

PFAS in Food Packaging Alternatives Assessment

Information for Businesses Submitting Confidential Business Information to Ecology

Background

In 2018, Washington State passed a new law to prohibit all per- and polyfluorinated substances (PFAS) in plant fiber-based food packaging. The ban takes effect following the identification of safer alternatives (not limited to paper) as specified in the toxics in packaging law ([RCW 70.95G](#)). The assessment of alternative products must consider chemical hazard, exposure, performance, cost, and availability [[RCW 70.95G.070](#)].

Ecology has contracted with SRC, Inc. to support development of the alternatives assessment (AA). SRC is responsible for coordinating communications with suppliers and manufacturers of PFAS-containing and PFAS-free products to obtain the data needed for the AA. You may be asked to provide information on formulations of chemical coatings or other packaging treatments and treatment amounts. Ecology contractors will evaluate coating and treatment formulation ingredients for their hazard, exposure potential, performance, cost and availability.

Ecology understands that some manufacturers may be reluctant to share information about proprietary coating or treatment formulations due to a concern that the information will be made public and could become available to your competitors. Ecology's evaluation of safer alternatives *will* require a degree of transparency to the public. The law requires review of Ecology's safer alternatives determinations by peer reviewers and potentially by the courts. In addition, Ecology must report its findings and feedback from the peer review to legislative committees. This report will need to include sufficiently detailed information to explain and give confidence in Ecology's findings. However, Ecology can provide a process to lessen the risk of public disclosure of confidential product details that you are able to show to be legitimately unique to your company or worthy of protection due to a real potential for competitive harm to you from disclosure to competitors.

This document describes how you can apply for limited protection of confidential business information, should you decide to request it, and additional details on how that data may be disclosed.

Providing Trade Secret or Confidential Business Information (CBI)

Requesting Confidential Treatment

If you plan to provide data that are trade secrets or confidential business information, you may submit a request to have your proprietary information granted confidential treatment under [RCW 43.21A.160](#). You may request the assurance of confidential treatment prior to providing the actual information to Ecology.

Your request must offer convincing evidence that the criteria in RCW 43.21A.160 for confidential treatment are met. These criteria include:

- The information "relate[s] to the processes of production unique to the owner or operator thereof," or
- The information "may affect adversely the competitive position of such owner or operator if released to the public or to a competitor."

Following this determination, Ecology staff would recommend that the Director grant conditional confidential treatment, subject to exceptions needed to meet Ecology's peer review and public transparency needs.

Ecology Contractor Access to CBI

For Ecology to perform the required work you must agree to make the information you provide to Ecology available on a limited basis to Ecology's contractor(s).

Information required to perform a full assessment include:

- Product formulation disclosure:
 - Active ingredient (substance providing oil/grease-proofing function), including CASRN
 - Functional additives
 - Known residual monomers or oligomers (>100 ppm or 0.01%)
 - Known byproducts or impurities (>100 ppm or 0.01%)
- For polymeric substances, additionally
 - Representative structure
 - Mole ratios of monomers
 - Indication as to whether the monomers are blocked
 - MWn (molecular weight average)
 - Oligomer characterization: %MW <500 kDa, %MW <1000 kDa
- Experimental studies that address hazard endpoints utilized in GreenScreen® for Safer Chemicals®
- Performance information
- Cost information
- Availability information

You are free to require Ecology's contractor(s) to execute a nondisclosure agreement with you before Ecology shares your CBI with the contractor. Alternatively, you may authorize Ecology to provide the information to its contractor(s) subject to an agreement between Ecology and each contractor requiring the information be kept confidential. Key terms of the nondisclosure agreements that Ecology would require with its contractor(s) are described below.

Requirements for Providing Documents

In order to facilitate confidential handling of your information, you will be required to provide documents with the specific confidential information highlighted, but readable, in order to facilitate redaction of only the truly confidential information. If Ecology believes you have highlighted information that exceeds Ecology's grant of confidential treatment under [RCW 43.21A.160](#), Ecology will return the documents to you with a request to change the highlighting accordingly to afford a reasonable degree of transparency to the public.

Legal Challenges

In the event of legal action to challenge Ecology's determinations, we may be required to make the confidential information part of the record for review by the court. Should this occur, Ecology will seek a protective order from the court, asking that the confidential information be protected against access by the general public.

Contractor Confidentiality Agreement Key Terms

If you decide to allow Ecology to execute its own nondisclosure agreement with contractors (rather than having the contractor sign your own nondisclosure agreements) then Ecology would require its contractor(s) to sign a confidentiality agreement with Ecology that would include the following key terms:

- Use the information only for the purposes of the contract.
- Do not disclose to third parties.
- Store separately and securely.
- When providing deliverables or making comments to Ecology that reference information granted confidentiality protection by the director, mark the cover sheet and each page of the document conspicuously with the words “CONFIDENTIAL UNDER RCW 43.21A.160—DO NOT DISCLOSE.” Mark any information in the document that has been granted CBI protection with brackets and the word “CONFIDENTIAL.” This will facilitate redaction by Ecology if it becomes necessary to produce a public version of the document.
- Destroy written records after conclusion of the contract work.

Peer Reviewers

RCW 70.95G.070 requires the alternative assessment conducted by Ecology for PFAS in food packaging to be subject to a peer review. Ecology has contracted with the Washington Academy of Sciences to perform this peer review. Washington Academy of Sciences will contact individual experts in the field to carry out this process. If these individuals request access to CBI, Ecology will require each individual to sign an agreement to protect the confidentiality of the CBI of each manufacturer for which they request data. The template for this agreement can be provided upon request, and is similar to the terms listed above. Peer reviewers will have to agree to this condition before signing on to participate in the review process.

We highly recommend that manufacturers allow Ecology to provide information to these reviewers under this agreement if requested. We cannot guarantee that each reviewer will be willing to sign an agreement with each manufacturer on terms different from those in the Ecology template. If this were to occur, and Ecology was not able to provide CBI to these individuals, it may disrupt the peer review process, and thus the entire alternative assessment.

If the Washington State Academy of Sciences or a specific peer reviewer’s public institution employer (such as a state university) receives a request for the information under Washington’s Public Records Act, RCW 42.56, or similar state or federal freedom of information laws, those entities will be required to afford you an opportunity to enjoin disclosure under the Act’s trade secret or valuable formulae exemptions before releasing an un-redacted version to the requester.

Submission Process

1. Manufacturer/Supplier submits request to Ken Zarker (contact details below) for CBI protection:
 - a. All requests for CBI protection must be initiated by you.
 - b. A template for the request with suggested content can be found on the PFAS EZview website under the documents section.
 - c. Ken Zarker will work with the Ecology Public Disclosure Coordinator to process the CBI request and forward it to the Director’s office for approval.
2. Ecology notifies manufacturer/supplier on decision to grant CBI.

3. Manufacturer provides documents necessary for safer alternatives assessment to Ecology with CBI highlighted consistent with Ecology's grant of confidentiality.

Ecology CBI Handling Process

1. Ecology will label and inventory all documents covered by CBI.
2. These documents will be kept in a secure filing cabinet with limited access by staff that have been granted access.
3. Ecology will obtain relevant non-disclosure agreements from the contractor and peer reviewers. You are free to negotiate your own nondisclosure agreement with Ecology's contractor, but we ask that you not try to do so with the peer reviewers.
4. Ecology will provide the CBI documents as needed to the authorized parties during the course of the project work.
5. At the close of the project, if Ecology has supplied CBI to any authorized parties, Ecology will obtain letters confirming that manufacturer/supplier CBI has been deleted and destroyed by all parties with non-disclosure agreements.

For Additional Information

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