

WAC 173-901-180 Enforcement—Violations—Penalties. (1) The department will enforce this chapter. The department may:

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

(b) Verify that brake friction material manufacturers have submitted accurate self-certification documentation to the department by requiring brake friction manufacturers to submit complete copies of laboratory testing results and/or samples of brake friction material formulations for which self-certification documentation has been submitted. A brake friction material manufacturer that is required to submit verifying testing results or samples of brake friction material must provide these within seven days of receiving a written notice from the department. The department may not require a manufacturer of brake friction material to verify compliance by submitting samples of brake friction material more than once every three years unless the brake friction material manufacturer has been issued a penalty or required to recall a product under this chapter.

(2) Enforcement of this chapter by the department will rely on notification and information exchange between the department and manufacturers, distributors, retailers, installers, and an industry-sponsored registrar.

(a) After issuing a penalty to or requiring a recall from a manufacturer, the department will notify the industry-sponsored registrar of the violation and inform the registrar if any brake friction materials with a registered unique identification code are not in compliance with the requirements of chapter 70.285 RCW or this chapter.

(b) The department will also post a notice of the penalty or recall on its website.

(3) The department will issue one warning letter by certified mail to a manufacturer, distributor, installer, 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 (4) 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 (5) 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.

(4) 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 70.285.080 (2)(b) and this chapter 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 70.285.030 or 70.285.050 or this chapter, the brake friction material distributor or retailer may be subject to civil penalties according to this section.

(5) A brake friction material manufacturer that knowingly violates this chapter shall recall the brake friction material and reimburse the brake friction distributor, installer, retailer, or any other purchaser for the material and any applicable shipping and handling charges for returning the material. A brake friction material manufac-

turer that violates this chapter is subject to a civil penalty not to exceed ten thousand dollars for each violation.

(6) 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 70.285.030, 70.285.050, 70.285.080 (2)(b), or this chapter on the vehicle being sold and was aware that the brake friction material violates RCW 70.285.030, 70.285.050, 70.285.080 (2)(b), or this chapter, the motor vehicle distributor or retailer is subject to civil penalties under this section.

(7) 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.

(8) Before the effective date of the prohibitions in RCW 70.285.030 or 70.285.050, the department will prepare and distribute information about the prohibitions to manufacturers, distributors, and retailers to the maximum extent practicable.

(9) All penalties collected under this chapter will be deposited in the state toxics control account created in RCW 70.105D.070.

[Statutory Authority: Chapter 70.285 RCW. WSR 12-21-082 (Order 10-17), § 173-901-180, filed 10/19/12, effective 11/19/12.]