SAFER CONSUMER PRODUCTS PROPOSED REGULATIONS

SUMMARY OF SIGNIFICANT CHANGES IN JANUARY 2013 REVISED PROPOSED REGULATIONS

(As compared with the July 2013 Proposed Regulations)

NOTE: *This is an informational non-inclusive summary of changes only. For a more precise understanding of the provisions of the revised proposed regulations, and how they differ from the July 2012 proposed regulations, please refer to the regulations themselves.*

Chemical – Product Prioritization

- The list of chemicals is now called the "Candidate Chemicals" list. The regulations define "Candidate Chemical" as a chemical that is a candidate for designation as a "Chemical of Concern" (COC). A "Candidate Chemical" that is the basis for a product-chemical combination being listed as a Priority Product is designated as a "Chemical of Concern" with respect to that product. NOTE: This change in terminology does not affect the application of the regulations to the chemicals on the chemicals list.
- Chemicals classified by the European Union as Category 1 respiratory sensitizers have been added to the initial list of Candidate Chemicals. In addition, the list of pollutants identified for California under the federal Clean Water Act has been expanded to include section 303(d) chemicals in addition to the section 303(c) chemicals.
- Language has been added to make it clear that the Priority Products list will be established and updated through the Administrative Procedure Act rulemaking process.
- The phrase "ability to" has been replaced with "potential". This term is used in the regulations primarily with respect to adverse impacts and exposures associated with a chemical or a product. The regulations define "potential" to mean that the phenomenon described is reasonably foreseeable based on reliable information.
- An upfront applicability exemption has been added for products regulated by other laws that provide equivalent or greater protections with respect to the same public health and environmental adverse impacts and exposure pathways that are addressed by these regulations.
- The factors below are no longer upfront applicability exemptions, and are instead included as product prioritization factors:
    - Whether the product is manufactured or stored in, or transported through, California solely for use outside of California; and
    - Whether the product is used in California solely for the manufacture of one or more of the products exempted from the definition of "consumer product".

Alternatives Analysis

- The requirement for Alternatives Analyses (AAs) to be performed by certified assessors has been eliminated, along with all of the ancillary provisions relating to certified assessors and accreditation bodies. To address the underlying purpose of these prior provisions – provide a quality assurance mechanism – the regulations now provide a public review and comment process for Preliminary AA Reports, Alternate Process AA Work Plans, and draft Abridged AA Reports. The final reports will be required to include a summary of the public comments received, and a description as to how the comments are addressed in the report or an explanation as to why the comments are not addressed.

- The prior provisions pertaining to chemical removal, product removal, and product replacement notifications and exemptions have been consolidated into a single section in Article 5 (Alternatives Analyses), with revisions made to the specific content requirements for the notifications. Additionally, a manufacturer will now have the option of initially submitting an intent notification followed within ninety (90) days by a confirmation notification.

- The Alternatives Analysis Threshold (AAT) is now defined as the Practical Quantitation Limit (PQL), and the exemption applies only if the Priority Product contains the COC solely as a contaminant chemical. If during the product prioritization process DTSC determines that an AAT is needed for a particular intentionally added chemical in a particular product this can be addressed in the rulemaking for that Priority Product listing.

- The regulations clarify that the required AA evaluation of chemical hazards and adverse impacts is limited in scope to the COCs, alternative replacement chemicals, and any other chemicals in the alternatives that differ from the chemicals in the Priority Product.

- The required AA evaluation of economic impacts is limited to a monetized comparison of public health and environmental costs, and costs to governmental agencies and non-profit organizations that manage waste, oversee environmental cleanup and restoration efforts, and/or are charged with protecting natural resources, water quality, and wildlife. Additionally, if the alternative selection decision is to retain the Priority Product based in whole or in part on internal cost impacts, this decision must be explained in the Final AA Report. In this case, the Final AA Report must include a comparison of internal cost impacts (manufacturing, marketing, materials and equipment acquisition, and resource consumption costs) for the Priority Product and the alternatives.

- The requirement to submit a revised AA Report if the selection decision changes has been limited to three (3) years after DTSC approves the original Final AA Report.

- A yearly progress report will be required for an AA when DTSC has approved an extended due date for the Final AA Report.

Regulatory Responses

- The regulatory response selection principles have been revised to address a variety of public comments received.
- The basis for, and application of, regulatory responses has in general been limited to the COCs for the product and any replacement Candidate Chemicals.
- The provision allowing DTSC to impose regulatory responses to situations other than those specifically spelled out in the regulations has been eliminated.
- A notice of DTSC's proposed regulatory response determination, or a determination that no regulatory response is required, must be issued no later than ninety (90) days after DTSC issues the notice of compliance or notice of disapproval for an AA Report. A public comment period (and workshop) will be provided for all proposed regulatory response determinations.
- DTSC may require the submittal of information supplementary to an AA Report prior to or concurrently with (but not later than) the imposition of other regulatory responses.
- DTSC may impose (within a specified time frame) a revised regulatory response only if:
    - DTSC determines this is necessary based on supplementary information submitted in response to an information request made by DTSC at the time the initial regulatory response is imposed (see above); or
    - DTSC determines this is necessary in response to a revised AA Report that is required to be submitted to reflect a revised alternative selection decision.
- The provision allowing DTSC to require that a new AA be performed based on receipt of new information has been eliminated.
- When imposing a regulatory response, DTSC will have the flexibility to consider whether or not the regulatory response should be applied to either of the following:
    - Priority Products ordered by a retailer prior to the effective date of the Priority Product listing, and still for sale as of the date of the final regulatory response determination notice.
    - Priority Products manufactured after the effective date of the Priority Product listing, but before the date of the final regulatory response determination notice.
- Only manufacturers will be required to comply with regulatory responses imposed by DTSC for:
    - Engineered safety measures / administrative controls
    - End-of-life management requirements
    - Advancement of Green Chemistry and Green Engineering
- A financial guarantee will not be required for an end-of-life management program when the program will be administered by a non-profit third party.

Other Changes

- The definition “manufacturer” has been revised to mean ”any person who manufactures a product that is subject to the requirements of this chapter, or any person that controls the manufacturing process for, or has the capacity to specify the use of chemicals in, such a product”.
- The definition of “manufacture” been revised to explicitly state that “manufacture does not include acts that meet the definition of “assemble”. “Assemble” is defined to mean “fit, join, put, or otherwise bring together components to create a consumer product”. “Assembler” is defined as someone who “assembles a product containing a component that is a product subject to the requirements” of the regulations (i.e., a component that is listed as a Priority Product). In the event that the manufacturer and importer of the Priority Product component do not comply with applicable requirements, assemblers who use that component have the same option as do retailers – they can comply with the requirements themselves, or cease ordering the Priority Product component.
- The definition of “reliable information” has been expanded to provide appropriate criteria for determining the reliability of non-scientific information.
- The trade secret protection provisions have been revised to recognize that in some cases a responsible entity may not be able to submit otherwise required information due to federal law disclosure prohibitions or nondisclosure agreements.
- The trade secret protection provisions pertaining to hazard trait submissions have been revised to allow masking of precise chemical identify only for an alternate chemical being considered or proposed for which a patent application is pending. Masking will only be allowed until the patent application is granted or denied.
- Language has been added to explicitly state that nothing in the regulations authorizes DTSC to supersede the requirements of another California State or federal regulatory program.
- The revised proposed regulations include many non-substantive restructuring changes intended to improve readability.