CALIFORNIA ENVIRONMENTAL QUALITY ACT
NOTICE OF EXEMPTION

To: Office of Land Use and Climate Innovation
State Clearinghouse
1400 Tenth Street, Room 212
Sacramento, CA 95812-3044

From: Department of Toxic Substances Control
Safer Consumer Products Program
1001 I Street, 12th floor
Sacramento, CA 95812-0806

Project Title: Safer Consumer Products: Listing Nail Products Containing Triphenyl Phosphate (TPhP) at Concentrations Greater Than 250 Parts per Million (ppm) as a Priority Product in Regulation (Regulation Reference Number R-2025-03R)

Project Location: Statewide

County: Statewide

Project Applicant: Department of Toxic Substances Control

Approval Action Under Consideration by DTSC: Regulations

Statutory Authority: California Code of Regulations, Article 11, Chapter 55, Sections 25252, 25253
Project Description: The Department of Toxic Substances Control (DTSC), pursuant to authority granted by Health and Safety Code Sections 25252, 25253, and 58012, approved a regulatory amendment to amend section 69511 and add section 69511.10 to Article 11, Chapter 55, Division 4.5 of Title 22, California Code of Regulations. The action will add one new Priority Product, nail products containing triphenyl phosphate (TPhP) at concentrations greater than 250 parts per million (ppm), to the Priority Products List (Article 11 of the Safer Consumer Products Regulations).

Background: DTSC's Safer Consumer Products Regulations, adopted in 2013, strive to reduce toxic chemicals in products and create safer substitutes for hazardous ingredients in consumer products sold in California. The regulations emphasize safer products and healthier lives by reducing or eliminating the use of toxic chemicals, while allowing manufacturers to determine how to best address human health or environmental concerns related to their products.

The regulations require DTSC to evaluate and prioritize product/Candidate Chemical combinations for possible addition to the Priority Products List. A Candidate Chemical that is the basis for a product being listed as a Priority Product is designated as a Chemical of Concern for that product and for any alternative considered or selected to replace that product. DTSC selects Priority Products based on the potential for exposure to the Chemical(s) of Concern in the product and the potential for this exposure to contribute to or cause widespread or significant adverse impacts to people or the environment.

Project Activities: The Priority Product added through this rulemaking is nail products containing TPhP at concentrations greater than 250 ppm. DTSC placed this product on the Priority Products List based on a finding that the product meets the key prioritization criteria in the Safer Consumer Products Regulations: 1) The product has the potential to expose people or the environment to the Candidate Chemical in the product, and 2) This exposure has the potential to contribute to or cause significant or widespread adverse impacts. The regulations present a variety of compliance pathways that manufacturers may select to address these potential exposures and impacts.

To comply with a Priority Product listing, manufacturers of the product must notify DTSC if they manufacture a product meeting the definition of the Priority Product that has been placed in the stream of commerce in California. Following the initial notification, a manufacturer may choose to:

1. remove the Chemical of Concern from the Priority Product;
2. replace the Chemical of Concern in the product with a different chemical already used in that type of product;
3. stop selling or distributing the Priority Product in California; or
4. perform an Alternatives Analysis to determine how best to limit adverse public health and environmental impacts posed by the Chemical of Concern in the product.

DTSC does not and cannot mandate a particular response by the manufacturers.

In the Alternatives Analysis, a manufacturer compares the Chemical of Concern in a Priority Product with potential alternatives to determine if there is a safer way to make the product. The Alternatives Analysis focuses on the lifecycle of the product and must consider all of the following factors relevant to the comparison of the product and its alternatives:

A. adverse environmental impacts
B. adverse public health impacts

C. adverse waste and end-of-life impacts

D. environmental fate

E. materials and resource impacts

F. physical chemical hazards

G. physiochemical properties

A manufacturer who chooses to perform an Alternatives Analysis may select to complete either 1) an Abridged Alternatives Analysis when it finds that no safer alternative to the Priority Product is functionally acceptable, technically feasible, and economically feasible, or 2) a two-stage Alternatives Analysis to compare potential alternative products to the Priority Product. The two-stage Alternatives Analysis considers individual impacts throughout the lifecycle of the product, and each manufacturer's Alternatives Analysis will be tailored to its individual manufacturing processes. Any alternative evaluated by a manufacturer would be identified according to its unique product function and performance requirements.

The conclusions and outcome of each Alternatives Analysis are included in an Alternatives Analysis Report, which may be unique to each manufacturer. The conclusions or proposal of the report cannot be predetermined or foreseen by DTSC. After the Alternatives Analysis is completed, DTSC will evaluate a manufacturer's Alternatives Analysis Report to determine if any additional regulatory action is necessary.

DTSC may decide to impose one or more regulatory responses, based on the results of the Alternatives Analysis Report, that are designed to prevent or significantly reduce the potential for adverse impacts to public health and the environment posed by the Priority Product or by the alternative selected by a manufacturer. If DTSC determines that additional regulatory action is required based on the results of the Alternatives Analysis Report, DTSC will evaluate the potential environmental impacts of any proposed regulatory response.

If a manufacturer elects to complete an Abridged Alternatives Analysis Report and continue to sell the Priority Product in California because there is no functionally acceptable, technically feasible, and economically feasible, safer alternative, two regulatory responses are automatically applicable: Product Information for Consumers and Advancement of Green Chemistry and Green Engineering. (See Cal. Code Regs., tit. 22, §§ 69506.3, 69506.8.)

The Product Information for Consumers regulatory response is designed to ensure that consumers are aware of the presence of the Chemical of Concern in the product and the chemical's known hazard traits and/or toxicological endpoints, as well as any safe handling, use, storage, or disposal information necessary to protect public health or the environment during the useful life of the product.

The Advancement of Green Chemistry and Green Engineering regulatory response requires the manufacturer to initiate a research and development project or fund a challenge grant pertinent to the Priority Product that uses green chemistry and/or green engineering principles to do one or more of the following:

a) Design a safer alternative to the Priority Product;

b) Improve the performance of a safer alternative to the Priority Product;

c) Decrease the cost of the safer alternative to the Priority Product; and/or

d) Increase the market penetration of a safer alternative to the Priority Product.

Name of Public Agency Approving Project: Department of Toxic Substances Control

Name of Person or Agency Carrying Out Project: Department of Toxic Substances Control

Exempt Status: Feasibility or Planning Study [14 CCR § 15262]; Data Collection [14 CCR §15306]

Reasons Why Project is Exempt: This Priority Product listing requires notifications from any manufacturer of the Priority Product if its product is sold in California and the possible creation of reports that evaluate alternatives to the Priority Product. DTSC cannot anticipate how individual manufacturers will choose to comply with the regulation or mandate any particular response.

For instance:

- Any number of manufacturers may elect to stop selling their product in California once the rule is final, or even before.
- Any number of manufacturers may elect to stop producing a particular formula of a suite of products that they currently manufacture to avoid using the named Chemical of Concern.

- Any number of manufacturers may elect to complete an Abridged Alternatives Analysis.
- Any number of manufacturers may elect to complete a two-stage Alternatives Analysis and propose to adopt an alternative product.
- Any number of manufacturers may be subject to regulatory response if there are Alternative Analysis Reports DTSC needs to evaluate and if, based on the Report's conclusions, DTSC determines one or more regulatory responses are necessary to address remaining potential exposures or adverse impacts associated with the Priority Product or the selected alternative.

It would therefore be speculative to predict how many, or if any, manufacturers would choose a particular compliance pathway. Further regulatory action is not legally compelled or presumed by DTSC's decision to list the Priority Product.

DTSC finds that the Alternatives Analysis process meets the definition of a feasibility or planning study for possible future action that has not yet been approved, adopted, or funded (14 CCR § 15262).

Any regulatory response that DTSC may impose following its review of an Alternatives Analysis Report will be subject to CEQA requirements at the point of determination. Such regulatory responses cannot be determined until after the Alternatives Analysis has been completed.

Additionally, DTSC has no evidence of potential direct or indirect physical change to the environment that would result from the notifications, Alternatives Analysis Reports, or the two automatic regulatory responses that would be triggered by the submittal of an Abridged Alternatives Analysis Report. DTSC has no evidence that this regulation would result in a change in any of the physical conditions within California, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

The administrative record for this project is available to the public by appointment at the following location:

Department of Toxic Substances Control
Safer Consumer Products Program
P.O. Box 806, 1001 I Street, 12th floor
Sacramento, CA 95812-0806

Additional project information is available at https://dtsc.ca.gov/regs/.

Contact Person	Contact Title	Phone Number
Tiglath Moradkhan	Environmental Scientist	279-895-5158

Approver's Signature:

Robin Christensen

Date:

Click or tap to enter a date.

Approver's Name	Approver's Title	Approver's Phone Number
Robin Christensen	Deputy Director, Safer Consumer Products Program	916-764-8443

TO BE COMPLETED BY OPR ONLY

Date Received for Filing and Posting at OPR: