

October 10, 2012

Debbie Raphael, Director
California Department of Toxic Substances Control
1001 "I" Street
Sacramento, CA 95812

Re: Comments of the Automotive Aftermarket Industry Association and California
Automotive Wholesalers Association on Proposed Safer Consumer Products
Regulations

Dear Ms. Raphael:

The Automotive Aftermarket Industry Association (AAIA), on behalf of our member organization, the California Automotive Wholesalers Association (CAWA), and our full membership base thank you for this opportunity to provide comments regarding the proposed Safer Consumer Products regulation (22 CCR, div 4.5, ch. 55).

AAIA is recognized as the pre-eminent trade association and voice for the \$297.5 billion motor vehicle aftermarket, which employs four million people and contributes more than two percent of the U.S. gross domestic product. AAIA's more than 23,000 member and affiliates manufacture, distribute and sell motor vehicle parts, accessories, service, tools, equipment, materials and supplies across the country. Through its membership, AAIA represents more than 100,000 repair shops, parts stores and distribution outlets nationally.

CAWA is a non-profit trade association representing 450 automotive aftermarket parts manufacturers, jobbers, warehouse distributors and retailers in California, Nevada, and Arizona. The Association was formed in 1955 and serves as the voice of the aftermarket parts industry in the West. CAWA prides itself on quality customer service to its members and the industry.

Statement of Concern:

AAIA members appreciate the goal of the California green chemistry initiative; however the current proposed Safer Consumer Products regulation will impose severe adverse effects on the aftermarket industry in California. The automotive aftermarket employs nearly 350,000 individuals and accounts for more than \$32 billion in sales in California annually. Given the significant economic contribution to the State, AAIA believes the Department of Toxic Substance Control (DTSC) should perform a robust economic analysis of the proposed Safer Consumer Product regulations prior to implementation.

In addition to a comprehensive economic analysis of the impact of these rules on California businesses, AAIA also submits specific comments on the proposed language. These comments are intended to reduce unnecessary burdens that will be placed on many of the state's

small businesses should the currently drafted rule be adopted while still ensuring car owners have access to repairs necessary for the safe and efficient operation of their vehicles.

Currently, the proposed language contains several definitions and requirements that are far too broad. These areas within the regulations contribute to the expansive scope of the proposal creating the potential inability for responsible entities to reasonably respond to the concerns of the DTSC.

Furthermore, deadlines offered by the regulation do not take into account the complex and highly-regulated nature of the aftermarket. The aftermarket industry must already be responsive to existing timeframes for responsible product development, safety testing, national regulatory compliance, state regulatory compliance, international and domestic trade responsibilities, and other environment and safety-related circumstances. The proposed regulation currently imposes timelines for responsible entities that could put them in violation of already existing requirements that hold precedence over the authority of the Safer Consumer Products regulation.

The comments provided by the Complex Durable Goods Coalition with respect to the Safer Consumer Products regulation address in-depth many of the concerns shared by the AAIA. This organization agrees with those recommendations and would like to associate the AAIA with those statements, and all included documents to those comments. In order for DTSC to properly understand and respond to the concerns of the AAIA with regard to the current proposed regulation, some recommendations for remedies relevant to the most critical issues facing the aftermarket are detailed below.

Recommendations:

1) Modification to the definition of “Manufacture”

The definition provided in §69501.1 (40) for “manufacture” should not include the three listed actions of (A), (B), and (C) under any circumstances. The majority of automotive aftermarket entities involved in the business of repairing vehicles or returning them to working order under the regulations of the California Department of Motor Vehicles do not possess the capabilities to “manufacture” consumer products in the generally understood sense of the term. These businesses rely upon a network of organizations within the aftermarket supply chain to provide them with the necessary tools, equipment, parts and consumer products to operate their businesses. The manufacturing of items required to undertake automotive repair have occurred long before and by several other entities prior to reaching the repair-focused business.

Identifying activities such as “repair,” “refurbish,” “installation of standardized components,” and “making non-material alterations,” could hold repair-focused businesses accountable for the content of Chemicals of Concern in products after having no control over the initial methods of production that dictated the product make-up. This would be similar to holding the homeowner who prefers do-it-yourself repairs accountable for the chemical content of the paint they purchased from their local hardware store.

Furthermore, automotive repair-focused entities are typically small businesses that simply cannot shoulder the cost burden of the alternatives analysis and regulatory process outlined in the current proposed regulation. The threat of such expense could be crippling to the future planning

of automotive repair businesses in California and ultimately weaken the availability of convenient, reasonably-priced vehicle servicing locations in the State.

Proposed language:

§69501.1 (a) (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;
- (B) Installation of standardized components to an existing consumer product; or
- (C) Making non-material alterations to an existing consumer product.

2) Revised definition of “historic product” and exemption for service parts of “historic products”

The AAIA agrees that “historic products” should be exempted from the definition of “consumer product” or “product,” as found in §69501.1 (22)(B)(1) & (2), AAIA urges that the exemption be extended to service parts for historic products. Parts to repair historic products were developed based on certain parameters generated around those historic items. The proposed regulation defines a “historic product” as no longer being in production. Therefore, significant concern exists around the ability to reengineer service products that continue to perform properly as a part of an original product that is no longer in production. Changing the composition of these service parts could significantly alter the ability of historic products to operate.

Proposed language:

§69501.1 (22)(B)(1) “Consumer product” or “Product” does not mean any historic product or service part intended to repair, refurbish or maintain a historic product.

§69501.1 (22)(B)(2) “Historic product” means ~~a product that ceased to be manufactured prior to the date the product is listed as a Priority Product~~ one of the following:

- (i) A product that ceased to be manufactured prior to the date the product is listed as a Priority Product;
- (ii) A product manufactured in accordance with national or international standards requiring certification of compliance with those standards prior to the date the product is listed as a Priority Product; or
- (iii) A product that is used as a spare part or component for repair or maintenance of a product identified in (A) or (B) regardless of when it was manufactured.

3) Narrow the definition of “component”

The definition of “component” in §69501.1 (21) is far too broad and should be more narrowly focused to address the specific material within a consumer product that causes the measurable and significant threat to public health. The inclusion of entire assemblies, subassemblies, systems, or subsystems creates an unnecessarily burdensome scope for responsible entities to address when working to respond to the requests of the proposed regulation.

The definition of “component” should be narrowed to only one piece or part of an overall product. More narrowly focusing the definition can streamline the process to achieve the desired outcome of the Safer Consumer Products regulation. This would allow both identifiers of priority products and the entities responsible for addressing the Chemicals of Concern within those products to more efficiently and effectively attack the public health threat at a minimum burden to businesses.

Proposed language:

§69501.1 (21) “Component” means a uniquely identifiable part, piece, or a material within a part, piece of a consumer product or for a highly durable product, a uniquely identifiable material within a single identifiable part or piece not comprised of subparts, 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

In conclusion, the automotive aftermarket is extremely concerned with the direct impact that the proposed Safer Consumer Products regulation will have on the ability to continue providing vehicle solutions to the state of California. We urge that a full economic analysis of these rules be completed and further urge that the DTSC consider adoption of the proposed changes we have included in these comments in order to mitigate the significant potential burden that these rules will place on our industry.

Thank you for the opportunity to provide our comments on the proposed Safer Consumer Products regulation and we look forward to working with you on coming to an agreement that is both beneficial to public health and safety as well as reasonable for businesses.

Sincerely,



Aaron Lowe
Vice President, Government Affairs
AAIA