

Department of Toxic Substances Control
Responses to Comments on the Informal Draft Regulations
Division 4.5, California Code of Regulations, Title 22
Chapter 35. Hazardous Materials: Motor Vehicle Brake Friction Materials

Based on comments received internally, these regulations will be moved to Chapter 35 to comply with numbering practices for new chapters in the California Code of Regulations. In the past, the Department has synchronized the California Code of Regulations with the Federal Code of Regulations. Since the number of Chapters available under Chapter 25 is limited, these regulations were moved to Chapter 35. Sections for the revised proposed regulations will read 66387.1 to 66387.9 instead of 66275.1-66275.9. Table 1 provides a crosswalk for the old and new section numbers along with the section header. As part of the response to comments, the new section numbers will be placed in [] and in italics after the old citation.

Table 1. Crosswalk for old to new section numbers

Section Header	Chapter 25 section number	Chapter 35 section number
Definitions	66275.1	66387.1
References	66275.2	66387.2
Self-certification of compliance	66275.3	66387.3
Testing Certification Agency for brake friction materials	66275.4	66387.4
Accredited laboratories for brake friction materials	66275.5	66387.5
Testing methodology for brake friction materials	66275.6	66387.6
Marked proof of certification	66275.7	66387.7
Environmental compliance marking	66275.8	66387.8
Extension process	66275.9	66387.9

Accreditation Related Comments

Commenter: Advanced Systems, Inc.

Comment 1. Section 66275.5 (a) identifies two inappropriate accreditation programs for this type of material or product testing. These are items (2) and (3) (see wording). Items 2 and 3 related to programs that address testing of water, wastes and environmental materials and not products such as the SAE method defined for this regulation. The accreditations by NELAP and CA ELAP do not include this testing method in the scope of accreditation.

(2) Any accreditation body that is recognized by the National Environmental Laboratory Accreditation Program, as of the effective date of this chapter and

(3) By the California environmental laboratory accreditation program, as of the effective date of this chapter.

Response 1. Although NELAP and CA ELAP do not specifically list SAE J2975:2013 in their scope of accreditation, the individual test methods for copper and its compounds, mercury and its compounds, lead and its compounds, cadmium and its compounds, hexavalent chromium and asbestiform fibers are based on U.S. EPA environmental test methods which are included in their accreditation scope. DTSC included these programs in the draft regulations to ensure

manufacturers had a large pool of certified analytical laboratory testing facilities. Since California Health and Safety Code section 25250.50 et.seq. was passed in 2010, NSF International has approved three analytical laboratories for SAE J2975:2013. Section 66275.5(a) [Section 66387.5(a)] has been modified to remove the California environmental laboratory accreditation program.

Comment 2. Section 66275.1 Definitions (m) identifies the term testing certification agency. There are many US certification bodies that are recognized through the International Accreditation Forum that do not operate a testing laboratory. These certification bodies contract with testing laboratories accredited by an ILAC recognized accreditation body that meets the requirements of ISO/IEC 17011. The industry term “registrar” is used in the US for certification bodies (CB) performing registration or certification or manufacturers, suppliers or other producers. These are often not laboratories. A certification body may be associated with a laboratory or not. In some certification schemes (ISO/IEC 17067), the testing must be done by an organization different from the certification body to ensure an adequate evaluation of the testing, product marking and use of the CB mark. The CB mark is addressed in ISO/IEC 17065 along with the process for evaluation and decision for certification. The testing laboratory requirements (ISO/IEC 17025) does not address authorizations for use of a mark and does not address the review of packaging, labeling or other markings. So the term Testing certification agency does not follow the standards referenced in other parts of these draft regulations.

(m) “Testing certification agency” means a third-party testing certification agency that is utilized by a vehicle brake friction materials manufacturer and that has an accredited laboratory program that provides testing in accordance with the certification agency requirements that are approved by the department. The term “registrar” is used by the industry when referring to this entity.

Response 2. The term “testing certification agency” is defined in California Health and Safety Code section 25250.50(g). The Department agrees the responsibilities outlined in the draft proposed regulations for the “testing certification agency” are more akin to the tasks associated with a “registrar.” However to be consistent with the California statute, the Department must use the term “testing certification agency”. To clarify the Department’s interpretation of the term, the sentence regarding the term “registrar” was added. Since the term “testing certification agency” and its definition are established in statute, DTSC cannot change it as part of the rulemaking. As part of the Initial Statement of Reasons (ISOR), a discussion shall be added regarding the Department’s understanding on the role of the “testing certification agency” as a registration organization and not a product certification organization.

Comment 3. Section 66275.2 References (a) (3) identifies a reference that is not applicable to the testing of brake friction material. The TNI standard referenced is developed for materials found in the environment using EPA and related methods as defined in regulation. The assessors and program do not address conformity assessment of products or marking of such products.

Response 3. SAE J2975:2013 lists several U.S. EPA analytical methods for analyzing a brake friction material for copper and its compounds, mercury and its compounds, lead and its compounds, cadmium and its compounds, hexavalent chromium and asbestiform fibers. The NELAC Institute (TNI) standard is referenced to provide guidance to laboratories and “registrars” on the type of information to submit when requesting an alternative test method evaluation. The

Department is aware that TNI standard is developed for materials found in the environment. The Department will be making a determination only when a manufacturer, testing certification agency or laboratory requests the Department to determine if an alternative test method is deemed equivalent to the method listed in SAE J2975:2013.

The State of Washington Better Brake regulations and the proposed California regulations describe a registration process that is currently in use by the industry. Although in California Health and Safety Code section 25250.50 et.seq. uses the word “certify”, the tasks and responsibilities performed by the “testing certification agency” are more akin to a “registrar” than a certification agency.

Comment 4. Section 66275.4(a) identifies the need for accreditation of the testing certification agency to ISO/IEC 17065:2012. The clause does not provide information on the acceptable accreditation as it does in clause 66275.5 (a) (1). ISO/IEC 17065 accreditation may be obtained from the American National Standards Institute or from an accreditation body recognized by a regional cooperative as a signed signatory to the International Accreditation Forum (IAF). Note the term used in ISOIEC 17065 is certification body and not testing certification agency since the ISO/IEC 17065 requirements are for certification of the product and not certification of the testing.

Response 4. The language in Section 66275.4(a) [*Section 66387.4(a)*] has been modified to incorporate this comment as follows:

“...The testing certification agency shall be accredited in accordance with the requirements of either the ISO/IEC 17065:2012 standard or the ISO/IEC Guide 65:1996 standard. The accreditation must be issued by an accreditation body (AB), operating in accordance with ISO/IEC 17011:2005. The accreditation body shall be a signatory to the International Laboratory Accreditation Cooperation (ILAC) Arrangement for testing (ISO/IEC 17025) for accreditation of testing organizations or the International Accreditation Forum (IAF) arrangement for product certification (ISO/IEC 17065) for accreditation of certification agencies.”

Commenter: ANSI

Comment 1. Remove reference to certified laboratory.

Response 1. This change has been incorporated into the revised draft regulations.

Comment 2. The laboratory shall be accredited in accordance with the requirements of ISO/IEC 17025, General requirements for the competence of testing and calibration laboratories.

Response 2. The language in Section 66275.5(a) [*Section 66387.5(a)*] has been modified to read as follows: “...by a laboratory that is qualified and equipped for testing products in accordance with the SAE J 2975:2013, and maintains accreditation to one of the following :

- (1) ISO/IEC 17025:2005 from a laboratory accreditation body that is a signatory to the International Laboratory Accreditation Cooperation Multilateral Recognition Arrangement, as of the effective date of this chapter. The laboratory’s scope of accreditation to ISO/IEC 17025:2005 shall encompass testing to the test method(s) listed in SAE J2975:2013 or an alternate method approved under California Code of Regulations, title 22, section 66275.6 [*Section 66387.6*], subsection (I); or
- (2) Any accreditation body that is recognized by the National Environmental Laboratory Accreditation Program, as of the effective date of this chapter.

Comment 3. The certification agency shall be accredited in accordance with the requirements of ISO/IEC 17065, *Conformity assessment -- Requirements for bodies certifying products, processes and services*.

Response 3. The language under Section 66275.4(a) [Section 66387.4(a)] has been modified to read as follows:

“...The testing certification agency shall be accredited in accordance with the requirements of either the ISO/IEC 17065:2012 standard or the ISO/IEC Guide 65:1996 standard”.

Comment 4. The accreditation shall be issued by an accreditation body (AB), operating in accordance with ISO/IEC 17011, *General requirements for accreditation bodies accrediting conformity assessment bodies* and signatory to the ILAC Arrangement for testing (ISO/IEC 17025) for accreditation of testing organizations or IAF arrangement for product certification (ISO/IEC 17065) for accreditation of certification agencies.

Response 4. The following language has been added to Section 66275.4(a) [Section 66387.4(a)]:

“The accreditation must be issued by an accreditation body (AB), operating in accordance with ISO/IEC 17011:2005. The accreditation body shall be a signatory to the International Laboratory Accreditation Cooperation (ILAC) Arrangement for testing (ISO/IEC 17025) for accreditation of testing organizations or the International Accreditation Forum (IAF) arrangement for product certification (ISO/IEC 17065) for accreditation of certification agencies.”

Comment 5. The laboratory’s scope of accreditation to ISO/IEC 17025, *General requirements for the competence of testing and calibration laboratories* shall encompass testing to the test method(s) listed in SAE J2975:2013 or an alternate method approved under California Code of Regulations, title 22, section 66275.6, subsection (l).

Suggestion: - Directory of previously approved alternative methods should be made publically available and could be common for CA and WA states. This will allow for easy access not only to accreditation bodies but industry as well. Additionally, it would avoid situation where the state would review same submission more than once.

Response 5. The following language has been added in regards to the laboratory’s scope of accreditation in Section 66275.5(a)(1) [Section 66387.5(a)(1)]:

“The laboratory’s scope of accreditation to ISO/IEC 17025:2005 shall encompass testing to the test method(s) listed in SAE J2975:2013 or an alternate method approved under California Code of Regulations, title 22, section 66275.6 [section 66387.6], subsection (l);”

The suggestion above will be discussed with the State of Washington Department of Ecology to determine the most effective way to implement and maintain this directory.

Comment 6. Specify technical scope of accreditation for the Certification Agency.

Response 6. Since the process outlined in the proposed regulations describes a registration process for brake friction material instead of a product certification process, a technical scope of accreditation will not be specified in the proposed regulations.

Referenced documents

Commenter: ANSI

Comment 1. For this item, you have an option of specifying the version or including statement “latest version of....”. depending on how you wish to proceed with any transitions from one version of the standard to another in the future.

However, specifically related to the accreditation standards. The international community has strict transition requirements that Accreditation Bodies must follow to transition accredited organizations. Once the accreditation standard are revised, ILAC and IAF set timeframes for transition period. Accreditation Bodies are not able to have any accredited organizations to the superseded version of the standard past the date set by ILAC or IAF. There could be a situation where regulations are not revised in time to keep up with the date set by the international community and conflict occurs where regulation specifies accreditation to the withdrawn version of the document.

Response 1. As stated in the DTSC Responses to Comments on the Informal Draft Regulations dated October 3, 2014, California Administrative Code, title 1, section 20 specifies the format requirements to be used for “incorporation by reference”. California Administrative Code, title 1, section 20 requires the document to be identified by title and date of publication or issuance, which prevents the Department from excluding the publication date or including a statement such as “the latest version of...” in the regulations. Due to this requirement, the Department will need to monitor the accreditation documents for updates and revise the regulations with the appropriate publication date in the future. The Department is required to follow the formal rulemaking process to update the ‘incorporation by reference’.

Comment 2. Standards could also be purchased through ANSI <http://webstore.ansi.org/>

Response 2. This comment will not be incorporated into the regulations. Instead, the Department shall provide a link to the ANSI Web store (<http://webstore.ansi.org/>) on the Department Website at <http://www.dtsc.ca.gov>.

Additional items/suggestions

Commenter: ANSI

Comment 1. “...NELAP would be difficult to obtain for testing facilities outside the US. To ensure consistency in application of accreditation some governmental organizations and industries (in US and abroad) have developed documents containing requirements in addition to ISO/IEC 17025. Accreditation bodies evaluate compliance with these additional requirements and identify so on scopes of accreditation. To ensure reliability, (no translation, easier oversight and etc.) the program could be and has been limited, in a number of US programs, to US based Accreditation Bodies that deliver accreditation globally to ISO/IEC 17025 and the additional requirements.”

Response 1. The NELAP and CA ELAP are included as other possible laboratory testing accreditation and **is not** intended to be additional accreditation that a laboratory needs to obtain. DTSC included these programs in the draft regulations to ensure manufacturers had a large pool of certified analytical laboratories to choose from for analyzing their brake friction material. NELAP also was included to maintain some consistency with the State of Washington Better Brake

regulations which also lists accreditation by either ISO 17025:2005 or NELAP. Section 66275.5(a) [Section 66387.5(a)] has been modified to remove the California environmental laboratory accreditation program.

Comment 2. Reference “Testing Certification Agency”, you have mentioned, comes from another regulation. If the definition could be revised, it should be clarified that it is the certification program that must be accredited and the data produced by an accredited testing facility is to be utilized by the certification agency towards certification. Additionally, the term Registrar is typically used in Management System registration/certification program and not in product certification.

Response 2. Since the definition of a “testing certification agency” is in California Health and Safety Code section 25250.50(g), the Department cannot make a change to the definition as part of rulemaking. The term “registrar” is included in the regulation definition as a clarifying statement to describe the current system used by the industry which is a registration system.

Comment 3. “ (c) Who is responsible for the accuracy of laboratory testing results? The manufacturer of brake friction material is responsible for the accuracy of the laboratory testing results reported to the testing certification agency.

Typically under ISO/IEC 17025 accreditation it is the laboratory that is responsible for accuracy of the test results. The manufacturer is responsible for continuously manufacturing product as the samples submitted for testing.

Response 3. We intended the statement in Section 66275.6(c) [Section 66387.6(c)] to emphasize the need for manufacturers to confirm the testing results provided by the analytical laboratory accurately characterize the content of copper and the regulated constituents in their brake friction material formulations. Since the brake friction material formulations are trade secret, it is the manufacturer’s responsibility to confirm if the laboratory test results reflect the content copper and the regulated constituents in their formulations. Section 66275.6(c) [Section 66387.6(c)] has been modified to read as follows:

“The analytical laboratory is responsible for the accuracy of the test results reported to the testing certification agency. The manufacturer of brake friction material is responsible to confirm the concentrations of regulated constituents and copper reported correspond to the concentrations known to be in their brake friction material formulations prior to the analytical laboratory reporting these testing results to the testing certification agency.”

Comment 4. ISO/IEC 17065 accreditation ensures not only issuance of proper certification documents but also manufacturer surveillance activities, periodic retesting, directory of certified products, control of product marking, recall procedures and more. Depending on how you wish to proceed the program, one suggestion is not to have a manufacturer self-declare but have certification agencies certify these product under the accredited system, as ISO/IEC 17065 accreditation provides assurance that all of the certification activities have been conducted in impartial and technically competent manner. Additionally, as the scheme owner of this program you could specify timeframes for any of these activities and any additional certification requirements.

Response 4. The process and requirements proposed in this regulation reflect the current process that is used by the State of Washington, and is used by the industry to register their brake friction material formulations. Our intent is to list the requirements and responsibilities of the “testing certification agency” and a process for becoming a “testing certification agency” available to

other interested organizations. As stated in previous comments, the current process is a registration process rather than a product certification process.

Comment 5. “... all of the above could be a stepping stone in recognition, many scheme owners retain final decision on whether to accept any organization in the program and maintain publically available directory of the accepted organizations. However, there are also programs that recognize Accreditation Bodies and point to ABs’ website for list of accredited organizations. Accreditation Bodies in this case would identify organizations accredited for your program in the directory of accredited organizations. These directories are publically available and maintained by the Accreditation Bodies per requirements of ISO/IEC 17011.”

Response 5. DTSC does not think the approach recommended is appropriate for the self-certification process described in the proposed regulations.

Editorial Related comments

Commenter: Akebono Brake Corporation

Comment 1. **The excerpt below is from page 6 of Better Brake Rules**
(<https://fortress.wa.gov/ecy/publications/publications/1204027.pdf>).

- (7) **Updating certification: Manufacturers of brake friction material must recertify each previously certified brake friction material that is still being manufactured at least once every three years. When recertifying brake friction materials, manufacturers of brake friction materials must submit updated self-certification documentation and new laboratory testing results. However, brake friction materials containing more than five percent copper, but that meets the requirements for the regulated constituents, do not need to be submitted for new testing to be recertified prior to 2021.**
- (8) Exemption: Brake friction material manufactured prior to 2015 is exempt from this section.
- (9) Optional certification: A manufacturer of brake friction material that is not required to comply with the requirements of this law may certify compliance and mark brake friction materials in accordance with this chapter, provided that it certifies the product in accordance with this section.

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Response 1. Section 66275.4(b)(2)(D)3 [Section 66387.4(b)(2)(D)3] has been modified as follows:
“When recertifying brake friction materials, manufacturers of brake friction materials must submit updated self-certification documentation and new laboratory testing results. However, brake friction materials containing more than five percent copper, but that meets the requirements for the constituents listed in California Health and Safety Code section 25250.51, subdivisions (a)(1) through (a)(5), do not need to be submitted for new testing to be recertified prior to 2021;”

Comment 2. On page 9 of the DTSC Responses to Comments on the Informal Draft Regulations dated October 3, 2014, there is a typo in Section 66275.6(g)(1).

Response 2. The typo in Section 66275.6(g)(1) [Section 66387.6(g)(1)] has been corrected to read SAE J2975:2013 instead of SAEJ8297:2013.

Comments from Link Engineering

Below are some suggestions and comments regarding the subject proposed regulation for friction materials. This is based on our experience as an approved independent testing laboratory since 2012 and our involvement in other certification or registration programs.

The suggested **changes to specific text on the regulation are indicated in bold blue font.**

Comment 1. Page 1-of-16 item (i) [...] the marked proof of certification also includes the Leaf Mark from the BMC NOTE: This ensures a common marking across multiple suppliers and certification agencies. Also, provides proper identification in the marketplace and avoids confusion or misleading marks. This should prevent the appearance in the marketplace of the “ThreeTrees” or the “ThreeFrogs” marks.

Response 1. The Department cannot make a direct reference to a specific mark proof of certification owned by a non-government third party. However, Section 66275.7(a) [Section 66387.7(a)] will be revised to include the following language:

“The Department shall post certification marks issued by the testing certification agency in accordance with section 66387.4(b)(2)(C)9 on the Department’s Web site at <http://www.dtsc.ca.gov>.”

- Comment 2.** Page 2-of-16 item (m) “Testing certification agency” means a third-party testing certification that is appointed by a legally established industry association that is utilized...
- Response 2. The definition of a “testing certification agency” is defined in the California Health and Safety Code section 25250.50(g) and cannot be changed as part of the rulemaking process.
- Comment 3.** Page 3-of-16 item 4. Replace “self-certification” with “declaration of conformity.” Per ISO 17000 and ISO 17050 to avoid confusion with attestation by certification bodies, the term “self-certification” is deprecated and should not be used.
- Response 3. The term “self-certification” is used to maintain consistency between the State of Washington Better Brake regulations and the proposed draft California regulations. The term “declaration of conformity” is not referenced in the State of Washington Better Brake regulations and may cause confusion amongst the manufacturers by making this change.
- Comment 4.** Page 6-of-16 item (b) (2) (A) Demonstrate qualifications as a material and/or product certification organization by furnishing formal endorsement from a legally established and recognized industry association. This endorsement shall also indicate the approval to use the LeafMark as part of the certification program.
- Response 4. The Department cannot make a direct reference to a specific certification mark owned by a non-government third party. For the text in blue, the terms “formal endorsement” and “legally established and recognized industry association” are unclear. Upon further review of the language in section 66275.4(b)(2)[*section 66387.4(b)(2)*], the Department decided to delete subsection 66275.4(b)(2)(A) [*subsection 66387.4(b)(2)(A)*] since the requirements in subsections 66275.4 (b)(2)(B) thru (E) [*subsections 66387.4(b)(2)(B) thru(E)*] provided sufficient detail on the information the Department required to approve a testing certification agency.
- Comment 5.** Page 7-of-16 item 9. Copy of the industry approved and recognized trademark...
- Response 5. This language will not be included in the revised draft regulations since it will not pass the clarity standard under California Code of Regulations, title 1, section 11349.1, subsection(c).
- Comment 6.** Page 10-of-16 item (g)(1) replace SAE J8297:2013 with SAE J2975:2013
- Response 6. This correction has been made in the revised draft regulations in Section 66275.6(g)(1) [*Section 66387.6(g)(1)*].
- Comment 7.** Page 14-of-16 item (b) [...] marking “A” (one leaf) indicate?
- Response 7. The proposed change will not be included the proposed language in the regulations. The Department cannot make a direct reference to a specific certification mark owned by a non-government third party.
- Comment 8.** Page 14-of-16 item (c) [...] marking “B” (two leaves) indicate?
- Response 8. The proposed change will not be included the proposed language in the regulations. The Department cannot make a direct reference to a specific certification mark owned by a non-government third party.
- Comment 9.** Page 14-of-16 item (d) [...] marking “N” (three leaves) indicate?
- Response 9. The proposed change will not be included the proposed language in the regulations. The Department cannot make a direct reference to a specific certification mark owned by a non-government third party.

Comments from MEMA

- Comment 1.** 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 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

Response 1. Per Health and Safety Code section 25250.54(a)(2), "An extension application submitted pursuant to this section shall be submitted based on vehicle model, class, platform, or other vehicle-based category, **and not on the basis of the brake friction material formulation**" (bold and italics added for emphasis). Since "brake pad and/or brake drum" are linked to a specific vehicle model, class, platform, or other vehicle-based category, the term "brake pad and/or brake drum" is used in sections 66275.9(a)(1)(B)2(a), (b), and (c) [sections 66387.9(a)(1)(B)2(a), (b), and (c)]. A brake friction material may be used across several different vehicle models, classes, and platforms and requiring the brand name of the brake friction material would not meet the conditions stipulated in the California statute.

Comment 2. 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.)**

Response 2. This comment has been incorporated in the revised draft regulation language in Section 66275.1(h) [Section 66387.1(h)].

Comment 3. 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.

- Response 3. This definition cannot be incorporated in the revised draft regulation since it will not pass the clarity standard under California Code of Regulations, title 1, section 11349.1, subsection(c). . The comments in regards to 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” were addressed in the DTSC Responses to Comments on the Informal Draft Regulations dated October 3, 2014. The suggested language was considered to be rewriting California Health and Safety Code (HSC) section 25250.50(e), 25250.55(g) and 25250.55(h) which is outside our regulatory authority. These sections are deemed to be clear in their meaning such that a “regulation” is not needed to interpret, implement, make specific or govern the procedure of those sections.

Commenter: Global automakers and Auto Alliance

- Comment 1. ***b. Definition of Manufacturer***
We agree with the DTSC's decision to revise the definition of manufacturer to align with the statute. However, we believe that the definition should include an additional note, similar to that use in the Washington Department of Ecology's regulation - *“In each instance the term “manufacturer” is used, this chapter identifies which type of manufacturer is referred to.”* We believe addition of this sentence helps provide additional clarity for the regulation and will enhance harmonization between the two regulations.
- Response 1. This comment has been incorporated in the revised draft regulation language in Section 66275.1(h) [Section 66387.1(h)].

Comments from NSF

- Comment 1. **Revise Section 66275.1(h) as follows:**
(h) “Manufacturer” except where otherwise specified in Health and Safety Code section 25250.50, subdivision (e) means: (1)
(1) a manufacturer or assembler of motor vehicles or motor vehicle equipment, and
(2) an importer of motor vehicles or motor vehicle equipment for resale.
~~(h)~~ **A “manufacturer” includes a vehicle brake friction materials manufacturer.**
- Response 1. This comment has been incorporated in the revised draft regulation language in Section 66275.1(h) [Section 66387.1(h)].
- Comment 2. **Revise Section 66275.1(i) as follows:**
(i) “Marked proof of certification” means the unique identification code and environmental compliance mark marked on the brake friction material and a certification mark that appears on the brake friction material packaging that provides attestation that the brake friction material has been tested and certified as compliant with requirements in Health and Safety Code section 25250.51, 25250.52, and 25250.53.

The phrase ***“and environmental compliance mark”*** added because the addition of a definition for ***“Unique identification code”*** means that the environmental code would no longer be part of the ***“Marked proof of certification”*** without this change.

Response 2. Section 66275.1(i) [*Section 66387.1(i)*] has been revised to read as follows:
““Marked proof of certification” means 1) the unique identification code and environmental compliance marking marked on the brake friction material; and 2) a certification mark that appears on the brake friction material packaging that provides attestation that the brake friction material has been tested and certified as compliant with the requirements in Health and Safety Code section 25250.51, 25250.52, and 25250.53.”

Comment 3. **Add the following definition to Section 66275.1:**
“Unique identification code” means the combination of “Company Assigned ID” and “Formulation Identification” referenced in SAE J866:JUL2012 section 3.

Response 3. This comment has been incorporated in the revised draft regulation language as Section 66387.1(o).

Comment 4. **Add the following reference to Section 66275.2:**
ISO/IEC Guide 65:1996, “General requirement for bodies operating product certification systems,” dated 1996, available from the International Organization for Standardization (ISO)

My understanding is that ISO 17065 and ISO Guide 65 are equivalent to each other (ISO 17065 effectively superseded ISO Guide 65).

Response 4. This comment has been incorporated in the revised draft regulation language as Section 66275.2(2) [*Section 66387.2(2)*].

Comment 5. **Revise Section 66275.4 to read as follows:**
The “testing certification agency” shall serve as the official registration source for self-certified brake friction materials. The “testing certification agency” shall post and maintain the self-certification of brake friction materials on the internet which includes the ~~marked proof of certification~~ unique identification code and the identifying identity of the manufacturer entity which registered the unique identification code through the testing certification agency. The Department shall approve the ~~certification~~ registration requirements used by the “testing certification agency” to facilitate the acceptance of the mark of proof in all 50 states and United States territories per Health and Safety Code section 25250.60, subdivision (j).

Changed this from referencing solely the product’s manufacturer to the registering entity because the product’s manufacturer will not necessarily be the company registering the edge code.

For example, some manufacturers are requesting that their distributor register the edge code for them. And some distributors are going along with that request.

Therefore, this clause should reference the registering entity since the testing certification agency will not necessarily KNOW that the registering entity is the product’s manufacturer.

Response 5. This comment has been incorporated in the revised draft regulation language except for the portion regarding the registered entity and replacing the term “certification” with “registration”. The Department decided to use the term “certification” in order to maintain consistency between the California and the State of Washington regulations wherever the two state laws converge. A discussion will be incorporated into the detailed discussion in the Initial Statement of Reasons.

Comment 6. **Revise Section 66275.4(a) to read as follows:**
The “testing certification agency” shall use accredited laboratories that meet the requirements of California Code of Regulations, title 22, section 66275.5. The testing certification agency shall ~~and~~ maintains accreditation to the either the ISO/IEC 17065:2012 standard or the ISO/IEC Guide 65:1996 standard.

As written, this requires that test LABS maintain accreditation to ISO/IEC 17065. I think California wants to require that the testing certification agency maintain ISO/IEC 17065 accreditation. If so, then this revised wording removes the ambiguity about who is required to maintain the ISO/IEC 17065 accreditation.

Response 6. Section 66275.4(a) [Section 66387.4(a)] has been modified to read as follows:
“The “testing certification agency” shall use accredited laboratories that meet the requirements of California Code of Regulations, title 22, section 66275.5 [section 66387.5]. The testing certification agency shall be accredited in accordance with the requirements of either the ISO/IEC 17065:2012 standard or the ISO/IEC Guide 65:1996 standard. “

Comment 7. **Revise Section 66275.4(a)(3) as follows:**
Issue a “certification of compliance” ~~for~~ to the brake friction material’s registering entity so that the registering entity may ~~declaring~~ declare that its formulation(s) complies with Health and Safety Code sections 25250.51, 25250.52, or 25250.53.

Response 7. This comment will not be incorporated in the revised draft regulation language since the portion regarding the registered entity is not consistent with California Health and Safety Code section 25250.60(h) and (i). Under Health and Safety Code section 25250.60(h), the “manufacturer of vehicle brake friction materials shall file a copy of the certification of each of its brake friction materials with a testing certification agency.” Under Health and Safety Code section 25250.60(i), “a manufacturer of vehicle brake friction materials may obtain from a testing certification agency a certification of compliance with the requirements of sections 25250.51, 25250.52, and 25250.53...”.

Comment 8. **Revise Section 66275.4(a)(4) as follows:**
Publish all self-certifications on the internet pursuant to Health and Safety Code section 25250.60, subdivision (h);

Response 8. This comment has been incorporated in the revised draft regulation language under Section 66275.4(a)(4) [Section 66387.4(a)(4)].

Comment 9. **Revise Section 66275.4(b) as follows:**

“...An organization interested in being a “testing certification agency” shall submit a request for approval to the Department on their brake friction material ~~certification~~ registration requirements in writing or electronically...”

Response 9. This comment will not be incorporated in the revised draft regulation language. The Department decided to use the term “certification” in order to maintain consistency between the California statute and the State of Washington law and regulations wherever the two state laws converge.

Comment 10. What constitutes an organization’s “Qualifications” as a material and/or product certification organization? Recommend removing this point unless specific subpoints are listed which specify what the required “qualifications” are.

Response 10. Upon further review of the language in section 66275.4(b)(2)[*section 66387.4(b)(2)*], the Department decided to delete subsection 66275.4(b)(2)(A) [*subsection 66387.4(b)(2)(A)*] since the requirements in subsections 66275.4 (b)(2)(B) thru (E) [*subsections 66387.4(b)(2)(B) thru(E)*] provided sufficient detail on the information the Department requires to approve a testing certification agency.

Comment 11. Revise Section 66275.4(b)(2)(B) as follows:

(B) Certificate of Conformity Accreditation for either:

1. ISO/IEC 17065:2012; or
2. ISO/IEC Guide 65:1996;

My understanding is that ISO 17065 and ISO Guide 65 are equivalent to each other (ISO 17065 effectively superseded ISO Guide 65).

Response 11. This comment has been incorporated in the revised draft regulation language as Section 66387.4(b)(2)(A).

Comment 12. Revise Section 66275.4(b)(2)(D)4 as follows:

“Copy of the procedure used to ensure every self-certified brake friction material formulation has a unique identification code;”

Response 12. This comment has been incorporated in the revised draft regulation language as Section 66387.4(b)(2)(C)4.

Comment 13. Revise Section 66275.4(b)(2)(D)7 as follows:

Copy of the procedure regarding self-certification information on brake friction materials on their Web site. This includes, but is not limited to, the list of self-certified materials, description of the ~~certification~~ registration procedures, date of the last update of the list of ~~certified-registered~~ materials, description and graphics illustrating the marked proof of certification on the pad and packaging logo.

Response 13. This comment has been incorporated in the revised draft regulation language in Section 66387.4(b)(2)(C)7.

Comment 14. Revise Section 66275.4(c) as follows:

“...If the Department finds the testing certification agency requirements meets California Code of Regulations, title 22, section 66275.4, subsection (a),...”

“... If the Department does not find the testing certification agency requirements meet subsection (a) of this section...”

Response 14. This comment has been incorporated in the revised draft regulation language in Section 66275.4(c) [*Section 66387.4(c)*].

Comment 15. Revise Section 66275.5(b) as follows:

“...The manufacturer of brake friction material, laboratory, or laboratory accreditation body that requests the Department to consider...”

Response 15. This comment has been incorporated in the revised draft regulation language in Section 66275.5(b) [Section 66387.5(b)].

Comment 16. Revise Section 66275.5(c) to include this bullet and renumber as needed:

(3) Information and data sufficient to prove to the Department that the alternate laboratory accreditation is equivalent to or better than the standards or laboratory accreditation programs listed in subsection (a) of this section

Response 16. This comment was not incorporated into Section 66275.5(c) [Section 66387.5(c)] since the phrase “Information and data sufficient” will not pass the clarity standard under California Code of Regulations, title 1, section 11349.1, subsection (c) because it does not define what information and data is required.

Comment 17. Revise section 66275.6(g)(1) as follows:

Testing reports transmitted from the laboratory to the testing certification agency shall include the minimum information specified in SAE ~~J8297~~J2975:2013. If an alternate method of testing approved under California Code of Regulations, title 22, section 66275.6, subsection (l) is used to perform testing and that alternate method specifies the minimum reporting information, then test reports transmitted from the laboratory to the testing certification agency may include either the minimum information specified in SAE J 2975:2013 or the minimum information specified in the alternated method of testing utilized.

Response 17. Section 66275.6(g)(1) [Section 66387.6(g)(1)] has been modified to read as follows:

“(1) Testing reports transmitted from the laboratory to the testing certification agency must include the minimum information specified in SAE J2975:2013.

(A) If an alternate method of testing approved under subsection (l) of this section is used to perform testing and that alternate method specifies the minimum reporting information, then test reports transmitted from the laboratory to the testing certification agency shall include the minimum information specified in the alternate method of testing utilized.”

Comment 18. Revise Section 66275.6(i) as follows:

“...A manufacturer of brake friction materials shall maintain copies of laboratory testing results for a period of at least ten (10) years after the date of certification.”

Response 18. This comment has been incorporated in the revised draft regulation language in Section 66275.6(i) [66387.6(i)].

Comment 19. Revise Section 66275.6(j) as follows:

**“May a manufacturer of brake friction material self-certify compliance...”
“...under California Code of Regulations, title 22, section 66275.6, subsection (l), in advance of use for self-certification.”**

Response 19. The first comment on Section 66275.6(j) [Section 66275.6(j)] has been incorporated. On the second comment the text in Section 66275.6(j) [Section 66275.6(j)] has been revised as follows:

“A manufacturer of brake friction material may use an alternative testing method if the alternative testing method is approved by the Department under subsection (k) of this section, in advance of use for self-certification.”

Comment 20. Revise Section 66275.6(k)(2) as follows:

“A copy of the proposed alternative method”

Response 20. Section 66275.6(k)(2) [Section 66387.69K)(2)] has been modified to read as follows:

“A copy of the proposed alternative testing method”

Comment 21. Revise Section 66275.7(c)(3) as follows:

“Ensure that the ~~unique identification code~~ brake friction material’s marking includes a code that contains the appropriate environmental compliance marking for the requirements cited in Health and Safety Code sections 25250.51, 25250.52, and 25250.53. This marking is also described in SAE J 866:JUL2012;”

With the specific definition of “Unique identification code” as the “Company Assigned ID” and “Formulation Identification” referenced in SAE J866:JUL2012, this section must be changed as by definition the unique identification code cannot also contain the environmental compliance code.

Response 21. Section 66275.5(c)(3) [Section 66387.5(c)(3)] has been modified to read as follows:

“Ensure that the brake friction material’s marked proof of certification includes an unique identification code and the appropriate environmental compliance marking for the requirements cited in Health and Safety Code sections 25250.51, 25250.52, and 25250.53. This marking is also described in SAE J 866:JUL2012”

Comment 22. Revise Section 66275.8(a) as follows:

“The environmental compliance marking is the last letter or last two letters ~~in the unique identification code~~ marked...”

With the specific definition of “Unique identification code” as the “Company Assigned ID” and “Formulation Identification” referenced in SAE J866:JUL2012, this section must be changed as by definition the unique identification code cannot also contain the environmental compliance code.

Response 22. Section 66275.8(a) [Section 66387.8(a)] has been revised to read as follows:

“The environmental compliance marking is the last letter marked on brake friction materials followed by the two digit year of manufacture. It must be an "A," "B," or "N and it allows a person to determine the level of environmental compliance of the brake friction material.”

Comment 23. Revise Section 66275.8(c) as follows:

“...amounts exceeding the specified concentrations and that the brake friction material contains between 0.5 and 5.0 (inclusive) percent copper by weight.”

Response 23. This comment has been incorporated in the revised draft regulation language in Section 66275.8(c) [Section 66387.8(c)].

Availability of Information on the Testing Certification Agency, Certified Analytical Laboratories, and Alternative Test Method Requests

Comment from California Stormwater Quality Association (CASQA)

Comment 1. We urge DTSC to ask NSF International to voluntarily post certifications online as soon as possible, and to urge the Motor and Equipment Manufacturers Association (MEMA) to allow use of the trademarked logos by anyone for education and outreach purposes. CASQA has made these same requests.

We do believe that DTSC has both the authority and obligation to inform the public of various items by posting them on the Internet. In our August 22, 2014 comments on the prior version of informal draft regulations we urged that:

DTSC specify in the regulations that it will post on its website in a timely manner Testing Certification Agency, certified analytical laboratory, and alternative test method requests for approval (Sections 66275.4 (c), 66275.5 (c), and 66275.6 (j)), DTSC notifications required under Sections 66275.4 (d), 66275.5 (d), 66275.6 (k), and extension requests and renewal requests (Section 66275.8 (a) and (b)).

Response 1. The following sentence will be added to listed sections:

Section 66275.4(c) [Section 66387.4(c)]: "Testing certification agencies approved by the Department shall be posted on the Department's Web Page at <http://www.dtsc.ca.gov>."

Section 66275.5(d) [Section 66387.5(d)]: "The alternative laboratory accreditation approved by the Department shall be posted on the Department's Web Page at <http://www.dtsc.ca.gov>."

Section 66275.6(l) [Section 66387.6(l)]: "The alternative testing method approved by the Department shall be posted on the Department's Web Page at <http://www.dtsc.ca.gov>."

Section 66275.7(a) [Section 66387.7(a)]: "The Department shall post certification marks issued by the testing certification agency in accordance with section 66387.4(b)(2)(C)9 on the Department's Web site at <http://www.dtsc.ca.gov>."

Section 66387.9(a)(2)(4): "The Department shall post the following information on its Web site at <http://www.dtsc.ca.gov> for all extension applications received: (A) the name of the applicant, (B) the vehicle model, class, platform, or other vehicle-based category, (C) the brand name of the brake pad and/or brake drum, (D) the part number of the brake pad and/or brake drum, and (E) whether the extension was approved or denied."

Comment from Clean Water Action

Comment 1. Because of our work on surface water quality, we too wish to see compliance achieved quickly along with full transparency of the process. For that reason, we support CASQA's suggestion that the Department ask NSF International to post certifications online as soon as possible and that DTSC also post a number of items that will serve to inform the public of the regulations and how they are being implemented. This includes Test Certification Agency, certified analytical laboratory, and alternative test method requests that require approval, as well as extension and renewal requests, and other DTSC notifications required by the regulations.

Response 1. Please refer to the response to CASQA's comment.

Harmonization of Regulation with WA Better Brake Law and Regulations

Commenter: Global automakers and Auto Alliance

Comment 1. Harmonization of Regulatory Programs

Global Automakers and the Auto Alliance believe that it is of the utmost importance for California and Washington to harmonize their requirements for brake friction materials, as any regulatory differences can result in unnecessary burdens on industry, especially when the ultimate goals of each state are the same. We appreciate that the California DTSC and Washington Department of Ecology have been in discussions throughout the stakeholder process. With the Washington Department of Ecology's regulations completed and DTSC now developing its regulations, it appears that the statutory differences between the two states programs could unnecessarily complicate the compliance process. Inasmuch as the goals and requirements of the programs are aligned – to eliminate or reduce asbestos and heavy metals in brake friction material - and will provide the same environmental benefit, California should make every effort to also align its regulations with Washington's. In the interim time period leading up the effective date of these regulations, DTSC could provide reciprocity with Washington, whose regulations are in place, by allowing any brake pads that comply with Washington's regulations to comply in California as well.

While Washington and California may not be able to harmonize all aspects of their regulations due to diverging state laws, our associations believe, as we have stated in our previous comments, that at a minimum both states should provide reciprocity through agreements or other mechanisms (i.e. "deemed-to-comply") to accept compliance with one state's programs as compliance with the other. A reciprocity agreement would mean that the two states would agree to allow the use of a single edge code marking, certification mark, and compliance documentation.

Response 1.

As stated in the DTSC Responses to Comments on the Informal Draft Regulations dated October 3, 2014, the "environmental compliance marking" section will not contain language regarding an exemption mark. When SAE J866:2012 was modified, the standard did not list an environmental compliance mark for exempt materials since the California and the State of Washington statutes varied in this area.

As discussed in the reciprocity section in the DTSC Responses to Comments on the Informal Draft Regulations dated October 3, 2014, the Department cannot adopt the State of Washington exemptions since that is outside the Department's authority. The authorizing statute Health and Safety Code section 25250.55 defines the classes for motor vehicles that are exempt from the California statute and thus, from the reach of these regulations. The Department does not have the authority to state that a brake pad that complies with the State of Washington law and regulations is deemed to comply with the California statute. Essentially a reciprocity agreement would be stating that if a person complies with the State of Washington's exemptions, then they will be deemed to have complied with exemptions under California's statute.

Under well-established principles of the proper exercise of rulemaking authority granted to administrative agencies, the implementing regulations may neither expand nor shrink the scope of the authority conferred by the authorizing statute. The Department cannot include "reciprocity" into the regulation because it would enlarge the scope of the statute. The Department does not have an authority section that allows the Department to take such action. If the legislature wanted additional exemptions in the statute, they could have included them in the statute, or provided an authority section in the statute to allow a

regulation to expand the exemptions section of the statute. Since the legislature did neither, the Department cannot add them to a regulation indirectly.

Comment 2. Harmonization of the environmental compliance marks between the California and Washington programs is necessary to maximize understanding, minimize confusion and ensure the regulation can be practically implemented by the regulated parties.

DTSC has done an outstanding job of addressing our concerns in this area. We appreciate that efforts have been made to match the draft language to Washington's regulations. However, there is still one unreasonably burdensome difference between the two regulations. While the California statute has no requirement to mark exempted brakes (or brakes for which an approved extension has been obtained), the Washington state regulations require additional markings (either "WX" or "X") for exempt brakes. DTSC has clarified in its response to comments document that "Any brake friction material marked with 'WX' or 'X' will not be acceptable in California unless it is used in an optional field of the format specified under SAE J866:2012 or on another location on the brake pads."⁵

The statute states that the 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."⁶ However, it would be extremely impracticable and costly for brake manufacturers to apply different markings to brakes destined for Washington vs. California and perhaps even more impracticable and costly for vehicle manufacturers to somehow predict where the vehicles will be sold and sort these parts in their factories to ensure they are assembling the correctly marked brakes on vehicles headed for the two different states. Considering that the brakes will have the same formulations designed to meet the environmental requirements of both states, DTSC needs to ensure that brakes with Washington markings (*i.e.*, "WX" or "X") are allowed to be sold in California, either through the regulations, a reciprocity agreement, or some other legally binding means.

The statute also 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 requirements.⁷ Through its use of the SAE J866 standard, which includes markings for hot and cold coefficients, DTSC is already making allowances for markings required by other states. Thus, we reiterate our request that DTSC needs to find a way to make the same allowance for the Washington state markings either through harmonized regulations or by providing reciprocity with Washington.

Response 2. When the Department worked with the State of Washington Department of Ecology (WA ECY) and the Society of Automotive Engineers (SAE) Brake Materials Environmental Task Force, the issues regarding a general or state specific exemption mark were discussed and not included in the SAE J866:2012 due to the impracticality that you have stated above. The Department feels it tried to address this concern during the revisions to SAE J866:2012. As stated in our in the DTSC Responses to Comments on the Informal Draft Regulations dated October 3, the Department cannot adopt the State of Washington exemptions since

⁵ http://www.dtsc.ca.gov/PollutionPrevention/upload/Responses_to_Common_Comments_Received_10-3-2014.pdf, page 3.

⁶ Article 13.5 Section 25250.60(a).

⁷ Article 13.5 Sec 25250.60(j).

that is outside the Department's authority. It should also be noted that the State of Washington Department of Ecology (WA ECY) also does not have the authority under their statute to adopt California exemptions.

The commenter should note that the California regulations are not retroactive. These regulations will affect brake pads manufactured on and after the effective date of California regulations.

Comment 3. Section 25250.55 Exemptions

The issue of any potential exemptions is not addressed in the proposed regulations. We recognize that there are differences between California's and Washington's legislation. However, the confusion that is being created by the different processes must be addressed. The Exemption/Extension comparison chart developed by DTSC highlights the areas of confusion.⁸ We request that DTSC work closely with Washington to create as much harmonization as possible in this area.

Response 3. Please refer to the response for Comment 2.

Comments from MEMA

Comment 1. 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 factors⁹.

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.

⁸ DTSC, Diagram on the California Exemptions versus the State of Washington Exemptions, http://www.dtsc.ca.gov/PollutionPrevention/upload/Diagram_comparing_Ca_and_WA_exemptions_plainlanguage.pdf.

⁹ 25250.60(a)

Response 1. When the Department worked with the WA ECY and the Society of Automotive Engineers (SAE) Brake Materials Environmental Task Force, the issues regarding a general or state specific exemption mark were discussed and not included in the SAE J866:2012 due to the impracticality that you have stated above. The Department feels it tried to address this concern during the revisions to SAE J866:2012. As stated in our in the DTSC Responses to Comments on the Informal Draft Regulations dated October 3, the Department cannot adopt the State of Washington exemptions since that is outside the Department's authority. It should also be noted that the State of Washington Department of Ecology (WA ECY) also does not have the authority under their statute to adopt California exemptions.

Some potential solutions may involve further discussions with WA ECY to discuss moving the "X" or "WX" mark to a different location, removing the "X" or "WX" mark from the State of Washington Better Brakes regulation, or setting up a cross referencing system for ALL brake friction formulations marked "X" or "WX" with their corresponding "A", "B" or "N" designator. However, these solutions are outside the scope for preparing the draft proposed regulations and will be discussed in a separate venue.

Comment 2. 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.

Response 2. As stated in in our in the DTSC Responses to Comments on the Informal Draft Regulations dated October 3, the suggested language regarding the exemptions provided in the statute is rewriting sections of the California statute which is outside our regulatory authority. The affected sections of the statute, Health and Safety Code (HSC) section 25250.50(e), 25250.55(g) and 25250.55(h), are deemed to be clear in their meaning such that a "regulation" is not needed to interpret, implement, make specific or govern the procedure of those sections.