

PUBLIC HEARING

STATE OF CALIFORNIA

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

**SAFER CONSUMER PRODUCTS REGULATIONS - Listing Children's  
Foam-Padded Sleeping Products Containing TDCPP or TCEP  
As a Priority Product**

**Department Reference Number: R-2014-03**

TRAINING ROOM 1 EAST/WEST

CAL/EPA HEADQUARTERS BUILDING

1001 I STREET

SACRAMENTO, CALIFORNIA

MONDAY, AUGUST 29, 2016

10:00 A.M.

CALIFORNIA REPORTING, LLC  
52 LONGWOOD DRIVE  
SAN RAFAEL, CA 94901  
415-457-4417

APPEARANCES

HEARING OFFICER

Christine Papagni, DTSC

PUBLIC TESTIMONY

Tim Shestek, American Chemistry Council

Alvaro Casanova, Californians for Toxic-Free Fire Safety

Bill Allayaud, Environmental Working Group

ALSO PRESENT

Meredith Williams, Deputy Director, Safer Products and  
Workplaces Program, Department of Toxic Substances Control  
(DTSC) (via phone)

Marcia Levinson, Covestro

Stephanie Pizzoferrato, Covestro

Robert Skoglund, Covestro

Justin Paddock, Department of Consumer Affairs, Bureau of  
Electronic and Appliance Repair, Home Furnishings and  
Thermal Insulation

Indira Balkissoon, TechLaw, Inc.

Dawn Koepke, McHugh, Koepke & Associates

Shuo Yu, Ramboll Environ

Maureen Gorsen, Alston & Bird, LLP

Karl Palmer, DTSC

Anne Cooper Dougherty, DTSC

Hortensia Muniz-Ghazi, DTSC

Simona Balan, DTSC

Nivashni Veerasamy, DTSC

Xiaoying Zhou, DTSC

Eileen Sheehan, U.S. Environmental Protection Agency

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10:03 A.M.

HEARING OFFICER PAPAGNI: Good Morning. My name is Christine Papagni. I am with the Department of Toxic Substances Control, and I am the hearing officer for today's proceedings.

Please look around you and identify the exit closest to you. In some cases, an exit may be behind you. You may find an exit door by following the ceiling mounted exit signs. In the event of a fire alarm, we are required to evacuate this room immediately. Do not use the elevators. Please take your valuables with you, exit through the closest stairway, and proceed to the relocation site at Cesar Chavez Park across the street. Please obey all traffic signs and exercise caution crossing the street.

For the record, today is August 29th, 2016 and the time is 10:03 Pacific Standard Time.

Under the provisions of the Administrative Procedure Act, this is the time and place set for the presentation of statements, arguments, and contentions, orally or in writing, for or against the Department's proposal to amend California Code of Regulations, Title 22, Division 4.5 of Chapter 55 by adding a new article, Article 11, and Sections 69511 and 69511.1.

This amendment adds actions, which establish the

1 product-chemical combination of children's foam-padded  
2 sleeping products containing tris(1,3-dichloro-2-propyl)  
3 phosphate (TDCPP) or tris(2-chloroethyl) phosphate (TCEP) as  
4 a Priority Product. This proposed amendment pertains to  
5 identification of Priority Products under the Safer Consumer  
6 Products regulations, approved by the Office of  
7 Administrative Law (OAL), and filed with the Secretary of  
8 State on August 28, 2013.

9           The entire proceedings will be recorded. The  
10 recording, as well as any exhibits or evidence presented at  
11 this hearing, will be incorporated into the rulemaking file  
12 and will be reviewed prior to final approval of the  
13 regulations by the Department and the Office of  
14 Administrative Law.

15           The purpose of today's hearing is to accept public  
16 comment. Registered persons will be heard in the order of  
17 their registration. Anyone else wishing to speak at the  
18 hearing will have an opportunity after all registered  
19 persons have been heard. If you want to present a written  
20 comment, you may also do so.

21           Persons presenting testimony at this hearing will  
22 not be sworn in, nor will we engage in cross-examination of  
23 those providing public comment. The Department will not  
24 respond to comments made today, but we will address all  
25 comments in writing and include them as part of the

1 rulemaking record available to the public. We ask that you  
2 restrict your comments to the regulations being considered  
3 today.

4           Persons who do not wish to speak but would like to  
5 indicate their presence at this hearing can do so using the  
6 participant sign-in sheet by the door or at the front of the  
7 room. The participant sign-in sheet will be used to notify  
8 interested parties of any post-hearing changes to the  
9 proposed regulations.

10           After the close of this hearing, you may also  
11 present hard copy written comments to us at 1001 "I" Street,  
12 12th Floor, Sacramento, California 95814, until the close of  
13 business today, at 5:00 p.m. Pacific Standard Time. Or, you  
14 may submit written comments to us through the Department's  
15 Safer Consumer Products Information Management System, also  
16 referred to as CalSAFER, at [calsafer.dtsc.ca.gov](http://calsafer.dtsc.ca.gov) until 5:00  
17 p.m. Pacific Standard Time tonight.

18           The public record of these regulations, the  
19 proposed text of the regulations, and the Initial Statement  
20 of Reasons, also known as the ISOR, are provided at the  
21 registration table. These regulations were duly noted in  
22 the California Regulatory Notice Register, and copies of the  
23 notice, proposed regulation text, and the ISOR were made  
24 available to interested parties who requested such notice.  
25 Additional copies of these documents are available through

1 the Department's website at  
2 [www.dtsc.ca.gov/LawsRegsPolicies/Regs/CC-List-Amendment.cfm](http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/CC-List-Amendment.cfm),  
3 and at the Department's headquarter office, regional  
4 offices, the State Library, and depository libraries.

5 Meredith Williams, the Deputy Director of the  
6 Safer Products and Workplaces Program has called in to  
7 listen to today's hearing.

8 To enable the audience to hear, and to ensure that  
9 your comments are entered into the record, we ask that  
10 speakers come to the table and speak directly and clearly  
11 into the microphone when called. It would also be helpful  
12 if you would begin by stating your name and the organization  
13 you represent. Please indicate the proposed regulatory  
14 section that each comment addresses.

15 With that, let's begin to hear comments on the  
16 proposed regulations. The first witness who has registered  
17 to testify is Tim Shestek.

18 MR. SHESTEK: Good morning, my name is Tim Shestek  
19 with the American Chemistry Council. We will be submitting  
20 some written comments by the deadline later today, but I did  
21 want to take the opportunity to highlight just a couple of  
22 points. Primarily they're process-oriented issues, well and  
23 not just for this particular ruling, I think, but also  
24 future proposed Priority Product listings.

25 The first issue of concern is the Department's

1 determination of widespread and significant exposure. In  
2 reviewing some of the background documents it was difficult  
3 for us to determine if the Department made a determination  
4 based off of specific product data that the widespread and  
5 significant exposure level was met. And in our view it  
6 appears that that determination was based on the detection  
7 of these chemicals in the environment, but it doesn't appear  
8 information was included tying detection to those particular  
9 products.

10 In fact, one of the peer reviewers in reviewing  
11 their response, alluded to this point in saying -- I'll  
12 quote from that reviewer -- "The exposure evidence is a  
13 loosely connected string of facts rather than as a coherent  
14 documentation of exposure from a specific type of consumer  
15 product."

16 And the point being here is that we would  
17 encourage DTSC to really take a hard look at how it  
18 determined a widespread and significant exposure. As it  
19 appears now the Department is taking a very broad view in  
20 defining those particular terms. Essentially everything in  
21 the environment or in consumer products may meet that  
22 threshold. So it may be necessary to offer a meaningful,  
23 objective, and scientifically defensible definition of those  
24 (indiscernible) terms.

25 The second point I would like to make is that we

1 would encourage, that we have for about a year and a half or  
2 so been encouraging DTSC to increase stakeholder engagement  
3 in the process early. We think it is valuable, not just for  
4 the regulated community, but also for the Department in  
5 prioritizing for the program and for determining future  
6 chemical product selections. You may have situations where  
7 manufacturers from a product company may be innovating in to  
8 newer chemistries. That information, if brought in may  
9 reveal a determination by the Department that an identified  
10 Priority Product may not be the appropriate combination to  
11 effectively meet the intent of the statute.

12           And then the final comment I'd like to make in  
13 terms of the Department's determination of whether or not  
14 this regulation is consistent or inconsistent or  
15 incompatible with existing state regulations. In its  
16 supporting documentation the Department explains that its  
17 review of "any regulations concerning the identification and  
18 regulation of Priority Products" yielded nothing, because  
19 "the only regulations concerning the identification and  
20 regulation of Priority Products are found in the Safer  
21 Consumer Products Program."

22           In our view this key word search that was  
23 undertaken to come to this conclusion, we believe this is  
24 inadequate. It certainly is conceivable that there are  
25 state regulatory programs and policies that may require,

1 encourage, or somehow otherwise regulate the manufacture,  
2 use, or disposal of certain chemicals, materials and  
3 products. For example engine oil additives or insulation  
4 products may be critical to the state achieving some its  
5 identified policy objectives for reducing greenhouse gas  
6 emissions.

7           So we would encourage DTSC to include a more  
8 thorough analysis in determining whether proposed Priority  
9 Product regulations may be either inconsistent or somehow  
10 incompatible with existing state regulations.

11           We certainly appreciate the opportunity to make  
12 these verbal comments today. Again, we will be submitting  
13 some written comments later this afternoon and we'll look  
14 forward to continuing to engage with the Department about  
15 this regulation and future regulations. Thank you.

16           HEARING OFFICER PAPAGNI: Thank you.

17           Our next commenter will be Alvaro Cavenaro?

18           MR. CASANOVA: Casanova.

19           HEARING OFFICER PAPAGNI: Casanova, I'm sorry, I  
20 couldn't read your writing.

21           MR. CASANOVA: So hello, my name is Alvaro  
22 Palacios Casanova. I'm with the Center for Environmental  
23 Health, Environmental Justice and Policy Advocacy. And I am  
24 here representing the Californians for Toxic-Free Fire  
25 Safety, which is a diverse coalition of groups dedicated to

1 improving public health and safety by advocating for non-  
2 toxic alternatives to hazardous and untested chemicals.

3           In terms of widespread and significant exposures,  
4 children and children of color, often have the highest  
5 levels of flame retardants in their blood. Additionally,  
6 children also have 3 to 15 times higher levels of flame  
7 retardant exposures compared to their parents. But in terms  
8 of widespread and significant exposure these flame  
9 retardants do have impacts on vulnerable subpopulations.

10           We support the Department's proposal to list TDCPP  
11 and TCEP in children's sleeping products as a product-  
12 chemical combination Priority Product. However, the problem  
13 is broader than TDCPP and TCEP in children's sleeping  
14 products and we call for broader action. The Department  
15 should act swiftly on this product chemical combination and  
16 follow up by ensuring that they have the ability to address  
17 other hazardous flame retardant chemicals, which are  
18 associated with health concerns in a broader range of  
19 children's products.

20           The entire class of brominated, chlorinated and  
21 non-halogenated aromatic phosphate chemicals used as flame  
22 retardants are all Safer Consumer Products Candidate  
23 Chemicals, not just TDCPP and TCEP. Inclusion on the list  
24 reflects the chemical's public health importance to  
25 California and that it is, "known to, or strongly suspected

1 of, adversely impacting human health and development based  
2 upon scientific, peer-reviewed animal, human, and in vitro  
3 studies."

4           Given the absence of a flammability standard for  
5 most children's products, other than car seats and  
6 mattresses, the evidence that these products do not pose a  
7 fire risk, and the fact that flame retardant chemicals have  
8 a long history of adverse environmental and human health  
9 effects, we strongly urge the Department to move to cover  
10 all flame retardant chemicals in the broader category of  
11 children's products.

12           The Center for Environmental Health's recent nap  
13 mat testing, found a nap mat that contained a chlorinated  
14 organophosphate flame retardant compound identified as U-  
15 OPFR by Dr. Stapleton in her 2011 study on baby products.  
16 This flame retardant contains TCPP as an impurity.

17           And in 2016, CEH also tested of 27 children's foam  
18 products including porta-crib pads, bassinet pads, crib  
19 wedges, changing pads, infant carriers worn by parents and  
20 found that 25 percent of these products tested, which is 7  
21 of 27, contained flame retardant chemicals. Several  
22 products contained TCPP and others contained new flame  
23 retardant chemicals or mixtures for which there is no health  
24 data available.

25           In light of these considerations, we urge the



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2 is Christine Papagni. I am with the Department of Toxic  
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13 With that, let's begin to hear comments on the  
14 proposed regulations. The next witness who is registered to  
15 testify is Bill --

16 MR. ALLAYAUD: Allayaud.

17 HEARING OFFICER PAPAGNI: Allayaud.

18 MR. ALLAYAUD: Good morning, my name is Bill  
19 Allayaud. I'm the California Director of Government Affairs  
20 for the Environmental Working Group. I'm glad I was able to  
21 get here before you closed down.

22 I'm here to comment on the Safer Consumer Product  
23 Proposal to list children's foam-padded sleeping products  
24 containing TDCPP or TCEP as a Priority Product.

25 I'm also speaking for and we submitted a sign-on

1 letter in July -- on August 29th -- the Natural Resources  
2 Defense Council, the Center for Environmental Health, Clean  
3 Water Action, Commonweal, Friends of the Earth and the  
4 Trauma Foundation.

5           The comments I will give will be brief and really  
6 just summarize that letter, which has more detailed  
7 comments.

8           First is we strongly support that the proposal to  
9 list these chemicals meets the standards for listing a  
10 Priority Product under the Safer Consumer Product Program,  
11 because flame retardant chemicals have the potential to  
12 cause adverse health and environmental impacts. The State  
13 of California knows that these chemicals cause cancer and  
14 studies find they have additional hazard traits, so we  
15 strongly support the listing.

16           Number two is we agree that the proposal meets the  
17 standards for listing as a Priority Product, because there  
18 is a large potential for widespread public exposure to the  
19 chemicals and children are an exposed subpopulation. So if  
20 you read the law and the regulations we feel it absolutely  
21 clearly meets that level of standard and should be listed.

22           Our third comment, and this is again put in more  
23 detail in our letter, is that we feel the problem is broader  
24 than just TDCPP and TCEP in children's sleeping products and  
25 call for broader action. This is because all flame

1 retardant chemicals in children's foam-sleeping products are  
2 a concern, not just those two. We recommend that DTSC  
3 expand its rulemaking or follow up to cover all these  
4 additional flame retardant chemicals to protect children's  
5 health. As you know, the chemical industry plays whack-a-  
6 mouse, as we call it, where one chemical gets banned so they  
7 introduce another one. It's Firemaster 3000 and Firemaster  
8 4000 etcetera. And we don't want to play that game with our  
9 children's health or the health of adults, pregnant women,  
10 and the environment as flame retardant chemicals have spread  
11 through the entire earth.

12           Lastly, one of the objectives of the Safer  
13 Consumer Products Program is to ask manufacturers to address  
14 the question, "Is it necessary?" We think that flame  
15 retardant chemicals are not needed in these children's  
16 products and thus we ask the question, "Is it necessary? We  
17 find that it's not in almost every case and urge the  
18 Department to broaden this and make sure that none of these  
19 harmful chemicals, whether as a carcinogenic or causing  
20 reproductive harm -- both Prop 65 standards -- are  
21 considered and met.

22           Thank you very much for the opportunity to  
23 comment. Thank you.

24           HEARING OFFICER PAPAGNI: Thank you, Bill.

25           We have reached the end of our meeting, and I am

1 closing the oral testimony part of this hearing. Hard-copy  
2 written comments will be accepted until the close of  
3 business today, 5:00 p.m., at the Department's offices at  
4 the CalEPA building and until 5:00 p.m. tonight through the  
5 online CalSAFER system. Thank you for attending the meeting  
6 and for sharing your thoughts with DTSC.

7 (Thereupon, the Meeting was adjourned)

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**TRANSCRIBER'S CERTIFICATE**

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of September, 2016.



Myra Severtson  
Certified Transcriber  
AAERT No. CET\*\*D-852