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Governor

TITLE 22, CALIFORNIA CODE OF REGULATIONS

45-DAY PUBLIC NOTICE AND COMMENT PERIOD

SAFER CONSUMER PRODUCTS: CANDIDATE CHEMICAL LIST AMENDMENT

Department Reference Number: R-2014-02

OAL Notice File Number: Z-2015-0922-08

NOTICE IS HEREBY GIVEN that the Department of Toxic Substances Control (DTSC) proposes to amend California Code of Regulations, title 22, division 4.5, sections 69502.2(a)(1)(C), 69502.2(a)(1)(F), and 69502.2(a)(1)(G) of chapter 55. This proposed amendment pertains to identification of Candidate Chemicals under the Safer Consumer Products regulations, approved by the Office of Administrative Law (OAL) and filed with the Secretary of State on August 28, 2013 (effective date: 10/01/2013; OAL reference number: Z-2012-0717-04).

PUBLIC HEARING

DTSC will hold a public hearing on the proposed regulation on Monday, November 16th at the Cal/EPA Building, 2nd Floor, 1001 "I" Street, Sacramento in the Klamath Training Room, at which time any person(s) may present statements or arguments, orally or in writing, relevant to this proposal described in the Informative Digest. The public hearing will convene at 1:00 p.m. PST and will remain open until 3:00 p.m. PST or until no attendees present testimony, whichever occurs first.

Representatives of DTSC will preside at the hearing. DTSC requests persons who wish to speak to please register before the hearing. Pre-hearing registration is conducted at the location of the hearing from 12:30 p.m. PST until the hearing commences. Registered persons will be heard in the order of their registration. Anyone else wishing to speak at the hearing will have an opportunity after all registered persons have been heard.

All visitors are required to sign in prior to attending any meeting at the Visitor and Environmental Services Center located just inside and to the left of the building's public entrance. Please allow adequate time to sign in and receive a visitor badge before the public hearing begins.

NOTICE PERTAINING TO ACCESSIBILITY & REASONABLE ACCOMMODATION

All documents related to this regulation can be made available in alternate format (*i.e.* Braille, large print, etc.) or in another language, as requested, in accordance with State and Federal law. Further, to ensure the public has equal access to all available services and information, DTSC will provide disability related reasonable accommodations and/or translator/interpreter needs, upon request. Please contact the staff person below as soon as possible, but no later than 10 business days prior to the scheduled hearing for assistance:

Ms. Lisa Quagliaroli
Safer Products and Workplaces Program
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806
Email: Lisa.quagliaroli@dtsc.ca.gov
Phone number: (916) 445-3077
TTY/TDD Speech-to-Speech users may dial 711 for the California Relay Service

WRITTEN COMMENT PERIOD

Any interested person(s) or their authorized representative(s) may submit written comments relevant to the proposed regulatory action to DTSC in either electronic or hard-copy formats.

Written comments may be submitted electronically through the Safer Consumer Products Information Management System (CalSAFER) at: <https://calsafer.dtsc.ca.gov/>.

Please direct hard-copy written comments to:

Ms. Jackie Buttle, Regulations Coordinator
Office of Planning & Environmental Analysis
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806
Fax Number: (916) 324-1808
Phone (Ms. Buttle): (916) 322-2543

The written comment period will close at 11:59 p.m. PST on Monday, November 16. Only comments received at the DTSC office by that date and time will be considered.

AUTHORITY & REFERENCE

Authority

These regulations are being adopted under the following authorities:

Health and Safety Code (HSC) Section 25252 authorizes and requires DTSC to adopt regulations to establish a process to identify and prioritize those chemicals or chemical ingredients in consumer products that may be considered a Chemical of Concern. This section also directs DTSC to reference and use available information from various sources, but does not limit DTSC to use only this information.

HSC Section 25253 authorizes and requires DTSC to adopt regulations that establish a process for evaluating Chemicals of Concern in consumer products, and their potential alternatives, to determine how best to limit exposure or to reduce the level of hazard posed by a chemical of concern.

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

Reference

These regulations implement, interpret, or make specific the following statutes:

HCS Sections 25252 and 25257.1

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Policy Statement Overview

DTSC proposes to amend the Safer Consumer Products regulations to correct or update citations for three lists included in 22 CCR section 69505.2 that are the basis of the Safer Consumer Products Candidate Chemicals List.

Proposed regulation

The proposed regulation would:

- Amend Section 69502.2(a)(1)(C) of chapter 55, division 4.5 of Title 22, California Code of Regulations to correct the citation for the chemicals identified by the European Union as endocrine disruptors on the Candidate List of Substances of Very High Concern;
- Amend Section 69502.2(a)(1)(F) of chapter 55, division 4.5 of Title 22, California Code of Regulations to update the reference to the most recent version of the United States Department of Health and Human Services, Public Health Service, National Toxicology Program's Report on Carcinogens; and
- Amend Section 69502.2(a)(1)(G) of chapter 55, division 4.5 of Title 22, California Code of Regulations to correct the citation for the chemicals identified by the European Union as persistent, bioaccumulative, and toxic (PBT), or very persistent and very bioaccumulative (vPvB) on the Candidate List of Substances of Very High Concern.

The proposed amendments will result in three additions to the current Candidate Chemical list.

Benefits

The broad objective of the Safer Consumer Products regulations is a comprehensive, state-level effort to find safer alternatives to hazardous chemicals. The use of fewer hazardous chemicals reduces the potential for adverse impacts to the people of California and the environment.

HSC Section 25252 requires DTSC to reference and use—to the maximum extent feasible—available information from other nations, governments, and authoritative bodies that have undertaken similar chemical prioritizations processes, so as to leverage the work and costs already incurred by those entities. By basing the Candidate Chemicals list on externally produced information, DTSC maximized benefits for the state's economy while minimizing program implementation costs. The proposed amendments to Sections 69502.2(a)(1)(C), (F), and (G) leverage the European Union's work on the Candidate List of Substances of Very High Concern for Authorization, as well as the National Toxicology Program's work on the biennial Report on Carcinogens.

Ensuring that authoritative lists used to identify Candidate Chemicals are current and cited correctly minimizes potential confusion as to which chemicals may be identified by DTSC as a Chemical of Concern in a Priority Product. DTSC's actions to ensure accurate, reliable information will encourage manufacturers to use the Candidate Chemicals list to identify potentially hazardous ingredients in their products, avoid regrettable substitutions, and proactively improve the safety of the products sold to California's consumers.

Summary of Existing Statutes and Regulations

HSC Section 25253 authorized and required DTSC to adopt regulations that established a process for evaluating Chemicals of Concern in consumer products, and their potential alternatives, to determine how best to limit exposure or to reduce the level of hazard posed by a chemical of concern. HSC Section 25252 required DTSC to reference and use—to the maximum extent feasible—available information from other nations, governments, and authoritative bodies that have undertaken similar chemical prioritizations processes, so as to leverage the work and costs already incurred by those entities. Based on this requirement, DTSC defined the Candidate Chemical List as Candidate Chemicals that exhibit specific hazard traits and/or environmental or toxicological endpoints and are included in one or more of the 23 authoritative organizations' lists cited in Sections 69502.2(a)(1) and (2) of Title 22 of the CCR that are the basis of the Safer Consumer Products regulations.

Relation to Existing State Regulations

The Department evaluated the proposed regulations for any inconsistency or incompatibility with existing state regulations and has found that these are the only regulations concerning the identification of Candidate Chemicals under the Safer Consumer Products program. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

DISCLOSURE REGARDING THE PROPOSED ACTION

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DTSC determined that the proposed changes to these regulations will not impose a local mandate or result in costs subject to reimbursement pursuant to part 7 of division 4, commencing with Section 17500, of the Government Code or other nondiscretionary costs or savings to local agencies.

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

DTSC determined that the proposed changes to these regulations will not result in costs or savings for any state or local agency, or school district that is required to be reimbursed pursuant to part 7 of division 4, commencing with Section 17500 of the Government Code, or other nondiscretionary costs or savings imposed on local agencies.

COST OR SAVINGS IN FEDERAL FUNDING TO THE STATE

DTSC determined that the proposed changes to these regulations will not result in any decrease in federal funds to California. By relying on externally produced information, DTSC maximized benefits for the state's economy while minimizing program implementation costs.

DETERMINATION OF NO SIGNIFICANT STATEWIDE ECONOMIC IMPACT

These regulations do not impose new responsibilities for businesses; therefore, DTSC has determined that the proposed changes to these regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California business to compete with businesses in other states.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

These regulations do not impose new responsibilities for private persons or businesses; therefore, DTSC is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESSES

DTSC determined that the proposed changes to these regulations will not impact small businesses because the regulations do not impose new responsibilities for small businesses.

EFFECT ON HOUSING COSTS

DTSC determined that the proposed changes to the regulations will not impact housing costs.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

DTSC has determined that this proposed regulation will not create or eliminate jobs nor will it result in the creation, elimination, or expansion of new businesses. Ensuring that authoritative lists used to identify Candidate Chemicals are current and cited correctly

minimizes potential confusion as to which chemicals may be identified by DTSC as a Chemical of Concern in a Priority Product. DTSC's actions to ensure accurate, reliable information will encourage manufacturers to use the Candidate Chemicals list to identify potentially hazardous ingredients in their products, avoid regrettable substitutions, and proactively improve the safety of the products sold to California's consumers, therefore benefitting the health and welfare of California residents, worker safety, and the state's environment.

CONSIDERATION OF ALTERNATIVES

Per Gov. Code section 11346.5(a)(13), DTSC has determined that no reasonable alternatives considered or that have otherwise been identified and brought to our attention would be more effective in carrying out the purpose for which the action is proposed; would be as effective and less burdensome to affected private persons than the proposed action; or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

DISCLOSURE REGARDING REASONABLE ALTERNATIVES

This action will have no adverse economic or fiscal impacts because it does not impose regulatory requirements on businesses or individuals. Since there are no impacts, there are no alternatives which would have fewer impacts to businesses or individuals or be more effective in carrying out the purpose of these regulation changes. Taking no action was not considered a viable alternative for this proposed regulatory action due to the critical nature of correcting and updating citations in the Safer Consumer Products regulations.

OTHER APPLICABLE REQUIREMENTS PRESCRIBED BY STATUTE

EXTERNAL SCIENTIFIC PEER REVIEW

Under the provisions of HSC Section 57004, DTSC completed an external scientific peer review prior to the adoption of the Safer Consumer Products regulations in October 2013 (the peer review reports may be viewed at:

<http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/SCPA.cfm>). In general, the peer reviewers concluded that the use of lists compiled by reliable, authoritative governmental organizations allowed the Safer Consumer Products program to rapidly generate a comprehensive list of Candidate Chemicals while avoiding costly duplication of effort.

DTSC determined that further external scientific peer review is not necessary for this rulemaking, as the proposed amendments do not establish new regulatory levels or standards that would warrant additional peer review; they only correct and update citations to authoritative lists that were adopted following the 2013 Safer Consumer Products peer review.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

DTSC has found this rulemaking project to be exempt under CEQA (Public Resources Code Section 21000, et seq.). This rulemaking meets the general rule exemption available under 14 CCR Section 15061(b)(3). A draft Notice of Exemption (NOE) is available for review with this rulemaking file and will be filed with the State Clearinghouse when the regulations are adopted.

CALIFORNIA ENVIRONMENTAL POLICY COUNCIL REVIEW

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

DTSC determined that further review by the CEPC is not warranted for this rulemaking because the proposed amendments only correct or update citations to authoritative lists that were adopted following the 2013 CEPC review.

CONTACTS

Inquiries regarding technical aspects of the proposed regulation or CEQA documents may be directed to Lisa Quagliaroli of DTSC at 916-445-3077. However, such oral inquiries are not part of the rulemaking record. If Ms. Quagliaroli is unavailable, you may also contact the regulations coordinator as a backup, Jackie Buttle at 916-322-2543.

A 45-day public comment period for this rulemaking file, as described above, will commence on October 2, 2015 and close on November 16 at 11:59 p.m. PST. During this time, DTSC will accept statements, arguments, or contentions and/or supporting documents regarding this rulemaking that must be submitted in writing, or may be presented orally or in writing at the public hearing. Comments must be received by the deadline in order for them to be considered before DTSC adopts, amends, or repeals these regulations.

AVAILABILITY OF TEXT OF PROPOSED REGULATIONS and INITIAL STATEMENT OF REASONS

Copies of the Notice, Initial Statement of Reasons, the text of the proposed regulation, all the information upon which the proposal is based, and the express terms of the proposed regulation are posted to DTSC's website at: <http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/CC-List-Amendment.cfm> .

Copies of these documents may also be obtained from Jackie Buttle, Regulations Coordinator in the Office of Environmental Planning & Analysis, as specified above.

After the close of the 45-day comment period, DTSC may adopt the proposed regulation. If changes are made to the regulation text, the modified full text will be made available for comment for at least 15 days, prior to adoption. Only persons who specifically request copies of the modified text, attend the public hearing, provide written or oral comments at the hearing, or submit written comments to our office, will be sent a copy of the modified text if substantive changes are made.

Once DTSC finalizes the regulation text, DTSC will prepare a Final Statement of Reasons that updates the Initial Statement of Reasons, summarizes how DTSC addressed comments, and includes other materials, as required by Government Code Section 11346.9. A copy of the Final Statement of Reasons along with the date the rulemaking is filed with the Secretary of State and the effective date of the regulations will be posted on DTSC's website at:

<http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/CC-List-Amendment.cfm> .

To be included in this regulation package's mailing list and to receive updates of this rulemaking, please visit <http://www.dtsc.ca.gov/ContactDTSC/ELists.cfm> and subscribe to the applicable electronic mailing list or e-mail the Safer Consumer Products program at SaferConsumerProducts@dtsc.ca.gov.