Motor & Equipment Manufacturers Association

Response to the

State of Washington Department of Ecology

Preliminary Draft Better Brakes Rule; WAC-173-910

November 30, 2011

Introduction

The Motor & Equipment Manufacturers Association (MEMA) represents over 700 companies that manufacture motor vehicle parts for use in the light vehicle and heavy-duty original equipment and aftermarket industries. Motor vehicle parts suppliers are the nation's largest manufacturing sector, directly employing over 685,000 U.S. workers and contributing to over 3.2 million jobs across the country. MEMA represents its members through four affiliate associations: Automotive Aftermarket Suppliers Association (AASA); Heavy Duty Manufacturers Association (HDMA); Motor & Equipment Remanufacturers Association (MERA); and Original Equipment Suppliers Association (OESA).

The Brake Manufacturers Council (BMC), which is a product council of the AASA, represents the manufacturers of brake systems, components and friction materials. MEMA, in conjunction with the BMC, have actively participated in the State of Washington's ("State") Department of Ecology ("Department") Better Brakes Work Group.

Throughout the legislative and regulatory process, MEMA has worked to address the State's environmental concerns. MEMA congratulates the Department on its efforts to consider the requirements of the legislation, the needs of the citizens, and the burden to the industry. Overall, we believe these draft regulations provide a balanced approach to the vast majority of issues. We are particularly supportive of the certification requirements. We believe many of the suggestions that follow will serve to clarify the intent of the legislation. However, the financial and resource compliance burden to the industry is not insignificant. MEMA therefore urges the state to carefully consider the recommendations outlined below. Please note that the MEMA comments are followed by an appendix of minor typographical errata or other editorial suggestions for regulatory clarity.

SAE International Standards

For the past year, the brake manufacturing industry has worked through the SAE International [1] to develop a test methodology to evaluate components of brake friction materials in a way that is meaningful, repeatable and reliable and to revise an existing standard to mark brake material in a manner that can readily identify compliant product. The endeavor resulted in the development of a new testing standard, Measurement of Copper and Other Elements in Brake Friction Materials

[1] See Appendix A for "SAE" definition.

(SAE J2975) for use in accordance with WAC 173-901-070. In addition, the SAE reviewed, revised and balloted its Friction Coefficient Identification and Environmental Marking System for Brake Lining (SAE J866) to incorporate the alpha characters per the State's environmental compliance letter vis-à-vis the unique identification code compliance marking requirements (WAC 173-901-090). In the State's preliminary draft, the reference to "2012" refers to the year the standard is published.

The SAE International protocol is to review standards every five years (or sooner if appropriate). When the standard is up for review – whether it is revised and updated to reflect improvements in the test protocols or is reconfirmed in its present condition – the standard is published to reflect that year (e.g. J2975:2017). Considering the SAE standards development protocol and the State's reliance on incorporating by reference specific SAE standards into its regulatory framework, MEMA strongly urges the State not to reference the standard's specific year in the text of the rule. MEMA believes that doing so limits the State's regulation only to the year 2012 and, therefore, no other future publications of that particular SAE International Standard would be valid under the State's rule.

Furthermore, MEMA strongly suggests that the State not use any excerpts from the text of an SAE standard in the regulatory text. (Sections WAC 173-901-060, WAC 173-901-070, WAC 173-901-080, and WAC 173-901-090.) These sections are redundant and any future revisions to the standards would have to, in turn, be revised and updated in the State's regulation. In addition, MEMA believes that SAE may have copyright concerns and may not permit the State to use excerpts. Therefore, MEMA urges Washington to incorporate the standard by referencing only the standard title and publication identification.

Implications of Permitting Alternative Standards

In the preliminary rule, the Department permits other alternative testing methods or protocols "if the manufacturer can demonstrate to the Department, in advance … that these alternative methods or protocols are at least as effective as SAE 2975:2012." *WAC 173-901-070* The Department does not prescribe what entity can verify that the alternative is as good as or better than the SAE standard.

The industry is concerned that allowing alternatives, other than the industry's internationally-recognized standard, opens the door to a less rigorous testing protocol. If, in the future, there is a better protocol or technology that can improve upon the current standard's test method, then, the formal documented review and improvement process contained in the SAE standards development procedure can be used to ensure the SAE standard will always reflect the most current methodology provided it is properly incorporated by reference. For that reason, MEMA recommends that the State should not permit alternative testing methods. However, if the State cannot make such a change, then MEMA insists that any alternatives must be independently verified by a laboratory (per WAC 173-901-060 Section 1) and that the protocol must be made

publicly available by the State and referenced in revised or noted in addendums to any future editions of the State's rule.

Reporting Requirements

In WAC 173-901-100, the Department specifically asked for public comments regarding what data could be submitted that meets the requirements of friction materials testing (per WAC 173-901-070). Collecting this baseline data may be a challenge and the industry is reviewing possible ways to go about this process. MEMA believes the data parameters should include:

- A defined period in time (e.g. 2007);
- The top 25 light vehicle platforms registered in the State of Washington representing a cross-section of vehicle classes;
- Identification of the brake friction materials –the OE materials and aftermarket replacement materials used for those vehicles; and
- Uniform data fields.

The industry will collect and analyze an aggregate of the industry data and provide the resulting baseline information to the State. This in turn will allow for the protection of all confidential business information.

Analysis of this data should provide the State a sufficient, appropriate baseline of data from which to compare future information collection reporting (every three years) from the brake friction material manufacturers. MEMA welcomes the opportunity to work with the state to further refine these parameters.

It is extremely difficult, if not impossible, to accrue this type of data for heavy, commercial vehicles. In large part, this is due to the nature of commercial vehicles, many are interstate vehicles not necessarily registered in the State of Washington. MEMA urges the State to exempt heavy vehicles from this baseline reporting.

Confidential Treatment of Data

The regulations will require brake friction manufacturers to provide to the state a wide range of data. This data will ensure compliance with the law. However, much of this data is proprietary information and contains business sensitive formulations. Industry members commit significant financial and human resources to develop these formulations and the State has an obligation to protect this data.

Therefore, MEMA proposes that the State insert the following:

Section WAC 173-901-100

3. Documentation of lab testing results containing proprietary product formulations submitted by manufacturers hereunder as well as self-certification documentation containing such proprietary product formulations lab testing results submitted to the Department shall be deemed confidential business information pursuant to RCW 70.285.070 and RCW 43.21A.160 and shall be

exempt from public disclosure. Lab testing results formatted for a "Pass-Fail" format and which only state the end result pass fail status shall be available for public disclosure hereunder.

Marked Proof of Certification (WAC 173-901-080)

MEMA is concerned that the Department does not specify that the unique identification code refers directly to the SAE standard. We urge the Department to specifically clarify that the term "unique identification code" used throughout the draft regulation refers to SAE J866. A single marking system streamlines and strengthens compliance efforts by all parties. It reduces the possibilities for product to slip through the system and provides consumers, retailers, distributors, and wholesalers with specific guidance on identifying product. We believe there is a significant distinction between product and packaging marking. We agree with the Department that the registrar should be able to develop appropriate packaging marking.

While the current SAE marking proposal does not include an "X" designation, the industry is committed to working with the Department and SAE to address these concerns. We believe any "X" system must provide all parties with a clear indication of product that can only be sold through the statutory exemptions. Only working through SAE will the Department be able to create a robust system that will serve all parties well.

The question and answer regulatory text proposed by the State is designed to give the public clearer compliance guidance. With this goal in mind, MEMA would urge the State to make some modifications to this section.

Question #1

MEMA believes the term "coupled with" can be misunderstood to mean that both the mark PLUS the code must be marked on BOTH the friction material and the packaging. The law does not require this duplication. Therefore, MEMA suggests that the Department rephrase this question and instead ask "How does a manufacturer demonstrate compliance? First, the friction materials must be marked with the unique identification code ending in the appropriate environmental compliance letter. Second, the packaging must be marked with proof of certification (see also, WAC 173-901-080 Section 5)."

Question #4

Edge codes are copyrighted. Excluding the use of the environmental compliance letters ('A', 'B','N' or 'X") from the batch code or any other component of the edge code would infringe on current copyrights. To clarify this matter, the State should include, by reference, the standard SAE J866.

WAC 173-901-130 Process for Reviewing an Exemption Application

MEMA would urge the State to adopt a similar timeline for response to applications for extensions as provided in California law. These timelines will allow industry and the State to plan

for compliance. Therefore, MEMA proposes that the Department notify the applicant within 100 days of receipt of the application.

Conclusion

MEMA looks forward to providing additional feedback to all stakeholders as the Department moves forward with these regulations.

Respectfully submitted,

Ann Wilson
Senior Vice President, Government Relations

APPENDIX A

MEMA presents in this appendix items that we believe are either typographical errata or require minor editorial changes for regulatory clarity. Deleted text is marked as strikethrough; changes/edits are in red underline text.

WAC 173-901-040 Definitions

10. "SAE" means ~~the Society of Automotive Engineers~~ SAE International.

2. Brake friction material manufactured as part of an original equipment service contract means brake friction material that:

a. is provided as service parts that are identical to the parts that were originally designed for and using the same brake friction material; and

b. are ~~sold~~ used solely by an authorized new ~~car dealer~~ vehicle dealer for the repair and maintenance of the motor vehicle with which they were originally sold.

12. f. Beginning January 1, 2021, for copper and its compounds, ~~five~~ 5.0 percent by weight.

WAC 173-901-050 Self-Certification of Compliance

1. e. ii. a list of unique identification codes ~~assigned~~ recorded by an industry-sponsored registrar and their accompanying laboratory testing results, in a tabular format, for each of the brake friction materials listed on the internet; and

WAC 173-901-060

1. a. to the ISO 17025:2005 standard by a lab accreditation body, located ~~with in the United States~~ in the NAFTA region, that is a …

WAC 173-901-070

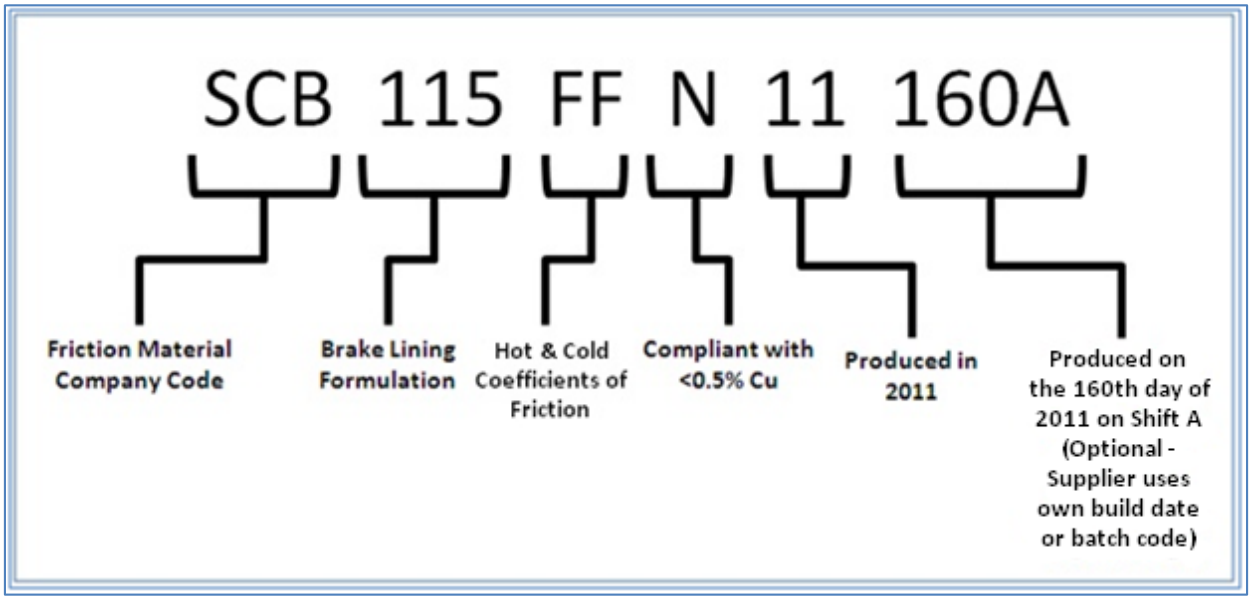
1. b. using the testing protocol SAE 2975:~~2012 or an alternative testing method or protocol approved under subsection (3) of this section~~

APPENDIX A

CONTINUED

WAC 173-901-090 Environmental Compliance Letter

MEMA recommends the Department consider the inclusion of a diagram graphically illustrating the components of a brake friction material edge code relative to the unique identification code and environmental compliance letter. This diagram is for illustrative purposes only.



WAC 173-901-150 Responsibilities of Wholesalers, Distributors, Installers, and Retailers of Brake Friction Materials

Under the Department's suggestion for Section 2 – "How will I know that the brake friction material I sell is compliant," in the interest of regulatory clarity, to reduce redundancy and eliminate possible transposition errors, MEMA strongly recommends that the Department eliminate the entire currently proposed answer with a simple reference to WAC 173-901-080 and WAC 173-901-090. The inclusion of the table, however, we agree should remain. MEMA recommends Section 2 to be revised as follows:

2. How will I know that the brake friction material I sell is compliant? ~~Brake friction material packaging is required to be marked with a certification mark indicating that the brake friction material complies with this chapter. The friction material itself will also be marked with an environmental compliance letter followed by the last two digits of the year of manufacture. These letters and numbers must appear to the right of the friction coefficient.~~ Please refer to WAC 173-901-080 and WAC 173-901-090. The following table describes which brake friction materials are acceptable for sale and when:
<SEE TABLE>