

Chapter 70A.340 RCW
BRAKE FRICTION MATERIAL

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RCW 70A.340.010 Findings. The legislature finds that:

- (1) Brake friction material is an essential component of motor vehicle brakes and is critically important to transportation safety and public safety in general;
 - (2) Debris from brake friction material containing copper and its compounds is generated and released to the environment during normal operation of motor vehicle brakes;
 - (3) Thousands of pounds of copper and other substances released from brake friction material enter Washington state's streams, rivers, and marine environment every year; and
 - (4) Copper is toxic to many aquatic organisms, including salmon.
- [2010 c 147 § 1. Formerly RCW 70.285.010.]

RCW 70A.340.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Accredited laboratory" means a laboratory that is:
 - (a) Qualified and equipped for testing of products, materials, equipment, and installations in accordance with national or international standards; and
 - (b) Accredited by a third-party organization approved by the department to accredit laboratories for purposes of this chapter.
- (2) "Alternative brake friction material" means brake friction material that:
 - (a) Does not contain:
 - (i) More than 0.5 percent copper or its compounds by weight;
 - (ii) The constituents identified in RCW 70A.340.030 at or above the concentrations specified; and
 - (iii) Other materials determined by the department to be more harmful to human health or the environment than existing brake friction material;
 - (b) Enables motor vehicle brakes to meet applicable federal safety standards, or if no federal safety standard exists, a widely accepted industry standard;

(c) Is available at a cost and quantity that does not cause significant financial hardship across the majority of brake friction material and vehicle manufacturing industries; and

(d) Is available to enable brake friction material and vehicle manufacturers to produce viable products meeting consumer expectations regarding braking noise, shuddering, and durability.

(3) "Brake friction material" means that part of a motor vehicle brake designed to retard or stop the movement of a motor vehicle through friction against a rotor made of more durable material.

(4) "Committee" means the brake friction material advisory committee.

(5) "Department" means the department of ecology.

(6) (a) "Motor vehicle" has the same meaning as defined in RCW 46.04.320 that are subject to registration requirements under RCW 46.16A.080.

(b) "Motor vehicle" does not include:

(i) Motorcycles as defined in RCW 46.04.330;

(ii) Motor vehicles employing internal closed oil immersed motor vehicle brakes or similar brake systems that are fully contained and emit no debris or fluid under normal operating conditions;

(iii) Military combat vehicles;

(iv) Race cars, dual-sport vehicles, or track day vehicles, whose primary use is for off-road purposes and are permitted under RCW 46.16A.320; or

(v) Collector vehicles, as defined in RCW 46.04.126.

(7) (a) "Motor vehicle brake" means an energy conversion mechanism used to retard or stop the movement of a motor vehicle.

(b) "Motor vehicle brake" does not include brakes designed primarily to hold motor vehicles stationary and not for use while motor vehicles are in motion.

(8) "Original equipment service" means brake friction material provided as service parts originally designed for and using the same brake friction material formulation sold with a new motor vehicle.

(9) "Small volume motor vehicle manufacturer" means a manufacturer of motor vehicles with Washington annual sales of less than one thousand new passenger cars, light duty trucks, medium duty vehicles, heavy duty vehicles, and heavy duty engines based on the average number of vehicles sold for the three previous consecutive model years. [2020 c 20 § 1421; 2011 c 171 § 111; 2010 c 147 § 2. Formerly RCW 70.285.020.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

RCW 70A.340.030 Prohibition on the sale of certain brake friction material—Exemptions. (1) No manufacturer, wholesaler, retailer, or distributor may sell or offer for sale brake friction material in Washington state containing any of the following constituents in an amount exceeding the specified concentrations:

(a) Asbestiform fibers, 0.1 percent by weight.

(b) Cadmium and its compounds, 0.01 percent by weight.

(c) Chromium(VI)-salts, 0.1 percent by weight.

(d) Lead and its compounds, 0.1 percent by weight.

(e) Mercury and its compounds, 0.1 percent by weight.

(2) Beginning January 1, 2021, no manufacturer, wholesaler, retailer, or distributor may sell or offer for sale brake friction material in Washington state containing more than five percent copper and its compounds by weight.

(3) Beginning January 1, 2025, no manufacturer, wholesaler, retailer, or distributor may sell or offer for sale brake friction material in Washington state containing more than 0.5 percent copper and its compounds by weight.

(4) Brake friction material manufactured prior to 2015 is exempt from subsection (1) of this section for the purposes of clearing inventory. This exemption expires January 1, 2025.

(5) Brake friction material manufactured prior to 2021 is exempt from subsection (2) of this section for the purposes of clearing inventory. This exemption expires January 1, 2031.

(6) Brake friction material manufactured prior to 2025 is exempt from subsection (3) of this section for the purposes of clearing inventory. This exemption expires January 1, 2035.

(7) Brake friction material manufactured as part of an original equipment service contract for vehicles manufactured prior to January 1, 2015, is exempt from subsection (1) of this section.

(8) Brake friction material manufactured as part of an original equipment service contract for vehicles manufactured prior to January 1, 2021, is exempt from subsection (2) of this section.

(9) Brake friction material manufactured as part of an original equipment service contract for vehicles manufactured prior to January 1, 2025, is exempt from subsection (3) of this section. [2017 c 204 § 1; 2010 c 147 § 3. Formerly RCW 70.285.030.]

RCW 70A.340.040 Brake friction material advisory committee—

Members—Duties. (1) By December 1, 2015, the department shall review risk assessments, scientific studies, and other relevant analyses regarding alternative brake friction material and determine whether the material may be available. The department shall consider any new science with regard to the bioavailability and toxicity of copper.

(2) If the department finds that alternative brake friction material may be available, it shall convene a brake friction material advisory committee. The committee shall include, but is not limited to:

(a) A representative of the department, who will chair the committee;

(b) The chief of the Washington state patrol, or the chief's designee;

(c) A representative of manufacturers of brake friction material;

(d) A representative of manufacturers of motor vehicles;

(e) A representative of a nongovernmental organization concerned with motor vehicle safety;

(f) A representative of the national highway traffic safety administration; and

(g) A representative of a nongovernmental organization concerned with the environment.

(3) If convened pursuant to subsection (2) of this section, the committee shall separately assess alternative brake friction material for passenger vehicles, light duty vehicles, and heavy duty vehicles. The committee shall make different recommendations to the department as to whether alternative brake friction material is available or

unavailable for passenger vehicles, light duty vehicles, and heavy duty vehicles. For purposes of this section, "heavy duty vehicle" means a vehicle used for commercial purposes with a gross vehicle weight rating above twenty-six thousand pounds. The committee shall also consider appropriate exemptions including original equipment service and brake friction material manufactured prior to the dates specified in RCW 70A.340.050. The department shall consider the committee's recommendations and make a finding as to whether alternative brake friction material is available or unavailable.

(4) If, pursuant to subsection (3) of this section, the department finds that alternative brake friction material:

(a) Is available, it shall comply with RCW 70A.340.050;

(b) Is not available, it shall periodically evaluate the finding and, if it determines that alternative brake friction material may be available, comply with subsections (2) and (3) of this section. If the department finds that alternative brake friction material is available, it shall comply with RCW 70A.340.050. [2020 c 20 § 1422; 2010 c 147 § 4. Formerly RCW 70.285.040.]

RCW 70A.340.050 Finding that alternative brake friction material is available—Report. If, pursuant to RCW 70A.340.040, the department finds that alternative brake friction material is available:

(1) (a) By December 31st of the year in which the finding is made, the department shall publish the information required by RCW 70A.340.040 in the Washington State Register and present it in a report to the appropriate committees of the legislature; and

(b) The report must include recommendations for exemptions on original equipment service and brake friction material manufactured prior to dates specified in this section and may include recommendations for other exemptions.

(2) Beginning January 1, 2025, and consistent with RCW 70A.340.030(3), no manufacturer, wholesaler, retailer, or distributor may sell or offer for sale brake friction material in Washington state containing more than 0.5 percent copper and its compounds by weight, as specified in the report in subsection (1) of this section. [2020 c 20 § 1423; 2017 c 204 § 2; 2010 c 147 § 5. Formerly RCW 70.285.050.]

RCW 70A.340.060 Application for exemption from chapter. Any motor vehicle manufacturer or brake friction material manufacturer may apply to the department for an exemption from this chapter for brake friction material intended for a specific motor vehicle model or class of motor vehicles based on special needs or characteristics of the motor vehicles for which the brake friction material is intended. Exemptions may only be issued for small volume motor vehicle manufacturers, specific motor vehicle models, or special classes of vehicles, such as fire trucks, police cars, and heavy or wide-load equipment hauling, provided the manufacturer can demonstrate that complying with the requirements of this chapter is not feasible, does not allow compliance with safety standards, or causes significant financial hardship. Exemptions are valid for no less than one year and may be renewed automatically as needed or the exemption may be permanent for as long as the vehicle is used in the manner described in the application. [2010 c 147 § 6. Formerly RCW 70.285.060.]

RCW 70A.340.070 Manufacturers of brake friction material must provide certain data to the department—Department's duties. (1) By January 1, 2013, and at least every three years thereafter, manufacturers of brake friction material sold or offered for sale in Washington state shall provide data to the department adequate to enable the department to determine concentrations of antimony, copper, nickel, and zinc and their compounds in brake friction material sold or offered for sale in Washington state.

(2) Using data provided pursuant to subsection (1) of this section and other data as needed, and in consultation with the brake friction material manufacturing industry, the department must:

(a) By July 1, 2013, establish baseline concentration levels for constituents identified in subsection (1) of this section in brake friction material; and

(b) Track progress toward reducing the use of copper and its compounds and ensure that concentration levels of antimony, nickel, or zinc and their compounds do not increase by more than fifty percent above baseline concentration levels.

(3) If concentration levels of antimony, nickel, or zinc and their compounds in brake friction material increase by more than fifty percent above baseline concentration levels, the department shall review scientific studies to determine the potential impact of the constituent on human health and the environment. If scientific studies demonstrate the need for controlling the use of the constituent in brake friction material, the department may consider recommending limits on concentration levels of the constituent in the material.

(4) Confidential business information otherwise protected under RCW 43.21A.160 or chapter 42.56 RCW is exempt from public disclosure. [2010 c 147 § 7. Formerly RCW 70.285.070.]

RCW 70A.340.080 Compliance with chapter—Proof of compliance.

(1) Manufacturers of brake friction material offered for sale in Washington state must certify compliance with the requirements of this chapter and mark proof of certification on the brake friction material in accordance with criteria developed under this section.

(2) By December 1, 2012, the department must, after consulting with interested parties, develop compliance criteria to meet the requirements of this chapter. Compliance criteria includes, but is not limited to:

(a) Self-certification of compliance by brake friction material manufacturers using accredited laboratories; and

(b) Marked proof of certification, including manufacture date, on brake friction material and product packaging. Marked proof of certification must appear by January 1, 2015. Brake friction material manufactured or packaged prior to January 1, 2015, is exempt from this subsection (2)(b).

(3) Beginning January 1, 2021, manufacturers of new motor vehicles offered for sale in Washington state must ensure that motor vehicles are equipped with brake friction material certified to be compliant with the requirements of this chapter. [2010 c 147 § 8. Formerly RCW 70.285.080.]

RCW 70A.340.090 Enforcement of chapter—Violations—Penalties.

(1) The department must enforce this chapter. The department may

periodically purchase and test brake friction material sold or offered for sale in Washington state to verify that the material complies with this chapter.

(2) Enforcement of this chapter by the department must rely on notification and information exchange between the department and manufacturers, distributors, and retailers. The department must issue one warning letter by certified mail to a manufacturer, distributor, or retailer that sells or offers to sell brake friction material in violation of this chapter, and offer information or other appropriate assistance regarding compliance with this chapter. Once a warning letter has been issued to a distributor or retailer for violations under subsections (3) and (5) of this section, the department need not provide warning letters for subsequent violations by that distributor or retailer. For the purposes of subsection (6) of this section, a warning letter serves as notice of the violation. If compliance is not achieved, the department may assess penalties under this section.

(3) A brake friction material distributor or retailer that violates this chapter is subject to a civil penalty not to exceed ten thousand dollars for each violation. Brake friction material distributors or retailers that sell brake friction material that is packaged consistent with RCW 70A.340.080(2)(b) are not in violation of this chapter. However, if the department conclusively proves that the brake friction material distributor or retailer was aware that the brake friction material being sold violates RCW 70A.340.030 or 70A.340.050, the brake friction material distributor or retailer is subject to civil penalties according to this section.

(4) A brake friction material manufacturer that knowingly violates this chapter must recall the brake friction material and reimburse the brake friction distributor, retailer, or any other purchaser for the material and any applicable shipping and handling charges for returning the material. A brake friction material manufacturer that violates this chapter is subject to a civil penalty not to exceed ten thousand dollars for each violation.

(5) A motor vehicle distributor or retailer that violates this chapter is subject to a civil penalty not to exceed ten thousand dollars for each violation. A motor vehicle distributor or retailer is not in violation of this chapter for selling a vehicle that was previously sold at retail and that contains brake friction material failing to meet the requirements of this chapter. However, if the department conclusively proves that the motor vehicle distributor or retailer installed brake friction material that violates RCW 70A.340.030, 70A.340.050, or 70A.340.080(2)(b) on the vehicle being sold and was aware that the brake friction material violates RCW 70A.340.030, 70A.340.050, or 70A.340.080(2)(b), the motor vehicle distributor or retailer is subject to civil penalties under this section.

(6) A motor vehicle manufacturer that violates this chapter must notify the registered owner of the vehicle within six months of knowledge of the violation and must replace at no cost to the owner the noncompliant brake friction material with brake friction material that complies with this chapter. A motor vehicle manufacturer that fails to provide the required notification to registered owners of the affected vehicles within six months of knowledge of the violation is subject to a civil penalty not to exceed one hundred thousand dollars. A motor vehicle manufacturer that fails to provide the required notification to registered owners of the affected vehicles after twelve months of knowledge of the violation is subject to a civil

penalty not to exceed ten thousand dollars per vehicle. For purposes of this section, "motor vehicle manufacturer" does not include a vehicle dealer defined under RCW 46.70.011 and required to be licensed as a vehicle dealer under chapter 46.70 RCW.

(7) Before the effective date of the prohibitions in RCW 70A.340.030 or 70A.340.050, the department must prepare and distribute information about the prohibitions to manufacturers, distributors, and retailers to the maximum extent practicable.

(8) All penalties collected under this chapter must be deposited in the model toxics control operating account created in RCW 70A.305.180. [2020 c 20 § 1424; 2019 c 422 § 409; 2010 c 147 § 9. Formerly RCW 70.285.090.]

Effective date—Intent—2019 c 422: See notes following RCW 82.21.010.

RCW 70A.340.100 Adoption of rules. The department may adopt rules necessary to implement this chapter. Rules adopted by the department under this section may not exceed the terms explicitly established by this chapter. [2017 c 204 § 3; 2010 c 147 § 10. Formerly RCW 70.285.100.]