

**Motor & Equipment Manufacturers Association**

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June 30, 2016

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 Formal Proposed Rule, Motor Vehicle Brake Friction Material [as revised June 16, 2016]**

Dear Ms. Davis:

The Motor & Equipment Manufacturers Association (MEMA)<sup>1</sup> and the Brake Manufacturers Council (BMC)<sup>2</sup> submit the following comments to the California Department of Toxic Substances Control's (DTSC) revisions of the formal proposed rule issued June 16, 2016.<sup>3</sup>

The brake friction materials manufacturers have been actively engaged on this issue for years. As we mention in our May 23, 2016 comments, we support much of the proposed regulation. Our remaining concerns are based on the need to ensure the California regulation is implemented in a manner that provides clarity for our members. Clarity is of the utmost importance as we continue to make significant investments to comply with not only California regulations, but also similar regulations in Washington State and the voluntary agreements reflected in the Copper-free Brake Initiative Memorandum of Understanding (MOU).<sup>4</sup>



<sup>1</sup> MEMA represents more than 1,000 companies that manufacture motor vehicle systems and parts for use in the light and heavy-duty vehicle original equipment and aftermarket industries. The motor vehicle parts manufacturing industry is the nation's largest direct employer of manufacturing jobs – over 734,000 workers are employed by suppliers in all 50 states. 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, a product council of the AASA, represents manufacturers of brake systems, components and friction materials.

<sup>3</sup> [http://www.dtsc.ca.gov/SCP/upload/Revised\\_regulation\\_language\\_redline.pdf](http://www.dtsc.ca.gov/SCP/upload/Revised_regulation_language_redline.pdf)

<sup>4</sup> Memorandum of Understanding on Copper Mitigation in Watersheds and Waterways between U.S. EPA and Motor Equipment Manufacturers Association, Automotive Aftermarket Suppliers Association, Brake Manufacturers Council, Heavy Duty Manufacturers Association, Auto Care Association, Alliance of Automobile Association, Association of Global Automakers, Truck and Engine Manufacturers Association, and Environmental Council of the States, January 21, 2015.

## Summary of Concerns

MEMA and BMC thank DTSC for addressing two concerns we raised in our May 23, 2016 comments. We appreciate DTSC codifying exemption markings are not required on brake friction material. The inclusion of this regulatory language provides certainty for the regulated community. We also appreciate DTSC adding regulatory language under “Step 6” of “Self-certification of compliance” (Section 66387.3) that self-certification should be taking testing samples of each brake friction formulation and should not require testing each edge code. However, as we discuss in more detail below, DTSC needs to clarify what is meant by the phrase “one complete set of testing results” versus “one set of testing results.”<sup>5</sup>

While some changes DTSC made to the proposed regulation will help provide clarity, many of the issues that MEMA and BMC raised in previous comments have not been addressed and remain concerns for our members. The largest concern for industry is that the California regulation is implemented in a manner that provides clarity for brake friction materials manufacturers as we continue to make significant investments to comply. We urge DTSC to address the clarifications we have recommended below in regulatory language. If DTSC does not address these recommendations in regulatory language, then MEMA and BMC request DTSC provide clarification at least in the Final Statement of Reasons. Our comments focus on five areas:

- 1) Clarification of Section 25250.55(g) and (h)
- 2) Definition of Testing Certification Agency, Replacement Parts and Original Equipment Service Contracts
- 3) Self-certification: Clarification of Terms and Referencing the Standard’s Year
- 4) Product Marking and Packaging Labeling Consistency
- 5) Enforcement of Testing Certification Agency Requirements

## Clarification of Section 25250.55(g) and (h)

In our previous comments,<sup>6</sup> we outline our concern that the California law does not allow for an inventory sell down aligning with the State of Washington and the Copper-free Brake Initiative MOU that allows for a timeline of 10 years. DTSC asserts that Health and Safety Code (HSC) Sections 25250.55(g) and 25250.55(h), which addresses exemptions and is in effect an inventory sell down provision, are clear and do not need a regulation to interpret that section of the statute.<sup>7</sup>

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<sup>5</sup> Section 66387.3 the added language of Subsection (c) “Manufactures of brake friction material may use one complete set of testing results to register multiple unique identification codes for products using an identical brake friction material formulation.”

<sup>6</sup> MEMA and BMC comments submitted to DTSC on the informal proposed rule on September 5, 2014, the revised informal proposed rule on December 5, 2014 and the formal proposed rule on May 23, 2016.

<sup>7</sup> Department of Toxic Substances Control Responses to Comments on the Informal Draft Regulations, Division 4.5, California Code of Regulations, Title 22 Chapter 25. Hazardous Materials: Motor Vehicle Brake Friction Materials, October 3, 2014, p. 2.



However, in order to provide certainty for the brake friction manufacturers industry, MEMA and BMC request that DTSC provide clarifying language in the Final Statement of Reasons that Sections 25250.55(g) and (h) apply to both original equipment service (OES) contracts and aftermarket replacement parts. Doing so would provide the industry greater certainty to have clarification that these exemptions apply to both market channels of brake friction materials. Both categories of brake friction materials – aftermarket and OES contracts – are intended to be applied to a series of vehicle models and model years. (Please refer to MEMA and BMC's May 23, 2016 comments for more detail on the two market channels for replacement brake friction materials.)

## Definitions [66387.1]

### Testing Certification Agency

The proposed regulation requires that the testing certification agency for brake friction material be accredited in accordance with requirements of either ISO/IEC 17065:2012 standard or the ISO/IEC Guide 65:1996 standard, which requires that the laboratory and the testing certification agency (or registrar) are separate entities.<sup>8</sup> MEMA and BMC support this requirement.

However, the definition of 'testing certification agency'<sup>9</sup> provided in the California statute and in the proposed regulation could be misconstrued as meaning the testing certification agency needs to be directly involved and overseeing laboratory testing for certification. As we understand it, per the requirements of ISO/IEC, the DTSC does not intend for the testing certification agency (or registrar) to be directly involved, overseeing or enforcing laboratory testing procedures for certification. MEMA and BMC appreciate DTSC clarifying in the Initial Statement of Reasons (ISOR) that DTSC does not require the 'testing certification agency' to have an in-house analytical laboratory.<sup>10</sup> We request, however, that DTSC add further clarifying language in the Final Statement of Reasons that the 'testing certification agency' and the laboratory are required to be separate entities and not directly involved in each other's operations as stipulated by the ISO/IEC requirements.

### Replacement Parts and Original Equipment Service Contracts

If DTSC provides clarifying language that Sections 25250.55(g) and 25250.55(h) apply to OES contracts and aftermarket replacement parts, MEMA and BMC request DTSC define these terms. Further, the proposed regulation language for the Extension Process (Section 66387.9), also uses the term 'replacement part' when explaining that a manufacturer, if requesting an extension, must provide information on whether the brake friction material is intended for original equipment or replacement parts. Therefore, MEMA and BMC request that DTSC define 'replacement parts' and 'brake friction material manufactured as part of an OES

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<sup>8</sup> Section 66387.4

<sup>9</sup> Testing certification agency is defined as 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.

<sup>10</sup> Initial Statement of Reasons, Section 66387.1(n) and Section 66387.4

contract' in the final rule or in the Final Statement of Reasons. (Please see MEMA and BMC's recommended definition for 'OES contract' and 'replacement parts' in our May 23, 2016 comments).

## Self-Certification of Compliance [66387.3]

### Clarification of "Complete Set of Testing Results"

MEMA and BMC support the language added under Section 66387.3(c), "*Manufactures of brake friction material may use one complete set of testing results to register multiple unique identification codes for products using an identical brake friction material formulation.*" This language clarifies that self-certification does not require testing of each edge code, but only testing of each brake friction formulation. This language is extremely helpful.

MEMA and BMC request that DTSC defines or discusses what the phrase "one complete set of testing results" means under Section 66387.3(c) since the phrase "one set of testing results" is used in Section 66387.3(b). The phrase should be clarified in the final regulation or at least the Final Statement of Reasons. Alternatively, DTSC should use "one set of testing results" in both Subsections (b) and (c) to avoid confusion.

If DTSC keeps the "one complete set of testing results" phrase, MEMA and BMC recommend the phrase is defined as the testing results from the testing carried out under "Step 1" of the certification process in Section 66387.3, not all the results of all testing ever carried out on a brake friction material formula. In a letter from Washington State's Department of Ecology (DoE) submitted to MEMA on February 18, 2016, DoE clarified what was meant by the phrase "all testing results" in Washington Administration Code 173-901-080. Washington State's DoE clarified that the phrase "all testing results" meant all testing results from testing carried out for certification and did not mean testing results from experimental formulations, conformity of production audits, incorrectly manufactured products, or previous certification cycles. Please see attached letter from Washington State's DoE.

It would benefit the brake friction materials manufacturers, the certification agency and the laboratories if the phrase "one complete set of testing results" is defined in either the final regulation or the Final Statement of Reasons. Without this clarification, there may be inconsistent interpretations of what is meant by the phrase "one complete set of testing results" in the industry.

### Referencing the Standard's Specific Year

Under the same section, MEMA and BMC strongly urge the State not to reference an industry standard's specific year in the text of the rule without adding to the reference a caveat for the latest revision or edition. We understand that California Administrative Code, title 1, section 20 requires that the document be identified by title and date of issuance. Therefore, when DTSC sites a document and title (i.e. SAE J866:2012), we urge DTSC to add to the reference "or the latest edition or revision." Referencing a specific year without having a caveat for the latest edition, greatly limits the State's regulation only to that specific year.



## Product Marking and Packaging Labeling Must Be Consistent [66387.8]

MEMA and BMC request that DTSC includes regulatory language in the final rule, or at least the Final Statement of Reasons, that it recognizes and accepts the LeafMark™ packaging logo on brake friction materials sold in California. The LeafMark™ is recognized by stakeholders of the Copper-free Brake Initiative MOU and by the State of Washington.<sup>11</sup> Because brake friction material manufacturers are changing their products and product packaging to be compliant with both the MOU, and the Washington law, it is important that California recognizes and accepts these marking and packaging labeling requirements. (Please see MEMA and BMC's May 23, 2016 comments for more detail on the BMC developed LeafMark™ logo).

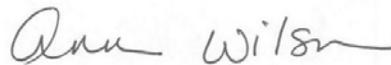
MEMA and BMC understand that California's law does not explicitly require package labeling as the Washington law requires. We recognize that DTSC does not need to require the LeafMark™, and in absence of a regulation stating otherwise, the use of the LeafMark™ is acceptable. We also recognize the ISOR addresses the issue (Section 66387.7(a)) of a certification mark packaging logo and provides the example of the "A", "B" or "N" with the LeafMark™ logo. However, in order to provide certainty for all stakeholders, MEMA and BMC request that DTSC explicitly provide language in the final rule, or at least the Final Statement of Reasons that California recognizes and accepts the LeafMark™ logo.

## Testing Certification Agency for Brake Friction Material [66387.4]

MEMA and BMC support DTSC's requirement that the testing certification agency be accredited in accordance with requirements of either ISO/IEC 17065:2012 standard or the ISO/IEC Guide 65:1996 standard. It is imperative that DTSC enforce the requirement that the laboratory and the testing certification agency (or the registrar) are separate entities.

MEMA and BMC appreciate consideration of the recommendations presented herein. Please do not hesitate to contact Laurie Holmes at 202-312-9247 or [lholfmes@mema.org](mailto:lholfmes@mema.org) with questions or for additional information. We look forward to working with DTSC as this proposed rule moves forward.

Respectfully Submitted,



Ann Wilson  
Senior Vice President  
Motor & Equipment Manufacturers Association

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<sup>11</sup> The Copper-free Brake Initiative MOU, Section VI, A.1.d., p. 7 and WAC 173-901-090.



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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February 18, 2016

Ms. Ann Wilson, Sr. Vice President  
Motor Equipment Manufacturers Association  
1030 15th St. NW, Suite 500 East  
Washington, DC 20005

**SUBJECT:** Clarification Regarding the Scope of Testing Results Reported Under the Better Brakes Rules, Chapter 173-901 WAC

Dear Ms. Wilson:

Thank you for the opportunity to provide clarification on the Better Brakes Rules. We greatly appreciate the brake manufacturing industry's efforts to reduce the copper content of brake friction materials in Washington State.

In our meeting on October 14, 2015, you asked for clarification regarding the meaning of WAC 173-901-060(1)(B), which reads:

**“Step 2:** Ensure that the laboratory provides laboratory testing results for each brake friction material directly to an industry-sponsored registrar. The brake friction material manufacturer may review the testing results prior to the laboratory sending the results to the registrar. However, the manufacturer must ensure that the laboratory submits the results from all testing conducted on a given friction material formula. All testing and reporting of results must be carried out in accordance with WAC 173-901-080.”

In particular you asked for clarification of the meaning of the term “all testing results,” and asked if this required the submittal of several different types of testing data including:

- All edge codes or all formulations
- Experimental formulations
- Conformity of production audits
- Incorrectly manufactured formulas
- Testing results that were submitted in a previous three year testing cycle

WAC 173-901-060(1)(B) should be read in the context of the certification process outlined in WAC 173-901-060 and the rest of the Better Brakes Rules. Step 1 of the certification process requires manufacturers to submit a sample of a brake friction formula to a laboratory for testing,

in accordance with WAC 173-901-080. WAC 173-901-080 requires that each brake friction material be tested in triplicate, and under certain circumstances requires additional testing to demonstrate compliance. Step 2 only requires the submittal of all testing results from the testing carried out under Step 1, not all the results of all testing ever carried out on a brake friction material formula.

Please see more detailed responses for each category of data:

**Question 1: Do manufacturers need to report cumulative averages including all data from a formulation or from an edge code?**

Manufacturers are only required to test at the formulation level and may use one set of testing results for any edge codes that are manufactured using this formulation.

For example, Manufacturer X makes formula ABC, which is used in product D, E, and F. Manufacturer X is only required to send a single sample of formula ABC to the laboratory and use the results for the certifications of D, E, and F.

Ecology was previously asked if a manufacturer could elect to certify each of their edge codes as a separate formulation – testing each edge code separately and reporting these results as a distinct cumulative average for each edge code. This is allowed under the regulations. However, this option would increase compliance costs and is not required.

**Question 2: Do manufacturers need to report results or include results from experimental formulations or other research and development tests in the cumulative average reported to Ecology?**

No, manufacturers do not need to report data on experimental formulation or other research and development tests or include these results in the cumulative average reported to Ecology. When a manufacturer creates a new formulation they must certify prior to offering it for sale in Washington State. When the manufacturer is ready to certify a product they should send a sample to the lab to be tested for the purposes of certification. This sample must match the formulation that will be sold in Washington. If future research and development work results in changes to a formulation sold in Washington, it must be recertified as a new formula.

**Question 3: Do manufacturers need to report data from conformity of production audits or include this data in the cumulative average reported to Ecology?**

No, manufacturers do not need to report data from conformity of production audits or include this data in the cumulative average reported to Ecology. However, if conformity of production audits indicate manufactured products do not meet the certification standards, these products should not be marked with a certification mark and should not be sold in Washington State. A manufacturer that marked a non-conforming product with a certification mark would be falsely certifying these products and could be subject to penalties or other enforcement actions.

**Question 4: Do manufacturers need to report data from incorrectly manufactured products or include this data in the cumulative average reported to Ecology?**

No, manufacturers do not need to report data from incorrectly manufactured products or include this data in the cumulative averages reported to Ecology. However, incorrectly manufactured products do not meet the certification standards, should not be marked with a certification mark and should not be sold in Washington State. A manufacturer that marked a non-conforming product with a certification mark would be falsely certifying these products and could be subject to penalties or other enforcement actions.

**Question 5: Do testing reports submitted in previous certification cycles need to be reported or included in cumulative averages reported to Ecology?**

No, manufacturers should not report data submitted in previous certification cycles or include these results in cumulative averages reported to Ecology. A manufacturer should only include testing results from the samples submitted for the most recent certification.

Thank you again for the opportunity to clarify the meaning of the Better Brakes Rules. If you have any further questions please feel free to contact Ian Wesley, the Better Brakes Coordinator, at 360-407-6747 or [ian.wesley@ecy.wa.gov](mailto:ian.wesley@ecy.wa.gov).

Sincerely,



Ken Zarker, Manager  
Pollution Prevention & Regulatory Assistance Section  
Hazardous Waste and Toxics Reduction Program

cc: Ian Wesley, Ecology Better Brakes Coordinator