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California Department of Toxic Substances Control
Office of Legislation & Regulatory Policy
Heather Jones, MS 22A
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RE: Draft Regulations for Safer Consumer Product Alternatives, Chapter 53, Division 4.5
22CCR§69301-69311

Dear Ms. Jones:

The California Industrial Hygiene Council (CIHC) respectfully submits the following comments regarding the draft regulations for Safer Consumer Product Alternatives, Chapter 53 of Division 4.5 of Title 22, California Code of Regulations.

Founded in 1990, the CIHC represents the Industrial Hygiene profession in California and is affiliated with the American Industrial Hygiene Association (AIHA), a 12,000 member national organization. Our Board consists of Certified Industrial Hygienist (CIH) representatives from all California local sections of the AIHA, specifically, Northern California, Orange County, Sacramento, San Diego, and Southern California. Our mission is to bring good science to the legislative and/or regulatory agenda which impacts the health of California workers and the public.

The following comments are submitted for your consideration:

While implementation of 'green chemistry principles' is an important goal, it is expected that the significant data collection, analysis, and reporting, as well as the required projections of resource consumption for each priority product, priority product component, and each alternative to be considered may well place a huge financial and resource burden on both manufacturers and the Department (in its anticipated review/audit role), while providing an unquantifiable public health benefit. The required projections of resource consumption requiring significant data collection, analysis and reporting include, among others--water consumption and conservation; production, in-use, and transportation energy inputs; energy consumption and efficiency; and

reusability and recyclability. In order to ensure a successful implementation of the regulations, DTSC might consider a beta test phase of implementation, using a smaller set of selected chemicals and products before the full roll out of the program. During this beta test phase, any problems could be addressed and resolved.

- We strongly support the use of the de minimis level of 0.1%. This is consistent with several other existing regulations and will provide continuity with those regulations.
- There appears to be some inconsistency and lack of clarity regarding the scope of the regulation. Section 69301, Applicability and Severability, clearly states that the chapter applies to all consumer products made available for use in California. However, in Section 69303.3, Products under Consideration, prioritization factors include “workers, customers, clients and members of the general public who come in contact with the product or releases from the product in the workplace...” In Section 69305.3, Alternatives Assessment Work Plan Required Contents, #11, Human Health Impacts, the work plan is required to collect information on and assess “public and occupational health impacts...” The first section addresses consumer products used in the workplace, while the second appears to go beyond the scope and applicability of the regulation and could lead to jurisdictional confusion. Occupational health impacts clearly fall under the jurisdiction of the California Division of Occupational Safety and Health. While the issue is addressed in the supplemental “Frequently Asked Questions,” clarifying guidance should be provided in the actual regulatory text.
- It is critically important to include the concept of ‘potential exposure’ when addressing Chemicals of Concern (COC) concentrations and hazard traits. In the draft regulation, there is no adequate differentiation between “hazard” and “risk.” To properly assess the risk to consumers, reasonable and foreseeable use must be considered to quantify exposure.
- The Third Party and In-House Assessment Entities and the Lead Assessor Accreditation processes appear to be vague and incomplete. Aside from knowledge of Life Cycle Assessment, education and professional criteria are not defined. The decision as to whether to approve or disapprove either the assessment or the accreditation entities appears to be at the discretion of the Department, without any clearly defined minimum standards or expectations. In order to complete the Alternatives Assessments, the assessors must have broad scientific knowledge beyond that of life cycle assessments which is specifically called out in the draft regulations. They must also have knowledge of the following, among others: chemistry, environmental and health sciences, understanding of how to assess economic impacts, risk assessment, and toxicology.

Without more specific approval criteria, there is a risk that a large number of unqualified individuals will apply for these positions and increase the risk that some unqualified people will actually secure these positions.

As an example, individuals applying to take the Certified Industrial Hygienist (CIH) exam must meet the education qualifications spelled out by the American Board of Industrial Hygiene. A typical qualified candidate has a Bachelor's Degree in biology, chemistry, chemical engineering, mechanical engineering, sanitary engineering, physics, industrial hygiene, environmental health, or safety. Many have graduate degrees as well. In addition, the candidate must have academic or continuing education coursework specifically addressing industrial hygiene, environmental impacts, toxicology, community health impacts, hazard/risk anticipation, recognition, evaluation and controls, as well as a number of years of work experience. These criteria help ensure that practitioners have the basic academic and work experience underpinnings to take on selected tasks. A similar process should anchor the qualifications of Alternative Assessment and Lead Assessor personnel.

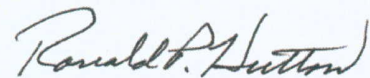
- As a companion to the previous point, if the Assessor qualification process is sound and an audit process is in place per the draft regulations, it seems to be unnecessarily redundant to require every Alternatives Assessment to be reviewed by an additional Third Party Assessment Entity. [Section 69305 (D3)]

Thank you for the opportunity to review and comment on these draft regulations. If you have questions or would like to discuss any of this further, please feel free to call either one of us.

Sincerely,



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