



DEPARTMENT OF
ECOLOGY
State of Washington

Rule Implementation Plan

Better Brakes Rule

Chapter 173-901 WAC

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Purpose and Introduction

The Department of Ecology (Ecology) provides the information in this implementation plan to meet agency and Administrative Procedure Act (RCW 34.05.328) requirements related to rule adoptions.

The purpose of this rule implementation plan is to inform those who must comply with the Better Brakes Rule, Chapter 173-901 WAC, about how Ecology intends to:

- Implement and enforce the rule.
- Inform and educate persons affected by the rule.
- Promote and assist voluntary compliance with the rule.
- Evaluate the rule.
- Train and inform Ecology staff about the new or amended rule.

Also included in this plan is information about:

- Supporting documents that may need to be written or revised because of the new or amended rule.
- Other resources for more information about the rule.
- Contact information for Ecology employees who can answer questions about the rule implementation.

Implementation and Enforcement

Implementation and enforcement of the Better Brakes Rule will be phased-in over several years with the first requirements taking effect January 1, 2013. By this date, manufacturers of brake friction material are required to report certain baseline information. This baseline information will include the concentrations of copper, nickel, zinc, and antimony in brake friction materials sold or offered for sale in Washington State.

In preparation for this requirement, Ecology has developed a reporting system and database to store reported information. After manufacturers report this information, Ecology is to develop a baseline for the concentrations of the reported elements in brake friction material sold in the state. Ecology will not take enforcement action on companies that fail to report by the deadline; however manufacturers will not be able to certify their products until they have submitted baseline reporting information.

This work is funded by a legislative appropriation from the Model Toxics Control Account (MTCA), which ends June 30, 2013. Some of the following work is currently unfunded, although Ecology has submitted a budget request for additional MTCA funds.

Chapter 70.285 RCW requires Ecology to carry out some of the following elements, regardless of funding levels. If funding is not received to carry out the work required by Chapter 70.285 RCW, Ecology will be required to shift resources from work on public notices and permits for cleanups at facilities that treat, store, or dispose of hazardous wastes. We would also need to

reassign resources away from researching and analyzing safer alternatives for toxic metals in packaging and manufacturing processes. Other work will only be carried out if funding is provided and will be commensurate with the level of funding received.

Work that is required regardless of funding:

Ecology is required to maintain the certification and reporting system and track levels of copper, nickel, antimony, and zinc in brake friction materials.

By December 1, 2015, Ecology is required to review risk assessments, scientific studies, and other relevant analyses regarding alternative brake friction materials containing less than 0.5 percent copper and determine if these materials *may be* available. If Ecology makes this determination, Ecology is required to convene an advisory committee to determine if the materials *are* available.

If alternative materials are available, Ecology must write a report documenting this finding and submit it to the Legislature. Ecology is then required to write rules implementing a ban on brake friction materials containing more than 0.5 percent copper.

Manufacturers may apply for an exemption from certain requirements under the law. If a manufacturer applies for an exemption Ecology will be required to review the application for an exemption.

Work that will be completed commensurate with funding levels:

Ecology is directed to prepare and distribute information about the requirements of the law to affected entities to the maximum extent practicable. Please see the following section for more information regarding implementation of this requirement.

Ecology will carry out enforcement of the law commensurate with the level of funding received. Ecology will purchase brake friction materials sold and offered for sale in the state and test them to determine if they comply with the requirements of the law. Ecology is directed to carry out enforcement by relying on notifications and information exchange between manufacturers, distributors, and retailers. Prior to issuing any penalties under the law, Ecology is required to send a warning letter and offer information or other assistance to help achieve compliance. If someone repeatedly and knowingly violates the law, Ecology may issue penalties.

Informing and Educating Persons Affected by the Rule

Prior to adopting rules Ecology conducted a considerable amount of education and outreach as part of our rule making process. Many stakeholders are already well informed about the requirements of the rule. Ecology solicited input from and educated persons affected by the rule by:

- Forming the Better Brakes Rule Workgroup.
- Conducting outreach as part of several informal comment periods on draft rules.

- Hosting two workshops on draft rules.
- Sending at least two email notices to all brake friction material manufacturers that currently comply with other state regulations.
- Sending at least two email notices to all brake friction material manufacturers that are licensed to use FMSI numbers (Friction Materials Standards Institute numbers are used to indicate the shape and size of a brake pad or shoe).
- Sending at least two email notices to various trade associations potentially impacted by the rule.
- On two occasions, mailing information about the proposed rule to all potentially regulated entities in the state.
- Emailing notices to various list-serves.
- Publishing a story in the Hazardous Waste and Toxics Reduction Program's publication *ShopTalk*.
- Maintaining a Web site that includes a frequently asked questions section.
- Creating numerous focus sheets.
- Preparing and sending out two press releases.

Prior to the effective dates in the rule Ecology will send out another round of the various mailings, email notices, and press releases listed above. Web sites and focus sheets will also be updated and maintained.

Additional ongoing efforts to inform and educate people about the rule could include:

- Webinars
- Workshops
- Presentations
- Distribution of educational materials prepared by the Society of Automotive engineers or Ecology

Promoting and Assisting Voluntary Compliance

Ecology will promote and assist with voluntary compliance by maintaining close communication with manufacturers, retailers, distributors, and industry sponsored registrars. Due to the support for the rule within the brake manufacturing industry, Ecology expects that nationally manufacturers will only make products that comply with the requirements of the Washington State law. Ecology also expects that national distributors will only carry products that comply with the requirements of the law.

Manufacturers are required to file certification documents with Ecology. Ecology will use this information to maintain a list of compliant parts. Manufacturers will also list compliant parts on the internet. Retailers and distributors will be able to use these list to identify parts that comply with the requirements of the rule.

Ecology will provide technical assistance and guidance to any entity that violates the law or rule prior to issuing any penalties.

To enforce this rule, Ecology will primarily rely on notification and information exchange between manufacturers, distributors, and retailers of brake friction material.

Evaluating the Rule

Chapter 70.285 RCW directs manufacturers to report the concentrations of copper, nickel, zinc, and antimony in brake friction materials sold or offered for sale in Washington State. Ecology will track this information to determine average concentrations of the elements in brake friction materials. Ecology will evaluate the performance of the rule based on how quickly the average concentration of copper drops and by the number of products that contain very low amounts of copper. Ecology will also estimate the number of pounds of copper pollution that have been prevented in the state.

Ecology will also purchase and test brake friction materials sold or offered for sale in Washington state to determine if manufacturers, distributors, and retailers are complying with the law.

Training and Informing Ecology Staff

Ecology staff that work with facilities affected by the rule should understand the basic requirements of the rule – that brakes need to be marked with proof of certification. They should also be aware that there is more information available on Ecology's Web site.

Staff will be informed of these requirements through an "Inside Ecology" article, Ecology's internal staff newsletter. Trainings/presentations will be offered to staff who work with facilities affected by the rules.

Supporting Documents that May Need to be Written or Revised

After the rule is finalized, the Web site and several focus sheets will need to be updated. Guidance documents may need to be written if there are questions regarding the certification process or the submittal of data to Ecology.

Other educational materials may also need to be prepared, including focus sheets or other guidance documents.

More Information

Ecology's Better Brakes Web site: <http://www.ecy.wa.gov/programs/hwtr/betterbrakes.html>

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