

**Motor & Equipment Manufacturers Association**

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Ms. Suzanne Davis  
Department of Toxic Substances Control  
P.O. Box 806 Mail Station/Code: SPWP/MS 12A  
Sacramento, CA 95812-0806

*Via E-mail: [brakepad@dtsc.ca.gov](mailto:brakepad@dtsc.ca.gov)*

**RE: Comments to DTSC Informal Proposed Draft Regulation for Motor Vehicle Brake Friction Material [as revised November 14, 2014]**

Dear Ms. Davis:

The Motor & Equipment Manufacturers Association (MEMA)<sup>1</sup> and the Brake Manufacturers Council (BMC)<sup>2</sup> appreciate the opportunity to respond to the California Department of Toxic Substance Control's (DTSC) revisions of the informal proposed rule issued Nov. 14, 2014,<sup>3</sup> as well as the DTSC response to comments on the first informal draft dated Oct. 3, 2014.<sup>4</sup> As DTSC is aware, the brake system manufacturers and friction material manufacturers have been actively engaged on this issue for a number of years. Working with other industry stakeholders – the vehicle manufacturers, parts distributors and service providers – the BMC and its members have all worked collaboratively with the States of California and Washington, non-governmental organizations, and other interested parties to address concerns related to copper and to comply with the requirements from the states' laws.

<sup>1</sup> MEMA represents more than 1,000 companies that manufacture motor vehicle parts for use in the light- and heavy-duty vehicle original equipment and aftermarket industries. Motor vehicle parts manufacturers are the nation's largest manufacturing sector, directly employing more than 734,000 people across the country. MEMA represents its members through four divisions: Automotive Aftermarket Suppliers Association (AASA), Heavy Duty Manufacturers Association (HDMA), Motor & Equipment Remanufacturers Association (MERA) and Original Equipment Suppliers Association (OESA).

<sup>2</sup> BMC is a product council of the AASA and represents manufacturers of brake systems, components and friction materials.

<sup>3</sup> [http://www.dtsc.ca.gov/PollutionPrevention/upload/Revised\\_draft\\_strawman\\_reg\\_language\\_-11132014.pdf](http://www.dtsc.ca.gov/PollutionPrevention/upload/Revised_draft_strawman_reg_language_-11132014.pdf)

<sup>4</sup> [http://www.dtsc.ca.gov/PollutionPrevention/upload/Responses\\_to\\_Common\\_Comments\\_Received\\_10-3-2014.pdf](http://www.dtsc.ca.gov/PollutionPrevention/upload/Responses_to_Common_Comments_Received_10-3-2014.pdf)



## Overview

MEMA and BMC appreciate the effort from DTSC to address stakeholders' comments. Several items raised by MEMA, BMC and other vehicle industry stakeholders were revised, thus improving aspects of the informal proposed draft. Yet, while some elements were reflected in the DTSC's Nov. 14 proposal, there are still several outstanding items that were not. Therefore, MEMA and BMC continue to be concerned about these important and key issues.

The largest universal concern is the importance of harmonization and alignment. Certainly, MEMA recognizes that there are aspects that may be beyond the agency's authority and/or outside the scope of the underlying statute. The fact remains, however, that the differences between the California and Washington laws – while seemingly small, are actually exceedingly large. MEMA and BMC continue to urge the State of California to make every effort to align its regulation as closely as possible to the State of Washington regulation. Alignment has the potential to improve compliance, reduce cost burden and permit the brake friction material manufacturers to provide a singular consistent product for not just the two states, but nationwide. Members of the BMC have been proactive in their adoption of the new friction formulations that meet the specified regulations and collectively have spent millions of dollars in order to be compliant. Disparate requirements would increase those costs and potentially put adherent manufacturers at a competitive disadvantage in the nation's marketplace.

DTSC repeatedly emphasizes in their Oct. 3, 2014 response to comments that the agency is restricted to what is prescribed (or not prescribed) in the California statute. However, in the Nov. 14 revision of the informal proposed rule, DTSC did incorporate a new section for package labeling requirements,<sup>5</sup> which is required in the State of Washington. Package labeling was not stipulated in the California law, however, DTSC recognized the importance of a package label to communicate the products' level of compliance in an easy-to-understand format for retailers and the end-users (professional service technicians, consumers). MEMA and BMC agree with this interpretation and applaud DTSC for including package labeling.

Given that DTSC made this interpretation, MEMA and BMC challenge the agency to further clarify and rectify other discrepancies that match the intent and spirit of the California legislation to mitigate copper from storm water runoff and waterways.

MEMA and BMC remain very concerned that the subtle, but key statutory differences between the two States statutes, will needlessly complicate compliance for all manufacturers – particularly brake manufacturers. We understand the constraints that

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<sup>5</sup> 66275.7(d)

limit complete harmonization. However, we urge the DTSC to use the implementation tools at its disposal to establish a regulatory framework by which these differences can be alleviated or eliminated entirely.

## Product Marking and Exemptions

In the November revision of the informal proposed rule, DTSC did adopt several elements of the Washington regulation with respect to marking requirements (66275.8 “Environmental Compliance Marking”). This provides synchronicity on the essential requirements and nomenclature of marking the brake friction material with the Washington rule, except for one significant element: the marking of exempted materials. DTSC’s omission of this matter is a subtle difference that has a major impact and is counter to the intent of the California law (emphasis added):

*“The department shall **consult with the brake friction materials manufacturing industry** in the development of all criteria for testing and marking brake friction materials and adopting certification procedures for brake friction materials, as required pursuant to this article. The mark of proof of certification on brake friction materials shall identify the brake friction material manufacturer, be easily applied, be easily legible, and **not impose unreasonable additional costs on manufacturers** due to the use of additional equipment or other factors.”<sup>6</sup>*

The lack of recognition and acceptance of the Washington exemption marks (“WX” or “X”) in addition to the environmental compliance marks (“A”, “B”, “N”) will create a situation where brake manufacturers will have to mark friction materials differently only for brake friction materials sold in California. This is impracticable, unreasonable, and very costly. Furthermore, it has the potential to create confusion in the marketplace for distributors, retailers, professional technicians, and consumers.

It is within the interpretive authority of the DTSC to clarify and rectify this discrepancy either in the regulation itself or through another legally binding action. MEMA and BMC urge DTSC to take this action. DTSC must ensure that brakes with the markings “WX” and “X” are permitted for sale in the State of California.

## Extension Process & Use of Term “Brake Pads and/or Brake Drums”

DTSC’s response to comments indicated it would further review the comments to remove the term “brake pads and/or brake drums” but elected to retain the term in its Nov. 14, 2014 informal proposed rule. Yet, this is the only place in the informal draft where this term appears. MEMA and BMC repeat that this term is not appropriate for this context and request DTSC to remove it. The term “brake pads and/or brake drums” in the exemptions section is not the appropriate terminology. To be clear and consistent with the definitions

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<sup>6</sup> 25250.60(a)

in 66275.1 and for regulatory clarity, MEMA and BMC encourage DTSC to strike this term and replace with “brake friction material” as follows:

66275.9(a)(1)(B)2:

*2. Identification of the brake pads and/or brake drums associated with each vehicle model, class, platform, or other vehicle-based category on the extension application that includes:*

*a. Brand name(s) of the ~~brake pad and/or brake drum~~ brake friction material; and*

*b. Part number(s) of the ~~brake pad and/or brake drum~~ brake friction material; and*

*c. Identification on whether the ~~brake pad and/or brake drum~~ brake friction material is original equipment or a replacement parts*

## Replacement Friction Materials and Inventory Run-Off

In addition to the challenge presented by different exemption markings, there is an additional concern about not allowing for inventory run-off for the 2021 (0.5%wt) and 2015 (5.0%wt) copper content requirements. The average age of vehicles in the U.S. fleet is over 11 years and it continues to increase. Replacement brake friction materials need to be available for a vehicle throughout its useful life.

There are essentially two market channels for replacement brake friction materials – original equipment service (OES) and aftermarket. In our Sept. 5 comments, MEMA and BMC provided DTSC with a series of definitions to clarify their meanings. We also provided language to address inventory run-off timeline that is consistent with the State of Washington. DTSC uses these terms in its informal proposal – in fact, we cited an example above about the agency’s draft section 66275.9(a)(1)(B)2. Defining replacement parts is necessary if the term is in the regulatory text.

The average vehicle requires about four brake friction material replacements during its life. Brake friction materials are critical vehicle safety components. There are essentially two types of replacement materials – OES and aftermarket. If California does not recognize or allow for an inventory run-off or clarify the terms by defining them, there will be a significant, negative impact on the availability of “allowed” friction materials in the State’s market for consumers.

Thus, MEMA and BMC urge DTSC to revisit this issue, review our Sept. 5 recommended definitions and language, and find a regulatory or other legally binding mechanism by which to rectify this important discrepancy.

## Definitions

A small, but important, change is required in the DTSC's revision of the definition for "manufacturer." As you may recall, MEMA and BMC asked the DTSC to use the definition as stated in the statute at Section 25250.50. However, the revised Nov. 14 informal proposed rule did not exactly capture the definition accurately from the statute. We believe this is a simple typographical error and can be easily revised to reflect the definition as it appears in the statute (minus the statute's subsection "e"). Therefore, revise the definition of "Manufacturer" as laid out in the statute\*:

*(1) "Manufacturer," except where otherwise specified, means both of the following:*

*(A) A manufacturer or assembler of motor vehicles or motor vehicle equipment.*

*(B) An importer of motor vehicles or motor vehicle equipment for resale.*

*(2) A manufacturer includes a vehicle brake friction materials manufacturer.*

\*NOTE: The formatting is exaggerated for effect and to make it very clear that the definition is in two parts where the first part has two subsets.)

Under the previous section about Replacement Friction Materials and Inventory Run-Off, MEMA and BMC discussed the need to define "inventory run-off" as well as "brake friction material manufactured as part of an original equipment service contract" and "brake friction material manufactured for the vehicle aftermarket." These are all important distinctions in the marketplace. Addressing these distinctions will help ensure improved compliance across all of the braking business sectors impacted by this legislation.

MEMA and BMC also asked the agency to define "wholesaler, distributor, retailer, installer," which are identified in the California statute at section 25250.51. It is not outside the scope of the statute or the regulating agency's authority to define what those entities mean. Therefore, we again urge DTSC to use the following definition:

*"Wholesaler, distributor, installer, and retailer" means any person that sells or offers to sell brake friction materials to consumers in the state of California, and any person that sells or offers to sell brake friction materials to such person. Selling or offering to sell brake friction material includes installing or offering to install brake friction material in a vehicle for a fee.*

## Conclusion

The implications of not rectifying these small discrepancies will have an immense impact on not only brake friction material manufacturers and vehicle manufacturers, but also, and more importantly, on the consumer and the marketplace. Increases in compliance

costs for brake friction material manufacturers are very likely to be passed on to the consumer, thus raising retail prices. It may also impact the availability and choice of products in the State of California, which impacts commerce.

Lack of action will result in two compliance programs and will place unreasonable burdens on all manufacturers. However, providing clarity, guidance and alignment will help the State of California reach the environmental goals while reducing compliance burden.

MEMA and BMC look forward to continuing our dialogue with the DTSC and other stakeholders. DTSC has an opportunity to provide a solution that is effective, feasible and within the scope of the legislature's founding statute and the agency's regulatory authority.

Respectfully submitted,



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