



April 25, 2013

Debbie Raphael, Director
Department of Toxic Substances Control
1001 I Street
Sacramento, CA 95812-0806

Dear Ms. Raphael,

We are pleased that DTSC is finally bringing the SCP regulation-writing process to closure and will move to implementation. On behalf of BizNGO, we have the following comments on the Safer Consumer Product Proposed Regulations, R-2011-02 (April 2013):

§ 69501.1(a) Definitions

(29) "Economically feasible"

BizNGO recommends the following change:

"Economically feasible" means that an alternative product or replacement chemical is **commercially available for a similar functional use in similar products** ~~does not~~ significantly reduce the manufacturer's operating margin.

DTSC's decision to include this definition of "economically feasible" means that there will be no public opportunity to review this section of an AA. The DTSC definition of "economically feasible" is inconsistent with, or certainly not supportive of, public review of AAs as economic feasibility. This means a key criterion in the evaluation of alternatives will be judged by criteria that will be blocked from public review by confidential business information claims. Furthermore, the definition of economic feasibility complicates any effort on the part of industry consortia to submit AAs – as competitors will not want to share this information, assuming the sharing of such information among competitors is even legal.

§ 69502.3. Candidate Chemicals List.

(a) Informational List.

BizNGO recommends updating the list annually:

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

Rationale: Given that the authoritative bodies that generate the lists referred to in § 69502.2(a) regularly update their lists, the Department needs to develop a process for keeping these lists up-to-date. An annual automatic update of the lists based on changes by the relevant authoritative bodies is an easy task.

The failure to specify a time period for updating of the list means that DTSC cannot be held accountable for updating the Candidate Chemicals List. The likely outcome of this failure is that the list will quickly become outdated.

§ 69505.6. Alternatives Analysis: Second Stage



BizNGO supports the revised streamlining of (a)(1) Adverse Impacts and Multimedia Life Cycle Impacts.

BizNGO is still concerned with (a)(3) Economic Impacts and recommends the following change:

1. If none of the alternatives under consideration are Candidate Chemicals or Chemical(s) of Concern, no economic analysis is required.
2. If any replacement chemical under consideration is a Candidate Chemical, or if the Priority Product with the Chemical(s) of Concern is to be retained, the responsible entity shall evaluate, monetize, and compare the following impacts of the Priority Product and the alternatives:
 - a. Quantified comparison of the internal cost impacts of the Priority Product and the alternatives, including manufacturing, marketing, materials and equipment acquisition, and resource consumption costs;
 - b. Public health and environmental costs; and
 - c. 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.

Rationale: The Regulations have been revised regarding the economic impacts, but unfortunately the Department has retained the requirement that responsible entities monetize and evaluate externalized costs. The type of economic impact analysis required is extremely difficult to perform, particularly when there are multiple alternatives under consideration or when no alternative under consideration shows significant burden shifting. BizNGO recommends tiering the economic analysis requirements such that eliminating the Chemical of Concern and replacing it with a non-Candidate chemical requires no economic analysis, and that retaining the Chemical of Concern or replacing it with a Candidate Chemical requires a complete economic analysis, including consideration of externalized costs. (Externalized costs are extraordinarily hard to calculate, and should not be required for cases where the Chemical of Concern is being phased out.)

§ 69505.8. Public Comments on AA Reports.

BizNGO supports the public review of the “Final AA Report” and “Abridged AA Report”, and recommends adding back in the public review of the “Preliminary AA Report.” Preliminary AAs are a critical step in the AA process, including the identification of alternatives as well as the screening out of possible alternatives. The deletion of the preliminary AA report removes a key step in providing outside eyes on the direction of an AA. The selection of alternatives to review and the initial assessment of hazard traits are significant steps in an AA. Now review of these evaluations will only be performed on the final AA Report – a point in time in which the preferred alternative(s) is/are close to being set for the responsible entity.

§ 69506(a) BizNGO recommends the following change:

- (a) Need for Regulatory Response. The Department shall identify and require implementation of one or more regulatory responses **applicable to all responsible entities** for Priority Products ...

Rationale: In these proposed regulations the Department is theoretically allowed to select different regulatory responses for different responsible entities. BizNGO finds this possibility unfair and believes it creates a situation ripe for claims of impropriety by the Department with regard to different treatment for different entities. Also, compliance and verification of compliance within the regulated community is greatly complicated if different entities have different requirements for similar Priority Products. If the Department is concerned with ensuring that its procedures are standardized, fair, and objective, then



the Department should ensure the regulations provide a level playing field by stating that all AAs for the same chemical-product combination will be reviewed by the Department at the same time, and that the Department will issue a uniform regulatory response. For the Department to conduct simultaneous reviews, it must also ensure that the deadlines for submission as the same.

Sincerely,

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BizNGO Note on Government Policy Positions

Participants in BizNGO are all working towards the use of safer chemicals in commerce. Reflecting the diversity of participants in the Working Group, we have a diversity of perspectives on government, NGO and industry initiatives. While BizNGO strives for consensus on all of its policy positions and all participants agree on the government policy issues we address, we may not achieve consensus on the specifics of every BizNGO policy statement.