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Gavin Newsom
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45-DAY PUBLIC NOTICE AND COMMENT PERIOD

SAFER CONSUMER PRODUCTS REGULATIONS – Listing Nail Products Containing Triphenyl Phosphate (TPhP) at Concentrations Greater Than 250 Parts per Million (ppm) as a Priority Product

Department of Toxic Substances Control reference number: R-2025-03R

NOTICE IS HEREBY GIVEN that the Department of Toxic Substances Control (DTSC) proposes to amend the California Code of Regulations, title 22, division 4.5, chapter 55, article 11, section 69511, and adopt section 69511.10. This proposed amendment pertains to the 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: Z-2012-07170-04).

WRITTEN COMMENT PERIOD

The written comment period will close on September 22, 2025. Only comments received at the DTSC office or postmarked on or before that date 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.

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 Tiglath Moradkhan at 279-895-5158 or Tiglath.Moradkhan@dtsc.ca.gov. While DTSC prefers comments to be submitted through the CalSAFER system, interested persons may also submit their comments in an email to: SaferConsumerProducts@dtsc.ca.gov or through the DTSC regulations email address at regs@dtsc.ca.gov. Please include the DTSC reference number for this regulation in the subject of your message. Direct hard-copy written comments to the Office of Legislation and Regulatory Review, as specified below.

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 their duly authorized representative, no later than 15 days prior to the close of the written comment period, pursuant to Government Code Section 11346.8. Submit a written request for a public hearing in an email to SaferConsumerProducts@dtsc.ca.gov or to the Office of Legislation and Regulatory Review at regs@dtsc.ca.gov or as specified below.

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 the office below. Note: the range of assistive services available may be limited if requests are made less than 10 business days prior to a public hearing.

Office of Legislation and Regulatory Review
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806
Fax Number: (916) 324-1808
TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

AUTHORITY & 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 Chemicals 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 Gov. Reorg. Plan No. 1, §146, eff. 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:

DTSC proposes to amend section 69511 and add section 69511.10 to article 11 of the SCP Regulations. The proposed action will add nail coatings and nail or cuticle treatments, that contain triphenyl phosphate (TPhP) at concentrations greater than 250 parts per million (ppm) as a Priority Product to the Priority Products List.

The proposed regulation applies to any nail product containing TPhP at concentrations greater than 250 ppm that is placed into commerce in California.

Background and Effect of the Proposed Regulatory Action:

Following an extensive review of the scientific literature and analysis of known hazard traits of TPhP, DTSC has determined there is potential for workers and consumers to be exposed to TPhP in nail products. This exposure contributes to or causes significant or widespread adverse impacts including changes in the liver, thyroid hormone blood levels, metabolism, and behavior. DTSC based this determination on an evaluation of publicly available, reliable scientific information pertinent to the regulatory criteria.

Benefits of the Proposed Regulatory Action:

A primary goal of the SCP Regulations is to prevent or reduce potential adverse health and environmental impacts to the State of California. By listing nail products containing TPhP at concentrations greater than 250 ppm as a Priority Product, DTSC requires manufacturers selling these products into California to evaluate whether TPhP at concentrations greater than 250 ppm is necessary in nail products or whether there are functionally safer alternatives that would reduce exposure to TPhP during product manufacturing, use, or disposal. Reduction of TPhP in nail products would reduce the potential for harm to Californians, including sensitive subpopulations such as nail salon workers children, and pregnant people. This would result in safer homes, offices, schools, and workplaces. Reducing exposure to TPhP could reduce or

prevent adverse effects on the liver, changes in thyroid hormone blood levels, behavioral alterations, and developmental toxicity in the general population of California.

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 this proposed regulation. DTSC's process encourages the use of green chemistry alternatives and prefers 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 TPhP 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 lifecycle.

DTSC has assessed all applicable state and federal laws and regulations, as well as international treaties or agreements with the force of domestic law, related to the proposed Priority Product and the Candidate Chemical in the product. DTSC has determined that no state or federal regulations overlap or conflict with this proposal to list nail products containing TPhP at concentrations greater than 250 ppm as a Priority Product. There is no conflict or duplication between state or federal regulation and this proposed rule.

Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state and federal regulations.

Related State and Federal Laws and Regulations:

Nail products, as a cosmetic, are regulated by the U.S. Food and Drug Administration (FDA). TPhP is regulated by the U.S. Environmental Protection Agency (EPA), the U.S. Occupational Safety and Health Administration (OSHA), the California Division of Occupational Safety and Health (Cal/OSHA), the California Air Resources Board (CARB), and the California

Department of Public Health (CDPH). The proposed regulation does not duplicate or conflict with any of these regulations, which are discussed below.

U.S. Food and Drug Administration

Federal Food, Drug, and Cosmetic Act

The FDA is authorized by the Federal Food, Drug, and Cosmetic Act (FDCA) to oversee the safety of food, drugs, and cosmetics. 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 Labelling Act (FPLA), or against firms or individuals who violate these laws.

The Modernization of Cosmetics Regulation Act (MoCRA) of 2022 builds on the original Act and provides new authority to the FDA to access and copy records, including safety data records, when reasonable conditions are met. MoCRA also establishes new requirements for adverse event reporting. A responsible person must report serious adverse events associated with the use of cosmetic products to the FDA within 15 days.

Fair Packaging and Labelling Act

The FPLA, a federal law, requires each package of household consumer products marketed or sold in the U.S. to bear a label that includes a statement identifying the commodity (e.g., detergent, sponges, 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 specific labeling requirements for cosmetic products are detailed 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 that are not typically distributed for retail sale (e.g., nail products used by professionals on customers at their workplaces) are exempt from this requirement, provided they are not sold directly to consumers. Cosmetic product labels are required to bear a warning statement whenever necessary or appropriate to alert users about a health hazard that may be associated with the product.

California Division of Occupational Safety and Health

TPhP is listed as a hazardous chemical by Cal/OSHA. Pursuant to Cal/OSHA's hazard communication regulations, employers must "provide information to their employees about the hazardous chemicals to which they may be exposed, by means of a hazard communication

program, labels, and other forms of warning, Safety Data Sheets, and information and training”. TPhP is listed as an airborne contaminant. Cal/OSHA has set a Permissible Exposure Limit (PEL) for TPhP at 3 mg/m³ (average concentration over an eight-hour shift).

California Department of Public Health, California Safe Cosmetics Program

The 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 that have intentionally added chemical ingredients identified by an authoritative body as known or suspected carcinogens or reproductive or developmental toxicants. TPhP must be reported to CSCP if it is an ingredient in a cosmetic product.

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 towards 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 alternatives.

California Professional Cosmetics Labeling Law

The California Professional Cosmetics Labeling Law requires manufacturers to disclose ingredients on the label of professional cosmetics. The law also authorizes CDPH to require professional cosmetic product labels to list ingredients. Professional cosmetic products manufactured on or after July 1, 2020, and available for sale in California must have a label affixed on each container that satisfies all the labeling requirements.

California Air Resources Board

Under the Health and Safety Code Section 44321, CARB is required to compile and maintain a list of substances that must be reported under the AB 2588 Air Toxics Hot Spots Program. TPhP is listed on the Hot Spots list of substances. The Hot Spots Program requires stationary sources to report the types and quantities of listed substances released routinely into the air.

Comparable Federal Regulation or Statute:

These regulations are 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, section 15262 and 15306, respectively. The project would also be exempt under the common sense exemption (Cal. Code Regs., tit. 14, § 15061, subd. (b)(3)). 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 Health and Safety Code 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 and obtained 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 has determined that adoption of this regulation will not impose a local mandate or result in costs subject to state 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.

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 estimates that the state fiscal impact of adopting this regulation will range from \$94,500 to \$4,532,500 from the Toxic Substances Control Account in DTSC staff costs for reviewing all Notifications and Alternatives Analysis (AA) Reports submitted by manufacturers of nail products that use TPhP at concentrations greater than 250 ppm.

Local Agencies:

DTSC determined that adoption of this regulation will not 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 will not result in cost or savings in federal funding to the state. DTSC determined that no fiscal impact to federal funding or state programs exists.

Local Mandate:

DTSC determined that adoption of this regulation will not impose a local mandate.

Types of Businesses Affected:

Manufacturers of nail products containing TPhP at concentrations greater than 250 ppm 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 delineated in California Code of Regulations, title 22:

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 Extension [section 69505.1(c)]
- Preliminary AA Report [section 69505.4(a)(2), section 69505.5, section 69505.1(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 a manufacturer must submit 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 responsible entities 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 Alternatives Analysis Threshold Notification requirements as they must be submitted by a manufacturer.

SIGNIFICANT, STATEWIDE ADVERSE IMPACTS DIRECTLY AFFECTING BUSINESS, INCLUDING THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES

DTSC estimates the implementation of the proposed regulation will result in a total economic impact on the state’s businesses of less than \$10 million.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

DTSC estimates there are at most 11 California-based manufacturers of nail products with TPhP at concentrations greater than 250 ppm that could be impacted by this regulation. DTSC estimates the cumulative cost for all impacted California-based businesses to submit all required Notifications and AA reports to be between \$69,300 and \$3,760,900. 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.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

Creation of New Businesses or Elimination of Existing Businesses:

DTSC has determined that it is unlikely that this proposal will eliminate or create businesses in manufacturing nail products. It is possible that this proposal could create an unknown number of businesses to assist manufacturers of nail products containing TPhP at concentrations greater than 250 ppm in meeting regulatory obligations, including consulting services, chemical and material science research services, and product development support.

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.

Creation of New Jobs or Elimination of Existing Jobs:

DTSC anticipates that the proposed regulation may result in expanded employment opportunities with 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.

Effect on Housing Costs:

DTSC has determined 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 two of the 11 potentially impacted manufacturers are small businesses. DTSC anticipates the one-time costs for submitting Priority Product Notifications, AA Reports, and/or Removal/Replacement Notifications to be the same for all impacted businesses, regardless of size. DTSC estimates that the costs for individual manufacturers to comply with SCP regulatory requirements could range between \$6,300 and \$341,900.

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

As stated above, a reduction in exposure to TPhP could benefit the health and welfare of California residents, worker safety, and the state's environment by reducing potential harms to Californians in homes, offices, schools, and workplaces.

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. DTSC's consideration of alternatives is available in the Initial Statement of Reasons included as part of this proposed regulation.

DOCUMENTS RELIED ON

This proposal relied on the following document:

- DTSC (2025) Product-Chemical Profile for Nail Products Containing Triphenyl Phosphate (TPhP)

CONTACT PERSONS

Inquiries regarding technical aspects of the proposed regulation or CEQA documents may be directed to Tiglath Moradkhan of DTSC at 279-895-5158 or Tiglath.Moradkhan@dtsc.ca.gov, or, if unavailable, Topher Buck of DTSC at 916-445-2928 or Topher.Buck@dtsc.ca.gov or Nathalie Pham of DTSC at 916-302-0296 or Nathalie.Pham@dtsc.ca.gov. However, such oral inquiries are not part of the rulemaking record.

A public comment period for the rulemaking has been established commencing on August 8, 2025, and closing on September 22, 2025. 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 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 this proposal is based, and the express terms of the proposed regulation (also known as the proposed regulatory text) are posted to DTSC's website at <https://dtsc.ca.gov/regs/> and will be made available for viewing at the Office of Legislation and Regulatory Review, as specified below.

Office of Legislation and Regulatory Review
Department of Toxic Substances Control

1001 I Street
Sacramento, California 95814-2828

The text of the proposed amendment contains the following formatting features:

- The symbol “***” means that intervening text not proposed for amendment is not shown.
- Proposed additions are indicated in single underlining to show where the new text is being added.
- Proposed deletions (repeals) are indicated as a ~~strike through~~ to show where the existing text is being removed.

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 to be notified of any modifications to the proposed text, submit written or oral comments (comments submitted at a hearing, if one is held, or comments submitted to DTSC), 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 approved regulation 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 or email to the Office of Legislation and Regulatory Review, as specified above. To be included in this regulation package’s mailing list and to receive updates for this rulemaking, please e-mail your request to regs@dtsc.ca.gov.