Electronics Industry Comments on Proposed Regulation on Safer Consumer Products (July 2012)

The Information Technology Industry Council (ITI), TechAmerica, the Consumer Electronics Association (CEA) and the Semiconductor Industry Association (SIA), are pleased to provide these comments on behalf of the information technology, consumer electronics, and semiconductor industries on the Proposed Regulation for Safer Consumer Products (Proposed Regulation). We appreciate the opportunity to provide input on the Proposed Regulation and we look forward to working with the California Department of Toxic Substances Control (DTSC) as the Regulation is finalized and implemented.

Our member companies have long been leaders in innovation and sustainability, often taking measures to exceed regulatory requirements on environmental design, energy efficiency and product stewardship. ITI, TechAmerica, CEA and SIA are submitting these comments in order to promote the development of consumer product regulations that will expand on the environmental efforts of our member companies and drive improvements in environmental performance and ensure California's continued leadership in technological innovation.

General Comments:

We offer specific comments on sections of the Proposed Regulation below, but wish to offer several overarching comments. As we have mentioned in our previous comments, when AB 1879 was signed into law by then Governor Schwarzenegger, Governor Schwarzenegger specifically noted that AB 1879 and its implementing regulation were to draw on "lessons learned" in other jurisdictions, and take into account programs in other states, countries and regions, such as the European Union, and build upon their experience, data and expertise.

Unfortunately, it does not appear that the Proposed Regulation was developed with the perspective of learning from other jurisdictions' experience in developing chemical regulations. In previous comments, we have provided several examples of how such experience and expertise can be used to improve the Proposed Regulation; however, we have seen little improvement in this area. We suggest that the DTSC consider how other jurisdictions regulate chemicals used in consumer products when redrafting these regulations.

Overall, the electronics industry considers the Proposed Regulation to be an improvement over the informal draft regulations that were released in 2011, but we still have significant concerns with the Proposed Regulation. The Proposed Regulation presents a very onerous and potentially costly regulatory scheme that is predicated on significant paperwork requirements, for both industry and the DTSC, and an overreliance on testing that, especially for manufactured products (e.g., articles), will be difficult and expensive, while providing few, if any, environmental benefits.

The electronics industry is concerned that the Proposed Regulation is overly subjective and needs to be more focused on objective and standardized processes. It is critical that any person doing a regulatory analysis or determination under these regulations will be able to reach a similar conclusion. Currently, the Proposed Regulation is overly deferential to the DTSC and too discretionary in several areas, mostly but not exclusively in the prioritization and regulatory response areas, for which we've provided specific comments.

While we appreciate that the DTCS is looking for flexibility to allow for changes in science and in response to new information in chemicals management, in many cases, the overly-flexible language only provides ambiguity, does little to provide the regulated community with regulatory certainty, and could provide a disincentive to voluntary actions in the marketplace. While the DTSC has recently assured industry that the regulatory assessment process will be consistent across individual cases, future administrations may take different approaches if given the regulatory authority to do so. We suggest that, in particular, the DTSC provide clear processes for prioritization and clear triggers for regulatory actions. There should also be a provision allowing for the regulations to be revisited if there are changes in the scientific or economic landscape.

The electronics industry suggests removing the term "homogenous material" from the Draft Regulations, but retaining the concept and intent of targeting specific materials within a larger consumer product by modifying the definitions of "component" and "consumer product." While we agree with the intent of regulating specific uses of a material in certain and clearly defined cases, the term "homogenous material" has been problematic, even the improved version that is contained in the European Union's revised RoHS Directive (termed "RoHS Recast")[1]. In our comments, we suggest that, by modifying the definitions of "component" and "consumer product," the DTSC will have the ability to target chemicals of concern in specific materials, but will not propagate a still problematic definition contained in another regulatory program.

We believe that several provisions contained in the Proposed Regulation, especially those requiring testing, may constitute a technical barrier to trade) under the World Trade Organization's Agreement on Technical Barriers to Trade[2]. When suggesting restrictions on the use of any chemicals, the DTSC must be able to list acceptable, internationally-recognized testing methods that will allow manufacturers to demonstrate compliance with the regulatory requirements. However, testing should not be viewed as the only means of demonstrating compliance as there are often less costly and destructive means to determine regulatory compliance, such as supply chain disclosures and material declarations.

The electronics industry continues to oppose the use of Certified Assessors in Article 8. We provide more detailed comments on this Article below, but we believe that the use of Certified Assessors will not provide any certainty to the DTSC, public or manufacturers that the assessment has been done correctly and thoroughly, and can, in fact, raise significant legal issues for the Assessors, the manufacturers and the DTSC. The use of a Certified Assessor, with DTSC review and acceptance of the

[1] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:174:0088:0110:EN:PDF

[2] http://www.worldtradelaw.net/uragreements/tbtagreement.pdf

Alternatives Assessment (AA) results, raises a basic question up for debate as to who is ultimately responsible, and subsequently liable, for the selection of materials in a product. We have stated repeatedly in previous comments that an AA is only one data point of several that inform the decision of which materials are selected for use in a product. We believe that the DTSC is erroneous in assuming that there will be a clear "winner" material in an AA that should be used above all others. It is rarely the case that an assessment will provide an overwhelmingly clear answer.

Finally, the Proposed Regulation raises several concerns related to trade secret and confidential business information (CBI) protections. In several parts of the Proposed Regulation, requirements are established that would require manufacturers to supply information to the DTSC, such as specific information related to sales and manufacturing processes, which are often closely-held, private business information. ITI, TechAmerica, CEA and SIA recommend that the DTSC review the information that is being requested and consider the potential trade and business ramifications of divulging such information. We make specific comments on this important issue in our review of specific sections of the Proposed Regulation below.

Specific Comments by Section:

Article 1. General

Section 69501.2 Definitions

"Homogenous Material" – Because of the difficulty with the term "homogenous material" we suggest removing this definition (part 34) from the regulations in its entirety. We agree that the Department needs the ability to set threshold levels at the material level, rather than the part or component level, but as mentioned previously, the definition of "homogenous material" is not viewed as well defined in the EU RoHS Directive by all stakeholders, and attempting to harmonize with a term that is problematic to some in the industry will make compliance difficult for both the Department and manufacturers.

Additionally, while we support the continued exclusion of "Historic products" from the definition of "Consumer product" and therefore from being subject to these regulations, we note that the proposed definition fails to include any necessary repair or replacement parts to maintain such products. The continued manufacture and availability of repair and replacement parts without being subject to these regulations is critical to maintaining the cost-effective support and operation of these products for our customers. As noted in the Initial Statement of Reasons (ISOR), the definition of "manufacture" (40) is intended to also exclude "replacement parts" as may be required to repair or refurbish an existing consumer product, although the actual proposed definition fails to reference replacement parts. We recommend below that these definitions be modified accordingly.

Thus, we recommend that the definitions of "Component" and "Consumer Product" be changed to read:

(21) "Component" means a uniquely identifiable part, piece, assembly, subassembly or uniquely identifiable material within a single part, piece, assembly, subassembly of a consumer product that:

(A) Is required to complete or finish an item
(B) Performs a distinctive or necessary function in the operation of a product or part of a product
(C) Is intended to be included as a part of a finished item

(22)(A) "Consumer product" or "Product" means the following:
1. A "consumer product," including component, as defined in Health and Safety Code section 25251,that is identified under section 69503.4(a)(2)(B), as the minimum required focus of an AA.
(B)1. "Consumer product" or "Product" does not mean any historic product.
2. "Historic product" means a product that ceased to be manufactured prior to the date the product is listed as a Priority Product, and includes its service, replacement and repair parts regardless of when manufactured that are necessary to maintain and/or repair the historic product.
(C) "Consumer product" or "Product" does not mean a product previously owned or leased by someone other than the manufacturer, importer, distributor, or retailer of the product.

(40) "Manufacture" means to make, produce, or assemble. "Manufacture" does not include any of the following actions, unless the action results in the addition, or increased concentration, of a Chemical of Concern, or replacement of a Chemical of Concern, in a product:
(A) Repair or refurbishment of an existing consumer product, including the manufacture of repair or replacement parts;
(B) Installation of standardized components to an existing consumer product; or
(C) Making non-material alterations to an existing consumer product.

Additional definitional recommendations:

(26) "End-of-life" – This definition would encompass stages of a product life cycle where products may be reused or refurbished and, therefore, are not considered to be at their "end-of-life." This is an important distinction for electronic products. We suggest tying the end-of-life to when a product enters the waste stream and no longer has useful life.

We believe that DTSC could address this concern by changing the definition of (26) to read:

> (26) "End-of-life" means the point when the product is at the end of its useful life, and is discarded for recycling or disposal by the consumer.

(52) "Reliable information" – We are concerned that the definition of "reliable information" assumes that too much information is *de facto* deemed "reliable" simply because it has been published in peer reviewed journals or by state regulators. We believe neither of these scenarios automatically make information "reliable" We recommend that, due to the limitations of peer review[3] and state agency reports, that a process for disputing the reliability of such information be included. .

[3] See OMB's Information Quality Guidelines, 67 Fed. Reg. 8452, 8455 (Feb. 22, 2002).

Recommendation:

We suggest revising the definition of "Reliable information" to read as follows:

> (52) (A) "Reliable information" means a scientific study or other information that is one or more of the following:
> 1. Published in a scientifically peer reviewed report or other literature;
> 2. Published in a report of the United States National Academies;
> 3. Published in a report by an international, federal, state, or local agency that implements laws governing chemicals; and/or
> 4. Conducted, developed, submitted, or reviewed and accepted by an international, federal, state, or local agency for compliance or other regulatory purposes.
> (B) Interested parties may dispute the information from the Department in public workshops or during comment periods.

Section 69501.2. Duty to Comply and Consequences of Non-Compliance

(a) Duty to Comply.

Subpart (a)(2) should allow a consortium, trade association, public-private partnership, or other to apply for technology-specific exemptions under sections 69503.6 and 69503.7, rather than each company being required to do so independently. Thus, to minimize the compliance burden on individual companies, we recommend the following:

Change subpart (a)(2) to read:

> The requirements of this chapter applicable to a responsible entity may be fulfilled by a consortium, trade association, public-private partnership, or other entity acting on behalf of, or in lieu of, the responsible entity.

(b) Manufacturer and Importer Options.

(b)(1) and (2) - These notification requirements will only serve to burden manufacturers and the Department, with no discernible benefit to the environment, and (b)(2) will significantly increase the burden of placing new products on the market. The Department has consistently stated that the regulations must reward innovation. However, these requirements will significantly slow the introduction of new products in the California market.

We believe one way that DTSC could address this concern is as follows:

Change subpart (b) (1) and (2) to read:

> if a priority product is either removed from commerce in California, or if the product has been redesigned to remove or reduce the chemical(s) that were the basis of an AA or replaced, the

manufacturer must be able to demonstrate to the Department's satisfaction, upon request, that the product has been removed from commerce or redesigned or replaced in the marketplace.

A similarly simplified process should also be applied to the Retailer Option under subpart (c).

Section 69501.4. Chemical and Product Information

The Department should not request information from responsible parties unless publically-available sources of information have been exhausted. We suggest that the Department specify that the approaches outlined are in order of preference.

It is not clear how the Department will handle cases where responsible parties do not have the information being requested or if there is conflicting information between sources of information; in particular for information submitted by responsible parties.

Article 2. Chemicals of Concern Identification Process

Section 69502.2. Chemicals of Concern Identification

While we appreciate that the lists presented in the regulation have been pared down from previous versions, the list of chemicals identified by the list of lists in § 69502.1 will still be in excess of 1,000 chemicals. We are concerned that the purpose of this list will be misconstrued by companies in the supply chain as well as by governments, NGOs, and in particular by members of the general public whose lack of understanding with this complex regulation may lead to unfounded fear. It is very likely that the chemicals identified by this process will have a stigma attached to them that will cause their use to be unnecessarily challenged or questioned, even though the chemicals may have already undergone an assessment or have been determined to be safe in specific applications. The electronics industry believes that the approach suggested by Mr. Mike Rossi of the Governor's office is appropriate for the chemicals of concern identification process, which is reflected in our recommendation below.

Further, we believe that there should be different terms to address specific instances in the regulation. The term "Chemical of Concern" (CoC) currently means a chemical on the list per section 69502.2 that exhibits a hazard trait; the chemical paired with a specific product and the focus of the alternatives assessment in sections 69503.4 and 69503.5; and could mean any chemical requiring reporting to the Department in section 69505.5 or disclosure in consumer information in section 69506.4. Using different terms in different instances will clarify what the Department is referring to at any part in the regulatory process.

Recommendation:

The electronics industry recommends a two-part process for identifying chemicals of concern. First, a list of "Chemicals of Interest" are developed using the process in Section 69502.2, then a pared-down

"Chemicals of Concern" list is developed from the "Chemicals of Interest list" and specific factors identified by the Department. Finally, a "Priority Chemical" is a chemical that has been pared with a priority product and is the focus of the Alternative Analysis. This Priority Chemical will also be the focus of any regulatory actions that stem from the AA.

Article 3. Chemicals of Concern and Consumer Product Prioritization Process

Section 69503.1. Applicability

The Statement of Reasons document for these regulations is very clear that products that do not contain a chemical of concern are not subject to the requirements of this Chapter. However, the regulations are not as clear on this point.

Recommendation:

There are two options that we believe address this concern.

Option 1 - Add a second sentence:

This section is not applicable to products that do not contain one or more chemicals of concern.

Option 2 – Modify the definition of Priority Product:

(48) "Priority Product" means a product containing one or more Chemical(s) of Concern as identified and listed as a Priority Product by the Department under section 69503.4.

Section 69503.2. Priority Products Prioritization Factors

The regulations have several factors that include the concept of exposure, but exposure of a chemical of concern is not a factor in the prioritization. While the regulations do contain subpart (a)(1)(B), the regulations seem to assume that any exposure to a product equates to exposure to the chemical of concern, so this subpart relates to exposure to the product, not to the chemical of concern.

"Containment of the Chemical" within the product is included in the product prioritization criteria in subpart (a)(1)(B). As described in the ISOR, "how the Chemical of Concern is contained or bound during the use of the product determines, in part, the amount of exposure that may occur. For instance, the Chemical of Concern may be a component inside a product and may not be accessible to the user, in which case, there is little to no exposure as a result of use of the product." These are meaningful and practical ways to assess exposure to a chemical in a complex product or article and should be retained. We suggest that the Department add language in subpart (a)(1)(B) to clarify that "containment" includes the concept of accessibility as described in the ISOR. "Accessibility" is a commonly-accepted term with

well-established tests for whether a part of a product is accessible or not for chemical exposure purposes, such as the test used by the Federal Consumer Product Safety Commission.[4]

Finally, subpart (a)(1)(B)(4)(a) discusses chemical exposures during manufacturing. The Department has been consistent in stating that these regulations cover consumer products and chemicals. Exposures during manufacturing processes are already covered under existing authority by the federal Occupational Safety and Health Act (OSHA), and should not be included in these regulations.

Recommendation:

We recommend that this section, in particular subpart (a)(1)(A), be greatly simplified and specifically mention exposure as a factor. One way that DTSC could address this concern is as follows:

Change (a)(1) to read:

> Adverse impacts and exposure. The Department will consider the adverse public health and environmental impacts posed by the Chemical(s) of Concern in a product due to the physicochemical properties, environmental fate, hazard traits and the possibility and likelihood of exposure to the Chemical(s) of Concern through reasonably foreseeable use and abuse of the product.

Additionally, we believe further clarity could be provided by the following:

Change (a)(1)(B)(4)(d) to read:

> Containment of the Chemical(s) of Concern within the product, <u>which includes whether the Chemical(s) of Concern is in an inaccessible component within a product</u>.

Subpart (a)(3) also has the Department "considering" other California and federal laws. The electronics industry strongly believes that, as in previous drafts of the regulations, devices that are already regulated for a particular chemical use must be exempt from these regulations. The potential for multiple, conflicting and confusing regulatory schemes is too great to simply make those a factor for consideration. At the least, there should be considerations for exempting products that are previously regulated under other international or federal chemical regulatory regimes. There should be a presumption that chemical risks have already been reduced in such cases.

Subpart (b) lists key prioritization factors the Department will consider. We believe this process is more complicated than in previous drafts, and suggest the Department consider expanding these key criteria to make it clearer when a product may meet them.

[4] http://www.cpsc.gov/about/cpsia/inaccessiblefr.pdf

Recommendations:

We suggest the Department give priority to products meeting the following criteria:

(1) The chemical of concern in the product have a significant potential to cause adverse public health or environmental impacts;
(2) The product is widely distributed in commerce and widely used by consumers;
(3) There is significant potential for public and environmental exposures to the chemical(s) of concern in the product in quantities that can result in adverse public health or environmental impacts; and
(4) For assembled products, the product contains one or more chemicals of concern that may present potential exposure(s) through inhalation or dermal contact in quantities that can result in adverse public health or environmental impacts during intended and reasonably foreseeable use.

Section 69503.3. Process to Evaluate Products Using the Prioritization Factors

While this section is labeled a process, the electronics industry does not believe this is truly a process as required by AB 1879. As we mention in our general comments on the regulations, we are concerned that any person, or any administration, conducting this process will not generate similar results. While we appreciate that different entities (i.e., manufacturers vs. regulators) will have different assumptions and potentially different expertise, the process should still be sufficiently standardized so that anyone who does the process in good faith will come up with a similar result. We are not convinced that this is the case with the SCP regulations. There is simply too much discretion and variation in the steps enumerated in this section.

We recommend that the DTSC revert to the flow chart process that the DTSC used previously.
A flow chart approach or, at least, a step-wise approach will be more systematic and less subjective than the current proposal.

Subpart (f)(1)(B) allows the Governor's office to potentially skip all of the Article 2 Chemical of Concern identification, and to unilaterally give priority to a chemical without any process or public input. While the final list would be open for public comment, it would be too late in the process to respond to any potential issues stemming from a Governor's Executive Order. We believe this is too broad a mandate and needs to be either removed or moved to the CoC identification in 69502.2.

Section 69503.4. Priority Products List

Subpart (a)(2)(B) introduces the concept of the highly durable product. While we appreciate the intent of this term, we are not sure that it will adequately distinguish between formulated products and articles, and we believe that the limits placed on the department for selection of components and materials (10 per product every 3 years) are not useful. Alternatives assessments on articles are often very long and complex undertakings. For example, the US EPA Design for Environment program has been investigating alternatives for decaBDE in plastic casings. This assessment has taken over 3 years

and has consumed several hundred thousand dollars, and has just gone out for public comment. While we recognize that this case is more complex than many others, it is still not unusual for assessments on electronic products to take two – three years. Having a limit of 10 things every three years will still potentially have manufacturers in a constant loop of mandated assessments.

Subpart (d) notes that the Department may respond to some or all public comments. We believe that for a truly credible process, the Department has the obligation to respond to all public comments. We do recognize that the response will be, in some cases, that a comment is without merit.

(a)(2)(B) – Per our comments on homogenous material in Section 69501.1, we recommend changing (B) to read:

> (B)1. If applicable, the component(s) and/or uniquely identifiable material(s) within a component, to which the alternatives analysis threshold applies, and which is/are the required minimum focus of the AA.
> 2. For each Priority Product that is a highly durable product, the Department shall in all cases specify the number of component(s) and/or uniquely identifiable material(s) within a component to which the alternatives analysis threshold applies, and which is/are the required minimum focus of the AA. For each listed highly durable product, the Department shall specify no more than ten (10) components and/or uniquely identifiable materials per product every three (3) years.

Section 69503.5. Alternatives Analysis Threshold Exemption

As mentioned in comments to previous Draft Regulations, we believe that the inclusion of cumulative concentrations (in subpart (d)) will add ambiguity to the regulations that will make it very difficult for the Department and manufacturers to determine compliance with these regulations. For example, if a chemical gets reclassified or a new chemical of concern gets added to an existing priority product, then industry and DTSC personnel will have to re-calculate all the existing threshold level summations as the grouping of chemicals subject to the threshold will change. Further, manufacturers will not be able to use existing data and compliance systems, which are all based on single chemical thresholds, to ensure compliance with these regulations. This will delay DTSC's ability to quickly and efficiently implement the new regulation as both industry and the agency will be required to develop innovative new business processes and/or software tools that are capable of calculating the summation of chemicals vs. applying the threshold to a single chemical. This will divert valuable agency resources to focus on documenting that chemicals are not present in products from the primary purpose of the regulation which is to identify safer consumer products.

Finally, it is not always possible to analytically quantify all chemicals in a consumer product, especially for assembled products which may have matrix interferences, or some inorganic compounds with only analytical methods for the elements but not the full chemical compound. Therefore, having the threshold potentially set at a cumulative sum of chemicals and not an individual chemical increases the complexity of quantification to a sum total as more and more chemicals may fall into the category of "unquantifiable." As the department adds more chemicals to a priority product, the cumulative sum threshold will become more and more difficult to quantify as the thresholds get smaller and smaller

going below any ability of analytical detection limits. This uncertainty will be exacerbated in more complex assembled products and will only make the compliance demonstration and/or enforcement more difficult.

The electronics industry acknowledges the importance of considering cumulative chemical effects, however, we believe this should be considered during the product prioritization phase and can be addressed through regulatory responses, but it is not appropriate for a threshold determination.

Section 69503.6. Alternatives Analysis Threshold Exemption Notifications

The electronics industry continues to believe that these minimum threshold exemptions should be self-implementing. The amount of information being requested by the Department to demonstrate that the levels are below that which should be regulated will be overwhelming to the regulated community and the Department. Additionally, there is a dependence on testing results to "prove the negative" that a chemical is not in a product, where a compliance assurance system, which may include but does not require testing results, is in most cases much more practical for manufacturers to manage the content of their products and the Department to ensure compliance with the regulations.

Recommendations:

The electronics industry suggests that much of § 69503.6 be deleted, and replace with a compliance assurance process where the Department may request information from the manufacturer.

In creating a program to ensure compliance with the threshold exemption, the Department should remove the implication at § 69503.6(a)(5) and (a)(7) that only analytical testing results are appropriate substantiation that a product meets the threshold exemption. Given the sheer number of chemicals of concern based on regulations and customer restricted/banned substances lists, testing for all of these chemicals is cost-prohibitive. Therefore, manufacturers commonly rely on supplier certifications regarding purchased material content to understand product ingredients and impurities, and cannot routinely test all purchased materials or finished goods. Responsible manufacturers augment supplier information with testing when knowledge of the chemistry of the product indicates probable presence of chemicals of interest, or when there is cause to doubt the veracity of the supplier certification. This method has been widely used to determine compliance with international chemical restriction laws and regulations and is sufficiently rigorous and credible to provide a model for the Safer Consumer Products Regulation.

Section 69503.7. Priority Product Notifications

As written, this section will inundate the Department with information as soon as a Priority Product list is published. The Department should reconsider the reporting and notification requirements in the regulations, considering the burden on the manufactures to produce this information and the Department to receive process and respond to it. It is not clear why the Department would need all of the information requested, in particular all of the information in subpart (a)(2).

Article 4. Petition Process for Identification and Prioritization of Chemicals and Products

Section 69504. Applicability and Petition Contents

We are concerned that the requirement of subpart (b), that a chemical be off all lists, is an overly high hurdle to clear to request a petition. The lists in section 69502.2(a) are all updated on different cycles, with some taking significantly longer than others to refresh. If there is significant new information, it is unlikely that it will change all of the lists within a reasonable time frame. The section should allow petitioners to remove Chemicals of Concern on a showing of "preponderance of the evidence" that the scientific evidence supports removal.

Recommendation:

We believe one way that DTSC could address this concern is as follows:

(b) Change to read:

> A person may not petition the Department to delist any chemical identified as a Chemical of Concern unless that chemical has been removed from at least one list identified in section 69502.2(a).

Section 69504.1. Merits Review of Petitions

This section contains a list of factors the Department will consider in making a determination of whether a petition will be denied or granted. However, the criteria listed are only applicable to petitions to add substances to the Chemical of Concern list. There should be factors for how a chemical may be petitioned for removal from the CoC list.

Further, we are concerned with the subjectivity of this section. As with previous sections, there should be assurances that the petitions will be reviewed with a process that is dependent only on the science and merits of the review. We suggest that the Department develop a process or explanation of how the factors will be applied so that petitions may be reviewed more consistently based on an objective determination.

Article 5. Alternatives Analysis

Section 69505. Guidance Materials

The electronics industry contends that not all methodologies to perform an assessment are of equal caliber. Therefore, we are concerned that a process that has less rigor than necessary may be promoted and accepted as guidance by the department, and processes that are applicable to one type of products but not others may be used by assessors that do not understand the products and how they are produced. Therefore, we suggest that the Department allow for public input into the guidance materials when they are posted.

Section 69505.1. Alternatives Assessments: General Provisions

As mentioned in our general comments, the electronics industry feels that several of the timelines presented in the Proposed Regulations are too short to be workable. We believe that subpart (b)(3)(C) is an example of this. Some of our associations' member companies have done assessments using the guidance in previous drafts of the regulations, and the preliminary steps took longer than 180 days. For simpler products, it is possible that a shorter timeframe is practical, but for high tech products with a complex supply chain, 180 days is too little. We suggest allowing the Department to set due dates when the Priority Products List is published. Allowing flexibility for the due dates may provide manufacturers with the opportunity to work with their supply chain and develop meaningful AAs.

As we mention in our comments to Article 8, we believe the requirements for a Certified Assessor in subpart (e) should be removed. Notwithstanding our objection to the use of Certified Assessors, we further believe that the 2 year implementation is unworkable. If the department proceeds with a Certified Assessor program, the timeframe of 2 years from the effective date of the regulations is unworkable. For the first set of priority products, a manufacturer will start the AA before 2 years is over, but may not have been able to complete it. These manufacturers should not have to switch assessors mid-stream. The DTSC should instead allow that the AA's for the first round of priority products do not require a Certified Assessor.

Subpart (g) requires that manufacturers who reformulate their products submit significant information to show that the chemical of concern is no longer in the product. We believe that this is another example of an overly-burdensome and large information request that manufacturers will be required to prepare and the DTSC will be required to process with little or no benefit to the environment. We believe that as with the AA threshold, if the manufacturer reformulates the product, no further reporting should be due. If the DTSC does feel some notice is necessary, a simple notification with the contact information and a statement that the product no longer contains a chemical of concern should be adequate. As we have mentioned previously, it is impossible to "prove the negative" that a chemical is not present, and the regulations are overly reliant on product testing to demonstrate compliance. There are many examples of other reliable and credible ways to demonstrate conformance, including supply chain declarations and internal process controls. If the DTSC is going to require testing to demonstrate compliance, it is incumbent on the Department to specify which tests are acceptable to show compliance.

Section 69505.2. Analysis of Priority Products and Alternatives

Subpart (b) notes that a responsible entity may submit an abridged AA report if an acceptable alternative is not "available or feasible." However, the Department does not specify thresholds for these terms. The Department should provide some guidance for feasibility in this section or in section 69505.3. Additionally, subpart (b) indicates that a responsible entity cannot do an Abridged AA Report without first doing a full Stage 1 study. We believe that a responsible entity should be able do an Abridged AA Report without first going through the process of a full Stage 1 study if they rely on information from other regulatory entities or trusted bodies to show that there are no viable alternatives.

Additionally, it is not clear how the Department will approve research and development (R&D) plans under this part and section 69505.3. It is unlikely that the Department will have the industry-specific expertise necessary to adequately review and approve R&D plans.

Subpart (d) allows for a responsible entity (manufacturer) to select a different alternative from the one identified in the Final AA Report. As we note in our general comments, this may raise the question of who is responsible for the material content of a product. It is not clear who will be ultimately responsible for a product material content if a manufacturer disagrees with the Certified Assessor. This subpart allows the manufacturer to assume that responsibility, but it is not clear why they may want to do this if a Certified Assessor has already made a recommendation.

Additionally, subpart (d)(1)(B) notes that the revised Final AA Report must be submitted to the Department 60 days prior to placing the product in the stream of commerce. What is the responsibility of the manufacturer if the proposed selected alternative is already in the stream of commerce?

Section 69505.3. Alternatives Analysis: First Stage

Subpart (a) is an example of our comments in Section 69502.2, where different terms are needed to identify chemicals at different parts in the process. Using the same term depending on when referenced in the regulations is confusing. We recommend developing separate terms for these concepts in the regulation.

Subpart (b)(1)(A) notes the responsible entity must identify all legal requirements associated with the use of the product. However, the manufacturer is not likely to have this information. The manufacturers will have all compliance information for the manufacture of the product. We believe that this is what the DTSC is asking for in this section, but it should be made clear.

Subpart (b)(2)(A)1 states that alternatives must "eliminate or reduce the concentration" of the chemicals of concern in the product, but does not provide any threshold for this. As written, a trivial reduction of the CoC in the product through any means would meet this requirement. We suggest using the term "reduction in use" of the chemical of concern which will remove much of the ambiguity with the term.

The electronics industry is concerned with the requirement in (b)(2)(A)2 that a manufacturer shall consider alternatives posted for consideration by the Department. It is possible that a manufacturer has already considered these alternatives and should not be subject to doing so again, or based on the technical expertise of the manufacturer, they may be able to reject an alternative without the need for a full assessment. We suggest that the Department should not suggest alternatives, allowing the manufacturer to perform the AA, however, the Department could require the manufacturer to review and potentially explain why an alternative presented by the Department is not viable, but to require them to consider these in their AA is overly prescriptive.

Section 69505.4. Alternatives Analysis Second Stage

In subpart (a)(2), the Department assigns all responsibility for collecting and using available information and tools on the responsible entity; however, as we have pointed out, a third-party Certified Assessor may actually be the entity performing the assessment, and the Department has reserved the right to agree or disagree with the assessment results. As we have mentioned several times, this can potentially pose a significant conflict, and it is not clear who is ultimately responsible for the results of the AA. It is possible that the Department or Certified Assessor may second guess the manufacturer (responsible entity) and it is not clear what recourse, if any, the manufacturer has in these cases.

The electronics industry is concerned that the economic impacts in subpart (a)(2)(C) do not include research and development costs of using new materials, as well as performance and other testing (for example, for medical devices). These costs are important factors and should be part of the AA. Further, the Factors in subparts (B) and (C) do not include performance of the selected alternative.

Step 2 (subpart (b)) will require the use of the tools and guidance materials identified in section 69505. It is important to realize that these tools will provide important information, but will not be conclusive regarding the final decision or assessment. Weighting of the factors involved will have a significant effect on the outcome, and only the technical expertise of the manufacturer and assessor will be able to adequately weigh factors in the assessment. As we mentioned previously, there will rarely be a clear-cut "winner" material in this process, and only, after reviewing all the evidence, will the assessors and manufacturers be able to make a final decision based on the totality of the evidence. While the manufacturers will attempt to provide justification to the Department, it is not clear that the Department will agree with this justification, or for that matter, the outcome of the assessment.

Subpart (d), considering additional information, should be performed before an alternative is selected (currently subpart (c)).

The timelines for implementation of the alternative (in several sections, but mostly section 69505.5), are very tight and manufacturers, in many cases, may not be able to implement an alternative in proposed timeframe. For example, communications and medical devices have, on average, a four-year cycle between when a product is first designed to when it is formulated, assembled, and tested for performance and compliance with existing regulations. Further, smaller companies often do not have the "pull" to affect changes in the supply chain; in fact, large companies (our associations represent many of the world's leading high-tech companies, as well as smaller or medium enterprises) often have trouble affecting changes in the supply chain since many companies are located overseas. This may lead to an outcome where certain globally-available products will not be available for sale in the State of California.

Section 69505.5. Alternatives Analysis Reports

(a) – The term "sufficient information" is used several times in this section, but is not defined in the regulations. It is not clear how the responsible entity can provide information for an appropriate due date. Section 69505.4(e) states that a responsible entity shall propose regulatory responses as part of the AA, then section 69505.5(a)(4) states that the Department will determine an appropriate regulatory

response. What is the process if the Department disagrees with the Certified Assessor/Responsible Entity proposed response?

(d) – It is very likely that the manufacturer will not have much of this information, and it is unclear why this information would be necessary for an environmental, health and safety alternatives assessment. Manufacturers typically sell to distributors or distribution centers, and they determine what products go where. Additionally, much of this information, especially the supply chain and manufacturing locations, is likely classified as "trade secret" information.

Recommendation:

Remove these reporting requirements from this section. If this information is necessary, the Department can obtain it in the process outlined in § 69506.9.

(f) – The Regulation should not dictate how information is presented in the Alternatives Analysis Reports. It is not possible, in all cases, to present a matrix or even an easily-understood visual comparison. Very complex AAs may not lend themselves to one particular type of information format.

Recommendation:

Simplify section (f) and remove most requirements for how information is to be presented. The Department should consider adding a subpart asking for clarification on a section of the AA, rather than simply asking for more information.

(g) – As mentioned in several sections, determining the relevant comparison factors is a somewhat subjective exercise and depends greatly on technical expertise and knowledge of the industry being assessed. It is not clear what will happen if the Department disagrees with the weighing and comparison of the factors.

(j) – The list of all chemical ingredients is not always available for complex parts and products, or it may be confidential information not available to the responsible party or not relevant to the AA. The further information (subparts 1-6) is potentially a significant amount of information for the manufacturer to prepare and Department to process, which may not be relevant to the AA for the chemical-product parings. We recommend simplifying this section and paring the information required to the chemical/product information used in the AA and relied upon to make the final assessment.

(k) – As per our general and subsequent comments, it may take several years to complete these sections, and it is not clear that the deadlines in this section are practical. We recommend providing more flexibility, especially for more complex products.

Section 69505.6. Department Review and Determinations for AA Reports

It would seem that this section obviates the need for Certified Assessors in Article 8. If the Department is reviewing all AAs to ensure compliance with this section, it is not clear what role the Certified Assessor will serve in assuring the quality and thoroughness of the AAs.

Article 6. Regulatory Responses

Section 69506. Regulatory Response Selection Principles

As written, this section does not require the Department to consider the five factors listed in subsection (c) when determining which regulatory response may be appropriate, if any. Rather, DTSC is only required to give preference to regulatory responses that provide the greatest level of "inherent protection." However, less inherent toxicity in a product should not be the only factor DTSC considers; there are many other factors involved when a decision is made to use a particular chemical in a product. Thus, DTSC should be required to consider all five factors listed in subsection (c) by eliminating the permissive language on Page 52, Line 15 and replacing it with "…the Department shall consider all of the following factors." We believe that reasonable consideration of all five factors prior to imposing any regulatory response will be critical if the program is to be practical, meaningful, and legally defensible. Additionally, the Department should consider existing regulations when determining a regulatory response.

Recommendation:

Add the following line to subpart (c):

(c)(6) Existing regulations for that product

Finally, while we appreciate that DTSC has included a cost-effectiveness consideration in (c)(2), we are concerned that the Department will not have the information necessary to do an effective cost-benefit analysis of the regulatory response.

Section 69506.1. Applicability and Determination Process

We believe that this section should include a minimum timeline for when a regulatory response will be required to be implemented. Given the complexity and significance of the regulatory response options at the Department's disposal, we believe that regulated entities should be given a minimum of one year after the receipt of the final regulatory response determination notice to implement the regulatory response. This timeline should increase depending on the severity of the regulatory response selected.

Section 69506.2. AA Report Supplemental Information Requirements

As written, we believe that this regulatory response would act as an overly broad and unnecessary mandate on companies, giving the Department the ability to demand any information from a company on any timeline it chooses. We suggest the following changes:

§ 69506.2 (a) – Change to read:

> (a) The Department may require a responsible entity to provide, within a reasonable time frame specified by the Department, information supplementary to the Final AA Report…

§ 69506.2 (b) – Change to read:

> (b) The Department may require a responsible entity to obtain or develop, within a reasonable time frame specified by the Department, information that is reasonably attainable by the entity to fill one or more information gaps identified in the Final AA Report…

In addition to these changes, we believe that the information demands made by DTSC should be targeted and reasonable, rather than overly broad. Furthermore, once the required information has been provided, that action should fulfill the regulatory response obligation for a reasonable period of time, so that a compliant entity is not continuously required to generate more and more information.

Section 69506.3. No Regulatory Response Required

It is not clear how this section relates to the product sales prohibition (Section 69506.6) and end of life management (Section 69506.8) response options. As currently written, it appears that § 69506.8, and potentially § 69506.6, will act as "default" regulatory responses and will be automatically implemented unless a finding is made that no regulatory response is required under this section. This is due to the language in both sections reading "except as provided in section 69506.3." For obvious reasons, we believe that automatic triggers for any of the regulatory responses, including product information, will lead to unnecessarily burdensome results. Rather, DTSC should be required to carefully weigh and consider all of the factors delineated in § 69506(c) before deciding to impose any of its regulatory response options.

Section 69506.4. Product information for Consumers

As written, it appears that this regulatory response will be automatically required unless no Chemical of Concern is present above the applicable threshold. This automatic trigger seems unnecessary and could lead to information saturation for consumers on a wide scale. This is especially true given the amount of information required by subsection (a)(1). This requirement also includes some information that the manufacturer may not even have available, such as (a)(1)(C), or that may be considered confidential business information, such as the importer information in (a)(1)(F).

It would also be very difficult to fit this much information on the product packaging, and retailers will not voluntarily provide a placard at the point of sale. As we have stated in prior comments, the physical labeling of products is an outdated and inefficient solution that makes little sense for many types of

products. Research continues to show that beyond immediate hazards, labeling of a product is an ineffective way to warn consumers of potential hazards. Furthermore, information/disclosure requirements should be done in the least restrictive manner possible. Manufacturers should have options to labeling by providing information channels to consumers through the use of websites, product manuals, or other options that make sense for their market and for the potential hazard.

Section 69506.5. Use Restrictions on Chemical(s) of Concern and Consumer Products

It is not clear how restrictions on the use of consumer products can be enforced. While information on use restrictions can certainly be made available, how would the Department ensure compliance with such restrictions?

Section 69506.6. Product Sales Prohibition

As stated above, it is not clear how the tie-in to Section 69506.3 would work in practice for the product sales prohibition response option. Additionally, how would the Department know which products contain any Chemical of Concern above the applicable alternative analysis threshold, and which do not? Again, there may not be tests available for determining the presence of a particular material in a product, making these determinations and enforcement challenging.

This section is also made unnecessarily burdensome by allowing the Department to still prohibit the sale of a product even if no viable alternatives exists (see subsection (d)(1)), and by requiring responsible entities to notify DTSC if their product does not contain a Chemical of Concern.

Section 69506.7. Engineered Safety Measures or Administrative Controls

We would suggest that this section use the term “accessibility” rather than “integrally contain” in subsection (b), as there are defined tests for accessibility, making it a more objective standard for compliance. Thus, page 57, subsection (b), line 16 would read: “limit accessibility to the Chemical(s) of Concern within the structure of the product or limit…”

Additionally, we believe that there needs to be thresholds for presence under subsection (b)(1) as Chemicals of Concern, metabolites, or others may be naturally occurring or have multiple metabolites. Simply requiring “presence” is too ambiguous of a standard to be useful here. Also, as written, presence in a single building would be sufficient to trigger administrative control under (b)(2), which we think is unnecessarily strict.

Section 69506.8. End-of-Life Management Requirements

As stated earlier, it appears that this regulatory response will be automatically imposed unless the Department finds that there is no need for any regulatory response under § 69506.3. Automatically requiring end-of-life management requirements would lead to unnecessarily burdensome results as comprehensive product stewardship plans are very significant undertakings – logistically, financially, and otherwise – that should not be imposed absent careful consideration of all factors delineated in § 69506(c).

In addition, a one year time frame given in subsection (a)(2) is far too short for entities to implement the complex take-back schemes envisioned by this section, and it is unclear what financial guarantees, if any, would be adequate or available to entities under (a)(2)(A)(7). An additional concern is that this section does not differentiate between Business to Business (B2B) markets and consumer markets; there are viable markets for B2B recycling in many instances and the regulation should not undermine the free markets here.

The report required under (a)(2)(D) is also problematic. First, information on state sales and recycling is likely not available – most sales are done through distributors and manufacturers have no way to track what is sold in state. Additionally, and especially in the electronics industry, there is a vibrant post-consumer market, which would also make tracking recovery very difficult. And for durable products especially, which have lifespans of several years, the amount of goods recovered in a given year will have no relation to the amount of goods sold, which could give the impression to the Department that a program is performing poorly when in fact it is not.

Finally, it is unclear how a manufacturer might be able to prove to DTSC that an end-of-life management program is not feasible under subsection (d), though we agree that responsible entities should have the opportunity to show why they should be exempt from the requirement.

Section 69506.9. Advancement of Green Chemistry and Green Engineering

This section states that DTSC may "require" a manufacturer to conduct research and development, or fund a challenge grant, to design, improve, reduce the cost of, or increase the market penetration of, a safer alternative to a Priority Product. Since any given manufacturer might not have the resources to undertake such project, or might believe that such projects are not likely to be successful, a manufacturer should always have the option of discontinuing manufacture of the Priority Product. Section 69506.9 should be amended to provide explicitly that a manufacturer can choose to discontinue manufacturing a Priority Product instead of complying with any requirement issued pursuant to this section.

Additionally, many companies are engaging in research and development to achieve the goals specified in subparts (a) – (d), independent of the mandates in this regulation. These companies should be given

credit for their independent efforts as it relates to this regulatory response, and any further mandated funding of R&D needs to come with IP protection for the responsible entity.

Section 69506.10. Regulatory Response Selection and Re-Evaluation

As written, it is not clear what other situations DTSC is referring to in subsection (a), or why this section is needed to begin with. This section seems to remove any of the constraints imposed by earlier sections by stating that DTSC "may impose one or more regulatory responses … to situations other than those specified in those section." If that is the case, what could the Department not impose as a result of this section? We would request clarification on this point.

Additionally, the term "periodically" needs to be further defined or clarified in subsection (b). It would be unnecessary and burdensome to review regulatory responses too frequently. Entities need certainty with the responses they are required to comply with in order to do business.

Section 69506.11. Exemption from Regulatory Response Requirements

As written, this section appears duplicative of work that the Department should have presumably already completed: the determination of conflicting or duplicative regulatory programs. If the product is already covered by California or other regulatory programs elsewhere, the product should already be exempt from these requirements. The responsible entity should not have to do an alternatives analysis and then put in a formal request to DTSC for exemption to demonstrate that a conflict exists with other regulatory schemes. That determination should have already been made.

We would suggest that a responsible entity be able to request and receive exemption for compliance with international law, such as RoHS or REACH, provided that the manufacturer can show compliance and that the international law will also provide health and environmental benefits.

Section 69506.12 Regulatory Response Report and Notifications

As written, we believe this section is very problematic and fundamentally ignores the realities of supply chains and commerce. Manufacturers rarely sell directly to a retailer and thus will not be able to identify the retailers required to comply with subsection (a). We would suggest rather that the manufacturer notify whoever it is they are directly selling the product to if it is reasonably likely that the product will be sold in California. Then, the entity selling or distributing the product would be obligated to notify the appropriate retailers.

We believe the regulatory response notice to the Department required under subsection (c) is unnecessary, as DTSC should assume but confirm compliance as needed, such as by requesting compliance documentation.

Article 7. Dispute Resolution Processes

Section 69507. Dispute Resolution

It is not clear why articles 2, 4 and 10 are not subject to dispute resolution. We would think that the DTSC would welcome the opportunity to informally arbitrate any decision made pursuant to the Regulation. We would think an information dispute process would help these articles; otherwise injunctive relief through the courts would be the only process open should a dispute arise. We suggest allowing all Articles to have some sort of administrative dispute process.

Section 69507.1. Informal Dispute Resolution Procedures

We submit that allowing only 30 days to dispute an action, especially notice on the Department's website, is inadequate. In many cases, it may take 30 days for a responsible entity to realize they are involved and decide to dispute a posting. We suggest at least 90 days for this initial time.

Article 8. Accreditation Bodies and Certified Assessors

ITI, TechAmerica, CEA, and SIA strongly assert that the Certified Assessor process as described in Article 8 will not serve to meet the goals of the Green Chemistry Initiative to ensure that 1) the alternative assessments are conducted by a person with all of the expertise necessary to adequately complete an assessment, and 2) that assessments will be done within the expected requirements for compliance with the law, thoroughness, and scientific rigor. For the reasons described in comments to previous sections and below, we urge the DTSC to remove Article 8.

Simply put, the Certified Assessor requirement will increase the costs to do the AAs, with absolutely no benefit. Most small companies will need to hire a third-party assessor, and larger companies will likely assume the expense of getting one or more of their technical experts certified. Most certified assessors will not have the specific product knowledge, especially if they are not experts in the industry they are trying to assess, to perform an assessment. Simply requiring a bachelor's degree in a scientific field and training on the requirements of these regulations will not ensure that the assessors will have the knowledge base to adequately perform an assessment. The assessor must have knowledge of the tools being used to perform the assessment (which will vary depending on the type of material and product assessed), knowledge of the industry being assessed, and the expertise to be able to weigh the factors and assess the information used to perform the assessment. No certification program will ever be able to provide this level of expertise.

As we have mentioned previously, the use of third-party certified assessors will likely create potential legal issues. For example, who will be liable for any material use decision based on the outcome of an

assessment? What happens if the manufacturer disagrees with the assessor? What if multiple assessors are used (either in different manufacturers of the same product, or even within a single assessment) and the assessors disagree on the optimal outcome? Who will resolve any conflicting findings?

Recommendation:

Delete Article 8. The Department reviews all submissions for compliance with the regulations in section 69505.6 and has provided for a process to audit any AAs submitted under Article 9. We believe this is adequate protection to ensure that the assessments are done correctly, and the Department has the ability to review the AAs in depth for compliance, information quality and adequacy of the analysis.

Article 10. Trade Secret Protection

Section 69510. Assertion of a Claim of Trade Secret Protection

The electronics industry believes that a reasonable protection of confidential business information (CBI) is critical to innovation and competition in the market. As mentioned earlier, the Proposed Regulation would require manufacturers to supply a substantial amount of information to the DTSC, including sales and manufacturing processinformation. The submittal of such a broad range of potentially sensitive information increases the likelihood and frequency that a manufacturer may have to rely upon the regulation's trade secret provisions in order to safeguard its CBI.

Under Section 69510(a), a claim for trade secret protection will involve the submittal of extensive supporting information to the DTSC in order to substantiate its need for trade secret protection. A disagreement from the DTSC in the trade secret claim would mean that the manufacturer would need to cure the perceived deficiencies in the trade secret claim or seek judicial review in order to prevent the CBI from being released to the public (Section 69510.1).

This resource-intensive CBI claim process strongly emphasizes the need for the Department to carefully consider what information it truly requires from regulated entities throughout the Regulation. Thus, we urge the Department to limit submission requirements only to that information which is absolutely necessary for DTSC to implement the Regulation. This will help reduce unnecessary compliance burdens and help ensure that CBI is properly protected.

Further, this section of the regulations should focus on the interrelationship of the new Safer Consumer Products law with existing California laws on trade secrets. California Civil Code § 3426.1 provides:

> (d) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:
> (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and
> (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Therefore, in order to establish that information submitted is a trade secret under California law, one would need to show that: (1) it has independent economic value, actual or potential, because it is not known to others; and (2) it is the subject of efforts to maintain its secrecy that are reasonable under the circumstances. The determination (whether or not information claimed to be trade secret is to be released) by DTSC under California Health and Safety Code §25257(d) should logically begin by looking at those two questions. While it seems that the gist of each of these two questions is addressed in subpart (a) of the document, subpart (b) requires, by itself, the submission of a large quantity of information, on top of the already large quantity of information that is being requested by the Proposed Regulation. Further, if any of the Trade Secret claims themselves are claimed to be Trade Secret, the entire process of subparts (a) must be submitted as per subpart (b), setting up a potential feedback loop of data submissions to the department. In particular, subparts (a)(4-8) will almost invariably involve trade secret information.

The exclusion of all chemical identity information in subpart (f) is overly broad due to the broad definition of '"hazard trait" found in OEHHA's supporting regulations. For example, a chemical with the hazard trait of "irritation" cannot be claimed as a trade secret, even if it is not being assessed for that trait. Often, chemical identity is the most closely guarded trade secret, and, as drafted, the Proposed Regulation will substantially reduce the ability to protect such intellectual property.

For subpart (g), how does a manufacturer establish a chemical use is a "new use?" Proving that a chemical has never been used is difficult.

Section 69510.1. Department Review of Claims of Trade Secret Protection

As mentioned in our comments to section 69507, it is not clear why the DTSC would not subject these determinations to an agency review process. We appreciate that the DTSC has included in subpart (d) that the Department may not disclose information until a court proceeding is finished; however we are still concerned with the timelines, in particular subpart (b)(2). It is unlikely that a manufacturer will be able to respond or file an action in 30 days.

Conclusions

ITI, TechAmerica, CEA and SIA wish to thank the Department for its ongoing work on the Proposed Safer Consumer Product regulation, and feel that the proposed regulations contain several significant improvements compared to previous drafts. However, we are very concerned with the lack of specificity in several sections of the regulations, the immense data submission burdens, the required use of certified assessors, and the very weak trade secret protections offered in the draft regulations. We share the Department's goals of a meaningful and workable regulation, but unfortunately feel that the proposed regulations contain several sections, as outlined above, that would make these difficult for industry to interpret and meet, as well as for the Department to enforce. We look forward to continuing to work with the DTSC to finalize a workable set of regulations in a manner that will focus on the chemicals and products that pose the greatest risk.

If you have any questions, please do not hesitate to contact Chris Cleet at (202) 626-5759 or ccleet@itic.org, Robert Callahan at (916) 443-9088 or robert.callahan@techamerica.org, Allison Schumacher at (703) 907-7631 or aschumacher@ce.org, or David Isaacs at (202) 446-1709 or DIsaacs@sia-online.org.

Sincerely,

Chris Cleet, QEP
Director, Environment and Sustainability
Information Technology Industry Council (ITI)
1101 K Street, NW Suite 610
Washington, DC 20005
202.626.5759
www.itic.org

Robert Callahan
Director, State Government Affairs
TechAmerica
1107 9th Street, Suite 850
Sacramento, CA 95814
916.443.9088
www.techamerica.org

Walter Alcorn
Vice President, Environmental Affairs and
Industry Sustainability
Consumer Electronics Association
1919 South Eads Street
Arlington, VA 22202
(703) 907-7765
www.ce.org

David Isaacs
Vice President, Government Affairs
Semiconductor Industry Association
1101 K Street, NW Suite 450
Washington, DC 2005
(202) 446-1709
www.sia-online.org

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The Information Technology Industry Council (ITI) is the premier advocacy and policy organization for the world's leading innovation companies. Founded in 1916, we have earned the trust of the world's most recognized technology brands to solve their most complex policy challenges. Learn more about ITI at www.itic.org

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TechAmerica is the leading voice for the U.S. technology industry – the driving force behind productivity growth and jobs creation in the United States and the foundation of the global innovation economy. Representing approximately 1,000 member companies of all sizes from the public and commercial sectors of the economy, it is the industry's largest advocacy organization and is dedicated to helping members' top and bottom lines. TechAmerica is also the technology industry's only grassroots-to-global advocacy network, with offices in state capitals around the United States, Washington, D.C., Europe (Brussels) and Asia (Beijing). Learn more about TechAmerica at www.techamerica.org.

About CEA

The Consumer Electronics Association® ("CEA") represents more than 2,000 companies involved in the design, development, manufacturing, distribution and integration of audio, video, in-vehicle electronics, wireless and landline communications, information technology, home networking, multimedia and accessory products, as well as related services that are sold through consumer channels.

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The Semiconductor Industry Association (SIA) is the voice of the U.S. semiconductor industry, one of America's top export industries and a bellwether measurement of the U.S. economy. Semiconductor innovations form the foundation for America's $1.1 trillion dollar technology industry affecting a U.S. workforce of nearly 6 million. Founded in 1977 by five microelectronics pioneers, SIA unites over 60 companies that account for 80 percent of the semiconductor production of this country. Through this coalition SIA seeks to strengthen U.S. leadership of semiconductor design and manufacturing by working with Congress, the Administration and other key groups. The SIA works to encourage policies and regulations that fuel innovation, propel business and drive international competition in order to maintain a thriving semiconductor industry in the United States. Learn more at www.sia-online.org.