

WAC 173-443-235 Exemptions. (1) The owner or operator of a facility that has a refrigeration or air conditioning system may apply to ecology for an exemption from the requirements of WAC 173-443-165 or 173-443-175. Ecology may grant an exemption if it determines the request meets the conditions identified in subsection (2) of this section and the applicant has complied with subsection (3) of this section.

(2) Types of exemptions.

(a) Impossibility. Ecology may grant an exemption if the applicant provides clear and convincing documentation that the requested exemption will not increase the overall risk to human health or the environment and that at least one of the following criteria is met:

(i) The component(s) or parts needed to complete a leak repair are not currently or potentially available; or

(ii) The applicant has made a good faith effort to repair all identified leaks in accordance with WAC 173-443-165 and to operate and maintain the system in accordance with manufacturer recommendations.

(b) Force majeure. Ecology may grant an exemption if the applicant provides clear and convincing documentation that the requested exemption will not increase the overall risk to human health or the environment and that all of the following criteria are met:

(i) The applicant cannot comply with the applicable requirements due to a force majeure event; and

(ii) The applicant has made a good faith effort to anticipate, address, and mitigate the impacts of any force majeure event.

(c) Economic hardship. Ecology may grant an exemption if the applicant provides clear and convincing documentation that the requested exemption will not increase the overall risk to human health or the environment and that all of the following criteria are met:

(i) The facility is a retail food facility or a small business, as defined in WAC 173-443-030;

(ii) Compliance with the applicable requirements would result in extreme financial hardship such as the closure of the facility or a substantial loss of revenue from the facility; and

(iii) The applicant has made a good faith effort to anticipate, address, and mitigate any potential noncompliance.

(3) Application process.

(a) Applicant. If the facility's owner(s) and operator(s) are different persons or entities, the application for an exemption must be submitted by the operator(s) and must include an attestation signed by the owner(s) indicating they have reviewed and verified the accuracy of the information contained in the application.

(b) To apply for an exemption, the applicant must submit an application that meets the requirements of (b)(i) through (vii) of this subsection:

(i) Applicant contact information:

(A) Name of facility;

(B) Facility owner(s);

(C) Facility operator(s), if different than the owner;

(D) Type of business or business activity;

(E) Facility address, including street address, city, state, and zip code;

(F) Facility contact phone number and email address;

(ii) The specific requirement(s) for which an exemption is requested;

(iii) An explanation of the reasons for seeking an exemption;

(iv) Documentation that the criteria for one or more of the types of exemptions set forth in subsection (2)(a) or (b) or (c) of this section is met;

(v) Length of time for which the exemption is requested and the earliest date when compliance can be achieved;

(vi) A description of the damage or harm that will result from having to comply with the applicable requirements within the required time frame; and

(vii) A proposed compliance plan describing how and when compliance with the applicable requirements will be achieved if the exemption is granted. The compliance plan must include all of the following:

(A) The method(s) by which compliance will be achieved;

(B) Milestone achievements;

(C) Milestone dates; and

(D) A proposed mitigation plan that demonstrates how the applicant will reduce greenhouse gas emissions while the exemption is in place. The mitigation plan must include all calculations used to determine emissions estimates.

(c) The application must be submitted in writing to either of the following addresses:

Ecology Air Quality Program

HFC Program

P.O. Box 47600

Olympia, WA 98504-7600; or

By email to: HFC@ecology.wa.gov [HFC@ecy.wa.gov]

(4) Approval and disapproval process.

(a) Ecology will determine whether the exemption application is complete and will notify the applicant of its completeness determination within 30 days of receipt of the application. Only complete applications will be considered.

(b) Within 60 days of determining that the application is complete, ecology will determine if and under what conditions the exemption will be permitted. The applicant and ecology may mutually agree to a longer time period for ecology's review and evaluation.

(c) During the review period, ecology may request, and the applicant must provide, more information, if necessary, to reach a decision.

(d) Ecology will notify the applicant of the decision in writing, and if approved, will specify the terms and conditions of the exemption in a letter to the applicant. Such terms and conditions may include a requirement that best management practices be followed or that mitigation measures identified in the applicant's proposed compliance plan be implemented.

(e) Ecology will grant an exemption only to the applicant who applied for the exemption. The exemption is not transferable.

(f) Ecology will not approve an exemption retroactively prior to receipt of the application.

(g) An applicant adversely affected by a denial of an exemption or by the terms and conditions of an approved exemption, may appeal ecology's decision to the pollution control hearings board pursuant to chapter 43.21B RCW.

(5) Failure to comply with the terms of an approved exemption.

(a) The applicant must comply with the terms and conditions of an approved exemption to maintain its approved status.

(b) Ecology may revoke or modify an exemption approval if it determines the applicant no longer meets the criteria specified in the exemption approval letter.

(c) An applicant adversely affected by an ecology decision to revoke or modify an approved exemption may appeal ecology's decision to the pollution control hearings board pursuant to chapter 43.21B RCW.

[Statutory Authority: Chapter 70A.60 RCW. WSR 23-24-041 (Order 21-02), § 173-443-235, filed 11/30/23, effective 12/31/23.]