June 6, 2013

Ms. Jackie Buttle
Acting Regulations Coordinator
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California  95812-0806

RE:  Comments on the revised Economic and Fiscal Impact Statement (Std. Form 399), and attachments, revised to reflect post-hearing changes to the proposed Safer Consumer Products regulations (R-2011-02)

Dear Ms. Buttle:

The American Chemistry Council (ACC) submits the following comments on the Department of Toxic Substances Control’s (DTSC) revised Economic and Fiscal Impact Statement (hereafter “EIS”), and attachments, related to the post-hearing changes to the proposed Safer Consumer Products regulations. ACC also supports the comments of the Green Chemistry Alliance.

Despite DTSC’s many changes to the proposed Safer Consumer Products regulations, ACC remains concerned that the Department is still unable, as with the preliminary EIS, to provide dollar ranges for the potential estimated impacts to the private sector or to quantify the potential benefits of the regulations. Regulatory analysis is a tool used to anticipate and evaluate the likely consequences of the rules, both positive and negative. It provides evidence as to whether the benefits of an action are likely to justify the costs. Benefit-cost analysis is a primary tool within regulatory analysis, and when it is not possible to quantify monetary units of all the benefits and costs, a “threshold” analysis using professional judgment should be conducted – evaluating the significance of the non-quantified benefits and costs.¹

DTSC has not conducted a threshold analysis for the process that would be set by the proposed regulations. DTSC has not considered implicit consequences that will affect businesses within and external to California once the proposed rule is promulgated. Moreover, contrary to the preliminary EIS, DTSC has not included a revised “Attachment 3: Estimated Costs for DTSC to Implement the Safer Consumer Products Regulations.”²

ACC is concerned that stakeholders have not been provided with an opportunity to weigh the potential overall impacts of the regulatory procedure established by the proposed Safer Consumer Products regulations. Although DTSC views the proposed regulations as procedural regulations that will subsequently prioritize further regulation, and which will be accompanied by specific economic assessments, the State and the regulated community miss a key opportunity to assess benefits and costs associated with the regulatory procedure by not having an economic assessment before the rule is made final. Despite the proposed economic and fiscal impact statements that are to accompany subsequent rulemakings on Priority Products, the Department should, to the best of its ability, conduct an assessment of the underlying regulatory program.

ACC disagrees with the Department’s assertion that the only impacts to the private sector under the proposed Safer Consumer Products regulations, would result from a DTSC request of businesses to provide existing information or generate new information necessary to implement the regulations. An important, but under-appreciated consequence is that market impacts will likely occur once DTSC publishes the Candidate Chemical list of approximately 1200 substances, and, the list of approximately 230 Candidate Chemicals that will be evaluated for the development of the first Priority Products List. The listing of chemicals as “candidate chemicals” can trigger market de-selection pressures against the use of these chemicals, even if there is insignificant risk from their use in a product. Market changes, based upon the Candidate Chemicals List, will have direct impacts on particular chemicals and particular products. Product manufacturers and chemical manufacturers will likely see costs rise as the volume of customer and consumer questionnaires increase, inquiring as to whether certain products contain “candidate chemicals”. Manufacturers could spend a significant amount of time and resources just to prove the negative. Furthermore, de-selection could affect the costs to produce goods or services even in the absence of significant risks of material harm to human health and/or the environment from exposure to the chemical or product.

In addition, DTSC should focus its efforts on chemicals and products that are explicitly subject to the proposed regulations. It is legally questionable whether DTSC has authority under Health and Safety Code Sections 25252-25255, and 25257, to require manufacturers, importers, assemblers, and retailers “of any product” to provide information regardless of whether these chemicals or products are subject to the regulation. DTSC should focus the scope of the regulation on chemicals and products that have the highest hazard and exposure potential to Californians.

Finally, ACC suggests that DTSC issue a revised attachment that outlines the estimated costs to DTSC to implement the proposed regulations, given the significant changes since the July 2012

4 Proposed, revised, post-hearing changes Safer Consumer Products Regulation, §69501.4(a) (2).
version. DTSC could update the estimates outlined in the previous “Attachment 3: Attachment 3: Estimated Costs for DTSC to Implement the Safer Consumer Products Regulations,” published with the July 2012 regulatory proposal.

Before recommending regulatory action, the Department should establish that the proposed action is necessary, demonstrating that the estimated benefits will outweigh the costs. This type of demonstration, or economic and fiscal impact assessment – before the promulgation of the rule – should include quantifying both benefits and costs, and conducting a threshold analysis for those elements that cannot be quantified. It is this demonstration that is required under the California Administrative Procedure Act. The failure to adequately identify the economic impacts of the proposed regulations is not merely a shortcoming; it reaffirms the legislative findings of the Administrative Procedure Act that proposed regulations promulgated without orderly, systematic review may place an unnecessary burden on people and entities in California. Consequently, this failure may also be one in complying with the Administrative Procedure Act.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Emily V. Tipaldo
Manager
Regulatory and Technical Affairs

CC: The Honorable Matt Rodriquez, Secretary, CalEPA (SectyRodriquez@calepa.ca.gov)
Mike Rossi, Senior Business and Economic Advisor, Office of the Governor (mike.rossi@gov.ca.gov)

5 Government Code §11346.3
6 Government Code § 11340 “The imposition of prescriptive standards upon private persons and entities through regulations . . . has placed an unnecessary burden on California citizens and discouraged innovation, research and development of improved means of achieving desirable social goals.”