

Exemption Request Process Resource

Safer Products

Restrictions and Reporting:

Chapter 173-337 WAC



Safer Products Restrictions and Reporting Rule

Safer Products for Washington aims to protect people and the environment from toxic chemicals in consumer products and is the implementation program for the provisions of chapter [70A.350 RCW](#).¹ The statute authorizes the Department of Ecology to adopt rules restricting or requiring reporting of chemicals and chemical classes used in specific kinds of consumer products. The Safer Products Restrictions and Reporting Rule (Chapter 173-337 WAC) adopted in 2023 implements our Safer Products for Washington program.

The current [Safer Products Restrictions and Reporting rule](#)² is intended to reduce exposure to toxic chemicals. However, there may be some cases where exemptions to these requirements are necessary. To request an exemption please provide the information we need and follow the process listed in [WAC 173-337-020](#).³

This document describes our process for evaluating exemption requests. We provide three examples to illustrate what you should submit with your request so we can evaluate it effectively and provide a determination.

Who can submit an exemption request?

Any person seeking to manufacture, distribute, sell, or offer to sell a priority consumer product that contains a priority chemical in or into Washington state may submit an exemption request.

We define a manufacturer as any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a product, is an importer, or a domestic distributor of a product sold or offered for sale in or into the state.

Why would someone request an exemption?

In some cases, there may be technical barriers to compliance, or unforeseen circumstances that require flexibility. Exemptions are intended to minimize unintended consequences of the restrictions in chapter [173-337 WAC](#).²

¹ <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.350>

² <https://app.leg.wa.gov/WAC/default.aspx?cite=173-337>

³ <https://app.leg.wa.gov/WAC/default.aspx?cite=173-337-020>

We provide three examples of scenarios where we may consider granting exemptions in [WAC 173-337-020](#):³

- The priority chemical is functionally necessary to the priority consumer product and there is no alternative.
- It isn't currently possible to comply with the restriction and comply with another legally imposed requirement.
- An unforeseen event or circumstance limited the availability of alternatives.

These examples are non-exhaustive. We'll consider exempting priority chemicals from specific restrictions if sufficient hazard information is submitted to show the chemical used is a safer alternative (see [RCW 70A.350.010\(15\)](#)).⁴ For more information on safer alternatives, please review our [Cycle 1 Regulatory Determinations Report to the Legislature](#)⁵ Appendix C.

What to include in an exemption request?

An entity seeking exemption from the requirements of chapter [173-337 WAC](#)² must submit a request that includes:

- Name and address of requestor.
- The rule requirement(s) from which you're seeking exemption.
- Documentation of need and justification for the request, including information to support the request.
- The statement of required certification and signature. We require use of the statement from the rule. Please see below.

When does my exemption take effect?

1. We'll notify the applicant when we receive all the required information for the exemption request. Your application must contain enough information to allow for a thorough review. At a minimum, it must present a justification that we could use to make a decision.
2. We'll inform, and grant, the applicant a temporary exemption while we review the information submitted and issue a final decision.
3. We may ask for additional information during the application review if we determine we need more information to make a final decision. We may request that before, or after granting the temporary exemption.
4. If you don't provide additional information when requested, we may deny the request for exemption.

⁴ <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.350.010>

⁵ <https://apps.ecology.wa.gov/publications/summarypages/2204018.html>

What happens if Ecology denies my request?

The [Safer Products Restrictions and Reporting rule](#)⁶ allows applicants to ask for a review of the decision by the Ecology Director or their designee.

Our final decision is not subject to further administrative review. Upon receipt of our final decision, we'll work with the manufacturer to arrive at an agreed-upon date for compliance.

Steps to request an exemption

We require a credible and justified rationale to request consideration. There is no form to request an exemption. They're considered on a case-by-case basis.

The following is a list of the steps necessary to request an exemption from a section of chapter [173-337 WAC](#):⁶

1. A manufacturer (as defined in [WAC 173-337-025](#))⁷ decides to apply for an exemption.
2. A manufacturer compiles the following information:
 - The name and address of the manufacturer.
 - The name, phone number, email address, and physical address of the individual submitting the exemption request.
 - The section of the rule from which the exemption is requested. Please include section and line identification numbers and letters.
 - An explanation of the justification and need for the exemption using data and information to describe the situation that prevents compliance. Include as much detail and documentation as necessary to present your situation and help compress the review time.
 - For us to review, please include informational documentation, including credible evidence.
 - A certification statement: The information submitted must be prepared in good faith. The rule requires the person who submits a request for exemption to make the following certification:
 - "I certify under penalty of perjury under the law of Washington that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry as the person or one of the persons who manage(s) the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete."
3. The manufacturer submits an exemption request to the [Safer Products for Washington Compliance lead](#).⁸

⁶ <https://app.leg.wa.gov/WAC/default.aspx?cite=173-337>

⁷ <https://app.leg.wa.gov/WAC/default.aspx?cite=173-337-025>

⁸ SaferProductsWA@ecy.wa.gov

4. We'll notify the requester when we receive the submission, and if it meets the requirements for us to review. If the application is incomplete, and we require additional information, we'll notify you. **We won't grant you a temporary exemption if the request is incomplete.**
5. Once we notify a requester that they've submitted the complete package required for our review, the manufacturer is temporarily exempt from the requirements from which they requested an exemption.
6. We'll review the request for exemption. At this stage, we may have follow-up questions. If you don't respond to additional questions quickly and completely we may deny your exemption request.
7. Once we make a decision, one of two outcomes is possible:
 1. **We grant an exemption of a specific requirement in the rule.** The exemption may include a time limit or other requirements (such as criteria that could remove the exemption in the future). We'll notify you if we remove the exemption. At that time, we'll work with you to arrive at an agreed-upon date for compliance.
 2. **If we deny an exemption request we'll explain the reasoning behind the decision.** At that time, we'll work with you to arrive at an agreed-upon date for compliance.
8. If we deny your request for exemption, you may request a review of that decision by the Ecology Director or their designee. Our final decision is not subject to further administrative review.
 - Upon receipt of a final decision denying an exemption, we'll work with you to arrive at an agreed-upon date for compliance.

Examples of Need and Justification

We've provided some examples to illustrate the types of documentation required for your request.

Flame retardants

Electric and electronic products with plastic external enclosures, intended for indoor use.

Justification 1: Alternatives can't meet the required performance needs for the product.

Please provide us with the following:

- A certified statement clarifying why the priority chemical is functionally necessary to the priority consumer product and why none of the alternatives will meet the performance needs of the product. Please support the statement with evidence including:
 1. Characterization of the current performance needs of the product including the:
 - Desired or required flammability standards.

- Additional performance needs of the enclosure (e.g., water resistance, flexibility, weight).
- 2. A description of the current process you used to meet the performance needs:
 - A description and concentration of the flame retardants and any related chemicals (including anti-drip agents) used.
 - The type of plastic currently used.
- 3. An evaluation of alternatives including those identified in the [Cycle 1 Regulatory Determinations Report to the Legislature](#)⁹ and an explanation for why they can't meet the above performance criteria.

Justification 2: Alternatives aren't available by the date and in the quantity needed to make the switch.

Please provide us with the following:

- A certified statement clarifying that alternatives aren't available in the quantity needed and as a result you have suffered setbacks in the compliance process.
- Support your statement by:
 1. A description of the current process used to meet the performance needs:
 - A description and concentration of the flame retardants and related chemicals (including anti-drip agents) used.
 - The type of plastic you currently use.
 2. A characterization of the current performance needs of the product including:
 - UL flammability standard.
 - Additional performance needs of the enclosure (e.g., water resistance, flexibility, weight).
 3. A description of your actions to try to comply, including alternatives tested or researched.
 4. Provide a timeline for your anticipated compliance and a description of actions you'll take to meet your timeline.

Justification 3: We use a within-class chemical that appears safer than the class as a whole and we would like an exemption for that chemical.

Please supply us with the following:

- A written request for an exemption that includes:
 1. The name and identification of the chemical alternative be sure to include the CAS registry number and molecular structure.
 2. Provide information on the manufacturing process and the identification of any potential contaminants, residuals, or breakdown products.

⁹ <https://apps.ecology.wa.gov/publications/summarypages/2204018.html>

3. A hazard assessment that reviews existing data for the endpoints required in Appendix C of the [Cycle 1 Regulatory Determinations Report to the Legislature](#).⁹ Alternatives within priority chemical classes must meet our “within-class” criteria for safer which adds more stringent hazard and data requirements.
- We strongly encourage you to contact us before beginning the hazard assessment process so we can provide additional support and answer questions.

Submit exemption requests

Safer Products for Washington Compliance Lead
Washington Department of Ecology
Hazardous Waste and Toxics Reduction Program
PO Box 47600
Olympia, WA 98504-7600
Phone: 360-688-4312

Email address: SaferProductsWA@ecy.wa.gov

General Program Contact

Hazardous Waste and Toxics Reduction Program

Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
Phone: 360-407-6700

Website: [Washington State Department of Ecology](#)¹⁰

ADA Accessibility

The Department of Ecology is committed to providing people with disabilities access to information and services by meeting or exceeding the requirements of the Americans with Disabilities Act (ADA), Section 504 and 508 of the Rehabilitation Act, and Washington State Policy #188.

To request an ADA accommodation, contact Ecology by phone at 360-407-6700 or email at hwtrpubs@ecy.wa.gov. For Washington Relay Service or TTY call 711 or 877-833-6341. Visit [Ecology's website](#)¹¹ for more information.

¹⁰ www.ecology.wa.gov/contact

¹¹ <https://ecology.wa.gov/accessibility>