

June 30, 2016

Ms. Suzanne Davis
Safer Products and Workplace Program
Office of Planning and Environmental Analysis
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806

Sent Electronically to: brakepads@dtsc.ca.gov

SUBJECT: Comments on Chapter 35. California Brake Friction Material Requirements

Dear Ms. Davis:

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 motor vehicles in the United States. We appreciate the opportunity to provide the following comments on the proposal for Brake Friction Material Requirements.

OVERVIEW

On April 8, 2016, DTSC proposed to adopt California Code of Regulations, Title 22, Chapter 35. These regulations proposed 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 also clarified the process to approve extension requests for the 2025 statutory requirements. On June 16, 2016, DTSC issued revised regulations and requested comment on the changes reflected in this most recent version.

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 Group, FCA US, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche Cars North America, Toyota, Volkswagen Group of America, and Volvo Cars of North America. For additional information, please visit www.autoalliance.org.

CONCERNS

We would like to thank DTSC for addressing one of the concerns that we raised with the April 8, 2016 draft regulations for the Brake Friction Material Law. We appreciate DTSC's willingness to include language in the regulations clarifying 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 of the format specified under SAE J866:2012 or on another location on the brake pads. The inclusion of this regulatory clarification will provide a higher degree of compliance certainty for the regulated community.

We continue to have serious concerns about a number of issues, which we have raised in all of our previous comments. Our primary concern is the need for these regulations to parallel the Washington State Better Brakes regulations as closely as possible to avoid unnecessary duplication of effort that has no environmental benefit. This approach allows for clarity for the consumer, while providing a consistent approach for the automotive sector. Our concerns focus on the following:

1. Acceptability of the Automotive Aftermarket Suppliers Association's LeafMark™ designation for package identification for compliant brake friction materials; and
2. Testing Requirements and Record Keeping Requirements

1. Leaf Mark™ Acceptability

In our comments submitted on May 23, 2016, we requested that DTSC include language in its rulemaking that speaks directly to the LeafMark™ designation for packaging compliant brake friction materials. We understand that in the absence of a regulation stating otherwise, the use of the LeafMark™ is acceptable. However, from a compliance standpoint, we urge DTSC to explicitly state in the regulations that it is acceptable to use the LeafMark™. Without this language, our members face compliance uncertainty if they opt to provide the Automotive Aftermarket Suppliers Association's LeafMark™ on packaging.

As with our earlier comment on the exemption markings, which DTSC addressed, this clarification would be consistent with the statute. While the Initial Statement of Reasons (ISOR) addresses this issue in Section 66387.7(a), clear and specific language in the rulemaking is necessary to provide certainty that California finds the LeafMark™ acceptable.

We also urge DTSC to provide language in the FSOR explaining that DTSC's regulation does not require the LeafMark™. DTSC should make it clear that while use of LeafMark™ designation is not required, California encourages its use.

2. Testing Requirements and Record Keeping Requirements

We would like to restate the request from our previous comments submitted to the DTSC on May 23, 2016 regarding testing requirements. The proposed regulations do not address the issue of whether and how testing performed prior to these new requirements can be used to satisfy the certification requirements. It is important that DTSC add affirmative language to this regulation indicating that testing and certification previously performed in accordance with Washington state requirements will be acceptable in California. It is crucial that manufacturers have the certainty that testing, certification and marking performed in good faith prior to California adopting these regulations will continue to provide a shield from non-compliance.

Having to perform duplicative testing for two different states is costly and onerous and would restrict the free-flow of merchandise between states while adding no environmental benefit. If the testing method is flawed or inaccurate, DTSC should identify those problems and require a better approach. We request that DTSC address this issue in the regulations or at a minimum in the FSOR.

In addition, we have noted that in Section 66387 and throughout, the SAE testing standard referenced by this proposal (SAE J2975:DEC2013) appears to be a different version than the one referenced in the Washington State Better Brakes regulation (SAE J2975:2011). As stated above, it is our utmost concern that the California and Washington regulations align so that testing and certification can be performed that will satisfy the requirements of both states. We urge DTSC to either adopt the same version of the standard as Washington (SAE J2975:2011) or to indicate in the regulation that testing performed according to the version specified by Washington will be acceptable in California as well. While important for all brake pads, this is an urgent matter so that brake friction materials already tested to meet Washington requirements will be acceptable to California as well.

Similarly, in Section 66387.3, DTSC states that testing results will be posted on the “testing certification agency” website. In Section 66387.1 (o) “Testing certification agency” is defined as a “third-party testing certification agency.” That section goes on to state that “[t]he term ‘registrar’ is used by the industry when referring to this entity.” Meanwhile, in WAC 173-901-040(5), Washington refers to an “industry-sponsored registrar.” We urge DTSC to clarify that these terms are interchangeable.

CONCLUSION

We thank you for considering our comments. We continue to raise these issues because they are critical for a clear and workable regulation. 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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