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GlobalAutomakers

December 5, 2014

Ms. Suzanne Davis and Ms. Evelia Rodriguez
Department of Toxic Substances Control
Attn: Comments on Draft Informal Regulations for Brake Friction Material Law
P.O. Box 806
Mail Station/Code: SPWP/MS 12A
Sacramento, California 95812-0806

Sent Electronically to: brakepad@dtsc.ca.gov

SUBJECT: Comments on Draft Informal Regulations for the Brake Friction Material Law

Dear Ms. Davis and Ms. Rodriguez:

We are writing on behalf of the members of the Association of Global Automakers, Inc.¹ (Global Automakers) and the Alliance of Automobile Manufacturers² (Auto Alliance), which include nearly every company selling new vehicles in the United States (U.S.). We appreciate the opportunity to provide the following comments on the pre-regulatory proposal for the Brake Friction Material Law.

OVERVIEW

The California Department of Toxic Substances Control (DTSC) has released new informal draft regulations (as of 11-13-2014) to implement the Brake Friction Material Law (Health and Safety Code sections 25250.50 et seq.) that became effective January 1, 2014.^{3,4} This new law will prohibit the sale of automobile brake pads sold in California containing more than trace amounts of certain heavy metals and asbestos by 2014. The law will also ban brake pads containing more than five percent copper by 2021. By 2025, the law reduces the amount of copper allowed to almost zero. In addition to restricting the content of brake friction material, the law requires that the brake material complies with laboratory testing and is marked with an environmental code that indicates proof of certification.

¹ Global Automakers' members include Aston Martin, Ferrari, Honda, Hyundai, Isuzu, Kia, Maserati, McLaren, Nissan, Subaru, Suzuki, and Toyota. Please visit www.globalautomakers.org for further information.

² Auto Alliance members are BMW, Chrysler, Ford, General Motors, Jaguar Land Rover, Mazda, Mercedes-Benz, Mitsubishi, Porsche, Toyota, Volkswagen, and Volvo. Please see www.autoalliance.org for further information.

³ <http://www.dtsc.ca.gov/PollutionPrevention/BrakePads.cfm>.

⁴ Washington State passed a similar law earlier in 2010 and adopted regulations on October 19, 2012. <http://www.ecy.wa.gov/programs/hwtr/betterbrakes.html>.

DTSC has worked diligently to update the draft regulations and respond to the previous round of comments in a Response to Comments document. However, we continue to have concerns about the draft as noted in the following.

CONCERNS

First, we would like to thank DTSC for the efforts evidenced in the latest draft. It is obvious to us that DTSC has worked very hard to address our concerns. However, several critical issues remain outstanding, which are reiterated in these comments. In addition, we have identified additional items that should be addressed.

Global Automakers and the Auto Alliance continue to have concerns about unnecessary regulatory burdens resulting from a lack of harmonization between the Washington and California regulatory programs. As we have noted previously, where harmonization is not possible, reciprocity is essential. We understand that DTSC believes it lacks the authority under the current California statute to provide reciprocity in the regulations; however the lack of reciprocity between the two programs creates a difficult compliance regime for brake manufacturers and automakers. Harmonized programs will reach the same goals while reducing compliance costs, ensuring no duplication of efforts, and allowing manufacturers and suppliers to offer one consistent product in both states.

In particular, we are concerned about the inconsistent markings for the environmental compliance mark between California and Washington and believe the environmental compliance mark must be harmonized in order to maximize understanding of the mark and reduce confusion.

We also have concerns about the definition of “manufacturer” and the proposal’s processes for exemptions and extensions. These concerns are explained in detail below.

1. Harmonization of Regulatory Programs

Global Automakers and the Auto Alliance believe that it is of the utmost importance for California and Washington to harmonize their requirements for brake friction materials, as any regulatory differences can result in unnecessary burdens on industry, especially when the ultimate goals of each state are the same. We appreciate that the California DTSC and Washington Department of Ecology have been in discussions throughout the stakeholder process. With the Washington Department of Ecology’s regulations completed and DTSC now developing its regulations, it appears that the statutory differences between the two states programs could unnecessarily complicate the compliance process. Inasmuch as the goals and requirements of the programs are aligned – to eliminate or reduce asbestos and heavy metals in

brake friction material - and will provide the same environmental benefit, California should make every effort to also align its regulations with Washington's. In the interim time period leading up to the effective date of these regulations, DTSC could provide reciprocity with Washington, whose regulations are in place, by allowing any brake pads that comply with Washington's regulations to comply in California as well.

While Washington and California may not be able to harmonize all aspects of their regulations due to diverging state laws, our associations believe, as we have stated in our previous comments, that at a minimum both states should provide reciprocity through agreements or other mechanisms (i.e. "deemed-to-comply") to accept compliance with one state's programs as compliance with the other. A reciprocity agreement would mean that the two states would agree to allow the use of a single edge code marking, certification mark, and compliance documentation.

2. Harmonization of the environmental compliance marks between the California and Washington programs is necessary to maximize understanding, minimize confusion and ensure the regulation can be practically implemented by the regulated parties.

DTSC has done an outstanding job of addressing our concerns in this area. We appreciate that efforts have been made to match the draft language to Washington's regulations. However, there is still one unreasonably burdensome difference between the two regulations. While the California statute has no requirement to mark exempt brakes (or brakes for which an approved extension has been obtained), the Washington state regulations require additional markings (either "WX" or "X") for exempt brakes. DTSC has clarified in its response to comments document that "Any brake friction material marked with 'WX' or 'X' will not be acceptable in California unless it is used in an optional field of the format specified under SAE J866:2012 or on another location on the brake pads."⁵

The statute states that the proof of certification on brake friction materials shall identify the brake friction material manufacturer, be easily applied, be easily legible, and "not impose unreasonable additional costs on manufacturers due to the use of additional equipment or other factors."⁶ However, it would be extremely impracticable and costly for brake manufacturers to apply different markings to brakes destined for Washington vs. California and perhaps even more impracticable and costly for vehicle manufacturers to somehow predict where the vehicles will be sold and sort these parts in their factories to ensure they are assembling the correctly marked brakes on vehicles headed for the two different states. Considering that the brakes will have the same formulations designed to meet the environmental requirements of both states, DTSC needs to ensure that brakes with Washington markings (i.e., "WX" or "X") are allowed to be sold in California, either through the regulations, a reciprocity agreement, or some other legally binding means.

⁵ http://www.dtsc.ca.gov/PollutionPrevention/upload/Responses_to_Common_Comments_Received_10-3-2014.pdf, page 3.

⁶ Article 13.5 Section 25250.60(a).

The statute also states that the certification and mark of proof shall show a consistent date format, designation, and labeling “to facilitate acceptance in all 50 states and U.S. territories” for purposes of demonstrating compliance with all applicable requirements.⁷ Through its use of the SAE J866 standard, which includes markings for hot and cold coefficients, DTSC is already making allowances for markings required by other states. Thus, we reiterate our request that DTSC needs to find a way to make the same allowance for the Washington state markings either through harmonized regulations or by providing reciprocity with Washington.

3. *Other Key Issues*

A number of key implementation issues persist regarding extensions, exemptions and the definition of manufacturer.

a. Section 25250.55 Exemptions

The issue of any potential exemptions is not addressed in the proposed regulations. We recognize that there are differences between California’s and Washington’s legislation. However, the confusion that is being created by the different processes must be addressed. The Exemption/Extension comparison chart developed by DTSC highlights the areas of confusion.⁸ We request that DTSC work closely with Washington to create as much harmonization as possible in this area.

b. Definition of Manufacturer

We agree with the DTSC’s decision to revise the definition of manufacturer to align with the statute. However, we believe that the definition should include an additional note, similar to that use in the Washington Department of Ecology’s regulation - “*In each instance the term "manufacturer" is used, this chapter identifies which type of manufacturer is referred to.*” We believe addition of this sentence helps provide additional clarity for the regulation and will enhance harmonization between the two regulations.

CONCLUSION

Global Automakers and the Alliance of Automobile Manufacturers appreciate DTSC’s effort to provide a workable implementation of the Brake Friction Material Law. We urge DTSC to prevent unnecessary regulatory burdens by solidifying harmonization between the Washington and California regulatory programs, and where harmonization is not possible, providing reciprocity. We understand that DTSC believes it lacks authority under the current California

⁷ Article 13.5 Sec 25250.60(j).

⁸ DTSC, Diagram on the California Exemptions versus the State of Washington Exemptions, http://www.dtsc.ca.gov/PollutionPrevention/upload/Diagram_comparing_Ca_and_WA_exemptions_plainlanguage.pdf.

statute to provide reciprocity in the regulations, however the lack of reciprocity between the two programs creates a very difficult compliance regime for brake manufacturers and automakers. Harmonized programs will reach the same goals while reducing compliance costs (which ultimately will be borne by the consumer in the form of increased retail prices), ensuring no duplication of efforts, and allowing manufacturers and suppliers to offer one consistent product in both states.

In addition, we ask that DTSC address our concerns regarding the inconsistent markings for the environmental compliance mark between California and Washington, as well as our issues with definitions, and the proposal's processes for exemptions and extensions.

We thank you for considering the comments presented herein, and we look forward to additional opportunities to comment on the regulations. Please do not hesitate to contact us with questions or if we may provide additional information. We look forward to working with DTSC as it moves forward.



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