



# RULE-MAKING ORDER PERMANENT RULE ONLY

## CR-103P (December 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: December 10, 2020

TIME: 2:49 PM

WSR 21-01-085

**Agency:** Department of Ecology AO #19-04

**Effective date of rule:**

**Permanent Rules**

- 31 days after filing.
- Other (specify) \_\_\_\_\_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

- Yes  No If Yes, explain:

**Purpose:** The rule prohibits the use of hydrofluorocarbons (HFCs) and other substitutes in various products and equipment in the air conditioning and refrigeration, aerosol propellant, and foam end-use categories. This will occur in a phased approach, similar to rules adopted under EPA's Significant New Alternatives Policy (SNAP) program and HFC rules adopted or proposed for adoption by other states around the country.

The rule defines requirements for manufacturers, importers, and distributors of covered products and equipment to:

- Notify Ecology about the use of HFCs and other prohibited substitutes.
- Disclose HFCs and other substitutes used in an on-product label or other designated format.

Ecology modified the prohibition date for the new and existing vending machine end-use category from January 1, 2020, to January 1, 2022.

**Citation of rules affected by this order:**

New: WAC 173-443-010, WAC 173-443-020, WAC 173-443-030, WAC 173-443-040, WAC 173-443-050, WAC 173-443-060, WAC 173-443-070, WAC 173-443-080, WAC 173-443-090, WAC 173-443-100, WAC 173-443-110

Repealed: None

Amended: None

Suspended: None

**Statutory authority for adoption:** Chapter 70A.45 RCW Limiting Greenhouse Gas Emissions

**Other authority:** Chapter 70A.15 RCW Washington Clean Air Act

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 20-13-089 on June 16, 2020 (date).

Describe any changes other than editing from proposed to adopted version: See the "Concise Explanatory Statement" for more details.

**Throughout Rule**

We updated references to Ecology RCWs that were recodified to implement House Bill 2246, which reorganized environmental health laws without making any substantive or policy changes.

**WAC 173-443-030: Definitions and Acronyms**

We revised the following definitions in the foam end-use category to more closely align the definitions with industry terminology:

**"Flexible polyurethane"** means a nonrigid ~~synthetic~~ polyurethane foam including, but not limited to, that used in furniture, bedding, and chair cushions containing polymers of urethane radicals including, but not limited to, that used in furniture, bedding, chair cushions, and shoe soles.

**"Foam blowing agent"** means ~~a product or substance that functions as a source of gas to generate bubbles or cells in the mixture during the formation of foam used to produce the product with a cellular structure formed via a foaming process in a variety of materials that undergo hardening or phase transition.~~

**"Foam system"** means a multipart liquid material product that expands when mixed to form a foam solid or flexible substance in which thin films of material separate pockets of gas.

**"Integral skin polyurethane"** means a ~~synthetic~~ self-skinning polyurethane foam ~~containing polymers of urethane radicals including, but not limited to, that used in shoe soles and car steering wheels and dashboards.~~

**"Rigid polyurethane appliance foam"** means polyurethane ~~insulation~~ foam in domestic appliances used for insulation.

**"Rigid polyurethane commercial refrigeration and sandwich panels"** means polyurethane foam used to provide insulation for use in walls and doors, including that used for commercial refrigeration equipment, and used in doors, including garage doors.

**"Rigid polyurethane high-pressure two-component spray foam"** means a liquid polyurethane-a foam system product that is pressurized 800-1600 psi during manufacture; sold in pressurized containers as two parts (i.e., A-side and B-side) in nonpressurized containers; and is field or factory-blown and applied in situ using high-pressure proportioning pumps at 800 – 1600 psi to propel the foam components, and an application gun to mix and dispense the chemical components may use liquid blowing agents without an additional propellant.

**"Rigid polyurethane low-pressure two-component spray foam"** means a ~~foam product~~ liquid polyurethane foam system that is pressurized to less than 250 psi during manufacture; sold in pressurized containers as two parts (i.e., A-side and B-side) in containers that are pressurized to less than 250 psi during manufacture of the system for application without pumps; and are typically applied in situ relying upon a liquid blowing agent and/or gaseous foam blowing agent that also serves as a propellant so pumps typically are not needed.

**"Rigid polyurethane marine flotation foam"** means buoyancy or flotation polyurethane foam used in boat and ship manufacturing for both structural and flotation purposes.

**"Rigid polyurethane one-component foam sealants"** means a polyurethane foam generally packaged in aerosol cans that is applied in situ using a gaseous foam-blowing agent that is also the propellant for the aerosol formulation.

**"Rigid polyurethane slabstock and other"** means a rigid closed-cell polyurethane foam ~~containing polymers of urethane radicals~~ formed into slabstock insulation for panels and fabricated shapes for pipes and vessels.

We added a definition for the term "stationary" to address ambiguity in the definition of "refrigeration equipment."

**"Stationary"** means the system is (1) installed in a building, structure, or facility; or (2) attached to a foundation, or if not attached, will reside at the same location for more than twelve consecutive months; or (3) located intermittently at the same facility for at least two consecutive years and operates at that facility a total of at least 90 days each year.

We added a definition of "sufficient disclosure" to address ambiguity in the option of using another jurisdiction's label for refrigeration and foam end-uses.

**"Sufficient disclosure"** means providing the name of the substitute.

## WAC 173-443-060 Prohibitions

### Section 060(2):

We added additional distribution methods in the sell-through provision to align with similar provisions in the HFC law and U.S. Climate Alliance model rule.

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

### Section 060(2)(c):

We expanded the sell-through provision from "spray foam systems" to "polyurethane foam systems."

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

## **WAC 173-443-070 Product Labeling and Disclosure Requirements**

### **Throughout section:**

We removed the qualifier “HFC” from all references to “HFC disclosure requirements of another jurisdiction.”

### **Section 070(3)(a):**

We revised the order in which the two federal agencies appear.

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

### **Section 070(4) and (5):**

We added the option of using another jurisdiction’s label and clarified when it must be combined with online disclosure in Subsections (4)(a)(iii) and (iv), (4)(c)(iv) and (v), and (5)(a)(iv) and (v).

A label required by another jurisdiction with sufficient HFC disclosure requirements; and online disclosure;

A label required by another jurisdiction that does not disclose the substitute; and online disclosure; or

### **Section 070(6):**

We revised Subsections (6)(a)(ii)(C) and (D) and (6)(b)(iv) and (v) so that online disclosure is only required with use of another jurisdiction’s label if the other jurisdiction’s label does not adequately disclose the substitute.

A label required by another jurisdiction with sufficient HFC disclosure requirements; and online disclosure;

A label required by another jurisdiction that does not disclose the substitute; and online disclosure; or

We revised terminology in Subsection (6)(c) to align with revisions in Section 060(2)(c).

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

We added two new options in Subsection (6)(c)(iv) and (v) to allow use of another jurisdiction’s label for polyurethane foam systems.

A label required by another jurisdiction with sufficient disclosure requirements;

A label required by another jurisdiction that does not disclose the substitute; and online disclosure; or

### **Section 070(7):**

We removed unnecessary language to improve consistency with other subsections.

Ecology must approve in advance the use of a symbol or code ~~to comply with this section~~.

### **Section 070(9):**

We added clarification that online publication of a safety data sheet, owner’s manual, or other product document qualifies as “online disclosure.”

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.

**WAC 173-443-080 Manufacturer Notification**

**Section 080(1):**

We clarified that notification is only required for manufacturers using HFCs or other prohibited substitutes for an end-use listed in WAC 173-443-040.

A manufacturer of a product or equipment that contains, uses, or will use HFCs or other substitutes prohibited for an end-use listed in WAC 173-443-040 or a representative on behalf of the manufacturer, must report to ecology consistent with WAC 173-443-090 and 173-443-100.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: Linda Kildahl

Address: Department of Ecology

Air Quality Program

300 Desmond Drive

Lacey, WA 98503

Phone: 360-407-7655

Fax: N/A

TTY: For Washington Relay Service or TTY call 711 or 877-833-6341.

Email: linda.kildahl@ecy.wa.gov

Web site: <https://fortress.wa.gov/ecy/publications/SummaryPages/2002027.html>

Other:

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	<u>11</u>	Amended	___	Repealed	___

**The number of sections adopted at the request of a nongovernmental entity:**

New	___	Amended	___	Repealed	___
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**The number of sections adopted on the agency's own initiative:**

New	<u>11</u>	Amended	___	Repealed	___
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	___	Amended	___	Repealed	___
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**The number of sections adopted using:**

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	___	Repealed	___

Signature:

Date Adopted: 12/10/2020

Name: Laura Watson

Title: Director

A handwritten signature in black ink, appearing to read 'L. Watson', written in a cursive style.