

WSR 25-02-025  
PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF ECOLOGY

[Order 24-13—Filed December 19, 2024, 7:51 a.m.]

Subject of Possible Rule Making: The Washington department of ecology (ecology) started a rule making under the authority of chapter 70A.560 RCW, Toxic-Free Cosmetics Act, to identify a feasible approach to regulating lead in cosmetic products, including potentially adopting a different limit on lead impurities than the statutory limit of one part per million (ppm). Ecology will work with interested parties to:

- Better understand compliance challenges with the statutory limit.
- Determine the lowest feasible limit that manufacturers can achieve that is also protective of people and the environment.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapter 70A.560 RCW, Cosmetic products—Toxic chemicals.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: In 2023, the Washington state legislature passed the Toxic-Free Cosmetics Act to restrict the manufacture, sale, and distribution of cosmetic products containing certain chemicals, including lead and lead compounds. The law applies to cosmetic products such as makeup, perfume, shampoo, lotion, deodorant, shaving cream, and toothpaste.

After meeting with many cosmetics manufacturers, ecology learned that a strict one ppm limit can be difficult, if not impossible, for some cosmetic products to achieve. Lead is a naturally occurring metal that can be in raw ingredients such as minerals and clay that are used in cosmetics. Ingredients used for pigments are a common source of lead impurities, but manufacturers have limited pigment options approved by the federal Food and Drug Administration (FDA). The variability of lead concentrations in ingredients can prevent manufacturers from complying with the statutory limit of one ppm.

Product testing data from Germany and the United Kingdom shows that 90 percent of cosmetic products can achieve lead concentrations of two ppm for general cosmetics (such as lotion or cleansers) and five ppm for color cosmetics (such as blush or eye shadow). While there may be some variability in lead concentrations by geographic location, the data supports the technical feasibility of lower concentrations.

**Interim policy on lead restrictions:** Ecology also issued an interim policy to provide compliance guidance to manufacturers while we conduct the rule making. This interim policy gives:

- Manufacturers more time to comply with the lead restriction.
- Ecology more time to collect information.
- Manufacturers alternative paths to compliance for cosmetic products that are unable to achieve lead concentrations below one ppm.

We are committed to supporting businesses with their compliance efforts. Contact us at [ToxicFreeCosmetics@ecy.wa.gov](mailto:ToxicFreeCosmetics@ecy.wa.gov) with questions or concerns.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The federal Environmental Protection Agency regulates toxic chemicals through the Toxic Substance Control Act. The FDA regulates cosmetic products under the authority of the Federal Food Drug and Cosmetic Act and the Fair Packaging and Labeling Act. Many states regulate chemicals in consumer

products or have proposed regulations. Ecology will consider these regulations when developing requirements and will coordinate with these agencies as necessary.

Process for Developing New Rule: Ecology will follow the standard process for the adoption of rules under the Administrative Procedure Act (chapter 34.05 RCW).

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Stacey Callaway, Department of Ecology, Hazardous Waste and Toxics Reduction Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-584-5661, Washington relay service or TTY call 711 or 877-833-6341, email ToxicFreeCosmetics@ecy.wa.gov, website Rulemaking webpage; or Shari Franjevic, Department of Ecology, Hazardous Waste and Toxics Reduction Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-338-2913, Washington relay service or TTY call 711 or 877-833-6341, email ToxicFreeCosmetics@ecy.wa.gov, website Rulemaking webpage.

Additional comments: Learn more about this rule making by signing up for email announcements; visiting our web pages; or reviewing the interim policy on lead in cosmetics.

Ecology will extend an offer for government-to-government consultation with tribal governments during each phase of the rule making. Ecology will also complete an environmental justice assessment in compliance with RCW 70A.02.06 [70A.02.060] as part of this rule making.

December 19, 2024

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Hazardous Waste and Toxics Reduction