

**Motor & Equipment Manufacturers Association**

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**Brake Manufacturers Council**

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**The Motor & Equipment Manufacturers Association  
and the  
Brake Manufacturers Council of the Automotive Aftermarket Suppliers Association  
Comments to the  
State of California Environmental Protection Agency  
Department of Toxic Substance Control**

**RE: Formal Proposed Rule, Motor Vehicle Brake Friction Material**

**May 23, 2016**

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The Motor & Equipment Manufacturers Association (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).

The Brake Manufacturers Council (BMC), which is a product council of the AASA, represents manufacturers of brake systems, components and friction materials.

In January 2015, MEMA, BMC and multiple other industry stakeholders, including the vehicle manufacturers, signed a Memorandum of Understanding (MOU) with the U.S. Environmental Protection Agency.<sup>1</sup> The MOU establishes a voluntary agreement to carry out practices and approaches under a framework called the "Copper-free Brake Initiative," modeled on the laws in California and Washington. The purpose of this endeavor of the MOU was to bring various industry and government stakeholders under a national framework and to reduce the burden of meeting multiple, varying laws that create redundant burdens and result in unnecessary complications.



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<sup>1</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

We would like to thank the California Department of Toxic Substances Control (DTSC) for addressing a number of concerns that we raised with the Draft Regulations for the Brake Friction Material Law. As we outline below, 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 brake friction materials manufacturers 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 MOU. Our comments focus on five areas:

1. Clarity in Exemptions and Inventory Sell Down
2. Support of No Requirements for Exemption Markings
3. Product Marking and Packaging Labeling Consistency
4. Enforcement of Testing Certification Agency Requirements
5. Self-Certification of Compliance Language
6. Definition of Replacement Parts and Original Equipment Service Contracts

## Clarity in Exemptions and Inventory Sell Down

In our 2014 comments, MEMA and BMC requested that California allow for inventory sell down that aligns with the State of Washington and the Copper-free Brake Initiative MOU which allows for a timeline of 10 years.<sup>2</sup> DTSC makes clear in its response to comments<sup>3</sup> that our proposed language on inventory sell down will not be added because the affected sections of the statute, Health and Safety Code (HSC) section 25250.55(g) and 25250.55(h) that address inventory sell down are clear and do not need a regulation to interpret the section of the statute.

### Request for Clarifying Language for Section 25250.55(g) and (h)

However, in order to provide certainty for the brake friction manufacturers industry, MEMA and BMC request that DTSC provide clarifying language that Section 25250.55(g) and (h) applies to both original equipment service (OES) contracts and aftermarket replacement parts. The statute allows for an exemption of brake friction materials for use on vehicles manufactured prior to January 1, 2021 from the requirements of Section 25250.52 (less than 5 percent copper by weight) and allows for an exemption of brake friction materials for use

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<sup>2</sup>Ibid., Section VIII, E, p. 12.

<sup>3</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.

on vehicles manufactured prior to January 1, 2025 from requirements of Section 25250.53 (less than .5 percent copper by weight). It would provide the industry great certainty to have clarification that these exemptions apply to both brake friction materials manufactured for the vehicle aftermarket and as part of an OES contract. As we explain below, both categories of brake friction materials are intended for a series of vehicle models and model years (MYs).

### Discussion on OES Contracts and Aftermarket

There are essentially two types of market channels for replacement brake friction materials – OES and aftermarket. Brake friction material manufactured as part of an OES contract will be used as service parts or is manufactured as part of a contract with the vehicle manufacturer and sold directly to the vehicle manufacturer that use material that is identical to the brake friction material formulation sold with a new motor vehicle. Brake friction material manufactured as part of an OES contract are designed and manufactured for use on a series of vehicle models and MYs and are often required to supply replacement parts to motor vehicle manufacturers for 10 years.

Brake friction material manufactured for the aftermarket is brake friction material offered as a replacement part. Brake friction material aftermarket replacement parts not manufactured as part of an OES contract will often try to match the original brake friction material formulation sold with new motor vehicles and is designed and manufactured for a series of vehicle models and MYs. For instance, in 2018 an aftermarket brake manufacturer will manufacture brake friction material that will be very similar to brake friction material that is sold with a motor vehicle manufactured in 2018. Product catalogs for these aftermarket brake friction materials will indicate which series of vehicle models and MYs these products were intended.

If there is no allowance of inventory sell down for aftermarket replacement parts, there will be a significant, negative impact on the availability of “allowed” friction materials in the State’s market for consumers. The lowered supply of “allowed” friction materials may force consumers to use a product that either may not fit their budget or may not meet their expectation of performance. If there is no allowance for inventory sell down that is aligned with the State of Washington and the MOU, at a minimum, the regulation needs to make clear the exemptions included in Section 25250.55(g) and (h) apply to brake friction material for OES contracts and aftermarket replacement parts.

### Exemption Markings

The California statute does not require exemption markings on brake friction material and, appropriately, DTSC regulation has not proposed regulatory language on the issue. MEMA and BMC support that California does not require exemption markings on brake friction material and support DTSC not adding regulatory language on exemption markings.

The Washington law does not require that all brake friction material indicate it is exempt, but the law does require markings for exempt brake friction material if it is part of an OES

contract by using the marks “WX” or “X”.<sup>4</sup> If California required separate exemption markings it would create an extremely impracticable, unreasonable, and very costly situation for brake manufacturers to mark friction materials differently for brakes distributed to Washington versus California. It would also create confusion in the marketplace for distributors, retailers, technicians, and consumers. We appreciate DTSC making clear in October 3, 2014 response to comments that the agency will accept “WX” or “X” as long as it is appropriately used in an optional field of the format specified under SAE J866:2012.<sup>5</sup>

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

We understand that California’s law does not explicitly require package labeling as the Washington law requires. Because brake friction material manufacturers are changing their products and product packaging to be compliant with both the California and Washington laws, it is important that California recognizes or accepts Washington’s marking and packaging labeling requirements. As we state in our December 2014 comments, we applaud DTSC for proposing regulatory language for environmental compliance marks (“A”, “B”, “N”). Although package labeling is not required in the California law, DTSC recognized the importance of a package label to communicate the products’ level of compliance.

The BMC developed the LeafMark™ logo to meet the package labeling requirements for the State of Washington and is being applied to packaging on all products sold nationwide. The LeafMark™ meets the package marking needs via a 3-leaf logo that includes the alpha character (“A”, “B”, “N”) designating the environmental compliance mark. The logo is intended to be an easy-to-understand format for consumers, retailers and installers. The LeafMark™ logo is also discussed and recognized by stakeholders in the Copper-free Brake Initiative MOU.<sup>6</sup> Over the past few years, the brake friction material manufacturers have made significant investments and applied multiple resources to make the necessary marking and labeling changes to all of its products to meet the State of Washington requirements. This included revising and creating industry standards and test methods as well as developing trademarked materials for packages. These are not insignificant alterations. Any deviation in marking requirements would be unacceptable to the industry.

We recognize that DTSC does not need to require the LeafMark™. We request, however, that DTSC includes regulatory language in the final rule that it recognizes and accepts the LeafMark™ on brake friction materials sold in California.

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<sup>4</sup> WAC 173-901-150 (4)(b)(ii).

<sup>5</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.3.

<sup>6</sup> The Copper-free Brake Initiative MOU, Section VI, A.1.d., p. 7.

## 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. These standards require that the laboratory and the testing certification agency (or registrar) are separate entities. It is imperative that DTSC enforce this requirement.

## Self-Certification of Compliance [66387.3]

MEMA and BMC request that DTSC clarify language under 'Step 5' in part (C)(b) by defining or at least discussing in the regulation what 'one set of testing results' means. Self-certification should be taking testing samples of each formulation and should not require testing each edge code. Each formulation could be identified by over a dozen edge codes. Requiring brake friction material manufacturers to self-certify by testing every edge code would be impracticable, extremely burdensome, and cost prohibitive.

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. The SAE International protocol is to review standards every five years – or sooner, if needed. When a standard is revised and updated to reflect improvements in test protocols or reconfirmed that it is up to date in its present condition, the standard is published to reflect that year.

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 then 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. Consequently, future publications of that particular SAE International Standard would not be valid under the State's rule.

## Definitions [66387.1]

In the proposed regulatory text for the Extension Process (Section 66387.9), DTSC requires that a manufacturer requesting an extension provide information on whether the brake friction material is intended for use in original equipment or replacement parts. MEMA and BMC request that DTSC define 'replacement parts.' Replacement parts should be defined as brake friction material that meets the environmental compliance requirements and is installed on a vehicle as a replacement part that may not be the same brake formulation as the original equipment manufacturer or original equipment service contract brake friction material.

If DTSC provides clarifying language that Section 25250.55(g) and 25250.55(h) applies to OES contracts and aftermarket replacement parts, DTSC should include definitions of 'replacement parts' and 'brake friction material manufactured as part of an OES contract.'



Brake friction material manufactured as part of an OES contract should be defined as brake friction material that: (a) Is provided as service parts originally designed for and using the same brake friction material formulation sold with a new motor vehicle and there have been no changes to the original design of the service part's brake friction formulation; or (b) Is manufactured as part of a contract between a vehicle manufacturer and a brake friction material manufacturer that requires the brake friction material manufacturer to provide brakes with the identical brake friction material formulation to those that originally came with a new motor vehicle, and the brake friction material manufacturer only sells these parts directly to the vehicle manufacturer. This definition of brake friction material manufactured as part of an OES contract is aligned with the definition in the State of Washington statute.<sup>7</sup>

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

Respectfully Submitted,

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<sup>7</sup> Chapter 173-901 WAC, Better Brakes Law