

WAC 173-443-060 Prohibitions and additional requirements for new products and equipment listed in Table 1. (1) Prohibitions. No person may offer for sale, lease, rent, install, or otherwise cause to enter into Washington commerce any new product or equipment, as defined in WAC 173-443-030, that contains or uses a prohibited substance listed in WAC 173-443-040, Table 1, unless an exemption is provided for in WAC 173-443-050.

(2) Sell through provisions.

(a) Products and equipment manufactured prior to the effective date of a prohibition in WAC 173-443-040, Table 1, may be sold, leased, rented, imported, exported, distributed, installed, used, or otherwise introduced into Washington commerce after the date of prohibition.

(b) Polyurethane foam systems manufactured (blended) before the prohibition date and not yet applied on site may be used after the prohibition date.

(3) Other allowances. Except where existing equipment is retrofit, nothing in this chapter requires a person who acquired a product or equipment that contains or uses a prohibited substance prior to the effective date of a prohibition in WAC 173-443-040 to cease use of that product or equipment.

(4) Product labeling and disclosure.

(a) Except as provided in (d) and (e) of this subsection and for products and equipment listed as exempt in WAC 173-443-060, a manufacturer of any new product or equipment listed in Table 1 must disclose the substance(s) contained or used through labeling the product(s) or equipment in accordance with this subsection.

(b) Effective date. The effective date for product labeling and disclosure is January 10, 2021, or one year from the effective date of an applicable prohibition, whichever is later.

(c) Disclosure methods.

(i) A manufacturer of aerosol propellant products must disclose the substance(s) contained or used in such products through one of the following methods:

(A) For aerosol products regulated by the U.S. Consumer Product Safety Commission, the U.S. Food and Drug Administration excluding prescription drug products, or products that are not covered by

(c)(i)(B) of this subsection:

(I) New dedicated label;

(II) On-packaging label;

(III) A label required by another jurisdiction that discloses the substance(s) used or the compliance status of the product; or

(IV) On-product or on-packaging symbol or code; and online disclosure.

(B) For aerosol products regulated by EPA under the Federal Insecticide Fungicide and Rodenticide Act, aerosol products regulated by the Occupational Safety and Health Administration, or aerosol products regulated by the U.S. Food and Drug Administration:

(I) Any option in (c)(ii)(A) through (D) of this subsection; or

(II) A product document, such as a Safety Data Sheet (SDS), that complies with 29 C.F.R. § 1910.1200; and online disclosure if the SDS is not posted online.

(ii) A manufacturer of refrigeration equipment (including refrigeration equipment that contains foam) must disclose the substance(s) contained or used in such equipment through one of the following methods:

(A) For the refrigerant used in household refrigerators and freezers - Compact, and household refrigerators and freezers - Built-in:

- (I) New dedicated label;
- (II) Underwriters laboratories or equivalent safety label;
- (III) A label required by another jurisdiction that discloses the substance(s) used or the compliance status of the equipment; or
- (IV) On-product symbol or code; and online disclosure.

(B) For the foam blown in or installed by the manufacturer of household refrigerators and freezers, household refrigerators and freezers - Compact, and household refrigerators and freezers - Built-in:

- (I) New dedicated label;
 - (II) Underwriters laboratories or equivalent safety label;
 - (III) Owner's manual; or
 - (IV) On-equipment symbol or code; and online disclosure.
- (C) For the refrigerant used in commercial refrigeration equipment:

- (I) New dedicated label;
- (II) Underwriters laboratories or equivalent safety label;
- (III) A label required by another jurisdiction that discloses the substance(s) used or the compliance status of the equipment; or
- (IV) On-product symbol or code; and online disclosure.

(D) For the foam blown in or installed by the manufacturer of commercial refrigeration equipment:

- (I) New dedicated label;
 - (II) Underwriters laboratories or equivalent safety label;
 - (III) Owner's manual; or
 - (IV) On-equipment symbol or code; and online disclosure.
- (iii) A manufacturer of centrifugal or positive displacement chillers must disclose the substance(s) contained or used in such equipment through one of the following methods:

(A) For the refrigerant used in centrifugal and positive displacement chillers:

- (I) New dedicated label;
- (II) Underwriters laboratories or equivalent safety label;
- (III) A label required by another jurisdiction that discloses the substance(s) used or the compliance status of the equipment; or
- (IV) On-equipment symbol or code; and online disclosure.

(B) For the foam blown in or installed by the manufacturer of centrifugal and positive displacement chillers:

- (I) New dedicated label;
- (II) Underwriters laboratories or equivalent safety label;
- (III) Owner's manual;
- (IV) A label required by another jurisdiction that discloses the substance(s) contained or the compliance status of the equipment; or
- (V) On-product symbol or code; and online disclosure.

(iv) A manufacturer of foam products must disclose the substance(s) contained or used in such products through one of the following methods:

(A) For nonretail foam products, the following methods may be used on a unit or on each individual product within a unit:

- (I) New dedicated label;
- (II) On-packaging label;
- (III) A label required by another jurisdiction that discloses the substance(s) used or the compliance status of the product; or

(IV) On-product or on-packaging symbol or code; and online disclosure.

(B) For retail foam products:

(I) New dedicated label;

(II) On-packaging label;

(III) A label required by another jurisdiction that discloses the substance(s) used or the compliance status of the product; or

(IV) On-product or on-packaging symbol or code; and online disclosure.

(C) For the foam blowing agent used in polyurethane foam systems, including spray foam systems:

(I) New dedicated label on the canister or cylinders;

(II) Existing product label on the canister or cylinders;

(III) On-packaging label;

(IV) A label required by another jurisdiction that discloses the substances(s) used or the compliance status of the product;

(V) On-packaging symbol or code; and online disclosure.

(v) Online disclosure may occur through online publication of an owner's manual, safety data sheet, or other documentation that provides information about the product to the end-user of the product.

(d) Alternative disclosure methods.

(i) A manufacturer may request approval to use an alternative disclosure method in lieu of the labeling options listed in (c) of this subsection by submitting a written statement to ecology. The written statement must:

(A) Describe the condition(s) or circumstance(s) that make it infeasible to comply with the labeling requirements of this subsection; and

(B) Propose an alternative disclosure method that satisfactorily communicates the substance(s) used or the compliance status of the product(s) or equipment.

(ii) Ecology will provide a written response to a manufacturer's request to use an alternative disclosure method by approving or denying the request, or requesting additional information, within 30 days of receipt.

(iii) Ecology may approve the request if it determines that the use of a label meeting the requirements in (c) of this subsection is not feasible for the particular product(s) or equipment.

(iv) If ecology approves the request, the effective date of the approval is the date the manufacturer received written confirmation from ecology that its proposed alternative disclosure method may be used to satisfy this subsection.

(e) The requirements of this subsection do not apply to aircraft and aircraft components subject to certification requirements of the Federal Aviation Administration.

(5) Manufacturer reporting.

(a) A manufacturer of a product or equipment that contains or uses prohibited substance(s) as of July 28, 2020, for an end-use listed in Table 1 of this subsection, or a representative of the manufacturer, must report to ecology consistent with (b) and (c) of this subsection.

(i) It is only necessary for one person to report on behalf of the manufacturer for a particular product or equipment.

(ii) In the event of a manufacturer's failure to provide a complete, accurate, and timely report, ecology will require the submittal of the information from related persons or entities in the following order:

(A) The person or entity that manufactured, produced, or assembled the product or equipment, unless that person or entity has no presence in the United States.

(B) The person or entity that marketed the product or equipment under its name or trademark, unless that person or entity has no presence in the United States.

(C) The first person or entity, whether an importer or a distributor, that owned the product or equipment in the United States.

(iii) This subsection in no way limits the liability of any manufacturer, as defined in WAC 173-443-030, associated with the product or equipment from enforcement under chapter 70A.15 RCW.

(b) Initial status notification.

(i) By December 31, 2019, a manufacturer or its representative must provide ecology an initial status notification of the status of all products and equipment within each applicable end-use that contains or uses any prohibited substance(s) listed in WAC 173-443-040, Table 1.

(ii) An initial status notification must include all covered products and equipment that the manufacturer offers for sale, leases, rents, installs, or otherwise causes to enter into Washington commerce.

(iii) A manufacturer must submit an annual status notification using ecology's notification form. The current form is available on ecology's website. This initial status notification must provide:

(A) Contact information for the manufacturer;

(B) The name of the person authorized to represent the manufacturer for purposes of providing initial status notifications and status updates;

(C) All products and equipment within each applicable end-use;

(D) Which HFCs or other prohibited substance(s) are being used within each applicable end-use; and

(E) Signature and certification by the authorized representative for the manufacturer.

(c) Updated status notifications.

(i) Within 120 days after the effective date of a prohibition set forth in WAC 173-443-040, a manufacturer affected by the prohibition must provide ecology with an updated status notification using ecology's form.

(ii) Within 120 days of a manufacturer's introduction into Washington commerce of a new or modified product or equipment that contains or uses a prohibited substance(s) listed in WAC 173-443-040, the manufacturer must provide ecology with an updated status notification using ecology's form.

(iii) The updated status notification required by (c)(i) and (ii) of this subsection must include:

(A) Whether the manufacturer has ceased use of the prohibited substance(s) listed in WAC 173-443-040 for each applicable product(s) or equipment within each end-use;

(B) What, if any, prohibited substance(s) remain in use; and

(C) Updated responses on all information requested in the initial status notification required in (b) of this subsection.

[Statutory Authority: Chapter 70A.60 RCW. WSR 23-24-041 (Order 21-02), § 173-443-060, filed 11/30/23, effective 12/31/23. Statutory Authority: Chapters 70A.45 and 70A.15 RCW. WSR 21-01-085 (Order 19-04), § 173-443-060, filed 12/10/20, effective 1/10/21.]