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Edmund G. Brown Jr.
Governor

TITLE 22

45-DAY PUBLIC NOTICE AND COMMENT PERIOD

Hazardous Materials: Motor Vehicle Brake Friction Materials

Department Reference Number: R-2014-01

Office of Administrative Law Notice File Number: Z-2016-0329-04

NOTICE IS HEREBY GIVEN that the Department of Toxic Substances Control (DTSC) proposes to adopt California Code of Regulations, Title 22, Division 4.5, Chapter 35, Article 1, sections 66387.1 to 66387.9.

PUBLIC HEARING

DTSC will hold one public hearing on the proposed regulation at the following time and location:

DATE: May 27, 2016
TIME: 8:00 a.m. (PDT)
LOCATION: Sierra Hearing Room
1001 "I" Street
Sacramento, California 95814

At the time and location listed above, any person(s) may present statements or arguments, orally or in writing, relevant to this proposal described in the Informative Digest. The public hearing will convene at 8:00 a.m. PDT and will remain open until 12:00 p.m. PDT, or until no attendees present testimony, whichever occurs first.

Representatives of DTSC will preside at the hearing. DTSC requests persons who wish to speak to please register before the hearing. Pre-hearing registration is conducted at the location of the hearing from 7:30 a.m. PDT until the hearing commences. Registered persons will be heard in the order of their registration. Anyone else wishing to speak at the hearing will have an opportunity after all registered persons have been heard.

All visitors are required to sign in prior to attending any meeting at the Visitor and Environmental Services Center located just inside and to the left of the building's public entrance. Please allow adequate time to sign in and receive a visitor badge before the public hearing begins.

NOTICE PERTAINING TO ACCESSIBILITY & REASONABLE ACCOMMODATION

All documents related to this regulation can be made available in alternate format (*i.e.* Braille, large print, etc.) or in another language, as requested, in accordance with State and Federal law. Further, to ensure the public has equal access to all available services and information, DTSC will provide disability related reasonable accommodations and/or translator/interpreter needs, upon request. For assistance, please contact **Litiana Patino at (916) 324-3095** or Litiana.Patino@dtsc.ca.gov as soon as possible, but no later than 10 business days prior to the scheduled hearing. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

WRITTEN COMMENT PERIOD

Any interested person(s) or their authorized representative(s) may submit written comments relevant to the proposed regulatory action to DTSC in either electronic or hard-copy formats.

Written comments may be submitted electronically through the DTSC regulations email address at regs@dtsc.ca.gov or please direct hard-copy written comments to:

Ms. Jackie Buttle, Regulations Coordinator
Office of Planning & Environmental Analysis
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806
Fax Number: (916) 255-3757

The written comment period will close at 11:59 p.m. PDT on May 23. Only comments received at the DTSC office by that date and time will be considered.

AUTHORITY & REFERENCE

Authority

These regulations are being adopted under the following authorities:

- Health and Safety Code section 58012. This section grants DTSC authority to adopt and enforce rules and regulations to execute its duties. (Added by Governor's Reorganization Plan No. 1, §146, eff. July 17, 1991. See http://www.dtsc.ca.gov/LawsRegsPolicies/upload/OEARA_REG_GRP1.pdf)
- Health and Safety Code section 25250.50(g). This section requires DTSC to develop and approve certification agency requirements.

- Health and Safety Code section 25250.60(a). This section requires DTSC to adopt certification procedures for brake friction materials.
- Health and Safety Code section 25250.60(j). This section requires a certification and mark of proof that is accepted in the all 50 states and United States territories be used to demonstrate compliance with all applicable requirements.

Reference

These regulations implement, interpret, or make specific the following statutes:

- Health and Safety Code section 25250.50(g). This section requires DTSC to develop and approve certification agency requirements.
- Health and Safety Code section 25250.54. This section requires a procedure for the extension process which shall be facilitated by DTSC.
- Health and Safety Code section 25250.60(a). The section requires the certification procedures for brake friction materials to be adopted by the DTSC.
- Health and Safety Code section 25250.60(j). This section requires a certification and mark of proof that is accepted in the all 50 states and United States territories be used to demonstrate compliance with all applicable requirements.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Policy Statement Overview

The governor of California approved Senate Bill 346 on September 10, 2010 and enacted Health and Safety Code (HSC) sections 25250 et seq. The statute, commencing on January 1, 2014, prohibits the sale of any motor vehicle brake friction materials containing specified constituents in amounts that exceed certain concentrations. The statute allows, until December 31, 2023, motor vehicle manufacturers and distributors, wholesalers, or retailers of replacement brake friction materials to deplete their inventory of noncompliant materials. Commencing on January 1, 2021, the statute prohibits motor vehicle brake friction materials containing more than 5.0 % copper by weight from being sold in the state, and, commencing on January 1, 2025, prohibits motor vehicle brake friction materials exceeding 0.5% copper by weight from being sold in the state. DTSC is responsible for implementing this statute.

The statute exempts brake friction materials used for certain motor vehicle classes, such as motorcycles, from its requirements and would exempt from certain prohibitions the sale of vehicles or brake friction materials manufactured prior to certain dates. Manufacturers of vehicle brake friction material are required to screen potential alternatives for copper using the existing Toxics Information Clearinghouse and to use an open source alternatives assessment or a screening analysis to select alternatives to copper that pose less potential hazard to public health and the environment. The vehicle brake friction material manufacturer or importer of record is required to provide DTSC with a summary of the alternatives screening, upon request, and the manner in which the selection of alternatives is informed.

The statute requires all new motor vehicles offered for sale, on and after the specified compliance dates described above, to be equipped with brake friction materials meeting

the requirements of the HSC sections 25250.51, 25250.52, and 25250.53. The statute also requires all vehicle brake friction material manufacturers, on or after those compliance dates, to certify compliance with those requirements and mark proof of certification on all brake friction materials. Manufacturers of vehicle brake friction materials manufacturers are required to file a copy of the certification with a testing certification agency.

Proposed regulation

The proposed regulation would:

Adopt a new Chapter 35, Hazardous materials: motor vehicle brake friction materials, to division 4.5 of Title 22, California Code of Regulations to satisfy the mandates of HSC sections 25250.50(g), 25250.54, 25250.60(a), and 25250.60(j). These sections direct DTSC to develop performance requirements for (1) testing the chemical content of brake friction materials for compliance to HSC sections 25250.51, 25250.52 and 25250.53, (2) marking compliant brake friction materials, (3) reviewing certification procedures used by the testing certification agency, and (4) approving alternative chemical analytical testing methods for brake friction materials for compliance to HSC sections 25250.51, 25250.52 and 25250.53, and (5) approving alternative laboratory accreditation standards for analytical laboratories. The proposed regulation would clarify the process to approve extension requests for the 2025 statutory requirements.

Anticipated Benefits

DTSC estimates the benefits from the proposed regulations are from incorporating key aspects of the current certification and marking system used by the brake friction materials industry. By incorporating these key aspects into the proposed regulations, compliance costs will be low for the regulated industry; California consumers and retailers will more easily identify compliant brake friction materials; and the time to achieve compliance with the statute and the proposed regulations will be reduced. Compliance with the statute and proposed regulations will promote the goal to reduce the amount of copper and other toxic substances released from brakes from entering California's streams, rivers, and marine environment.

Summary of Existing Statutes and Regulations

HSC section 25250.60(a) requires the DTSC to approve certification procedures for brake friction materials. HSC section 25250.50(g) requires the DTSC to develop and approve certification agency requirements. HSC section 25250.54 requires the DTSC to develop steps to clarify the extension process which shall be facilitated by the DTSC.

The statute provides a framework for reducing specific heavy metals and asbestos in brakes, and calls upon the department to work with interested parties to develop compliance criteria including:

- Criteria for self-certification of compliance using a testing certification agency that uses third-party accredited laboratories.
- Requirements relating to a "proof of certification" mark to appear on brake pads.
- Process for approving certification requirements used by the testing certification agency.

- Requirements for the third-party accredited laboratories.
- Process for approving an equivalent laboratory accreditation program or standard.
- Adoption of criteria and procedures to test brake friction materials.
- Process for approving equivalent analytical methods for testing brake friction materials.
- A process for companies to apply for an extension to the January 1, 2025 restriction for copper and its compounds under HSC section 25250.54. The law includes a fee assessed to process the extension application.

Relation to Existing Federal Regulations

DTSC performed an automated search of electronic Code of Federal Regulations that yielded no conflicting federal regulations using the following keywords: “copper and brake and pads”, “lead and brake and pads”, “mercury and brake and pads”, “hexavalent chromium and brake and pads”, “asbestiform fibers and brake and pads”, “asbestos and brake and pads”, “brake and pads”, “braking systems”, “vehicle and brakes and chemical content”.

Several federal regulations were found that specified the safety and performance standards for brakes and braking systems used in various types of transportation systems and industrial systems. Existing federal motor vehicle safety standard regulations (FMVSSR) provide performance-based requirements for braking systems under FMVSSR sections 571.105, 571.121, 571.122, and 571.135.

The Occupational Safety and Health Administration (OSHA) established several regulations that oversee the occupational exposures to asbestos (29 CFR §1910.1001), specific compliance methods for brake and clutch repair (29 CFR § 1910.1001(F)(3)), and sampling and testing methods for asbestos occupational exposure (29 CFR § 1915.1001, Appendix B). The U.S. Environmental Protection Agency promulgated regulations under the National Emission Standards for Hazardous Air Pollutants for new and existing friction materials manufacturing facilities under 40 CFR Part 63, Subpart QQQQQ. These federal rules do not address the chemical composition of the brake friction material and focus either on a safety-based performance standard or on the air-based emissions. Therefore, the proposed regulations will neither duplicate nor conflict with the federal regulations.

Relation to Existing State Regulations

An automated search was conducted via Westlaw that yielded no conflicting state regulations using the following keywords: “brakes”, “brake pads”, “braking systems”, “copper”, “cadmium and brakes”, “lead and brakes”, “mercury and brakes”, hexavalent chromium and brakes”, “asbestiform fibers and brakes”, and “asbestos and brakes”. Several state regulations were found that specified safety and performance standards for brakes and braking systems used in various types of transportation systems and industrial systems. The regulations concerning braking systems and brakes used on motor vehicles are overseen by the California Highway Patrol, Department of Industrial Relations, and Department of Transportation. DTSC also reviewed regulations

regarding the requirements for brake adjusters and brake stations overseen by the Bureau of Automotive Repair.

The proposed regulation is not inconsistent or incompatible with any existing state regulations. The existing regulations focused on safety-based performance standards and best management practices, and not the chemical composition of the brake friction materials.

Incorporated By Reference

The regulation incorporates the following references:

- (1) ILAC-P5:10:2013, "International Laboratory Accreditation Cooperation (ILAC) Multilateral Recognition Arrangement", dated 2013, available from the ILAC Secretariat, PO Box 7507, Silverwater, NSW 2128, Australia.
- (2) ISO/IEC Guide 65:1996, "General requirement for bodies operating product certification systems," dated 1996, available from the International Organization for Standardization (ISO), ISO Central Secretariat, 1, ch. de la Voie-Creuse, CP 56, CH-1211 Geneva 20, Switzerland
- (3) ISO/IEC 17011:2005, "General requirements for accreditation bodies accrediting conformity assessment bodies", dated 2005, available from International Organization for Standardization (ISO), ISO Central Secretariat, 1, ch. de la Voie-Creuse, CP 56, CH-1211 Geneva 20, Switzerland
- (4) ISO/IEC 17025:2005, "General requirements for the competence of testing and calibration laboratories," dated 2005, available from International Organization for Standardization (ISO), ISO Central Secretariat, 1, ch. de la Voie-Creuse, CP 56, CH-1211 Geneva 20, Switzerland
- (5) ISO/IEC 17065:2012, "Conformity assessment -- Requirements for bodies certifying products, processes and services", dated 2012, available from International Organization for Standardization (ISO), ISO Central Secretariat, 1, ch. de la Voie-Creuse, CP 56, CH-1211 Geneva 20, Switzerland
- (6) NELAC Institute Standard, Environmental Laboratory Sector, Volume 1, "Management and Technical Requirements for Laboratories Performing Environmental Analysis," dated 2009, available from The NELAC Institute, P. O. Box 2439, Weatherford, TX 76086;
- (7) SAE J 866:2012, "Friction Coefficient Identification and Environmental Marking System for Brake Linings," dated July 2012, available from the Society of Automotive Engineers (SAE) Customer Service, 400 Commonwealth Drive, Warrendale, PA 15096-0001;
- (8) SAE J 2975:2013, "Measurement of Copper and Other Elements in Brake Friction Materials," dated December 2013, available from the Society of Automotive Engineers (SAE) Customer Service, 400 Commonwealth Drive, Warrendale, PA 15096-0001.

DISCLOSURE REGARDING THE PROPOSED ACTION

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DTSC determined that the proposed changes to these regulations will not impose a local mandate or result in costs subject to reimbursement pursuant to Part 7 of Division

4, commencing with section 17500, of the Government Code or other nondiscretionary costs or savings to local agencies.

COST OR SAVINGS TO STATE OR LOCAL AGENCIES, OR SCHOOL DISTRICTS SUBJECT TO REIMBURSEMENT

DTSC determined that the proposed changes to these regulations will not result in costs or savings for any state or local agency, or school district that is required to be reimbursed pursuant to part 7 of division 4, commencing with section 17500 of the Government Code. The proposed regulation is not anticipated to result in any other nondiscretionary cost or savings imposed on local agencies or any change in federal funding to the state

COST OR SAVINGS IN FEDERAL FUNDING TO THE STATE

DTSC does not anticipate any changes to federal funds which the State of California receives. DTSC does not receive any federal funds for water pollution control.

DETERMINATION OF NO SIGNIFICANT STATEWIDE ECONOMIC IMPACT

DTSC has made an initial determination found through the economic impact assessment that the proposed regulation will not have a significant statewide adverse economic impact directly affecting business, including the ability of California business to compete with businesses in other states.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The statute requires the brake friction material manufacturer to test, mark and certify their brake friction materials comply with the provisions of HSC sections 25250.51, 25250.52 or 25250.53.

DTSC estimates that the economic impact on California businesses, employment, and consumers will be negligible because brake pad manufacturers and new motor vehicle manufacturers have already invested in the third-party testing and third-party testing certification agency in order to comply with the State of Washington's Better Brake Rule and statute. From experience gained through implementation of the State of Washington Better Brake Rule, the consumer's costs for brake pads that are compliant with the chemical restrictions are unchanged.

EFFECT ON SMALL BUSINESSES

The Department of Consumer Affairs, Bureau of Automotive Repair reports 1,448 service and repair stations (providers) are licensed for brake repair work in California as of 2014. These businesses provide "Do It For Me" or "DIFM" aftermarket repair and replacement for worn or damaged brake pads. DTSC anticipates minor additional time - to view the package labeling - but no additional cost to the consumer because "brake jobs" are customarily a flat fee which includes labor and brake pad materials. New original equipment (OE) vehicle sellers typically now include brake pad replacement in on-going service contracts sold along with the new vehicle. These also are a pre-set cost, and paid under the service contract.

The Board of Equalization reports 20,916 permits have been issued to entities selling auto parts, accessories, and tires. This universe includes the subset of retailers selling aftermarket brake pads to the "Do It Yourself" or "DIY" customer. As above, DTSC does not anticipate any price changes (increase or decrease) for the aftermarket brake pads sold at retail.

The proposed regulations will not affect small business because DTSC does not anticipate any price changes (increase or decrease) for the aftermarket brake pads sold at retail or purchased by small businesses in California.

EFFECT ON HOUSING COSTS

DTSC determined that the proposed changes to the regulations will not impact housing costs.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

DTSC has conducted an economic impact assessment, as required by Government Code section 11346.3, and found that no businesses or jobs will be created, expanded, or eliminated in California as a result of the proposed regulation. The rulemaking does, however, aim to reduce the amount of copper pollution, which helps to protect public health and the environment.

DTSC estimates that the economic impact on California businesses, employment, and consumers will be negligible because brake pad manufacturers and new motor vehicle manufacturers have already invested in the third-party testing and third-party testing certification agency in order to comply with the State of Washington's Better Brake Rule and statute. While brake pad manufacturers have complied with the statutory and administrative requirements under the State of Washington's Better Brake Rule, no cost increases appear to have been passed along to consumers-in the original equipment or aftermarket sectors.

CONSIDERATION OF ALTERNATIVES

Prior to rulemaking, DTSC vetted the proposed regulation language in June 2014 and October 2014 to solicit comments from the public. As part of the June 2014 comment period, DTSC held five (5) workshops to solicit comments on the proposed regulation language. The comments received focused on differences in the exemptions listed the California and the State of Washington laws, sell-through timelines, reciprocity agreement between California and the State of Washington, retroactive application of the regulations, exclusion of the date of publication on standards cited in the reference section, and harmonization of the product marking and package labeling.

DTSC issued revised proposed language for public comment in October 2014. The second round of comments focused on mainly editorial issues but also included comments on accreditation of the testing certification agency, availability of information on the testing certification agency, certified analytical laboratories, and alternative test method requests. For both sets of comments, DTSC addressed comments in a document that was posted on the DTSC website. DTSC also notified subscribers on

the DTSC Brake Pad eList, workshop participants, and members of the Society of Automotive Engineers (SAE) Brake Materials Environmental Task Force via electronic mail about the documents and where they could be obtained.

A detailed discussion of the proposed regulations is presented in the Initial Statement of Reasons for statute entitled Hazardous Materials: Motor Vehicle Brake Friction Materials.

Per Government Code section 11346.5(a)(13), DTSC must determine that no reasonable alternatives considered or that have otherwise been identified and brought to our attention would be more effective in carrying out the purpose for which the action is proposed; would be as effective and less burdensome to affected private persons than the proposed action; or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

OTHER APPLICABLE REQUIREMENTS PRESCRIBED BY STATUTE

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

DTSC has found this rulemaking to be an exempt General Rule (CEQA Guidelines, § 15061(b)(3)) under the California Environmental Quality Act (Public Resources Code section 21000, et seq.). This rulemaking meets the statutory exemption available under subdivision (b)(8) of Public Resources Code section 21080. A draft Notice of Exemption is available for review with the rulemaking file and will be filed with the State Clearinghouse when the regulations are adopted.

CONTACTS

Inquiries regarding technical aspects of the proposed regulation or CEQA documents may be directed to Suzanne Davis of DTSC at (916) 327-4206; or Evelia Rodriguez at (916) 327-6104. If unavailable, contact Tony Luan of DTSC at (916) 322-5244. However, such oral inquiries are not part of the rulemaking record.

A 45-day public comment period for this rulemaking file, as described above, will commence on April 8, 2016 and close on May 23, 2016 at 11:59 p.m. PDT. During this time, DTSC will accept statements, arguments, or contentions and/or supporting documents regarding this rulemaking that must be submitted in writing, or may be presented orally or in writing at the public hearing. Comments must be received by the deadline in order for them to be considered before DTSC adopts, amends, or repeals these regulations.

AVAILABILITY OF TEXT OF PROPOSED REGULATIONS and INITIAL STATEMENT OF REASONS

Copies of the Notice, Initial Statement of Reasons, the text of the proposed regulations, all the information upon which its proposal is based, and the express terms of the proposed regulation are posted to DTSC's Internet site at:

<http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/index.cfm> or may be obtained from

Jackie Buttle of DTSC's Office of Planning and Environmental Analysis, as specified below.

After the close of the comment period, DTSC may adopt the proposed regulation. If substantial changes are made, the modified full text will be made available for comment for at least 15 days prior to adoption. Only persons who request the specific proposed regulation, attend the hearing, or provide written comments on this specific regulation will be sent a copy of the modified text if substantive changes are made.

Once the regulation has been adopted, DTSC prepares a Final Statement of Reasons which updates the Initial Statement of Reasons, summarizes how DTSC addressed comments, and includes other materials required by Government Code section 11346.9. Copies of the Final Statement of Reasons may be obtained from Jackie Buttle at the address listed below. A copy of the Final Statement of Reasons along with the date the rulemaking is filed with the Secretary of State and the effective date of the regulation will also be posted on DTSC's Internet site at: <http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/index.cfm>

To be included in this regulation package's mailing list and to receive updates of this rulemaking, please visit <http://www.dtsc.ca.gov/ContactDTSC/ELists.cfm> and subscribe to the applicable eList, or e-mail: regs@dtsc.ca.gov.

Please direct all written comments, procedural inquiries, and requests for documents by mail, e-mail, or fax to:

Ms. Jackie Buttle
Regulations Coordinator
Office of Planning and Environmental Analysis
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

E-mail address: regs@dtsc.ca.gov

Fax number: (916) 255-3757

Phone number: (916) 255-3730

If Ms. Buttle is unavailable, please call Ms. Evelia Rodriguez at (916) 327-6104.