

TEXT OF PROPOSED REGULATIONS
July 2012

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, 11, and 12, 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, 69506, 69506.1, 69506.2, 69506.3, 69506.4, 69506.5, 69506.6, 69506.7, 69506.8, 69506.9, 69506.10, 69506.11, 69506.12, 69507, 69507.1, 69507.2, 69507.3, 69507.4, 69507.5, 69507.6, 69508, 69508.1, 69508.2, 69508.3, 69508.4, 69509, 69510, 69510.1, 69511, and 69512 through 69599 to division 4.5 of California Code of Regulations, title 22, to read:

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

2
3 **Chapter 55. Safer Consumer Products**

4
5 **Article 1. General**

6
7 **§ 69501. Purpose and Applicability.**

8 (a) This chapter specifies the process for identifying chemicals as Chemicals of
9 Concern, and the process for prioritizing consumer products containing Chemicals of Concern
10 and identifying alternatives to consider for Priority Products to determine how best to limit
11 exposures to, or the level of adverse impacts posed by, the Chemical(s) of Concern in the
12 product. 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)(1) Except as provided in paragraphs (2) and (3), this chapter applies to all consumer
16 products placed into the stream of commerce in California.

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

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

24
25 NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code.
26 Reference: Sections 25251, 25252, 25253, and 25257.1, Health and Safety Code.

27
28 **§ 69501.1. Definitions.**

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

31
32 (1) “AA Reports” means the Preliminary and Final AA Reports, collectively.

33
34 (2) “Accreditation body” means an entity designated by the Department, under article 8,
35 to administer a program designed to train, evaluate, assist, and certify assessors.

36
37 (3) “Adverse air quality impacts” means air emissions of any of the air contaminants
38 listed below that have the ability to result in adverse public health, ecological, soil, or water
39 impacts:

40 (A) California Toxic Air Contaminants as specified in Title 17, California Code of
41 Regulations, sections 93000 through 93001;

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

- 1 1. Carbon dioxide;
- 2 2. Hydrofluorocarbons;
- 3 3. Methane;
- 4 4. Nitrogen trifluoride;
- 5 5. Nitrous oxide;
- 6 6. Perfluorocarbons;
- 7 7. Sulfur hexafluoride; or
- 8 8. Gases that exhibit the global warming potential hazard trait, as specified in section
- 9 69405.4;
- 10 (C) Nitrogen oxides;
- 11 (D) Particulate matter that exhibits the particle size or fiber dimension hazard trait, as
- 12 specified in section 69405.7;
- 13 (E) Chemical substances that exhibit the stratospheric ozone depletion potential hazard
- 14 trait, as specified in section 69405.8;
- 15 (F) Sulfur oxides; or
- 16 (G) Tropospheric ozone-forming compounds, including compounds that exhibit the
- 17 ambient ozone formation hazard trait, as specified in section 69405.1.
- 18
- 19 (4) “Adverse ecological impacts” means any of the following direct or indirect effects on
- 20 living organisms and their environments:
- 21 (A) Adverse impacts to aquatic, avian, or terrestrial animal or plant organisms or
- 22 microbes, including:
- 23 1. Acute or chronic toxicity;
- 24 2. Changes in population size, reductions in biodiversity, or changes in ecological
- 25 communities; and
- 26 3. The ability of an endangered or threatened species to survive or reproduce;
- 27 (B) Adverse impacts on aquatic and terrestrial ecosystems including:
- 28 1. Deterioration or loss of environmentally sensitive habitats;
- 29 2. Impacts that contribute to or cause vegetation contamination or damage; and
- 30 3. Adverse impacts on environments that have been designated as impaired by a
- 31 California State or federal regulatory agency;
- 32 (C) Biological or chemical contamination of soils; or
- 33 (D) Any other adverse effect, as defined in section 69401.2(a), for environmental hazard
- 34 traits and endpoints specified in article 4 of chapter 54.
- 35
- 36 (5) “Adverse environmental impacts” means any of the following:
- 37 (A) Adverse air quality impacts;
- 38 (B) Adverse ecological impacts;
- 39 (C) Adverse soil quality impacts;
- 40 (D) Adverse water quality impacts; or
- 41 (E) Exceedance of an enforceable California or federal regulatory standard relating to
- 42 the protection of the environment.

1
2 (6) "Adverse public health impacts" means any of the toxicological effects on public
3 health specified in articles 2 or 3 of chapter 54, or exceedance of an enforceable California or
4 federal regulatory standard relating to the protection of public health. Public health includes
5 occupational health.

6
7 (7) "Adverse public health and/or environmental impacts" or "adverse impacts" means
8 adverse public health impacts and/or adverse environmental impacts, collectively.

9
10 (8) "Adverse soil quality impacts" means any of the following effects on soil function or
11 properties:

12 (A) Compaction or other structural changes;

13 (B) Erosion;

14 (C) Loss of organic matter; or

15 (D) Soil sealing, meaning the covering of the surface soil with a layer of impervious
16 material or changing the nature of the soil so that it behaves as an impermeable medium.

17
18 (9) "Adverse waste and end-of-life impacts" means the materials and byproducts
19 generated during the life cycle of the Priority Product and/or each alternative being considered,
20 including degradates and reaction products, and the associated adverse public health or
21 environmental impacts due to any of, or a combination of, the following:

22 (A) The volume or mass generated;

23 (B) Any special handling requirements needed to mitigate adverse impacts;

24 (C) Impacts on solid waste disposal and treatment, including operation of solid waste
25 handling or treatment facilities;

26 (D) Discharge or disposal to storm drains or sewers, contributing to adverse impacts on
27 operation of wastewater or storm water treatment facilities; or

28 (E) Release into the environment, as a result of solid waste handling, treatment, or
29 disposal activities or the discharge or disposal to storm drains or sewers, of either or both of
30 the following:

31 1. The Chemical(s) of Concern contained in the Priority Product or alternatives; and/or

32 2. Any other chemical contained in the alternatives that differs from the chemicals
33 contained in the Priority Product.

34
35 (10) "Adverse water quality impacts" means any of the following adverse effects on the
36 beneficial uses, as specified in Water Code section 13050(f) or adopted in a Water Quality
37 Control Plan under article 3 of chapter 3 and/or article 3 of chapter 4 of division 7 of the Water
38 Code, of the waters of the State, which include groundwater, fresh water, brackish water,
39 marsh lands, wetlands, or coastal bodies or systems:

40 (A) Increase in biological oxygen demand;

41 (B) Increase in chemical oxygen demand;

42 (C) Increase in temperature;

1 (D) Increase in total dissolved solids; or

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

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

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

7 3. Chemicals for which primary Maximum Contaminant Levels (MCLs) have been
8 established under Health and Safety Code section 116365(a), or by the Environmental
9 Protection Agency under the federal Safe Drinking Water Act;

10 4. Chemicals for which Notification Levels (NLs) have been specified under Health and
11 Safety Code section 116455; or

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

15
16 (11) "Alternative" means any of the following:

17 (A) Removal of Chemical(s) of Concern in a Priority Product, with or without adding a
18 substitute chemical or increasing the concentration of a chemical already contained in the
19 product;

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

22 (C) Redesign of a Priority Product and/or manufacturing process, using different
23 materials to reduce or restrict exposures to Chemical(s) of Concern in the Priority Product; or

24 (D) Any other change to a Priority Product or a manufacturing process that reduces the
25 adverse public health and/or environmental impacts or exposures associated with the
26 Chemical(s) of Concern in the Priority Product.

27
28 (12) "Alternatives Analysis" or "AA" means an evaluation and comparison of a Priority
29 Product and one or more alternatives to the product, under article 5.

30
31 (13) "Alternatives Analysis Threshold" means a concentration by weight specified by the
32 Department under section 69503.5(c).

33
34 (14) "Alternatives Analysis Threshold Exemption Notification" means a notification
35 submitted to the Department under section 69503.6.

36
37 (15) "Aqueous hydrolysis half-life" means the time required for the concentration of a
38 chemical to be reduced to one-half of its initial concentration after being introduced into water.

39
40 (16) "Atmospheric oxidation rate" means the rate of change or degradation of a chemical
41 through the interaction with oxygen in the atmosphere.

1 (17) “Bioaccumulation” means the following:

2 (A) Accumulation of a chemical in an organism, tissues of an organism, or an individual
3 biological compartment of the environment, which absorbs the chemical at a rate greater than
4 that at which the chemical is lost; and

5 (B) Bioaccumulation as specified in section 69405.2.

6
7 (18) “Certified assessor” means an individual that has been issued a “Certified
8 Alternatives Assessor” certificate by an accreditation body, under article 8.

9
10 (19)(A) “Chemical” means either of the following:

11 1. An organic or inorganic substance of a particular molecular identity, including any
12 combination of such substances occurring, in whole or in part, as a result of a chemical
13 reaction or occurring in nature, and any element, ion or uncombined radical, and any
14 degradate, metabolite, or reaction product of a substance with a particular molecular identity;
15 or

16 2. A chemical ingredient, which means a substance comprising one or more of any
17 substance, element, ion, uncombined radical, degradate, metabolite, or reaction product.

18 (B) “Molecular identity” means the substance’s physicochemical properties, chemical
19 structure and composition, size and size distribution, shape and surface structure, reactivity,
20 and any other properties that are relevant to whether the substance would be a Chemical of
21 Concern.

22
23 (20) “Chemical of Concern” means a chemical identified as a Chemical of Concern under
24 section 69502.2(a), or a chemical listed by the Department under section 69502.3(b).

25
26 (21) “Component” means a uniquely identifiable part, piece, assembly or subassembly,
27 system, or subsystem of a consumer product that:

28 (A) Is required to complete or finish an item;

29 (B) Performs a distinctive and necessary function in the operation of a system; or

30 (C) Is intended to be included as a part of a finished item.

31
32 (22)(A) “Consumer product” or “Product” means any of the following:

33 1. A “consumer product” as defined in Health and Safety Code section 25251;

34 2. A component that meets the definition of a “consumer product” specified in Health
35 and Safety Code section 25251; or

36 3. A component, or a homogeneous material within a component, that is identified,
37 under section 69503.4(a)(2)(B), as the minimum required focus of an AA.

38 (B)1. “Consumer product” or “Product” does not mean any historic product.

39 2. “Historic product” means a product that ceased to be manufactured prior to the date
40 the product is listed as a Priority Product.

41 (C) “Consumer product” or “Product” does not mean a product previously owned or
42 leased by someone other than the manufacturer, importer, distributor, or retailer of the product.

1
2 (23) "Contact information" means mailing and electronic address, headquarters location,
3 phone number(s), title(s) if applicable, and website address.

4
5 (24) "Day" means calendar day. Periods of time are calculated by excluding the first day
6 and including the last; except that the last day is excluded if it is a Saturday, Sunday, or other
7 holiday specified in Government Code section 6700.

8
9 (25) "Department" means the Department of Toxic Substances Control.

10
11 (26) "End-of-life" means the point when the product is discarded by the consumer or the
12 end of the useful life of the product, whichever occurs first.

13
14 (27) "Environment" means the land, air, water, soil, minerals, flora, and fauna.

15
16 (28) "Environmental fate" means all of the following:

17 (A) Aerobic and anaerobic half-lives;

18 (B) Aqueous hydrolysis half-life;

19 (C) Atmospheric oxidation rate;

20 (D) Bioaccumulation;

21 (E) Biodegradation;

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

23 (G) Persistence; and

24 (H) Photodegradation.

25
26 (29) "Environmental or toxicological endpoint" means any environmental or toxicological
27 endpoint specified in chapter 54.

28
29 (30) "Failure to Comply List" means the list prepared by the Department under section
30 69501.2(d).

31
32 (31) "Functionally acceptable" means that an alternative product meets both of the
33 following requirements:

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

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

37
38 (32) "Hazard trait" means any hazard trait specified or defined in chapter 54.

39
40 (33) "Hazard trait submission" means any health, safety, or environmental study of, or
41 health, safety, or environmental data regarding, a chemical that has been submitted to any
42 government agency for any purpose or is required to be submitted to the Department under

1 article 14 of chapter 6.5 of division 20 of the Health and Safety Code or these regulations.
2 When any study or datum indicates that a chemical manifests any hazard trait, chemical
3 identity is part of any hazard trait submission.

4
5 (34) “Homogeneous material” means either of the following:

6 (A) One material of uniform composition throughout; or

7 (B) A material, consisting of a combination of materials, that cannot be disjoined or
8 separated into different materials by mechanical actions such as unscrewing, cutting, crushing,
9 grinding, or abrasive processes.

10
11 (35) “Import” means to bring, or arrange to bring, a consumer product into the United
12 States for purposes of placing the product into the stream of commerce. “Import” includes
13 reimporting a consumer product manufactured or processed, in whole or in part, in the United
14 States.

15
16 (36) “Importer” means a person who imports a consumer product into the United States.

17
18 (37) “Information” means data, documentation, records, graphs, reports, or any other
19 depiction of specific pieces of knowledge.

20
21 (38) “Legal requirements” means specifications and/or performance standards that a
22 chemical, product, or product packaging is required to meet under federal or California law.

23
24 (39) “Life cycle” means the sum of all activities in the course of a consumer product’s
25 entire life span, including raw materials extraction, resource inputs and other resource
26 consumption, intermediate materials processes, manufacture, packaging, transportation,
27 distribution, use, operation and maintenance, waste generation and management, reuse and
28 recycling, and end-of-life disposal.

29
30 (40) “Manufacture” means to make, produce, or assemble. “Manufacture” does not
31 include any of the following actions, unless the action results in the addition, or increased
32 concentration, of a Chemical of Concern, or replacement of a Chemical of Concern, in a
33 product:

34 (A) Repair or refurbishment of an existing consumer product;

35 (B) Installation of standardized components to an existing consumer product; or

36 (C) Making non-material alterations to an existing consumer product.

37
38 (41) “Manufacturer” means any person who manufactures a product, or any person that
39 controls the specifications and design of, or use of materials in, a product.

40
41 (42)(A) “Materials and resource consumption” means the consumption of renewable and
42 nonrenewable resources that are used for a consumer product throughout its life cycle.

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

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

6 1. An inherently finite resource that is formed over long periods of geologic time,
7 including petroleum, coal, metals (mined and recycled), minerals, and other finite resources;
8 and

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

12
13 (43) "Persistence" means environmental persistence, as specified in section 69405.3.

14
15 (44) "Person" has the same meaning as in Health and Safety Code section 25118.

16
17 (45) "Physical chemical hazards" means physical hazard traits specified in article 6 of
18 chapter 54.

19
20 (46) "Physicochemical properties" means the physicochemical properties specified in
21 section 69407.2.

22
23 (47)(A) "Place into the stream of commerce in California" means to sell, offer for sale,
24 distribute, supply, or manufacture a consumer product for use in California.

25 (B) "Sell or offer for sale" means any transfer or offer to transfer for consideration of title
26 or the right to use, by lease or sales contract, including, but not limited to, transactions
27 conducted and offers made through sales outlets, catalogs, or the Internet, or any other similar
28 electronic means.

29
30 (48) "Priority Product" means a product identified and listed as a Priority Product by the
31 Department under section 69503.4.

32
33 (49) "Processing agent" means a chemical used in a product manufacturing process to
34 promote chemical or physical changes.

35
36 (50) "Recycled material" means a material that has been separated from a waste stream
37 for the purpose of recycling the material as feedstock.

38
39 (51) "Release" means an intentional or unintentional liberation, emission, or discharge of
40 a chemical into the environment.

1 (52) “Reliable information” means a scientific study or other information that is one or
2 more of the following:

3 (A) Published in a scientifically peer reviewed report or other literature;

4 (B) Published in a report of the United States National Academies;

5 (C) Published in a report by an international, federal, state, or local agency that
6 implements laws governing chemicals; and/or

7 (D) Conducted, developed, submitted, or reviewed and accepted by an international,
8 federal, state, or local agency for compliance or other regulatory purposes.

9
10 (53) “Reliable information demonstrating the occurrence of exposures to a chemical”
11 means any of the following that meet the definition of reliable information:

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

13 1. Present in household dust, indoor air, or drinking water, or on interior surfaces;

14 2. Present in, or released from, products used in or present in the home or places of
15 employment;

16 3. Accumulative or persistent in the environment; or

17 4. Accumulative in aquatic, avian, animal, or plant species.

18 (B) Biomonitoring data that show the chemical to be present in human organs, tissues,
19 or fluids including data from either of the following:

20 1. California Environmental Contaminant Biomonitoring Program; or

21 2. Center for Disease Control’s National Health and Nutrition Evaluation Survey
22 biomonitoring data.

23 (C) Evidence that a chemical exhibits the hazard trait for any of the following:

24 1. Bioaccumulation;

25 2. Persistence; or

26 3. Lactational or transplacental transfer, as specified in section 69405.5.

27 (D) Exposure or environmental modeling that indicates either of the following:

28 1. Exposure point concentration(s) associated with adverse public health or
29 environmental impacts; or

30 2. Environmental accumulation of a chemical.

31 (E) Monitoring data indicating the presence of a chemical or its degradation products in
32 California solid waste, wastewater, or storm water streams collected or managed by California
33 State or local agencies in concentrations or volumes that:

34 1. Contribute to or cause adverse public health or environmental impacts;

35 2. Would require the expenditure of public funds to mitigate adverse public health or
36 environmental impacts associated with the chemical or its degradation products;

37 3. Increase the costs of reusing or recycling materials containing the chemical or its
38 degradation products;

39 4. Interfere with the proper operation of solid waste, wastewater, or storm water
40 treatment systems and result in the discharge of the chemical or its degradation products to
41 the environment;

42 5. Exceed regulatory thresholds for the chemical or its degradation products; or

1 6. Result in violations of the permit issued to the facility responsible for managing solid
2 waste, wastewater, or storm water streams.

3
4 (54) "Responsible entity" means any of the following:

5 (A) The manufacturer of a consumer product.

6 (B) The importer of a consumer product.

7 (C) The retailer of a consumer product.

8
9 (55) "Retailer" means a person to whom a consumer product is delivered or sold for
10 purposes of sale or distribution by the person to a consumer.

11
12 (56) "Safer alternative" means an alternative that, in comparison with the existing Priority
13 Product, reduces, avoids, or eliminates the use of, and/or exposures to, one or more
14 Chemical(s) of Concern, so as to reduce adverse public health and environmental impacts.

15
16 (57) "Sales outlet" means any place at which consumer products are sold, supplied, or
17 offered for sale directly to consumers in California.

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

26
27 (59) "Technically and economically feasible alternative" means an alternative product or
28 chemical for which:

29 (A) The technical knowledge, equipment, materials, and other resources available in the
30 marketplace are expected to be sufficient to develop and implement the alternative, and to
31 meet consumer demand after an appropriate phase-in period; and

32 (B) The manufacturer's operating margin is not significantly reduced.

33
34 (60) "Trade secret" means "Trade Secret" as defined in Civil Code section 3426.1(d).

35
36 (61) "Useful life" means the period of time during which a product can be used for its
37 intended use, expressed in terms of a single use, number of applications, or days, months, or
38 years of use.

39
40 NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code.

41 Reference: Sections 25251, 25252, 25253, and 25257, Health and Safety Code, Section 1060,
42 Evidence Code, and Sections 3426 through 3426.11, inclusive, Civil Code.

1
2 **§ 69501.2. Duty to Comply and Consequences of Non-Compliance.**

3 (a) Duty to Comply.

4 (1) A manufacturer has the principal duty to comply with requirements applicable to a
5 responsible entity. In the event a manufacturer does not comply, it shall be the duty of the
6 importer, if any, to comply. A retailer is required to comply with the requirements applicable to
7 a responsible entity only if the manufacturer and the importer have failed to comply and the
8 Department notifies the retailer of such non-compliance by posting the information on the
9 Failure to Comply List, under subsection (d)(4)(C).

10 (2) Except for the requirement to submit a notification under sections 69503.6 or
11 69503.7, the requirements of this chapter applicable to a responsible entity may be fulfilled by
12 a consortium, trade association, public-private partnership, or other entity acting on behalf of,
13 or in lieu of, the responsible entity.

14 (b) Manufacturer and Importer Options.

15 (1) Priority Product Removal Notification. A responsible entity that is the manufacturer
16 or importer of a product is not responsible for complying with the applicable requirements of
17 this chapter if the manufacturer or importer provides a written notice to the Department
18 containing information demonstrating to the Department's satisfaction that the product is no
19 longer placed into the stream of commerce in California. The notice shall be provided no later
20 than the due date for compliance with the requirement. The notice must include all of the
21 following information:

22 (A) The name of, and contact information for, the manufacturer or the importer;

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

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

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

31 (2)(A) Priority Product Replacement Notification. If the manufacturer or importer places a
32 product into the stream of commerce in California that replaces the removed Priority Product,
33 in terms of use and customer bases, and that contains the same or different Chemical(s) of
34 Concern, the manufacturer or importer shall provide a notice to the Department at the same
35 time as the notice provided under paragraph (1), or within thirty (30) days after the
36 replacement product is first placed into the stream of commerce in California, whichever is
37 later. The notice must include all of the following information:

38 1. The manufacturer's or importer's name and contact information;

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

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

4 4. Information describing the Priority Product that is replaced by the new product,
5 including the brand name(s) and product name(s) under which the Priority Product was placed
6 into the stream of commerce in California;

7 5. Information describing the new product that replaces the Priority Product, including
8 the brand name(s) and product name(s) under which the product is placed into the stream of
9 commerce in California, and the Chemical(s) of Concern in the new product; and

10 6. A copy of the notice provided under paragraph (1).

11 (B) Subparagraph (A) does not apply to a replacement product that was the selected
12 alternative from an AA conducted under article 5.

13 (c) Retailer Option.

14 A retailer of a consumer product for which the Department has provided notice under
15 subsection (a)(1), shall not be held responsible for complying with the requirements specified
16 in the notice if:

17 (1) The manufacturer or importer complies with the requirement specified in the
18 Department's notice, or fulfills the requirements of subsection (b), within sixty (60) days after
19 the Department issues the notice; or

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

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

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

27 1. The name of, and contact information for, the retailer;

28 2. The name of, and contact information for, the manufacturer and importer;

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

31 4. The name of, and contact information for, the person immediately upstream from the
32 retailer in the supply chain for the product;

33 5. Information describing the product, including the brand name(s) and product
34 name(s) under which the retailer placed the product into the stream of commerce in California;
35 and

36 6. A statement certifying that the retailer will not re-initiate ordering the product unless
37 and until information posted on the Department's website indicates that the non-compliance
38 has been remedied.

39 (d) Failure to Comply List.

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

1 (B) A notice of non-compliance must include a description of the nature of the non-
2 compliance and the Department's intent to place information concerning the determination of
3 non-compliance on the Failure to Comply List on its website under paragraph (4).

4 (2) If the non-compliance has not been remedied to the satisfaction of the Department,
5 the Department shall post information concerning the determination of non-compliance on the
6 Failure to Comply List on its website under paragraph (4). The Department shall post the
7 information on the Failure to Comply List not less than forty-five (45) days and not later than
8 ninety (90) days after issuing the notice of non-compliance. The non-compliance is deemed to
9 be remedied when the Department determines either that the requirements of subsection
10 (b)(1) have been fulfilled, or that the condition of non-compliance has been fully remedied.

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

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

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

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

20 (C) A statement placing retailers of the product on notice of the failure to comply by the
21 manufacturer(s) and the importer(s), under subsection (a)(1), including identification of the
22 requirement with which the retailer shall comply and the timeframe for compliance, which will
23 be no less than ninety (90) days after the notice is posted on the Department's website;

24 (D) The Chemical(s) of Concern known to be in the product;

25 (E) The name of and, if known, the contact information for the person listed on the
26 product label as the manufacturer and the person, if any, listed as the distributor;

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

29 (G) The name of, and contact information for, retailers of the product known to the
30 Department who have not fully complied with the requirements of subsection (c); and

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

32 (5) The Department shall remove a product, and the associated information, from the
33 Failure to Comply List if the Department determines that the condition of non-compliance has
34 been fully remedied, or that the requirements of subsection (b)(1) have been fulfilled.

35 (6) The Department shall remove information concerning a retailer from the Failure to
36 Comply List if the Department determines that the retailer has fully complied with subsection
37 (c).

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

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

41
42 **§ 69501.3. Information Submission and Retention Requirements.**

1 (a) All information required to be submitted to the Department by a responsible entity
2 under the chapter must be signed by the responsible individual in charge of preparing or
3 overseeing the preparation of the information and by the owner, or an officer of the company,
4 or an authorized representative.

5 (b) All information submitted to the Department must be in English, and must be
6 generated and submitted in a manner and in an electronic format specified by the Department.

7 (c) All Priority Product Removal Notifications, Priority Product Replacement
8 Notifications, Priority Product Cease Ordering Notifications, Alternatives Analysis Threshold
9 Exemption Notifications, Chemical of Concern Removal Notifications, AA Reports, and
10 submissions of information claimed to constitute trade secrets must include the following
11 certification statement, signed by the owner or an officer of the entity submitting the document,
12 whose responsibilities include product development, product safety or related responsibilities
13 pertinent to the documents listed in this paragraph, and by the responsible individual in charge
14 of preparing, or overseeing the preparation of, the information:

15
16 “I certify under penalty of perjury that this document and all attachments were prepared or
17 compiled under my direction or supervision to assure that qualified personnel properly
18 gathered and evaluated the information submitted. Based on my inquiry of the person(s)
19 directly responsible for gathering the information, the information submitted is, to the best of
20 my knowledge and belief, true, accurate, and complete. I am aware that submitting false
21 information or statements is a punishable offense.”

22
23 (d) A person who is subject to a requirement to obtain or prepare information, but who is
24 not required to submit the information to the Department or has not yet been requested to
25 submit information to the Department, shall retain the information for a period of three (3) years
26 following the date the person was required to obtain or prepare the information.

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

30
31 **§ 69501.4. Chemical and Product Information.**

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

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

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

39 (3) Request a responsible entity or a chemical manufacturer or importer to make
40 existing information available to the Department, in accordance with a schedule specified by
41 the Department; and/or

1 (4) Request a responsible entity or a chemical manufacturer or importer to generate
2 new information and provide it to the Department, in accordance with a schedule specified by
3 the Department.

4 (b) The Department may request that information be made available to it under this
5 section by either or both of the following methods:

6 (1) Correspondence sent to an individual responsible entity or chemical manufacturer or
7 importer electronically or by United States mail; and/or

8 (2) Information call-ins that, unless otherwise specified, apply to all responsible entities
9 and/or all chemical manufacturers and importers of a specific chemical or product or group of
10 chemicals or products. The Department shall post information call-ins on its website, and
11 provide notice to individuals on the electronic mailing list(s) established by the Department
12 related to this chapter.

13 (c)(1) Response Status List. The Department shall maintain and post on its website a
14 Response Status List. The Response Status List shall be used to provide notice that a
15 responsible entity or a chemical manufacturer or importer, or a person acting on behalf of or in
16 lieu of that entity, has done one of the following:

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

19 (B) Failed to make the information requested under this section available to the
20 Department, within the time period specified by the Department; or

21 (C) Demonstrated to the Department's satisfaction that it does not have and is unable to
22 produce the requested information.

23 (2) The information posted on the Response Status List shall include identification of the
24 responsible entity or the chemical manufacturer or importer and the chemical or product that is
25 the subject of the request.

26 (3) The Department shall update information on its website upon determining that the
27 responsible entity or the chemical manufacturer or importer, or another person, has taken
28 action to change its status under paragraph (1).

29 (d) Safer Consumer Products Partner Recognition List. The Department shall maintain
30 and post on its website a Safer Consumer Products Partner Recognition List identifying
31 persons that have voluntarily provided the Department with information that advances the
32 quest for safer consumer products. Persons identified on this list shall include, but are not
33 limited to, persons that have done one or both of the following:

34 (1) Voluntarily completed an alternative analysis on a consumer product that has not
35 been listed as a Priority Product; and/or

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

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

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

41
42 **§ 69501.5. Availability of Information on the Department's Website.**

1 (a) The Department shall post on its website, and update as appropriate, all of the
2 information and documents listed below. The Department shall also provide notice of the
3 availability of these documents and information, including the availability of updates to the
4 documents and information, to individuals on the electronic mailing list(s) that the Department
5 establishes related to this chapter.

6 (1) The Failure to Comply List prepared under section 69501.2(d).

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

8 (3) Proposed and final Chemicals of Concern and Priority Products lists and revisions to
9 the lists, supporting rationale and documentation, prepared under sections 69502.3 and
10 69503.4, copies of all written comments received during the public comment period for the
11 proposed list, and copies of any written responses the Department provides to the comments.

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

14 (5) A list of extension requests approved for submission of AA Reports.

15 (6) AA Report notices of compliance, notices of deficiency, notices of disapproval, and
16 notices of ongoing review issued under section 69505.6.

17 (7) Proposed and final regulatory response determination notices issued by the
18 Department under section 69505.6(c) and article 6, copies of all written comments received
19 during the public comment period for a proposed notice, and copies of any written responses
20 the Department provides to the comments.

21 (8) A list of regulatory response exemption requests submitted to the Department under
22 section 69506.11, and copies of all notifications issued by the Department granting, denying,
23 or rescinding a regulatory response exemption.

24 (9) Copies of all disputes and Requests for Review filed with the Department under
25 article 7, and copies of all Department decisions, and notices of ongoing review, issued in
26 response to disputes and Requests for Review.

27 (10) A list of accreditation bodies whose designation has been revoked by the
28 Department under section 69508.3(d) or (g), and a list of certified assessors whose
29 certification has been reprovved, suspended, place on probation, or revoked under section
30 69508 (e).

31 (b) The Department shall also post on its website, and update as appropriate, all of the
32 following information and documents:

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

34 (2) The Safer Consumer Products Partner Recognition List prepared under section
35 69501.4(d).

36 (3) As the following information becomes available, the Department shall add it to the
37 Priority Products list for each product that is a Priority Product, and maintain and update this
38 information for as long as the Priority Product continues to be placed into the stream of
39 commerce in California:

40 (A) Brand name(s) and product name(s) for the product;

41 (B) Product manufacturer(s) and importers, except for those manufacturers or importers
42 that have complied with the requirements of section 69501.2(b);

- 1 (C) Other responsible entities for the product, except for the responsible entities that
2 have complied with the requirements of section 69501.2(c);
- 3 (D) The identity of the person that has been identified as being the person that will fulfill
4 the requirements of article 5;
- 5 (E) The due dates for, and dates of receipt of, each Preliminary AA Report and Final AA
6 Report; and
- 7 (F) Lists of, and copies of, all of the following that have been submitted to the
8 Department for each product:
- 9 1. Priority Product Notifications;
- 10 2. Alternatives Analysis Threshold Exemption Notifications, and notices submitted to
11 the Department under subsections (c) and (d) of section 69503.6, and notices issued by the
12 Department under section 69503.6(e);
- 13 3. Priority Product Removal Notifications, and, when applicable, the associated Priority
14 Product Replacement Notifications;
- 15 4. Chemical of Concern Removal Notifications; and
- 16 5. Priority Product Cease Ordering Notifications.
- 17 (4) Guidance documents prepared by the Department under section 69505(a).
- 18 (5) AAs made available by the Department under section 69505(b).
- 19 (6) A list of all Preliminary AA Reports, Final AA Reports, Abridged AA Reports, and
20 Alternate Process AA Work Plans that have been submitted to the Department under article 5,
21 the executive summary for each document, and a full or redacted copy of each document,
22 including both the originally submitted document and the document approved by the
23 Department, if different.
- 24 (7) A list, and copies, of all notifications issued by the Department, and all documents
25 submitted to the Department, under section 69506.6.
- 26 (8) Copies of, or links to, product stewardship plans, substitute end-of-life management
27 programs, exemptions from end-of-life management program requirement, and copies of
28 annual end-of-life program reports.
- 29 (9) The Regulatory Response Summary prepared and updated under section
30 69506.12(d).
- 31 (10) A list of entities that have been designated as accreditation bodies under section
32 69508.3, and a list of certified assessors who have been accredited under section 69508. The
33 Department shall update these lists whenever an accreditation body's designation is revoked,
34 or an assessor's certification is reprovod, suspended, placed on probation, or revoked.
- 35 (11) Findings of audits conducted by the Department under section 69509.
- 36 (c) All documents and information posted on the Department's website under this
37 chapter must include the date the document or information is first posted and the date(s) of
38 any revised postings.

39

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

42

1 **Article 2. Chemicals of Concern Identification Process**

2
3 **§ 69502. General.**

4 (a) This article identifies Chemicals of Concern, and specifies the process by which the
5 Department may identify additional Chemicals of Concern.

6 (b) The Department may use, but is not limited to using, information obtained and/or
7 reviewed under section 69501.4 to perform its duties under this article.

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

11
12 **§ 69502.1. Applicability.**

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

16
17 NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code.
18 Reference: Sections 25252 and 25257.1, Health and Safety Code.

19
20 **§ 69502.2. Chemicals of Concern Identification.**

21 (a) Initial Chemicals of Concern List. As of the effective date of these regulations, a
22 chemical is identified as a Chemical of Concern, if it exhibits a hazard trait or an environmental
23 or toxicological endpoint, and meets one or both of the following criteria:

24 (1) The chemical is one or more of the following types of chemicals that are identified as
25 exhibiting a hazard trait or an environmental or toxicological endpoint on one or more of the
26 lists specified below:

27 (A) Chemicals known to cause cancer and/or reproductive toxicity that are listed under
28 Health and Safety Code section 25249.8 of the California Safe Drinking Water and Toxic
29 Enforcement Act of 1986;

30 (B) Category 1A and 1B chemicals identified in the European Union European
31 Commission 1272/2008 Annex VI due to carcinogenicity, reproductive toxicity, and/or
32 mutagenicity;

33 (C) Category 1 endocrine disruptors identified in the *European Commission DG Env*
34 *report, Towards the establishment of a priority list of substances for further evaluation of their*
35 *role in endocrine disruption*, M0355008/1786Q/10/11/00;

36 (D) Chemicals for which a reference dose or reference concentration has been
37 developed based on neurotoxicity in the United States Environmental Protection Agency's
38 Integrated Risk Information System;

39 (E) Chemicals that are identified as "carcinogenic to humans", "likely to be carcinogenic
40 to humans", or Group A, B1, or B2 carcinogens in the United States Environmental Protection
41 Agency's Integrated Risk Information System;

- 1 (F) Chemicals that are identified as “known to be” or “reasonably anticipated to be” a
2 human carcinogen in the 12th Report on Carcinogens, United States Department of Health
3 and Human Services, Public Health Service, National Toxicology Program;
- 4 (G) Chemicals that are identified as High Production Volume Persistent Bioaccumulating
5 Toxins by the European Union;
- 6 (H) Chemicals that are identified as Persistent, Bioaccumulative, and Inherently Toxic to
7 the environment by the Canadian Environmental Protection Act Environmental Registry
8 Domestic Substances List;
- 9 (I) Groups 1, 2A, and 2B carcinogens identified by the International Agency for
10 Research on Cancer;
- 11 (J) Neurotoxicants that are identified in the Agency for Toxic Substances and Disease
12 Registry’s Toxic Substances Portal, Health Effects of Toxic Substances and Carcinogens,
13 Nervous System;
- 14 (K) Persistent Bioaccumulative and Toxic Priority Chemicals that are identified by the
15 United States Environmental Protection Agency’s National Waste Minimization Program;
- 16 (L) Reproductive or developmental toxicants identified in Monographs on the Potential
17 Human Reproductive and Developmental Effects, National Toxicology Program, Office of
18 Health Assessment and Translation;
- 19 (M) United States Environmental Protection Agency’s Toxics Release Inventory
20 Persistent, Bioaccumulative and Toxic Chemicals that are subject to reporting under the
21 Emergency Planning and Community Right-to-Know Act section 313; and/or
- 22 (N) Washington Department of Ecology’s Persistent, Bioaccumulative, Toxic Chemicals
23 identified in the Washington Administrative Code, title 173, chapter 173-333.
- 24 (2) The chemical is one or more of the following types of chemicals:
- 25 (A) Chemicals for which Notification Levels, as defined in Health and Safety Code
26 section 116455, have been established by the California Department of Public Health;
- 27 (B) Chemicals for which primary Maximum Contaminant Levels have been established
28 and adopted under sections 64431 or 64444 of chapter 15 of Title 22 of the California Code of
29 Regulations;
- 30 (C) Chemicals that are air pollutants that may contribute to or cause an increase in
31 mortality or an increase in serious illness or which may pose a present or potential hazard to
32 human health, and are identified as Toxic Air Contaminants under sections 93000 and 93001
33 of Title 17 of the California Code of Regulations;
- 34 (D) Chemicals that are identified as priority toxic pollutants in the California Water
35 Quality Control Plans under section 303(c) of the federal Clean Water Act and in section
36 131.38 of Title 40 of the Code of Federal Regulations;
- 37 (E) Chemicals that are identified with non-cancer endpoints and listed with an inhalation
38 or oral Reference Exposure Level by the California Office of Environmental Health Hazard
39 Assessment under Health and Safety Code section 44360(b)(2);
- 40 (F) Priority Chemicals that are identified under the California Environmental
41 Contaminant Biomonitoring Program;

1 (G) Chemicals that are identified on the Centers for Disease Control and Prevention's
2 Fourth National Report on Human Exposure to Environmental Chemicals and Updated Tables;
3 and/or

4 (H) Chemicals that are identified on Part A of the list of Chemicals for Priority Action,
5 Oslo and Paris Conventions for the Protection of the Marine Environment of the North-East
6 Atlantic.

7 (b) Additions to the Chemicals of Concern List. In addition to the chemicals identified as
8 Chemicals of Concern under subsection (a), the Department may identify chemicals, which
9 exhibit one or more hazard traits or environmental or toxicological endpoints, as Chemicals of
10 Concern by considering the following factors for which reliable information is available:

11 (1) Adverse Impacts.

12 (A) The ability of the chemical to contribute to or cause adverse public health and/or
13 environmental impacts, considering reliable information relevant to the following factors:

14 1. The chemical's hazard trait(s) and/or environmental or toxicological endpoint(s);

15 2. The chemical's aggregate effects;

16 3. The chemical's cumulative effects with other chemicals with similar hazard trait(s)
17 and/or environmental or toxicological endpoint(s);

18 4. The chemical's physical chemical hazards;

19 5. The chemical's physicochemical properties;

20 6. The chemical's environmental fate;

21 7. The human populations and/or aquatic, avian, or terrestrial animal or plant
22 organisms that would be adversely impacted; and

23 8. The chemical's ability to degrade, form reaction products, or metabolize into another
24 Chemical of Concern or a chemical that exhibits one or more hazard traits and/or
25 environmental or toxicological endpoints.

26 (B) Based on reliable information, the Department shall give special consideration to the
27 ability of the chemical to contribute to or cause adverse impacts for the following:

28 1. Sensitive subpopulations;

29 2. Environmentally sensitive habitats;

30 3. Endangered and threatened species; and

31 4. Environments in California that have been designated as impaired by a California
32 State or federal regulatory agency.

33 (C) Based on reliable information, the Department shall also give special consideration
34 to the ability of the chemical to contribute to or cause widespread adverse public health and/or
35 environmental impacts.

36 (2) Exposures. The Department shall consider exposures to the chemical, considering
37 reliable information regarding exposures to the chemical and reliable information
38 demonstrating the occurrence of exposures to the chemical.

39 (3) Availability of Information. The Department shall consider the extent of reliable
40 information that is available to substantiate adverse impacts and exposures. All other factors
41 being equal, a chemical for which there is a greater amount of reliable information to

1 substantiate adverse impacts and exposures, relative to other chemicals being evaluated, shall
2 be given higher priority for purposes of this subsection.

3 (4) Safer Alternatives. In addition to the factors specified in paragraphs (1) through (3),
4 the Department may consider the availability of a safer alternative chemical that is functionally
5 acceptable for one or more common uses of the chemical in consumer products in determining
6 whether to list the chemical as a Chemical of Concern.

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

10
11 **§ 69502.3. Chemicals of Concern List.**

12 (a) The Department shall post an informational list of the chemicals identified as
13 Chemicals of Concern under section 69502.2(a) on the Department's website within thirty (30)
14 days after the effective date of these regulations. The Department shall periodically update the
15 list to reflect changes to the underlying lists and sources from which it is drawn, using the
16 procedures specified in subsections (c) and (d).

17 (b) The Department may make additions to, or deletions from, the Chemicals of
18 Concern list using the factors specified in section 69502.2(b) and the procedures specified in
19 subsections (c) and (d).

20 (c) The Department shall make proposed revisions to the Chemicals of Concern list
21 available on its website for public review and comment, along with supporting documentation,
22 including the Department's rationale and a bibliography of the supporting information and
23 information sources, prior to finalizing the revisions to the Chemicals of Concern list. The
24 Department shall hold one or more public workshop(s) to provide an opportunity for oral
25 comment on the proposed revisions to the list. The Department shall send to individuals on
26 the electronic mailing list(s) that the Department establishes related to this chapter, and post
27 on its website, a notice regarding the availability of the proposed revisions to the list and
28 supporting documentation. The notice must include all of the following:

29 (1) The last day for the public to submit written comments on the proposed revisions to
30 the Chemicals of Concern list. The last day for submission of public comments shall be no
31 sooner than forty-five (45) days from the date the availability of the proposed revisions is sent
32 to individuals on the electronic mailing list(s) that the Department establishes related to this
33 chapter, and posted on the Department's website;

34 (2) The method(s) for submitting comments to the Department; and

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

36 (d) The Department shall post the final revisions to the Chemicals of Concern list on its
37 website after review of public comments. The Department may respond to some or all public
38 comments received.

39
40 NOTE: Authority cited: Sections 25252 and 58012, Health and Safety Code. Reference:
41 Sections 25252 and 25257, Health and Safety Code.

Article 3. Chemicals of Concern and Consumer Product Prioritization Process**§ 69503. General.**

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

(b) The Department may use, but is not limited to using, information obtained and/or reviewed under section 69501.4 to perform its duties under this article.

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

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

§ 69503.1. Applicability.

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

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

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

§ 69503.2. Priority Products Prioritization Factors.

(a) Product Prioritization Factors. The Department may evaluate products to determine the adverse impacts and exposures associated with the product by considering the factors listed in paragraphs (1) through (3) for which information is available. Based on this evaluation the Department may identify and list as a Priority Product, consistent with the provisions of subsection (b) and the processes specified in sections 69503.3 and 69503.4, one or more products that it determines to be of high priority.

(1) Adverse Impacts and Exposures. The Department shall consider the adverse public health and environmental impacts posed by the Chemical(s) of Concern in a product due to exposures during the life cycle of the product. The evaluation of adverse impacts and exposures must consider both of the following:

(A) Adverse Impacts Associated with the Chemical(s) of Concern.

1. The ability of the Chemical(s) of Concern in a product to contribute to or cause adverse public health and/or environmental impacts, considering reliable information relevant to the following factors:

a. The Chemical(s) of Concern's hazard trait(s) and/or environmental and toxicological endpoint(s);

b. The Chemical(s) of Concern's aggregate effects;

c. The Chemical(s) of Concern's cumulative effects with other chemicals with the same or similar hazard trait(s) and/or environmental or toxicological endpoint(s);

d. The Chemical(s) of Concern's physical chemical hazards;

e. The Chemical(s) of Concern's physicochemical properties;

f. The Chemical(s) of Concern's environmental fate;

- 1 g. The human populations, and/or aquatic, avian, or terrestrial animal or plant
2 organisms for which the Chemical(s) of Concern has/have the ability to contribute to or cause
3 adverse impacts; and
- 4 h. The Chemical(s) of Concern's ability to degrade, form reaction products, or
5 metabolize into another Chemical of Concern or a chemical that exhibits one or more hazard
6 traits and/or environmental or toxicological endpoints.
- 7 2. Based on reliable information, the Department shall give special consideration to the
8 ability of the Chemical(s) of Concern in the product to contribute to or cause adverse impacts
9 for the following:
- 10 a. Sensitive subpopulations;
11 b. Environmentally sensitive habitats;
12 c. Endangered and threatened species listed by the California Department of Fish and
13 Game; and
- 14 d. Environments in California that have been designated as impaired by a State or
15 federal regulatory agency.
- 16 3. Based on reliable information, the Department shall also give special consideration
17 to the ability of the Chemical(s) of Concern in the product to contribute to or cause widespread
18 adverse public health and/or environmental impacts.
- 19 (B) Exposures. Exposures to the Chemical(s) of Concern in the product, considering:
- 20 1. Market presence information for the product, including all of the following:
- 21 a. Statewide sales by volume;
22 b. Statewide sales by number of units; and
23 c. Intended product use(s), and types and age groups of targeted customer base(s).
- 24 2. Reliable information regarding public and/or aquatic, avian, or terrestrial animal or
25 plant organism exposures to the Chemical(s) of Concern in the product, and reliable
26 information demonstrating the occurrence of exposures to the Chemical(s) of Concern in the
27 product.
- 28 3. Information concerning the household presence of the product, and other products
29 containing the same Chemical(s) of Concern that is/are the basis for considering listing the
30 product as a Priority Product, including the number of such of products, how common their
31 household presence is, the frequency of use, and the concentration of the chemical in those
32 products.
- 33 4. Public and/or aquatic, avian, or terrestrial animal or plant organism exposures to the
34 Chemical(s) of Concern in the product during the product's life cycle, considering:
- 35 a. Manufacturing, use, storage, transportation, waste, and end-of-life management
36 practices and the locations of these practices;
- 37 b. The types of uses that would contribute to or result in public exposure to the
38 Chemical(s) of Concern in the product, considering:
- 39 i. Household and recreational use;
40 ii. Sensitive subpopulation use of, or exposure to, the product at locations frequented
41 by members of sensitive subpopulations; and

1 iii. Workers, customers, clients, and members of the general public who use, or
2 otherwise come in contact with, the product or releases from the product in the home,
3 workplace, or other locations;

4 c. Frequency, extent, level, and duration of exposure for each use scenario and end-of-
5 life scenario;

6 d. Containment of the Chemical(s) of Concern within the product;

7 e. Engineering and administrative controls; and

8 f. The ability of the Chemical(s) of Concern or its/their degradation products to be
9 released into, migrate from, or distribute across environmental media, and the ability of the
10 Chemical(s) of Concern or its/their degradation products to accumulate and persist in
11 biological and/or environmental compartments or systems.

12 5. Product uses, or discharges or disposals, in any manner that would contribute to or
13 cause adverse waste and end-of-life impacts.

14 (2) Availability of Information. The Department shall consider the extent of information
15 that is available to substantiate adverse impacts and exposures. All other factors being equal,
16 a product for which there is a greater amount of information to substantiate adverse impacts
17 and exposures, relative to other products being evaluated, shall be given a higher priority for
18 purposes of this subsection.

19 (3) Other Regulatory Programs. The Department shall consider the scope of other
20 California and federal laws, and international agreements with the force of domestic law, under
21 which the product or the Chemical(s) of Concern in the product is/are regulated, and the extent
22 to which these other regulatory requirements address, and provide adequate protections with
23 respect to, the same adverse public health and environmental impacts and exposure pathways
24 that are being considered as a basis for the product being listed as a Priority Product.

25 (b) Key Prioritization Factors. The Department shall, based on available information,
26 give priority to products meeting both of the following criteria:

27 (1) The Chemical(s) of Concern in the product have a significant ability to contribute to
28 or cause adverse public health and environmental impacts; and

29 (2) There is a significant ability for the public and/or aquatic, avian, or terrestrial animal
30 or plant organisms to be exposed to the Chemical(s) of Concern in the product in quantities
31 that would contribute to or cause adverse public health or environmental impacts, which may
32 include consideration of how widely the product is distributed in commerce and how widely the
33 product is used by consumers.

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

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

37
38 **§ 69503.3. Process to Evaluate Products Using the Prioritization Factors.**

39 (a) Adverse Impacts and Exposures and Availability of Information. The Department
40 shall begin the product evaluation and identification process, specified in section 69503.2, by
41 using available information to consider and evaluate the adverse impact and exposure factors

1 specified in section 69503.2(a)(1), along with the extent of available information as specified in
2 section 69503.2(a)(2).

3 (b) Other Regulatory Programs. Having considered the adverse impacts and the
4 exposure pathways associated with the product and its Chemical(s) of Concern, the
5 Department shall then, in accordance with section 69503.2(a)(3), assess whether any of these
6 adverse impacts and/or exposures pathways are adequately addressed by other California and
7 federal laws, and international agreements with the force of domestic law. This assessment
8 shall be based upon available information. If a product is regulated or is subject to pending
9 regulation by another entity, with respect to one or more adverse impacts or exposure
10 pathways, the Department shall adjust the prioritization of the product based on whether listing
11 the product as a Priority Product would meaningfully enhance protection of public health and/or
12 the environment with respect to the adverse impacts and/or exposure pathways associated
13 with the product.

14 (c) Priority Products. The Department may list as a Priority Product one or more
15 products determined to be of high priority after completion of the steps specified in subsections
16 (a) and (b).

17 (d) Safer Alternative. The Department may, at its discretion, consider whether there is a
18 readily available safer alternative, that is functionally acceptable and technically and
19 economically feasible, to further adjust the prioritization prior to listing a product as a Priority
20 Product.

21 (e) Key Prioritization Factors. Prior to issuing the proposed and final Priority Products
22 lists, the Department shall review and evaluate the list for consistency with the key
23 prioritization factors specified in section 69503.2(b), and make adjustments as needed.

24 (f) Priority Product Work Plan. No later than January 1, 2014, the Department shall
25 issue a Priority Product Work Plan that identifies and describes the product categories that the
26 Department will evaluate to identify products to be added to the Priority Products list during the
27 next three (3) years. The work plan must include a general explanation of the decision to
28 select the identified product categories for evaluation during the life of the work plan.

29 (1) Subsequent to the issuance of the work plan, the Department may revise the work
30 plan to include one or more additional product categories if necessitated by any of the
31 following:

32 (A) The Department is required by statute to take action on a particular chemical or
33 product, or both, prior to the expiration of the work plan;

34 (B) The Department is required by a Governor's Executive Order to take action on a
35 particular chemical or product, or both, prior to the expiration of the work plan; and/or

36 (C) The Department grants a petition under section 69504.1.

37 (2) Subsequent work plans shall be issued by the Department no later than one (1) year
38 before the three-year expiration date of the current work plan, and shall become effective upon
39 expiration of the current work plan.

40 (3) Prior to issuing each work plan, the Department shall hold one or more public
41 workshop(s) to provide an opportunity for oral comment.

1 (4) The Department shall send to individuals on the electronic mailing list(s) that the
2 Department establishes related to this chapter, and post on its website, a notice of the
3 availability of each work plan, and each revised work plan.

4 (5) This subsection does not apply to the adoption of the initial list of Priority Products.

5 (g) Initial Priority Products List(s). Prior to January 1, 2016, the Department may list a
6 product as a Priority Product only if the product is being listed on the basis of one or more
7 Chemical(s) of Concern in the product that meet both of the following criteria:

8 (1) The chemical meets one or more of the criteria specified in subsection (a)(1) of
9 section 69502.2; and

10 (2) The chemical meets one or more of the criteria specified in subsection (a)(2) of
11 section 69502.2.

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

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

15
16 **§ 69503.4. Priority Products List.**

17 (a)(1) The Department shall use the procedures specified in this section and the factors
18 and process specified in sections 69503.2 and 69503.3 to identify and list products as Priority
19 Products.

20 (2) The Department shall specify in the proposed and final Priority Products lists the
21 following for each listed product:

22 (A) The Chemical(s) of Concern and the hazard trait(s) that is/are the basis for the
23 product being listed as a Priority Product.

24 (B)1. If applicable, the component(s) and/or homogeneous material(s) within a
25 component, to which the alternatives analysis threshold applies, and which is/are the required
26 minimum focus of the AA.

27 2. For each Priority Product that is a highly durable product, the Department shall in all
28 cases specify the number of component(s) and/or homogeneous material(s) within a
29 component to which the alternatives analysis threshold applies, and which is/are the required
30 minimum focus of the AA. For each listed highly durable product, the Department shall specify
31 no more than ten (10) components and/or homogenous materials per product every three (3)
32 years.

33 3. For purposes of subparagraph 2., “highly durable product” means a product that
34 meets all of the following criteria:

35 a. The product is assembled from 100 or more manufactured components;

36 b. Manufacturers of the product routinely prepare information intended to be provided
37 to consumers that indicates that the product has a useful life, or an average useful life, of five
38 (5) or more years; and

39 c. The product is typically not consumed, destroyed, or discarded after a single use.

40 4. Subparagraph 2. does not apply to either of the following types of products:

41 a. Products designed or intended primarily for children twelve (12) years of age or
42 younger, as determined by information made available to consumers or as determined by

1 whether the product is commonly recognized by consumers as being primarily intended for use
2 by a child twelve (12) years of age or younger; or

3 b. Products intended to be worn or placed on the human body, dispersed as an aerosol
4 or vapor, or applied to hard surfaces with the likelihood of runoff or volatilization.

5 (C) The due date for submission of the Preliminary AA Report, required under article 5.
6 The due date for the Preliminary AA Report shall be 180 days after the date the product is
7 listed on the final Priority Products list, unless the Department specifies a shorter or longer
8 period of time.

9 (b) The Department shall hold one or more public workshop(s) to provide an opportunity
10 for oral comment on candidate products being considered for the proposed Priority Products
11 list. The Department shall make the proposed Priority Products list available on its website, for
12 public review and comment, along with supporting documentation, including the Department's
13 rationale and a bibliography of the supporting information and information sources, prior to
14 finalizing the Priority Products list. The Department shall hold one or more public workshop(s)
15 to provide an opportunity for oral comment on the proposed list. The Department shall send to
16 individuals on the electronic mailing list(s) that the Department establishes related to this
17 chapter, and post on its website, a notice regarding the availability of the proposed list and
18 supporting documentation. The notice must include all of the following:

19 (1) The last day for the public to submit written comments on the proposed Priority
20 Products list. The last day for submission of public comments shall be no sooner than forty-
21 five (45) days from the date the availability of the proposed list is sent to individuals on the
22 electronic mailing list(s) that the Department establishes related to this chapter, and posted on
23 the Department's website;

24 (2) The method(s) for submitting comments to the Department; and

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

26 (c) Comments submitted under subsection (b) on the proposed Priority Products list
27 may also include recommendations, with supporting rationale and information, pertaining to an
28 alternatives analysis threshold for one or more proposed Priority Products. Comments
29 submitted under this subsection shall be considered by the Department in making its
30 determination under section 69503.5(c).

31 (d) The Department shall post the final Priority Products list on its website after review
32 of public comments. The final Priority Products list shall include the alternatives analysis
33 threshold for each Priority Product. The Department may respond to some or all public
34 comments received.

35 (e) The Department shall make the initial proposed list of Priority Products available for
36 public review and comment under subsection (b) no later than 180 days after the effective date
37 of these regulations. The initial list of Priority Products shall include no more than five (5)
38 Priority Products.

39 (f) The Department shall review and revise, as appropriate, the Priority Products list at
40 least once every three (3) years, using the procedures specified in this section.

41 (g) Each responsible entity for a product listed on the Priority Products list shall provide
42 to the Department one of the following notifications within sixty (60) days after the product is

1 listed as a Priority Product, or sixty (60) days after the product is first placed into the stream of
2 commerce in California, whichever is later:

3 (1) Priority Product Notification, as specified in section 69503.7;

4 (2) Alternatives Analysis Threshold Exemption Notification, as specified in section
5 69503.6;

6 (3) Priority Product Removal Notification and, if applicable, a Priority Product
7 Replacement Notification, as specified in section 69501.2(b); or

8 (4) Chemical of Concern Removal Notification, as specified in section 69505.1(g).

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 **§ 69503.5. Alternatives Analysis Threshold Exemption.**

14 (a) A responsible entity is exempt from the requirements of article 5 with respect to a
15 product that is listed as a Priority Product and that meets the criteria for an alternatives
16 analysis threshold exemption specified in subsection (b), if one of the responsible entities for
17 the product submits a complete and timely Alternatives Analysis Threshold Exemption
18 Notification to the Department under section 69503.6, unless subsection (d) or (e) of section
19 69503.6 applies.

20 (b) To be eligible for an alternatives analysis threshold exemption, the concentration in
21 the product, or in each component or homogeneous material identified under section
22 69503.4(a)(2)(B), whichever is applicable, of each Chemical of Concern that is/are the basis
23 for the product being listed as a Priority Product must not exceed the applicable alternatives
24 analysis threshold specified under subsection (c). If subsection (d) applies, the total
25 concentration of all Chemicals of Concern to which the alternatives analysis threshold applies
26 must not exceed that threshold. This condition must be met as of the date of the applicable
27 Priority Products listing, or the date the product is first placed into the stream of commerce in
28 California, whichever is later.

29 (c) The Department shall specify an alternatives analysis threshold for each Chemical of
30 Concern that is a basis for the product being listed as a Priority Product. In establishing an
31 alternatives analysis threshold, the Department shall, except as provided in paragraph (3), take
32 into consideration, based on available reliable information, the factors specified in paragraph
33 (1), if relevant, and paragraph (2):

34 (1) The ease or difficulty of removing from the product, or otherwise avoiding the
35 presence in the product of, the Chemical of Concern, if the source(s) of the Chemical of
36 Concern is/are one or more of the following:

37 (A) A naturally occurring contaminant in raw materials that are common and are
38 frequently used to manufacture the product;

39 (B) Air or water frequently used as a processing agent or an ingredient to manufacture
40 the product;

41 (C) A contaminant in recycled materials that are common and are frequently used to
42 manufacture the product; and/or

1 (D) A processing agent or intermediate frequently used to promote certain chemical or
2 physical changes during manufacturing, and the incidental retention of a residue is not desired
3 or intended.

4 (2)(A) The minimum concentration of the Chemical of Concern that can be detected with
5 available laboratory analytical methodology.

6 (B) The Department shall not specify an alternatives analysis threshold that is lower
7 than the minimum detectable concentration for the Chemical of Concern.

8 (3) Notwithstanding paragraphs (1) and (2)(A), the Department may specify an
9 alternatives analysis threshold based on reliable information showing that the specified
10 threshold will protect public health and/or the environment. In doing so, the Department shall
11 consider the following factors that are relevant:

12 (A) The inherent potency of the Chemical of Concern;

13 (B) The ability of the Chemical of Concern to bioaccumulate;

14 (C) The unintended presence of the Chemical of Concern in organs, tissues, or fluids;

15 (D) The presence or absence of a threshold dose-response;

16 (E) The ability of the Chemical of Concern to contribute to or cause disproportionate
17 adverse impacts on sensitive subpopulations and/or environmentally sensitive habitats;

18 (F) The degree to which the severity of adverse impacts associated with the Chemical of
19 Concern is affected by aggregate exposures to the Chemical of Concern, if the Chemical of
20 Concern is found in multiple common and frequently used products;

21 (G) The degree to which the severity of adverse impacts associated with the Chemical of
22 Concern is affected by cumulative exposures to other Chemicals of Concern that are the basis
23 for the product being listed as a Priority Product and that exhibit the same hazard trait and/or
24 environmental or toxicological endpoint(s); and/or

25 (H) Any relevant regulatory action threshold established by a government agency.

26 (d) If multiple Chemicals of Concern that exhibit the same hazard trait and/or
27 environmental or toxicological endpoint(s) are identified as the basis for the product being
28 listed as a Priority Product, the Department may specify a single alternatives analysis
29 threshold under subsection (c) that applies to the total concentration in the Priority Product of
30 all such Chemicals of Concern.

31 (e) The Department may lower or raise a previously established alternatives analysis
32 threshold based on new, or newly considered, information.

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 **§ 69503.6. Alternatives Analysis Threshold Exemption Notifications.**

38 (a) A responsible entity claiming an alternatives analysis threshold exemption shall
39 submit an Alternatives Analysis Threshold Exemption Notification, as required under section
40 69503.5(a), to the Department within sixty (60) days after the product is listed as a Priority
41 Product. The notification must include all of the following:

1 (1) The name of, and contact information for, the person submitting the Alternatives
2 Analysis Threshold Exemption Notification.

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

4 (3) The name of, and contact information for, all responsible entities for the product, to
5 the extent known.

6 (4) The source of the Chemical(s) of Concern in the product.

7 (5) The maximum concentration at which the Chemical(s) of Concern is/are present in
8 the product, or in each component or homogeneous material, whichever is applicable, and a
9 listing and description of all information used to determine and substantiate this concentration.
10 The description must include the maximum concentration of each Chemical of Concern that is
11 a basis for the Priority Product listing, and a description of the information used to detect and
12 measure this concentration.

13 (6) Laboratory analytical testing protocols and results used to detect and measure the
14 concentration of the Chemical of Concern in the product, including quality control and quality
15 assurance protocols and information concerning the testing laboratory.

16 (7) A demonstration and certification that the responsible entity does and will continue to
17 meet the criteria, assumptions, and conditions that are the basis for the exemption.

18 (b) The responsible entity bears the burden of proof to demonstrate that the
19 concentration of the Chemical(s) of Concern in the product, or in each component or
20 homogeneous material, whichever is applicable, does not exceed the applicable alternatives
21 analysis threshold.

22 (c) The responsible entity shall submit to the Department a revised Alternative Analysis
23 Threshold Exemption Notification, if any of the information listed in subsection (a) significantly
24 changes. A revised Alternatives Analysis Threshold Exemption Notification must be submitted
25 to the Department within thirty (30) days of the change.

26 (d) If the product no longer meets the criteria for an Alternatives Analysis Threshold
27 exemption specified in section 69503.5, the responsible entity shall notify the Department of
28 this change within thirty (30) days of the change, and shall submit a Preliminary AA Report to
29 the Department within 180 days after the change, unless the responsible entity submits a
30 Priority Product Removal Notification or Chemical of Concern Removal Notification within sixty
31 (60) days of the change.

32 (e) The exemption provided under section 69503.5(a) does not apply if the Department
33 determines, and notifies the person who submitted the Alternatives Analysis Threshold
34 Exemption Notification, that the information or findings contained in the notification are
35 inaccurate, invalid, or inadequate to support a alternatives analysis threshold exemption.

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

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

39
40 **§ 69503.7. Priority Product Notifications.**

41 (a) Within sixty (60) days after a product is listed as a Priority Product, each responsible
42 entity for such a Priority Product shall notify the Department that its product is a Priority

1 Product, unless the responsible entity has submitted an alternate notification to the
2 Department under section 69503.4 (g)(2) through (g)(4). For a Priority Product that is first
3 manufactured or first placed into the stream of commerce in California after the date the
4 product is listed as a Priority Product, the responsible entity shall provide the Priority Product,
5 or an alternate, notification within sixty (60) days after the product is first placed into the stream
6 of commerce in California. The notification must include all of the following:

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

9 (2) The type, brand name(s), and product name(s) of the Priority Product, and, if
10 applicable, information specifically identifying the component(s) and/or the homogeneous
11 material(s) and its/their associated component(s) identified under section 69503.4(a)(2)(B);
12 and

13 (3) If applicable, the name of, and contact information for, the person that will be
14 complying with the requirements of article 5 on behalf of or in lieu of the responsible entity.

15 (b) If the Department determines that the notice requirements specified in subsection (a)
16 have not been complied with for a particular product that is a Priority Product, the Department
17 shall post this information on the Failure to Comply List under section 69501.2(d).

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

21 22 **Article 4. Petition Process for Identification and Prioritization of Chemicals and** 23 **Products**

24 25 **§ 69504. Applicability and Petition Contents.**

26 (a) Except as provided in subsection (b), a person may petition the Department to add
27 to or remove from the Chemicals of Concern list one or more chemicals, or to add the entirety
28 of an existing chemicals list to the lists specified in section 69502.2(a). A person may also
29 petition the Department to add to or remove from the Priority Products list a product, or to
30 establish or revise an alternatives analysis threshold for a Chemical of Concern in a Priority
31 Product. A petition must include all of the following:

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

33 (A) The petitioner; and

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

36 (2) A description of the chemical and/or product that is the subject of the petition;

37 (3) A description of the uses and applications of the chemical and/or product;

38 (4) The basis for the petition, including an analysis of the scientific basis for the
39 existence or absence of adverse public health and/or environmental impacts associated with
40 the chemical and/or product, or for the establishment or revision of an alternatives analysis
41 threshold;

42 (5) Reliable information supporting the petition; and

1 (6) The identity of any known manufacturers and importers of the chemical or product.

2 (b) A person may not petition the Department to delist any chemical identified as a
3 Chemical of Concern under section 69502.2(a), unless that chemical is no longer listed on any
4 of the lists identified in section 69502.2(a).

5 (c) Within sixty (60) days after receiving a petition, the Department shall review the
6 petition and shall designate the petition complete if it contains all of the items specified in
7 subsection (a). If the Department determines that a petition is incomplete, the Department
8 shall notify the petitioner of this determination and shall specify the basis for the determination.
9 If the Department determines that a petition is complete, the Department shall notify the
10 petitioner that it will conduct a merits review to determine whether to grant or deny the petition.

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

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

14
15 **§ 69504.1. Merits Review of Petitions.**

16 (a) The Department shall determine whether to grant or deny a complete petition in
17 accordance with the processes specified in articles 2 and/or 3. The Department shall make its
18 determination no later than the next regular update of the Chemicals of Concern or Priority
19 Products list, as applicable. The Department shall give high priority to responding to petitions
20 by federal and other California State agencies that relate to the petitioning agency's statutory
21 and/or regulatory authorities.

22 (b) The Department's merits review of each complete petition shall be based on:

23 (1) The comprehensiveness of the information submitted that pertains to the factors
24 specified in sections 69502.2 and/or 69503.2, as applicable;

25 (2) The quality of the information submitted; and

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

28 (A) The chemical exhibits one or more hazard traits or environmental or toxicological
29 endpoints; and

30 (B) An evaluation of the chemical and/or the product, based on the factors specified in
31 sections 69502.2 and/or 69503.2, as applicable, indicates adverse public health and/or
32 environmental impacts.

33 (c) The Department may request that the petitioner provide additional information to
34 assist the merits review, within a timeframe specified by the Department.

35 (d) After completing the merits review, the Department shall:

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

38 (2) Notify the petitioner of the decision.

39
40 NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code.

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

1 **Article 5. Alternatives Analysis**

2
3 **§ 69505. Guidance Materials.**

4 (a) Before finalizing the initial list of Priority Products under section 69503.4, the
5 Department shall make available on its website guidance materials to assist persons in
6 performing AAs in accordance with this article. The Department shall periodically revise and
7 update the guidance materials.

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

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

15
16 **§ 69505.1. Alternatives Analysis: General Provisions.**

17 (a)(1) All references in this article to “Priority Product” mean a product that has a been
18 listed on the Priority Products list under Article 3, or, if applicable, the component(s) and/or
19 homogeneous material(s) within a component in the product that are the focus of the AA. If
20 applicable, the AA must at a minimum include those component(s) and/or homogeneous
21 material(s) that is/are identified under section 69503.4(a)(2)(B). The responsible entity may
22 elect to expand the focus of the AA to include additional components and/or homogeneous
23 materials or the entire product.

24 (2) All references in this article to “product” mean the product as a whole.

25 (b) This article does not apply to either of the following:

26 (1) A product that is no longer placed into the stream of commerce in California by any
27 person on and after the date that the product is included on the Priority Products list.

28 (2) A Priority Product that meets the alternatives analysis threshold exemption criteria
29 specified in section 69503.5, if a complete and timely Alternatives Analysis Threshold
30 Exemption Notification has been submitted to the Department satisfying the requirements of
31 section 69503.6, unless subsection (d) or (e) of section 69503.6 applies.

32 (c)(1) The requirements of this article applicable to a responsible entity may be fulfilled
33 entirely by the responsible entity, or entirely by a person acting on behalf of or in lieu of the
34 responsible entity. Alternatively, the responsible entity may choose to fulfill some requirements
35 themselves with other requirements being fulfilled by a person acting on behalf of or in lieu of
36 the responsible entity.

37 (2) Except as otherwise provided in subsections (b), (f), and (g) and section 69505.2 (b)
38 and (c), a responsible entity for a product that contains one or more Chemicals of Concern,
39 that is/are the basis for inclusion of the product on the Priority Product list, shall conduct an AA
40 for the Priority Product, and shall comply with all applicable requirements of this article.

1 (3) A responsible entity subject to the requirements of paragraph (2) shall prepare, sign,
2 and submit to the Department AA Reports, meeting the requirements of section 69505.5, as
3 follows:

4 (A) Except as provided in subsection (d)(1), the responsible entity shall submit the
5 Preliminary AA Report no later than 180 days after the date the product is listed on the final
6 Priority Products list posted on the Department's website, unless the Department specifies a
7 different due date for the product in the Priority Products list under section 69503.4(a)(2)(C).

8 (B) Except as provided in subsection (d)(1), the responsible entity shall submit the Final
9 AA Report no later than twelve (12) months after the date the Department issues a notice of
10 compliance for the Preliminary AA Report, unless the responsible entity requests, under
11 section 69505.5(k)(1), and the Department approves, under section 69505.6(a)(3), a longer
12 period of time.

13 (C) For a product that is first placed into the stream of commerce in California after the
14 date the product is listed on the Priority Products list, the due date for the Preliminary AA
15 Report shall be 180 days after the product is first placed into the stream of commerce in
16 California.

17 (d)(1) A responsible entity may request, and the Department may grant, a one-time
18 extension of up to ninety (90) days to the submission deadline for either the Preliminary or
19 Final AA Report, or both, if the extension request is based on circumstances that could not
20 reasonably be anticipated or controlled by the responsible entity. The extension request must
21 be received at least sixty (60) days before the applicable due date.

22 (2) The extension request must include all of the following:

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

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

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

28 (D) Information identifying and describing the product, and, if applicable, the
29 component(s) and/or homogeneous material(s) and its/their associated component(s) subject
30 to the AA requirement, including the brand name(s) and product name(s) under which the
31 product is placed into the stream of commerce in California;

32 (E) The due date for the Preliminary or Final AA Report, as applicable;

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

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

37 (3) The Department shall approve or deny, in whole or in part, the extension request,
38 and notify the person submitting the extension request of the decision, within thirty (30) days of
39 receipt of the extension request. Failure by the Department to issue a decision within thirty
40 (30) days does not constitute an approval of the extension request.

41 (e) Each AA completed on and after the date that is two (2) years after the effective date
42 of these regulations shall be performed by, or under the responsible charge of, one or more

1 assessor(s) certified under article 8 for the appropriate product type or industry sector. Each
2 Preliminary and Final AA Report submitted on and after the date that is two (2) years after the
3 effective date of these regulations shall be prepared by, or under the responsible charge of,
4 one or more assessor(s) certified under article 8 for the appropriate product type or industry
5 sector.

6 (f) A responsible entity may fulfill the requirements of subsection (c)(2) by submitting to
7 the Department a report for a previously completed AA for the Priority Product, if the
8 Department determines that the report is substantially equivalent to the Final AA Report
9 requirements of section 69505.5, and that the report contains sufficient information for the
10 Department to identify regulatory response(s) under article 6.

11 (1) A responsible entity submitting a report under this subsection shall submit the report
12 no later than the deadline for submitting a Preliminary AA Report, under subsection (c)(3)(A),
13 except that a one-time extension may be requested under subsection (d).

14 (2) A responsible entity submitting an existing report under this subsection may
15 supplement the report with additional information to render the report substantially equivalent
16 to the Final AA Report requirements of section 69505.5.

17 (g) Chemical of Concern Removal Notification. If a responsible entity reformulates the
18 Priority Product to remove the Chemical(s) of Concern, that is/are the basis for the Priority
19 Product listing, without adding a substitute chemical, the responsible entity may submit a
20 Chemical of Concern Removal Notification to the Department in lieu of conducting an AA and
21 submitting an AA Report.

22 (1) A responsible entity submitting a Chemical of Concern Removal Notification under
23 this subsection shall submit the notification no later than the deadline for submitting the
24 Preliminary AA Report under subsection (c)(3)(A).

25 (2) The Chemical of Concern Removal Notification must include all of the following:

26 (A) The name of, and contact information for, the person submitting the notification;

27 (B) The name of, and contact information for, the responsible entity(ies) on whose
28 behalf the notification is being submitted;

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

31 (D) Information identifying and describing the original product and the reformulated
32 product, including the brand name(s) and labeling information for both products;

33 (E) The intended uses, and targeted customer base(s), for the product and the
34 reformulated product;

35 (F) The measures the responsible entity will take to ensure the product that contained
36 the Chemical(s) of Concern is no longer placed into the stream of commerce in California; and

37 (G) The Chemical(s) of Concern removed from the product, and both of the following:

38 1. Information explaining the rationale and the factors considered in selecting the
39 reformulation; and

40 2. Laboratory analytical testing, quality control, and quality assurance protocols used to
41 detect and measure the Chemical(s) of Concern in the product that ensures the Chemical(s) of
42 Concern have been removed.

1 (h) A responsible entity conducting an AA under this article shall consider all relevant
2 information made available on the Department's website, including any relevant public
3 comments, and any additional information or technical assistance the Department may provide
4 regarding alternatives analysis. The responsible entity shall summarize these efforts in the AA
5 Report.

6 (i) Notwithstanding any other provision of this chapter, failure of the Department to
7 make a compliance determination for a Preliminary or Final AA Report within the applicable
8 timeframe specified in section 69505.6, or failure of the Director or the Department to respond
9 to an appeal or Request for Review submitted under article 7 within sixty (60) days, shall not
10 cause a Preliminary or Final AA Report to be deemed compliant with this article.

11
12 NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference:
13 Sections 25252 and 25253, Health and Safety Code.

14
15 **§ 69505.2. Analysis of Priority Products and Alternatives.**

16 (a)(1) The AA required to be performed under section 69505.1(c)(2) must be conducted in
17 two stages, as specified in sections 69505.3 and 69505.4.

18 (2) The responsible entity shall complete the first stage of the AA, and submit a
19 Preliminary AA Report that complies with sections 69505.1(c)(3)(A) and 69505.5.

20 (3) The responsible entity shall next complete the second stage of the AA, and submit a
21 Final AA Report that complies with sections 69505.1(c)(3)(B) and 69505.5.

22 (b) After completion of the first four (4) steps of the first stage of the AA, under
23 subsections (b)(1) through (b)(4) of section 60505.3, a responsible entity that determines a
24 functionally acceptable alternative is not available or feasible may prepare and submit an
25 Abridged AA Report, in lieu of Preliminary and Final AA Reports, if all of the following
26 requirements are met:

27 (1) The responsible entity summarizes, in the Abridged AA Report, the first stage AA
28 findings in conformance with the applicable requirements of section 69505.5;

29 (2) The responsible entity identifies the factors relevant for comparison of alternatives,
30 as specified in section 69505.4(a), and summarizes, in the Abridged AA Report, its findings
31 with respect to section 69505.4(a) in conformance with the applicable requirements of section
32 69505.5;

33 (3) The responsible entity submits an Abridged AA Report to the Department by the due
34 date specified in section 69505.1(c)(3)(A); and

35 (4) The responsible entity specifies in the implementation plan included in the Abridged
36 AA Report the milestones and dates for implementation of proposed regulatory responses,
37 which shall, at a minimum, include the regulatory response required under section 69506.9.

38 (c) A responsible entity may use an AA process that differs from the process specified
39 in sections 69505.3 and 69505.4, if all of the following requirements are met:

40 (1) The responsible entity's alternate process provides the information needed to
41 prepare an AA Report that substantially meets the requirements of section 69505.5.

1 (2) The responsible entity's alternate process compares the Priority Product and the
2 alternatives using, at a minimum, the same factors and, where applicable, associated
3 exposure pathways and life cycle segments specified in sections 69505.3 and 69505.4.

4 (3) The responsible entity submits a work plan to the Department with sufficient
5 information to demonstrate that the alternate process will meet the requirements of paragraphs
6 (1) and (2), and sufficient information for the Department to specify an appropriate due date for
7 submittal of the Final AA Report.

8 (A) If the work plan includes information for which trade secret protection is claimed, the
9 responsible entity shall also submit a redacted copy of the work plan, which shall exclude the
10 information for which trade secret protection is claimed.

11 (B) The work plan shall be accompanied by an executive summary sufficient to convey
12 to the public a general understanding of the work plan.

13 1. The executive summary must be organized in conformance with the organization of
14 the work plan. The responsible entity may not include in the executive summary any
15 information for which trade secret protection is claimed.

16 2. If the Department subsequently rejects a trade secret claim, the responsible entity
17 shall, at the Department's request, submit a revised executive summary within thirty (30) days
18 of the request to add any information for which a trade secret claim is rejected and which the
19 Department determines, and specifies in its request, must be included in the executive
20 summary.

21 (C)1. The work plan must be submitted to the Department no later than sixty (60) days
22 after the product is included on the Priority Products list. Upon receipt of a work plan under
23 this subsection, the Department shall follow the steps specified for the review of Preliminary
24 AA Reports in section 69505.6(a).

25 2. For a product that is first placed into the stream of commerce in California after the
26 date the product is included on the Priority Products list, the due date for the work plan shall be
27 sixty (60) days after the product is first placed into the stream of commerce in California.

28 (D) The due date for the Final AA Report shall be eighteen (18) months after the date
29 the Department issues a notice of compliance for the work plan, unless the responsible entity
30 requests, under section 69505.5(k)(1), and the Department approves, under section
31 69505.6(a)(3), a longer period of time. The additional time shall not exceed thirty (30) months
32 after the Department issues a notice of compliance for the work plan.

33 (4) The responsible entity submits a Final AA Report to the Department that
34 substantially meets the requirements of section 69505.5 by the due date specified by the
35 Department under paragraph (3).

36 (d)(1) A responsible entity may select a different alternative from the one identified as the
37 selected alternative in the Final AA Report submitted to the Department, if both of the following
38 requirements are met:

39 (A) The responsible entity shall submit a revised Final AA Report that identifies and
40 explains the differences in the information from the original Final AA Report to the revised Final
41 AA Report. The responsible entity shall identify the information used to support the revisions
42 to the Final AA Report.

1 (B) The revised Final AA Report must be submitted to the Department at least sixty (60)
2 days prior to placing the selected alternative product into the stream of commerce in California.

3 (2) Paragraph (1) also applies if the selection decision in the original Final AA Report
4 was to retain the Priority Product, and the responsible entity later decides to select an
5 alternative to replace the Priority Product.

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 **§ 69505.3. Alternatives Analysis: First Stage.**

11 (a) All references in this section to “Chemical(s) of Concern” mean the Chemical(s) of
12 Concern that is/are the basis for the product being included on the Priority Products list.

13 (b) The first stage of the AA shall include all of the following steps:

14 (1) Step 1, Identification of Product Requirements and Function of Chemical(s) of
15 Concern.

16 (A) The responsible entity shall identify the function, performance, and legal
17 requirements associated with the Priority Product that must be met by the alternatives being
18 considered.

19 (B) The responsible entity shall identify the function of the Chemical(s) of Concern in
20 meeting the Priority Product’s requirements identified under subparagraph (A).

21 (C)1. The responsible entity shall determine if the Chemical(s) of Concern or substitute
22 chemical(s) is/are necessary to meet the Priority Product’s requirements identified under
23 subparagraph (A).

24 2. If the responsible entity determines that neither the Chemical(s) of Concern nor
25 substitute chemical(s) is/are necessary to meet the Priority Product’s requirements identified
26 under subparagraph (A), the responsible entity shall evaluate as one of the alternatives to the
27 Priority Product the removal of the Chemical(s) of Concern from the Priority Product without
28 the addition of substitute chemical(s).

29 (2) Step 2, Identification of Alternatives.

30 (A)1. In addition to any alternative identified under paragraph (1)(C)2., the responsible
31 entity shall identify alternatives that meet the definition of “alternative” under section
32 69501.1(a)(11) and meet the requirements identified under paragraph (1)(A) for the Priority
33 Product, and that eliminate or reduce the concentration of the Chemical(s) of Concern in the
34 Priority Product and/or reduce or restrict exposures to the Chemical(s) of Concern in the
35 Priority Product.

36 2. The responsible entity shall research available information, including information
37 posted on the Department’s website under section 69505(b), that may identify existing viable
38 alternatives for consideration in the AA. The responsible entity shall consider any such
39 identified alternatives in the AA.

40 (B) Alternatives that do not involve the addition of a substitute chemical do not require
41 completion of the steps specified in paragraph (3).

42 (3) Step 3, Initial Screening of Alternative Chemicals.

1 For those alternatives being considered that involve substituting the Chemical(s) of
2 Concern with other chemical(s), the responsible entity shall do all of the following:

3 (A) Collect and use available information on hazard traits and toxicological and
4 environmental endpoints, and any other relevant data, to identify all of the following for each
5 alternative chemical being considered:

- 6 1. Adverse public health impacts;
- 7 2. Adverse environmental impacts;
- 8 3. Environmental fate;
- 9 4. Physical chemical hazards; and
- 10 5. Physicochemical properties;

11 (B) Compare each of the alternative chemicals being considered with the Chemical(s) of
12 Concern in the Priority Product, using the information collected and evaluated under
13 subparagraph (A); and

14 (C) Eliminate from further consideration in the AA any alternative chemical(s) that the
15 responsible entity determines poses equal or greater adverse public health and/or
16 environmental impacts than the Chemical(s) of Concern.

17 (4) Step 4, Consideration of Additional Information.

18 As part of the first stage of the AA, the responsible entity may also consider other relevant
19 information and data not specifically identified in this section. This may include consideration
20 of the factors and information identified in section 69505.4.

21 (5) Step 5, Identification of Next Steps.

22 (A) The responsible entity shall prepare a work plan and proposed implementation
23 schedule for completion of the second AA stage, as specified in section 69505.4, and
24 preparation and submittal of the Final AA Report.

25 (B) The responsible entity shall prepare and submit to the Department a Preliminary AA
26 Report as specified under section 69505.5.

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

30
31 **§ 69505.4. Alternatives Analysis: Second Stage.**

32 The second stage of the AA shall include all of the following steps:

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

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

- 36 1. It makes a demonstrable contribution to one or more adverse public health,
37 environmental, waste and end-of-life, and/or materials and resource consumption impacts of
38 the Priority Product and/or one or more of the alternatives under consideration; and
- 39 2. There is a demonstrable difference in the factor's contribution to such impact(s)
40 between two or more of the alternatives being considered.

41 (B) For purposes of subparagraph (A), a responsible entity shall include retaining the
42 Priority Product as one of the alternatives being considered.

1 (2) The responsible entity shall collect and use available quantitative information and
2 analysis tools, supplemented by available qualitative information and analysis tools, to identify
3 the factors listed in subparagraph (A) and, where applicable, the associated exposure
4 pathways and life cycle segments that are relevant for the comparison of the Priority Product
5 and the alternatives still under consideration after completion of the first AA stage as specified
6 in section 69505.3. The factors identified in subparagraphs (B) and (C) shall be considered
7 relevant for all comparisons of the Priority Product and the alternatives.

8 (A) Multimedia life cycle impacts and chemical hazards for chemical ingredients known
9 to be in the Priority Product and the alternatives being considered based on available
10 information on:

- 11 1. Adverse environmental impacts;
- 12 2. Adverse public health impacts;
- 13 3. Adverse waste and end-of-life impacts;
- 14 4. Environmental fate;
- 15 5. Materials and resource consumption impacts;
- 16 6. Physical chemical hazards; and
- 17 7. Physicochemical properties.

18 (B) Product function and performance, meaning the principal use(s) or application(s) of
19 a product by a consumer, as intended by the manufacturer, including function and
20 performance attributes, and legal requirements. This evaluation shall include, at a minimum,
21 all of the following:

- 22 1. Useful life of the Priority Product, and that of the alternatives being considered;
- 23 2. Comparison of function and performance for each alternative relative to the Priority
24 Product and each of the other alternatives being considered, and identification of the source
25 and basis for the function and performance metrics used; and
- 26 3. A determination of whether a “technically and economically feasible alternative”
27 exists.

28 (C) Economic impacts. The responsible entity shall evaluate and compare the economic
29 impacts of the Priority Product and the alternatives. If the comparison of economic impacts
30 leads to a determination to retain the Priority Product, then the responsible entity shall take into
31 account all projected direct and indirect cost impacts during the life cycle of the product and
32 the alternatives being considered. A cost impact is an increase or decrease in one or more of
33 the following:

- 34 1. Capital;
- 35 2. Consumer costs associated with the purchase or lease and use of the product;
- 36 3. Government agency, public, and/or business costs associated with the product;
- 37 4. Jobs or businesses;
- 38 5. Manufacturing costs;
- 39 6. Marketing costs;
- 40 7. Materials and resource consumption costs; and/or
- 41 8. Waste and end-of-life management costs.

1 (3) The responsible entity's identification of relevant exposure pathways shall consider
2 both of the following:

3 (A) Chemical quantity information:

4 1. Quantities of the Chemical(s) of Concern or alternative chemical(s) necessary to
5 manufacture the Priority Product and each alternative being considered; and

6 2. Estimated volume and/or mass of the Chemical(s) of Concern or substitute
7 chemical(s) that is/are or would be placed into the stream of commerce in California as a result
8 of the Priority Product and each alternative being considered.

9 (B) Exposure factors specified in subsection (a)(1)(B) of section 69503.2.

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

11 The responsible entity shall use available quantitative information and analyses,
12 supplemented by available qualitative information and analyses, to evaluate and compare the
13 Priority Product and each of the alternatives under consideration with respect to each relevant
14 factor and, where applicable, associated exposure pathways and life cycle segments identified
15 under subsection (a). The responsible entity shall compare each alternative with the Priority
16 Product and with each of the other alternatives being considered. The responsible entity shall
17 identify and/or document, as appropriate, all of the following information:

18 (1) Quantitative metrics, where available and appropriate, for each of the relevant
19 factors identified under subsection (a)(2);

20 (2) Qualitative metrics for any relevant factors for which quantitative metrics are not
21 available or appropriate;

22 (3) Available data for each metric for the Priority Product and each alternative being
23 considered;

24 (4) Any absent or conflicting data regarding a relevant factor, and either or both of the
25 following, as appropriate:

26 (A) Available data that is most protective of public health and the environment, unless
27 there are sound methodological reasons for rejecting such data; and/or

28 (B) A value for the metric, using a method for dealing with data uncertainty due to
29 absent or missing data that has been adopted by an authoritative organization, as defined in
30 section 69401.2(b), or generally accepted in peer reviewed literature;

31 (5) A description of the performance of the Priority Product and each alternative, with
32 respect to each of the relevant factors;

33 (6) Appropriate qualitative and/or quantitative relative weights for the relevant factors,
34 and the rationale for the assignment of the relative weights;

35 (7) An evaluation of the overall performance of each alternative as compared to the
36 Priority Product and the other alternatives, including discussion of the impact of the weight
37 placed upon the relevant factors, the rationale for choosing the particular method for
38 determining the overall evaluation, and the sensitivity of the comparative evaluation to data
39 uncertainty; and

40 (8) Any other known evaluation of the Priority Product or one or more of the alternatives
41 that comes to different conclusions, regarding the relative overall performance or public health
42 and/or environmental impacts, and the reasons for the difference in the conclusions.

1 (c) Step 3, Alternative Selection Decision.

2 The responsible entity shall select the alternative that will replace or modify the Priority
3 Product, unless the decision is to retain the existing Priority Product. The selection of an
4 alternative or the decision to retain the Priority Product shall be based on and supported by the
5 comparative analysis conducted under subsection (b).

6 (d) Step 4, Consideration of Additional Information.

7 As part of the second stage of the AA, the responsible entity may also consider other
8 relevant information and data not specifically identified in this section. This may include
9 reconsideration of the factors and information identified in section 69505.3.

10 (e) Step 5, Identification of Next Steps.

11 (1) The responsible entity shall prepare a Final AA report that contains an
12 implementation schedule for implementing the selected alternative, if any, and/or proposed
13 regulatory responses, if any.

14 (2) The responsible entity shall prepare and submit to the Department a Final AA Report
15 as specified under section 69505.5.

16
17 NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference:
18 Sections 25252, 25253, and 25257, Health and Safety Code.

19
20 **§ 69505.5. Alternatives Analysis Reports.**

21 (a) All references in this section to “AA Reports” mean the Preliminary and Final AA
22 Report, unless otherwise specified.

23 (1) The Preliminary and Final AA Reports must each include, as applicable, all of the
24 information specified in subsections (b) through (k).

25 (2) The responsible entity shall include in the AA Reports sufficient information for the
26 Department to determine compliance with this article.

27 (3) The responsible entity shall include in the Preliminary AA Report sufficient
28 information for the Department to determine the appropriate due date for submission of the
29 Final AA Report.

30 (4) The responsible entity shall include in the Final AA Report sufficient information for
31 the Department to determine the appropriate regulatory response(s), if any, under article 6.

32 (5) The responsible entity shall identify and explain in the Final AA Report all differences
33 in the information and analyses presented in the Preliminary AA Report and the Final AA
34 Report. The responsible entity must identify in the Final AA Report the information sources
35 used to support changes from the Preliminary AA Report to the Final AA Report.

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

38 (A) If the AA Report contains information claimed by the responsible entity to be a trade
39 secret, a separate publicly available AA Report shall be submitted to the Department that
40 masks claimed trade secret information only to the extent necessary to protect its confidential
41 nature.

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

5 (b) Executive Summary. AA Reports must include a publicly available executive
6 summary sufficient to convey a general understanding of the scope and results of the AA and
7 the rationale for the AA selection decision. The executive summary must be organized in
8 conformance with the organization of the AA Report and must include, for each section of the
9 AA Report, a detailed summary of the information presented. Information for which trade
10 secret protection is claimed must not be included in the executive summary.

11 (c) Preparer Information.

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

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

15 (3) The names of the parties that were involved in funding, directing, overseeing,
16 preparing, and/or reviewing the AA, and the qualifications and certification information,
17 demonstrating compliance with article 8, for the individual(s) in responsible charge under
18 whose direction the AA was conducted and the AA Report was prepared.

19 (d) Responsible Entity and Supply Chain Information.

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

24 (2) The name of, and contact information for, any persons identified on the product label
25 as the manufacturer, importer, or distributor;

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

29 (4) Identification and location of the manufacturer's and/or importer's retail sales outlets
30 where the manufacturer and/or importer sold, supplied, or offered for sale the product in
31 California, if applicable; and

32 (5) The proximity of the place(s) of product manufacture to one or more source(s) of
33 virgin or recycled materials that directly or indirectly influences the type and/or amount of
34 Chemical(s) of Concern in the Priority Product.

35 (e) Product Information.

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

38 (2) If applicable, the component(s) and/or homogeneous material(s) and its/their
39 associated component(s) that is/are the focus of the AA;

40 (3) Identification of the Chemical(s) of Concern in the Priority Product that is/are the
41 basis for the product being included on the Priority Product list, and any other Chemical(s) of

- 1 Concern that is/are known, or reasonably should be known based on available information, to
2 be in the product; and
- 3 (4) The information specified in section 69505.3(b)(1).
- 4 (f) Scope and Comparison of Alternatives. The AA Reports must identify and describe
5 the alternatives chosen to be evaluated and compared, and explain the rationale for selecting
6 and screening out specific alternatives at each stage of the alternatives comparison process.
- 7 (1)(A) The Preliminary AA Report must include all of the following information for the
8 evaluation and comparison, conducted under section 69505.3(b), of the Chemical(s) of
9 Concern in the Priority Product and possible alternative chemical(s):
- 10 1. The information collected for the Chemical(s) of Concern and alternative
11 chemical(s); and
- 12 2. The comparative results of evaluating the information presented under
13 subparagraph 1.
- 14 (B) The information required under subparagraph (A) must be presented in a matrix, or
15 other format, that provides the reviewer with an easily understood visual comparison of the
16 chemicals and their adverse impacts.
- 17 (2) The Final AA Report must include all of the following information for the evaluation
18 and comparison of the Priority Product and its alternatives conducted under sections
19 69505.3(b) and 69505.4:
- 20 (A) A matrix, or other format, that provides the reviewer with an easily understood visual
21 comparison that presents all of the following, as applicable, for the evaluations conducted
22 under sections 69505.3(b) and 69505.4:
- 23 1. The relevant exposure pathways and life cycle segments, if applicable, for each
24 relevant comparison factor;
- 25 2. The information collected for each relevant factor and, where applicable, associated
26 exposure pathways and life cycle segments for the Priority Product and each alternative
27 considered; and
- 28 3. The comparative results of evaluating the information presented under
29 subparagraph 2.
- 30 (B) A description, if applicable, of how safeguards provided by other federal and
31 California State regulatory programs were considered in the AA, including identification of
32 those programs and safeguards considered.
- 33 (3) The responsible entity shall demonstrate in the Final AA Report that all of the
34 requirements of section 69505.4(b) have been met.
- 35 (g) Scope of Relevant Comparison Factors. The Final AA Report must identify which
36 factors and, where applicable, associated exposure pathways and life cycle segments were
37 determined to be relevant, under section 69505.4(a), for evaluation and comparison of the
38 Priority Product and its alternatives. For each factor, and exposure pathway and life cycle
39 segment, if applicable, determined not be relevant, the Final AA Report must explain the
40 rationale and identify, and explain the pertinent findings of, the supporting information for this
41 determination.

1 (h) Methodology. The AA Report shall identify and describe the analysis tools, models,
2 and software used to conduct the AA, and discuss any limitations of these tools, models, and
3 software. The AA Report shall also identify any published methodologies or guidelines used,
4 and any deviations taken from the published methodologies or guidelines.

5 (i) Supporting Information.

6 (1) All information used as supporting information in performance of the AA and
7 preparation of the AA Reports must be cited in the AA Reports and made available to the
8 Department, upon request. The AA Reports must include a brief summary of the information
9 reviewed and considered under section 69505.1(h).

10 (2) The Final AA Report must include the identification of information that is not
11 currently available but, if available, could be used to:

12 (A) Validate information used for purposes of sections 69505.3(b) and 69505.4;

13 (B) Address any uncertainties in the analyses conducted under sections 69505.3(b) and
14 69505.4; and/or

15 (C) Ensure that the list of chemical ingredients required to be identified for the product
16 and its alternatives during the conduct of the AA and the preparation of the AA Reports is
17 complete.

18 (j) Selected Alternative(s).

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

22 (2) The Final AA Report must identify and describe the alternative, if any, selected to
23 replace or modify the Priority Product. The description of the selection decision must include
24 an analysis that evaluates and compares the selected alternative against the Priority Product
25 and a detailed list and explanation of the reasons for the selection decision, or, alternatively,
26 for the decision not to select and implement an alternative to the Priority Product, whichever is
27 applicable. The Final AA Report must also include all of the following:

28 (A) The information specified in section 69505.4(a)(2)(B) for the selected alternative. If
29 no alternative is selected, this information must be provided for each alternative considered.

30 (B) An explanation of the rationale for deciding to retain the Chemical(s) of Concern or
31 to use substitute chemical(s), if section 69505.3(b)(1)(C)2. applies, and the selected alternative
32 retains the Chemical(s) of Concern, that is/are the basis for the product being included on the
33 Priority Products list, or uses substitute chemical(s).

34 (C) A list of all chemical ingredients known, based on available information, to be in the
35 selected alternative that differ from the chemical ingredients in the Priority Product or that are
36 present in the selected alternative at a higher concentration than in the Priority Product, and all
37 of the following information that is available for those chemicals:

38 1. Environmental fate;

39 2. Hazard trait(s) and environmental and toxicological endpoint(s) information for any of
40 those chemicals for which such information has not already been provided to the Department
41 under this chapter;

- 1 3. Information on the purity, meaning the relative freedom from extraneous matter, of
2 the chemicals and identification of known impurities and additives in the chemical;
- 3 4. Physical chemical hazards;
- 4 5. Physicochemical properties; and
- 5 6. Substance identification information, including all of the following that are applicable:
- 6 a. Chemical abstract services number;
- 7 b. Structural formula;
- 8 c. Molecular weight;
- 9 d. Synonyms;
- 10 e. International Union of Pure and Applied Chemistry name;
- 11 f. European Commission number;
- 12 g. Registry of Toxic Effects of Chemical Substances number;
- 13 h. International Union of Biochemistry and Molecular Biology number;
- 14 i. Japan Ministry of International Trade and Industry number;
- 15 j. Number assigned by the United Nations Experts on the Transport of Dangerous
16 Goods;
- 17 k. North America Department of Transportation number;
- 18 l. European Inventory of Existing Commercial Chemical Substances number;
- 19 m. European List of Notified Chemical Substances number;
- 20 n. European Commission Directive 67/548/EEC No Longer Polymers number; and
- 21 o. Other commonly recognized substance identification system numbers.
- 22 (k) Next Steps.
- 23 (1) The Preliminary AA Report must include the work plan and proposed implementation
24 schedule required to be prepared under section 69505.3(b)(5).
- 25 (A) The work plan and implementation schedule must specify the proposed submission
26 date for the Final AA Report, and must ensure that the Final AA Report will be submitted to the
27 Department no later than twelve (12) months after the Department issues a notice of
28 compliance for the Preliminary AA Report.
- 29 (B) The responsible entity may request an extension for submittal of the Final AA
30 Report, not to exceed twenty-four (24) months from the date the Department issues a notice of
31 compliance for the Preliminary AA Report. The extension request must include a detailed
32 explanation of why additional time is needed. If the Priority Products list identifies more than
33 one component or homogeneous material that must be included in the AA for the product,
34 separate submission dates may be proposed for each component and/or homogeneous
35 material. If the responsible entity chooses to include additional components and/or
36 homogeneous materials in the AA, separate submission dates may be proposed for each of
37 those components and/or homogeneous materials.
- 38 (C) The responsible entity may request an extension for submittal of the Final AA
39 Report, not to exceed thirty-six (36) months from the date the Department issues a notice of
40 compliance for the Preliminary AA Report, if the additional time is needed to conduct
41 regulatory safety and/or performance testing on multiple alternatives prior to making an AA

1 selection decision. The extension request must include a detailed explanation of why
2 additional time is needed.

3 (2) The Final AA Report must include a detailed implementation plan as specified in
4 section 69505.4(e).

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

8 (B) The implementation plan may also include the identification of any regulatory
9 response(s) that the responsible entity wishes to propose that would best limit the exposure to,
10 or reduce the level of adverse public health and environmental impacts posed by, any
11 Chemical(s) of Concern that will be in the selected alternative or that is in the Priority Product if
12 the decision resulting from the AA is to retain the Priority Product.

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

16
17 **§ 69505.6. Department Review and Determinations for AA Reports.**

18 (a)(1) Within sixty (60) days of receiving a Preliminary AA Report, the Department shall
19 review the Preliminary AA Report for compliance with this article, and issue a notice of
20 compliance, a notice of deficiency, or a notice of ongoing review.

21 (2)(A) The Department shall specify in a notice of deficiency the areas of deficiency and
22 the due date for submitting the necessary information to complete the Preliminary AA Report.
23 The due date for correcting the areas of deficiency may not exceed sixty (60) days from the
24 date the notice of deficiency is issued. The responsible entity shall submit a revised
25 Preliminary AA Report by the due date specified, and address the areas of deficiency.

26 (B) Within thirty (30) days of receipt of the additional information requested in the notice
27 of deficiency, the Department shall issue a notice of compliance, a notice of disapproval, or a
28 notice of ongoing review for the Preliminary AA Report. If the Preliminary AA Report is
29 disapproved, the Department shall explain the basis for the disapproval in the notice. The
30 Department shall also issue a notice of disapproval if a revised Preliminary AA Report is not
31 submitted by the due date specified under subparagraph (A). A disapproved Preliminary AA
32 Report is not in compliance with section 69505.1(c)(2).

33 (3) The Department shall specify in a notice of compliance the date for submitting the
34 Final AA Report. The Department shall specify a due date that is twelve (12) months from the
35 date the Department issues the notice of compliance, except that the Department may specify
36 more time for submission of the Final AA Report if it determines based on information in the
37 Preliminary AA Report that more time is needed. The Department may not establish a due
38 date for the Final AA Report that is more than twenty-four (24) months from the date the
39 Department issues the notice of compliance for the Preliminary AA Report, except as provided
40 in sections 69505.1(d) and 69505.5(k)(1)(C).

1 (b)(1) Within sixty (60) days of receiving a Final AA Report, the Department shall review
2 the AA Report for compliance with the requirements of this article, and shall issue a notice of
3 compliance, a notice of deficiency, or a notice of ongoing review.

4 (2) The Department shall specify in a notice of deficiency the areas of deficiency and
5 the due date for submitting the necessary information to complete the Final AA Report. The
6 due date for correcting the areas of deficiency may not exceed sixty (60) days from the date
7 the notice of deficiency is issued. The responsible entity shall submit a revised Final AA
8 Report by the due date specified, and address all areas of deficiency. If requested by the
9 responsible entity, the Department may approve a one-time extension, of not more than sixty
10 (60) days, for submission of the revised Final AA Report to correct the deficiencies.

11 (3) Within sixty (60) days of receipt of the requested additional information, the
12 Department shall issue a notice of compliance, a second notice of deficiency, or a notice of
13 ongoing review.

14 (A) If the Department issues a second notice of deficiency, the Department may grant
15 no more than thirty (30) days for resubmission of the requested information.

16 (B) Within sixty (60) days of receipt of the additional information requested in the second
17 notice of deficiency, the Department shall issue a notice of compliance, a notice of disapproval,
18 or a notice of ongoing review for the Final AA Report. If the Final AA Report is disapproved,
19 the Department shall explain the basis for the disapproval in the notice. The Department shall
20 also issue a notice of disapproval if a revised Final AA Report is not submitted by the due date
21 specified under paragraph (2) or subparagraph (A), whichever is applicable. A disapproved
22 Final AA Report is not in compliance with section 69505.1(c)(2).

23 (c)(1) If the Final AA Report is determined to be in compliance with this article, the
24 Department shall include in the notice of compliance, or in a separate notice sent to the
25 manufacturer and all responsible entities known to the Department, a notice of the
26 Department's proposed determination, if any, that one or more of the regulatory responses
27 specified in sections 69506.5, 69506.6, 69506.7, 69506.9, and/or 69506.10 is/are required.

28 (2) If the Department requires one or more regulatory responses under sections
29 69506.5, 69506.6, 69506.7, 69506.9, and/or 69506.10, the Department shall specify in the
30 notice the proposed due date(s) for implementation of the regulatory response(s). In assigning
31 a due date for completing a regulatory response, the Department shall consider the complexity
32 of implementing the regulatory response.

33 (d) The Department shall specify in a notice of ongoing review the estimated date by
34 which the Department expects to issue a notice of compliance or notice of deficiency. The
35 Department shall take into account its available resources and the complexity of the AA Report
36 under review in estimating the date for issuance of a notice of compliance or notice of
37 deficiency.

38 (e) All notices issued by the Department under this section shall be issued to the person
39 who submitted the AA Report, and a copy of the notice shall be sent by the Department to all
40 persons identified in the AA Report under subsections (c)(2) and (c)(3) of section 69505.5.

41

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

3
4 **Article 6. Regulatory Responses**

5
6 **§ 69506. Regulatory Response Selection Principles.**

7 (a) The Department shall identify and require implementation of regulatory responses
8 designed to protect public health and the environment, and maximize the use of alternatives of
9 least concern, where such alternatives are technically and economically feasible.

10 (b) In selecting regulatory responses, the Department shall give preference to regulatory
11 responses providing the greatest level of inherent protection. For these purposes, “inherent
12 protection” refers to avoidance or reduction of adverse impact or exposure that is achieved
13 through the redesign of a product or process, rather than through administrative or engineering
14 controls designed to limit exposure to, or the release of, a Chemical of Concern in a product.

15 (c) In selecting regulatory responses, the Department may consider any or all of the
16 following factors:

17 (1) The likely actual effectiveness of the regulatory response, including the capacity of
18 responsible entities to comply, and the ability of end-users to understand and act upon any
19 information and directions provided with respect to the product;

20 (2) The relative cost-effectiveness of the regulatory response as compared to other
21 possible responses;

22 (3) The administrative and other burdens that would be placed upon the Department,
23 the responsible entities, the product end-users, and the public;

24 (4) Any unique or additional burdens that would be imposed by the regulatory response
25 upon sensitive subpopulations; and/or

26 (5) The ease and efficacy of enforcement of the regulatory response.

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

30
31 **§ 69506.1. Applicability and Determination Process.**

32 (a) This article applies to any product placed into the stream of commerce in California
33 that is:

34 (1) An alternative selected under section 69505.4(c);

35 (2) A Priority Product for which an alternative is not selected; or

36 (3) A Priority Product that will remain in commerce in California pending development
37 and distribution of a selected alternative.

38 (b) Prior to issuing a final regulatory response determination notice under sections
39 69506.5, 69506.6, 69506.7, 69506.9, and/or 69506.10, the Department, as required under
40 section 69505.6(c), shall notify all known responsible entities for the product of the proposed
41 regulatory response(s), and make the proposed regulatory response determination notice
42 available on its website, for public review and comment. The Department shall hold one or

1 more public workshop(s) to provide an opportunity for oral comment on the proposed
2 regulatory response determination. The Department shall send to individuals on the electronic
3 mailing list(s) that the Department establishes related to this chapter, and post on its website, a
4 notice regarding the availability of the proposed regulatory response determination. The notice
5 must include all of the following:

6 (1) The last day for the public to submit written comments on the proposed regulatory
7 response determination. The last day for submission of public comments shall be no sooner
8 than forty-five (45) days from the date the availability of the proposed regulatory response
9 determination notice is sent to individuals on the electronic mailing list(s) that the Department
10 establishes related to this chapter, and posted on the Department's website;

11 (2) The method(s) for submitting comments to the Department; and

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

13 (c) After review and consideration of public comments, the Department shall finalize and
14 send to known responsible entities the final regulatory response determination notice. The
15 Department may respond to some or all public comments received.

16 (d) All proposed and final regulatory response determination notices must include all of
17 the following:

18 (1) A description of the required regulatory response(s);

19 (2) The Department's basis for requiring the regulatory response(s);

20 (3) The rationale, information, and information sources supporting the Department's
21 determination(s); and

22 (4) The implementation due date(s) for the regulatory response(s).

23 (e) In assigning a due date for a regulatory response, the Department shall consider the
24 complexity of implementing the regulatory response.

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

28 29 **§ 69506.2. AA Report Supplemental Information Requirements.**

30 (a) The Department may at any time require a responsible entity to provide, within a
31 time frame specified by the Department, any information supplementary to the Final AA Report
32 that the Department determines is necessary to select and ensure implementation of one or
33 more regulatory responses that may be imposed under this article.

34 (b) The Department may at any time require a responsible entity to obtain or develop,
35 within a time frame specified by the Department, information to fill one or more of the
36 information gaps identified in the Final AA Report, under section 69505.5(i)(2), if the
37 Department determines this information is needed to re-evaluate, under section 69506.10(b),
38 the initial regulatory response(s) imposed for a selected alternative or a Priority Product that
39 remains in commerce.

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

1
2 **§ 69506.3. No Regulatory Response Required.**

3 No regulatory response under sections 69506.4 through 69506.10 is required for the
4 selected alternative, if the Department determines for the selected alternative that no
5 regulatory response is necessary to prevent or limit adverse public health or environmental
6 impacts.

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

10
11 **§ 69506.4. Product Information for Consumers.**

12 (a)(1) Except as provided in paragraph (2), this section applies to selected alternative
13 products, Priority Products for which an alternative is not selected, and Priority Products which
14 remain in commerce in California pending development and distribution of an alternative
15 product for longer than twelve (12) months after the Department issues a notice of compliance
16 for the Final AA Report. Beginning no later than twelve (12) months after the Department
17 issues a notice of compliance for the Final AA Report for the product, and for as long thereafter
18 as the product is placed into the stream of commerce in California, the responsible entity shall
19 ensure that all of the following information is made available to the consumer prior to exposure
20 to any Chemical(s) of Concern:

21 (A) Manufacturer's name and importer's name;

22 (B) Brand name(s) and product name(s), and description of the product;

23 (C) A list of, and common names for, all Chemicals of Concern known to be in the
24 product, and known hazards traits for those chemicals, based on available information;

25 (D) Any safe handling procedures needed to protect public health or the environment
26 during the useful life of the product, including precautions that consumers may take to prevent
27 or limit exposure to the Chemical(s) of Concern;

28 (E) Identification of any end-of-life management requirements specified by law, and any
29 existing end-of-life management program(s) for the product; and

30 (F) The manufacturer's website address and the importer's website address where the
31 consumer can obtain additional information about the product, the adverse public health and/or
32 environmental impacts associated with the product as identified in the AA Report for the
33 product, and proper end-of-life disposal or management of the product.

34 (2) If the product contains no Chemical(s) of Concern above the applicable alternatives
35 analysis threshold, then paragraph (1) does not apply.

36 (b) The responsible entity shall satisfy subsection (a) by making the required information
37 available to consumers, in easily seen, legible, and understandable formats, by both:

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

40 (2) Using one or both of the following means of informing consumers at the point of sale
41 of the information specified in subsection (a):

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

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

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

9
10 **§ 69506.5. Use Restrictions on Chemical(s) of Concern and Consumer Products.**

11 The Department may impose restrictions on the use of one or more Chemicals of Concern
12 in a selected alternative, or in a Priority Product for which an alternative is not selected, or
13 restrictions on the use of the product itself, to reduce the ability of the product to contribute to
14 or cause adverse public health and/or environmental impacts. Use restrictions may include
15 one or more of the following:

16 (a) Restrictions on the amount or concentration of the Chemical(s) of Concern permitted
17 in a product;

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

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

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

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

22 (f) Any other use restriction that reduces the amount of any Chemical(s) of Concern in
23 the product, or reduces the ability of the product to contribute to or cause an exposure to the
24 Chemical(s) of Concern in the product.

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

28
29 **§ 69506.6. Product Sales Prohibition.**

30 (a) This section does not apply to a product that does not contain any Chemical of
31 Concern above the applicable alternatives analysis threshold.

32 (b) Except as provided in section 69506.3 and subsection (e), the requirements of
33 subsection (c) apply to a selected alternative that contains one or more Chemical(s) of
34 Concern, or a Priority Product for which an alternative is not selected, if the Department
35 determines and notifies the responsible entity, under section 69506.1, that there is a safer
36 alternative that does not contain a Chemical of Concern and that is both functionally
37 acceptable and technically and economically feasible. In making such a determination, the
38 Department shall consider the exposure pathways that have the ability to contribute to or
39 cause adverse public health and/or environmental impacts.

40 (c) Any responsible entity that is the subject of a notification issued under subsection (b)
41 shall cease to place the noticed product into the stream of commerce in California within one

1 (1) year after the Department issues the notification, unless the notification specifies a shorter
2 period of time.

3 (d)(1) Except as provided in section 69506.3 and subsection (e), the Department may
4 issue a notification, under section 69506.1, of its determination that a product containing a
5 Chemical of Concern may no longer be placed into the stream of commerce in California,
6 notwithstanding that there are no currently identified safer alternatives that are both
7 functionally acceptable and technically and economically feasible.

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

11 (A) The overall beneficial public health and environmental impacts of the product
12 significantly outweigh the overall adverse public health and environmental impacts of the
13 product; and

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

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

19 (4) Any responsible entity that is the subject of a notification issued by the Department
20 under paragraph (1) shall cease to place the noticed product into the stream of commerce in
21 California within one (1) year after the Department issues the notification, unless the
22 notification specifies a shorter period of time.

23 (e) A responsible entity that receives a notification under subsection (b) or (d) is not
24 subject to the requirements of subsection (c) or (d)(4) if all of the following requirements are
25 met:

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

29 (2) Within one (1) year after the notification is issued by the Department, unless the
30 Department specifies a shorter period of time in the notification, the Department receives a
31 revised Final AA Report that selects an alternative that does not contain a Chemical of
32 Concern and that meets the requirements of section 69505.5; and

33 (3) The product containing one or more Chemical(s) of Concern is completely removed
34 from commerce in California by the date specified by the Department in the notice of
35 compliance or notice of disapproval for the revised Final AA Report submitted under paragraph
36 (2), or in a separate notice issued under section 69505.6(c). The completion date shall be no
37 longer than three (3) years after the Department issues the notice of compliance or notice of
38 disapproval.

39 (f)(1) A responsible entity may request a one-time extension to the due date for the
40 revised Final AA Report to be submitted under subsection (e), under the procedures specified
41 in section 69505.1(d).

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

3 (A) A revised Final AA Report meeting the requirements of subsection (e)(2) shall be
4 submitted to the Department; or

5 (B) The product shall cease to be placed into the stream of commerce in California.

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

9
10 **§ 69506.7. Engineered Safety Measures or Administrative Controls**

11 (a) The Department may, under subsection (b), impose requirements that control
12 access to or limit exposure to Chemical(s) of Concern in a selected alternative product, or a
13 Priority Product for which an alternative is not selected, to reduce the likelihood of adverse
14 public health and/or environmental impacts.

15 (b) Engineering or administrative controls may be imposed by the Department to either
16 integrally contain the Chemical(s) of Concern within the structure of the product or limit
17 exposure to the Chemical(s) of Concern, if one or more of the following applies:

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

21 (2) Reliable information indicates an elevated level of the Chemical(s) of Concern in an
22 indoor building or other enclosed environment; and/or

23 (3) Improper product handling would increase the likelihood of release of, or exposure to,
24 the Chemical(s) of Concern.

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

28
29 **§ 69506.8. End-of-Life Management Requirements.**

30 (a) Except as provided in section 69506.3, a responsible entity for a selected
31 alternative, or a Priority Product for which an alternative is not selected, that is sold or
32 otherwise made available to consumers as a finished product and is required to be managed
33 as a hazardous waste in California at the end of its useful life, shall ensure that the following
34 requirements are met:

35 (1) The information required by section 69506.4 shall be provided for the product.
36 Additionally, the product information must state that the product must be disposed of or
37 otherwise managed as a hazardous waste at the end of its useful life.

38 (2) No later than one (1) year after the Department issues a notice of compliance for the
39 Final AA Report for the product, the responsible entity shall fund, establish, and maintain an
40 end-of-life management program for the product. The program must comply with all of the
41 following requirements:

- 1 (A) A comprehensive product stewardship plan must be developed and maintained,
2 after being submitted to the Department for approval. The plan must include all of the
3 following:
- 4 1. A list of, and contact information for, participating manufacturers, importers, and
5 other participating persons.
 - 6 2. The scope of products to be covered by the plan.
 - 7 3. The roles and responsibilities for manufacturers, importers, retailers, consumers,
8 and government throughout the life cycle of the product, and identification of retailers who
9 have agreed to participate in the program.
 - 10 4. Identification and description of collection systems that will be used.
 - 11 5. End-of-life management information, that includes the steps that will be taken to
12 ensure compliance with all applicable federal and California State and local laws, and that
13 addresses any adverse multimedia impacts.
 - 14 6. Anticipated resources needed to implement and sustain the plan, including
15 identification of any third-party product stewardship organization collecting and administering a
16 fee to fund the stewardship program.
 - 17 7.a. A financial guarantee provided by the responsible entity to insure a sustainable end-
18 of-life management program for the product.
 - 19 b. "Financial guarantee" means any mechanism, including the mechanisms described
20 in article 8 of chapter 14, to ensure that adequate funding is available to pay for future end-of-
21 life management costs for products placed into the stream of commerce in California.
 - 22 8. Program performance goals, which shall be quantitative to the extent feasible, for:
 - 23 a. Increasing the capture rate of covered products at the end-of-life; and
 - 24 b. Increasing recyclability.
 - 25 9. A description of how each program goal will be achieved.
 - 26 10. Public education, outreach, and communications plans.
 - 27 11. A description of public and stakeholder consultation activities during preparation,
28 and in periodic review and updating, of the plan.
 - 29 12. Reporting and evaluation procedures.
- 30 (B) The product stewardship program and plan for collecting and, if applicable, recycling
31 the product shall be developed in consultation with California retailers and owners/operators of
32 prospective collection sites. The collection program must include one or both of the following:
- 33 1. Collection mechanisms; and/or
 - 34 2. Compensation to retailers and other persons who agree to administer or participate
35 in the collection program.
- 36 (C) The responsible entity shall provide its product stewardship plan to the Department
37 for review and approval, post a copy of the product stewardship plan on its own website, and
38 provide a link to the posting to the Department for posting on the Department's website.
- 39 (D) The responsible entity for a product subject to the requirements of this section shall
40 ensure that a report is provided to the Department annually from the date the end-of-life
41 management program is required to be implemented. The report must include, by total
42 tonnage:

1 1. The quantity of products placed into the stream of commerce in California over the
2 previous one-year period; and

3 2. The quantity of products recovered over the same one-year period.

4 (b) Multiple responsible entities may form a third-party product stewardship
5 organization, funded by participating manufacturers and other responsible entities, to provide
6 local services to collect, recycle, or otherwise appropriately manage covered products at the
7 end-of-life.

8 (c) A responsible entity subject to the requirements of this section may request the
9 Department's approval to substitute an alternative end-of-life management program that
10 achieves, to the maximum extent feasible, the same results as the program required by this
11 section. A responsible entity may not substitute an alternative end-of-life management
12 program for the program specified in this section unless it receives advanced written approval
13 from the Department.

14 (d) A responsible entity subject to the requirements of this section may request an
15 exemption from the requirement to provide an end-of-life management program by
16 demonstrating to the Department's satisfaction in the Final AA Report that an end-of-life
17 management program cannot feasibly be implemented for the product.

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

21
22 **§ 69506.9. Advancement of Green Chemistry and Green Engineering.**

23 The Department may require a manufacturer to initiate a research and development project
24 or fund a challenge grant pertinent to the Priority Product that uses green chemistry and/or
25 green engineering principles to do one or more of the following:

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

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

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

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

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

33
34 **§ 69506.10. Regulatory Response Selection and Re-Evaluation.**

35 (a) The Department may impose one or more regulatory responses specified in section
36 69506.2 and sections 69506.4 through 69506.9 to situations other than those specified in
37 those sections.

38 (b) The Department may periodically re-evaluate any regulatory response imposed
39 under this section to determine if changes are needed based upon changed circumstances or
40 information identified since a regulatory response was selected, including information that fills
41 one or more of the information gaps identified in the Final AA Report under section
42 69505.5(i)(2). The Department may accordingly require a new AA to be performed, and

1 Preliminary and Final AA Reports to be submitted to the Department, in a specified time
2 period.

3
4 NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference:
5 Section 25253, Health and Safety Code.

6
7 **§ 69506.11. Exemption from Regulatory Response Requirements.**

8 (a) A product is exempt from the requirements of sections 69506.4 through 69506.10, if
9 the responsible entity requests, and the Department grants, an exemption. A responsible
10 entity seeking an exemption shall submit an exemption request to the Department no later than
11 whichever of the following dates is applicable:

12 (1) Sixty (60) days after the Department issues a notice to the responsible entity under
13 sections 69505.6(c); or

14 (2) Sixty (60) days after the Department issues a notice of compliance for a Final AA
15 Report for a product subject to sections 69506.4 or 69506.8.

16 (b) An exemption request submitted under subsection (a) must include all of the
17 following:

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

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

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

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

25 (5) Information identifying and describing the product, including the brand name(s) and
26 product name(s) under which the product is placed into the stream of commerce in California,
27 and information specifically identifying the component and/or homogeneous material and
28 its/their associated component, if applicable; and

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

31 (A) The required or proposed regulatory response would conflict with one or more
32 requirements of another California or federal regulatory program or an international trade
33 agreement with the force of domestic law, in such a way that the responsible entity cannot
34 reasonably be expected to comply with both requirements; and/or

35 (B) The required or proposed regulatory response substantially duplicates one or more
36 requirements of another California or federal regulatory program or an international trade
37 agreement with the force of domestic law, without conferring additional public health or
38 environmental protection benefits.

39 (c) Within sixty (60) days of receiving an exemption request, the Department shall issue
40 a notice to the person who submitted the request granting or denying the exemption request.
41 The Department shall send a copy of the notice to known responsible entities for the product.

1 (d) If the exemption request or the Department's granting of the exemption is based
2 solely on the criteria specified in subsection (b)(6)(A), the Department may require
3 implementation of a modified regulatory response that resolves the conflict that is the basis for
4 the exemption.

5 (e) The Department shall rescind an exemption granted under this section if the
6 Department determines that the facts and/or assumptions that the Department relied upon in
7 granting the exemption were not, or are no longer, valid. If the Department rescinds an
8 exemption, the Department shall notify the person who submitted the exemption request and
9 known responsible entities for the product.

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

13
14 NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference:
15 Sections 25253 and 25257.1, Health and Safety Code.

16
17 **§ 69506.12. Regulatory Response Report and Notifications.**

18 (a) A responsible entity subject to a regulatory response under this article, except for the
19 regulatory responses specified in sections 69506.2 and 69506.9, shall ensure that a notice is
20 sent to all retailers who sell the product in California, informing the retailers of the applicability
21 of the regulatory response to the product. The notice shall be sent to the retailers, and a copy
22 sent to the Department, no later than whichever of the following dates is applicable:

23 (1) Thirty (30) days after receiving a final regulatory response determination notice,
24 under section 69506.1; or

25 (2) Thirty (30) days after the Department issues a notice of compliance for a Final AA
26 Report for a product subject to section 69506.4 or 69506.8.

27 (b) The notice required under subsection (a) shall include all of the following:

28 (1) The name of, and contact information for, the manufacturer and the importer;

29 (2) The responsible entity's name and contact information, if different from the
30 manufacturer or importer;

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

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

37 (c) The responsible entity shall notify the Department upon completing implementation
38 of the required regulatory response(s) and, if applicable, upon completing development and
39 introduction into the California marketplace of the selected alternative. The notification must
40 include information describing how the regulatory response(s) was/were implemented. If
41 requested by the Department, the responsible entity shall provide periodic implementation

1 status reports regarding the selected regulatory response(s). The information provided to the
2 Department under this subsection shall also be posted on the website of the responsible entity.

3 (d)(1) The Department shall prepare and post on its website, and update at least annually,
4 a Regulatory Response Summary that identifies the regulatory response(s) for each selected
5 alternative for a Priority Product, or for the Priority Product, whichever is applicable. The
6 Regulatory Response Summary must contain all of the following for which information is
7 available:

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

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

10 (C) Information identifying and describing the original Priority Product, and the selected
11 alternative, if any, including the brand name(s) and product name(s) under which the product is
12 placed into the stream of commerce in California;

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

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

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

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

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

20 (2) The Department shall also include in the Regulatory Response Summary the
21 information specified in paragraphs (1)(A) through (1)(D) for each exemption granted by the
22 Department under section 69506.11.

23
24 NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference:
25 Sections 25253 and 25257, Health and Safety Code.

26 27 **Article 7. Dispute Resolution Processes**

28 29 **§ 69507. Dispute Resolution.**

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

33 (b) The procedures set out in this article are required for resolving disputes arising
34 under this chapter. If the responsible entity fails to follow the procedures specified in this
35 article for disputes subject to this article, it waives its right to further contest the disputed issue
36 administratively.

37 (c) A decision made by the Department under article 2, 4, or 10 is not subject to dispute
38 resolution under this article.

39 (d) A requirement imposed by the Department under this chapter on a responsible
40 entity, and any posting concerning the requirement on the Failure to Comply list under section
41 69501.2(d), is stayed during the pendency of an administrative dispute concerning the
42 requirement.

1
2 NOTE: Authority cited: Sections 25252, 25253, and 58012, Health and Safety Code.
3 Reference: Sections 25252, 25253, and 25257.1, Health and Safety Code.

4
5 **§ 69507.1. Informal Dispute Resolution Procedures.**

6 (a) For a dispute regarding a decision made by the Department under the provisions of
7 this chapter, other than sections 69506.5, 69506.6, 69506.7, 69506.9, 69506.10, and
8 69506.11, a responsible entity may, within thirty (30) days following the notice or website
9 posting of the Department's decision that is the basis of the dispute, request that the
10 Department informally resolve the dispute. The Department shall provide the responsible
11 entity with an opportunity to resolve the dispute informally within thirty (30) days of receiving
12 the request for dispute resolution. If a request for informal dispute resolution is not received
13 within thirty (30) days of the notice or website posting of the Department's decision, the
14 Department's decision is final and is not eligible for any dispute resolution procedures under
15 this article.

16 (b) If the responsible entity disagrees with the Department's decision following
17 completion of the informal dispute resolution process, the responsible entity may appeal to the
18 Director of the Department under section 69507.2.

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

24 (a) A responsible entity appealing the Department's decision following completion of the
25 informal dispute resolution process shall submit information stating the basis for seeking
26 further review, and the reasons why the decision does not comport with the requirements of
27 this chapter or is otherwise unreasonable. The responsible entity shall also provide all of the
28 following:

29 (1) The original statement of dispute;

30 (2) Supporting documents; and

31 (3) Copies of responses prepared by the Department.

32 (b) The responsible entity appealing a Department decision shall file the appeal with the
33 Department's Director within thirty (30) days after completion of the informal dispute resolution
34 process under section 69507.1.

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

38 (1) Contain a short and plain description of the basis for denial of the request for further
39 administrative review; and

40 (2) Specify the date by which the responsible entity shall comply with the requirements
41 of this chapter that were in dispute.

1 (d) A decision issued under subsection (c) is the Department's final decision and is not
2 subject to additional administrative dispute resolution.

3 (e) The Department shall specify in a notice of ongoing review the estimated date by
4 which the Department expects to issue a decision granting or denying the relief sought. The
5 Department shall take into account its available resources and the complexity of the issues
6 raised in the appeal in estimating the date for issuance of the final decision.

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

10
11 **§ 69507.3. Formal Dispute Resolution Procedures.**

12 For all disputes regarding a decision made by the Department under sections 69506.5,
13 69506.6, 69506.7, 69506.9, 69506.10, and 69506.11, the procedures specified in sections
14 69507.4 through 69507.6 shall apply in lieu of the procedures set forth in sections 69507.1 and
15 60507.2.

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

19
20 **§ 69507.4. Time Lines for Requests for Review.**

21 Within thirty (30) days of a responsible entity receiving a determination from the
22 Department under section 69506.5, 69506.6, 69506.7, 69506.9, 69506.10, or 69506.11, the
23 responsible entity may submit a Request for Review to the Department, requesting review of
24 such determination. If a Request for Review is not filed within this time period, the
25 Department's determination is final and is not eligible for any dispute resolution procedures
26 under this article.

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

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

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

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

40
41 **§ 69507.6. Department Procedures for Requests for Review.**

1 (a) Within sixty (60) days following the filing of a Request for Review under section
2 69507.4, the Department shall issue an order either granting or denying the Request for
3 Review, or a notice of ongoing review.

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

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

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

11 (c) An order granting review must specify a schedule for briefing of the issues by the
12 responsible entity and the Department.

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

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

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

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

29 (f) No Department staff that participated in the decision that is the subject of the
30 Request for Review filed under section 69507.4 may participate in decision-making or review
31 of decisions made under this section.

32 (g) No Department staff participating in decision-making or review of decisions made
33 under this section may have communications about the Request for Review with the
34 Department staff that participated in the decision that is the subject of the Request for Review
35 filed under section 69507.4, unless the Department simultaneously communicates with the
36 responsible entity or its representative regarding the issues under discussion with Department
37 staff.

38
39 NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference:
40 Sections 25253 and 25257.1, Health and Safety Code.

41
42 **Article 8. Accreditation Bodies and Certified Assessors**

1
2 **§ 69508. Qualifications and Certification for Assessors.**

3 (a) An individual in responsible charge of conducting an AA and/or preparing a
4 Preliminary or Final AA Report, or both, shall meet both of the following requirements:

5 (1) Possess a Bachelor's degree with a major in a scientific or engineering field from an
6 accredited college or university; and

7 (2)(A) Have the equivalent of two (2) years of professional experience performing AAs
8 and/or working in a scientific or engineering field.

9 (B) Post-graduate work in the performance of AAs and/or in a scientific or engineering
10 field, while attending an accredited college or university, may be substituted on a year-for-year
11 basis for the experience required under subparagraph (A).

12 (b) On and after the date that is two (2) years after the effective date of these
13 regulations, an individual in responsible charge of conducting an AA and/or preparing a
14 Preliminary or Final AA Report, or both, shall successfully complete an assessor training
15 program that is developed and delivered by an accreditation body, successfully complete an
16 exit exam that meets the requirements of section 69508.2(c)(5), and meet all of the following
17 requirements:

18 (1) Receive a "Certified Alternatives Assessor" certificate that meets the requirements of
19 section 69508.2(c)(6), and is issued by the accreditation body whose training program the
20 assessor successfully completed.

21 (2) Maintain certification by doing all of the following:

22 (A) Complete at least 20 hours of continuing education during each two-year
23 accreditation period, as required and provided by, or verified by, the accreditation body from
24 which the assessor will seek re-certification upon expiration of their current certification.
25 Continuing education shall be education and/or training focused on one or more aspects of
26 conducting AAs or closely related topics. At least two (2) hours of continuing education must
27 be in professional ethics;

28 (B) Submit a certificate renewal application to an accreditation body at least thirty (30)
29 days prior to the expiration of the assessor's current certification. If the assessor complies with
30 the requirements of this subparagraph and subparagraph (A), the current certification will
31 remain in effect until the accreditation body makes a determination on the application for
32 renewal; and

33 (C) Receive a renewed "Certified Alternatives Assessor" certificate that satisfies the
34 requirements of section 69508.2(c)(6) and is issued by the accreditation body that provided or
35 verified the assessor's continuing education under subparagraph (A).

36 (3) Possess, and produce when requested, a current "Certified Alternatives Assessor"
37 certificate meeting the requirements of section 69508.2(c)(6).

38 (c) Successful completion of an approved challenge test developed by the accreditation
39 body may be used in lieu of the classroom training requirements specified in section
40 69508.2(c)(4) and written and practical tests specified in section 69508.2(c)(5) for applicants
41 who meet the competency requirements and/or possess on-the-job training equivalent to that
42 specified in section 69508.2(c)(4)(A) through (E).

1 (d) If the Department revokes, under subsection (g)(2), (g)(3), or (g)(4) of section
2 69508.3, the designation of the accreditation body from which the assessor obtained
3 accreditation, the assessor shall apply for re-certification from another accreditation body no
4 later than sixty (60) days after information concerning the revocation is posted on the
5 Department's website.

6 (e) An assessor's certificate shall be subject to reprimand, suspension, probation, or
7 revocation by the accreditation body or the Department, or both, for failure to comply with the
8 requirements of this chapter, or if the Department or the accreditation body finds the assessor
9 has engaged in activities governed by this chapter in a manner that is negligent, fraudulent, or
10 otherwise unethical. The accreditation body shall provide to the Department the name of, and
11 contact information for, any assessor whose certification is reprovved, suspended, placed on
12 probation, or revoked by the accreditation body, and an explanation of the reasons for the
13 decision.

14 (f) Final decisions and a summary regarding actions which result in reprimand,
15 suspension, probation, or revocation shall be posted on the Department's web site for five (5)
16 years after the effective date of the decision.

17 (g)(1) A certified assessor may not be in responsible charge of conducting an AA and/or
18 preparing a Preliminary or Final AA Report, if the certified assessor has an ownership interest
19 in the responsible entity whose product is the subject of the AA. For purposes of this
20 subsection, an ownership interest exists if the certified assessor, or his/her spouse, child, or
21 parent holds a position as an officer or director of the responsible entity or has an equity stake
22 in the responsible entity in the amount of ten thousand dollars (\$10,000) or more.

23 (2) Paragraph (1) applies only to third-party certified assessors that are in responsible
24 charge of conducting an AA and/or preparing a Preliminary or Final AA Report under a
25 contractual agreement with the responsible entity.

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

29
30 **§ 69508.1. Qualifications for Accreditation Bodies.**

31 (a) An entity wishing to be designated, or to renew designation, by the Department as
32 an accreditation body to certify assessors shall have on staff one or more individuals that, in
33 combination, possess all of the following:

34 (1) A post-graduate degree in a scientific or engineering field from an accredited college
35 or university.

36 (2) The equivalent of four (4) years of professional experience performing AAs and/or
37 working in a scientific or engineering field. Post-graduate work in the performance of AAs
38 and/or in a scientific or engineering field, while attending an accredited college or university,
39 may be substituted on a year-for-year basis for the required experience.

40 (3) The ability to teach, and experience teaching, the principles and practices of
41 performing AAs as specified in article 5.

1 (4) The ability to teach, and experience teaching, the application of life cycle analysis
2 tools and methodologies relevant to products.

3 (5) The ability to teach, and experience teaching, or have access to subject matter
4 experts with the ability to teach, and experience teaching, in all of the following subject areas:

5 (A) Environmental fate and transport, which shall include all of the following:

6 1. Fundamental processes in natural and engineered systems, including inter-media
7 transport of contaminants between environmental compartments, and chemical and
8 biochemical transformations within these compartments;

9 2. Principles of environmental reactions with emphasis on aquatic chemistry, reaction
10 and phase equilibria, acid-base and carbonate systems, oxidation-reduction, colloids, organic
11 contaminant classes, sources and fates, and groundwater chemistry; and

12 3. Topics concerning the environment, including ecology, population dynamics,
13 pollution micro-biology, aquatic biology, bio-concentration, limnology, stream sanitation,
14 nutrient cycles, and toxicology atmospheric chemistry.

15 (B) Principles of green chemistry, which shall include both of the following:

16 1. The study of all aspects and types of chemical processes, including synthesis,
17 catalysis, analysis, monitoring, separations and reaction conditions that reduce adverse
18 impacts on public health and the environment through the reduction in, or elimination of, the
19 use or generation of hazardous materials; and

20 2. Pollution prevention and cleaner production methods.

21 (C) Project life cycle management, which shall include both of the following:

22 1. Environmental management of engineering projects from the research through the
23 development, operation, maintenance and ultimate disposal phases; and

24 2. Impacts of exploitation of raw materials and energy resources, and transportation;
25 pollution from use and ultimate disposal of products; economics of environmental resources.

26 (D) Public health, which shall include all of the following:

27 1. Impacts to sensitive populations, including the study of risk and factors that influence
28 the distribution of disease in subpopulations;

29 2. Examination of the basic principles of epidemiology, their application to specific
30 public health situations, and criteria for critically evaluating epidemiology studies; and

31 3. Methods of evaluating the causative factors of disease and the assessment of
32 epidemiological study designs and research activities.

33 (E) Professional ethics, which shall include all of the following:

34 1. Analysis of ethical principles and dilemmas that may arise during the conduct and
35 preparation of the AA and AA Reports;

36 2. Examination of the services provided and approaches to providing impartial, fair, and
37 equitable services dedicated to the protection of public health and the environmental;

38 3. Fundamental standards that protect the safety, health, and welfare of the public;

39 4. Standards and practices to ensure that services are performed only in areas of
40 competency, statements are made only in an objective and truthful manner, the assessor acts
41 for each employer or client as a faithful agent or trustee, and deceptive acts are avoided; and

42 5. Rules of practice and professional obligations that support the above.

1 (F) Toxicology and comparative risk assessment, which shall include all of the following:

- 2 1. The toxic effects that hazardous chemicals have on biological systems, including
3 dose-response curves, mechanisms of toxicity, carcinogenesis, and reproductive hazards;
4 2. The risks associated with exposure to hazardous chemicals and instruction on how
5 risk assessment fits into the risk management processes; and
6 3. Examination of common toxicological effects of chemicals on biological systems
7 through inclusion of relevant case studies.

8 (G) Occupational health and safety, which shall include all of the following:

- 9 1. The principles, practices, and methods for identifying, evaluating, preventing, and
10 reducing workplace chemical hazards;
11 2. Methods for measuring and evaluating chemical-related hazardous workplace
12 conditions; and
13 3. Federal and State statutory and regulatory requirements regarding occupational
14 health protection.

15 (6) The ability to teach, and experience teaching, or have access to subject matter
16 experts with the ability to teach, and experience teaching, in two or more of the following
17 subject areas:

18 (A) Economics and financial planning for innovation, which shall include both of the
19 following:

- 20 1. An introduction to the core principles of economics, finance, and accounting to
21 understand the steps necessary to bring green chemistry innovations to market; and
22 2. Exploration of other relevant topics in business administration and sustainability,
23 including business models, ecological economics, entrepreneurship and service design.

24 (B) Environmental law, which shall include all of the following:

- 25 1. Federal statutory and regulatory requirements regarding public health and
26 environmental protection;
27 2. State statutory and regulatory requirements regarding public health and
28 environmental protection; and
29 3. Principles of public policy.

30 (C) Research in emerging technologies, which shall include both of the following:

- 31 1. Advances made in materials science; and
32 2. Case studies in lessons learned which must include the principles of design,
33 manufacture, and use of classes of materials such as metals, ceramics, semiconductors,
34 polymers, and biomaterials that addresses fundamental energy, environmental, health,
35 economic, and manufacturing issues relating to those materials.

36 (D) Sustainable practices, which shall include all of the following:

- 37 1. The examination and fundamental qualities, attributes and competencies to manage
38 resources in a responsible manner, with minimal impact on natural resources and climate;
39 2. Identification of scientific methods for measuring and auditing the effectiveness of
40 eco-friendly practices that make improvements on the amount of resources expended on
41 energy, transportation, water use, recycling, and natural resources through the life cycle of
42 products, technologies, and processes; and

1 3. Identification skills and tools to identify emerging issues and opportunities most
2 pertinent to specific industries, establishing appropriate goals, developing and integrating new
3 strategies, and measuring performance.

4 (b) Except as provided in subsection (c), any entity that seeks designation as an
5 accreditation body must be independent of, and may not hold any stock or ownership interest
6 in, any consumer product manufacturing, importation, distribution, or retail business.

7 (c) Subsection (b) does not apply to colleges, universities, or their subdivisions, that
8 seek designation as an accreditation body.

9
10 NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference:
11 Sections 25253 and 25257, Health and Safety Code.

12
13 **§ 69508.2. Accreditation Body Designation Requirements.**

14 (a) An entity meeting the qualification requirements specified in section 69508.1 may
15 apply to be designated by the Department as an accreditation body to certify assessors.

16 (b) The application to be designated as an accreditation body, or to renew designation
17 as an accreditation body, must include all of the following:

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

19 (2) A summary of the qualifications of the individuals, meeting the requirements
20 specified in section 69508.1, including education, experience, and areas of subject matter
21 competency, that are available within, or to, the entity for training and certifying individuals to
22 perform AAs;

23 (3) Documentation that the entity meets all of the qualification requirements specified in
24 section 69508.1; and

25 (4) A detailed description of the accreditation program demonstrating that the program
26 meets the requirements specified in subsection (c), including all of the following information:

27 (A) The entity's training program for certification of assessors, including for each course
28 the title, content description, hours, and exam plan;

29 (B) Demonstrated qualifications and areas of expertise of the individuals responsible for
30 developing the entity's training curriculum, as evidenced by education, experience,
31 professional licenses, registrations, or other relevant credentials; and

32 (C) The entity's continuing education curriculum for re-accreditation of assessors,
33 including for each course the title, content description, hours, and exam plan.

34 (c) Each accreditation body shall include in its program, at a minimum, all of the
35 following:

36 (1) Admission Procedures. A summary of application requirements and admission
37 procedures for certification and certification renewal must be included. Required information
38 includes all of the following:

39 (A) The applicant's name and contact information;

40 (B) The applicant's educational experience, which must meet the requirements of
41 section 69508(a)(1) and must be substantiated by submittal of transcripts or other equivalent
42 records;

1 (C) The applicant's employment and other experience history, which must meet the
2 requirements of section 69508(a)(2) and for which references must be provided;

3 (D) The professional licenses, registrations, or other relevant credentials that the
4 applicant possesses;

5 (E) Documentation of completion of continuing education required under section
6 69508(b)(2), if the application is for certification renewal; and

7 (F) A signed and dated certification statement that reads: "I certify under penalty of
8 perjury that the information I have entered on this application is true and complete to the best
9 of my knowledge. I further understand that any false or incomplete statements may result in
10 my disqualification as a certified alternatives assessor. I authorize the employers and
11 educational institutions identified on this application to release any information they may have
12 concerning my employment or education to the accreditation body with which this application is
13 filed and to the State of California."

14 (2) Verification Procedures. Written procedures must be included for verifying an
15 applicant's qualifying education and experience, including verification of fulfillment of
16 continuing education requirements.

17 (3) Denial Criteria. A summary of the criteria and procedures for denying an applicant
18 for certification or certification renewal must be included. Denial decisions must be provided to
19 the applicant in writing and must state the grounds for denial and, if applicable, specify the
20 conditions the applicant must fulfill in to order to be certified or re-certified as an assessor.

21 (4) Training of Assessors. The training program must include classroom and on-the-job
22 assistance and/or training of applicants. The training must incorporate classroom and/or on-
23 the-job training in analysis of information and practical application of principles, at a minimum,
24 in all of the following:

25 (A) The requirements of this chapter, with an emphasis on the requirements of articles
26 5, 6, and 10;

27 (B) Training and case studies on principles and practices of performing AAs as specified
28 in article 5 using life cycle analysis tools and methodologies and life cycle thinking, meaning
29 the examination and consideration of public health and environmental impacts over a product's
30 entire life cycle;

31 (C) Training and case studies on identification of alternatives for consideration in AAs;

32 (D) Training and case studies on identification of the life cycle segments and exposure
33 pathways for chemicals and products; and

34 (E) Training needed for the attainment of expertise in specific fields necessary to the
35 performance of AAs.

36 (5) Evaluation and Examination of Assessors. The program must include both of the
37 following:

38 (A) A Department-approved written and practical test or evaluation developed by the
39 accreditation body that demonstrates the applicant's competence in the training requirements
40 specified in paragraphs (4)(A) through (4)(E); and

41 (B) A Department-approved challenge test developed by the accreditation body, that
42 may be used in lieu of the classroom training requirements specified in paragraph (4) and the

1 written and practical tests specified in subparagraph (A), for applicants that meet the
2 competency requirements and/or possess on-the-job experience that is equivalent to the
3 requirements specified in paragraphs (4)(A) through (4)(E).

4 (6)(A) Certificate Issuance. A certificate for initial certification and certification renewal that
5 is entitled "Certified Alternatives Assessor" and must, at a minimum, include all of the following:

6 1. The assessor's name;

7 2. The certificate number;

8 3. The certificate issuance date and expiration date;

9 4. The name of, and contact information for, the accreditation body issuing the
10 certificate;

11 5. An indication whether the certificate is for initial certification or a renewal;

12 6. The product type(s) and/or industry sector(s) for which the assessor is certified;

13 7. A statement that the assessor meets the requirements of subsections (a) and (b) of
14 section 69508; and

15 8. The signature of the owner or an officer of the accreditation body issuing the
16 certification.

17 (B) The accreditation body's program must include requirements and a process for
18 certification renewal every two (2) years.

19 (7) Assessor Agreement and Audit Program. The program must require that certified
20 assessors enter into an agreement with the accreditation body under which the assessors
21 agree to all of the following:

22 (A) Provide alternatives analysis services only in the areas of expertise in which the
23 individual has demonstrated competence;

24 (B) Provide true and accurate analyses; and

25 (C) Random auditing by the accreditation body or its consultants, subject to non-
26 disclosure agreements as needed, to ensure the quality of work and proper application of tools
27 by the assessor.

28 (8) Record Maintenance Program.

29 (A) The accreditation body shall maintain a database of the names of individuals whose
30 applications were accepted or denied, names of and contact information for individuals
31 certified, their certificate numbers, their certificate issuance and expiration dates, and the
32 area(s) of expertise in which each assessor is certified. The database must also include
33 copies of applications, verification information, audit records, and violations, if any. All records
34 shall be maintained for a minimum of five (5) years. The accreditation body shall provide the
35 Department with real-time electronic access to the database.

36 (B) Upon the request of the Department, but not more frequently than annually, an
37 accreditation body shall submit to the Department sufficient information to facilitate audits by
38 the Department under article 9.

39
40 NOTE: Authority cited: Sections 25253 and 58012, Health and Safety Code. Reference:
41 Section 25253, Health and Safety Code.
42

§ 69508.3. Accreditation Body Designation Process.

(a) The Department shall review an application submitted under section 69508.2, and approve or deny the request for designation as an accreditation body, within sixty (60) days of receiving the application. The Department shall notify the person submitting the application of its determination. A notice of denial shall state the grounds for denial and, if applicable, specify the conditions the applicant must fulfill in to order to be designated, or re-designated, as an accreditation body.

(b) If the information submitted under section 69508.2 changes, the person that submitted the application shall provide updated written information to the Department within thirty (30) days of the change.

(c) A designation as an accreditation body expires after a period of five (5) years, except that it may be renewed upon application by the accreditation body, under section 69508.2, not later than ninety (90) days before expiration of the existing designation. Timely applications for renewal of designation, meeting the requirements of section 69508.2, shall extend the expiring designation until the Department makes a determination on the renewal application.

(d) If the Department determines an accreditation body is negligently or willfully in violation of this chapter, the Department shall revoke the entity's designation as an accreditation body for a period of at least ten (10) years. After this period, the accreditation body may reapply to be designated as an accreditation body.

(e) An accreditation body may not claim trade secret protection for its general admission process, curriculum, and educational approach.

(f) The Department may periodically review the performance of an accreditation body to determine whether the accreditation body is in compliance with the requirements of this chapter. This review may include records review and/or interviews of assessors participating in the training and certification program.

(g) The Department shall revoke its designation of an accreditation body if one or more of the following occurs:

(1) The designation period has lapsed, and the accreditation body has not submitted a timely renewal application that meets the requirements of section 69508.2;

(2) A substantial number of individuals certified by the accreditation body as assessors are found by the Department to be in violation of this chapter;

(3) The Department finds that the accreditation body has significantly deviated from the documentation submitted to the Department under section 69508.2, or is out of compliance with the applicable requirements of this article; and/or

(4) The Department finds the accreditation body to have carried out its activities governed by this chapter in a manner that is negligent, fraudulent, or is otherwise unethical.

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

§ 69508.4. Filing a Complaint.

- 1 (a) A person may file a complaint alleging a violation of this chapter by an accreditation
2 body or a certified assessor. The complaint must include both of the following:
3 (1) The name of, and contact information for, both of the following:
4 (A) The accreditation body or certified assessor that is the subject of the complaint; and
5 (B) The name of the complainant, unless filing anonymously.
6 (2) A description of the complaint, including the particular requirements that are alleged
7 to have been violated and the facts which the complainant relies upon to support the alleged
8 violation.
9 (b) Within thirty (30) days of receiving a complaint, the Department shall review the
10 complaint and determine if the complaint includes the items specified in subsection (a). If the
11 Department determines that a complaint is complete, the Department shall notify the
12 complainant, if not submitted anonymously, that the Department will conduct further review to
13 determine whether a violation has occurred. If the Department determines that the complaint
14 is incomplete, it shall notify the complainant, unless submitted anonymously, and specify the
15 basis for the determination. Anonymous complaints lacking sufficient information will be
16 dismissed.
17 (c) If the complaint substantially complies with the requirements of this section, the
18 Department shall serve a copy to each subject of the complaint, together with an order
19 requiring that the complaint be answered by the subject within thirty (30) days after the date of
20 service.
21 (d) The Department shall review the information and documentation in the response
22 from the subject of the complaint and may refer items to external subject matter experts for
23 review and recommendations.
24 (e) If the Department determines there is insufficient evidence to determine whether or
25 not a violation has occurred, the Department shall close the complaint.
26 (f) If the Department determines that a violation has occurred, the Department shall:
27 (1) Warn the subject of the complaint by issuing a citation, and obtain compliance;
28 (2) Pursue the violations under the Administrative Procedure Act; and/or
29 (3) Refer the matter to the Attorney General or appropriate district attorney.
30

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

34 **Article 9. Audits**

36 **§ 69509. Audit of Materials Submitted to the Department and Regulatory Responses.**

- 37 (a) The Department may audit any information compiled, and/or submitted to the
38 Department, under this chapter. Information the Department may audit includes, but is not
39 limited to, AAs, AA Reports, information related to notifications submitted under this chapter,
40 and implementation of regulatory responses.
41 (b) The scope of any audit may include, but is not limited to, an examination of one or
42 more of the following:

- 1 (1) Compliance with article 5 requirements;
- 2 (2) Information quality and adequacy of analysis;
- 3 (3) Implementation of the selected alternative, if applicable; and/or
- 4 (4) Compliance with the regulatory response(s) imposed under article 6, if any.
- 5 (c) Upon completion of an audit, the Department shall notify the responsible entity(ies)
- 6 of the audit finding and the process to dispute audit findings.

7

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

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

10

11 **Article 10. Trade Secret Protection**

12

13 **§ 69510. Assertion of a Claim of Trade Secret Protection.**

14 (a) A person who asserts a claim of trade secret protection with respect to documents or

15 information submitted to the Department under this chapter will receive a written request from

16 the Department to furnish the Department with all of the following supporting information:

- 17 (1) The identity of the person asserting the claim;
- 18 (2) A brief description of the nature of the information for which trade secret protection is
- 19 being claimed;
- 20 (3) The extent to which the information is known by employees or others involved with
- 21 the facility or business of the person, and whether or not those individuals are bound by non-
- 22 disclosure agreements;
- 23 (4) The extent to which the information is known outside of the facility or business of the
- 24 person, and whether or not individuals with such knowledge are bound by non-disclosure
- 25 agreements;
- 26 (5) The measures taken to restrict access to and safeguard the information, and
- 27 whether or not the person plans to continue utilizing such measures;
- 28 (6) The estimated value of the information to the person and the person's competitors;
- 29 (7) The estimated amount of effort and/or money expended by the person in developing
- 30 the information;
- 31 (8) The estimated ease or difficulty with which the information could be properly
- 32 acquired or duplicated by others, including for any chemical claimed as trade secret, an
- 33 explanation of why the chemical identity is not readily discoverable through reverse
- 34 engineering;
- 35 (9) Copies of, or references to, any pertinent trade secret or other confidentiality
- 36 determinations previously made by the Department or other public agencies;
- 37 (10) A description of the nature and extent of harm that would be caused if the
- 38 information were made public, including an explanation of the causal relationship between
- 39 disclosure and the harmful effects claimed;
- 40 (11) The signature of the person's general counsel or other executive with knowledge of
- 41 the preparation of the substantiating information, certifying under penalty of perjury and subject

1 to the provisions of section 69501.3, and based upon the knowledge and belief of the
2 signatory, that:

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

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

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

8 (12) Contact information for the individual to be contacted if part of the claimed
9 information is requested to be disclosed under the California Public Records Act.

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

14 (c) A person who asserts a claim of trade secret protection shall also, at the time of
15 submission, provide the Department with both of the following:

16 (1) A complete copy of the documentation being submitted, which shall include the
17 information for which trade secret protection is claimed; and

18 (2) A redacted copy of the documentation being submitted, which shall exclude the
19 information for which trade secret protection is claimed. The Department may make the
20 redacted copy of the documentation available to the public at its discretion.

21 (d) A person who asserts a claim of trade secret protection shall make such assertion at
22 the time of submission by marking the words "Trade Secret" conspicuously on each page
23 containing the information for which trade secret protection is claimed. If no claim of trade
24 secret protection is made at the time of submission, the Department may make the submitted
25 information available in full to the public without further notice.

26 (e) If the documentation supporting a claim of trade secret protection contains
27 information that is itself subject to a claim of trade secret protection, such supporting
28 documentation shall be separately supplied in both complete and redacted form as required by
29 subsection (c), and marked as required by subsection (d), but shall not itself require further
30 supporting documentation. Such documentation shall be separate from documentation used
31 to comply with other provisions of this chapter.

32 (f) Except as specified in subsection (g), trade secret protection may not be claimed for
33 any health, safety, or environmental information contained in any hazard trait submission or
34 any chemical identity information associated with a hazard trait submission.

35 (g) Trade secret protection may be claimed for the chemical identity of a chemical that is
36 the subject of a hazard trait submission only if the subject of claim is a proposed alternative to
37 a Chemical of Concern in a Priority Product, and the claimant does all of the following:

38 (1) Demonstrates to the Department's satisfaction that the chemical that is the subject
39 of the claim is a new chemical or a new use of an existing chemical;

40 (2) Provides the Department with sufficient health, safety, and environmental data on
41 the chemical subject to the claim to demonstrate, to the Department's satisfaction, that it is
42 substantially safer than the existing Chemical of Concern in the Priority Product; and

1 (3) Complies with the substantiation requirements of subsections (a)(1) through (a)(12).

2 (h) Any person making a claim of trade secret protection for the identity of a chemical
3 under subsection (g) shall provide the Department with a non-confidential description of the
4 nature of the chemical that is as specific as possible, consistent with the claim of trade secret
5 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 **§ 69510.1. Department Review of Claims of Trade Secret Protection.**

11 (a) Upon receipt of information submitted under this chapter that contains information
12 identified as being subject to trade secret protection, or at any time thereafter, the Department
13 may review the trade secret claim and supporting information for compliance with the
14 requirements of this article.

15 (b)(1) If the Department determines that information provided in support of a request for
16 trade secret protection is incomplete or insufficiently responsive to permit a trade secret
17 determination, the Department shall:

18 (A) Notify the submitter of the Department's finding of insufficiency;

19 (B) Identify the specific area(s) for which additional information is needed;

20 (C) Provide an explanation as to why the Department has determined the information to
21 be insufficient; and

22 (D) 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 notify the submitter by certified mail that the claim is out of compliance with
25 this article, and that the information claimed to be trade secret will be considered a public
26 record subject to disclosure by the Department thirty (30) days after such notice is mailed.
27 During this 30-day period, the submitter may seek judicial review by filing an action for a
28 preliminary injunction and/or declaratory relief.

29 (c) If the Department determines that information provided in support of a request for
30 trade secret protection does not meet the substantive criteria for trade secret designation, the
31 Department shall notify the submitter by certified mail of its determination and that the
32 information claimed to be trade secret will be considered a public record subject to disclosure
33 by the Department thirty (30) days after such notice is mailed. During this 30-day period, the
34 submitter may seek judicial review by filing an action for a preliminary injunction and/or
35 declaratory relief.

36 (d) If a person asserting a claim of trade secret protection initiates an action under
37 subsection (b) or (c), the Department may not publicly release or disclose the information that
38 is the subject of the claim of trade secret protection until resolution of any court challenge,
39 including appeals, if any.

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 11. Severability**

3

4 **§ 69511. 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 12. [Reserved]**

14

15 **§§ 69512 -- 69599. [Reserved]**