, reactant, by-product, or intermediate frequently used to promote
2 certain chemical or physical changes during manufacturing, and the incidental retention of a
3 residue is not desired or intended.

4 (B) "Intentionally added ingredient" means a chemical that is deliberately used in the
5 manufacture of a product where the continued presence is desired in the final product to
6 provide a specific characteristic, appearance, or quality.

7 (C) "Processing agent" means a chemical used in a product manufacturing process to
8 promote chemical or physical changes.

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

11
12 (27) "Day" means calendar day. Periods of time are calculated by excluding the first day
13 and including the last; except that the last day is excluded if it is a Saturday, Sunday, or other
14 holiday specified in Government Code section 6700.

15
16 (28) "Department" means the Department of Toxic Substances Control.

17
18 (29) "Economically feasible" means that an alternative product or replacement chemical
19 does not significantly reduce the manufacturer's operating margin.

20
21 (30) "End-of-life" means the point when a product is discarded by the consumer or the
22 end of the useful life of the product, whichever occurs first.

23
24 (31) "Environment" means the land, air, water, soil, minerals, flora, and fauna.

25
26 (32) "Environmental fate" means all of the following:

27 (A) Aerobic and anaerobic half-lives;

28 (B) Aqueous hydrolysis half-life;

29 (C) Atmospheric oxidation rate;

30 (D) Bioaccumulation;

31 (E) Biodegradation;

32 (F) Mobility in environmental media, as specified in section 69405.6;

33 (G) Persistence; and

34 (H) Photodegradation.

35
36 (33) "Environmental or toxicological endpoint" means any environmental or toxicological
37 endpoint specified in chapter 54.

38
39 (34) "Failure to Comply List" means the list prepared by the Department under section
40 69501.2(c).

1 (35) "Functionally acceptable" means that an alternative product meets both of the
2 following requirements:

3 (A) The product complies with all applicable legal requirements; and

4 (B) The product performs the functions of the original product sufficiently well that
5 consumers can be reasonably anticipated to accept the product in the marketplace.

6
7 (36) "Hazard trait" means any hazard trait specified or defined in chapter 54.

8
9 (37) "Hazard trait submission" means any health, safety, or environmental study of, or
10 health, safety, or environmental information regarding, a chemical submitted to the Department
11 under this chapter or article 14 of chapter 6.5 of division 20 of the Health and Safety Code.
12 Precise chemical identity is part of any hazard trait submission, except as otherwise provided
13 in section 69509(g).

14
15 (38) "Import" means to bring, or arrange to bring, a product into the United States for
16 purposes of placing the product into the stream of commerce in California. "Import" includes
17 reimporting a product manufactured or processed, in whole or in part, in the United States.
18 "Import" does not include ordering a product manufactured outside of the United States if the
19 product is ordered from a person located in the United States.

20
21 (39) "Importer" means a person who imports a product that is subject to the requirements
22 of this chapter. "Importer" does not include a person that imports a product solely for use in
23 that person's workplace if that product is not sold or distributed by that person to others.

24
25 (40) "Information" means data, documentation, records, graphs, reports, or any other
26 depiction of specific pieces of knowledge.

27
28 (41) "Legal requirements" means specifications, performance standards, and/or labeling
29 requirements that a chemical, product, or product packaging is required to meet under federal
30 or California law.

31
32 (42) "Life cycle" means the sum of all activities in the course of a consumer product's
33 entire life span, including raw materials extraction, resource inputs and other resource
34 consumption, intermediate materials processes, manufacture, packaging, transportation,
35 distribution, use, operation and maintenance, waste generation and management, reuse and
36 recycling, and end-of-life disposal.

37
38 (43) "Manufacture" means to make or produce. "Manufacture" does not include acts that
39 meet the definition of "assemble."

1 (44) "Manufacturer" means any person who manufactures a product that is subject to the
2 requirements of this chapter, or any person that controls the manufacturing process for, or
3 specifies the use of chemicals to be included in, the product.

4
5 (45)(A) "Materials and resource consumption" means the consumption of renewable and
6 nonrenewable resources that are used for a consumer product throughout its life cycle.

7 (B) Except as specified in subparagraph (C)2., a renewable resource is a resource that
8 is capable of being replaced by natural processes at a rate equal to or faster than its
9 consumption rate. Renewable resources include solar and wind energy, timber, agriculture,
10 and water.

11 (C) Both of the following are nonrenewable resources:

12 1. An inherently finite resource that is formed over long periods of geologic time,
13 including petroleum, coal, mined and recycled metals, minerals, and other finite resources; and

14 2. A resource that meets the definition of a renewable resource, specified in
15 subparagraph (B), but the resource is consumed at a rate that exceeds the rate at which it is
16 replaced such that its continued use will drive the resource to exhaustion.

17
18 (46) "Persistence" means environmental persistence, as specified in section 69405.3.

19
20 (47) "Person" has the same meaning as in Health and Safety Code section 25118.

21
22 (48) "Physical chemical hazards" means physical hazard traits specified in article 6 of
23 chapter 54.

24
25 (49) "Physicochemical properties" means the physicochemical properties specified in
26 section 69407.2.

27
28 (50)(A) "Placed into the stream of commerce in California" means that a consumer product
29 has been sold, offered for sale, distributed, supplied, or manufactured in or for use in California
30 as a finished product or as a component in an assembled product.

31 (B) "Sold or offered for sale" means any transfer or offer to transfer for consideration of
32 title or the right to use, by lease or sales contract, including, but not limited to, transactions
33 conducted and offers made through sales outlets, catalogs, or the Internet or other similar
34 electronic means.

35
36 (51)(A) "Potential" means that the phenomenon described is reasonably foreseeable
37 based on reliable information.

38 (B) Subparagraph (A) does not apply to the use of the term "potential" in paragraph (2)
39 above or section 69502.2(a)(1)(M).

1 (52) "Practical Quantitation Limit" or "PQL" means the lowest concentration of a chemical
2 that can be reliably measured within specified limits of precision and accuracy using routine
3 laboratory operating procedures.

4
5 (53) "Priority Product" means a product-chemical combination identified and listed as a
6 Priority Product by the Department under section 69503.5.

7
8 (54) "Product-Chemical Replacement Intent Notification" and "Product-Chemical
9 Replacement Confirmation Notification" mean the notifications submitted to the Department
10 under section 69505.2(a)(1)(A)3.

11
12 (55) "Product Removal Intent Notification" and "Product Removal Confirmation
13 Notification" mean the notifications submitted to the Department under section
14 69505.2(a)(1)(A)2.

15
16 (56) "Release" means an intentional or unintentional liberation, emission, or discharge of
17 a chemical into the environment.

18
19 (57) "Reliable information" means a scientific study or other scientific information that
20 meets the criteria in subparagraphs (A) and (B):

21 (A) The study or other scientific information was:

- 22 1. Published in a scientifically peer reviewed report or other literature;
- 23 2. Published in a report of the United States National Academies;
- 24 3. Published in a report by an international, federal, state, or local agency that
25 implements laws governing chemicals; and/or
- 26 4. Conducted, developed, submitted, prepared for, or reviewed and accepted by an
27 international, federal, state, or local agency for compliance or other regulatory purposes.

28 (B) With respect to a scientific study, the study design was appropriate to the hypothesis
29 being tested, and sufficient to support the proposition(s) for which the study is presented to the
30 Department.

31
32 (58) "Reliable information demonstrating the occurrence, or potential occurrence, of
33 exposures to a chemical" means any of the following that meet the definition of reliable
34 information:

35 (A) Monitoring data that shows the chemical to be any of the following:

- 36 1. Present in household dust, indoor air, or drinking water, or on interior surfaces;
- 37 2. Present in, or released from, products used in or present in homes, schools, or
38 places of employment;
- 39 3. Accumulative or persistent in the environment; or
- 40 4. Accumulative in aquatic, avian, animal, or plant species.

41 (B) Biomonitoring data from one or both of the following sources that show the chemical
42 to be present in human organs, tissues, or fluids:

- 1 1. California Environmental Contaminant Biomonitoring Program; and/or
2 2. United States Centers for Disease Control and Prevention's National Health and
3 Nutrition Evaluation Survey biomonitoring data.
- 4 (C) Evidence that a chemical exhibits the hazard trait for any of the following:
5 1. Bioaccumulation;
6 2. Persistence; or
7 3. Lactational or transplacental transfer, as specified in section 69405.5.
- 8 (D) Exposure or environmental modeling that indicates one or both of the following:
9 1. Exposure point concentration(s) associated with adverse impacts; or
10 2. Environmental accumulation of a chemical.
- 11 (E) Monitoring data indicating the presence of a chemical or its degradation products in
12 California solid waste, wastewater, biosolids, or storm water streams collected or managed by
13 California State or local agencies in concentrations or volumes that:
14 1. Potentially contribute to or cause adverse impacts;
15 2. Require the expenditure of public funds to mitigate potential adverse impacts
16 associated with the chemical or its degradation products;
17 3. Increase the costs of reusing or recycling materials containing the chemical or its
18 degradation products;
19 4. Interfere with the proper operation of solid waste, wastewater, or storm water
20 treatment systems and result in the discharge of the chemical or its degradation products to
21 the environment;
22 5. Exceed regulatory thresholds for the chemical or its degradation products; or
23 6. Result in violations of the permit issued to the facility responsible for managing solid
24 waste, wastewater, biosolids or storm water streams.
- 25
- 26 (59) "Replacement Candidate Chemical" or "replacement chemical" means a Candidate
27 Chemical or other chemical, whichever is applicable, that replaces, or is under consideration to
28 replace, the Chemical(s) of Concern, in whole or in part, in an alternative to the Priority
29 Product, and that is one of the following:
30 (A) A chemical that is not present in the Priority Product; or
31 (B) A chemical that is or would be present in the alternative at a higher concentration
32 than in the Priority Product relative to other chemicals in the Priority Product other than the
33 Chemical(s) of Concern.
- 34
- 35 (60) "Responsible entity" means any of the following:
36 (A) Manufacturer;
37 (B) Importer;
38 (C) Assembler; or
39 (D) Retailer.
40

1 (61) "Retailer" means a person to whom a product that is subject to the requirements of
2 this chapter is delivered or sold for purposes of sale or distribution by that person to a
3 consumer.

4
5 (62) "Safer alternative" means an alternative that, in comparison with another product or
6 product manufacturing process, has reduced potential adverse impacts and/or potential
7 exposures associated with one or more Candidate Chemical(s), Chemical(s) of Concern,
8 and/or replacement chemicals, whichever is/are applicable.

9
10 (63) "Sales outlet" means any place at which consumer products are sold, supplied, or
11 offered for sale directly to consumers in California.

12
13 (64) "Sensitive subpopulations" means subgroups that comprise a meaningful portion of
14 the general population that are identifiable as being at greater risk of adverse health effects
15 when exposed to one or more chemicals that exhibit a hazard trait and/or toxicological
16 endpoint, including, but not limited to, infants, children, pregnant women, and elderly
17 individuals. "Sensitive subpopulations" also include individuals at greater risk of adverse
18 health effects when exposed to chemicals because they are either individuals with a history of
19 serious illness or greater exposures to chemicals, or workers with greater exposures to
20 chemicals due to the nature of their occupation.

21
22 (65) "Technically feasible" means that the technical knowledge, equipment, materials,
23 and other resources available in the marketplace are expected to be sufficient to develop and
24 implement an alternative product or replacement chemical.

25
26 (66) "Trade secret" means "Trade secret" as defined in Civil Code section 3426.1(d).

27
28 (67) "Useful life" means the period of time during which a product can be used as
29 intended, expressed in terms of a single use, number of applications, or days, months, or
30 years of use.

31
32 NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code.
33 Reference: Sections 25251, 25252, 25253, and 25257, Health and Safety Code, Section 1060,
34 Evidence Code, and Sections 3426 through 3426.11, inclusive, Civil Code.

35
36 **§ 69501.2. Duty to Comply and Consequences of Non-Compliance.**

37 (a) Duty to Comply.

38 (1)(A) A manufacturer has the principal duty to comply with requirements applicable to a
39 responsible entity. In the event a manufacturer does not comply, it shall be the duty of the
40 importer, if any, to comply if the Department provides notice to the importer under subsection
41 (c)(1). A retailer or assembler is required to comply with the requirements applicable to a
42 responsible entity only if the manufacturer and the importer have failed to comply and the

1 Department provides notice to the retailer or assembler of such non-compliance by posting the
2 information on the Failure to Comply List.

3 (B) Notwithstanding subparagraph (A), the provisions of sections 69505.2 and 69505.3
4 may only be fulfilled by the manufacturer.

5 (C) The Department may not require any responsible entity other than the manufacturer
6 to comply with a regulatory response under sections 69506.6 through 69506.8. However, if
7 the manufacturer fails to comply and the Department provides notice under subparagraph (A),
8 the importer shall cease to place the product into the stream of commerce in California and
9 each retailer and assembler shall cease ordering the product, no later than ninety (90) days
10 after the Department has provided such notice.

11 (2) Except for the requirement to submit a notification under sections 69503.7, 69505.2,
12 or 69505.3, the requirements of this chapter applicable to a responsible entity may be fulfilled
13 by a consortium, trade association, public-private partnership, non-profit organization, or other
14 entity acting on behalf of, or in the stead of, the responsible entity.

15 (b) Retailer and Assembler Options.

16 A retailer or assembler who has received a notice from the Department under subsection
17 (a)(1)(A) is not responsible for complying with the requirements specified in the notice if:

18 (1) The manufacturer or importer complies with the requirement specified in the
19 Department's notice within ninety (90) days after the Department issues the notice; or

20 (2) The retailer or assembler complies with both of the following requirements:

21 (A) The retailer or assembler ceases ordering the product no later than ninety (90) days
22 after the Department has provided notice under subsection (a)(1)(A); and

23 (B) No later than ninety (90) days after the Department has provided notice under
24 subsection (a)(1)(A), the retailer or assembler submits a Product Cease Ordering Notification
25 informing the Department that the retailer or assembler has ceased ordering the product, and
26 provides the following information to the Department:

27 1. The name of, and contact information for, the retailer or assembler, whichever is
28 applicable;

29 2. The name of, and contact information for, the manufacturer(s) and importer(s);

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

32 4. The name of, and contact information for, the person immediately upstream from the
33 retailer or assembler, as applicable, in the supply chain for the product;

34 5. Information describing the product, and the brand name(s) and product name(s)
35 under which the retailer's or assembler's product is placed into the stream of commerce in
36 California, and, if the product is a component of one or more assembled products, a
37 description of the known product(s) in which the component is used;

38 6. The length of time the retailer or assembler estimates will be needed to exhaust the
39 remaining inventory of the Priority Product; and

40 7. A statement certifying that the retailer or assembler will not re-initiate ordering the
41 product unless and until information posted on the Department's website indicates that the
42 non-compliance has been remedied.

1 (c) Failure to Comply List.

2 (1)(A) If the Department determines that one or more requirements of this chapter have not
3 been complied with for a specific product, the Department shall issue a notice of non-
4 compliance to the manufacturer and the importer(s) for the product.

5 (B) A notice of non-compliance must include a description of the nature of the non-
6 compliance, the steps necessary to achieve compliance, and the Department's intent to place
7 information concerning the determination of non-compliance on the Failure to Comply List on
8 its website.

9 (2) If the non-compliance has not been remedied to the satisfaction of the Department
10 within forty-five (45) days after the issuance of the notice of non-compliance, the Department
11 shall post information concerning the determination of non-compliance on the Failure to
12 Comply List on its website. The Department shall post this information on the Failure to
13 Comply List not later than ninety (90) days after issuing the notice of non-compliance.

14 (3) Paragraph (2) does not apply if there is a pending dispute under article 7 concerning
15 the notice of non-compliance.

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

18 (A) Information identifying and describing the product, and the brand name(s) and
19 product name(s) under which the product is placed into the stream of commerce in California,
20 and, if the product is a component of one or more assembled products, a description of the
21 known product(s) in which the component is used;

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

24 (C) A statement placing retailers and, if applicable, assemblers on notice under
25 subsection (a)(1)(A) of the failure to comply by the manufacturer(s) and importer(s), including
26 identification of the requirement with which the retailer and, if applicable, assembler shall
27 comply and the timeframe for compliance, which shall be no less than ninety (90) days after
28 the notice is posted on the Department's website;

29 (D) The Chemical(s) of Concern and any other Candidate Chemical(s) known to the
30 Department to be present in the product;

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

33 (F) The name of, and contact information for, any manufacturer or importer that has
34 been noticed by the Department, under paragraph (1);

35 (G) The name of, and contact information for, retailers and, if applicable, assemblers
36 known to the Department who have not fully complied with the requirements of subsection (b);
37 and

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

39 (5) The Department shall remove a product and the associated information from the
40 Failure to Comply List if the Department determines that the condition of non-compliance has
41 been fully remedied.

1 (6) The Department shall remove information concerning a retailer or an assembler from
2 the Failure to Comply List if the Department determines that the retailer or assembler has fully
3 complied with subsection (b).

4
5 NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code.
6 Reference: Sections 25252 and 25253, Health and Safety Code.

7
8 **§ 69501.3. Information Submission and Retention Requirements.**

9 (a) Signatures. All documents required to be submitted to the Department under this
10 chapter must be signed by the responsible individual in charge of preparing or overseeing the
11 preparation of the information, and by the owner, or an officer of the company, or an
12 authorized representative.

13 (b) Format. All documents submitted to the Department must be in English, and must
14 be generated and submitted in a manner and in an electronic format specified by the
15 Department.

16 (c) Certification Statement. All documents required to be submitted to the Department
17 under this chapter must include the following certification statement, signed by the owner or an
18 officer of the entity submitting the document, whose responsibilities include product
19 development, product safety, or related responsibilities pertinent to the document, and by the
20 responsible individual in charge of preparing, or overseeing the preparation of, the information:

21
22 "I certify that this document and all attachments were prepared or compiled under my
23 direction or supervision to assure that qualified personnel properly gathered and evaluated the
24 information submitted. Based on my inquiry of the person(s) directly responsible for gathering
25 the information, the information submitted is, to the best of my knowledge and belief, true,
26 accurate, and complete. I am aware that submitting false information or statements is a
27 violation of law."

28
29 (d) Due Dates. All provisions in this chapter requiring a document to be submitted to
30 the Department within a specified time frame means that the document must be postmarked or
31 submitted electronically by the end date of that time frame.

32 (e) Document Retention. A person who is subject to a requirement to obtain or prepare
33 information, but who is not required to submit the information to the Department or has not yet
34 been requested to submit the information to the Department, shall retain the information for a
35 period of three (3) years following the date the person was required to obtain or prepare the
36 information.

37
38 NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code.
39 Reference: Sections 25252 and 25253, Health and Safety Code.

40
41 **§ 69501.4. Chemical and Product Information.**

42 (a) Information Gathering.

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

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

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

8 (C) Request one or more product or chemical manufacturers, importers, assemblers,
9 and/or retailers to make existing information available to the Department, in accordance with a
10 schedule specified by the Department; and/or

11 (D) Request one or more product or chemical manufacturers, importers, assemblers,
12 and/or retailers to generate new information and provide it to the Department, in accordance
13 with a schedule specified by the Department.

14 (2) For purposes of this section, the terms “manufacturer”, “importer”, “assembler”, and
15 “retailer”, mean the manufacturer, importer, assembler, and retailer of any product or chemical,
16 not just Priority Products or Candidate Chemicals, except for those products exempted from
17 the definition of “consumer product” specified in Health and Safety Code section 25251.

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

20 (1) Correspondence sent to an individual person electronically or by United States mail;
21 and/or

22 (2) Information call-ins that, unless otherwise specified, apply to all manufacturers,
23 importers, assemblers, and retailers, as applicable, of a specific chemical or product or group
24 of chemicals or products. The Department shall post information call-ins on its website, and
25 provide notice to persons on the electronic mailing list(s) established by the Department
26 related to this chapter.

27 (c) Response Status List.

28 (1) The Department shall maintain and post on its website a Response Status List. The
29 Response Status List shall be used to provide notice that a person, who has been requested to
30 provide information to the Department under this section, or someone acting on behalf of or in
31 the stead of that person, has done one of the following:

32 (A) Made the information requested under this section available to the Department
33 within the time specified by the Department;

34 (B) Failed to make the information requested under this section available to the
35 Department by the due date specified by the Department; or

36 (C) Demonstrated to the Department’s satisfaction that it does not have and is unable to
37 produce the requested information.

38 (2) The information posted on the Response Status List shall include identification of the
39 person and the chemical or product that is the subject of the request.

40 (3) The Department shall update information on its website upon determining that a
41 person has taken action to change its status under paragraph (1).

1 (d) Safer Consumer Products Partner Recognition List. The Department may maintain
2 and post on its website a Safer Consumer Products Partner Recognition List identifying
3 persons that have voluntarily provided the Department with information that advances the
4 quest for safer consumer products. Persons identified on this list may include, but are not
5 limited to, persons that have done the following:

6 (1) Voluntarily completed an alternatives analysis on a consumer product that has not
7 been listed as a Priority Product; and/or

8 (2) Voluntarily provided information that is helpful to the Department in implementing
9 this chapter.

10
11 NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code.

12 Reference: Sections 25252 and 25253, Health and Safety Code.

13
14 **§ 69501.5. Availability of Information on the Department's Website.**

15 (a) Website Postings Requiring Noticing. The Department shall post on its website, and
16 update as appropriate, all of the information listed below. The Department shall also provide
17 notice of the availability of the information, including the availability of updates to the
18 information, to persons on the electronic mailing list(s) that the Department establishes related
19 to this chapter.

20 (1) The Failure to Comply List.

21 (2) Requests for information made under section 69501.4.

22 (3)(A) Exemption determinations made under section 69501(b)(3)(A) and the rationale
23 supporting those determinations; and

24 (B) Determinations made under section 69501(b)(3)(B) rescinding previously-made
25 exemption determinations and the rationale supporting those rescission determinations.

26 (4) Priority Product Work Plans, proposed and final Candidate Chemicals and Priority
27 Products lists and revisions to the lists, supporting rationale and documentation, copies of all
28 written comments received during the public comment periods for the proposed lists, and
29 copies of written responses the Department provides to the comments.

30 (5) Petitions designated as complete under section 69504(c), and notices of decision
31 and statements of basis prepared by the Department under section 69504.1(d).

32 (6) A list of due date extension requests approved for submission of AA Reports.

33 (7) AA Report notices of public review periods, notices of compliance, notices of
34 deficiency, notices of disapproval, and notices of ongoing review.

35 (8) Proposed and final regulatory response determination notices issued by the
36 Department, copies of all written comments received during the public comment period for a
37 proposed regulatory response determination, and copies of written responses the Department
38 provides to the comments.

39 (9) A list of regulatory response exemption requests submitted to the Department, and
40 copies of all notices issued by the Department granting, denying, or rescinding a regulatory
41 response exemption.

1 (10) Copies of all disputes and Requests for Review filed with the Department under
2 article 7, and copies of all Department decisions, and notices of ongoing review, issued in
3 response to disputes and Requests for Review.

4 (b) Additional Website Postings. The Department shall also post on its website, and
5 update as appropriate, all of the following information:

6 (1) The Response Status List prepared under section 69501.4(c).

7 (2) Any Safer Consumer Products Partner Recognition List prepared under section
8 69501.4(d).

9 (3) As the following information becomes available, the Department shall post the
10 information on the Department's website for each product that is a Priority Product, and
11 maintain and update this information for as long as the Priority Product continues to be placed
12 into the stream of commerce in California:

13 (A) Brand name(s) and product name(s) for the product, and, if the product is a
14 component of one or more assembled products, a description of the known product(s) in which
15 the component is used;

16 (B) Product manufacturer(s) and importers, except for those manufacturers that have
17 submitted a timely and compliant Confirmation Notification under section 69505.2;

18 (C) Other responsible entities for the product, except for the responsible entities that
19 have complied with the requirements of section 69501.2(b);

20 (D) The identity of the person who will fulfill the requirements of article 5, as reflected in
21 the Priority Product Notification;

22 (E) The due dates for, and dates of receipt of, each applicable AA Report and each
23 Alternate Process AA Work Plan; and

24 (F) Lists of, and copies of, all of the following that have been submitted to the
25 Department for each product, including the date of receipt:

26 1. Priority Product Notifications;

27 2. Alternatives Analysis Threshold Notifications, and notifications submitted to the
28 Department under subsections (c) and (d) of section 69505.3, and notices issued by the
29 Department under section 69505.3(e);

30 3. Chemical Removal Intent and Confirmation Notifications;

31 4. Product Removal Intent and Confirmation Notifications;

32 5. Product-Chemical Replacement Intent and Confirmation Notifications; and

33 6. Product Cease Ordering Notifications submitted to the Department under section
34 69501.2(b)(2).

35 (4) Guidance documents prepared by the Department under section 69505(a).

36 (5) AAs made available by the Department under section 69505(b).

37 (6) A list of all AA Reports, Alternate Process AA Work Plans, and AA progress reports
38 submitted to the Department under article 5, the executive summary for each document, the
39 date of receipt, and a full or redacted copy of each document, including both the originally
40 submitted document and the document approved by the Department, if different.

1 (7) Copies of all written public comments submitted to the Department under section
2 69505.8, and identification of those issues that the Department determines must be addressed
3 in an AA Report Addendum.

4 (8) A list and copies of all notices issued by the Department and all documents
5 submitted to the Department under section 69506.5.

6 (9) Copies of, or links to, product stewardship plans, substitute end-of-life management
7 programs, exemptions from end-of-life management program requirements, and copies of
8 annual end-of-life management program reports.

9 (10) Regulatory response notifications submitted to the Department under subsections
10 (a) and (c) of section 69506.10, and the Regulatory Response Summary prepared and
11 updated by the Department under section 69506.10(d).

12 (11) Findings of audits conducted by the Department under section 69508.

13 (c) Website Posting Date. All information posted on the Department's website under
14 this chapter must include the date the document or information is first posted and the date(s) of
15 any revised postings.

16
17 NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code.
18 Reference: Sections 25252 and 25253, Health and Safety Code.

19 20 **Article 2. Process for Identifying Candidate Chemicals**

21 22 **§ 69502. General.**

23 This article identifies Candidate Chemicals that can be considered under article 3 for
24 designation as a Chemical of Concern, and specifies the process by which the Department
25 may identify additional Candidate Chemicals. The Department may use, but is not limited to
26 using, information obtained and/or reviewed under section 69501.4 to perform its duties under
27 this article.

28
29 NOTE: Authority cited: Sections 25252 and 58012, Health and Safety Code. Reference:
30 Section 25252, Health and Safety Code.

31 32 **§ 69502.1. Applicability.**

33 This article applies to all chemicals that exhibit a hazard trait and/or an environmental or
34 toxicological endpoint, and that are present in products that are placed into the stream of
35 commerce in California.

36
37 NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code.
38 Reference: Sections 25252 and 25257.1, Health and Safety Code.

39 40 **§ 69502.2. Candidate Chemicals Identification.**

- 1 (a) Candidate Chemicals List. As of the effective date of these regulations, a chemical
2 is identified as a Candidate Chemical if it exhibits a hazard trait and/or an environmental or
3 toxicological endpoint, and meets one or both of the following criteria:
- 4 (1) The chemical is on one or more of the lists specified below:
- 5 (A) Chemicals known to cause cancer and/or reproductive toxicity that are listed under
6 Health and Safety Code section 25249.8 of the California Safe Drinking Water and Toxic
7 Enforcement Act of 1986;
- 8 (B) Chemicals classified by the European Commission as carcinogens, mutagens,
9 and/or reproductive toxicants Categories 1A and 1B in Annex VI to Regulation (EC)
10 1272/2008;
- 11 (C) Chemicals included as Category 1 endocrine disruptors by the European
12 Commission in the candidate list of Substances of Very High Concern in accordance with
13 Article 59 of Regulation (EC) 1907/2006;
- 14 (D) Chemicals for which a reference dose or reference concentration has been
15 developed based on neurotoxicity in the United States Environmental Protection Agency's
16 Integrated Risk Information System;
- 17 (E) Chemicals that are identified as "carcinogenic to humans", "likely to be carcinogenic
18 to humans", or Groups A, B1, or B2 carcinogens in the United States Environmental Protection
19 Agency's Integrated Risk Information System;
- 20 (F) Chemicals that are identified as "known to be" or "reasonably anticipated to be" a
21 human carcinogen in the 12th Report on Carcinogens, United States Department of Health
22 and Human Services, Public Health Service, National Toxicology Program;
- 23 (G) Chemicals included as persistent, bioaccumulative and toxic, or very persistent and
24 very bioaccumulative by the European Commission in the candidate list of Substances of Very
25 High Concern in accordance with Article 59 of Regulation (EC) 1907/2006;
- 26 (H) Chemicals that are identified as Persistent, Bioaccumulative, and Inherently Toxic to
27 the environment by the Canadian Environmental Protection Act Environmental Registry
28 Domestic Substances List;
- 29 (I) Chemicals classified by the European Commission as respiratory sensitizers
30 Category 1 in Annex VI to Regulation (EC) 1272/2008;
- 31 (J) Groups 1, 2A, and 2B carcinogens identified by the International Agency for
32 Research on Cancer;
- 33 (K) Neurotoxicants that are identified in the Agency for Toxic Substances and Disease
34 Registry's Toxic Substances Portal, Health Effects of Toxic Substances and Carcinogens,
35 Nervous System;
- 36 (L) Persistent Bioaccumulative and Toxic Priority Chemicals that are identified by the
37 United States Environmental Protection Agency's National Waste Minimization Program;
- 38 (M) Reproductive or developmental toxicants identified in Monographs on the Potential
39 Human Reproductive and Developmental Effects, National Toxicology Program, Office of
40 Health Assessment and Translation;

- 1 (N) United States Environmental Protection Agency's Toxics Release Inventory
2 Persistent, Bioaccumulative and Toxic Chemicals that are subject to reporting under the
3 Emergency Planning and Community Right-to-Know Act section 313; and/or
4 (O) Washington Department of Ecology's Persistent, Bioaccumulative, Toxic Chemicals
5 identified in the Washington Administrative Code, title 173, chapter 173-333.
- 6 (2) The chemical is one or more of the following types of chemicals:
7 (A) Chemicals for which Notification Levels, as defined in Health and Safety Code
8 section 116455, have been established by the California Department of Public Health;
9 (B) Chemicals for which primary Maximum Contaminant Levels have been established
10 and adopted under section 64431 or section 64444 of chapter 15 of title 22 of the California
11 Code of Regulations;
12 (C) Chemicals identified as Toxic Air Contaminants under sections 93000 and 93001 of
13 title 17 of the California Code of Regulations;
14 (D) Chemicals that are identified as priority pollutants in California Water Quality Control
15 Plans under section 303(c) of the federal Clean Water Act and in section 131.38 of title 40 of
16 the Code of Federal Regulations, or identified as pollutants by California or the United States
17 Environmental Protection Agency for one or more water bodies in California under section
18 303(d) of the federal Clean Water Act and section 130.7 of title 40 of the Code of Federal
19 Regulations;
20 (E) Chemicals that are identified with non-cancer endpoints and listed with an inhalation
21 or oral Reference Exposure Level by the California Office of Environmental Health Hazard
22 Assessment under Health and Safety Code section 44360(b)(2);
23 (F) Priority Chemicals that are identified under the California Environmental
24 Contaminant Biomonitoring Program;
25 (G) Chemicals that are identified on the Centers for Disease Control and Prevention's
26 *Fourth National Report on Human Exposure to Environmental Chemicals and Updated Tables*;
27 and/or
28 (H) Chemicals that are identified on Part A of the list of Chemicals for Priority Action,
29 Oslo and Paris Conventions for the Protection of the Marine Environment of the North-East
30 Atlantic.
- 31 (b) Additions to the Candidate Chemicals List. In addition to the chemicals identified as
32 Candidate Chemicals under subsection (a), the Department may identify as Candidate
33 Chemicals those chemicals that exhibit one or more hazard traits and/or environmental or
34 toxicological endpoints by considering the following factors for which reliable information is
35 available:
36 (1) Adverse Impacts.
37 (A) The Department shall evaluate the potential for the chemical to contribute to or
38 cause adverse impacts, considering one or more of the following factors:
39 1. The chemical's hazard trait(s) and/or environmental or toxicological endpoint(s);
40 2. The chemical's aggregate effects;
41 3. The chemical's cumulative effects with other chemicals with the same or similar
42 hazard trait(s) and/or environmental or toxicological endpoint(s);

- 1 4. The chemical's physicochemical properties;
- 2 5. The chemical's environmental fate;
- 3 6. The human populations, and/or aquatic, avian, or terrestrial animal or plant
- 4 organisms for which the Candidate Chemical(s) has/have the potential to contribute to or
- 5 cause adverse impacts; and/or
- 6 7. The potential for the chemical to degrade, form reaction products, or metabolize into
- 7 another Candidate Chemical or a chemical that exhibits one or more hazard traits and/or
- 8 environmental or toxicological endpoints.

9 (B) The Department shall give special consideration to the potential for the chemical to
10 contribute to or cause adverse impacts for:

- 11 1. Sensitive subpopulations;
- 12 2. Environmentally sensitive habitats;
- 13 3. Endangered and threatened species listed by the California Department of Fish and
- 14 Wildlife; and
- 15 4. Environments in California that have been designated as impaired by a California
- 16 State or federal regulatory agency.

17 (C) The Department shall also give special consideration to the potential for the
18 chemical to contribute to or cause widespread adverse impacts.

19 (D) The Department may also evaluate and consider, based on reliable information,
20 structurally or mechanistically similar chemicals for which there is a known toxicity profile.

21 (2) Exposures. The Department shall consider potential exposures to the chemical,
22 based on both of the following:

23 (A) Reliable information regarding potential exposures to the chemical; and

24 (B) Reliable information demonstrating the occurrence, or potential occurrence, of
25 exposures to the chemical.

26 (3) Availability of Information. The Department shall consider the extent and quality of
27 information that is available to substantiate the existence or absence of potential adverse
28 impacts and potential exposures. In evaluating the quality of the available information, the
29 Department shall consider, as applicable, the factors specified in section 69503.2(b)(1)(C).

30
31 NOTE: Authority cited: Sections 25252 and 58012, Health and Safety Code. Reference:
32 Sections 25252 and 25257.1, Health and Safety Code.

33

34 **§ 69502.3. Candidate Chemicals List.**

35 (a) Informational List. The Department shall post an informational list of the chemicals
36 identified as Candidate Chemicals under section 69502.2(a) on the Department's website
37 within thirty (30) days after the effective date of these regulations. The Department shall
38 periodically update the list to reflect changes to the underlying lists and sources from which it is
39 drawn, using the procedures specified in subsections (c) and (d).

40 (b) Revisions to the List. The Department may make additions to, or deletions from, the
41 Candidate Chemicals list using the factors specified in section 69502.2(b) and the procedures
42 specified in subsections (c) and (d).

1 (c) Public Notice of Proposed List Revisions. The Department shall make proposed
2 revisions to the Candidate Chemicals list available on its website for public review and
3 comment, along with supporting documentation, including the Department's rationale and a
4 bibliography of the supporting information and information sources, prior to finalizing the
5 revisions to the Candidate Chemicals list. The Department shall hold one or more public
6 workshop(s) to provide an opportunity for comment on the proposed revisions to the list. The
7 Department shall send to persons on the electronic mailing list(s) that the Department
8 establishes related to this chapter, and post on its website, a notice regarding the availability of
9 the proposed revisions to the list and supporting documentation. The notice must include:

10 (1) The last day for the public to submit written comments on the proposed revisions to
11 the Candidate Chemicals list. The last day for submission of public comments shall be no
12 sooner than forty-five (45) days from the date the notice of availability of the proposed
13 revisions is posted on the Department's website or the date the notice is sent to persons on
14 the electronic mailing list(s) that the Department establishes related to this chapter, whichever
15 is the later date.

16 (2) The method(s) for submitting comments to the Department.

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

18 (d) Website Posting of Final List Revisions. The Department shall post the final
19 revisions to the Candidate Chemicals list on its website after review of public comments. The
20 Department may respond to some or all public comments received.

21
22 NOTE: Authority cited: Sections 25252 and 58012, Health and Safety Code. Reference:
23 Sections 25252 and 25257, Health and Safety Code.

24 25 **Article 3. Process for Identifying and Prioritizing Product-Chemical Combinations**

26 27 **§ 69503. General.**

28 This article specifies the process by which the Department shall identify and prioritize
29 products containing Candidate Chemicals. The Department may use, but is not limited to
30 using, information obtained and/or reviewed under section 69501.4 to perform its duties under
31 this article.

32
33 NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code.
34 Reference: Sections 25252 and 25253, Health and Safety Code.

35 36 **§ 69503.1. Applicability.**

37 Except as provided otherwise in section 69501(b), this article applies to all products that
38 contain one or more Candidate Chemicals and that are placed into the stream of commerce in
39 California.

40
41 NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code.
42 Reference: Sections 25251, 25252, 25253, and 25257.1, Health and Safety Code.

1

2 § 69503.2. Product-Chemical Identification and Prioritization Factors.

3 (a) Key Prioritization Principles. Any product-chemical combination identified and listed
4 as a Priority Product must meet both of the following criteria:

5 (1) There must be potential public and/or aquatic, avian, or terrestrial animal or plant
6 organism exposure to the Candidate Chemical(s) in the product; and

7 (2) There must be the potential for one or more exposures to contribute to or cause
8 significant or widespread adverse impacts.

9 (b) Identification and Prioritization Process. The Department may identify and list as a
10 Priority Product one or more product-chemical combinations that it determines to be of high
11 priority. The Department's decision to identify and list a product-chemical combination as a
12 Priority Product shall be based on an evaluation of the product-chemical combination to
13 determine its associated potential adverse impacts, potential exposures, and potential adverse
14 waste and end-of-life effects by considering the factors described in paragraphs (1) and (2) for
15 which information is reasonably available. The Department may additionally, in its discretion,
16 consider paragraph (3).

17 (1)(A) Adverse Impacts and Exposures. The Department shall begin the product-chemical
18 combination evaluation process by evaluating the potential adverse impacts posed by the
19 Candidate Chemical(s) in the product due to potential exposures during the life cycle of the
20 product. The Department's evaluation of potential adverse impacts and potential exposures
21 shall include consideration of one or more of the factors listed in section 69503.3(a) and one or
22 more of the factors listed in section 69503.3(b). The listing of a product-chemical combination
23 as a Priority Product shall be based on one or more of the factors listed in section 69503.3(a)
24 and one or more of the factors listed in section 69503.3(b), in addition to the other factors
25 specified in this section.

26 (B) Adverse Waste and End-of-Life Effects. The Department may also consider product
27 uses, or discharges or disposals, in any manner that have the potential to contribute to or
28 cause adverse waste and end-of-life effects associated with the Candidate Chemical(s) in the
29 product.

30 (C) Availability of Information. The Department shall consider the extent and quality of
31 information that is available to substantiate the existence or absence of potential adverse
32 impacts, potential exposures, and potential adverse waste and end-of-life effects. In
33 evaluating the quality of the available information the Department shall consider, as applicable:

34 1. The level of rigor attendant to the generation of the information, including, when
35 relevant, the use of quality controls;

36 2. The degree to which the information has been independently reviewed by qualified
37 disinterested parties;

38 3. The degree to which the information has been independently confirmed,
39 corroborated, or replicated;

40 4. The credentials and education and experience qualifications of the person(s) who
41 prepared and/or reviewed the information; and

1 5. The degree to which the information is relevant for the purpose for which it is being
2 considered by the Department.

3 (2) Other Regulatory Programs. The Department shall next consider the scope of other
4 California State and federal laws and applicable treaties or international agreements with the
5 force of domestic law under which the product or the Candidate Chemical(s) in the product
6 is/are regulated and the extent to which these other regulatory requirements address, and
7 provide adequate protections with respect to the same potential adverse impacts and potential
8 exposure pathways, and adverse waste and end-of-life effects, that are under consideration as
9 a basis for the product-chemical combination being listed as a Priority Product. If a product is
10 regulated by another entity with respect to the same potential adverse impacts and potential
11 exposure pathways, and potential adverse waste and end-of-life effects, the Department may
12 list such a product-chemical combination as a Priority Product only if it determines that the
13 listing would meaningfully enhance protection of public health and/or the environment with
14 respect to the potential adverse impacts, exposure pathways, and/or adverse waste and end-
15 of-life effects that are the basis for the listing.

16 (3) Safer Alternatives. When deciding whether to list a product-chemical combination
17 as a Priority Product, the Department may also consider whether there is a readily available
18 safer alternative that is functionally acceptable, technically feasible, and economically feasible.
19

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

21 Reference: Sections 25252, 25253, and 25257.1, Health and Safety Code.
22

23 **§ 69503.3. Adverse Impact and Exposure Factors.**

24 (a) Adverse Impacts.

25 (1) In evaluating a product-chemical combination for possible listing as a Priority
26 Product, the Department shall evaluate the potential for the Candidate Chemical(s) to
27 contribute to or cause adverse impacts, by considering one or more of the following factors for
28 which information is reasonably available:

29 (A) The Candidate Chemical(s)' hazard trait(s) and/or environmental or toxicological
30 endpoint(s);

31 (B) The Candidate Chemical(s)' aggregate effects;

32 (C) The Candidate Chemical(s)' cumulative effects with other chemicals with the same
33 or similar hazard trait(s) and/or environmental or toxicological endpoint(s);

34 (D) The Candidate Chemical(s)' physicochemical properties;

35 (E) The Candidate Chemical(s)' environmental fate;

36 (F) The human populations, and/or aquatic, avian, or terrestrial animal or plant
37 organisms for which the Candidate Chemical(s) has/have the potential to contribute to or
38 cause adverse impacts; and/or

39 (G) The potential for the Candidate Chemical(s) to degrade, form reaction products, or
40 metabolize into another Candidate Chemical or a chemical that exhibits one or more hazard
41 traits and/or environmental or toxicological endpoints.

- 1 (2) The Department shall give special consideration to the potential for the Candidate
2 Chemical(s) in the product to contribute to or cause adverse impacts for:
- 3 (A) Sensitive subpopulations;
4 (B) Environmentally sensitive habitats;
5 (C) Endangered and threatened species listed by the California Department of Fish and
6 Wildlife; and
7 (D) Environments in California that have been designated as impaired by a California
8 State or federal regulatory agency.
- 9 (3) The Department may also evaluate and consider, based on reliable information, the
10 adverse impacts associated with structurally or mechanistically similar chemicals for which
11 there is a known toxicity profile.
- 12 (b) Exposures. In evaluating a product-chemical combination for possible listing as a
13 Priority Product, the Department shall evaluate the potential for public and/or aquatic, avian, or
14 terrestrial animal or plant organism exposure(s) to the Candidate Chemical(s) in the product,
15 by considering one or more of the following factors for which information is reasonably
16 available:
- 17 (1) Market presence of the product, including:
18 (A) Statewide sales by volume;
19 (B) Statewide sales by number of units; and/or
20 (C) Intended product use(s), and types and age groups of targeted customer base(s).
- 21 (2) The occurrence, or potential occurrence, of exposures to the Candidate Chemical(s)
22 in the product.
- 23 (3) The household and workplace presence of the product, and other products
24 containing the same Candidate Chemical(s) that is/are the basis for considering the listing of
25 the product-chemical combination as a Priority Product.
- 26 (4) Potential exposures to the Candidate Chemical(s) in the product during the product's
27 life cycle, considering:
- 28 (A) Manufacturing, use, storage, transportation, waste, and end-of-life management
29 practices and the locations of these practices;
30 (B) Whether the product is manufactured or stored in, or transported through, California
31 solely for use outside of California;
32 (C) Whether the product is placed into the stream of commerce in California solely for
33 the manufacture of one or more of the products exempted from the definition of "consumer
34 product" specified in Health and Safety Code section 25251;
35 (D) The following types of uses:
36 1. Household and recreational use;
37 2. Sensitive subpopulation potential use of, or exposure to, the product; and/or
38 3. Workers, customers, clients, and members of the general public who use, or
39 otherwise come in contact with, the product or releases from the product in homes, schools,
40 workplaces, or other locations;
41 (E) Frequency, extent, level, and duration of potential exposure for each use scenario
42 and end-of-life scenario;

1 (F) Containment of the Candidate Chemical(s) within the product, including potential
2 accessibility to the Candidate Chemical(s) during the useful life of the product and the potential
3 for releases of the Candidate Chemical(s) during the useful life and at the end-of-life;

4 (G) Engineering and administrative controls that reduce exposure concerns associated
5 with the product; and/or

6 (H) The potential for the Candidate Chemical(s) or its/their degradation products to be
7 released into, migrate from, or distribute across environmental media, and the potential for the
8 Candidate Chemical(s) or its/their degradation products to accumulate and persist in biological
9 and/or environmental compartments or systems.

10
11 NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code.

12 Reference: Sections 25252, 25253, and 25257.1, Health and Safety Code.

13
14 **§ 69503.4. Priority Product Work Plan.**

15 (a) Initial Work Plan. Within one (1) year after the effective date of these regulations,
16 the Department shall issue a Priority Product Work Plan that, except as provided in section
17 69503.6, identifies and describes the product categories that the Department will evaluate to
18 identify product-chemical combinations to be added to the Priority Products list during the three
19 (3) years following the issuance of the work plan. The work plan must include a general
20 explanation of the decision to select the identified product categories for evaluation during the
21 life of the work plan.

22 (b) Subsequent Work Plans. Subsequent work plans shall be issued by the Department
23 no later than one (1) year before the three-year expiration date of the current work plan, and
24 shall become effective upon expiration of the current work plan.

25 (c) Revisions to Work Plans. The Department may revise an adopted work plan to
26 include one or more additional product categories if necessitated by either of the following:

27 (1) The Department is legally required to take action on a particular chemical or product,
28 or both, prior to the expiration of the work plan; and/or

29 (2) The Department grants a petition under section 69504.1.

30 (d) Public Input. Prior to issuing each work plan, the Department shall hold one or more
31 public workshop(s) to provide an opportunity for comment.

32 (e) Public Notice. The Department shall send to persons on the electronic mailing list(s)
33 that the Department establishes related to this chapter, and post on its website, a notice of the
34 availability of each work plan and each revised work plan.

35
36 NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code.

37 Reference: Sections 25252, 25253, and 25257.1, Health and Safety Code.

38
39 **§ 69503.5. Priority Products List.**

40 (a) Listing Process.

1 (1) The Department shall use the procedures specified in this section and the
2 identification and prioritization criteria and process specified in sections 69503.2 and 69503.3
3 to identify and list product-chemical combinations as Priority Products.

4 (2) The Priority Products list shall be established and updated through rulemaking under
5 the Administrative Procedure Act (commencing with Government Code section 11340).
6 Except as provided in section 69503.6, the Department shall hold one or more public
7 workshop(s) to provide an opportunity for comment on candidate product-chemical
8 combinations prior to issuing a proposed Priority Products list.

9 (b) List Contents. The Department shall specify in the proposed and final Priority
10 Products lists the following for each listed product-chemical combination:

11 (1)(A) A description of the product-chemical combination that is sufficient for a responsible
12 entity to determine whether one or more of its products is a Priority Product.

13 (B) If the product-chemical combination is a component of one or more assembled
14 products, a description of the known assembled product(s) in which the component is used
15 shall be included.

16 (2)(A) The Candidate Chemical(s) that is/are the basis for the product being listed as a
17 Priority Product and the hazard traits and/or environmental or toxicological endpoints known to
18 be associated with those chemicals.

19 (B) For purposes of this chapter, a Candidate Chemical that is the basis for a product-
20 chemical combination being listed as a Priority Product, as specified under paragraph (2)(A), is
21 designated as a Chemical of Concern for that product. All references in this chapter to the
22 Chemical(s) of Concern in an alternative product that is under consideration or is selected to
23 replace a Priority Product mean the chemical(s) that is/are the Chemical(s) of Concern for that
24 Priority Product.

25 (3) The due date for submission of the Preliminary AA Report required under article 5.
26 The due date for the Preliminary AA Report shall be 180 days after the date the product is
27 listed on the final Priority Products list, unless the Department specifies otherwise in the
28 Priority Products list.

29 (c) Alternatives Analysis Threshold. The Department may, for one or more product-
30 chemical combinations, specify in the proposed and/or final Priority Products list an
31 Alternatives Analysis Threshold concentration for any Chemical of Concern that is an
32 intentionally added ingredient. The Department may also specify an Alternatives Analysis
33 Threshold concentration greater than the applicable PQL for any Chemical of Concern that is a
34 contaminant.

35 (d) Complex Durable Products.

36 (1) For a complex durable product, the Department may not list as Priority Products
37 more than ten (10) components contained in that product in a three-year period.

38 (2) For purposes of paragraph (1), "complex durable product" means a product that
39 meets the following criteria:

40 (A) The product is assembled from 100 or more manufactured components;

1 (B) Manufacturers of the product routinely prepare information intended to be provided
2 to consumers that indicates that the product has a useful life, or an average useful life, of five
3 (5) or more years; and

4 (C) The product is typically not consumed, destroyed, or discarded after a single use.

5 (3) Paragraph (1) does not apply to either of the following types of products:

6 (A) Products designed or intended primarily for children twelve (12) years of age or
7 younger as determined by information made available to consumers or as determined by
8 whether the product is commonly recognized by consumers as being primarily intended for use
9 by a child twelve (12) years of age or younger; or

10 (B) Products intended to be worn or placed on the human body.

11 (e) Revisions to the Priority Products List. The Department shall review and revise, as
12 appropriate, the Priority Products list at least once every three (3) years using the procedures
13 specified in this section.

14 (f) Priority Product Notifications to the Department. As specified in section 69503.7(a),
15 the responsible entity for a product-chemical combination listed on the Priority Products list
16 shall provide a Priority Product Notification to the Department within sixty (60) days after the
17 product-chemical combination is listed as a Priority Product, or sixty (60) days after the
18 product-chemical combination is first placed into the stream of commerce in California,
19 whichever is later, unless the Department specifies a later due date in the Priority Products list.
20 If applicable, the responsible entity may concurrently submit a notification under section
21 69505.2 or section 69505.3, or such notification may be submitted at a later date as provided
22 in section 69505.2 or section 69505.3.

23
24 NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code.

25 Reference: Sections 25252 and 25253, Health and Safety Code.

26
27 **§ 69503.6. Initial Priority Products List.**

28 The following provisions apply only to the initial list of Priority Products:

29 (a) Scope of Candidate Chemicals. In the initial list of Priority Products, the Department
30 may list a product as a Priority Product only if one or more Candidate Chemical(s) that is/are
31 the basis for listing the product meet one or more of the criteria specified in subsection (a)(1) of
32 section 69502.2 and one or more of the criteria specified in subsection (a)(2) of section
33 69502.2. This subsection also applies to any revisions to Priority Products list adopted prior to
34 January 1, 2016.

35 (b) Size of the List. The initial final list of Priority Products shall include no more than
36 five (5) Priority Products. The list may identify more than one Chemical of Concern for each
37 listed product.

38 (c) Initial Proposed Priority Products List. The Department shall make the initial
39 proposed list of Priority Products available for public review and comment under section
40 69503.5 no later than 180 days after the effective date of these regulations.

41 (d) Procedural Exceptions.

1 (1) Priority Product Work Plan. Section 69503.4 does not apply to the adoption of the
2 initial list of Priority Products.

3 (2) Workshops. The provisions of section 69503.5(a)(2) requiring the Department to
4 hold one or more public workshop(s) prior to issuing the proposed Priority Products list do not
5 apply to the initial list of Priority Products.

6
7 NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code.
8 Reference: Sections 25252 and 25253, Health and Safety Code.

9
10 **§ 69503.7. Priority Product Notifications.**

11 (a) Notifications to the Department. Within sixty (60) days after a product-chemical
12 combination is listed as a Priority Product, unless the Department specifies a later due date in
13 the Priority Products list, the responsible entity for a Priority Product shall notify the
14 Department that its product-chemical combination is a Priority Product. For a Priority Product
15 that is first manufactured or first placed into the stream of commerce in California after the date
16 of the Priority Product listing, the responsible entity shall provide the Priority Product
17 Notification within sixty (60) days after the product is first placed into the stream of commerce
18 in California. The notification must include:

19 (1) The responsible entity's name and contact information, and a statement indicating
20 whether the responsible entity is the product manufacturer, importer, assembler, or retailer;

21 (2) The type, brand name(s) and product name(s) of the Priority Product, and, if the
22 product is a component of one or more assembled products, a description of the known
23 product(s) in which the component is used;

24 (3) If applicable, the name of, and contact information for, the person that will be
25 complying with the requirements of article 5 on behalf of or in the stead of the responsible
26 entity; and

27 (4) If applicable, an indication that a notification is being submitted under section
28 69505.2 or section 69505.3 concurrently with the Priority Product Notification, or will be
29 submitted later as provided in section 69505.2 or section 69505.3.

30 (b) Non-Compliance. A responsible entity is not in compliance with subsection (a) if the
31 responsible entity fails to fully and timely meet the requirements specified in subsection (a).

32
33 NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code.
34 Reference: Sections 25252 and 25253, Health and Safety Code.

35
36 **Article 4. Petition Process for Identification and Prioritization of Chemicals and**
37 **Products**

38
39 **§ 69504. Applicability and Petition Contents.**

40 (a) Petition Process. Except as provided in subsection (b), a person may petition the
41 Department to add to or remove from the Candidate Chemicals list one or more chemicals, or
42 to add to or remove from the lists specified in section 69502.2(a) the entirety of an existing

1 chemicals list. A person may also petition the Department to add to or remove from the
2 Priority Products list a product-chemical combination. A petition must include:

3 (1) The name of, and contact information for, both of the following:

4 (A) The petitioner; and

5 (B) The person responsible for the petition contents, if different from the petitioner, and
6 the affiliation of this person with the petitioner;

7 (2) A description of the chemical and/or product-chemical combination that is the
8 subject of the petition;

9 (3) A description of the uses of the chemical and/or product-chemical combination;

10 (4) The basis for the petition, including an analysis of the basis for the existence or
11 absence of potential adverse impacts, potential exposures, and/or potential adverse waste and
12 end-of-life effects associated with the chemical and/or product-chemical combination;

13 (5) Information supporting the petition; and

14 (6) The identity of any known manufacturers and importers of the chemical or product-
15 chemical combination.

16 (b) Limitations on Petitions.

17 (1) A person may not petition the Department to delist any chemical identified as a
18 Candidate Chemical under section 69502.2(a), unless that chemical is no longer listed on any
19 of the lists specified in section 69502.2(a).

20 (2) A person may not petition the Department to remove an entire chemicals list from
21 the lists specified in section 69502.2(a) until three (3) years after the effective date of these
22 regulations.

23 (3) A person may not petition the Department to remove a product-chemical
24 combination from the Priority Products list until three (3) years after the date the product-
25 chemical combination was placed on the Priority Products list.

26 (c) Completeness Review. Within sixty (60) days after receiving a petition, the
27 Department shall review the petition and shall designate the petition complete if it contains all
28 of the items specified in subsection (a). If the Department determines that a petition is
29 incomplete, the Department shall provide notice to the petitioner of this determination and shall
30 specify the basis for the determination. If the Department determines that a petition is
31 complete, the Department shall provide notice to the petitioner that it will conduct a merits
32 review to determine whether to grant or deny the petition.

33
34 NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code.

35 Reference: Sections 25252 and 25253, Health and Safety Code.

36
37 **§ 69504.1. Merits Review of Petitions.**

38 (a) Process and Timing. The Department shall determine whether to grant or deny a
39 petition in accordance with the criteria and processes specified in article 2 and/or article 3, as
40 applicable. The Department shall make its determination no later than the next regular update
41 of the Candidate Chemicals list or Priority Products list, as applicable. The Department shall

1 give high priority to reviewing petitions by federal and other California State agencies that
2 relate to the petitioning agency's statutory and/or regulatory authorities.

3 (b) Substantive Review. The Department's merits review of each complete petition
4 shall, to the extent applicable, be based on:

5 (1) The comprehensiveness of the information submitted that pertains to the factors
6 specified in section 69502.2(b) and/or section 69503.2.

7 (2) The quality of the information submitted.

8 (3) The availability of information, other than that submitted with the petition, that
9 supports the petitioner's claims that:

10 (A) The chemical does or does not exhibit one or more hazard traits and/or
11 environmental or toxicological endpoints; and

12 (B) An evaluation of the chemical and/or the product, based on the factors specified in
13 section 69502.2(b) and/or section 69503.2, as applicable, does or does not indicate potential
14 adverse impacts and potential exposures, and, if applicable, adverse waste and end-of-life
15 effects.

16 (4) For a petition to remove a chemical from the Candidate Chemicals list, whether the
17 chemical has changed status on any source list(s) that led to its inclusion on the Candidate
18 Chemicals list.

19 (5) For a petition to remove an entire existing chemicals list from the lists specified in
20 section 69502.2(a), whether the entity responsible for the underlying list still conducts its
21 scientific assessments of chemicals in a manner that is substantially equivalent to, or as
22 rigorous as, the manner in which it conducted its scientific assessments at the time of the initial
23 adoption of these regulations.

24 (c) Supplemental Information Requests. The Department may request that the
25 petitioner provide, within a specified timeframe, additional information to assist the merits
26 review.

27 (d) Notice of Decision. After completing the merits review, the Department shall provide
28 a notice to the petitioner of its decision to grant or deny the petition that includes a statement
29 explaining the basis for the decision.

30
31 NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code.

32 Reference: Sections 25252 and 25253, Health and Safety Code.

33 34 **Article 5. Alternatives Analysis**

35 36 **§ 69505. Guidance Materials.**

37 (a) Guidance Materials. Before finalizing the initial list of Priority Products, the
38 Department shall make available on its website guidance materials to assist persons in
39 performing AAs under this article. The Department shall periodically revise and update the
40 guidance materials.

1 (b) Sample Alternatives Analyses. The Department shall also post on its website
2 examples of AAs that are available in the public domain at no cost. The posting must indicate,
3 for each AA, the name of the person or entity that prepared the AA.

4
5 NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference:
6 Sections 25252 and 25253, Health and Safety Code.

7
8 **§ 69505.1. Alternatives Analysis: General Provisions.**

9 (a) Applicability. This article does not apply to a product for which the notification
10 requirements of section 69505.2 or section 69505.3 have been fully and timely met.

11 (b) AA Requirements.

12 (1) Except as otherwise provided in subsection (a) above and subsections (b), (c) and
13 (d) of section 69505.4, a responsible entity for a Priority Product shall conduct an AA for the
14 Priority Product and shall comply with all applicable requirements of this article.

15 (2) A responsible entity subject to the requirements of paragraph (1) shall prepare, sign,
16 and submit to the Department AA Reports as follows:

17 (A) Except as provided in subsection (c), a responsible entity shall submit the
18 Preliminary AA Report to the Department no later than 180 days after the date the product is
19 listed on the final Priority Products list posted on the Department's website, unless the
20 Department specifies a different due date in the Priority Products list.

21 (B) Except as provided in subsection (c), a responsible entity shall submit the Final AA
22 Report no later than twelve (12) months after the date the Department issues a notice of
23 compliance for the Preliminary AA Report, unless the responsible entity requests and the
24 Department approves an extended due date.

25 (C) For a product that is first placed into the stream of commerce in California after the
26 date the product is listed on the Priority Products list, the due date for the Preliminary AA
27 Report shall be 180 days after the product is first placed into the stream of commerce in
28 California, unless the Department specifies a different due date in the Priority Products list.

29 (3) The requirements of this article applicable to a responsible entity may be fulfilled
30 entirely or in part by the responsible entity, and/or entirely or in part by a person acting on
31 behalf of or in the stead of the responsible entity. This paragraph does not apply to sections
32 69505.2 and 69505.3.

33 (c) AA Report Due Date Extension.

34 (1) A responsible entity may request, and the Department may grant, a one-time
35 extension of up to ninety (90) days to the submission deadline for the AA Report or Alternate
36 Process AA Work Plan if the extension request is based on circumstances that could not
37 reasonably be anticipated or controlled by the responsible entity. The extension request must
38 be received at least sixty (60) days before the applicable due date.

39 (2) The extension request must include:

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

41 (B) The name of, and contact information for, the responsible entity(ies) on whose
42 behalf the AA Reports will be submitted;

1 (C) If different from subparagraphs (A) and (B), the name of, and contact information for,
2 the manufacturer(s) and importer(s) of the product;

3 (D) Information identifying and describing the responsible entity's Priority Product, and
4 the brand name(s) and product name(s) under which the Priority Product is placed into the
5 stream of commerce in California, and, if the Priority Product is a component of one or more
6 assembled products, a description of the known product(s) in which the component is used;

7 (E) The due date for the AA Report;

8 (F) The amount of additional time requested; and

9 (G) The reason the extension is needed, including an explanation as to why the
10 circumstances necessitating the extension could not reasonably be anticipated or controlled by
11 the responsible entity.

12 (3) The Department shall approve or deny the extension request in whole or in part and
13 provide notice to the person submitting the extension request of the decision within thirty (30)
14 days of receipt of the extension request. Failure by the Department to issue a decision within
15 thirty (30) days does not constitute an approval of the extension request.

16 (d) Consideration of Information. A responsible entity conducting an AA shall consider
17 all relevant information made available on the Department's website, and any additional
18 information or technical assistance the Department may provide regarding alternatives
19 analysis. The responsible entity shall summarize these efforts in the Final AA Report or final
20 Abridged AA Report, whichever is applicable.

21 (e) Compliance Status. Notwithstanding any other provision of this chapter, failure of
22 the Department to make a compliance determination for an AA Report or Alternate Process AA
23 Work Plan within the applicable timeframe specified in section 69505.9, or failure of the
24 Director or the Department to respond to an appeal or Request for Review submitted under
25 article 7 within sixty (60) days, shall not cause an AA Report or Alternate Process AA Work
26 Plan to be deemed compliant with this article.

27
28 NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference:
29 Sections 25252 and 25253, Health and Safety Code.

30
31 **§ 69505.2. Removal/Replacement Notifications in Lieu of Alternatives Analysis.**

32 (a) Applicability.

33 (1)(A) The requirements of this article do not apply to a responsible entity's Priority Product
34 if the manufacturer of the Priority Product submits one of the following notifications to the
35 Department no later than the due date for submitting the Preliminary AA Report:

36 1. A Chemical Removal Intent and/or Confirmation Notification that complies with
37 subsections (b) and (c);

38 2. A Product Removal Intent and/or Confirmation Notification that complies with
39 subsections (b) and (d); or

40 3. A Product-Chemical Replacement Intent and/or Confirmation Notification that
41 complies with subsections (b) and (e).

1 (B) If only a Chemical Removal, Product Removal, or Product-Chemical Replacement
2 Intent Notification is submitted to the Department by the date specified in subparagraph (A),
3 within ninety (90) days of the submission date, or by the due date for the Preliminary AA
4 Report, whichever is later, the manufacturer shall submit one of the following to the
5 Department:

6 1. A removal or replacement Confirmation Notification; or

7 2. A Preliminary AA Report, Abridged AA Report, or Alternate Process AA Work Plan.

8 (2)(A) If a Preliminary AA Report or Alternate Process AA Work Plan has already been
9 submitted to the Department, the requirements of this article pertaining to performance of a
10 second stage AA and submission of a Final AA Report do not apply if one of the notifications
11 specified in paragraph (1)(A) is submitted to the Department prior to the due date for
12 submitting the Final AA Report.

13 (B) If only a Chemical Removal, Product Removal, or Product-Chemical Replacement
14 Intent Notification is submitted to the Department by the date specified in subparagraph (A),
15 the manufacturer shall submit a removal or replacement Confirmation Notification or a Final AA
16 Report by the later of the following dates:

17 1. Ninety (90) days after the Intent Notification is submitted; or

18 2. The due date for the Final AA Report.

19 (3) A manufacturer is not in compliance with section 69505.1(b), if the manufacturer
20 submits a notification under this section, in lieu of submitting the otherwise required AA
21 Report(s), and that notification is not submitted by the applicable due date or does not fully
22 meet the applicable content requirements specified in subsections (b) through (e).

23 (b) Content Requirements for Intent and Confirmation Notifications. Chemical Removal,
24 Product Removal, and Product-Chemical Replacement Intent and Confirmation Notifications
25 must include:

26 (1) The name of, and contact information for, the person submitting the notification.

27 (2) The name of, and contact information for, any known responsible entity(ies).

28 (3) If different from paragraphs (1) and (2), the name of, and contact information for, the
29 manufacturer(s) and importer(s) of the product.

30 (4) The name of, and contact information for, all persons in California, other than the
31 final purchaser or lessee, to whom the manufacturer directly sold the Priority Product within the
32 prior twelve (12) months.

33 (5) Identification and location of the manufacturer's retail sales outlets where the
34 manufacturer sold, supplied, or offered for sale the Priority Product in California, if applicable.

35 (6) Information identifying and describing the Priority Product and the reformulated
36 product, if applicable, and the brand name(s) and labeling information under which the Priority
37 Product and the reformulated product, if applicable, are/were placed into the stream of
38 commerce in California, and, if the product is a component of one or more assembled
39 products, a description of the known product(s) in which the component is used.

40 (7) The intended uses, and targeted customer base(s), for the Priority Product and the
41 reformulated product, if applicable.

42 (8) The measures the manufacturer will take, or has taken, to:

- 1 (A) If applicable, provide information regarding the reformulated product to persons
2 selling or distributing the Priority Product in California; and
- 3 (B) Cease fulfilling orders for the Priority Product from persons selling or distributing the
4 Priority Product in California.
- 5 (9) For Chemical Removal Notifications and/or Product-Chemical Replacement
6 Notifications, the Chemical(s) of Concern that will be or have been removed from the product
7 and, as applicable, the following information:
- 8 (A) Information explaining the rationale and the factors considered in deciding to
9 reformulate the product;
- 10 (B) Laboratory analytical testing methodology and quality control and assurance
11 protocols used or that will be used to confirm that the Chemical(s) of Concern has/have been
12 removed, and identification of the testing laboratory;
- 13 (C) Information demonstrating that the Chemical(s) of Concern has/have been removed
14 from the product that was a Priority Product;
- 15 (D) The name of the replacement chemical(s), the concentration of each replacement
16 chemical in the reformulated product, and the hazard traits and/or environmental or
17 toxicological endpoints known to be associated with the replacement chemical(s);
- 18 (E) Laboratory analytical testing methodology and quality control and assurance
19 protocols used or that will be used to measure the concentration of the replacement
20 chemical(s) in the product, and identification of the testing laboratory; and
- 21 (F) Information demonstrating that the replacement chemical(s) meet one of the
22 following criteria:
- 23 1. The replacement chemical(s) is/are not on the list of Candidate Chemicals; or
24 2. The replacement chemical(s) is/are Candidate Chemical(s) that is/are already in use
25 to manufacture the same product, in lieu of the Chemical(s) of Concern, by the same or a
26 different responsible entity. For purposes of this subsection, "same product" means a product
27 that has the same or similar product description as the Priority Product; has the same intended
28 use(s) and targeted customer base(s) as the Priority Product; and fulfills the functional,
29 performance, and legal requirements of the Priority Product.
- 30 (10) The certification statement specified in subsection (c), (d) or (e), as applicable.
- 31 (c) Chemical Removal Notification Certification Statements. Chemical Removal Intent
32 and Confirmation Notifications must include whichever of the following certification statements
33 is applicable:
- 34 (1) Chemical Removal Intent Notifications must include a statement certifying that the
35 manufacturer intends to do all of the following within ninety (90) days of the date the
36 notification is submitted to the Department:
- 37 (A) Remove the Chemical(s) of Concern from the Priority Product without the use of one
38 or more replacement chemicals or otherwise adding other chemicals to the product;
- 39 (B) Provide information regarding the reformulated product to persons selling or
40 distributing the Priority Product in California;
- 41 (C) Cease fulfilling orders for the Priority Product from persons selling or distributing the
42 Priority Product in California; and

- 1 (D) Submit a Chemical Removal Confirmation Notification to the Department for the
2 Priority Product.
- 3 (2) Chemical Removal Confirmation Notifications must include a statement certifying
4 that:
- 5 (A) The Chemical(s) of Concern has/have been removed from the product that was a
6 Priority Product without the use of one or more replacement chemicals or otherwise adding
7 other chemicals to the product;
- 8 (B) Information regarding the reformulated product has been provided to persons selling
9 or distributing the Priority Product in California; and
- 10 (C) The manufacturer has ceased, and will not resume, fulfilling orders for the Priority
11 Product from persons selling or distributing the Priority Product in California.
- 12 (d) Product Removal Notification Certification Statements. Product Removal Intent and
13 Confirmation Notifications must include whichever of the following certification statements is
14 applicable:
- 15 (1) Product Removal Intent Notifications must include a statement certifying that the
16 manufacturer intends to do both of the following within ninety (90) days of the date the
17 notification is submitted to the Department:
- 18 (A) Cease fulfilling orders for the Priority Product from persons selling or distributing the
19 Priority Product in California; and
- 20 (B) Submit a Product Removal Confirmation Notification to the Department for the
21 product.
- 22 (2) Product Removal Confirmation Notifications must include a statement certifying that
23 the manufacturer has ceased, and will not resume, fulfilling orders for the Priority Product from
24 persons selling or distributing the Priority Product in California.
- 25 (e) Product-Chemical Replacement Notification Certification Statements. Product-
26 Chemical Replacement Intent and Confirmation Notifications must include whichever of the
27 following certification statements is applicable:
- 28 (1) Product-Chemical Replacement Intent Notifications must include a statement
29 certifying that the manufacturer intends to do all of the following within ninety (90) days of the
30 date the notification is submitted to the Department:
- 31 (A) Remove the Chemical(s) of Concern from the Priority Product;
- 32 (B) Provide information regarding the reformulated product to persons selling or
33 distributing the Priority Product in California;
- 34 (C) Cease fulfilling orders for the Priority Product from persons selling or distributing the
35 Priority Product in California; and
- 36 (D) Submit a Product-Chemical Replacement Confirmation Notification to the
37 Department for the Priority Product.
- 38 (2) Product-Chemical Replacement Confirmation Notifications must include a statement
39 certifying that:
- 40 (A) The Chemical(s) of Concern has/have been removed from the product that was a
41 Priority Product;

1 (B) The replacement chemical(s) meet the criteria specified in subparagraph 1. or
2 subparagraph 2. of subsection (b)(9)(F);

3 (C) Information regarding the reformulated product has been provided to persons selling
4 or distributing the Priority Product in California; and

5 (D) The manufacturer has ceased, and will not resume, fulfilling orders for the Priority
6 Product from persons selling or distributing the Priority Product in California.

7
8 NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference:
9 Sections 25252 and 25253, Health and Safety Code.

10
11 **§ 69505.3. Alternatives Analysis Threshold Notification in Lieu of Alternatives**
12 **Analysis.**

13 (a) Notification Requirements. This article does not apply to a responsible entity's
14 Priority Product for which the manufacturer submits an Alternatives Analysis Threshold
15 Notification to the Department concurrently with the Priority Product Notification, or by the due
16 date for the Preliminary AA Report for the Priority Product. Each notification must include:

17 (1) The name of, and contact information for, the person submitting the notification;

18 (2) The name of, and contact information for, any known responsible entity(ies);

19 (3) If different from paragraphs (1) and (2), the name of, and contact information for, the
20 manufacturer(s) and importer(s) of the Priority Product;

21 (4)(A) A statement certifying that the Chemical(s) of Concern is/are present in the
22 manufacturer's Priority Product only as contaminants and the concentration of each Chemical
23 of Concern does not exceed the PQL for that chemical; or

24 (B) A statement certifying that the Chemical(s) of Concern does/do not exceed the
25 Alternatives Analysis Threshold(s) specified by the Department under section 69503.5(c) for
26 the Chemical(s) of Concern.

27 (5) If applicable, identification of the PQL for each Chemical of Concern in the Priority
28 Product, and the information and method used to determine the PQL;

29 (6) The source of the Chemical(s) of Concern in the Priority Product;

30 (7) Information identifying and describing the Priority Product, the brand name(s) and
31 labeling information under which the Priority Product is placed into the stream of commerce in
32 California, and, if the Priority Product is a component of one or more assembled products, a
33 description of the known product(s) in which the component is used;

34 (8) Laboratory analytical testing methodology and quality control and assurance
35 protocols used to measure each Chemical of Concern in the Priority Product, and identification
36 of the testing laboratory; and

37 (9) A demonstration and certification that the manufacturer meets and will continue to
38 meet the criteria and conditions that are the basis for the exemption in this section.

39 (b) Burden of Proof. The manufacturer bears the burden of proof to demonstrate that
40 the concentration of the Chemical(s) of Concern in its Priority Product does not exceed the
41 applicable Alternatives Analysis Threshold.

1 (c) Notification Revisions. If any of the information listed in subsection (a) changes
2 significantly, the manufacturer shall submit to the Department a revised Alternatives Analysis
3 Threshold Notification within thirty (30) days of the change.

4 (d) Change in Product's Exemption Status. If the Priority Product no longer meets the
5 criteria for an Alternatives Analysis Threshold exemption, the manufacturer shall notify the
6 Department of this change within thirty (30) days of the change, and shall submit to the
7 Department a Preliminary AA Report or an applicable Intent and/or Confirmation Notification
8 under section 69505.2 within 180 days of the change.

9 (e) Determination of Exemption Eligibility. The exemption in subsection (a) does not
10 apply if the Department notifies the person who submitted the Alternatives Analysis Threshold
11 Notification that the information contained in the notification is inaccurate or inadequate to
12 support an Alternatives Analysis Threshold exemption.

13
14 NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference:
15 Sections 25252 and 25253, Health and Safety Code.

16
17 **§ 69505.4. Alternatives Analysis Process and Options.**

18 (a) AA Stages.

19 (1) An AA must be conducted in two stages.

20 (2) The responsible entity shall initially complete the first stage of the AA, and submit a
21 Preliminary AA Report that complies with sections 69505.1(b)(2)(A) and 69505.7.

22 (3) The responsible entity shall next complete the second stage of the AA, and submit a
23 Final AA Report that complies with sections 69505.1(b)(2)(B) and 69505.7.

24 (b) Abridged AA Reports. After completing the first five (5) steps of the first stage of the
25 AA under subsections (a) through (e) of section 69505.5, a responsible entity that determines
26 a functionally acceptable and technically feasible alternative is not available may prepare and
27 submit an Abridged AA Report, in lieu of the Preliminary and Final AA Reports, if:

28 (1) The responsible entity summarizes in the Abridged AA Report the first stage AA
29 findings in compliance with the applicable requirements of section 69505.7;

30 (2) The responsible entity summarizes in the Abridged AA Report its findings with
31 respect to section 69505.6(a) in compliance with the applicable requirements of section
32 69505.7;

33 (2) The responsible entity submits an Abridged AA Report to the Department by the due
34 date specified in section 69505.1(b)(2)(A); and

35 (3) The responsible entity includes an implementation plan in the Abridged AA Report
36 that specifies the milestones and dates for implementation of proposed regulatory responses,
37 which shall, at a minimum, include the regulatory responses required under sections 69506.3
38 and 69506.8.

39 (c) Alternate Process AA.

40 (1) A responsible entity may use an AA process that differs from the process specified
41 in sections 69505.5 and 69505.6, if:

1 (A) The responsible entity's alternate process provides the information needed to
2 prepare a Final AA Report that substantially complies with section 69505.7.

3 (B) The responsible entity's alternate process compares the Priority Product and the
4 alternatives under consideration using, at a minimum, the same relevant factors and, when
5 applicable, associated exposure pathways and life cycle segments specified in sections
6 69505.5 and 69505.6.

7 (C) The responsible entity submits an Alternate Process AA Work Plan to the
8 Department with sufficient information to demonstrate that the alternate process complies with
9 subparagraphs (A) and (B), and sufficient information for the Department to specify an
10 appropriate due date for submittal of the Final AA Report.

11 1. The Alternate Process AA Work Plan shall include the information specified in
12 subsections (c), (d), and (e) of section 69505.7.

13 2. If the Alternate Process AA Work Plan includes information for which trade secret
14 protection is claimed, the responsible entity shall also submit a redacted copy of the work plan
15 that excludes that information.

16 3. The Alternate Process AA Work Plan shall be accompanied by an executive
17 summary organized in conformance with the organization of the work plan that is sufficient to
18 convey to the public a general understanding of the work plan, and that excludes any
19 information for which trade secret protection is claimed. If the Department subsequently
20 rejects a trade secret claim, the responsible entity shall, at the Department's request, submit a
21 revised executive summary within thirty (30) days of the request to add any information for
22 which a trade secret claim is rejected and which the Department specifies must be included in
23 the executive summary.

24 (D) The Alternate Process AA Work Plan is submitted to the Department no later than
25 the due date for the Priority Product Notification for the product.

26 (E)1. The responsible entity timely submits a Final AA Report to the Department that
27 substantially complies with section 69505.7.

28 2. The due date for the Final AA Report is eighteen (18) months after the date the
29 Department issues a notice of compliance for the Alternate Process AA Work Plan, unless the
30 responsible entity requests and receives Department approval of an extended due date using
31 the procedures specified for Preliminary AA Reports in section 69505.7(k)(1)(B), or the
32 Department otherwise approves an extended due date under section 69505.9(b)(4)(A). If the
33 Department approves an extended due date, the responsible entity shall provide a yearly
34 progress report until the Final AA Report is submitted. Each progress report must provide all
35 of the information specified in subparagraphs 1. through 6. of section 69505.7(k)(1)(A).

36 (2) If the Alternate Process AA Work Plan is disapproved by the Department under
37 section 69505.9(b)(3), the responsible entity shall submit a Preliminary AA Report to the
38 Department within 180 days after the Department issues the notice of disapproval.

39 (d) Previously Completed AAs. A responsible entity may comply with section
40 69505.1(b) by submitting to the Department a report for a previously completed AA for the
41 Priority Product, if the Department determines that the report is substantially equivalent to the
42 Final AA Report requirements of section 69505.7 and contains sufficient information for the

1 Department to determine any necessary regulatory response(s) under article 6. The
2 previously completed AA may be either an AA conducted or obtained by the responsible entity
3 or a publicly available AA.

4 (1) A responsible entity submitting a report under this subsection shall submit the report
5 no later than the deadline for submitting a Preliminary AA Report, except that a one-time
6 extension may be requested under section 69505.1(c).

7 (2) A responsible entity submitting an existing report under this subsection may
8 supplement the report with additional information to render the report substantially equivalent
9 to the Final AA Report requirements of section 69505.7.

10 (e) Revised Alternative Selection Decision.

11 (1) If after submitting the Final AA Report, the responsible entity selects one or more
12 alternatives that differ from the alternative(s) identified as the selected alternative(s) in the
13 Final AA Report, the responsible entity shall submit a revised Final AA Report to the
14 Department at least sixty (60) days prior to placing the newly selected alternative product(s)
15 into the stream of commerce in California. The revised Final AA Report must explain the
16 differences from the original Final AA Report, identify the information used to support the
17 revisions to the Final AA Report, and describe the rationale for selecting the different
18 alternative(s). The Department shall review and make a compliance determination with
19 respect to the revised Final AA Report in accordance with the procedures and criteria set forth
20 in section 69505.9.

21 (2) Paragraph (1) also applies if:

22 (A) The selection decision in the original Final AA Report was to retain the Priority
23 Product, and the responsible entity later decides to select an alternative to replace the Priority
24 Product; or

25 (B) The responsible entity later decides to retain the Priority Product in lieu of a
26 previously selected alternative product.

27 (3) The requirements of this subsection only apply for three (3) years after the date the
28 original Final AA Report is approved by the Department.

29 (f) Reformulation. Except as provided in section 69505.2, if prior to submitting the Final
30 AA Report for a Priority Product the responsible entity removes, or reduces the concentration
31 of, the Chemical of Concern(s) and uses one or more replacement Candidate Chemical(s), the
32 Alternatives Analysis evaluation and comparison shall include consideration of both the Priority
33 Product and the reformulated product.

34
35 NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference:
36 Sections 25252, 25253, and 25257, Health and Safety Code.

37 38 **§ 69505.5. Alternatives Analysis: First Stage.**

39 The first stage of the AA shall include the six (6) steps described below:

40 (a) Step 1, Identification of Product Requirements and Function(s) of Chemical(s) of
41 Concern.

1 (1) The responsible entity shall identify the functional, performance, and legal
2 requirements of the Priority Product that must also be met by the alternatives under
3 consideration.

4 (2) The responsible entity shall identify the role(s), if any, of the Chemical(s) of Concern
5 in meeting the Priority Product's requirements identified under paragraph (1).

6 (3)(A) The responsible entity shall determine if the Chemical(s) of Concern or alternative
7 replacement chemical(s) is/are necessary to meet the Priority Product's requirements identified
8 under paragraph (1).

9 (B) If the responsible entity determines that neither the Chemical(s) of Concern nor
10 alternative replacement chemical(s) is/are necessary to meet the Priority Product's
11 requirements identified under paragraph (1), the responsible entity shall evaluate removal of
12 the Chemical(s) of Concern from the Priority Product without the use of any replacement
13 chemical(s) as one of the alternatives to the Priority Product. Alternatively, the responsible
14 entity may submit Chemical Removal Intent and/or Confirmation Notifications to the
15 Department in lieu of completing the Alternatives Analysis and submitting the required AA
16 Reports.

17 (b) Step 2, Identification of Alternatives.

18 (1)(A) In addition to any alternative identified under subsection (a)(3)(B), the responsible
19 entity shall identify and consider alternatives that meet the definition of "alternative" under
20 section 69501.1 and meet the Priority Product's requirements identified under subsection
21 (a)(1).

22 (B) The responsible entity shall research and evaluate available information that
23 identifies existing possibly viable alternatives for consideration in the AA. This research and
24 evaluation shall include, but is not limited to, information posted on the Department's website.
25 The responsible entity shall consider any identified alternative in the AA, or explain in the AA
26 Report why such an alternative is not viable for consideration.

27 (2) Alternatives that do not involve the use of one or more replacement chemicals, or
28 otherwise adding chemicals to the product, do not require compliance with subsection (c).

29 (c) Step 3, Identification of Factors Relevant for Comparison of Alternatives.

30 (1) A factor listed in paragraph (2), in conjunction with an associated exposure pathway
31 and life cycle segment, if applicable, is relevant if:

32 (A) The factor makes a material contribution to one or more adverse public health
33 impacts, adverse environmental impacts, adverse waste and end-of-life effects, and/or
34 materials and resource consumption impacts associated with the Priority Product and/or one or
35 more alternatives under consideration; and

36 (B) There is a material difference in the factor's contribution to such impact(s) between
37 the Priority Product and one or more alternatives under consideration and/or between two or
38 more alternatives.

39 (2) The responsible entity shall use available quantitative information and analytical
40 tools, supplemented by available qualitative information and analytical tools, to identify the
41 factors listed below and the associated exposure pathways and life cycle segments, if

- 1 applicable, that are relevant for the comparison of the Priority Product and the alternatives
2 under consideration:
- 3 (A) Adverse environmental impacts;
 - 4 (B) Adverse public health impacts;
 - 5 (C) Adverse waste and end-of-life effects;
 - 6 (D) Environmental fate;
 - 7 (E) Materials and resource consumption impacts;
 - 8 (F) Physical chemical hazards; and
 - 9 (G) Physicochemical properties.
- 10 (3) The responsible entity's identification of relevant exposure pathways shall consider
11 both of the following:
- 12 (A) Chemical quantity information:
 - 13 1. Quantities of the Chemical(s) of Concern or alternative replacement chemical(s)
14 necessary to manufacture the Priority Product and each alternative under consideration; and
 - 15 2. Estimated volume and/or mass of the Chemical(s) of Concern or alternative
16 replacement chemical(s) that is/are or would be placed into the stream of commerce in
17 California as a result of the Priority Product and each alternative under consideration.
 - 18 (B) Exposure factors specified in section 69503.3(b).
 - 19 (d) Step 4, Initial Evaluation and Screening of Alternative Replacement Chemicals.
 - 20 (1) For those alternatives under consideration that involve removing or reducing the
21 concentration of the Chemical(s) of Concern and using one or more alternative replacement
22 chemicals, or otherwise adding chemicals to the product, the responsible entity shall use
23 available quantitative information and analytical tools, supplemented by available qualitative
24 information and analytical tools, to evaluate and compare each of the alternative replacement
25 chemicals under consideration with the Chemical(s) of Concern in the Priority Product with
26 respect to each of the following factors to the extent relevant:
 - 27 (A) Adverse environmental impacts;
 - 28 (B) Adverse public health impacts;
 - 29 (C) Environmental fate;
 - 30 (D) Physical chemical hazards; and
 - 31 (E) Physicochemical properties.
 - 32 (2) The responsible entity may eliminate from further consideration in the AA any
33 alternative replacement chemical(s) that it determines has/have the potential to pose adverse
34 impacts equal to or greater than those posed by the Chemical(s) of Concern.
 - 35 (e) Step 5, Consideration of Additional Information.
 - 36 In the first stage of the AA, the responsible entity may consider pertinent factors and
37 information not specifically identified in this section. This may include, but is not limited to,
38 consideration of the factors and information specified in section 69505.6. A responsible entity
39 may eliminate an alternative from further consideration based on the additional factors and
40 information as long as the reason for its elimination is explained in the Preliminary AA Report
41 and there are alternatives remaining to be evaluated in the second AA stage.
 - 42 (f) Step 6, Preliminary AA Report Preparation.

1 (1) The responsible entity shall prepare, for inclusion in the Preliminary AA Report, a
2 work plan and proposed implementation schedule for completion of the second AA stage and
3 preparation and submittal of the Final AA Report.

4 (2) The responsible entity shall prepare and submit to the Department a Preliminary AA
5 Report as specified in section 69505.7.

6
7 NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference:
8 Sections 25252, 25253, and 25257, Health and Safety Code.

9
10 **§ 69505.6. Alternatives Analysis: Second Stage.**

11 After receiving approval of the Preliminary AA Report from the Department, the responsible
12 entity shall compare the Priority Product with the alternatives still under consideration. The
13 second stage of the AA shall include the five (5) steps described below:

14 (a) Step 1, Identification of Factors Relevant for Comparison of Alternatives.

15 (1) Adverse Impacts and Multimedia Life Cycle Impacts. The responsible entity may
16 use available quantitative information and analytical tools, supplemented by available
17 qualitative information and analytical tools, to re-evaluate the identification of factors and the
18 associated exposure pathways and life cycle segments, if applicable, determined to be
19 relevant under section 69505.5(c) for the comparison of the Priority Product and the
20 alternatives still under consideration after completion of the first AA stage. In addition to the
21 factors determined to be relevant under this paragraph and/or section 69505.5(c), the factors
22 specified in paragraphs (2) and (3) are relevant for all comparisons of the Priority Product and
23 the alternatives.

24 (2) Product function and performance. The responsible entity shall identify the principal
25 manufacturer-intended use(s) or application(s), the functional and performance attributes, and
26 the applicable legal requirements for the Priority Product. The responsible entity shall, at a
27 minimum, evaluate:

28 1. The useful life of the Priority Product, and that of the alternatives under
29 consideration;

30 2. The function and performance of each alternative relative to the Priority Product and
31 other alternatives under consideration; and

32 3. Whether an alternative exists that is functionally acceptable, technically feasible, and
33 economically feasible.

34 (3) Economic impacts.

35 1. The responsible entity shall evaluate, monetize, and compare for the relevant
36 exposure pathways and life cycle segments the following impacts of the Priority Product and
37 the alternatives:

38 a. Public health and environmental costs; and

39 b. Costs to governmental agencies and non-profit organizations that manage waste,
40 oversee environmental cleanup and restoration efforts, and/or are charged with protecting
41 natural resources, water quality, and wildlife.

1 2. If the responsible entity's alternative selection decision is to retain the Priority
2 Product based in whole or in part on internal cost impacts, this decision must be explained in
3 the Final AA Report. The Final AA Report must include a quantified comparison of the internal
4 cost impacts of the Priority Product and the alternatives, including manufacturing, marketing,
5 materials and equipment acquisition, and resource consumption costs.

6 (b) Step 2, Comparison of the Priority Product and Alternatives.

7 The responsible entity shall use available quantitative information and analytical tools,
8 supplemented by available qualitative information and analytical tools, to evaluate and
9 compare the Priority Product and each of the alternatives under consideration with respect to
10 each relevant factor and associated exposure pathways and life cycle segments, if applicable,
11 identified under subsection (a) above and section 69505.5(c). The responsible entity shall
12 compare each alternative with the Priority Product and with each of the other alternatives
13 under consideration.

14 (c) Step 3, Consideration of Additional Information.

15 As part of the second stage of the AA, the responsible entity may also consider other
16 pertinent information not specifically identified in this section. This may include, but is not
17 limited to, reconsideration of the factors and information identified in section 69505.5.

18 (d) Step 4, Alternative Selection Decision.

19 The responsible entity shall select the alternative(s) that will replace the Priority Product,
20 unless the decision is to retain the existing Priority Product. The selection of an alternative or
21 the decision to retain the Priority Product shall be based on and supported by the comparative
22 analysis conducted under subsections (b) and (c).

23 (e) Step 5, Final AA Report Preparation.

24 The responsible entity shall prepare and submit to the Department a Final AA Report as
25 specified under section 69505.7.

26
27 NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference:
28 Sections 25252, 25253, and 25257, Health and Safety Code.

29
30 **§ 69505.7. Alternatives Analysis Reports.**

31 (a) General Requirements.

32 (1) Preliminary and Final AA Reports and Abridged AA Reports must each include all of
33 the applicable information specified in subsections (b) through (k).

34 (2) The responsible entity shall include in the AA Reports sufficient information for the
35 Department to determine:

36 (A) Compliance with the substantive and administrative requirements of this article; and

37 (B) The appropriate due date for submission of the Final AA Report, and the appropriate
38 due date for any regulatory response(s) required under article 6.

39 (3) The responsible entity shall identify and explain in the Final AA Report all differences
40 in the information and analyses presented in the Preliminary AA Report and the Final AA
41 Report. The responsible entity must identify in the Final AA Report the information sources
42 used to support changes from the Preliminary AA Report to the Final AA Report.

1 (4) The responsible entity shall maximize the scope of information in the AA Report that
2 can be made available to the public, while maintaining protection of legitimate trade secrets.

3 (A) If the AA Report contains information claimed by the responsible entity to be a trade
4 secret, a separate publicly available AA Report shall be submitted to the Department that
5 excludes claimed trade secret information only to the extent necessary to protect its
6 confidential nature.

7 (B) If the Department subsequently rejects a trade secret claim and/or the nature and/or
8 extent of redaction, the responsible entity shall, at the Department's request, submit a revised
9 publicly available AA Report and executive summary within thirty (30) days of the request to
10 add any information for which a trade secret claim or redaction is rejected.

11 (b) Executive Summary. AA Reports must include a publicly available executive
12 summary sufficient to convey a general understanding of the scope and results of the AA and
13 the rationale for the AA selection decision. The executive summary must be organized in
14 conformance with the organization of the AA Report and must include for each section of the
15 AA Report a detailed summary of the information presented. Information for which trade
16 secret protection is claimed must not be included in the executive summary.

17 (c) Preparer Information. This section of the AA Report must include:

18 (1) The name of, and contact information for, the person submitting the AA Report;

19 (2) If applicable, the name of, and contact information for, all responsible entities on
20 whose behalf the AA Report is being submitted; and

21 (3) The names of the parties that were involved in funding, directing, overseeing,
22 preparing, and/or reviewing the AA.

23 (d) Responsible Entity and Supply Chain Information. This section of the AA Report
24 must include:

25 (1) The name of, contact information for, and headquarters location of the
26 manufacturer(s) and importer(s), if applicable, and, if the AA Report is prepared on behalf of a
27 consortium of manufacturers or other persons in the Priority Product's supply chain, a list of
28 the participants along with their contact information;

29 (2) The name of, and contact information for, any person(s) identified on the Priority
30 Product label as the manufacturer, importer, or distributor;

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

34 (4) Identification and location of the manufacturer's and/or importer's retail sales outlets
35 where the manufacturer and/or importer sold, supplied, or offered for sale the Priority Product
36 in California, if applicable.

37 (e) Priority Product Information. This section of the AA Report must include:

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

40 (2) If the Priority Product is a component of one or more assembled products, a
41 description of the known product(s) in which the component is used;

42 (3) Identification of the Chemical(s) of Concern for the Priority Product;

- 1 (4) Any Material Safety Data Sheets and/or Safety Data Sheets related to the Priority
2 Product; and
- 3 (5) The information specified in paragraphs (1) and (2) of section 69505.5(a).
- 4 (f) Scope of Relevant Comparison Factors. Each AA Report must identify which factors
5 and, when applicable, associated exposure pathways and life cycle segments were
6 determined to be relevant, under sections 69505.5(c) and 69505.6(a), for evaluation and
7 comparison of the Priority Product and its alternatives. For each factor, and exposure pathway
8 and life cycle segment, if applicable, determined not to be relevant, the AA Report must
9 explain the rationale and identify, and explain the pertinent findings of, the supporting
10 information for this determination.
- 11 (g) Scope and Comparison of Alternatives. The AA Reports must identify and describe
12 the alternatives chosen to be evaluated and compared, and explain the rationale for selecting
13 and screening out specific alternatives at each stage of the alternatives comparison process.
14 For any alternative that is screened out because it is determined that its adverse impacts are
15 equal to or greater than those of the Priority Product, the responsible entity shall describe in
16 the AA Report the method used to determine equal or greater adverse impacts, including the
17 method used to compare the multiple factors associated with the impacts, and the rationale for
18 any trade-offs made among the factors.
- 19 (1) Each Preliminary AA Report and Abridged AA Report must include the information
20 collected and the comparison conducted under section 69505.5 for the Chemical(s) of Concern
21 and the alternative replacement chemical(s). This must include a matrix, or other summary
22 format, that provides a clear visual comparison that summarizes the information collected
23 regarding the relevant adverse impacts, and their associated relevant exposure pathways and
24 life cycle segments, for the Chemical(s) of Concern and each alternative replacement chemical
25 being considered, and the comparative results of evaluating this information.
- 26 (2) The Final AA Report must include the information collected and the comparison
27 conducted under sections 69505.5 and 69505.6 for the Priority Product and its alternatives,
28 including:
- 29 (A) A matrix, or other summary format, that provides a clear visual comparison that
30 summarizes the information collected regarding the relevant comparison factors, and their
31 associated relevant exposure pathways and life cycle segments, for the Priority Product and
32 each alternative considered, and the comparative results of evaluating this information; and
- 33 (B) Identification and description of how any relevant safeguards provided by other
34 federal and California State regulatory programs were considered in the AA.
- 35 (3) The responsible entity shall demonstrate in the Final AA Report that all of the
36 requirements of section 69505.6 have been met.
- 37 (h) Methodology. The AA Report shall identify and describe the analytical tools,
38 models, and software used to conduct the AA, and discuss any of their limitations. The AA
39 Report shall also identify any published methodologies and/or guidelines used, and any
40 deviations from those methodologies and/or guidelines.
- 41 (i) Supporting Information.

1 (1) All information used as supporting information in performance of the AA and
2 preparation of the AA Reports must be cited in the AA Reports and made available to the
3 Department upon request. The AA Reports must include a brief summary of the information
4 reviewed and considered under section 69505.1(d).

5 (2) The Final AA Report must identify information that is not currently available but, if it
6 were available, could be used to:

7 (A) Validate information used for purposes of sections 69505.5 and 69505.6; and/or

8 (B) Address any uncertainties in the analyses conducted under sections 69505.5 and
9 69505.6.

10 (j) Selected Alternative(s).

11 (1) The Preliminary AA Report must identify and describe the alternatives selected for
12 further evaluation in the second stage of the AA, and explain the rationale for the selection
13 decision.

14 (2) The Final AA Report must identify and describe the alternative(s), if any, selected to
15 replace the Priority Product. The description of the selection decision must include an analysis
16 that evaluates and compares the selected alternative(s) against the Priority Product and a
17 detailed list and explanation of the reasons for the selection decision, or, alternatively, for the
18 decision not to select and implement an alternative to the Priority Product. The Final AA
19 Report must also include:

20 (A) The product function and performance information specified in section 69505.6(a)(2)
21 for the selected alternative(s). If no alternative is selected, this information must be provided in
22 the Final AA Report or Abridged AA Report, as applicable, for each alternative considered.

23 (B) An explanation of the rationale for retaining the Chemical(s) of Concern or using the
24 alternative replacement chemical(s), if section 69505.5(a)(3)(B) applies, and one or more
25 selected alternatives retains the Chemical(s) of Concern or uses one or more replacement
26 chemicals.

27 (C) A list of all chemicals known, based on available information, to be in the selected
28 alternative(s) that are Chemicals of Concern, that differ from the chemicals in the Priority
29 Product, or that are present in the selected alternative(s) at a higher concentration than in the
30 Priority Product relative to other chemicals in the Priority Product other than the Chemical(s) of
31 Concern. The following information, to the extent available, must be provided for those
32 chemicals:

33 1. Environmental fate;

34 2. Hazard trait and environmental and toxicological endpoint information that has not
35 already been provided to the Department under this chapter;

36 3. Information about the chemical purity, meaning the relative absence of extraneous
37 matter, and identification of known impurities and additives in the chemical;

38 4. Physicochemical properties; and

39 5. Substance identification information, including all of the following that are applicable:

40 a. Chemical abstract services number;

41 b. Structural formula;

42 c. Molecular weight;

- 1 d. Synonyms;
- 2 e. International Union of Pure and Applied Chemistry name;
- 3 f. European Commission number;
- 4 g. Registry of Toxic Effects of Chemical Substances number;
- 5 h. International Union of Biochemistry and Molecular Biology number;
- 6 i. Japan Ministry of International Trade and Industry number;
- 7 j. Number assigned by the United Nations Experts on the Transport of Dangerous
- 8 Goods;
- 9 k. North America Department of Transportation number;
- 10 l. European Inventory of Existing Commercial Chemical Substances number;
- 11 m. European List of Notified Chemical Substances number;
- 12 n. European Commission Directive 67/548/EEC No Longer Polymers number; and
- 13 o. Other commonly recognized substance identification system numbers.
- 14 (k) Next Steps.
- 15 (1) Work plan. The Preliminary AA Report must include the work plan and proposed
- 16 implementation schedule for completion of the second AA stage required to be prepared under
- 17 section 69505.5(f)(1).
- 18 (A) The work plan and implementation schedule must specify the proposed submission
- 19 date for the Final AA Report and must ensure that the Final AA Report or progress report, if
- 20 applicable, will be submitted to the Department no later than twelve (12) months after the
- 21 Department issues a notice of compliance for the Preliminary AA Report. If the Department
- 22 approves an extended due date under section 69505.9(b)(4)(A), the responsible entity shall
- 23 provide a yearly progress report until the Final AA Report is submitted. The first yearly
- 24 progress report shall be submitted no later than twelve (12) months after the Department
- 25 issues a notice of compliance for the Preliminary AA Report. Each progress report must
- 26 include:
- 27 1. Preparer information specified in subsection (c);
- 28 2. Priority Product information specified in subsection (e);
- 29 3. A summary of achievements since the last progress report;
- 30 4. A summary and discussion of issues that have arisen and their resolutions;
- 31 5. A summary of work that is pending; and
- 32 6. An assessment of whether the milestones in the schedule set forth in the Preliminary
- 33 AA Report or Alternate Process AA Work Plan are anticipated to be completed on time and
- 34 any contingency plans to ensure timely completion.
- 35 (B) The responsible entity may request an extended due date for submittal of the Final
- 36 AA Report. Any requested extension shall not exceed twenty-four (24) months from the date
- 37 the Department issues a notice of compliance for the Preliminary AA Report, unless additional
- 38 time is needed to conduct regulatory safety and/or performance testing on multiple alternatives
- 39 prior to making an AA selection decision, in which case the requested extension shall not
- 40 exceed thirty-six (36) months. The extended due date request must include a detailed
- 41 explanation of why additional time is needed.

1 (2) Implementation of selected alternatives. The Final AA Report must include a
2 detailed plan for implementing any selected alternative(s).

3 (A) The implementation plan must include key milestones and dates for implementing
4 the selected alternative(s), if applicable, and identify steps that will be taken to ensure
5 compliance with applicable federal, state, and/or local laws.

6 (B) The implementation plan may also include the identification of and implementation
7 plan(s) for any regulatory response(s) that the responsible entity wishes to propose that would
8 best limit exposure to, or reduce the level of adverse impacts or adverse waste and end-of-life
9 effects posed by, any Chemical(s) of Concern or replacement Candidate Chemical(s) that will
10 be in the selected alternative(s) or the Chemical(s) of Concern that is/are in the Priority
11 Product if the decision resulting from the AA is to retain the Priority Product.

12
13 NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference:
14 Sections 25252, 25253, and 25257, Health and Safety Code.

15
16 **§ 69505.8. Public Comments on AA Reports.**

17 (a) Public Notice of Opportunity for Comment. Upon receipt of a Final AA Report or an
18 Abridged AA Report, the Department shall post on its website, and send to persons on the
19 electronic mailing list(s) that the Department establishes related to this chapter, a notice
20 regarding the availability for public review and comment of the Final AA Report or Abridged AA
21 Report. The notice shall include the last day for the public to submit written comments to the
22 Department, the method(s) for submitting comments, and a link to the location on the
23 Department's website where a copy of the Final AA Report or Abridged AA Report may be
24 viewed. The last day for submission of public comments shall be no sooner than forty-five (45)
25 days from the date the notice of availability of the Final AA Report or Abridged AA Report is
26 posted on the Department's website or the date the notice is sent to persons on the electronic
27 mailing list(s), whichever is the later date.

28 (b) Department Review of Public Comments. No later than thirty (30) days after the
29 close of the public comment period established under subsection (a), the Department shall
30 review the public comments received and notify the person that submitted the Final AA Report
31 or Abridged AA Report of those issues that the Department determines must be addressed in
32 an AA Report Addendum. The notice shall include the due date by which the person must
33 submit an AA Report Addendum to the Department under subsection (c). In determining the
34 due date for the AA Report Addendum, the Department shall take into consideration the scope
35 and complexity of the issues the Department is requiring the person to address.

36 (c) AA Report Addendum. A person that receives a notice under subsection (b) shall
37 prepare, and submit to the Department by the due date specified under subsection (b), an AA
38 Report Addendum that addresses the issues identified by the Department as requiring further
39 attention. The AA Report Addendum shall also include any revisions to the Final AA Report or
40 Abridged AA Report determined necessary based on consideration of the issues identified by
41 the Department.

42

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

3
4 **§ 69505.9. Department Review and Determinations for AA Reports and Work Plans.**

5 (a) Review Criteria. In reviewing AA Reports and Alternate Process AA Work Plans for
6 compliance with the substantive and administrative requirements of this article, the Department
7 shall consider:

8 (1) Whether the AA Report or Alternate Process AA Work Plan was submitted timely;

9 (2) Whether, and to what extent, the responsible entity considered and addressed all
10 applicable provisions of this article pertaining to the preparation and submittal of an AA Report
11 or Alternate Process AA Work Plan, whichever is applicable;

12 (3) Whether, and to what extent, the responsible entity demonstrated that the
13 conclusions of the AA were based on reliable information, when applicable; and

14 (4) Whether, and to what extent, the responsible entity demonstrated that the
15 conclusions of the AA Report were determined using reliable information.

16 (b) Preliminary AA Reports and Alternate Process AA Work Plans.

17 (1) Within sixty (60) days of receiving a Preliminary AA Report or Alternate Process AA
18 Work Plan, the Department shall review the report or work plan for compliance with this article,
19 and issue a notice of compliance, notice of deficiency, notice of disapproval, or notice of
20 ongoing review.

21 (2) Notice of Deficiency.

22 (A) The Department shall specify in a notice of deficiency the areas of deficiency, the
23 information required to cure the deficiency(ies), and the due date for submitting the necessary
24 information, which may not exceed sixty (60) days from the date the notice of deficiency is
25 issued. The responsible entity shall submit a revised report or work plan, whichever is
26 applicable, by the due date specified, and address the areas of deficiency.

27 (B) Within thirty (30) days of receipt of the additional information requested in the notice
28 of deficiency, the Department shall issue a notice of compliance, a notice of disapproval, or a
29 notice of ongoing review for the report or work plan.

30 (3) Notice of Disapproval. If the revised report or work plan does not fully address the
31 identified areas of deficiency, the Department shall issue a notice of disapproval. The
32 Department shall also issue a notice of disapproval if a revised report or work plan is not
33 submitted by the due date specified under paragraph (2)(A). If the report or work plan is
34 disapproved, the Department shall explain the basis for the disapproval. A disapproved report
35 or work plan is not in compliance with section 69505.1(b).

36 (4) Notice of Compliance. The Department shall specify in a notice of compliance for a
37 Preliminary AA Report or Alternate Process AA Work Plan the due date for submitting the Final
38 AA Report. The Department shall specify a due date twelve (12) months from the date the
39 Department issues the notice of compliance, except that the Department may specify an
40 extended due date for submission of the Final AA Report if it determines based on information
41 in the Preliminary AA Report or Alternate Process AA Work Plan that more time is needed.

1 The Department may also specify an extended due date for submission of the Final AA Report
2 if the responsible entity submits a request under section 69505.7(k)(1)(B).

3 (c) Final AA Reports and Abridged AA Reports.

4 (1) Within sixty (60) days of receiving an AA Report Addendum, the Department shall
5 review the Final AA Report or Abridged AA Report, including the AA Report Addendum, for
6 compliance with this article, and shall issue a notice of compliance, notice of deficiency, notice
7 of disapproval, or notice of ongoing review. If no AA Report Addendum is required under
8 section 69505.8, the Department shall complete its review of the Final AA Report or Abridged
9 AA Report within sixty (60) days of whichever of the following dates is applicable:

10 (A) The close of the public comment period, if no public comments are received; or

11 (B) Thirty (30) days after the close of the public comment period, if the Department
12 determines after reviewing the public comments that there are no issues that need to be
13 addressed in an AA Report Addendum.

14 (2) Notice of Deficiency.

15 (A) The Department shall specify in a notice of deficiency the areas of deficiency, the
16 information required to cure the deficiency(ies), and the due date for submitting the necessary
17 information to complete the Final AA Report or Abridged AA Report, which may not exceed
18 sixty (60) days from the date of the notice of deficiency. The responsible entity shall submit a
19 revised Final AA Report or revised Abridged AA Report by the due date specified, and address
20 all areas of deficiency. The responsible entity may request and the Department may approve,
21 under section 69505.1(c), a one-time extension of not more than ninety (90) days for
22 submission of the revised Final AA Report or revised Abridged AA Report to correct the
23 deficiencies.

24 (B) Within sixty (60) days of receipt of the requested additional information, the
25 Department shall issue a notice of compliance, a second notice of deficiency, or a notice of
26 ongoing review.

27 1. If the Department issues a second notice of deficiency, the Department may grant
28 no more than thirty (30) days for submission of the requested information.

29 2. Within sixty (60) days of receipt of the additional information requested in the second
30 notice of deficiency, the Department shall issue a notice of compliance, a notice of disapproval,
31 or a notice of ongoing review for the Final AA Report or Abridged AA Report.

32 (3) Notice of Disapproval. If the Final AA Report or Abridged AA Report does not fully
33 address the areas of deficiency identified in the second notice of deficiency, the Department
34 shall issue a notice of disapproval. The Department shall also issue a notice of disapproval if a
35 revised Final AA Report or revised Abridged AA Report is not submitted by the due date
36 specified under paragraph (2)(A) or paragraph (2)(B)1., whichever is applicable. If the Final
37 AA Report or Abridged AA Report is disapproved, the Department shall explain the basis for
38 the disapproval. A disapproved Final AA Report or Abridged AA Report is not in compliance
39 with section 69505.1(b).

40 (d) Notice of Ongoing Review. The Department shall specify in a notice of ongoing
41 review the estimated date by which the Department expects to issue a notice of compliance or

1 notice of deficiency, which shall be based on its available resources and the complexity of the
2 document under review.

3 (e) Issuance of Notices. All notices issued by the Department under this section shall
4 be issued to the person who submitted the document, and a copy of the notice shall be sent by
5 the Department to all persons identified in the document under subsections (c)(2) and (c)(3) of
6 section 69505.7.

7
8 NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference:
9 Section 25253, Health and Safety Code.

10

11 **Article 6. Regulatory Responses**

12

13 **§ 69506. Regulatory Response Selection Principles.**

14 (a) Need for Regulatory Response. The Department shall identify and require
15 implementation of one or more regulatory responses for Priority Products and/or selected
16 alternative products when the Department determines such regulatory responses are
17 necessary to protect public health and/or the environment. In selecting regulatory responses,
18 the Department shall seek to maximize the use of alternatives of least concern when such
19 alternatives are functionally acceptable, technically feasible, and economically feasible.

20 (b) Inherent Protection Preference. In selecting regulatory responses, the Department
21 shall give preference to regulatory responses providing the greatest level of inherent
22 protection. For these purposes, "inherent protection" refers to avoidance or reduction of
23 adverse impacts, exposures, and/or adverse waste and end-of-life effects that is achieved
24 through the redesign of a product or process, rather than through administrative or engineering
25 controls designed to limit exposure to, or the release of, a Chemical of Concern or replacement
26 Candidate Chemical in a product.

27 (c) Selection Factors. In selecting regulatory responses, the Department may consider
28 the following factors:

29 (1) Public health and environmental protection.

30 (A) The degree to which, and speed with which, the regulatory response can address
31 the adverse impacts and/or adverse waste and end-of-life effects of the Chemical(s) of
32 Concern or replacement Candidate Chemicals in the selected alternative, or the Chemical(s) of
33 Concern in the Priority Product;

34 (B) The ability of end-users to understand and act upon any regulatory response
35 involving provision of information and/or directions with respect to the Priority Product; and

36 (C) Any adverse ecological impacts of the regulatory response on sensitive resources,
37 or unique or additional burdens that the regulatory response would impose upon sensitive
38 subpopulations.

39 (2) Private economic interests of responsible entities.

40 (A) Existing federal and/or California State regulatory requirements applicable to the
41 Chemical(s) of Concern or replacement Candidate Chemicals in the product;

- 1 (B) The cost to the responsible entity of the regulatory response(s) relative to the cost of
2 other possible responses; and
- 3 (C) The practical capacity of responsible entities to comply with regulatory response(s).
- 4 (3) Government interest in efficiency and cost containment.
- 5 (A) The management and clean-up costs imposed on public agencies by the ongoing
6 sale of the Priority Product or a selected alternative;
- 7 (B) The Department's administrative burden in overseeing implementation of the
8 regulatory response(s); and
- 9 (C) The ease of enforcing the regulatory response(s).

10

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

13

14 **§ 69506.1. Applicability and Determination Process.**

15 (a) Applicability. Except as specified otherwise, this article applies to any product
16 placed into the stream of commerce in California that is:

17 (1) A Priority Product for which an alternative is not selected;

18 (2) An alternative selected under section 69505.6(d);

19 (3) A Priority Product that will remain in commerce in California pending development
20 and distribution of a selected alternative; or

21 (4) A Priority Product for which the Final AA Report or Abridged AA Report is
22 disapproved by the Department under section 69505.9(c)(3).

23 (b) Exceptions. This article does not apply to a Priority Product if the manufacturer
24 submits a Removal or Replacement Confirmation Notification that fully meets the applicable
25 content requirements specified in subsections (b) through (e) of section 69505.2 to the
26 Department prior to the due date for implementing any regulatory response that would
27 otherwise apply to the product.

28 (c) Notice of Proposed Determination. After issuing a notice of compliance or a notice
29 of disapproval for a Final AA Report or an Abridged AA Report, the Department shall issue a
30 notice of the Department's proposed determination that one or more of the regulatory
31 responses specified in this article is/are required, or that no regulatory response is required.
32 The notice shall be issued no later than ninety (90) days after the Department issues the notice
33 of compliance or a notice of disapproval.

34 (d) Public Input. A notice issued under subsection (c) shall be sent to all known
35 responsible entities for the product, and shall be made available on the Department's website,
36 for public review and comment. The proposed regulatory response determination notice shall
37 include the Department's rationale for the proposed regulatory response(s). The Department
38 shall hold one or more public workshop(s) to provide an opportunity for comment on the
39 proposed regulatory response determination. The Department shall send to persons on the
40 electronic mailing list(s) that the Department establishes related to this chapter, and post on its
41 website, a notice regarding the availability of the proposed regulatory response determination.
42 The notice must include:

1 (1) The last day for the public to submit written comments on the proposed regulatory
2 response determination. The last day for submission of public comments shall be no sooner
3 than forty-five (45) days from the date the notice of the availability of the proposed regulatory
4 response determination notice is posted on the Department's website or the date the notice is
5 sent to persons on the electronic mailing list(s) that the Department establishes related to this
6 chapter, whichever is later.

7 (2) The method(s) for submitting comments to the Department.

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

9 (e) Notice of Final Determination. After review and consideration of public comments,
10 the Department shall post on its website and send to known responsible entities the final
11 regulatory response determination notice. The Department may respond to some or all public
12 comments received.

13 (f) Contents of Notices. All proposed and final regulatory response determination
14 notices must include:

15 (1) A description of the required regulatory response(s), or a determination that no
16 regulatory response is required, whichever is applicable;

17 (2) The rationale, information, and information sources supporting the Department's
18 determination(s);

19 (3) The implementation due date(s) for the regulatory response(s), if applicable; and

20 (4) The Department's determination as to whether or not the regulatory response(s)
21 apply(ies) to either or both of the following:

22 (A) Priority Products ordered by a retailer prior to the effective date of the Priority
23 Product listing, and still for sale by the retailer as of the date of the final regulatory response
24 determination notice; and/or

25 (B) Priority Products manufactured after the effective date of the Priority Product listing,
26 but before the date of the final regulatory response determination notice.

27 (g) Implementation Due Date(s). In assigning a due date for implementation of one or
28 more regulatory responses, the Department shall consider the complexity of implementing the
29 regulatory response(s).

30 (h) Finality of Regulatory Response(s). Once a final regulatory response determination
31 notice has been issued, the Department shall not augment or revise the regulatory responses
32 for the affected product, except as provided otherwise in section 69506.2 and article 7.

33
34 NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference:
35 Section 25253, Health and Safety Code.

36
37 **§ 69506.2. Supplemental Information and Regulatory Response Revisions.**

38 (a) Supplemental Information for Selection of Regulatory Response(s). Prior to
39 imposing any regulatory response for a product, the Department may require the responsible
40 entity to obtain or develop, and provide to the Department within a specified time frame, any
41 information supplementary to the AA Report that the Department determines is necessary to
42 select and ensure implementation of one or more regulatory responses.

1 (b) Information-Generation for Revision of Regulatory Response(s).

2 (1) When imposing one or more regulatory responses for a product, the Department
3 may include a requirement that the responsible entity provide information to the Department to
4 fill one or more information gaps identified in the AA Report under section 69505.7(i)(2), if the
5 Department determines this information is necessary to re-evaluate one or more of the other
6 initial regulatory responses.

7 (2) Following receipt of information required to be provided under paragraph (1), the
8 Department may, based on this new information, revise the initial regulatory response(s)
9 imposed for the product in accordance with the procedures set forth in section 69506.1. Any
10 revisions to the initial regulatory responses shall be noticed for public review and comment no
11 later than ninety (90) days after receiving the information required to be provided under
12 paragraph (1).

13 (c) Regulatory Response Revisions for Revised AA Reports. In addition to the
14 circumstances described in subsection (b), the Department may revise the initial regulatory
15 response(s) imposed for a product in response to a revised AA Report submitted by a
16 responsible entity under section 69505.4(e), within ninety (90) days after issuing the notice of
17 compliance or notice of disapproval for the revised AA Report.

18
19 NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference:
20 Section 25253, Health and Safety Code.

21
22 **§ 69506.3. Product Information for Consumers.**

23 (a) Applicability. This section applies to:

24 (1) Priority Products for which an alternative is not selected;

25 (2) Priority Products that continue to be introduced into commerce in California pending
26 development and distribution of an alternative product for longer than twelve (12) months after
27 the Department issues a notice of compliance or a notice of disapproval for the AA Report; and

28 (3) Selected alternative products that retain the Chemical(s) of Concern, and/or contain
29 any replacement Candidate Chemical(s).

30 (b) Required Information. Beginning no later than the date specified by the Department
31 in the final regulatory response determination notice for the product, or when the product is first
32 placed into the stream of commerce in California, whichever is later, and for as long thereafter
33 as the product continues to be placed into the stream of commerce in California, the
34 responsible entity shall ensure that all of the following information is made available to the
35 consumer prior to product purchase:

36 (1) Manufacturer's name and importer's name, and/or the name of any other entity listed
37 on the product label;

38 (2) Brand name(s) and product name(s), and a description of the product;

39 (3) A list of, and common names for, any Chemical(s) of Concern that remain in the
40 product and/or any replacement Candidate Chemical(s) and known hazards traits and/or
41 environmental or toxicological endpoints for those chemicals, based on available information;

1 (4) A statement informing consumers that the product must be disposed of or otherwise
2 managed as a hazardous waste at the end of its useful life, if applicable;

3 (5) Any safe handling and storage procedures and/or other information needed to
4 protect public health or the environment during the useful life of the product, including
5 precautions that consumers may take to prevent or limit exposure to the Chemical(s) of
6 Concern or replacement Candidate Chemical(s), and first aid and accidental release
7 procedures;

8 (6) Identification of any end-of-life management requirements specified by law, and any
9 existing end-of-life management program(s) for the product; and

10 (7) The manufacturer's website address and the importer's website address where the
11 consumer can obtain additional information about the product, the adverse impacts associated
12 with the product as identified in the AA Report for the product, and proper end-of-life disposal
13 or management of the product.

14 (c) Communication to Consumers. The responsible entity shall satisfy subsection (b) by
15 making the required information available to consumers, in easily seen, legible, and
16 understandable formats, by both:

17 (1) Posting the information in a prominent place on the manufacturer's website and the
18 importer's website; and

19 (2) Using one or both of the following means of informing consumers at the point of sale
20 of the information specified in subsection (b):

21 (A) Providing the required information on the product packaging or in accompanying
22 written material that is accessible without breaking the product seal; and/or

23 (B) Posting the information in a prominent place at the point of retail display. For
24 products offered for sale online, the point of retail display is/are the web page(s) on which the
25 product is offered for sale.

26
27 NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference:
28 Section 25253, Health and Safety Code.

29
30 **§ 69506.4. Use Restrictions on Chemicals and Consumer Products.**

31 The Department may impose restrictions on the use of one or more Chemicals of Concern
32 or replacement Candidate Chemicals in a selected alternative, or Chemicals of Concern in a
33 Priority Product for which an alternative is not selected, or restrictions on the use of the product
34 itself, that the Department determines are necessary to reduce the potential for the product to
35 contribute to or cause adverse impacts and/or adverse waste and end-of-life effects. Use
36 restrictions may include one or more of the following:

37 (a) Restrictions on the amount or concentration of the Chemical(s) of Concern or
38 replacement Candidate Chemical(s) permitted in a product;

39 (b) Restrictions on the settings in which a product may be sold or used;

40 (c) Restrictions regarding the form in which a product is sold;

41 (d) Restrictions on who may purchase and/or use a product;

42 (e) Requirements for training of product purchasers and/or users; and/or

1 (f) Any other use restriction that reduces the amount of any Chemical(s) of Concern or
2 replacement Candidate Chemical(s) in the product, or reduces the potential for the product to
3 contribute to or cause an exposure to the Chemical(s) of Concern or replacement Candidate
4 Chemical(s) in the product.

5
6 NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference:
7 Section 25253, Health and Safety Code.

8
9 **§ 69506.5. Product Sales Prohibition.**

10 (a) Existence of Safer Alternative(s). Except as provided in subsection (c), the
11 Department may require a responsible entity to cease placing into the stream of commerce in
12 California a selected alternative product that contains one or more Chemical(s) of Concern or
13 replacement Candidate Chemical(s), or a Priority Product for which an alternative is not
14 selected, if the Department determines and provides notice to the responsible entity under
15 section 69506.1 that a safer alternative exists that does not contain the Chemical(s) of
16 Concern or replacement Candidate Chemical(s) and that is functionally acceptable, technically
17 feasible, and economically feasible. In making this determination, the Department shall
18 consider the potential adverse impacts and potential exposure pathways associated with the
19 alternative product or Priority Product, as applicable.

20 (b) No Existing Safer Alternatives.

21 (1) Except as provided in subsection (c), the Department may issue a notice, under
22 section 69506.1, that a product containing the Chemical(s) of Concern or replacement
23 Candidate Chemical(s) may no longer be placed into the stream of commerce in California,
24 notwithstanding the fact that there are no currently identified safer alternatives that are
25 functionally acceptable, technically feasible, and economically feasible.

26 (2) Prior to issuing a notice under paragraph (1), the Department shall request the
27 responsible entity to provide, within sixty (60) days, documentation that demonstrates to the
28 Department's satisfaction both of the following:

29 (A) The overall beneficial public health and/or environmental impacts and/or social utility
30 of the product significantly outweigh the overall adverse impacts of the product; and

31 (B) Administrative and/or engineering restrictions on the nature and/or use of the
32 product will adequately protect public health and the environment.

33 (3) The Department may issue a notice under paragraph (1) if the responsible entity
34 does not provide the requested documentation with sixty (60) days, or if the submitted
35 documentation does not make the required demonstrations to the Department's satisfaction.

36 (c) Exceptions. A responsible entity that receives a notice under subsection (a) or (b) is
37 not subject to the requirements of subsection (a) or (b) if all of the following requirements are
38 met:

39 (1) Within sixty (60) days after the notice is issued by the Department, the responsible
40 entity notifies the Department in writing of its intent to submit a revised Final AA Report that
41 selects an alternative that does not contain the Chemical(s) of Concern or the replacement
42 Candidate Chemical(s);

1 (2) The Department receives, by the date specified by the Department in the final
2 regulatory response determination notice issued under section 69506.1, a revised Final AA
3 Report that selects an alternative that does not contain the Chemical(s) of Concern or the
4 replacement Candidate Chemical(s) and that complies with section 69505.7; and

5 (3) The product containing the Chemical(s) of Concern or the replacement Candidate
6 Chemical(s) is no longer placed into the stream of commerce in California by the responsible
7 entity, directly or indirectly, by the date specified by the Department in the final regulatory
8 response determination notice issued under section 69506.1.

9 (d) Extensions.

10 (1) A responsible entity may request an extension to the due date for the revised AA
11 Report to be submitted under subsection (c), under the procedures specified in section
12 69505.1(c) or section 69505.7(k)(1)(B).

13 (2) If the Department grants an extension, the responsible entity shall satisfy one of the
14 following requirements by the due date specified in the extension approval:

15 (A) A revised Final AA Report meeting the requirements of subsection (c)(2) shall be
16 submitted to the Department; or

17 (B) The product shall cease to be placed into the stream of commerce in California by
18 the responsible entity, directly or indirectly.

19
20 NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference:
21 Section 25253, Health and Safety Code.

22 23 **§ 69506.6. Engineered Safety Measures or Administrative Controls**

24 (a) Requirement for Controls. The Department may require a manufacturer to engineer
25 safety measures that integrally contain or control access to, and/or implement administrative
26 controls that limit exposure to, the Chemical(s) of Concern or replacement Candidate
27 Chemical(s) in a selected alternative, or the Chemical(s) of Concern in a Priority Product for
28 which an alternative is not selected, to reduce the potential for adverse impacts.

29 (b) Criteria. Engineering or administrative controls may be required if one or more of
30 the following applies:

31 (1) Reliable information indicates the presence of the Chemical(s) of Concern or
32 replacement Candidate Chemical(s), or its/their degradate, metabolite, or reaction products, in
33 a particular subpopulation that has one or more routes of exposure to the chemical(s);

34 (2) Reliable information indicates an elevated level of the Chemical(s) of Concern or
35 replacement Candidate Chemical(s) in an indoor building or other enclosed environment;
36 and/or

37 (3) Improper product handling increases the potential for release of, or exposure to, the
38 Chemical(s) of Concern or replacement Candidate Chemical(s).

39
40 NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference:
41 Section 25253, Health and Safety Code.

§ 69506.7. End-of-Life Management Requirements.

(a) Applicability. A manufacturer of a selected alternative, or a Priority Product for which an alternative is not selected, that is sold or otherwise made available to consumers as a finished product and is required to be managed as a hazardous waste in California at the end of its useful life, shall comply with the requirements of subsection (c) except as otherwise provided under subsections (d) and (e).

(b) Manufacturer Collaboration Option. A manufacturer may individually fulfill the requirements of this section, or may join with other manufacturers to form a non-profit third-party product stewardship organization, funded by participating manufacturers, to fulfill the requirements of this section on behalf of the participating manufacturers.

(c) End-of-Life Program Requirements. No later than the date specified by the Department in the final regulatory response determination notice for the product, or no later than the date the product is first placed into the stream of commerce in California, whichever is later, the manufacturer shall establish and maintain an end-of-life management program for the product. The program must comply with all of the following requirements:

(1) A comprehensive product stewardship plan must be developed and maintained, after the plan is submitted to and approved by the Department. If the Department disapproves the plan, it shall notify the manufacturer in writing, identify what is necessary to correct deficiencies in the plan, and specify a due date for submission of a revised plan. If the plan is not resubmitted by the due date or does not address all of the deficiencies, the plan will be considered to be non-compliant with this section.

(2) Each product stewardship plan must include:

(A) A list of, and contact information for, participating manufacturers, importers, and other participating persons.

(B) The scope of products and brands to be covered by the plan.

(C) The roles and responsibilities for manufacturers, importers, assemblers, retailers, consumers, and government throughout the life cycle of the product, and identification of retailers and/or assemblers who have agreed to participate in the program.

(D) Identification and description of collection systems that will be used.

(E) End-of-life management information that describes the steps that will be taken to ensure compliance with all applicable federal and California State and local laws, and that addresses any adverse multimedia impacts.

(F) Identification of anticipated resources needed to implement and sustain the plan, which must ensure that the end-of-life management program is maintained for sufficient time to be available at the end-of-life for the last covered product, and all previous covered products, that the manufacturer places into the stream of commerce in California. An estimate of the annual and total long-term program costs shall also be identified in the plan, along with the information, assumptions, calculations, and any models used to develop the cost estimate.

(G) The funding mechanism to cover, but not exceed, the costs identified in subparagraph (F). This requirement shall be satisfied by whichever of the following means is applicable:

- 1 1. If the end-of-life management program will be administered by a non-profit third-
2 party product stewardship organization under subsection (b), the plan shall describe how the
3 organization will collect operating revenues in an amount necessary to cover, but not exceed,
4 the costs identified in subparagraph (F). This shall include the method and calculations used
5 to determine how much each participant will contribute.
- 6 2. If an individual manufacturer is administering and funding its own end-of-life
7 management program, the manufacturer shall provide a financial guarantee that will ensure
8 that adequate funding is available to cover the costs identified in subparagraph (F).
- 9 (H) Program performance goals, which shall be quantitative to the extent feasible, for:
- 10 1. Increasing the capture rate of covered products at the end-of-life; and
11 2. Increasing recyclability, and recycling rate.
- 12 (I) A description of how each program goal will be achieved.
- 13 (J) Public education, outreach, and communications plans.
- 14 (K) A description of public and stakeholder consultation activities during preparation of
15 the plan, which shall include, at a minimum, provision of thirty (30) days for the public to
16 comment on the proposed product stewardship plan through the manufacturer's website. The
17 manufacturer shall transmit to the Department all comments received concurrent with submittal
18 of the plan.
- 19 (L) A description of public and stakeholder consultation activities for review and
20 updating of the plan, which shall occur no less frequently than annually.
- 21 (M) Reporting and evaluation procedures.
- 22 (3) The product stewardship program and plan for collecting and, if applicable, recycling
23 the product shall be developed in consultation with California retailers and other
24 owners/operators of prospective collection sites.
- 25 (4) The manufacturer shall provide its product stewardship plan to the Department for
26 review and approval, post a copy of the product stewardship plan on its own website, and
27 provide that link to the Department for posting on the Department's website.
- 28 (5) The manufacturer of a product subject to this section shall provide an annual report
29 to the Department. The annual report is due one (1) year from the date the end-of-life
30 management program is required to be implemented, and annually thereafter. The report must
31 include, by total tonnage:
- 32 (A) The quantity of products placed into the stream of commerce in California over the
33 previous one-year period; and
- 34 (B) The quantity of products recovered over the same one-year period.
- 35 (d) Alternative End-of-Life Programs. A manufacturer subject to this section may
36 request the Department's approval to substitute an alternative end-of-life management
37 program that achieves, to the maximum extent feasible, the same results as the program
38 required by this section. If a manufacturer's alternative end-of-life management program relies
39 on other persons, the manufacturer shall provide written substantiation of their agreement to
40 participate at a level necessary to insure successful implementation of the plan as proposed.
41 A manufacturer may not substitute an alternative end-of-life management program for the

1 program specified in this section unless it receives advanced written approval from the
2 Department.

3 (e) Exemption from End-of-Life Program Requirements.

4 (1) A manufacturer subject to this section may request an exemption from the
5 requirement to provide an end-of-life management program by demonstrating to the
6 Department's satisfaction in the AA Report that an end-of-life management program cannot
7 feasibly be implemented for the product.

8 (2) A manufacturer subject to this section is not exempt from this section until it receives
9 written concurrence from the Department that an end-of-life management program cannot
10 feasibly be implemented for the product.

11
12 NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference:
13 Section 25253, Health and Safety Code.

14

15 **§ 69506.8. Advancement of Green Chemistry and Green Engineering.**

16 When a manufacturer concludes that no safer alternative to its Priority Product is
17 functionally acceptable, technically feasible, and economically feasible, or a manufacturer
18 selects an alternative that reduces but does not eliminate the use of Candidate Chemicals in
19 the product, the Department may require the manufacturer to initiate a research and
20 development project or fund a challenge grant pertinent to the Priority Product that uses green
21 chemistry and/or green engineering principles to do one or more of the following:

22 (a) Design a safer alternative to the Priority Product;

23 (b) Improve the performance of a safer alternative to the Priority Product;

24 (c) Decrease the cost of the safer alternative to the Priority Product; and/or

25 (d) Increase the market penetration of a safer alternative to the Priority Product.

26

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

29

30 **§ 69506.9. Exemption from Regulatory Response Requirements.**

31 (a) Exemption Requests. A product is exempt from sections 69506.3 through 69506.8,
32 if the responsible entity requests, and the Department grants, an exemption. A responsible
33 entity seeking an exemption shall submit an exemption request to the Department no later than
34 sixty (60) days after the Department issues a final regulatory response determination notice for
35 the product.

36 (b) Contents of Requests. An exemption request submitted under subsection (a) must
37 include:

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

39 (2) The name of, and contact information for, the responsible entity(ies) on whose
40 behalf the exemption request is being submitted;

41 (3) If different from paragraphs (1) and (2), the name of, and contact information for, the
42 manufacturer(s) and importer(s) of the product;

1 (4) The name of, and contact information for, other responsible entities for the product,
2 to the extent known to the person submitting the exemption request;

3 (5) Information identifying and describing the product, and the brand name(s) and
4 product name(s) under which the product is placed into the stream of commerce in California,
5 and, if the product is a component of one or more assembled products, a description of the
6 known product(s) in which the component is used; and

7 (6) Information that demonstrates to the Department's satisfaction that one or both of
8 the following applies:

9 (A) The required or proposed regulatory response conflicts with one or more
10 requirements of another California State or federal regulatory program or applicable treaties or
11 international agreements with the force of domestic law in such a way that the responsible
12 entity cannot reasonably be expected to comply with both requirements; and/or

13 (B) The required or proposed regulatory response substantially duplicates one or more
14 requirements of another California State or federal regulatory program or applicable treaties or
15 international agreements with the force of domestic law without conferring additional public
16 health or environmental protection benefits.

17 (c) Departmental Notice. Within sixty (60) days of receiving an exemption request, the
18 Department shall issue a notice to the person who submitted the request granting or denying
19 the exemption request. The Department shall send a copy of the notice to known responsible
20 entities for the product.

21 (d) Actions Following Exemption Denial. If the exemption request or the Department's
22 granting of the exemption is based solely on the criteria specified in subsection (b)(6)(A), the
23 Department may require implementation of a modified regulatory response that resolves the
24 conflict that is the basis for the exemption.

25 (e) Rescission of Exemption. The Department shall rescind an exemption granted
26 under this section if the Department determines that the facts and/or assumptions that the
27 Department relied upon in granting the exemption were not, or are no longer, valid. If the
28 Department rescinds an exemption, the Department shall provide notice to the person who
29 submitted the exemption request and known responsible entities for the product.

30 (f) Contents of Notices. The Department shall include in all notices granting, denying,
31 or rescinding an exemption under this section a statement of basis for its decision and a new
32 due date for compliance, if applicable.

33
34 NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference:
35 Sections 25253 and 25257.1, Health and Safety Code.

36
37 **§ 69506.10. Regulatory Response Report and Notifications.**

38 (a) Notification to Supply Chain. A responsible entity subject to a regulatory response
39 other than one imposed under sections 69506.2 and 69506.8 shall ensure that a notification is
40 sent to all persons in California, other than the final purchaser or lessee, to whom the
41 responsible entity directly sells the product, and any other person other than the final
42 purchaser or lessee to whom the responsible entity directly sells the product if it is reasonably

1 foreseeable that the product will be placed into the stream of commerce in California, informing
2 those persons of the applicability of the regulatory response to the product. The notification
3 shall be sent, with a copy sent to the Department, no later than thirty (30) days after receiving
4 a final regulatory response determination notice under section 69506.1.

5 (b) Contents of Notifications. The notification required under subsection (a) shall
6 include:

7 (1) The name of, and contact information for, the person providing the notification;

8 (2) The name of, and contact information for, the responsible entity(ies) on whose
9 behalf the notification is being provided;

10 (3) If different from paragraphs (1) and (2), the name of, and contact information for, the
11 manufacturer(s) and importer(s) of the product;

12 (4) Information identifying and describing the original Priority Product and the selected
13 alternative, the brand name(s) and product name(s) under which the product is placed into the
14 stream of commerce in California, the name(s) of any persons identified as the manufacturer,
15 importer, and/or distributor on the product label, and, if the product is a component of one or
16 more assembled products, a description of the known product(s) in which the component is
17 used; and

18 (5) A description of the required regulatory response(s) and the due date for
19 implementing the regulatory response(s).

20 (c) Notifications to the Department. The responsible entity shall notify the Department
21 upon completing implementation of the required regulatory response(s) and, if applicable, upon
22 completing development and introduction into the California marketplace of the selected
23 alternative(s). The notification must include information describing how the regulatory
24 response(s) was/were implemented. If requested by the Department, the responsible entity
25 shall provide periodic implementation status reports regarding the selected regulatory
26 response(s) and/or the development and introduction into the California marketplace of the
27 selected alternative(s). The information provided to the Department under this subsection
28 shall also be posted on the website of the responsible entity.

29 (d) Regulatory Response Summary.

30 (1) The Department shall prepare and post on its website, and update at least annually,
31 a Regulatory Response Summary that identifies the regulatory response(s) for each selected
32 alternative to a Priority Product, or for the Priority Product, whichever is applicable. The
33 Regulatory Response Summary must contain all of the following for which information is
34 available:

35 (A) The name of, and contact information for, the manufacturer(s) and importer(s);

36 (B) The names of, and contact information for, other known responsible entities;

37 (C) Information identifying and describing the original Priority Product and the selected
38 alternative(s), if any, the brand name(s) and product name(s) under which the product is
39 placed into the stream of commerce in California, the name(s) of any persons identified as the
40 manufacturer, importer, and/or distributor on the product label, and, if the product is a
41 component of one or more assembled products, a description of the known product(s) in which
42 the component is used;

1 (D) The due date and actual date for completing development and introduction into the
2 California marketplace of the selected alternative(s), if any;

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

4 (F) The applicable section(s) in this article specifying the regulatory response(s);

5 (G) The implementation due date(s), and the actual implementation date(s), for the
6 regulatory response(s); and

7 (H) Other information provided to the Department under subsections (a) through (c).

8 (2) The Department shall also include in the Regulatory Response Summary the
9 information specified in paragraphs (1)(A) through (1)(D) for each exemption granted by the
10 Department under section 69506.9.

11
12 NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference:
13 Sections 25253 and 25257, Health and Safety Code.

14 15 **Article 7. Dispute Resolution Processes**

16 17 **§ 69507. Dispute Resolution.**

18 (a) Applicability. This article applies to any responsible entity that wishes to dispute a
19 decision made by the Department under this chapter that applies to the responsible entity,
20 except as otherwise provided in subsection (c).

21 (b) Exhaustion of Administrative Remedies. The procedures set out in this article are
22 required for resolving disputes arising under this chapter. If the responsible entity fails to
23 follow the procedures specified in this article for disputes subject to this article, it waives its
24 right to further contest the disputed issue.

25 (c) Scope. Notwithstanding any other provision of this chapter, a decision made by the
26 Department under article 2, 4, or 9 is not subject to dispute resolution under this article.

27 (d) Automatic Stay. A requirement imposed by the Department under this chapter on a
28 responsible entity, and any posting concerning the requirement on the Failure to Comply list, is
29 stayed during the pendency of an administrative dispute concerning the requirement.

30
31 NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code.
32 Reference: Sections 25252, 25253, and 25257.1, Health and Safety Code.

33 34 **§ 69507.1. Informal Dispute Resolution Procedures.**

35 (a) Request for Review. For a dispute regarding a decision made by the Department
36 under the provisions of this chapter other than article 6, a responsible entity may, within thirty
37 (30) days following the mailing of the notice or the website posting of the Department's
38 decision that is the basis of the dispute, whichever is later, request that the Department
39 informally resolve the dispute. The Department shall provide the responsible entity with an
40 opportunity to resolve the dispute informally within thirty (30) days of receiving the request for
41 dispute resolution. If a request for informal dispute resolution is not received within thirty (30)

1 days of the notice or website posting of the Department's decision, the Department's decision
2 is final and is not eligible for any dispute resolution procedures under this article.

3 (b) Administrative Appeal. If the responsible entity disagrees with the Department's
4 decision following completion of the informal dispute resolution process, the responsible entity
5 may appeal to the Director of the Department under section 69507.2.

6
7 NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code.
8 Reference: Sections 25252, 25253, and 25257.1, Health and Safety Code.

9
10 **§ 69507.2. Appeal to the Director.**

11 (a) Contents of Appeals. A responsible entity appealing the Department's decision
12 following completion of the informal dispute resolution process shall submit information stating
13 the basis for seeking further review, and the reasons why the decision does not comply with
14 this chapter or is otherwise unreasonable. The responsible entity shall also provide:

- 15 (1) The original statement of dispute;
16 (2) Supporting information; and
17 (3) Copies of responses prepared by the Department.

18 (b) Deadline for Filing an Appeal. A responsible entity appealing a Department decision
19 shall file the appeal with the Department's Director within thirty (30) days after completion of
20 the informal dispute resolution process under section 69507.1.

21 (c) Decision on Appeal. The Director or designee shall issue a decision granting or
22 denying the relief sought, in whole or in part, or a notice of ongoing review, within sixty (60)
23 days after receipt of the request under this section. If the relief sought is denied, the decision
24 by the Department must:

- 25 (1) Contain a short and plain description of the basis for denial of the request for further
26 administrative review; and
27 (2) Specify the date by which the responsible entity must comply with the requirements
28 of this chapter that were in dispute.

29 (d) Finality of Decision. A decision issued under subsection (c) is the Department's final
30 decision and is not subject to additional administrative dispute resolution.

31 (e) Notice of Ongoing Review. The Department shall specify in a notice of ongoing
32 review the estimated date by which the Department expects to issue a decision granting or
33 denying the relief sought. The Department shall take into account its available resources and
34 the complexity of the issues raised in the appeal in estimating the date for issuance of the final
35 decision.

36
37 NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code.
38 Reference: Sections 25252, 25253, and 25257.1, Health and Safety Code.

39
40 **§ 69507.3. Formal Dispute Resolution Procedures.**

1 For all disputes regarding a decision made by the Department under article 6, the
2 procedures specified in sections 69507.4 through 69507.6 shall apply in lieu of the procedures
3 set forth in sections 69507.1 and 60507.2.

4
5 NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference:
6 Sections 25253 and 25257.1, Health and Safety Code.

7
8 **§ 69507.4. Time Lines for Requests for Review.**

9 Within thirty (30) days of a responsible entity receiving a final regulatory response
10 determination notice from the Department under article 6, the responsible entity may submit a
11 Request for Review to the Department, requesting review of such determination. If a Request
12 for Review is not filed within this time period, the Department's determination is final and is not
13 eligible for any administrative dispute resolution procedures under this article.

14
15 NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference:
16 Sections 25253 and 25257.1, Health and Safety Code.

17
18 **§ 69507.5. Contents of Requests for Review.**

19 A Request for Review filed under section 69507.4 must include a statement of the reasons
20 supporting the Request for Review, and, as applicable, a showing that the determination is
21 based on:

- 22 (a) Erroneous facts, assumptions, approaches, or conclusions of law; and/or
23 (b) A policy judgment that the Department should, in its discretion, reconsider.

24
25 NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference:
26 Sections 25253 and 25257.1, Health and Safety Code.

27
28 **§ 69507.6. Department Procedures for Requests for Review.**

29 (a) Decision Time Frame. Within sixty (60) days following the filing of a Request for
30 Review under section 69507.4, the Department shall issue an order either granting or denying
31 the Request for Review, or a notice of ongoing review.

32 (b) Finality of Decision. An order denying review shall constitute the Department's final
33 decision and shall not be subject to additional administrative dispute resolution. The decision
34 shall be effective on the date of the order. An order denying review must:

35 (1) Specify the date by which the responsible entity must comply with the requirements
36 of this chapter that were the subject of the Request for Review; and

37 (2) Contain a short and plain description of the basis for the denial of further
38 administrative review.

39 (c) Briefing Schedule. An order granting review must specify a schedule for briefing of
40 the issues by the responsible entity and the Department.

1 (d) Merits Decision. The Department shall issue an order specifying its decision on the
2 merits of the Request for Review, or a notice of ongoing review, within 180 days from the date
3 it grants the Request for Review.

4 (1) If the final order upholds the Department's decision under this chapter, the order is
5 the Department's final decision and is not eligible for additional administrative dispute
6 resolution. An order upholding the Department's original decision must specify the date by
7 which the responsible entity must comply with the applicable requirements of this chapter.

8 (2) If the final order grants the relief sought by the responsible entity, in whole or in part,
9 the order must remand the decision that is the subject of the Request for Review to the
10 responsible program within the Department for re-evaluation by a specified date. The date for
11 completion of the re-evaluation must be no more than ninety (90) days from the date of the
12 order. The order may also provide guidance or criteria for the re-evaluation.

13 (e) Notice of Ongoing Review. The Department shall specify in a notice of ongoing
14 review the estimated date by which the Department expects to issue an order under
15 subsection (a) or (d), whichever is applicable. The Department shall take into account its
16 available resources and the complexity of the issues raised in the Request for Review in
17 estimating the date for issuance of the order.

18 (f) Recusal of Staff. No Department staff that participated in the decision that is the
19 subject of the Request for Review filed under section 69507.4 may participate in decision-
20 making or review of decisions made under this section.

21 (g) Limits on Intra-Departmental Communications. No Department staff participating in
22 decision-making or review of decisions made under this section may have communications
23 about the Request for Review with the Department staff that participated in the decision that is
24 the subject of the Request for Review filed under section 69507.4 unless the Department
25 simultaneously communicates with the responsible entity or its representative regarding the
26 issues under discussion with Department staff.

27
28 NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference:
29 Sections 25253 and 25257.1, Health and Safety Code.

30 31 **Article 8. Audits**

32 33 **§ 69508. Audit of Materials Submitted to the Department and Regulatory Responses.**

34 (a) Audits. The Department may audit any information compiled, and/or submitted to
35 the Department, under this chapter. Information the Department may audit includes, but is not
36 limited to, AAs, AA Reports, information related to notifications submitted under this chapter,
37 and implementation of regulatory responses.

38 (b) Scope. The scope of any audit may include, but is not limited to, an examination of
39 one or more of the following:

40 (1) Compliance with article 5 requirements;

41 (2) Information quality and adequacy of analysis;

42 (3) Implementation of selected alternatives, if applicable; and/or

- 1 (4) Compliance with the regulatory response(s) imposed under article 6, if any.
- 2 (c) Notification of Audit Findings. Upon completion of an audit, the Department shall
- 3 provide notice to the responsible entity(ies) of the audit findings and the process to dispute
- 4 audit findings.

5

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

7 Article 8 of Division 4.5 of Chapter 20 and Section 25253, Health and Safety Code.

8

9 **Article 9. Trade Secret Protection**

10

11 **§ 69509. Assertion of a Claim of Trade Secret Protection.**

- 12 (a) Substantiation Requirements. A person who asserts a claim of trade secret
- 13 protection with respect to information submitted to the Department under this chapter will
- 14 receive a written request from the Department to furnish the Department with all of the
- 15 following supporting information:
- 16 (1) The identity of the person asserting the claim;
- 17 (2) A brief description of the nature of the information for which trade secret protection is
- 18 being claimed;
- 19 (3) The extent to which the information is known by employees or others involved with
- 20 the facility or business of the person, and whether or not those individuals are bound by non-
- 21 disclosure agreements;
- 22 (4) The extent to which the information is known outside of the facility or business of the
- 23 person, and whether or not individuals with such knowledge are bound by non-disclosure
- 24 agreements;
- 25 (5) The measures taken to restrict access to and safeguard the information, and
- 26 whether or not the person plans to continue utilizing such measures;
- 27 (6) The estimated value of the information to the person and the person's competitors;
- 28 (7) The estimated amount of effort and/or money expended by the person in developing
- 29 the information;
- 30 (8) The estimated ease or difficulty with which the information can be properly acquired
- 31 or duplicated by others, including for any chemical claimed as trade secret, an explanation of
- 32 why the chemical identity is not readily discoverable through reverse engineering;
- 33 (9) Copies of, or references to, any pertinent trade secret or other confidentiality
- 34 determinations previously made by the Department or other public agencies;
- 35 (10) A description of the nature and extent of harm that could be caused if the information
- 36 were made public, including an explanation of the causal relationship between disclosure and
- 37 the harmful effects claimed;
- 38 (11) The signature of the person's general counsel or other executive with knowledge of
- 39 the preparation of the substantiating information, certifying as required by section 69501.3 and
- 40 based upon the knowledge and belief of the signatory that:
- 41 (A) The substantiating information is true, accurate, and complete;

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

3 (C) There is a reasonable basis to assert trade secret protection for the information so
4 claimed; and

5 (12) Contact information for the individual to be contacted if any of the claimed
6 information is requested to be disclosed under the California Public Records Act (commencing
7 with Government Code section 6250).

8 (b) Streamlining of Submittal. The substantiating information required under
9 subsections (a)(1) through (a)(10) shall be provided for each individual trade secret claim,
10 although such information may be incorporated by reference to apply to multiple claims, as
11 appropriate. The requirements of subsections (a)(11) and (a)(12) may be met once for all
12 claims submitted at one time.

13 (c) Documentation. A person who asserts a claim of trade secret protection shall also
14 at the time of submission provide the Department with both of the following:

15 (1) Except where expressly prohibited by federal law, or by a nondisclosure agreement
16 whose relevant text is provided to the Department, a complete copy of the documentation
17 being submitted, which shall include the information for which trade secret protection is
18 claimed; and

19 (2) A redacted copy of the documentation being submitted, which shall exclude the
20 information for which trade secret protection is claimed.

21 (d) Marking of Documents. A person who asserts a claim of trade secret protection
22 shall make such assertion at the time of submission by marking the words "Trade Secret"
23 conspicuously on each page containing the information for which trade secret protection is
24 claimed. If no claim of trade secret protection is made at the time of submission, the
25 Department may make the submitted information available in full to the public without further
26 notice.

27 (e) Provision of Separate Copies. If the documentation supporting a claim of trade
28 secret protection contains information that is itself subject to a claim of trade secret protection,
29 such supporting documentation shall be separately supplied in both complete and redacted
30 form as required by subsection (c), and marked as required by subsection (d), but shall not
31 itself require further supporting documentation. Such documentation shall be separate from
32 documentation used to comply with other provisions of this chapter.

33 (f) Hazard Trait Submissions. Except as specified in subsection (g), trade secret
34 protection may not be claimed for any hazard trait submission or for any chemical identity
35 information associated with a hazard trait submission.

36 (g) Chemical Identity Masking When a Patent is Pending.

37 (1) The precise identity of a chemical that is the subject of a hazard trait submission
38 may be temporarily masked only if that chemical is an alternative considered or proposed in an
39 Alternatives Analysis, and a patent application is pending for the chemical or its contemplated
40 use in the product. Such masking shall be authorized only until the information subject to the
41 trade secret claim is made public through any means, including through publication of the
42 patent application, a foreign counterpart, or an issued patent. The person claiming the trade

1 secret shall notify the Department in writing within thirty (30) days after the information is made
2 public.

3 (2) Any person temporarily masking the precise identity of a chemical under paragraph
4 (1) shall provide the Department with a non-confidential description of the nature of the
5 chemical that is as specific as possible, consistent with the claim of trade secret protection.
6

7 NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code.
8 Reference: Sections 25252, 25253, and 25257, Health and Safety Code.
9

10 **§ 69509.1. Department Review of Claims of Trade Secret Protection.**

11 (a) Review of Support for Trade Secret Designation. Upon receipt of information
12 submitted under this chapter that contains information identified as being subject to trade
13 secret protection, or at any time thereafter, the Department may review the trade secret claim
14 and supporting information for compliance with the requirements of this article.

15 (b) Additional Information Requirements.

16 (1) If the Department determines that information provided in support of a request for
17 trade secret protection is incomplete or insufficiently responsive to permit a trade secrecy
18 determination, the Department shall:

19 (A) Provide notice to the submitter of the Department's finding of insufficiency, and the
20 basis therefor;

21 (B) Identify the specific area(s) for which additional information is needed; and

22 (C) Indicate the date by which the submitter must provide the requested information.

23 (2) If the submitter fails to provide the information within the timeframe specified, the
24 Department shall provide notice to the submitter by certified mail that the claim is out of
25 compliance with this article, and that the information claimed to be trade secret will be
26 considered a public record subject to disclosure by the Department thirty (30) days after such
27 notice is mailed. During this 30-day period, the submitter may seek judicial review by filing an
28 action for a preliminary injunction and/or declaratory relief.

29 (c) Notice to Submitter. If the Department determines that information provided in
30 support of a request for trade secret protection does not meet the substantive criteria for trade
31 secret designation, the Department shall provide notice to the submitter by certified mail of its
32 determination and that the information claimed to be trade secret will be considered a public
33 record subject to disclosure by the Department thirty (30) days after such notice is mailed.
34 During this 30-day period, the submitter may seek judicial review by filing an action for a
35 preliminary injunction and/or declaratory relief.

36 (d) Judicial Review. If a person asserting a claim of trade secret protection initiates an
37 action for a preliminary injunction and/or declaratory relief under subsection (b)(2) or (c), the
38 Department may not publicly release or disclose the information that is the subject of the claim
39 of trade secret protection until resolution of any court challenge, including any appeals.
40

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

1

2 **Article 10. Severability**

3

4 **§ 69510. Severability.**

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

9

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

11 Reference: Sections 25252 and 25253, Health and Safety Code.

12

13 **Article 11. [Reserved]**

14

15 **§§ 69511 -- 69599. [Reserved]**