



July 15, 2024

Dr. Meredith Williams, Director
Department of Toxic Substances Control
California Environmental Protection Agency
P.O. Box 806, Sacramento, CA
95812-0806

Re: Department of Toxic Substances (DTSC) Stakeholder Discussion Draft: Three Year Priority Product Work Plan (2024-2026)

Dear Dr. Williams:

The Alliance for Automotive Innovation¹ (Auto Innovators) appreciates the opportunity to provide comments on DTSC's Stakeholder Discussion Draft: Three Year Priority Product Work Plan 2024-2026) (hereafter "Draft Work Plan").² The Draft Work Plan identifies categories of consumer products that DTSC plans to evaluate, with the goal of identifying Priority Products for potential regulation during the next three years (2024-2026).

Auto Innovators represents the auto manufacturing sector, including automakers that produce and sell around 95% of the new light-duty vehicles in the United States. Our mission is to work with policymakers to realize a future of cleaner, safer, and smarter personal transportation and to work together on policies that further these goals, increase U.S. competitiveness, and ensure sustainable, well-paying jobs for citizens throughout the country. It is in this spirit that we offer the following comments and recommendations.

Our comments provide an overview on the functioning of the automotive industry and supply chain; respond to two significant policy directions signaled in the Draft Work Plan; and finally, answer the specific questions asked by DTSC.

I. Basic Information on the Automotive Industry

Auto Innovators would like to provide DTSC with basic information on the automotive industry for the agency's consideration in determining whether the scope of the Safer Consumer Products program should be expanded to cover "Motor Vehicle Parts, Accessories, Maintenance, and Repair Materials."

Automobiles are complex durable goods, consumer products meant to last for years if not decades. They are made of many assemblies and sub-assemblies, composed of as many as 30,000 parts at their lowest component level. The automotive industry also has a complex and global supply chain,

¹ From the manufacturers producing most vehicles sold in the U.S. to autonomous vehicle innovators to equipment suppliers, battery producers and semiconductor makers – Alliance for Automotive Innovation represents the full auto industry, a sector supporting 10 million American jobs and five percent of the economy. Active in Washington, D.C. and all 50 states, the association is committed to a cleaner, safer, and smarter personal transportation future. www.autosinnovate.org

² Available at https://dtsc.ca.gov/wp-content/uploads/sites/31/2024/05/Stakeholder-Discussion-Draft-2024-2026-PPWP-Accessible.pdf?utm_source=hs_email&utm_medium=email&hsenc=p2ANqtz-qEI87QzGg2t6.

with as many as ten tiers of suppliers; sometimes, a decision on a component's chemical constitution is made several levels down the supply chain.

Automobiles must meet a number of different performance standards as well, including fuel economy and safety regulations promulgated by the National Highway Traffic Safety Administration, greenhouse gas emissions standards issued by the Environmental Protection Agency, and emissions regulations of the California Air Resources Board. Various chemistries and component parts are essential to meeting these varied standards, and are already regulated in vehicles under the Toxic Substances Control Act.

Vehicles are on long development timelines; development and production begin five or more years before a vehicle is actually finished and sold. In addition, vehicle models are manufactured for at least a few years with only minor changes and adjustments before undergoing a "major redesign" during which vehicle systems and body styles are more substantially overhauled. These facts make instituting a vehicle part or chemistry change more difficult.

In order for vehicles to last as long as they do, the automotive industry must also support a robust service, maintenance, and replacement parts market. Service and replacement parts must be compatible with the original build of the car and continue to enable it to meet the above-mentioned standards in use. Often service and replacement parts are manufactured at the same time as the original vehicle and its parts are manufactured, and then are held in storage for months or even years until the part is pulled for use. Additionally, the FAST Act extended to 15 years the requirement that automobile manufacturers be prepared to remedy defective and noncompliant vehicles,³ which effectively means having on hand compatible replacement parts.

All of these above-mentioned elements—complex products and supply chains, performance standards the vehicles must meet, long vehicle development timelines, and the need for compliant parts for service—substantially complicate any efforts toward regulating the chemical composition of vehicles and vehicle parts.

A final additional note is that there are a number of chemical regulatory programs already in place that address some of DTSC's chemical concerns in vehicle parts. Under the federal Toxic Substances Control Act, EPA is in the process of regulating vinyl chloride; asbestos; and certain flame retardants such as decaBDE, HBCD, tris, and others; all of which are mentioned in the Draft Work Plan. DTSC also mentions lead in brake materials, but California already has brake pad legislation and an implementing program to address chemicals of concern like copper, heavy metals such as lead, and asbestos in brake materials—administered by DTSC.⁴ The agency should be mindful of these additional programs in deciding whether to include "Motor Vehicle Parts, Accessories, Maintenance, and Repair Materials" in the Safer Consumer Products program, and should not include Priority Products or Candidate Chemicals that are already regulated.

³ P.L. 114-94 (2015).

⁴ *Brake Pad Legislation*, California Department of Toxic Substances Control, <https://dtsc.ca.gov/scp/brake-pad-legislation/>.

II. Significant Policy Directions

Auto Innovators has identified two major significant policy directions that DTSC is proposing in this Draft Work Plan. First, it is considering including components of complex durable goods as Priority Products. Second, DTSC is developing direct regulatory responses that rely solely on publicly available studies or existing evaluations of alternatives.

1. Including Components of Complex Durable Goods as Priority Products

DTSC's proposal to expand the scope of the Safer Consumer Products program to cover "Motor Vehicle Parts, Accessories, Maintenance, and Repair Materials" appears to be one of the first times that parts and components of complex durable goods have been added as a separate product category. It is critical that DTSC have an in-depth understanding of the complexities and challenges posed to both regulatory agencies and the regulated community when regulating products intended to manufacture, service or repair complex durable goods such as motor vehicles.

Complex durable goods are composed of hundreds or even thousands of components, which themselves may be composed of many other components. For example, a side mirror may contain over 30 parts. The whole mirror may be imported as an article or the component parts may be purchased (some domestically, some imported) and the mirror assembled "in house."



Complex durable goods and the components and parts used in their manufacture and production can require as many as 10 years of design, research and development, testing and validation. The timeframe is dependent on the availability of chemical substitutes that have comparable functionality. Changes in design and/or chemical composition of any individual component or part affect each phase of the product lifecycle and the interdependency of each part or component with other parts and components require substantial lead-time. Mandating changes in one component or part may well require redesign and development of multiple other interdependent parts. Further, changes in design and/or chemical composition often require prior regulatory approval from other state and federal agencies. The timelines for such prior regulatory approvals are unpredictable, and potentially unattainable. DTSC needs to consider these realities as it decides whether to include components of complex durable goods as Priority Products.

Specific concerns for the potential consideration of automotive parts, accessories, and repair materials are addressed under Question 7.

2. Developing Direct Regulatory Responses that Rely Solely on Publicly Available Studies or Existing Evaluations of Alternatives

Auto Innovators is very concerned about the unintended consequences that could flow from a "rush to judgement" approach if DTSC decides to utilize the authority granted in SB 502 and proceed directly to regulation of any specific candidate chemical– priority product combination. DTSC indicated in the Draft Work Plan that it will "actively explore opportunities to use this new authority

during the 2024-2026 Work Plan cycle, in consultation with stakeholders (including industry experts, non-governmental organizations, and government agencies).”

We recognize that SB 502 “authorize[s] the department, in lieu of requiring the analysis of alternatives, following public notice and an opportunity for public comment, to instead rely on all or part of one or more applicable publicly available studies or evaluations of alternatives to the chemical of concern under consideration in a consumer product, in existence at the time of consideration, and to proceed directly to a regulatory response, as provided.”⁵ However, DTSC should first engage with all stakeholders on the development of a detailed process, including specific criteria, that it will follow prior to moving forward with any regulatory risk management requirements under that SB 502 authority.

Auto Innovators further recommends that DTSC take the time necessary to fully assess and seek input on the criteria and circumstances under which the new authority granted in SB 502 would be used. The authority to move to a direct regulatory response should be used with caution and only under extreme circumstances where such an approach may be warranted. It should not be used merely as a cost savings approach for DTSC but rather only when criteria that DTSC has established through consultation and rulemaking. We recommend that DTSC adhere to the approach stated in the draft plan:

Future Priority Products from the product categories in this Work Plan will only be identified after robust scientific review and consultation with a wide range of stakeholders, including industry experts, academic researchers, government agencies, and nongovernmental organizations. Multiple iterations of research and stakeholder engagement may be necessary to properly identify and define products in advance of rulemaking. We will continue to seek and welcome input from a wide variety of sources. Engagement with all stakeholders has been, and will continue to be, critical for us to successfully implement our Work Plans.⁶

Further, while SB 502 provides an outline of the approach that DTSC may adopt,⁷ SB 502 relies on DTSC to fill in the blanks with respect to the criteria and circumstances under which this direct regulatory response will be applied. For example, does DTSC interpret this authority to allow the agency to issue a direct final rule, or does it envision a proposal, comment period, and then a final rule? In the absence of such publicly available criteria, DTSC may encounter concerns about lack of transparency and arbitrary and capricious decision-making.

Auto Innovators also has concerns about the current definition of “reliable information” cited in SB 502.⁸ Under DTSC’s current process, stakeholders have a number of opportunities to question the information DTSC uses to support its selection of Priority Products and/or Candidate Chemicals and any subsequent rulemaking. If DTSC adopts the direct regulatory response approach, those opportunities will be significantly limited if not totally absent.

⁵ See Legislative Counsel’s Digest for SB 502, *available* at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB502.

⁶ Draft Work Plan at 30.

⁷ Cal. Health & Safety Code § 25253(d).

⁸ Found at 22 CCR § 69501.1(a)(57).

The current definition of “reliable information” is overly broad and provides no guidance as to the age of the studies, the findings of the peer review, or the current state of the science that may be emerging but not yet captured. While that definition may be adequate for the regulatory approach that DTSC has been using, it must be further detailed and qualified for any direct regulatory response approach.

III. DTSC Questions for Commenters

1. Are there product categories that SCP should consider adding, modifying, or removing from the Work Plan? If so, why?

Yes. Auto Innovators recommends that DTSC remove from consideration the potential new category “Motor Vehicle Parts, Accessories, Maintenance, and Repair Materials” and instead keep the scope regarding automotive parts restricted to zinc and 6PPD in motor vehicle tires. Reasons why are further discussed in our answer to Question 7 below.

Additionally, DTSC should remove the two new proposed categories of Paints (carved out of the Building Products and Materials Used in Construction and Renovation category) and Products that Contain or Generate Microplastics. Please see discussion in our answers to Questions 4 and 5.

2. Are there policy priorities that SCP should consider adding, modifying, or removing from the Work Plan? If so, why?

No comments.

3. This Work Plan highlights environmental justice as an SCP priority over the coming three years. How can SCP effectively identify and prioritize consumer products in our Work Plan categories that may have disproportionate impacts on certain communities?

No comments.

4. SCP proposes adding a new Paints category to the Work Plan.
 - a. Is the proposed definition and scope of this product category appropriate?
 - b. Are there any specific products in this category that SCP should prioritize in its evaluation?

Auto Innovators finds that the scope of this category is overly broad, and suggests that it should be narrowed to exclude products and uses where exposure potential is negligible and where current federal regulations provide adequate risk management controls. The following excerpt from the Draft Work Plan should be modified to exclude such uses:

Due to the large market presence and widespread use of paints, there may be potential for exposures to the Candidate Chemicals they contain, and for those exposures to cause or contribute to significant and widespread adverse impacts to workers, children, the general public, and aquatic and terrestrial organisms.⁹

⁹ Draft Work Plan at 18.

Auto Innovators further reminds DTSC that the Safer Consumer Products program should be focused on products sold to and used by consumers, and should not include paints and painting processes undertaken by businesses or as part of auto manufacturing.

Differentiation between Original Equipment Manufacturer (OEM) and Refinishing Facilities

When evaluating the Paints category with respect to the automotive sector, DTSC must differentiate between Original Equipment Manufacturing (OEM) facilities and other types of painting and refinishing operations. In August 2019, EPA staff toured a Toyota OEM manufacturing facility. Auto Innovators recommends that DTSC reach out to EPA staff to hear firsthand how OEM facilities employ the industrial hygiene hierarchy to eliminate and/or mitigate exposure potential to the maximum extent possible.

At OEM facilities, the vast majority of coating and painting takes place within special cabins and through the use of robots in order to reduce worker exposures. As can be seen from the video, robotic sprayers are employed throughout the process in a contained and dedicated space; this dedicated space is particularly important to prevent dust, debris, or other materials from adhering to the painted vehicle. Thus, application of paints and coating in an OEM facility results in very little opportunity for worker exposure. In the event that a worker may need to “cut in” during the process, i.e., if a flaw is noticed or there is an equipment issue, negative pressure respirators with organic particulate cartridges, powered air purifying respirators, or disposable filtering facepiece respirators are used.

As DTSC has noted, any residual chemical(s) evaporate rapidly, further reducing any exposure potential. “The volatile components of liquid paint evaporate after application as the film dries, while the binder adheres the pigment in the dry film to the surface (IARC 2012).”¹⁰

Federal Regulations Provide Stringent Exposure Controls for Industrial Painting Processes

There are numerous federal regulations governing paints and their application, including National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources¹¹ and numerous Occupational Safety & Health Administration regulations. There are also industry standards, like the National Fire Protection Association’s Standard 33 for Spray Application Using Flammable or Combustible Materials. OEMs typically meet or exceed all of the mandated controls.

For the above reasons we believe that this category should be narrowed, and automotive OEM facilities excluded as an area of interest.

5. SCP proposes adding a new Products that Contain or Generate Microplastics Category to the Work Plan.
 - a. Is the scope of this product category appropriate?
 - b. Are there any specific products in this category that SCP should prioritize in its evaluation?

¹⁰ Draft Work Plan at 17.

¹¹ 40 C.F.R. Part 63, Subpart HHHHHH.

Auto Innovators finds that the scope of the “Products that Contain or Generate Microplastics Category” is not appropriate.

Microplastics do not meet the regulatory definition of a “chemical”¹² because microplastics do not have a “particular molecular identity,” nor do they seem to fit the idea of a “chemical ingredient.” Instead, microplastics exhibit diverse molecular identities, reflecting the variety of plastic materials present in the environment. Additionally, the Safer Consumer Products regulations define a “candidate chemical” as a chemical that exhibits “one or more hazard traits and/or environmental or toxicological endpoints.”¹³ Microplastics and secondary microplastics do not appear to meet that definition. For example, if DTSC’s goal in implementing the Safer Consumer Products program is to identify products that contain potentially harmful chemicals and to evaluate potential safer alternatives to those chemicals, listing secondary microplastics will not further that goal. Because secondary microplastics are formed during the use of a plastic polymer article or at its end of life, they are not used in a product and thus a safer alternative to them cannot be assessed. In proposing this category DTSC appears to have strayed from its primary mission to identify and to regulate, if appropriate, candidate chemicals.

For this reason, we believe that it is premature to add this category to DTSC’s work plan. At a minimum, this category should be restricted to products that contain microplastics, and products that generate microplastics—which is essentially any plastic product—should be excluded.

6. SCP proposes expanding the scope of the Food Packaging Category to match the definition of the U.S. Food and Drug Administration’s (FDA) of Food Contact Articles. This includes all products that are intended to be used with food or come into contact with food at any stage of a food product’s lifecycle.
 - a. Is the proposed new definition adequate?
 - b. If not, how might SCP revise the definition to provide further clarity?
 - c. Are there specific products in this category that SCP should consider evaluating?

No comments.

7. SCP previously evaluated and listed zinc and 6PPD in motor vehicle tires as Priority Products and proposes expanding the scope of this category to include Motor Vehicle Parts, Accessories, Maintenance and Repair Materials.
 - a. Are there any additional chemicals in motor vehicle tires that SCP should consider evaluating?
 - b. Are there additional chemicals or products in this expanded category that SCP should consider evaluating?

Auto Innovators strongly recommends that DTSC remove from consideration the potential new category “Motor Vehicle Parts, Accessories, Maintenance, and Repair Materials” and instead keep the scope restricted to zinc and 6PPD in motor vehicle tires.

As discussed further above, complex durable goods and their component parts face particular challenges when it comes to regulation. Before adding such products as Priority Products, DTSC

¹² 22 CCR § 69501.1(a)(20)(A).

¹³ 22 CCR § 69502.2(b).

must fully understand the complexities of those sectors and the unique characteristics and challenges that are inherent in such an approach. Motor vehicles are exceptionally complex products with complicated supply chains and lengthy design timelines, and they also are required to meet a number of state and federal regulations; chemicals often serve a critical role in enabling the vehicles to meet those standards.

Auto Innovators expects that if DTSC were to make “Motor Vehicle Parts, Accessories, Maintenance and Repair Materials” a Priority Product classification, the grouping would include a sizeable share of replacement parts. Replacement parts are typically manufactured at the same time as the new vehicle and are placed in inventory to be available when consumers need to repair or maintain their vehicles in safe working order. While the regulatory definition of consumer product would exempt any replacement parts manufactured prior to the listing of a Priority Product,¹⁴ replacement parts manufactured after that date would need to comply with whatever requirements DTSC may issue. In that circumstance, Auto Innovators would request allowance for replace-as-produced parts. In addition, changes in design of the part may not be able to be retrofitted to the current vehicle in many cases. These realities would potentially necessitate a unique and separate inventory of parts manufactured solely for California consumers, which would be highly unlikely and instead would probably result in interruptions to the availability of newly manufactured replacement parts in California.

It would be helpful to the regulated community if DTSC would provide some clarity by defining each element of this proposed product category—what constitutes a vehicle part, accessory, or maintenance and repair material. Auto Innovators is concerned about how this potential category may impact remanufactured vehicle parts, or used or recycled parts—a critical example is the reuse, repurpose, or recycling of electric vehicle or hybrid electric vehicle traction batteries.

DTSC should also consider the negligible exposure associated with individual automotive parts and accessories. While chemicals are used in the manufacture of automotive parts and accessories, those same chemicals are usually bound up in the part itself, or for example, in the case of solvents, have evaporated and are no longer present as a source of exposure.

8. Health and Safety Code section 25253.9 (Chapter 701, Statutes of 2022 (SB 502)) provides DTSC with new, enforceable authority to request certain information from consumer product manufacturers.
 - a. Based on the consumer product categories under consideration for our 2024-2026 Work Plan, do you have suggestions for information we should request from product manufacturers?
 - b. If so, what information and why?

Auto Innovators recommends that DTSC adopt a “known or reasonably ascertainable” standard for any data call-in from manufacturers that the agency considers necessary. Manufacturers of products subject to the notification requirement should be able to rely solely on documents or information

¹⁴ “‘Consumer product’ or ‘Product’ does not mean a product that ceased to be manufactured prior to the date the product is listed as a Priority Product.” Additionally, “‘Consumer product’ or ‘Product’ does not mean a product previously owned or leased by someone other than the manufacturer, importer, distributor, assembler, or retailer of the product.” 22 CCR § 69501.1(a)(24).

provided by suppliers and the supply chain in order to determine whether such products contain any subject chemicals. If a supplier informs the manufacturer that the components, parts, or other elements they purchase that are incorporated into their end products do not contain the subject chemical, the manufacturer should be able to rely on that information in the absence of contrary evidence. The notification requirement should make clear that a manufacturer's inquiry regarding chemical content with respect to any supplier ends with the existing information provided to manufacturers by suppliers for parts, components, etc. More extensive information submission requirements could impose significant costs on responding industries.

9. Are there existing alternatives assessments or other publicly available information that the SCP Program should use to substitute for the Alternatives Analysis step and proceed directly to regulatory response using the authority in Health and Safety Code section 25253.(d) (Chapter 701, Statutes of 2022 (SB 502))?

Please see our discussion above regarding DTSC's utilization of its authority granted under SB 502.

IV. Conclusion

In closing, we appreciate the opportunity to provide input to DTSC on the Draft Work Plan. As our comments indicate, DTSC should further consider how it approaches including complex durable goods and the parts and accessories used to manufacture and service those goods. Auto Innovators is also concerned about the potential addition of Paints and Products Generating Microplastics as new Priority Product categories. Most critically, we recommend that DTSC not expand the category on zinc and 6PPD in tires to include "Motor Vehicle Parts, Accessories, Maintenance and Repair Materials" not only because concerns of chemical content in vehicles are already otherwise addressed but also because regulating the chemical content of vehicle parts is a complex and arduous undertaking that should not be endeavored in such a sweeping manner.

Please feel free to reach out to me for any additional information or clarification of these comments.

Sincerely,



Catherine Palin
Senior Attorney & Director of Environmental Policy
Alliance for Automotive Innovation