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Via Electronic Submission

Re: Safer Consumer Products Regulation, Chapter 55 of Division 4.5 of Title 22 of the California Code of Regulations (Z-2012-0717-04) (January 2013)

IPC – Association Connecting Electronics Industries appreciates the opportunity to comment on the above referenced draft Safer Consumer Product Alternatives Regulation. We recognize and appreciate the effort DTSC has invested in developing the current draft. We support DTSC’s decision to rename the list of lists as “Candidate Chemicals,” add an Administrative Procedures Act process for updating Priority Products list, focus the scope for Alternatives Analyses, and remove of the third party certified assessor requirement. However, we are concerned that the Candidate Chemicals list remains overly broad and that the Alternatives Analysis should not be subject to public review and comment.

DTSC’s approach in the Safer Consumer Products Regulation should be scientifically based. Substances that exhibit the greatest hazards, such as those known to cause cancer, developmental or reproductive harm, be persistent, bioaccumulative and toxic (PBT) in the environment, and pose the greatest exposure to consumers, should be given priority. When evaluating consumer products to be covered by the regulation, DTSC must consider the level of exposure to the priority chemicals in order to ensure the utmost protection to human health and the environment. By considering both hazard and exposure when identifying chemical-product combinations to be evaluated, DTSC will make the biggest reduction in risk to human health and the environment.

IPC encourages DTSC to consider implementation of our proposed alternative provisions that would make the regulation more effective in protecting human health and the environment. We appreciate the opportunity to provide the following comments.

About IPC  
IPC, a U.S. headquartered global trade association, represents all facets of the electronic interconnection industry, including design, printed board manufacturing and electronics assembly. Printed boards and electronic assemblies are used in a variety of electronic devices that include computers, cell phones, pacemakers, and sophisticated missile defense systems. IPC has over 3,300 member companies, including over 250 member companies located in California.
IPC strongly supports cost effective, science-based environmental initiatives and has been active in a number of voluntary environmental programs including EPA’s Design for the Environment partnership projects, the development of the Electronic Product Environmental Assessment Tool (EPEAT) standard\(^1\), and the development of the Greener Chemicals and Process Information Standard\(^2\), developed through the American Chemical Society and the National Standards Foundation.

**DTSC Should Evaluate the Scientific Merit for Each Chemical Identified as a Candidate Chemical**

IPC believes that the proposed scope of Candidate Chemicals is overly broad. We believe that a more focused scope would allow DTSC to better achieve the goals of the legislation by focusing on those chemicals most likely to affect human health and the environment.

While IPC agrees with DTSC’s proposal to identify chemicals to be considered for listing as Chemicals of Concern as “Candidate Chemicals,” we urge DTSC to be cautious about placing chemicals on the Candidate Chemicals list. We are gravely concerned that the Candidate Chemicals list will have the negative connotation of a black list of chemicals. For example, the EU REACH Regulation Substances of Very High Concern (SVHC) list establishes a notification requirement, not a ban. However, the SVHC list is viewed by many as a list of banned substances resulting in manufacturers removing SVHCs from their products without conducting an alternatives assessment to ensure the substitutes are better for human health and the environment. Companies may view the Candidate Chemicals list in the same way as the SVHC list and remove Candidate Chemicals before conducting an Alternatives Analysis, which could result in unintended consequences, if the chosen alternative poses a higher risk to human health and the environment.

If DTSC decides that publishing a list of lists of Candidate Chemicals is unavoidable, it is critical the agency provide a clear, scientific explanation for the list’s content. Providing an explanation will provide both the public and industry with information on why certain chemicals are listed. Including a sound explanation for chemical listing will help avoid panic among the public by providing the necessary background information for informed decisions. An explanation for chemical listings may also prevent regrettable substitution by industry by reducing the pressure to remove Candidate Chemicals from their products. Furthermore, the list of lists proposed by DTSC contains lists of chemicals from multiple countries and U.S. states. Each list has a different set of criteria for evaluating chemicals and therefore the conclusions regarding the hazard potential of a particular chemical may be inconsistent among the lists. Any inconsistency between the lists’ conclusions on a particular chemical could cause stakeholders to question DTSC’s credibility. DTSC should provide a summary of available data, including but not limited to a literature review, available toxicity data, and available exposure data for each Candidate Chemical instead of providing a list of lists. DTSC should provide an explanation for why a chemical is listed as a Candidate Chemical.

\(^1\) [http://www.epeat.net/]
\(^2\) NSF/GCI/ANSI 355
DTSC Should Establish a De Minimis Threshold; Using a PQL is Inappropriate

DTSC should create a clearly defined, science-based de minimis threshold value for the Candidate Chemicals. The creation of a de minimis value would help to focus regulatory implementation on the most significant uses of chemicals presenting the highest risk to human health and the environment. DTSC should not presume that the mere presence of an identified Candidate Chemical is reason to suggest potential harm. Without a de minimis threshold, valuable resources would be spent on conducting an alternatives analysis on a COC that is present in Priority Products in only trace amounts. Using valuable resources on insignificant uses of chemicals would result in a minimal benefit to human health and the environment at great cost to industry and DTSC. Establishing a de minimis will help ensure that the most significant uses of Candidate Chemicals are addressed.

DTSC’s proposal to utilize the Practical Quantification Limit (PQL) as a threshold value for COCs in Priority Products is inappropriate. A PQL is the lowest quantity of a substance that can be measured. Just because a chemical can be measured does not mean it is a risk to human health or the environment. Laboratory test methods are continuously improving and are increasingly able to detect smaller and smaller trace amounts of chemicals. DTSC should focus its efforts on the most significant amounts of chemicals in order to ensure valuable state and industry resources are spent on conducting and evaluating Alternative Analyses for chemicals presenting the highest risk to human health and the environment.

IPC Supports DTSC’s Decision to Initially Focus the Priority Products List in Order to Implement a Workable Regulation

IPC supports DTSC’s decision to initially focus the regulation on no more than five Priority Products. This is a practical approach that will enable DTSC to implement the regulation and learn what works and does not work and make adjustments accordingly. A regulation that is focused on a small number of specific products will allow DTSC to use available resources more efficiently and implement a manageable regulation to protect human health and the environment.

IPC commends DTSC for proposing to establish an Administrative Procedures Act (APA) process for updating the Priority Products list. An APA process will allow for transparency throughout the implementation of the regulation. Opening up subsequent Priority Product lists to stakeholder review and comment will provide DTSC with valuable feedback on their proposed Priority Products list. Stakeholders, specifically manufacturers of products proposed to be listed as Priority Products, are the most knowledgeable on the chemical composition of their product. Therefore, manufacturers can provide DTSC with important information to inform DTSC’s decision on whether to finalize the product listing. DTSC should implement an APA process for updating the Priority Products list in order to be transparent.

DTSC Should Prioritize Chemicals in Priority Products

When identifying chemical-product combinations, DTSC should prioritize the chemicals within each product that deem that product as a Priority Product. Once DTSC has determined that a Candidate Chemical is the basis for a product-chemical combination being listed as a Priority
Product, that chemical is then considered a Chemical of Concern (COC). Requiring manufacturers to conduct simultaneous AAs for multiple COCs in a Priority Product would be overly burdensome, especially for small businesses. Prioritizing COCs in Priority Products would allow manufacturers to focus on the chemicals that present the highest risk to human health and the environment. DTSC should prioritize the COCs in Priority Products if multiple COCs are found in a product in order to ensure the chemicals presenting the highest risk to human health and the environment are addressed first.

**IPC Supports Proposed Alternative Analyses Process but Remains Concerned About Public Review and Comment Requirement**

IPC applauds DTSC for acknowledging the importance of identifying safer alternatives prior to replacing a COC. Confirming an alternative chemical is safer than the original chemical prior to replacing it will ensure that the changes result in improved human health and environmental protection. Furthermore, a thorough evaluation of the alternative chemical will ensure that the product functions properly, resulting in consumers having access to products that meet their expectations. Fully evaluating alternatives will also help ensure unintended consequences do not occur. For example, the European Union did not study the alternatives when they restricted the use of lead in electronics under the RoHS Directive. The U.S. EPA lead-free solder study evaluated the environmental impacts of tin-lead solder versus lead-free alternative solders. The study found that the increased energy use associated with the higher operating temperatures required for manufacturing lead-free soldered electronics would cause higher air pollution, acid rain, stream eutrophication and global warming impacts than tin-lead soldered electronics. EPA’s study serves as an important reminder that alternatives need to be fully evaluated before substitution in order to provide improvement to human health and the environment.

IPC supports DTSC’s proposal to focus the AA on only the COC, alternative replacement chemical and any other chemical in the alternative that differs from those chemicals already contained in the product. The proposed streamlined approach will help ensure that the COCs are the chemicals being evaluated. DTSC’s proposal will also encourage effective use of resources by both manufacturers and DTSC to conduct and evaluate, respectively, such a comprehensive AA because only the highest priority chemicals will be evaluated.

IPC also supports DTSC’s proposal to offer extensions for up to three years for conducting the AA. However, we are concerned that the proposed requirement that extension requests be made by each manufacturer would be extremely burdensome for DTSC to evaluate and industry to file, especially small companies. Almost all manufacturers impacted by a Priority Product listing are likely to request the additional time to conduct an AA. We recommend that DTSC grant an industry-wide extension if an extension request is granted in order to reduce the burden on manufacturers and DTSC.

IPC supports the removal of the third party certified assessor requirement for AAs. However, DTSC’s proposal to require public review and comment of AAs is not a good substitute. Stakeholders generally are not scientific experts and their feedback could misguide the AA.

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process. The process for evaluating AAs would be better served by qualified experts reviewing AAs. As an alternative to a public review and comment process, DTSC should consider implementing a qualified reviewer requirement for all AAs. This qualified reviewer could be a toxicologist, environmental consultant, an expert in AAs, or another qualified entity. In order to ensure stakeholder comments are heard, the qualified reviewer would hear stakeholder comments through a public meeting forum. The qualified reviewer would then take stakeholder comments into consideration when evaluating a manufacturer’s AA. The qualified reviewer would then issue a report on the manufacturer’s AA that would include a summary of the stakeholder comments and how they were addressed in the AA. Implementing a qualified reviewer requirement would ensure public comments are heard and the burden on manufacturers would be reduced.

Conclusions

IPC is a strong advocate for scientifically-based environmental regulations that improve environmental conditions, protect human health, and stimulate the economy. We urge DTSC to take our suggestions into account when finalizing the regulation in order to ensure human health and environmental protection.