

May 23, 2016

Ms. Jackie Butler, Regulations Coordinator  
Office of Planning and Environmental Analysis  
Department of Toxic Substances Control  
P.O. Box 806  
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*Sent Electronically to: [regs@dtsc.ca.gov](mailto:regs@dtsc.ca.gov)*

**SUBJECT:** Comments on California Motor Vehicle Brake Friction Material Draft Regulations

Dear Ms. Butler:

We are writing on behalf of the members of the Association of Global Automakers, Inc.<sup>1</sup> (“Global Automakers”) and the Alliance of Automobile Manufacturers<sup>2</sup> (“Auto Alliance”), which include nearly every company selling new motor vehicles in the United States. We appreciate the opportunity to provide the following comments on the California Motor Vehicle Brake Friction Material Draft Regulations<sup>3</sup> (“draft regulations” or “regulation”) for the Brake Friction Material Law<sup>4</sup> (“California statute” or “statute”).

## **OVERVIEW**

On April 8, 2016, the Department of Toxic Substance Control (“DTSC”) proposed to adopt California Code of Regulations, Title 22, Chapter 35. These draft regulations propose performance requirements for (1) testing the chemical content of brake friction materials, (2) marking compliant brake friction materials, (3) reviewing certification procedures used by the testing certification agency, (4) approving alternative chemical analytical testing methods for brake friction materials, and (5) approving alternative laboratory accreditation standards for analytical laboratories. The proposed regulation would also clarify the process to approve extension requests for the year 2025 statutory requirements.

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<sup>1</sup> Global Automakers’ members include Aston Martin, Ferrari, Honda, Hyundai, Isuzu, Kia, Maserati, McLaren, Nissan, Subaru, Suzuki, and Toyota. Please visit [www.globalautomakers.org](http://www.globalautomakers.org) for further information.

<sup>2</sup> 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](http://www.autoalliance.org) for further information.

<sup>3</sup> California Code of Regulations, Title 22, Chapter 35.

<sup>4</sup> Health and Safety Code §§ 25250.50 et. seq.

## **CONCERNS**

We thank DTSC for addressing a number of concerns that we raised with earlier drafts of the regulations. We appreciate DTSC's willingness to include language that clarifies that the "mark of proof of certification" is a two-part marking system that is harmonized with the Washington State requirements. We also appreciate that DTSC has removed the confusing edge code terminology from the definitions and the regulatory text.

Based on our review of this current proposal that provides the performance requirements necessary to comply with the Brake Friction Material Law, we have a number of concerns. These concerns are driven by the need to ensure that these regulations are developed and implemented in a manner that allows for clarity for the consumer and provides a consistent approach for the automotive sector as we strive to comply with similar regulations in Washington State and the voluntary agreements reflected in the U.S. Environmental Protection Agency's ("EPA") Memorandum of Understanding ("MOU")<sup>5</sup>. Our concerns focus on the following:

1. Maximizing Harmonization with Washington State Requirements
2. Testing Requirements and Record Keeping Requirements

### ***1. Maximizing Harmonization with Washington State Requirements***

We continue to have concerns about unnecessary regulatory burdens resulting from a lack of harmonization between the Washington and California programs. We understand that DTSC believes it lacks the authority under the current California statute to provide reciprocity in the regulations. However, there are additional areas where harmonization is not only essential, but specifically directed by the statute. Lack of harmonization in some key areas between the two programs creates a near-impossible compliance regime for brake manufacturers and automakers and will create confusion for end users.

***Exemption Markings:*** In its "Response to Comment" document,<sup>6</sup> DTSC clarified that brake friction material marked with Washington State's mandatory exemption markings ("WX" or "X") will be acceptable if the markings are "used in an *optional field* [emphasis added] of the format specified under SAE J866:2012 *or on another location* [emphasis added] on the brake pads."<sup>7</sup> The "Response to Comment" document is not a binding record so for compliance predictability it is imperative that DTSC affirmatively state that it does not prohibit the use of these markings in its final regulations. The statute 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

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<sup>5</sup> Memorandum of Understanding on Copper Mitigation in Watersheds and Waterways, 2015. <https://www.epa.gov/npdes/copper-free-brake-initiative>.

<sup>6</sup> DTSC Response to Comments on the Informal Draft Regulations: October 3, 2014.

<sup>7</sup> *Id.*

requirements.<sup>8</sup> Therefore, it is consistent with the statute to include the following statement in the final regulations:

*Exemption markings required by Washington State or any other state are not prohibited from use and may be shown in an optional field of the format specified under SAE J866:2012 or on another location on the brake friction material.*

**Leaf Mark™:** We also request that DTSC include language in this rulemaking that speaks directly to the Leaf Mark™ for packaging compliant brake friction materials. While the Initial Statement of Reasons (“ISOR”) addresses this issue in § 66387.7(a), we believe that to further the harmonization with Washington State and to codify AASA’s Leafmark™ as acceptable on packaging, clear and specific language is necessary. As with our earlier comment on the exemption markings, we believe that this would be consistent with the statute.

## **2. Testing Requirements and Record Keeping Requirements**

The proposed regulations do not address the issues of whether and how testing performed prior to these new requirements can be used to satisfy the certification requirements. If a manufacturer had their brake friction material tested for Washington State compliance, DTSC should honor the results of that testing. Having to perform duplicative testing is costly and onerous, with little to no benefits because constituent levels have already been quantified. We also believe that the requirement for testing to be done in triplicate due to “margin of error” in the test method is unduly burdensome and costly. If the testing method is flawed or inaccurate, DTSC should identify and require a better approach.

Furthermore, maintaining records for 10 years is overly burdensome and does not align with most federal and state environmental recordkeeping requirements. We urge DTSC to reduce the record retention requirements to something more consistent with federal recordkeeping requirements.

## **CONCLUSION**

We appreciate that DTSC is working diligently to make these regulations workable and effective. Many of the recommended changes that DTSC has incorporated have moved the regulations in that direction, however, there are additional changes that would further facilitate ease of adoption and compliance that would be wholly consistent with the authorizing statute. Maximizing harmonization with Washington State’s mandates is critical.

We thank you for considering our comments; we look forward to additional opportunities to comment on the regulations. We would welcome the opportunity to discuss these issues with you

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<sup>8</sup> Article 13.5 Sec 25250.60(j).

via teleconference. 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.

Best Regards,



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