



# Better Brakes Law Policy Statement on Reporting Requirements for OESC Friction Material

**Program Name:** Better Brakes

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**Date(s) of Substantive Updates:**

**References:** Better Brakes Original Equipment Service Contract (OESC) Exemption WAC 173-901-150

## Purpose

This policy statement allows vehicle and brake friction material manufacturers to resolve and meet compliance reporting requirements for products that meet the Better Brakes Original Equipment Service Contract (OESC) exemption.

## Application

WAC 173-901-150(4)(b)(iii) requires brake friction material manufacturers and vehicle manufacturers claiming the OESC exemption<sup>1</sup> (from A level requirements for regulated constituents currently in effect, and eventually from B and N level requirements when they go into effect<sup>2</sup>) to include, in self-certification documentation submitted to the industry-sponsored registrar, “a description of the vehicle model and its year of manufacture for which the brake friction material is manufactured.”

The industry-sponsored registrar website and reporting forms do not currently include the functionality needed for manufacturers to provide the vehicle model and year of manufacture information required by WAC 173-901-150(4)(b)(iii) for brake friction material that manufacturers claim is exempt as OESC.

To enable manufacturers claiming the OESC exemption to come into compliance, MEMA-BMC committed to work with the registrar to add the functionality to the registrar website and reporting forms to accept and document relevant compliance details necessary for the OESC exemption self-certification. Specifically, the registrar would add fields for indicating that the OESC exemption is claimed, and for specifying the vehicle make, model, and year(s) of manufacture.

Brake friction materials manufacturers will populate the registry utilizing best available information for vehicle make, model, and model year(s) through standardized industry data sources (and/or their own internal records and/or records from the vehicle manufacturers, if applicable) for brake friction material formulations claimed to be exempt under the OESC exemption for vehicle model years 2014 and newer.

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The vehicle manufacturers will build their own database of vehicles of model years 2014 – 2025 intending to utilize the OESC exemptions for Levels A and B materials.<sup>3</sup> The vehicle manufacturer will keep this data on file and it can be presented to Ecology if necessary. Furthermore, the vehicle manufacturer data will also be shared with friction material manufacturers, as appropriate, to corroborate and inform their reporting submissions as described above.

In response to these industry commitments, Ecology intends to take the following approach to enforcing the manufacturer self-certification requirement for friction materials that are claimed to be OESC exempt and are **intended for use on vehicles of model year 2014 or newer**:

Based on the foregoing MEMA-BMC and Alliance for Automotive Innovation<sup>4</sup> proposal, and assuming the foregoing steps are carried out as proposed, Ecology will exercise its enforcement discretion to refrain from penalizing manufacturers for failure to meet the requirements of WAC 173-901-150(4)(b)(iii) until April 1, 2021. By that date, we expect that friction material manufacturers should have had a reasonable opportunity to populate the registry with necessary information for vehicles of model years 2014 – 2025 intending to utilize the OESC exemption. After that date, Ecology may use its enforcement discretion to penalize friction material manufacturers or vehicle manufacturers that provide friction material under the OESC exemption, but fail to include in the OESC self-certification documentation submitted to the industry-sponsored registrar a description, based on the best available information, of the vehicle model and year of manufacture for which the brake friction material is manufactured.

In the course of enforcement, Ecology may compare information in the vehicle manufacturers' database against claims of OESC exemption by brake friction material manufacturers in the industry-sponsored registrar database. If discrepancies arise, Ecology may require parties to provide additional documentation to substantiate their claims of OESC exemption on a case-by-case basis.

If Ecology is not convinced that the OESC exemption in fact applies to a particular brake friction product, despite the brake friction material manufacturer's self-certification, Ecology may penalize the brake friction material manufacturer for failure to meet applicable constituent restrictions (Level A, Level B, or Level N, as applicable).<sup>5</sup>

Industry representatives have claimed it is difficult to gather information necessary to meet the requirements of WAC 173-901-150(4)(b)(iii) with respect to OESC friction material for vehicle model years 2013 and older. Based on these concerns, and in recognition of the fact that OESC friction material for vehicles of this vintage will decline over time, Ecology intends to take the following approach to enforcing the brake friction material manufacturer self-certification requirements for OESC friction materials that are **intended for use on vehicles of model year 2013 or older**:

Ecology will exercise its enforcement discretion not to penalize brake friction material manufacturers or vehicle manufacturers for failure to include in the OESC self-certification documentation submitted to the industry-sponsored registrar a description of the vehicle model and year of manufacture for which the brake friction material is manufactured if the material claimed to be OESC is offered for use exclusively on vehicles of model year 2013 or older, is represented at the point-of-sale as original equipment service parts, and is sold under the brand name of the manufacturer of the vehicle on which the material is marketed for use.

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Ecology may nonetheless request, on a case-by-case basis, documentation from the vehicle manufacturer showing that the friction material in fact meets the definition of “brake friction material manufactured as part of an original equipment service contract” in WAC 173-901-040(2). Ecology may penalize the friction material manufacturer or vehicle manufacturer for failure to comply with the constituent limitations in the law (A, B, or N level as applicable) if they cannot provide Ecology with documentation showing that the friction material meets the definition of OESC in WAC 173-901-040(2).

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<sup>1</sup> Better Brakes Rule WAC 173-901-040(2) defines brake friction material manufactured as part of an original equipment service contract 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—if there are any changes to the design of the service part's brake friction formulation, the product is no longer brake friction material manufactured as part of an original equipment service contract; and (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. The brake friction material manufacturer may only sell these parts directly to the other party to the contract, the vehicle manufacturer.

<sup>2</sup> “B level specifications” denote brake friction material compliant with the limits imposed on asbestiform fibers, cadmium and its compounds, chromium(VI)-salts, lead and its compounds, and mercury by RCW 70A.340.030(1), and with the five percent limit on copper imposed by RCW 70A.340.030(2) beginning January 1, 2021. “N level” specifications denote brake friction material compliant with the limits imposed on asbestiform fibers, cadmium and its compounds, chromium(VI)-salts, lead and its compounds, and mercury by RCW 70A.340.030(1), and with the 0.5 percent limit on copper imposed by RCW 70A.340.030(3) beginning January 1, 2025.

<sup>3</sup> To clarify, an OESC exemption for A level material refers to OESC brake friction material that meets A level requirements and is receiving an exemption from B level requirements and is sold in 2021 or later as a replacement part for a vehicle made between 2015 and 2020. An OESC exemption for B level material refers to OESC brake friction material that meets B level requirements and is receiving an exemption from N level requirements and is sold in 2025 or later as a replacement part for a vehicle made between 2021 and 2024.

<sup>4</sup> On January 8, 2020, Global Automakers and The Alliance of Automobile Manufacturers announced the formation of a new association: The Alliance for Automotive Innovation. According to the association, it “represents innovative manufacturers and value chain partners who together produce nearly 99 percent of all light-duty vehicles sold in the United States.”

<sup>5</sup> Ecology issued an interpretation letter dated February 13, 2019 that vehicle manufacturers are required to “have a system in place to ensure that brake friction material manufactured as part of an OESC is only installed on the vehicle for which is designed” as specified in WAC 173-901-150(3) and “should at least provide the part of the certification that pertains to the OESC status of the material, including the vehicle model and year for which the exemption is claimed.”