

WAC 173-443-095 Variances. (1) An applicant may apply to ecology for a variance from the prohibitions of WAC 173-443-040, Table 2 or Table 3. Ecology may grant a variance if it determines that 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 variances.

(a) Impossibility. Ecology may grant a variance if the applicant demonstrates that the requested exemption will not increase the overall risk to human health or the environment and all of the following apply:

(i) A substance that complies with the applicable threshold is not currently or potentially available; and

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

(b) Force majeure. Ecology may grant a variance if the applicant demonstrates that the requested exemption will not increase the overall risk to human health or the environment and all of the following apply:

(i) The applicant cannot comply with the applicable prohibitions 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 a variance if the applicant demonstrates that the requested exemption will not increase the overall risk to human health or the environment and all of the following apply:

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

(ii) Compliance with the applicable prohibitions would result in closure of the entire retail food facility or small business, or a large portion thereof, or a substantial loss of revenue from the retail food facility or small business; and

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

(3) Application process. To apply for a variance, the applicant must submit an application that meets the requirements of (a) through (i) of this subsection:

(a) Applicant name, ownership status, address, telephone number, and email address;

(b) Description of business activity or product description;

(c) The specific prohibition(s) for which a variance is requested;

(d) An explanation of the reasons for seeking a variance;

(e) Evidence demonstrating how the variance request meets the criteria identified in subsection (2)(a) or (b) or (c) of this section;

(f) Length of variance requested and the earliest date when compliance can be achieved;

(g) A description of the damage or harm that will result from having to comply with the applicable prohibition(s) within the required time frame;

(h) A proposed compliance plan describing how and when compliance with the applicable prohibition(s) will be achieved after the variance is granted. The compliance plan must include all of the following:

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

(ii) Milestone achievements;

(iii) Milestone dates; and

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

(i) 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 variance 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 a variance application is complete, ecology will notify the applicant of the decision in writing, and if approved, will specify the terms and conditions of the variance in a letter to the applicant. The applicant and ecology may mutually agree to a longer time period for ecology's review period.

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

(d) Ecology will grant a variance only to the applicant. The variance is not transferable.

(e) Ecology will not approve a variance retroactively to any date prior to receipt of the application.

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

(5) Failure to comply with the terms and conditions of an approved variance.

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

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

(c) An applicant adversely affected by an ecology decision to revoke or modify an approved variance 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), § 173-443-095, filed 11/30/23, effective 12/31/23.]