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Plain English Outline of “Safer Alternatives for Consumer Products” Rule

SECTION 1. PURPOSE AND SCOPE

Goal: To accelerate the transition to *safer, environmentally more benign consumer products*

Purpose: The Safer Alternatives rule sets forth processes that will:

- Reduce the presence of hazardous chemicals in products sold or used in California
- Drive technological innovation and development of safer, healthier, and environmentally more benign products across their lifecycles
- Consider alternatives so actions do not lead to adverse consequences
- Move beyond limitations of existing risk assessment system (i.e., “focus on the better, not how bad is bad”)
- Manage unknowns and take action (i.e., make decisions where data may be incomplete or unavailable)
- Apply market-based compliance measures
- Oversee and measure progress

Scope: The proposed regulations do not affect a duty or requirement imposed under federal or state law; do not alter or diminish any legal obligation required in common law or by statute or rule; and do not create or enlarge a defense in an action to enforce a legal obligation otherwise required in common law or by statute or rule.

Intergovernmental Coordination: The proposed rule will work in harmony with, and build upon to the extent practicable, the following related programs (*pursuant to Health and Safety Code section 25257.1*):

- ARB Consumer Products
 - ARB Fuels
 - DPR Pesticides
 - DPH Consumer Products, Cosmetics, etc.
 - DIR Cal-OSHA
 - Others
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SECTION 2. DEFINITONS

The following words and phrases are defined as follows for purposes of this article.

(a) “*Alternatives analysis*”—means

(b) “*Candidate list*”—means

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- (c) “*Chemical*”—means any naturally occurring or synthetic chemical, compound, by-product, substance, agent, or formulation that is found in a consumer product or can result from the use or disposal of a consumer product.
- (d) “*Chemical of concern*”—means
- (e) “*Consumer product*”—[repeated verbatim from statute] means a product or part of the product that is used, brought, or leased for use by a person for any purposes. “Consumer product” does not include any of the following:
- (1) A dangerous drug or dangerous device as defined in Section 4022 of the Business of Professions Code.
 - (2) Dental restorative materials as defined in subdivision (b) of Section 1648.20 of the Business and Professions Code.
 - (3) A device as defined in Section 4023 of the Business of Professions Code.
 - (4) A food as defined in subdivision (a) of Section 109935.
 - (5) The packaging associated with any of the items specified in paragraph (1), (2), or (3).
 - (6) A pesticide as defined in Section 12753 of the Food and Agricultural Code or the Federal Insecticide, Fungicide and Rodenticide (7 United States Code Sections 136 and following).
- (f) “*Department*”—means the Department of Toxic Substances Control, established pursuant to section 25111 of the Health and Safety Code, as amended by section 100 of the *Governor’s Reorganization Plan Number 1 of 1991*.
- (g) “*Lifecycle*”—means all of the steps or phases of a consumer product’s existence—from raw material and energy inputs, design, production, manufacture, distribution, use, and disposal or reuse/recovery.
- (h) “*Lifecycle assessment*” (*LCA*)—means a systematic method for compiling, evaluating, interpreting, and documenting the environmental aspects and potential impacts associated with a consumer product and its manufacture, distribution, use, and disposal or reuse/recovery.
- (i) “*Manufacturer*”—means [placeholder: includes manufacturer, supplier, importer, distributor, or retailer of a consumer product intended for sale or use in California]
- (j) “*New chemical*”—means
- (k) “*Person*”—means an individual, trust, firm, joint stock company, business concern, partnership, limited liability company, association, or corporation, including, but not limited to, a government corporation. “Person” also includes any city, county, city and county, district, commission, the state or any department, agency or political subdivision thereof,

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any interstate body, and the federal government or any department or agency thereof to the extent permitted by law.

- (l) “*Potential alternative*”—means
- (m) “*Purpose*”—means the intended essential function and use of a specific consumer product.
- (n) “*Sensitive sub-population*”—means members of subgroups that comprise a meaningful portion of the general population, including, but not limited to, infants, children, pregnant women, the elderly, individuals with a history of serious illness, or other subgroups that are identifiable as being at greater risk of adverse health effects than the general population.
- (o) “*Toxics Information Clearinghouse*”—means the system established pursuant to Health and Safety Code section 25256.

SECTION 3. PROCESS TO IDENTIFY CHEMICALS OF CONCERN

The process to identify chemicals or chemical ingredients of concern in consumer products will use a broad list of scientific criteria for placing chemicals on a “candidate” list. Criteria would be clearly laid out in regulation, but the list itself will not be in regulation, and will be dynamic. A set of prioritization criteria will then be used (as described in section 4 of this document) to prioritize chemicals on the candidate list, and develop a list of “prioritized chemicals of concern.” This approach is based on a defined set of criteria, will capture a large universe of chemicals, and will allow rapid identification and listing (or delisting) of chemicals or chemical ingredients.

Any chemical meeting any *one or more* the following criteria may be placed on the candidate list:

- Any new or existing chemical for which a minimum data set is not available that provides a thorough understanding of the potential risks associated with the chemical, including adverse health or environmental effects and exposure potential. The required minimum data set is the six hazard endpoints (acute toxicity, chronic toxicity, teratogenicity or developmental and reproductive toxicity, mutagenicity, ecotoxicity, and environmental fate) comprising the “Screening Information Data Set” (SIDS) test battery established by the Organization for Economic Cooperation and Development (OECD, 1998a)”
- Any chemical which appears on any “list” published by any government authoritative body, or nongovernmental organization, and that are deemed by DTSC to be potential chemicals of concern with respect to Health and Safety Code section 25252 based on available scientific information. (DTSC would have sole discretion to make this determination. This would provide DTSC with the flexibility to adopt chemicals

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appearing on new, relevant “lists” (e.g., the SIN List¹), as they are published, without the need to conduct additional rulemaking;

- Any chemical for which there is scientific evidence of any potential adverse effects to human health or the environment;
- Any chemical to which humans have been shown to be exposed through the California Environmental Contaminant Biomonitoring program², or other relevant biomonitoring studies, such as the Center for Disease Control NHANES surveys³; or biomonitoring studies conducted by non-governmental organizations.
- Any chemical already regulated in consumer products and/or packaging sold in California based on hazardous characteristics, such as toxicity (e.g., cadmium, mercury, lead, and hexavalent chromium);
- Any chemical known to the State of California to cause cancer or reproductive harm as specified under Proposition 65⁴;
- Any chemical with any of the hazard traits or environmental and toxicological endpoints specified by OEHHA pursuant to 25256.1;
- Any chemical identified by IARC as carcinogenic to humans (i.e., group 1 substances)⁵;
- Any persistent, bioaccumulative and toxic chemical on the USEPA’s “PBT List^{6,7}”;
- Any chemical designated as “higher hazard substances” by TURA⁸;
- Any chemical on the Washington State PBT List⁹;
- Any chemical classified as potentially very persistent and very bioaccumulative (vPvBs) in accordance with the criteria set out in Annex XIII of the EU REACH (Registration, Evaluation, and Authorization of Chemicals) Regulation¹⁰ (Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals),;
- Any chemical with evidence of potential endocrine disrupting effects (i.e., identified as category 1 in the priority list of substances established under the EU’s Community Strategy for Endocrine Disruptors¹¹);
- Any chemical classified as carcinogenic category 1A, 1B or 2 in accordance with the European Regulation on the Classification, Labeling and Packaging of Substances and

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¹ <http://www.sinlist.org/>

² <http://ww2.cdph.ca.gov/programs/Biomonitoring/Pages/default.aspx>

³ <http://www.cdc.gov/nchs/nhanes.htm>

⁴ <http://www.oehha.org/prop65.html>

⁵ <http://monographs.iarc.fr/ENG/Classification/index.php>

⁶ http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=1999_register&docid=99-28888-filed.pdf

⁷ http://www.epa.gov/tri/trichemicals/pbt%20chemicals/pbt_chem_list.htm

⁸ <http://www.mass.gov/legis/laws/mgl/21i-9.htm>

⁹ <http://www.ecy.wa.gov/programs/swfa/pbt/list.html>

¹⁰ http://ec.europa.eu/environment/chemicals/reach/reach_intro.htm

¹¹ http://ec.europa.eu/environment/endocrine/strategy/short_en.htm

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Mixtures which took effect on 20 January 2009 (REGULATION (EC) No 1272/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2008)^{12, 13, 14, 15};

- Any chemical classified as mutagenic category 1A, 1B or 2 in accordance with the European Regulation on the Classification, Labeling and Packaging of Substances and Mixtures which took effect on 20 January 2009 (REGULATION (EC) No 1272/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2008)
- Any chemical classified as toxic for reproduction category 1A, 1B or 2 in accordance with the European Regulation on the Classification, Labeling and Packaging of Substances and Mixtures which took effect on 20 January 2009 (REGULATION (EC) No 1272/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2008);
- Any chemical classified as category 1 respiratory sensitizers in accordance with the European Regulation on the Classification, Labeling and Packaging of Substances and Mixtures which took effect on 20 January 2009 (REGULATION (EC) No 1272/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2008);
- Any chemical that is known or anticipated to be potentially released during normal use of that product, or when the product is disposed of at end-of-life (e.g., in a landfill).
- Any chemical that is a known air pollutants, or potentially may give rise to air pollutants, including ozone forming compounds, particulate matter, toxic air contaminants, and greenhouse gases;
- Any chemical with any potential adverse human health or environmental impacts, that have the potential to contaminate surface water, groundwater, and soil;
- Any chemical which, during manufacturing, give rise to hazardous byproducts and waste materials that require treatment and/or disposal;
- Any chemical shown to potentially adversely impact worker safety and or public health;
- Any chemical with any potential or anticipated negative or adverse impacts to human health and safety or the environment;
- Any chemical that would be, or would be presumed to be, a hazardous waste when discarded; or
- Any chemical meeting certain of the specified hazard criteria (to be specified in detail in regulations) as described in the Globally Harmonized System of Chemicals Classification and Labeling created by the United Nations.

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¹² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:353:0001:1355:EN:PDF>

¹³ http://ec.europa.eu/environment/chemicals/ghs/index_en.htm

¹⁴ <http://www.bath.ac.uk/internal/bio-sci/bbsafe/cmt.htm>

¹⁵ http://ecb.jrc.ec.europa.eu/documents/Classification-Labeling/Table_3-2.doc

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The proposed regulations will address “new” chemicals, as follows:

- Based on the above criteria, any new chemical lacking adequate hazard characterization data would be placed on the high priority chemical of concern list described in section 4 below. In addition, any [manufacturer] who wishes to use a new (to that manufacturer) chemical, or any existing chemical in a new use application, in a consumer product, would be required to submit information regarding the identity and proposed or anticipated use of that chemical to the Toxics Information Clearinghouse. Moreover, manufacturers would have to submit the new data to the Toxics Information Clearinghouse prior to initiating a planned or foreseeable change in the use of a chemical.

SECTION 4. PROCESS TO PRIORITIZE CHEMICALS OF CONCERN

Once a candidate list for prioritization has been established pursuant to Section 3 above, chemicals in that list will be evaluated and prioritized.

The first level of prioritization will require that those chemicals or chemical ingredients that actually end up in consumer products sold or offered for sale in California be identified. Any chemicals or chemical ingredients that do not actually end up in consumer products would be excluded from further evaluation. Thus, this initial screening evaluation will require use data. Accordingly, manufacturers who sale or offer for sale consumer products in California that may contain any chemical or chemical ingredient identified on the candidate list will be required to submit use data to DTSC via the Toxics Information Clearinghouse portal. The information required will include identification of all products containing a chemical from the candidate list, and the estimated volume of that chemical per individual product, and the total volume estimated in all products made by that manufacturer that are sold or offered for sale in California. The manufacturer will also be required to report on whether or not the candidate chemical or chemical of concern is known or expected to be released (in the broadest sense) during normal use of the product, or at end of life when the product is disposed (e.g., to a landfill). And finally, the manufacturer will be required to report any time there is a planned or foreseeable change in the use patterns for a given chemical.

DTSC will restrict further evaluation and prioritization only to those chemicals that actually end up in consumer products that are sold or offered for sale in California, and will prioritize chemicals based on the following criteria:

- volume; (what should be the lower threshold for “high” priority?)
- potential for exposure; (is there expected, known, or anticipated release during use or at end of life?)
- exposure of California’s citizens based on biomonitoring data;
- potential effects on sensitive subpopulations, including infants and children;

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- lack of minimum data sets required to fully evaluate the hazard characteristics of the chemical. The required minimum data set is the six hazard endpoints (acute toxicity, chronic toxicity, teratogenicity or developmental and reproductive toxicity, mutagenicity, ecotoxicity, and environmental fate) comprising the "Screening Information Data Set" (SIDS) test battery established by the Organization for Economic Cooperation and Development (OECD, 1998a)"
- human experience suggesting that the chemical or chemical ingredient poses a substantial risk to human health or safety, or the environment;
- evidence of any actual adverse environmental impact of the chemical or chemical ingredient;
- evidence of accumulation/persistence in the environment; [and/or]
- any evidence that otherwise suggests that there are “reasonable grounds for concern” regarding the potential adverse impacts of the chemical.

Analogous to the USEPA CHAMP program, chemicals will be designated “high” or “low” priority based on these criteria. (There will not be a “medium priority” category as there is under CHAMP, because under CHAMP the medium priority chemicals are those lacking adequate data to prioritize. In California, chemicals lacking such data will automatically be classified as “high priority” until such time as manufacturers make such data available and the chemicals can be reevaluated.) Any chemical designated as “high” priority based on above criteria would be placed on a “high priority chemicals of concern list”, and would be subject to the alternatives analysis described in Section 5.

SECTION 5. PROCESS TO EVALUATE ALTERNATIVES

Alternatives Analysis

An alternatives analysis shall be required for consumer products that contain one or more high priority chemicals of concern. The alternatives analysis shall be conducted by manufacturers, importers, suppliers, retailers and any other entity responsible for placing the consumer product in commerce in California. Importers, suppliers and retailers may conduct the alternatives analysis or may request or require the manufacturer to provide the findings of an alternatives analysis to downstream users. These findings can be provided to each individual downstream user, or posted in a location accessible to downstream users. It will be the responsibility of the manufacturer, importer, suppliers, retailer and any other entity responsible for placing the product in commerce in California to determine if a consumer product contains one or more chemical of concern. DTSC will confirm these findings through its enforcement authority, research, collaboration with other authoritative bodies and by requesting information regarding these chemicals through the authority granted pursuant to Health and Safety Code section 57019.

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The alternative analyses required pursuant to these regulations shall be implemented according to a schedule established in the regulations. This schedule will allow the requirement to perform alternatives analyses to be phased in and provide an initial phase wherein necessary changes to the analysis requirements may become evident and can be implemented. The first phase shall require completed alternatives analyses on or before six months from the effective date of the regulation, for consumer products containing prioritized chemicals of concern that are intended for use by pregnant women or children under the age of six. In addition consumer products containing high priority chemicals of concern that have been identified by ECHA, pursuant to the requirements of the EU REACH, as chemicals that require authorization shall have completed analyses on or before 6 months from the date such chemicals are listed as requiring authorization. All other alternatives analyses for consumer products containing high priority chemicals of concern shall be completed on or before 18 months from the effective date of the regulation.

The completed alternatives analysis shall be submitted to DTSC electronically through the Toxics Information Clearinghouse portal. In addition, specified findings of the alternatives analysis shall be submitted to a publicly accessible portion of the Clearinghouse to ensure transparency and enhance public input. [Manufacturers] who submit alternatives analyses shall consider all comments, assess the comments’ relevance to the alternatives analysis and revise the analysis in response to comments that change the findings of the analysis. The comment period for an alternatives analysis shall remain open for 3 months and the revised alternatives analysis shall be re-submitted to DTSC and the Clearinghouse on or before 3 months from the close of the comment period. In addition, at any time DTSC may evaluate an alternatives analysis and require revision or additional analysis. All respondents whose consumer products continue to contain one or more high priority chemicals of concern shall revise the alternatives analysis using updated information, including, but not limited to, consideration of newly identified alternatives and changes in manufacturing processes. Revised alternatives analyses shall be submitted on or before 24 months from the date the previous version of the analysis was submitted. Such revisions to the alternatives analysis shall continue until the high priority chemical of concern is restricted or prohibited from this use. If an independent third party entity is used to complete or evaluate the alternatives analyses, the regulations will include a certification process.

The alternatives analysis shall identify consumer products that contain one or more high priority chemicals of concern and identify the availability of potential alternatives. These alternatives should be broadly considered to include alternatives to the chemicals of concern in the consumer product (chemical substitution) as well as other alternatives that may include, but are not limited to, alternative manufacturing or handling processes that result in reduced high priority chemicals of concern in a product, or alternative forms of products that do not contain chemicals of concern. If no alternatives can be identified for a subject consumer product or chemical of concern the analysis shall be placed in a category within the Toxics Information Clearinghouse that specifies no available alternatives and shall be subject to

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ongoing public comment. If a comment is submitted regarding a potential alternative, the respondent shall complete an alternatives analysis on or before 12 months from the date of the comment.

The alternatives analysis shall identify and evaluate the level of hazard and critical exposure pathways associated with consumer products that contain one or more prioritized chemicals of concern as well as for the identified alternatives. The alternatives analysis shall consider health impacts, ecological impacts and lifecycle impacts of prioritized chemicals of concern in consumer products and identified alternatives.

The health and ecological impacts of the current product and its alternatives will be evaluated in the alternatives analysis using attributes that include, but are not limited to, acute and chronic toxicity, carcinogenicity, reproductive hazard, mutagenicity, teratogenicity, endocrine disruption, aquatic toxicity, persistence, bioaccumulation, mobility and potential for exposure.

The methodology for conducting the lifecycle assessment will include all stages of the lifecycle and will be based on the mass flow of materials and energy in and out, emissions, and associated impacts of the different unit processes included within the lifecycle. The defining feature of lifecycle methodology is that it captures multi-media environmental impacts associated with all upstream and downstream stages of a system built on existing methods established through ISO 14040 and ISO 14044 and as described in *Life Cycle Assessment: Principles and Practice* (EPA/600/R-06/060, May 2006).

Assessment of the impacts arising from the life cycle of products shall be carried out in a manner that allows the impacts to be reported per functional unit for the product. The system boundary shall be clearly defined for each product and its underlying processes. The assessment should include impacts arising from processes, inputs and outputs in the life cycle of a product, including but not limited to:

- a. raw material acquisition and processing;
- b. manufacturing and operations;
- c. transportation;
- d. product use and maintenance;
- e. energy use (including energy sources, such as electricity, that were themselves created using processes that have impacts associated with them); and
- f. waste and end-of-life management.

The lifecycle impact guidelines address both the economic and environmental impacts arising from the provision of products, such as materials consumption, water consumption, energy efficiency, greenhouse gas and other air emissions, acidification, eutrophication, human health toxicity, and eco-toxicity that may be associated with the life cycle of products. The purpose of the economic or cost benefit analysis is to provide a range of direct and indirect costs for the

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alternatives under study in comparison to the product containing the prioritized chemical of concern. The economic analysis will use the same boundaries and specific alternatives as the lifecycle assessment. The results from both the economic and environmental analyses will then be used to inform the alternatives analysis.

The alternatives analysis shall be conducted using a multi-stage approach to conduct comparisons among alternatives. In the first stage the consumer product that contains one or more high priority chemicals of concern and its alternative(s) are compared according to the attribute(s) that cause the chemical of concern to be identified as a high priority. Only those alternatives that represent an improvement over the high priority chemical of concern with regard to this attribute will proceed to the next stage of the assessment.

In the second stage of the assessment the subject product and its alternatives are compared according to the remaining health and ecological impact attributes and those lifecycle attributes that address health and environmental impacts. Only those alternatives that represent an improvement over the product with the high priority chemical of concern with regard to attributes that assess health and ecological impacts will proceed to the next stage of the assessment.

In the third stage of the assessment the remaining lifecycle attributes and of the alternatives are evaluated and the subject product and its alternatives are ranked by assigning a high, medium or low impact assessment in each of the following impact categories:

- Health and ecological impact criteria
- Lifecycle impact criteria
- The twelve principles of Green Chemistry

The alternatives analysis shall identify any alternatives with a more favorable impact than the subject product or chemical of concern. When the [manufacturer] submits the completed alternatives analysis to the Toxics Information Clearinghouse, it shall also provide a plan and schedule for implementing the most favorable alternative or a detailed justification for not selecting a more favorable alternative. The outcome of the alternatives analysis will be categorized and assigned to the appropriate regulatory response(s).

SECTION 6. REGULATORY RESPONSES

Upon the completion of the alternatives analysis as defined in Section 5 above, the [manufacturer] must comply with all of the following:

- 1) **No further action.** (a) The [manufacturer] provides DTSC electronic notification pursuant to subsection () that an alternatives analysis has been performed pursuant to section 5(X) and the assessment is:

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- (1) made available to DTSC upon request within 30 days,
- (2) verifiable by a third party,
- (3) risk of exposure is mitigated through compliance with subsections (2) thru (9).

(b) in complying with section 6(1)(a) a manufacturer, supplier, distributor or retailer of a consumer product may arrange for the information to be provided by a manufacturer, supplier, and/or distributor.

(c) If the manufacturer, supplier, and/or distributor does not or can not provide the necessary information and the retailer elects to place the consumer product on its retail shelves the retailer must obtain the information and make the information available as specified in section () in the Toxics Clearinghouse.

- 2) **Additional information.** Any [manufacturer] who intends to use a prioritized chemical of concern for which there is insufficient data to meet the requirements of this part shall:
 - a) File an electronic notification with the following information: name, physical location of entity, name of contact person, names and types of chemicals, volume(s) of chemical being used, types of products being manufactured or sold, and
 - b) Comply with subsections (7) and within 18 months days of filing notification comply with subsection (1) by filing notification of compliance.
- 3) **Labeling.** Any [manufacturer] shall:
 - a) On an after January 1, 2012, label all consumer products meeting one of the following criteria:
 - i) a prioritized chemical of concern is present in the consumer product that exceeds state and federal standards that are protective of human health and the environment (such as a federal standards, FDA, Proposition 65 ,MADL, safe harbor number, etc.),
 - ii) reclamation of the consumer product at the end of life is necessary to mitigate long-term human health and or ecological risks,
 - iii) reclamation of product at end of life is necessary to eliminate need for continued extraction of virgin materials.
 - b) Ensure that the label conveys, with an appropriate symbol and or in the appropriate language, the following:
 - i) Warning to use product only as intended,
 - ii) End of life management requirements in accordance with subsection (7),
 - iii) Carbon foot print metrics in accordance _____,
 - iv) Permanently labeled with a logo or statement that product exceeds state and or federal levels for the prioritized chemical of concern.

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- c) In complying with the requirements of subsection (3)(a), the [manufacturer] shall obtain the information prior to introducing the product into the state.
- 4) **Restrictions.** Prioritized chemicals of concern are restricted for use if the presence of the prioritized chemical of concern in people or the environment has been documented through biomonitoring, ecological, and epidemiological data and the data indicates a risk to a sensitive subpopulation, ecological receptor, or environmental damage.
- a) In complying with this subsection, a [manufacturer] shall make available detailed chemical information on a representative sample of the consumer product on its website site, and the Toxics Information Clearinghouse.
- b) A [manufacturer] shall limit the use of the prioritized chemical of concern to the applications as listed on Appendix A, which shall be amended periodically by the department as new information becomes available and exposure to the priority chemical of concern through the use of the consumer product can be reasonably mitigated by complying with subsections (3), (6) and (7).
- c) A feasible alternative exists but requires further research and development and the manufacturer or retailer can demonstrate participation in collaborative research on the prioritized chemical of concern.
- 5) **Prohibitions.** On and after January 01, 2014, products containing prioritized chemicals of concern are prohibited from sale, and/or distribution where the risk can not be reasonably mitigated by complying with subsections (3), (6), and (7) a feasible alternative exists and the following apply:
- a) Data on the priority chemical of concern demonstrates an adverse health effect to a sensitive subpopulation and/or ecological receptor,
- b) The consumer product is intended for a sensitive sub population and the subpopulation will be exposed to the priority chemical through foreseeable use of the product,
- c) A sensitive subpopulation can be reasonably exposed to the priority chemical in a consumer product through foreseeable use of product in the household, workplace and/or place of care (i.e., childcare, schools, hospitals),
- 6) **Engineered Safety Measures.** Where substitution of a prioritized chemical of concern is not feasible because the performance of the product would be unreasonably compromised and is essential for the intended purpose and use, the [manufacturer] shall design the consumer product with the necessary engineering controls to enclose the hazard and prevent exposure under normal operations. Where complete enclosure is not feasible, clear instructions on the use of the product should be provided to reduce exposure to the hazard in normal operations.

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- a) Specific applications
 - b) Chemical of concern is integrally contained within the structure, formulation, mixture, or composition of the product (e.g., lead in vinyl versus toys with lead solder)
 - c) Product is used as intended
- 7) **End-of-Life Management.** In order to manage consumer products that have reached the end of their useful life, [manufacturers] shall offer a variety of take back programs that ensure that the consumer product is managed in an environmentally sound manner. End-of-life management programs shall be easy to understand and readily accessible to consumers.
- a) [Manufacturers] shall, when placing products on the market, provide a financial guarantee for the management of the products they produce as specified in subsection (8) to fund research and development of the products manufactured or other products necessitating an immediate response.
 - b) [Manufacturers], in collaboration with retailers, shall implement a public education program, for consumer products that contain chemicals of concern for which the provisions of subsection (3) and (6) have been used to mitigate hazard and or exposure.
 - c) [Manufacturers] shall assist retailers in creating an in-store recycling program for the collection and recycling of consumer products with prioritized chemical of concern. The program shall include:
 - i) Labeling consumer products that require end-of-life management with “return to the store for recycling;”
 - ii) Placement of recycling bins at retail centers in visible and accessible locations for consumers;
 - d) Compensation to retailer and centers for administration of recycling program.
 - e) [Manufacturers] shall, every two years, provide an electronic report to the Toxics Information Clearinghouse containing the following:
 - i) amount of products placed on the market over two year period by total tonnage,
 - ii) amount of products recovered for recycling over the two year period.
- 8) **Research and Development.** In order to recognize and reward innovations and foster the development of new technologies, this subpart may be waived if the [manufacturer] can demonstrate that research is in progress for the prioritized chemical of concern, and its alternatives, through a collaboration with other users of the prioritized chemical of concern or by an independent party who has provided documentation verifying the above.
- a) Parties seeking to apply for research and development grants shall provide a written research and development notice and shall specify:
 - i) The substantive elements of the research and development program, which shall include but is not limited to:
 - (1) Identification and nature of research on a specific product and or application of a prioritized chemical of concern,
 - (2) Design of product with chemicals that are not priority chemicals of concern,

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- (3) Use of chemical ingredients that are restorative of the environment,
- (4) Design of product for ease of dismantling, reclamation, recycling, and remanufacture,
- (5) Design products that optimize use of recycled materials,
- (6) Design products with less mass,
- (7) Design products with longer life (and add service after the sale),
- (8) Reduce packaging,
- (9) Redesign products to be sustainable throughout product life cycle
- (10) Other criteria as deemed necessary and appropriate including but not limited to:

- (A) Prevent waste rather than treating it or cleaning it up.
- (B) Incorporate all materials used in the manufacturing process in the final product.
- (C) Use synthetic methods that generate substances with little or no toxicity to people or the environment.
- (D) Design chemical products to be effective, but reduce toxicity.
- (E) Phase-out solvents and auxiliary substances when possible.
- (F) Use energy efficient processes, at ambient temperature and pressure, to reduce costs and environmental impacts.
- (G) Use renewable raw materials for feedstocks.
- (H) Reuse chemical intermediates and blocking agents to reduce or eliminate waste.
- (I) Select catalysts that carry out a single reaction many times instead of less efficient reagents.
- (J) Use chemicals that readily break down into innocuous substances in the environment.
- (K) Develop better analytical techniques for real-time monitoring to reduce hazardous substances.
- (L) Use chemicals with low risk for accidents, explosions and fires.

- ii) The expected amount of time required for each substantive element;
- iii) The processes, pollution control equipment, and emissions which are likely to be affected by the program;
- iv) Potential or expected benefits of the program; and
- v) The basis upon which the results of the program will be evaluated.

- b) The research and development program being undertaken shall include a provision for the employment of qualified independent firm(s) to prepare written reports at least annually which evaluates each completed significant stage of the research and development program, including all relevant information and data generated by the program.

DRAFT STRAW PROPOSAL

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Plain English Outline of “Safer Alternatives for Consumer Products” Rule

9) Continuous Improvement.

- a) Each [manufacturer] shall conduct an active program to continuously review the effectiveness of its alternatives assessments.
- b) An annual electronic report/questionnaire, detailing the results of the review shall be accessible via the Toxics Information Clearinghouse.
- c) The report shall include:
 - i) Identification of specific targets for reduction of:
 - (1) virgin materials
 - (2) energy use,
 - (3) greenhouse gas emissions,
 - (4) water use, and
 - (5) solid and hazardous waste.
 - ii) Specific metrics identified by the department.

SECTION 7. ENFORCEMENT

This rule applies to *any consumer product offered for sale or use in the State of California*. The rule is enforceable pursuant to the provisions of Chapter 6.5 of the Health and Safety code.

DRAFT STRAW PROPOSAL

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Statutory Definitions (Excerpted)

CALIFORNIA HEALTH AND SAFETY CODE

SECTION 25251

For purposes of this article, the following definitions shall apply:

(a) "Clearinghouse" means the Toxics Information Clearinghouse established pursuant to Section 25256.

(b) "Council" means the California Environmental Policy Council established pursuant to subdivision (b) of Section 71017 of the Public Resources Code.

(c) "Office" means Office of Environmental Health Hazard Assessment.

(d) "Panel" means the Green Ribbon Science Panel established pursuant to Section 25254.

(e) "Consumer product" means a product or part of the product that is used, brought, or leased for use by a person for any purposes. "Consumer product" does not include any of the following:

(1) A dangerous drug or dangerous device as defined in Section 4022 of the Business of Professions Code.

(2) Dental restorative materials as defined in subdivision (b) of Section 1648.20 of the Business and Professions Code.

(3) A device as defined in Section 4023 of the Business of Professions Code.

(4) A food as defined in subdivision (a) of Section 109935.

(5) The packaging associated with any of the items specified in paragraph (1), (2), or (3).

(6) A pesticide as defined in Section 12753 of the Food and Agricultural Code or the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Sec. 136 and following).

(7) Mercury-containing lights defined as mercury-containing lamps, bulbs, tubes, or other electric devices that provide functional illumination.

(f) This section shall remain in effect only until December 31, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before December 31, 2011, deletes or extends that date.