

ever comes later. At this time, no public hearing is scheduled. A person may request a hearing no later than November 1, 2021.

The **Department of Conservation** has determined that the proposed amendments:

1. Impose no mandate on local agencies or school districts.
2. Impose no costs or savings on any state agency.
3. Impose no costs on any local agency or school district that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
4. Will not result in any nondiscretionary costs or savings to local agencies.
5. Will not result in any costs or savings in federal funding to the state.
6. Will not have any potential cost impact on private persons, businesses or small businesses.

All inquiries concerning this proposed amendment and any communication required by this notice should be directed to:

Graham St. Michel  
 Senior Staff Counsel, Department of Conservation  
 (916) 858-9747  
[graham.stmichel@conservation.ca.gov](mailto:graham.stmichel@conservation.ca.gov)

**TITLE 22. DEPARTMENT OF TOXIC SUBSTANCES CONTROL**

SAFER CONSUMER PRODUCTS REGULATIONS — LISTING NAIL PRODUCTS CONTAINING TOLUENE AS A PRIORITY PRODUCT

DEPARTMENT OF TOXIC SUBSTANCES CONTROL REFERENCE NUMBER: R-2019-04

**NOTICE IS HEREBY GIVEN** that the Department of Toxic Substances Control (DTSC) proposes to amend the California Code of Regulations, title 22 (22 CCR), Division 4.5, Chapter 55, section 69511.6. This proposed amendment pertains to identification of a Priority Product under the Safer Consumer Products (SCP) regulations, approved by the Office of Administrative Law (OAL) and filed with the Secretary of State on August 28, 2013 (effective date: 10/01/2013; OAL Regulatory Action Number: 2013-0718-03).

**WRITTEN COMMENT PERIOD**

Any interested person(s) or their authorized representative(s) may submit written comments relevant to the proposed regulatory action to DTSC

in either electronic or hard-copy formats. Written comments may be submitted electronically through the SCP Information Management System, CalSAFER at: <https://calsafes.dtsc.ca.gov/>. Please direct questions or concerns about CalSAFER to Christine Papagni at (818) 717-6541 or [Christine.Papagni@dtsc.ca.gov](mailto:Christine.Papagni@dtsc.ca.gov). While DTSC prefers that comments be submitted through the CalSAFER system, interested persons may also submit their comments in an email to: [SaferConsumerProducts@dtsc.ca.gov](mailto:SaferConsumerProducts@dtsc.ca.gov).

Written comments may also be submitted electronically through the DTSC regulations email address at [regs@dtsc.ca.gov](mailto:regs@dtsc.ca.gov) or please direct hard-copy written comments to the Office of Legislation and Regulatory Review, as specified below.

The written comment period will close on November 15, 2021. Only comments received at the DTSC office by that date and time will be considered. Any interested person(s) or their authorized representative(s) may submit written comments relevant to the proposed regulatory action to DTSC in either electronic or hard copy formats. DTSC will only consider comments received on or before this date and time.

**PUBLIC HEARING**

A public hearing has not been scheduled for this rulemaking. However, DTSC will conduct a hearing if a written request for a public hearing is received from any interested person, or his or her duly authorized representative, no later than 15 days prior to the close of the written comment period, pursuant to Government Code Section 11346.8.

**Notice Pertaining to Accessibility and Reasonable Accommodation**

All documents related to these regulations can be made available in alternate format (i.e., Braille, large print, etc.) or in another language, as requested, in accordance with State and Federal law. Further, to ensure the public has equal access to all available services and information, DTSC will provide disability-related reasonable accommodations and/or translator/interpreter needs, upon request. For assistance, please contact a staff person from office below. Note: the range of assistive series available may be limited if requests are made less than 10 business days prior a public hearing.

Office of Legislation and Regulatory Review  
 Department of Toxic Substances Control  
 P.O. Box 806  
 Sacramento, California 95812-0806  
 e-mail: [regs@dtsc.ca.gov](mailto:regs@dtsc.ca.gov)  
 Fax Number: (916) 324-1808

TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

**AUTHORITY AND REFERENCE**

**Authority**

This regulation is being adopted under the following authorities:

- Health and Safety Code (HSC) section 25252 authorizes and requires DTSC to adopt regulations to establish a process to identify and prioritize those chemicals or chemical ingredients in consumer products that may be considered a Chemical of Concern. This section also directs DTSC to reference and use available information from various sources but does not limit DTSC to use only this information.
- HSC section 25253 authorizes and requires DTSC to adopt regulations that establish a process for evaluating Chemicals of Concern in consumer products, and their potential alternatives, to determine how best to limit exposure to or to reduce the level of hazard posed by a Chemical of Concern.
- HSC section 58012 (added by Governor’s Reorganization Plan No. 1, §146, effective July 17, 1991) grants DTSC authority to adopt regulations to execute its duties.

**Reference**

This regulation implements, interprets, or makes specific the following statutes:

- HSC sections 25252 and 25253.

**INFORMATIVE DIGEST**

**Policy Statement Overview**

Background and Effect of the Proposed Regulatory Action:

The SCP regulations were adopted in October 2013 to meet the statutory requirements outlined in HSC sections 25252 and 25253. The regulations outline a science-based process for evaluating Chemicals of Concern in consumer products and safer alternatives by:

- Establishing a list of Candidate Chemicals and specifying criteria by which these may be designated Chemicals of Concern;
- Establishing a process to identify and prioritize product and Candidate Chemical combinations that may be listed as Priority Products;
- Requiring manufacturers to notify DTSC when their product is listed as a Priority Product;
- Requiring manufacturers of a Priority Product to perform an Alternatives Analysis (AA) to determine how best to reduce exposures to, or the level of adverse public health or environmental

impacts posed by, the Chemical(s) of Concern in the product;

- Requiring DTSC to identify and require implementation of Regulatory Responses following completion of an AA; and
- Creating a process for persons to petition DTSC to add chemicals to the Candidate Chemicals list, add or remove Candidate Chemicals lists in their entirety, or to add or remove a product–chemical combination from the Priority Products List.

DTSC proposes to amend section 69511 and add section 69511.6 to Article 11 of the SCP regulations. The proposed action will add nail products containing toluene as a Priority Product on the Priority Products List.

The listing applies to any nail product, including nail coatings and nail polish thinners, that is placed into commerce in California that contains toluene. For the purposes of this regulation, DTSC defines nail coatings as any clear or colored paint, polish, lacquer, enamel, or gel product marketed or sold for application to fingernails or toenails.

There are two types of nail coatings: solvent-based nail coatings and UV gel nail coatings.

“Solvent-based nail coatings” are clear or colored nail coatings that form a hard coating on nails upon evaporation of their solvents. Subproducts include nail polishes, lacquers, enamels, base coats, undercoats, top coats, and gel nail polishes.

- “Nail polish” is a varnish or paint applied to the fingernails or toenails to color them or make them shiny.
- “Lacquer” or “enamel” is a coating that dries by means of solvent evaporation.
- “Base coat” or “undercoat” is a clear or milky-colored coating that is used before applying other coatings to the nail. It may be marketed for strengthening or protecting the nail, restoring moisture to the nail, or helping other coatings to adhere to the nail.
- “Top coat” is a clear coating that is used after applying other coatings to the nail. It may be used to protect underlying coatings or to add shine, gloss, or matte to the nail.
- “Gel nail polish” or “gel polish” is a gel varnish coating with a look and feel similar to UV gel nail coatings but that does not require an ultraviolet (UV) or a light-emitting diode (LED) lamp to dry. Gel nail polish typically contains color but can also be a clear nail coating.

“UV gel nail coatings” are clear or colored gel nail coatings that are cured or hardened on nails using a UV or an LED lamp rather than solvent evaporation. Subproducts include UV gel nail polish, UV gel topcoat, UV gel base coat, hard gel, and Shellac.

- “UV gel nail polish” or “UV gel” or “Gel” or “nail gel” is a premixed coating that is hardened using a UV or an LED lamp. UV gel nail polish typically contains color but can also be a clear coating.
- “UV gel base coat” is a clear coating that is used before applying other UV gel coatings to the nail; it is cured using a UV or an LED lamp.
- “UV gel top coat” is a clear coating that is used after applying other UV gel coatings to the nail; it is cured using a UV or an LED lamp.
- “Hard gel” is a premixed coating with high solvent resistance; it is hardened using a UV or an LED lamp. It can be applied directly onto natural nails to provide additional strength or sculptured using nail enhancements.
- “Shellac” is the brand name for a nail product created by Creative Nail Design. It is a hybrid which is a combination of nail polish and gel. Shellac is applied directly onto natural nails, and it is cured through UV light.

Nail coatings include “nail art paint,” which is any decorative paint including various solvent-based or UV gel nail coating overlays of nail polish, UV gel, or hybrid coatings like Shellac or airbrush paint applied to fingernails, toenails, or both by any technique. “Airbrush nail art paint” is a subcategory of “nail art paint.”

- “Airbrush nail art paint” means a nail art paint that is designed or intended to be sprayed onto the nail by a device using compressed air. This product may also be labeled as ink, polish, paint, or pigment for airbrush nail art.

“Nail polish thinner” is defined as any liquid product that is marketed or sold for the use of reducing viscosity of nail coatings. It is also included in this regulation when marketed for the use of increasing the fluidity or restoring the consistency of nail coatings. Following extensive review of the scientific literature and analysis of the known hazard traits of toluene, DTSC determined there is potential for workers and consumers to be exposed to toluene in nail products. This exposure contributes to or causes significant or widespread adverse impacts including neurotoxicity, developmental toxicity, neurodevelopmental toxicity, respiratory toxicity, nephrotoxicity, dermatotoxicity, immunotoxicity, ocular toxicity, and ototoxicity. DTSC based this determination on an evaluation of available, reliable scientific information pertinent to the regulatory criteria.

### **Benefits of the Proposed Regulatory Action**

A primary goal of the SCP regulations is to mitigate widespread adverse health and environmental impacts of toluene in commerce, as well as the overall costs of these impacts to the State of California. By listing

nail products containing toluene as a Priority Product, DTSC encourages manufacturers to evaluate whether toluene is necessary in nail products or whether there are functionally safer alternatives that would reduce human exposure to toluene during manufacturing, use, or disposal of nail products containing toluene. Reduction of toluene in consumer products and the environment means safer homes, workplaces, and a more sustainable environment. Reducing exposure to toluene could reduce nervous system effects, adverse effects of developing fetuses, respiratory tract effects, harm to the kidney toxicity, impacts to the immune system, and vision and hearing impairment in the general population of California. Expanded use and development of new, safer alternatives benefits California’s entire population and environment.

Another primary goal of the SCP regulations is to protect public health by reducing exposures to potentially harmful chemicals. By listing nail products containing toluene as a Priority Product, DTSC sets in motion a strategy to reduce human exposure to toluene from the manufacturing, use, and end-of-life of this product category. A reduction in exposure to toluene from nail products could benefit the health of California’s residents and wildlife. The development of safer alternatives benefits California workers, consumers, employers, and environment.

DTSC cannot pre-determine the alternatives that each manufacturer will propose; therefore, it is impossible to accurately predict or quantify the full range of potential benefits associated with their development. DTSC will maximize the use of alternatives of least concern and give preference to those that provide the greatest level of inherent protection. In general, economic benefits to California workers and business owners may include expanded employment opportunities in the fields of consulting, worker and consumer education, and marketing. Additional benefits may accrue because of increased research and product development collaboration between manufacturers and California-based research entities. Institutional and corporate financial support of chemical and material science programs focused on developing safer alternatives to toluene could advance the field. These research initiatives could provide manufacturers with employees that are highly skilled in the research and design of products for newly emerging global markets.

### **Existing Laws and Regulations**

The SCP regulations established a unique approach to regulating Chemicals of Concern in consumer products that grants DTSC authority to take actions to protect people and the environment when such actions are outside the scope of other regulatory programs. There are no equivalent federal or state regulations that require product manufacturers to determine if the

chemical in their product is necessary and whether there is a safer alternative, with the goal of protecting consumers and the environment from adverse effects associated with a product throughout its lifetime.

Nails products, as cosmetics, are regulated by the U.S. Food and Drug Administration (FDA), and toluene is regulated by the U.S. Environmental Protection Agency (EPA), the U.S. Occupational Health and Safety Administration (OSHA), the California Division of Occupational Safety and Health (Cal/OSHA), and the California Department of Public Health (CDPH), California Safe Cosmetics Program. The proposed regulation does not duplicate or conflict with any of these regulations, which are discussed below.

#### *U.S. Food and Drug Administration*

The U.S. Food and Drug Administration (FDA) is authorized by the Federal Food, Drug, and Cosmetic Act (FDCA) to oversee the safety of food, drugs, and cosmetics. The FDCA does not authorize the FDA to require safety testing of cosmetics, and there is no approval process for cosmetics products prior to sale in the U.S. (except for color additives). However, the FDA can and does inspect cosmetics manufacturing facilities to ensure that cosmetics are not adulterated.

While cosmetic product manufacturers are legally responsible for ensuring the safety of their products, neither the FDCA nor FDA regulations require specific tests to demonstrate the safety of individual products or ingredients, and manufacturers are not required to share their safety information with the FDA. However, the FDA can pursue enforcement action against products on the market that it determines are not in compliance with the FDCA or the Fair Packaging and Labeling Act (FPLA), or against firms or individuals who violate these laws.

#### *Federal Food, Drug, and Cosmetic Act*

The FDCA is a set of laws passed by Congress in 1938 giving authority to the FDA to oversee the safety of food, drugs, and cosmetics. The FDCA defines cosmetics as “articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body ... for cleansing, beautifying, promoting attractiveness, or altering the appearance.” As noted above, the FDA does not pre-approve cosmetic products. However, cosmetic products must be properly labeled and safe for consumers under labeled or typical conditions of use. The FDCA prohibits the marketing of adulterated or misbranded cosmetics in interstate commerce, and the FDA can remove cosmetics from the market that contain unsafe ingredients or that are mislabeled.

#### *Fair Packaging and Labeling Act*

The Fair Packaging and Labeling Act (FPLA) requires each package of household consumer

products (including cosmetic products) to bear a label that includes a statement identifying the commodity (detergent, sponge, etc.); the name and place of business of the manufacturer, packer, or distributor; and the net quantity of contents in terms of weight, measure, or count (in both metric and English units). The FPLA is designed to facilitate value comparisons and to prevent unfair or deceptive packaging and labeling of many household consumer commodities.

The specific labeling requirements for cosmetic products are specified in regulation in Title 21 of the Code of Federal Regulations, parts 701 and 740. Cosmetic products produced or distributed for retail sale to consumers for their personal care are required to bear an ingredient declaration. Cosmetic products not typically distributed for retail sale (e.g., nail products used by professionals on customers at their places of work) are exempt from this requirement provided these products are not also sold to consumers at professional establishments or workplaces.

#### *U.S. Environmental Protection Agency*

Toluene is listed under the Toxic Substances Control Act (TSCA) of 1976, which was enacted by Congress to test, regulate, and screen all chemicals produced in or imported into the United States. TSCA requires any chemical that reaches the consumer marketplace to be tested for possible toxic effect prior to commercial manufacture. Under Section 8, TSCA requires reporting and record keeping by persons who manufacture, import, process, and/or distribute chemical substances in commerce. Under Section 8(e), any person who manufactures (which includes importing), processes, or distributes in commerce a chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment should immediately inform the U.S. Environmental Enforcement Agency (EPA), except in situations where EPA has been adequately informed of such information.

Toluene is listed as a hazardous air pollutant under the Clean Air Act.

Toluene is listed as an organic hazardous air pollutant under Federal Code of Regulations 40 C.F.R., Section 63, Subpart F, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.

#### *U.S. Occupational Health and Safety Administration*

The U.S. Occupational Health and Safety Administration (OSHA) has set a permissible exposure limit (PEL), an enforceable limit to protect workers against the health effects of exposure to hazardous substances, of 200 parts per million (ppm) for toluene in air averaged over an eight-hour workday. OSHA acknowledges that many of its PELs are outdated and

inadequate to ensure protection of worker health. Most of OSHA’s PELs were issued shortly after adoption of the Occupational Safety and Health Act in 1970 and have not been updated since then. The OSHA PEL for toluene was set in 1971.

Nevertheless, as noted above, changes to occupational exposure limits for a chemical are not among the regulatory response options that DTSC might eventually impose for toluene-containing nail products.

*California Division of Occupational Safety and Health, Cal/OSHA*

In 2012, the California Division of Occupational Safety and Health (DOSH), also known as Cal/OSHA, set a PEL for workers of 10 ppm (37.6 mg/m<sup>3</sup>) for toluene in air averaged over an eight-hour workday. Listing toluene-containing nail products as a Priority Product would not affect existing occupational exposure limits like the PEL. DTSC might eventually impose one or more regulatory responses on manufacturers of toluene-containing nail products. However, regulatory responses must be selected from among seven options described in Article 6 of the SCP regulations; changes to occupational exposure limits for a chemical are not among these options.

*California Department of Public Health, California Safe Cosmetics Program*

The California Department of Public Health (CDPH) created the California Safe Cosmetics Program (CSCP) in response to the passage of the California Safe Cosmetics Act. Beginning in 2009, cosmetic manufacturers with aggregate sales greater than \$1 million must report to CSCP products they sell in California which have intentionally added chemical ingredients identified as known or suspected carcinogens or reproductive or developmental toxicants by authoritative bodies.

While the intention of the Safe Cosmetics Act is to improve access to information about potentially harmful ingredients in cosmetics and to influence the reformulation of some products toward safer alternatives, it does not duplicate the SCP regulations. The Safe Cosmetics Act requires manufacturers to report certain chemical ingredients in products, but it does not require manufacturers to evaluate those products for safer chemical alternatives.

**Comparable Federal Regulation or Statute**

This regulation is not based on, identical to, or in conflict with any federal regulations.

OTHER APPLICABLE REQUIREMENTS  
PRESCRIBED BY STATUTE

**California Environmental Quality Act (CEQA) Compliance**

DTSC has determined that this rulemaking would be exempt from CEQA (Public Resources Code Section 21000, et seq.) under the “feasibility or planning study” and “data collection” exemptions outlined in California Code of Regulations, title 14, sections 15262 and 15306, respectively. A draft Notice of Exemption (NOE) is available for review during the public comment period upon request and will be filed with the State Clearinghouse if the regulation is finalized.

**California Environmental Policy Council Review**

Under the provisions of HSC section 25252.5, the California Environmental Policy Council (CEPC) reviewed the framework SCP regulations prior to their adoption in October 2013 (the CEPC Resolution may be viewed at: <http://www.calepa.ca.gov/cepc/>). Under HSC Section 25252.5(f), the CEPC determined that the proposed regulations would not have any significant adverse impact on public health or the environment and could be adopted by DTSC without undergoing a multimedia life cycle evaluation.

DTSC determined that further review by the CEPC is not warranted for this rulemaking because the requirements of HSC section 25252.5 apply only to the creation of the SCP program and not regulations that may be required to implement this program.

**Peer Review**

DTSC requested an external scientific peer review of the scientific basis of the proposed regulation pursuant to Health and Safety Code section 57004. The result of the external scientific peer review is posted to DTSC’s rulemaking website at: <https://dtsc.ca.gov/regs/>.

MANDATE ON LOCAL AGENCIES OR  
SCHOOL DISTRICTS

DTSC determined that adoption of this regulation will not result in costs or savings for any local agency or school district required to be reimbursed pursuant to Part 7 of Division 4, commencing with section 17500 of the Government Code, or other nondiscretionary costs or savings imposed on local agencies.

COST OR SAVINGS TO STATE OR LOCAL  
AGENCIES OR SCHOOL DISTRICTS  
SUBJECT TO REIMBURSEMENT

DTSC determined that adoption of this regulation will not result in costs or savings for any local agency or school district required to be reimbursed pursuant to Part 7 of Division 4, commencing with section 17500

of the Government Code, or other nondiscretionary costs or savings imposed on local agencies.

**Costs or Savings to Any State Agency**

DTSC will absorb additional costs associated with reviewing Notifications, Abridged AA Reports, or two-stage AA Reports submitted by manufacturers of nail products containing toluene by reallocating staff to this new task. DTSC estimates that the total fiscal costs to state government for reviewing all Notifications, Abridged AA Reports, and two-stage AA reports submitted by manufacturers will range from \$653,269 to \$2,367,735.

**Local Agencies**

DTSC determined that adoption of this regulation will not impose a local mandate or result in costs or savings for any local agency subject to reimbursement pursuant to Part 7 of Division 4, commencing with section 17500, of the Government Code or other nondiscretionary costs or savings to local agencies.

**School Districts**

DTSC determined that adoption of this regulation would not result in costs or savings for any school district required to be reimbursed pursuant to Part 7 of Division 4, commencing with section 17500 of the Government Code.

**Federal Funding to the State**

DTSC determined that adoption of this regulation would not result in costs or savings in federal funding to the state. DTSC determined that no fiscal impact to federal funding or state program exists.

**DETERMINATION OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT**

DTSC determined the proposed regulatory action has no significant statewide adverse economic impact directly affecting business. Following a review of available nail products market data and survey of affected manufacturers and industry organizations, DTSC determined the proposed regulation is not a major regulation and is unlikely to have a significant adverse impact on business.

**Types of Businesses Affected:** Manufacturers of nail products containing toluene have the principal duty to comply with the notification and reporting requirements.

**Projected Reporting, Recordkeeping, or other Compliance Requirements:** In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), DTSC found that the reporting requirements of the proposed regulatory action, which apply to businesses, are necessary for the health, safety, and welfare of the people of the State of California. The specific reporting requirements and forms are:

- Priority Product Notification [section 69503.7]

- Removal/Replacement Notifications:
  - Chemical of Concern Removal Intent Notification [section 69505.2]
  - Chemical of Concern Removal Confirmation Notification [section 69505.2]
  - Product Removal Intent Notification [section 69505.2]
  - Product Removal Confirmation Notification [section 69505.2]
  - Product-Chemical Replacement Intent Notification [section 69505.2]
  - Product-Chemical Replacement Confirmation Notification [section 69505.2]
  - Product Cease Ordering Notification [section 69501.2(b)(2)(B)]
- AA Notifications and Reports:
  - AA Threshold Notification [section 69505.3]
  - AA Extension [section 69505.1(c)]
  - Preliminary AA Report [section 69505.4(a)(2), section 69505.5, section 9505.1(b)(2)(A), section 69505.7]
  - Final AA Report [section 69505.4(a)(3), section 69505.6, section 69505.1(b)(2)(B), section 69505.7]
  - Abridged AA Report [section 69505.4(b)]
  - Alternate AA Work Plan [section 69505.4(c)]
  - Previously completed AA [section 69505.4(d)]

The reports and forms that will be submitted by a manufacturer depend on several factors including the Priority Products produced, the availability of viable alternatives, and business decisions made by the manufacturer.

The reporting requirements applicable to manufacturers may be fulfilled by a consortium, trade association, public-private partnership, or other entity acting on behalf of, or in lieu of, one or more manufacturer. This does not apply to the Priority Product Notification or AA Threshold Exemption Notification requirements [section 69501.2(a)(2)].

DTSC has made an initial determination that the adoption of this regulation will not exert a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. DTSC has considered proposed alternatives that would lessen any adverse economic impact on business and invites interested parties to submit proposals. Submissions may include the following considerations:

- i. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.

- ii. Consolidation or simplification of compliance and reporting requirements for businesses.
- iii. The use of performance standards rather than prescriptive standards.
- iv. Exemption or partial exemption from the regulatory requirements for businesses.

**COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES**

DTSC relied on a variety of sources to estimate the number of California-based manufacturers potentially impacted by this proposed regulation. DTSC searched lists of manufacturers provided in D&B Hoovers and United States Census Bureau County Business Patterns for manufacturers of nail products containing toluene. DTSC then searched manufacturers' websites and safety data sheets (SDS) to refine the list of companies manufacturing these products. Based on the data collected from these sources, DTSC estimates there are 11 manufacturers of nail products containing toluene in California that would be potentially affected by this regulation. DTSC estimates that costs could range from \$112,960 to \$304,960 for individual manufacturers to fulfill the SCP regulatory requirements to submit a Priority Product Notification and complete an Alternatives Analysis report. Total estimated costs to California-based businesses range from \$1,242,000 to \$3,354,560.

**RESULTS OF THE ECONOMIC IMPACT ASSESSMENT**

**Creation of New Businesses or Elimination of Existing Businesses**

DTSC determined that it is:

- Unlikely that this proposal will eliminate or create businesses or jobs in the manufacturing of nail products;
- Possible that this proposal could create an unknown number of businesses to assist manufacturers of nail products containing toluene in meeting regulatory obligations including consulting services, chemical and material science research services, and product development support;
- Possible that this proposal could create an unknown number of public or private sector jobs in consulting services, product research and design, chemical and material science research and support and marketing.

**Expansion of Businesses Currently doing Business**

DTSC determined that it is possible that this proposal could result in the expansion of businesses currently doing business within the state, particularly those engaged in regulatory consulting services,

chemical and material science research and support, product research and design and marketing.

**Effect on Housing Costs**

DTSC has made a determination that the proposed regulation will have no significant effect on housing costs.

**Effect on Small Businesses**

DTSC made an initial determination that the adoption of this regulation may affect small businesses. DTSC estimates that 8 of the 11 potentially impacted manufacturers are small businesses. Costs to submit Priority Product Notifications and AA Reports are expected to be the same for all impacted businesses. Moreover, DTSC estimates that it will take each manufacturer a maximum of 16 hours at \$60/hour to complete a Priority Product Notification, or a total of \$960. DTSC estimates that the cost to each manufacturer for the Priority Product Notification, AA report, and responding to DTSC's AA report review will be \$112,960 to \$182,960 for an Abridged AA, and \$139,960 to \$304,960 for a two-stage AA. These are one-time notification and reporting requirements that manufacturers are expected to complete within one year of adoption of the proposed regulation; therefore, there are no ongoing costs.

**Benefits of the Regulation on the Health and Welfare of California Residents, Worker Safety, and the State's Environment**

DTSC made an initial determination that the adoption of this regulation may positively affect the health and welfare of California residents, worker safety, and the State's environment. A reduction in exposure to toluene could benefit the health of California's residents. The development of safer alternatives benefits California workers, consumers, employers, and the environment. DTSC cannot predetermine the alternatives that each manufacturer will propose; therefore, it is impossible to accurately predict or quantify the full range of potential benefits associated with their development. DTSC will maximize the use of alternatives of least concern and give preference to those that provide the greatest level of inherent protection. In general, economic benefits to California workers and business owners may include expanded employment opportunities in the fields of consulting and marketing. Additional benefits may accrue because of increased research and product development collaboration between manufacturers and California-based research facilities. Institutional and corporate financial support of chemical and material science programs focused on developing safer alternatives to toluene in nail products could advance the field. These research initiatives could provide manufacturers with employees that are highly skilled in the research and design of products for newly emerging global markets.

**CONSIDERATION OF ALTERNATIVES**

DTSC must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of DTSC would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

**CONTACT PERSONS**

Inquiries regarding technical aspects of the proposed regulations or CEQA documents may be directed to Ms. Christine Papagni of DTSC at (818) 717-6541 or, if unavailable, Nancy Ostrom of DTSC at (916) 445-3077. However, such oral inquiries are not part of the rulemaking record.

A public comment period for the rulemaking has been established commencing on October 1, 2021 and closing on November 15, 2021. Statements, arguments, or contentions regarding the rulemaking and/or supporting documents must be submitted in writing or presented orally or in writing at a public hearing, if a hearing is requested, in order for them to be considered by DTSC before it adopts, amends, or repeals these regulations.

DTSC will accept statements, arguments or contentions, and/or supporting documents regarding this rulemaking submitted in writing either through CalSAFER or by mail, or they may be presented orally or in writing at a public hearing, if a hearing is requested.

**AVAILABILITY OF TEXT OF  
PROPOSED REGULATIONS, INITIAL  
STATEMENT OF REASONS AND OTHER  
RULEMAKING DOCUMENTS**

Copies of the Notice of Proposed Action, Initial Statement of Reasons, all the information upon which its proposal is based, and the express terms of the proposed regulation (also known as the proposed regulatory text) are posted to DTSC's Internet website at <https://dtsc.ca.gov/regs/>.

After the close of the comment period, DTSC may adopt the proposed regulation. If substantial, sufficiently related changes are made to the regulatory text, the modified full text (with the changes clearly indicated) will be made available for comment for at least 15 days prior to adoption. Only persons who request the specific proposed regulation, attend a public hearing, if a hearing is requested, or provide

written comments on this specific regulation will be sent a copy of the modified text if substantial, sufficiently related changes are made.

Once DTSC finalizes the regulatory text, DTSC will prepare a Final Statement of Reasons that updates the Initial Statement of Reasons, summarizes how DTSC addressed comments, and includes other materials. A copy of the Final Statement of Reasons will also be posted on DTSC's Internet site at <https://dtsc.ca.gov/regs/>, along with the date the rulemaking is filed with the Secretary of State and the effective date of the regulation.

**ALL OTHER QUESTIONS/COMMENTS/  
INQUIRIES/UPDATES**

Please direct all written comments, procedural inquiries, and requests for documents by mail, e-mail, or fax to Office of Legislation and Regulatory Review, as specified above. To be included in this regulation package's mailing list and to receive updates of this rulemaking, please visit <https://dtsc.ca.gov/dtsc-e-lists/> and subscribe to the applicable E-List or e-mail: [regs@dtsc.ca.gov](mailto:regs@dtsc.ca.gov).

**GENERAL PUBLIC INTEREST**

**DEPARTMENT OF FISH AND  
WILDLIFE**

**FISH AND GAME CODE SECTION 1653  
CONSISTENCY DETERMINATION  
REQUEST FOR**

Horse Creek Off-channel Alcove Project  
(Tracking Number: 1653-2021-082-001-R1)  
Siskiyou County

California Department of Fish and Wildlife (CDFW) received a Request to Approve on September 15, 2021, that U.S. Fish and Wildlife Service (Service) proposes to carry out a habitat restoration or enhancement project pursuant to Fish and Game Code section 1653. The proposed project involves constructing an alcove off Horse Creek and adding one engineered log jam to create fish refugia. The proposed project will be carried out on Horse Creek, approximately 1.5 miles from the confluence with the Klamath River near Hamburg, Siskiyou, California.

On July 27, 2021, the North Coast Regional Water Quality Control Board (Regional Water Board) received a Notice of Intent (NOI) to comply with the terms of, and obtain coverage under, the General 401 Water Quality Certification Order for Small Habitat