

RCW 70A.245.070 Expanded polystyrene prohibitions—Penalty.

(1)(a) Beginning June 1, 2024, the sale and distribution of the following expanded polystyrene products in or into Washington state is prohibited:

(i) A portable container that is designed or intended to be used for cold storage, except for expanded polystyrene containers used for drugs, medical devices, and biological materials as defined in the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.) or shipping perishable commodities from a wholesale or retail establishment; and

(ii) Food service products that include food containers, plates, clam shell-style containers, and hot and cold beverage cups. For the purposes of this subsection (1)(a)(ii), food service products do not include: Packaging for raw, uncooked, or butchered meat, fish, poultry, or seafood, vegetables, fruit, or egg cartons.

(b) Beginning June 1, 2023, the sale and distribution of expanded polystyrene void filling packaging products, which means loose fill packaging material, also referred to as packing peanuts, in or into Washington state is prohibited.

(2)(a) The department must provide technical assistance and guidance to manufacturers of prohibited expanded polystyrene products, upon request. For manufacturers out of compliance with the requirements of this section, the department shall provide written notification and offer information to manufacturers that sell prohibited expanded polystyrene products who are in violation of this section. For the purposes of this section, written notification serves as notice of the violation. The department must issue at least two notices of violation by certified mail prior to assessing a penalty.

(b) A manufacturer of products in violation of this section is subject to a civil penalty for each violation in an amount not to exceed:

(i) \$250 if it is the manufacturer's first penalty; and

(ii) \$1,000 if the manufacturer has previously been issued a civil penalty under this section.

(c) Penalties collected under this section must be deposited in the model toxics control operating account created in RCW 70A.305.180.

(d) Penalties issued under this section are appealable to the pollution control hearings board established in chapter 43.21B RCW.

(3) A city, town, county, or municipal corporation may not implement a local ordinance restricting products prohibited under subsection (1) of this section unless the ordinance was filed by April 1, 2021, and enacted by June 1, 2021. An ordinance restricting products prohibited under subsection (1) of this section that was not enacted as of June 1, 2021, is preempted by this section.

(4) For the purposes of this section, "manufacturer" includes any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that:

(a) Produces the products subject to restrictions in subsection (1) of this section; or

(b) Is an importer or domestic distributor of a product subject to restrictions in subsection (1) of this section sold or offered for sale in or into the state. [2021 c 313 s 10.]

Finding—Intent—2021 c 313: See note following RCW 70A.245.010.