

WSR 22-24-107

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 21-01—Filed December 7, 2022, 8:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-23-105.

Title of Rule and Other Identifying Information: The Washington department of ecology (ecology) proposes new chapter 173-337 WAC, Safer products restrictions and reporting. This new chapter aims to reduce toxic chemicals in consumer products and implement chapter 70A.350 RCW.

For more information on this rule making, visit <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-337>.

Hearing Location(s): On January 18, 2023, at 10:00 a.m. PST, join the online hearing <https://waecy-wa-gov.zoom.us/j/87086239384?pwd=ZjU0Vk1xWjFnYmp5VDMvZWwhHRUMyZz09>; and on January 19, 2023, at 5:30 p.m. PST, join the online hearing <https://waecy-wa-gov.zoom.us/j/88155960286?pwd=NX1SZ3gzOEdoYzNGVlJQZHV0a05mZz09>. Ecology is hosting these events online and will provide presentations about proposed rules, question-and-answer sessions, and formal hearings. You can attend these events from any device with internet access.

Date of Intended Adoption: May 15, 2023.

Submit Written Comments to: Stacey Callaway, Department of Ecology, Hazardous Waste and Toxics Reduction Program, P.O. Box 47600, Olympia, WA 98504-7600 (United States mail), email safeproductswa@ecy.wa.gov, online <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-337>, by February 5, 2023.

Assistance for Persons with Disabilities: Contact ecology ADA coordinator, phone 360-407-6831, Washington relay service or TTY call 711 or 877-833-6341, email ecyADAcoordinator@ecy.wa.gov, <https://ecology.wa.gov/accessibility>, by January 13, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Ecology plans to conduct this rule making to:

- Reduce the use of priority chemicals in priority consumer products.
- Develop chapter 173-337 WAC in accordance with the regulatory actions outlined in the Final Regulatory Determinations Report to the legislature that ecology submitted in June 2022.

This rule making proposes to:

- Create reporting requirements or restrictions that apply to priority consumer products that contain priority chemicals. These include:
 - PFAS in aftermarket stain- and water-resistance treatments, carpets and rugs, and leather and textile furnishings.
 - Phthalates in personal care products (fragrances) and vinyl flooring.
 - Organohalogen flame retardants in electric and electronic products.
 - Flame retardants (as defined in RCW 70A.350.010) in recreational polyurethane foam.
 - Phenolic compounds in laundry detergent, food and drink can linings, and thermal paper.

- Include provisions for repair and replacement parts, refurbished products, and previously owned products.

Reasons Supporting Proposal: Steady releases of chemicals from millions of consumer products make up the largest source of toxics entering Washington's environment. Toxic chemicals in consumer products can expose people:

- Directly from items such as personal care products, furniture, and household products.
- Indirectly from their environment—air we breathe, water we drink, and food we eat.

In 2019, the Washington state legislature passed the Pollution Prevention for Healthy People and Puget Sound Act to make consumer products safer for our families and environment. Chapter 70A.350 RCW directs ecology to restrict chemicals in products when safer alternatives exist. The proposed rule aims to:

- Reduce the use of toxic chemicals in products by restricting those chemicals when ecology identifies safer, available, and feasible alternatives.
 - Reduce consumers' exposure to toxic chemicals.
 - Reduce the amount of toxic chemicals that enter the environment.
- Increase product ingredient transparency.
- Encourage changes in the broader marketplace, both nationally and internationally.

Statutory Authority for Adoption: Chapter 70A.350 RCW, Toxic pollution.

Statute Being Implemented: Chapter 70A.350 RCW, Toxic pollution.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: For more information on this rule making, visit <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-337>. For more information on the safer products for Washington program, visit https://www.ezview.wa.gov/site/alias__1962/37555/safer_products_for_washington.aspx.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Stacey Callaway, Lacey, Washington, 360-584-5661; Implementation and Enforcement: Camille Bennett, Lacey, Washington, 360-688-4312.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Stacey Callaway, Department of Ecology, Hazardous Waste and Toxics Reduction Program, P.O. Box 47600, Olympia, WA 98504-7600 (United States mail), phone 360-584-5661, Washington relay service or TTY call 711 or 877-833-6341, email saferproductswa@ecy.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: Elements of the rule are specified in the authorizing statute (chapter 70A.350 RCW), such as requirements for the safer products Washington process and chemicals to be regulated. The impacts of the proposed rule are also mitigated by baseline requirements (required by law or rule regardless of adoption of the proposed rule), including 15 U.S.C. 2601. Finally, we did not identify small businesses in Washington in one of the industries affected by the proposed rule, though we did in other industries. See the Preliminary Regulatory Analyses - Ecology publication number 22-04-042 for this rule making for details.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement (SBEIS)

This SBEIS presents the:

- Compliance requirements of the proposed rule.
- Results of the analysis of relative compliance cost burden.
- Consideration of lost sales or revenue.
- Cost-mitigating action taken by ecology, if required.
- Small business and local government consultation.
- Industries likely impacted by the proposed rule.
- Expected net impact on jobs statewide.

A small business is defined by the Regulatory Fairness Act (chapter 19.85 RCW) as having 50 or fewer employees. Estimated costs are determined as compared to the existing regulatory environment—the regulations in the absence of the rule. The SBEIS only considers costs to "businesses in an industry" in Washington state. This means that impacts, for this document, are not evaluated for government agencies.

The existing regulatory environment is called the "baseline" in this document. It includes only existing laws and rules at federal and state levels. This information is excerpted from ecology's complete set of regulatory analyses for this rule making. For complete discussion of the likely costs, benefits, minimum compliance burden, and relative burden on small businesses, see the associated Regulatory Analyses document (**Ecology publication no. 22-04-042, December 2022**).

COMPLIANCE REQUIREMENTS OF THE PROPOSED RULE, INCLUDING PROFESSIONAL SERVICES: The baseline for our analyses generally consists of existing rules and laws, and their requirements. This is what allows us to make a consistent comparison between the state of the world with and without the proposed rule.

For this rule making, the baseline includes:

- Toxic Pollution (chapter 70A.350 RCW).
- Toxic Substances Control Act, 15 U.S.C. §§ 2601, et seq.

The proposed rule would make the following changes:

- Restricting specific priority chemicals in designated priority consumer products.
- Requiring reporting of the use of specific priority chemicals in designated priority consumer products.

Restricting specific priority chemicals in designated priority consumer products: Baseline: Even if there are other regulations on priority chemicals and priority consumer products, we presume there currently are no restrictions on the specific combinations of priority chemicals in priority consumer products in Washington state.

Proposed: The proposed rule establishes restrictions on five priority chemicals in 10 designated priority consumer products manufactured, sold (including but not limited to wholesale, online, or retail), or distributed in Washington state.

In general, the restrictions prohibit the intentional use or addition of priority chemicals in priority consumer products. In some cases, the proposed rule sets concentration limits to align with restrictions from other jurisdictions. In other cases, where there were no existing limits, we either set a limit based on functionality or developed a rebuttable presumption. The rebuttable presumption describes our logic process for identifying products where restricted priority chemicals are likely intentionally added.

When we test regulated priority consumer products to determine compliance with the proposed rule, and we detect the chemicals identified in the rebuttable presumption, we will contact the manufacturer. The manufacturer then can rebut that presumption by certifying that they are not intentionally adding priority chemicals and providing some evidence to support that statement.

We expect the costs associated with rebutting ecology's presumptions around intentional use to be minimal. This is for two reasons: ecology has limited product testing resources and will only be able to test a handful of products for each product category.

We provide manufacturers with significant flexibility on how they rebut our presumptions. In some cases, it could be a certified letter from their suppliers; in other cases, it could be product testing. Product testing is not necessary if manufacturers have sufficient transparency across their supply chains or if they undertake improving supply chain transparency. Although we expect some costs associated with the rebuttable presumption, we do not analyze them in the preliminary regulatory analysis, as we do not require manufacturers to rebut the presumption. We also cannot confidently estimate the frequency of rebuttals, but assume that they would only undertake rebuttal if it was a net savings over otherwise needing to comply. So, our estimates of compliance costs and benefits conservatively assume no one rebuts the presumption in the proposed rule.

Expected impact: We expect the proposed rule to impact costs and the health of humans and the environment. We expect this requirement to result in costs to manufacturers, sellers (including, but not limited to, wholesale, online, or retail), and distributors of priority consumer products containing priority chemicals in Washington state. The costs would occur because some of the covered parties would have to reorient their production and investment patterns, and some would have to reconfigure their supply chains.

For some product categories, manufacturers would be required to integrate or develop new chemistries, redesign, or reformulate the product, and recertify new products.

Another main factor is the time needed to redesign products so that they meet safety standards, performance requirements, and aesthetic preferences.

In some instances, we expect decreased costs (benefits) for business, such as when product redesign eliminates the need for added chemicals. This would mean that a manufacturer would skip the step of

adding a chemical to the production process. Many of the chemicals included in the proposed rule are associated with human and environmental hazards:

- Cancer.
- Reproductive harm.
- Developmental harm.
- Endocrine disruption.
- Persistence in the environment.

If we continue to use and release these chemicals, they will continue to accumulate in the environment. People and animals interacting with the environment will experience increased exposures over time.

Contamination from priority chemicals has led to expensive clean-up efforts and widespread drinking water contamination.

By restricting the use of these chemicals in products where safer alternatives are feasible and available, we can reduce future clean-up costs and reduce the burden of diseases caused by the chemicals in the environment. This will benefit human health and the environment.

Requiring reporting use of specific priority chemicals in designated priority consumer products: Baseline: Although currently there is no requirement to report specific priority chemicals in designated priority consumer products in Washington state, for many reporting parties, a reporting requirement already exists in other jurisdictions. Some chemicals within these classes are also included in our chemicals of high concern to children (CHCC) list and are required to be reported in children's products as part of our Children's Safe Products Act (CSPA). See chapter 173-334 WAC.

Proposed: The purpose of the proposed rule's reporting requirement is to increase transparency in product ingredients. The proposed rule establishes reporting requirements for five priority chemicals in four designated priority consumer product categories. The proposed rule states the reporting party may be the:

- Manufacturer of the priority consumer product, or
- A trade organization representing the manufacturer.

The proposed rule would require the reporting party to submit a notification to ecology:

- By January 31 of the year after the effective date of the reporting requirement, as listed in the table below.
- Annually thereafter by January 31 each year.

The reporting party may submit a revised notification to ecology when a priority consumer product no longer contains an intentionally added priority chemical.

The notification must include the following information about a priority consumer product containing an intentionally added priority chemical, that is sold or offered for sale in Washington state during the prior calendar year:

- The name and CAS RN (chemical abstracts service registry number) of the priority chemical that is intentionally added, if the priority chemical has a CAS RN.
- The product category that contains the priority chemical. The product category means the "brick" level of the GS1 Global Product Classification (GPC) standard, which identifies products that

serve a common purpose, are of a similar form and material, and share the same set of category attributes.

- The product component within the product category that contains the priority chemical. The product component means a uniquely identifiable material or coating (including ink or dye) that is intended to be included as a part of a finished priority consumer product.
- A description of the function of the priority chemical.
- The concentration range of each intentionally added priority chemical in each product component in each product category. The reporting party may report the concentration in ranges rather than the exact concentration. If there are multiple concentrations for a given product component in a particular product category, the reporting party must report the highest concentration.
- The reporting ranges are:
 1. Less than 100 ppm (0.01 percent).
 2. Equal to or more than 100 ppm (0.01 percent), but less than 500 ppm (0.05 percent).
 3. Equal to or more than 500 ppm (0.05 percent), but less than 1,000 ppm (0.1 percent).
 4. Equal to or more than 1,000 ppm (0.1 percent), but less than 5,000 ppm (0.5 percent).
 5. Equal to or more than 5,000 ppm (0.5 percent), but less than 10,000 ppm (1.0 percent).
 6. Equal to or more than 10,000 ppm (1.0 percent).
- Contact information:
 1. The name and address of the reporting party.
 2. The name, address, phone number, and electronic mail address of the contact person for the reporting party.
 3. When a trade organization serves as the reporting party, the notification must include a list of the manufacturers they report for and all the required information.
 4. Which option in the hierarchy in the proposed rule best represents the reporting party.
 5. Any other information the reporting party deems relevant to the appropriate use of the product.

Expected impact: Reporting parties must notify ecology when they use a specific priority chemical in a specific priority consumer product. The reporting parties would need to create an account in the Interstate Chemical Clearinghouse (IC2) High Priority Chemicals Data System (HPCDS), create their inventory, and then create their annual report.

Reporting parties don't always know which chemicals are in their consumer product or the components, so they may need to contact entities in their supply chain to determine what chemicals are present.

This will likely also result in informational benefits, including increasing consumer awareness and informing government decision-making, reducing potential health impacts and litigation, and improving industry understanding of the presence of these chemicals across the supply chain. This knowledge would also serve as a deterrent for future uses where safe alternatives are available.

COSTS OF COMPLIANCE: EQUIPMENT, SUPPLIES, LABOR, PROFESSIONAL SERVICES, ADMINISTRATIVE COSTS:

Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of professional services, based on the necessary estimation methods to deal with data gaps. Costs were estimated in terms of maximum potential lost sales (see next section).

COSTS OF COMPLIANCE: OTHER: Average annual costs per business in worst-case scenario for the restriction of specific priority chemicals in designated priority consumer products, five-year adaptation:

Chemical	Industry	Assumed share to switch, %	Possible maximum sales loss (millions \$)	Maximum annual costs for market (millions \$)	Number of businesses	Maximum annual cost per business
PFAS	Aftermarket stain and water resistance treatments	15	\$2.1	\$0.4	208	\$2,049
PFAS	Carpet and rugs	5	\$11.8	\$2.4	464	\$5,067
PFAS	Leather and textile furnishings	50	\$77.4	\$15.5	1,139	\$13,595
Ortho-Phthalates	Personal care and beauty products (fragrance)	0.7	\$62.5	\$12.5	4,357	\$2,869
Ortho-Phthalates	Vinyl flooring	2.4	\$47.4	\$9.5	5,036	\$1,881
Organohalogen flame retardants	Electric and electronic equipment (plastic device casings)	50	\$286.3	\$57.3	3,388	\$16,902
Flame retardants	Recreational polyurethane foam products	64	\$0	\$0	0	\$0
APE	Laundry detergent	95	\$1.9	\$0.4	519	\$732
Bisphenols	Drink can linings	5	\$25.1	\$5.0	352	\$14,242
Bisphenols	Thermal paper	50	\$34.7	\$6.9	256	\$27,142
Total	N/A	N/A	\$549.2	\$109.9	15,719	N/A

COMPARISON OF COMPLIANCE COST FOR SMALL VERSUS LARGE BUSINESSES: We calculated the estimated per-business costs to comply with the proposed rule, based on the costs estimated in Chapter 3 of this document. Note that in Chapter 3 we identified losses in sales for businesses in the United States with sales in Washington. The losses indicate how much of the revenues a business would lose if not adapted to the new regulations before the effective date. The costs of restrictions are shown for potentially illustrative purposes only.

In this section, we estimate compliance costs per employee for businesses in Washington. The results are shown in the tables below.

Compliance costs per employee for businesses with sales [of] consumer products with PFAS.

Type of cost (or total cost), by industry	Low	High
Aftermarket stain treatments	-	-
Average small business employment	9	9
Average employment at largest 10 percent of businesses	N/A ¹	N/A
Small business cost per employee	\$11,198	\$44,791
Largest business cost per employee	N/A	N/A
Carpets and rugs	-	-
Average small business employment	5	5
Average employment at largest 10 percent of businesses	N/A	N/A
Small business cost per employee	\$53,707	\$214,830
Largest business cost per employee	N/A	N/A
Leather and textile	-	-
Average small business employment	11	11
Average employment at largest 10 percent of businesses	N/A	N/A

Type of cost (or total cost), by industry	Low	High
Small business cost per employee	\$36,107	\$144,430
Largest business cost per employee	N/A	N/A

¹ We determined that all of the businesses in these industries working in Washington state are small.

As we did not identify large businesses in the above industries that would be impacted by the proposed rule, RFA requires us to consider all cost-mitigating options listed in the law, as far as is legal and feasible.

Compliance costs per employee for businesses with sales of consumer products with ortho-phthalates.

Type of cost (or total cost)	Low	High
Personal care products	-	-
Average small business employment	7	7
Average employment at largest 10 percent of businesses	240	240
Small business cost per employee	\$68,672	\$274,687
Largest business cost per employee	\$732	\$2,926
Vinyl flooring	-	-
Average small business employment	4	4
Average employment at largest 10 percent of businesses	400	400
Small business cost per employee	\$12,939	\$51,757
Largest business cost per employee	\$362	\$1,446

We conclude that the proposed rule is likely to have disproportionate impacts on small businesses, and therefore, ecology must include elements in the proposed rule to mitigate this disproportion, as far as is legal and feasible. As we could not identify any large businesses in the leather and textile industry, RFA requires us to consider all cost-mitigating options listed in the law, as far as is legal and feasible.

Compliance costs per employee for businesses with sales of consumer products with flame retardants.

Type of cost (or total cost)	Low	High
Recreational polyurethane foam products	-	-
Average small business employment	\$705,530	\$2,822,122
Average employment at largest 10 percent of businesses	N/A	N/A
Small business cost per employee	\$68,832	\$275,329
Largest business cost per employee	N/A	N/A

We identified only large businesses affected by the proposed rule's restriction on flame retardants in electronic products. As no small businesses are likely to be impacted, this section of the proposed rule is exempt under RFA (RCW 19.85.025(4)).

As we did not identify large businesses in the recreational polyurethane foam product industry that would be impacted by the proposed rule, RFA requires us to consider all cost-mitigating options listed in the law, as far as is legal and feasible.

Compliance costs per employee for businesses with sales consumer products with APEs.

Type of cost (or total cost)	Low	High
Average small business employment	2	2
Average employment at largest 10 percent of businesses	65	65

Type of cost (or total cost)	Low	High
Small business cost per employee	\$1,071	\$4,283
Largest business cost per employee	\$737	\$2,947

We conclude that the proposed rule is likely to have disproportionate impacts on small businesses, and therefore, ecology must include elements in the proposed rule to mitigate this disproportion, as far as is legal and feasible.

Compliance costs per employee for businesses with sales of consumer products with bisphenols - thermal paper.

Type of cost (or total cost)	Low	High
Average small business employment	9	9
Average employment at largest 10 percent of businesses	N/A	N/A
Small business cost per employee	\$17,091	\$68,366
Largest business cost per employee	N/A	N/A

As we did not identify large businesses in the above industry that would be impacted by the proposed rule, RFA requires us to consider all cost-mitigating options listed in the law, as far as is legal and feasible.

Compliance costs per employee for drink can linings: We did not identify businesses manufacturing drink can linings in Washington state.

CONSIDERATION OF LOST SALES OR REVENUE: Businesses that would incur costs could experience reduced sales or revenues if the proposed rule significantly affects the prices of the goods they sell. The degree to which this could happen is strongly related to each business's production and pricing model (whether additional lump-sum costs would significantly affect marginal costs), as well as the specific attributes of the markets in which they sell goods, including the degree of influence each firm has on market prices, as well as the relative responsiveness of market demand to price changes.

We used the REMI E3+ model for Washington state to estimate the impact of the proposed rule on directly affected markets, accounting for dynamic adjustments throughout the economy. The model accounts for: Interindustry impacts; price, wage, and population changes; and dynamic adjustment of all economic variables over time. As potential maximum costs were modeled as lost sales, we structured REMI inputs as lost sales by specified industries, with consumers reallocating that spending on other goods and services.

Initially, the total value of output (total amount of goods and services produced by Washington businesses) in the state (across all sectors) is modeled to increase by a high of \$644,000, with diminishing impacts over time.

MITIGATION OF DISPROPORTIONATE IMPACT: RFA (RCW 19.85.030(2)) states that: "Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW 19.85.040, the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses. The agency must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:

- (a) Reducing, modifying, or eliminating substantive regulatory requirements;
- (b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements;

(c) Reducing the frequency of inspections;
(d) Delaying compliance timetables;
(e) Reducing or modifying fine schedules for noncompliance; or
(f) Any other mitigation techniques including those suggested by small businesses or small business advocates."

We considered all the above options, the goals and objectives of the authorizing statutes (see Chapter 6), and the scope of this rule making. We limited compliance cost-reduction methods to those that:

- Are legal and feasible.
- Meet the goals and objectives of the authorizing statute.
- Are within the scope of this rule making.

The scope of this rule making was limited to identifying actions, restrictions, or reporting, so we could not legally include options (a), (c), and (e).

Ecology was required to start the proposed rule making with pre-determined requirements, established as actions recommended to the legislature.

We included the following elements and mitigation techniques in the proposed rule to reduce costs to small businesses.

During the rule-development process, ecology specifically sought input from a variety of industry associations. The intent was to help ensure representation of businesses of all sizes, not just from large manufacturers who have staff dedicated to these types of stakeholder activities. To address potential discrepancies between large and small manufacturers and distributors, we made the following provisions in the rule:

- Incorporated concentration limits and effective dates suggested by manufacturers, distributors, and their representatives as being reasonable.
- Incorporated tiered effective dates for large and small electronics manufacturers. Although "Group 2" businesses may include some that do not qualify as "small" businesses under Washington law, we determined it was preferable to be overinclusive instead of potentially excluding small businesses.
- Left the criteria and process for requesting an exemption open-ended and flexible. This will allow us to respond to small businesses and grant exemptions or compliance extensions on an individualized basis.
- Required the use of the IC2 database when submitting notifications to ecology. Some manufacturers already use this database if they must comply with Washington's CSPA (chapter 173-334 WAC) and with Oregon regulations. This can reduce costs to small businesses that already use the IC2 database.
- Exempted existing stock and repair and replacement parts manufactured before the effective date. This allows small businesses to continue selling existing stock and to continue repairing products manufactured before the effective date.

SMALL BUSINESS AND LOCAL GOVERNMENT CONSULTATION: We involved small businesses and local governments in the development of the proposed rule:

- Ecology held 29 stakeholder meetings on the topics of the proposed rule during cycle 1 of the program.
- Ecology organized 19 webinars on the topics of the proposed rule during cycle 1 of the program.

- Ecology published on the safer products for Washington web page announcements, reports, and other informational materials.
- Three informal public comment periods on the draft products report, draft regulatory determinations report, and a preliminary draft of the proposed rule.
- Outreach through the Washington department of health newsletter, shared with local health authorities, encouraging feedback.

NAICS CODES OF INDUSTRIES IMPACTED BY THE PROPOSED RULE: The proposed rule likely impacts the following industries with associated NAICS codes. NAICS definitions and industry hierarchies are discussed at <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?chart=2017>.

443142 Electronics stores
 334417 Electronic connector manufacturing
 334111 Electronic computer manufacturing
 334418 Printed circuit assembly manufacturing
 334419 Other electronic component manufacturing
 423620 Household appliances, electric housewares, and consumer electronics wholesalers
 423690 Other electronic parts and equipment merchant wholesalers
 326150 Polyurethane foam products manufacturing
 424610 Plastics foam merchant wholesalers
 314110 Carpets and rugs made from textile materials
 423220 Carpet merchant wholesalers
 442210 Carpet stores
 442299 Home furnishings stores
 423220 Home furnishings merchant wholesalers/linens (e.g., bath, bed, table) merchant wholesalers/towels merchant wholesalers
 314120 Bedspreads and bed sets made from purchased fabrics/towels or washcloths made from purchased fabrics/curtains and draperies, window, made from purchased fabrics
 337121 Household-type furniture, upholstered, manufacturing
 337211 Office furniture, padded, upholstered, or plain wood, manufacturing
 337214 Office furniture (except wood), padded, upholstered, or plain (except wood), manufacturing
 313310 Chemical finishing (e.g., fire, mildew, water resistance) fabrics
 332431 Metal cans, light gauge metal, manufacturing
 322230 Tapes (e.g., adding machine, calculator, cash register) made from purchased paper
 325992 Heat-sensitized (i.e., thermal) paper made from purchased paper
 325611 Detergents (e.g., dishwashing, industrial, laundry) manufacturing
 424690 Detergents merchant wholesalers
 326199 Vinyl floor coverings manufacturing
 325199 Perfume materials (i.e., basic synthetic chemicals, such as terpineol) manufacturing
 325620 Blending and compounding perfume bases/perfumes manufacturing
 339999 Atomizers (e.g., perfumes) manufacturing
 424210 Perfumes merchant wholesalers/deodorants, personal, merchant wholesalers
 325611 Hand soaps (e.g., hard, liquid, soft) manufacturing/bar soaps manufacturing

325620 Makeup (i.e., cosmetics) manufacturing/deodorants, personal, manufacturing/cosmetic creams, lotions, and oils manufacturing/hair preparations (e.g., conditioners, dyes, rinses, shampoos) manufacturing

IMPACT ON JOBS: We used the REMI E3+ model for Washington state to estimate the impact of the proposed rule on jobs in the state, accounting for dynamic adjustments throughout the economy.

The proposed rule would result in transfers of money within and between industries, as compared to the baseline. The modeled impacts on employment are the result of multiple small increases and decreases in employment, prices, and other economic variables across all industries in the state. As potential maximum costs were modeled as lost sales, we structured REMI inputs as lost sales by specified industries, with consumers reallocating that spending on other goods and services.

Industry	Initial Jobs Impact	Jobs Impact in 20 years
Whole state	7	0
Household appliance manufacturing	0	0
Retail trade	7	0
Wholesale trade	1	0

A copy of the statement may be obtained by contacting Stacey Callaway, Department of Ecology, Hazardous Waste and Toxics Reductions Program, P.O. Box 47600, Olympia, WA 98504-7600 (United States mail), phone 360-584-5661, Washington relay service or TTY call 711 or 877-833-6341, email saferproductswa@ecy.wa.gov.

December 7, 2022
Heather R. Bartlett
Deputy Director

OTS-4159.1

**Chapter 173-337 WAC
SAFER PRODUCTS RESTRICTIONS AND REPORTING**

PART A - GENERAL

NEW SECTION

WAC 173-337-010 Authority and purpose. (1) **Authority.** Chapter 70A.350 Revised Code of Washington (RCW) authorizes ecology to:

- (a) Implement, administer, and enforce chapter 70A.350 RCW.

- (b) Regulate priority chemicals in priority consumer products.
- (2) **Purpose.** This chapter implements chapter 70A.350 RCW.
- (a) This chapter provides a regulatory framework to:
 - (i) Reduce the use of priority chemicals in priority consumer products by establishing restrictions.
 - (ii) Increase transparency in product ingredients by requiring notification.
- (b) This chapter establishes:
 - (i) Actions applicable persons must take related to manufacturing, selling (including, but not limited to, wholesale, online, or retail), or distributing priority consumer products containing priority chemicals in Washington state.
 - (ii) The enforcement process ecology will use if manufacturers fail to comply with this chapter.

[]

NEW SECTION

- WAC 173-337-015 Applicability.** (1) This chapter applies to any person who manufactures, sells, or distributes a priority consumer product that contains a priority chemical in Washington state.
- (2) This chapter does **not** apply to:
 - (a) Consumer products excluded from chapter 70A.350 RCW.
 - (b) Consumer products purchased outside of Washington state.
 - (c) Consumer products transported or stored in Washington state solely for sale or distribution to consumers outside of Washington state.
 - (d) Priority consumer product repair and replacement parts manufactured before the effective date of the restriction.
 - (e) Priority consumer products refurbished with repair or replacement parts manufactured before the effective date of the restriction.
 - (f) The recycling or disposal of existing stock.

[]

NEW SECTION

- WAC 173-337-020 Requesting an exemption.** (1) A person required to comply with this chapter may request an exemption from the requirements of this chapter.
- (2) Ecology will use objective factors, such as (a) through (c) of this subsection, in their evaluation of exemption requests.
 - (a) The priority chemical is functionally necessary to the priority consumer product and there is no alternative.
 - (b) It is not currently possible to comply with the restriction and also comply with another legally imposed requirement.
 - (c) An unforeseen event or circumstance limited the availability of alternatives.
 - (3) A person seeking exemption from the requirements of this chapter must submit a request to ecology that includes the following information:

- (a) Your name and address;
- (b) Requirements in this chapter from which you request an exemption;
- (c) A statement of the need and justification for the exemption. Include information, data, or sources relevant to the need and justification.
- (4) A person who submits a request for exemption must 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."

- (5) A person who submits a request for exemption to ecology must comply with the requirements of this chapter until ecology approves their request.

[]

NEW SECTION

WAC 173-337-025 Acronyms and definitions. Unless ecology determines the context requires otherwise, the following definitions apply for the purposes of this chapter.

"Bisphenol" means a chemical with two phenol rings connected by a single linker atom. The linker atom and phenol rings may have additional substituents.

"Chemical abstracts service registry number" or **"CAS RN"** means the number assigned for identification of a particular chemical by the chemical abstracts service, a service of the American Chemical Society that indexes and compiles abstracts of worldwide chemical literature called *chemical abstracts*.

"Consumer product" means any item, including any component parts and packaging, sold for residential or commercial use.

"Ecology" means the Washington state department of ecology.

"Electronic display" means a display screen and associated electronics that, as its primary function, displays visual information from wired or wireless sources.

"Environmental justice" means the term as defined in chapter 70A.02 RCW.

"Existing stock" means consumer products in commerce at the time a restriction takes effect.

"External enclosures" means the plastic external part of the product that renders inaccessible all or any parts of the equipment that may otherwise present a risk of electric shock or retards propagation of flame initiated by electrical disturbances occurring within.

"FDA" means the United States Federal Drug Administration.

"Flame retardant" means a chemical that is added to or reacted with a material to effectively retard flames. Chemicals used in the product to provide anti-drip are not flame retardants as long as other chemicals are explicitly used for the purpose of flame retardancy.

"Inaccessible electronic component" means a part or component of an electronic product that is located inside and entirely enclosed within another material and is not capable of coming out of the product or being accessed during any reasonably foreseeable use or abuse of the product.

"Intended for indoor use" means a product designed primarily for use or storage inside buildings.

"Intended for outdoor use" means a product designed to maintain functionality after exposure to ultraviolet (UV) light, water, or immersion when used outdoors for an extended time.

"Intentionally added chemical" means a chemical that serves an intended function in the final product or in the manufacturing of the product or part of the product.

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

"Organohalogen" means a class of chemicals that includes any chemical containing one or more halogen elements bonded to a carbon.

"Ortho-phthalates" means synthetic chemical esters of benzenedicarboxylic acid consisting of two carboxy groups at ortho positions.

"Overburdened community" means the term as defined in chapter 70A.02 RCW.

"Perfluoroalkyl and polyfluoroalkyl substances" or **"PFAS"** means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

"Phenolic compounds" means alkylphenol ethoxylates and bisphenols.

"ppm" means parts per million.

"Priority chemical" means the following chemicals or chemical classes used as, used in, or put in a priority consumer product.

- Perfluoroalkyl and polyfluoroalkyl substances;
- Phthalates;
- Organohalogen flame retardants;
- Flame retardants, as identified by the Washington state department of ecology under chapter 70A.430 RCW;
- Phenolic compounds;
- A chemical identified by ecology as a priority chemical under chapter 70A.350 RCW.

"Priority consumer product" means a product identified by ecology to be a significant source or use of a priority chemical.

"RCW" means the Revised Code of Washington.

"Sell" includes, but is not limited to, wholesale, online, and retail.

"Sensitive population" means the term as defined in chapter 70A.350 RCW.

"Thermal paper" means a paper coated with a material formulated to change color when exposed to heat.

"TMBPF" means tetramethyl bisphenol F (CAS RN: 5384-21-4).

"U.S.C." means the United States Code.

"WAC" means the Washington Administrative Code.

[]

NEW SECTION

WAC 173-337-030 Enforcement and penalties. (1) Any violation of this chapter is subject to the enforcement and penalty sanctions of chapter 70A.350 RCW.

(2) In accordance with chapter 70A.350 RCW:

(a) A manufacturer violating a requirement of this chapter is subject to a civil penalty **not** to exceed \$5,000 for each violation in the case of a first offense. Manufacturers who are repeat violators are subject to a civil penalty **not** to exceed \$10,000 for each repeat offense.

(b) A manufacturer may appeal any penalty provided for in this chapter to the pollution control hearings board.

(c) All penalties collected under this chapter shall be deposited in the model toxics control operating account created in RCW 70A.305.180.

[]

NEW SECTION

WAC 173-337-035 Severability. If any provision of this chapter or its application to any person is held invalid, the remainder of this chapter or the application of the provision to other persons or circumstances is not affected.

[]

NEW SECTION

WAC 173-337-040 Federal preemption. (1) This section applies in the event that either of the following federal regulatory actions occurs after the effective date of this chapter.

(a) The U.S. Environmental Protection Agency takes an action under the Toxic Substances Control Act, 15 U.S.C. Secs. 2601 through 2697, that preempts pursuant to 15 U.S.C. Sec. 2617 the enforcement of a restriction imposed by this chapter on a priority chemical in a priority consumer product.

(b) The U.S. Consumer Product Safety Commission takes an action under the Consumer Product Safety Act, 15 U.S.C. Secs. 2051 through 2089, or the Federal Hazardous Substances Act, 15 U.S.C. Secs. 1261 through 1278a, that preempts pursuant to 15 U.S.C. Sec. 2075 or 15 U.S.C. Sec. 1261 note "Effect Upon Federal and State Law" at

(b) (1) (B), the enforcement of a restriction imposed by this chapter on a priority chemical in a priority consumer product.

(2) If either of the preemptive federal regulatory actions described in subsection (1) of this section occurs, manufacturers will, starting on the date of the relevant federal agency action, be subject to the requirements of WAC 173-337-060 with regard to the affected priority chemical in the affected priority consumer product, instead of the restriction imposed by this chapter.

[]

NEW SECTION

WAC 173-337-045 Relation to other laws and rules. In addition to the requirements of this chapter and chapter 70A.350 RCW, other laws, rules, and ordinances may apply to priority consumer products containing priority chemicals. Nothing in this chapter is intended to excuse persons regulated by this chapter from complying with other laws, rules, ordinances, procedures, other restrictions, or limitations on regulated consumer products.

[]

NEW SECTION

WAC 173-337-050 Equity and environmental justice. (1) To strengthen the integration of equity and environmental justice considerations when implementing, administering, and enforcing chapter 70A.350 RCW, ecology will, to the extent legal and practical:

(a) Strive to collaborate and co-develop approaches to equitable and meaningful community engagement with overburdened communities, sensitive populations, tribes, and indigenous communities, and others.

(b) Pursue processes that facilitate and support the inclusion of overburdened communities that reduce barriers in equitable participation.

Examples of barriers include child care, food costs, ADA and other accessibility needs, and compensation for lived experience and expertise.

Examples of how community input may inform decision-making include determining:

- Preliminary priority chemicals, priority consumer products, and preliminary alternatives.

- Rule requirements.

- Compliance approach.

(c) Use existing data and information to document potential exposure disparities when identifying priority chemicals and priority consumer products. Examples of data and information include peer-reviewed scientific studies, government reports and data, demographic information, market-based research, and other sources reviewed by ecology.

(d) Prioritize chemicals and consumer products where regulatory actions may reduce disproportionate exposure.

(e) Work toward equitable access to safer consumer products. This includes, but is not limited to, considering overburdened communities and low-income populations' ability to access safer consumer products.

(2) Ecology will refer to guidance from relevant authorities including, but not limited to:

(a) Title VI of the Civil Rights Act 1964, 42 U.S.C. Sec. 2000D et seq.

(b) Chapter 70A.02 RCW - Environmental justice.

(c) Chapter 43.03.220 RCW - Compensation of members of part-time boards and commissions—Class one groups.

(d) The Washington state office of equity.

(e) Ecology's office of equity and environmental justice.

[]

NEW SECTION**WAC 173-337-055 Previously owned priority consumer products.**

(1) No person may sell or distribute a previously owned priority consumer product that they know violates a restriction in this chapter.

(2) This does **not** apply to a:

(a) Priority consumer product that has a reporting requirement.

(b) Priority consumer product manufactured before the effective date of the restriction, as listed in WAC 173-337-110 through 173-337-114.

(c) Repair part or replacement part manufactured before the effective date of the restriction, as listed in WAC 173-337-110 through 173-337-114.

(d) Priority consumer product refurbished with repair or replacement parts manufactured before the effective date of the restriction, as listed in WAC 173-337-110 through 173-337-114.

[]

NEW SECTION**WAC 173-337-060 Reporting requirements. (1) Applicability.**

(a) This section applies to a manufacturer of a priority consumer product required to submit a notification to ecology, as listed in WAC 173-337-110, 173-337-112, and 173-337-114. This chapter refers to that person as the "reporting party."

(b) The manufacturer of the priority consumer product or a trade organization representing the manufacturer may serve as the reporting party.

(c) **Reporting party.** The following hierarchy determines which person or entity ecology will hold primarily responsible for ensuring that ecology receives a complete, accurate, and timely notification.

(i) The person or entity that had the priority consumer product manufactured, unless it has **no** presence in the United States.

(ii) The person or entity that marketed the priority consumer product under their name or trademark, unless it has **no** presence in the United States.

(iii) The first person or entity, whether an importer or a distributor, who owned the priority consumer product in the United States.

(d) This chapter requires only one reporting party to submit notification with respect to a particular priority consumer product.

(2) Timing.

(a) The reporting party must submit a notification to ecology:

(i) By January 31st of the year after the effective date of the reporting requirement, as listed in WAC 173-337-110, 173-337-112, and 173-337-114.

(ii) Annually thereafter by January 31st each year.

(b) The reporting party may submit a revised notification to ecology when a priority consumer product **no** longer contains an intentionally added priority chemical.

(3) Notification contents.

(a) The notification must include information about a priority consumer product containing an intentionally added priority chemical,

that is sold or offered for sale in Washington state during the prior calendar year.

(b) The notification must include the following information:

(i) The name and CAS RN of the priority chemical that is intentionally added. If the priority chemical has a CAS RN, the notification must include it. If the priority chemical does **not** have a CAS RN, then include the generic name of the chemical.

(ii) The product category that contains the priority chemical. The product category means the "brick" level of the GS1 Global Product Classification (GPC) standard, which identifies products that serve a common purpose, are of a similar form and material, and share the same set of category attributes.

(iii) The product component within the product category that contains the priority chemical. The product component means a uniquely identifiable material or coating (including ink or dye) that is intended to be included as a part of a finished priority consumer product.

(iv) A description of the function of the priority chemical.

(v) The concentration range of each intentionally added priority chemical in each product component in each product category. The reporting party may report the concentration in ranges rather than the exact concentration. If there are multiple concentrations for a given product component in a particular product category, the reporting party must report the highest concentration.

The reporting ranges are:

(A) Less than 100 ppm (0.01%).

(B) Equal to or more than 100 ppm (0.01%), but less than 500 ppm (0.05%).

(C) Equal to or more than 500 ppm (0.05%), but less than 1,000 ppm (0.1%).

(D) Equal to or more than 1,000 ppm (0.1%), but less than 5,000 ppm (0.5%).

(E) Equal to or more than 5,000 ppm (0.5%), but less than 10,000 ppm (1.0%).

(F) Equal to or more than 10,000 ppm (1.0%).

(vi) **Contact information.**

(A) The name and address of the reporting party.

(B) The name, address, phone number, and electronic mail address of the contact person for the reporting party.

(C) When a trade organization serves as the reporting party, the notification must include a list of the manufacturers they report for and all the required information.

(D) Which option in the hierarchy in subsection (1)(c) of this section best represents the reporting party.

(vii) Any other information the reporting party deems relevant to the appropriate use of the product.

(c) If the reporting party determines the information in the prior annual notification did **not** change in the current reporting year, they must resubmit the data from the previous year's notification.

(d) This chapter does **not** require the reporting party to include:

(i) Specific formulations.

(ii) The specific name and address of the facility responsible for the use or addition of a priority chemical in the priority consumer product or product component.

(4) **Notification database.** The reporting party must use an ecology-designated notification database to submit the required notification to ecology.

[]

NEW SECTION

WAC 173-337-065 Confidential business information (CBI). A person who submits information to ecology may request that ecology treat that information as confidential as provided in RCW 43.21A.160 by providing appropriate documentation supporting the request.

[]

PART B - CHEMICALS AND CONSUMER PRODUCTSNEW SECTION

WAC 173-337-110 PFAS. (1) Aftermarket stain- and water-resistance treatments.

(a) **Applicability.**

(i) Priority consumer products. This subsection applies to:

(A) Aftermarket stain-resistant treatments applied to textile and leather consumer products.

(B) Aftermarket water-resistant treatments applied to textile and leather consumer products.

(C) Aftermarket stain-resistant and water-resistant treatments applied to textile and leather consumer products.

(ii) This subsection does **not** apply to premarket topical chemical treatments applied during the manufacturing process.

(b) **Compliance schedule.** The restriction in (c) of this subsection takes effect on January 1, 2025.

(c) **Restriction.**

(i) No person may manufacture, sell, or distribute a priority consumer product described in (a) of this subsection that contains intentionally added PFAS.

This does **not** apply to a priority consumer product described in (a) of this subsection manufactured before January 1, 2025.

(ii) Ecology presumes the detection of total fluorine indicates the intentional addition of PFAS.

(iii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information:

(A) The name and address of the person submitting the statement.

(B) A statement that PFAS were **not** intentionally added. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that PFAS were **not** intentionally added.

(2) **Carpets and rugs.**

(a) **Applicability.** Priority consumer products. This subsection applies to:

(i) Carpets intended for indoor use or intended for outdoor use.

(ii) Rugs intended for indoor use or intended for outdoor use, including carpeted mats.

(b) **Compliance schedule.** The restriction in (c) of this subsection takes effect on January 1, 2025.

(c) **Restriction.**

(i) No person may manufacture, sell, or distribute a priority consumer product described in (a) of this subsection that contains intentionally added PFAS.

This does **not** apply to a:

(A) Priority consumer product described in (a) of this subsection manufactured before January 1, 2025.

(B) Repair part or replacement part manufactured before January 1, 2025.

(C) Priority consumer product refurbished with repair or replacement parts manufactured before January 1, 2025.

(ii) Ecology presumes the detection of total fluorine indicates the intentional addition of PFAS.

(iii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information:

(A) The name and address of the person submitting the statement.

(B) A statement that PFAS were **not** intentionally added. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that PFAS were **not** intentionally added.

(3) **Leather and textile furniture and furnishings intended for indoor use.**

(a) **Applicability.**

(i) Priority consumer products. This subsection applies to leather and textile furniture and furnishings intended for indoor use.

(ii) This subsection does **not** apply to:

(A) Leather and textile furniture and furnishings intended for outdoor use.

(B) Leather and textiles sold separately and not part of furniture and furnishings.

(b) **Compliance schedule.** The restriction in (c) of this subsection takes effect on January 1, 2026.

(c) **Restriction.**

(i) No person may manufacture, sell, or distribute a priority consumer product described in (a) of this subsection that contains intentionally added PFAS.

This does **not** apply to a:

(A) Priority consumer product described in (a) of this subsection manufactured before January 1, 2026.

(B) Repair part or replacement part manufactured before January 1, 2026.

(C) Priority consumer product refurbished with repair or replacement parts manufactured before January 1, 2026.

(ii) Ecology presumes the detection of total fluorine indicates the intentional addition of PFAS.

(iii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information:

(A) The name and address of the person submitting the statement.

(B) A statement that PFAS were **not** intentionally added. Provide credible evidence supporting that statement and include information,

data, or sources relevant to demonstrate that PFAS were **not** intentionally added.

(4) **Leather and textile furniture and furnishings intended for outdoor use.**

(a) **Applicability.**

(i) Priority consumer products. This subsection applies to leather and textile furniture and furnishings intended for outdoor use.

(ii) This subsection does **not** apply to:

(A) Leather and textile furniture and furnishings intended for indoor use.

(B) Leather and textiles sold separately and not part of furniture and furnishings.

(b) **Compliance schedule.** The reporting requirement in (c) of this subsection takes effect on January 1, 2024.

(c) **Reporting.** The manufacturer must provide notice that the priority consumer product described in (a) of this subsection, contains intentionally added PFAS. The manufacturer must provide notice to ecology in accordance with WAC 173-337-060.

(i) Ecology presumes the detection of total fluorine indicates the intentional addition of PFAS.

(ii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information:

(A) The name and address of the person submitting the statement.

(B) A statement that PFAS were **not** intentionally added. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that PFAS were **not** intentionally added.

[]

NEW SECTION

WAC 173-337-111 Ortho-phthalates. (1) Fragrances in beauty products and personal care products.

(a) **Applicability.**

(i) Priority consumer products. This subsection applies to:

(A) Fragrances sold separately, such as perfumes and colognes.

(B) Fragrances used in beauty products, regardless of whether the item contains drug ingredients regulated by the FDA.

(C) Fragrances used in personal care products, regardless of whether the item contains drug ingredients regulated by the FDA.

(ii) This subsection does **not** apply to:

(A) Ortho-phthalates used in beauty products or personal care products for purposes other than as a solvent or fixative for fragrances.

(B) Active ingredients in products regulated by the FDA as drugs.

(C) Consumer products regulated by the FDA as medical devices.

(b) **Compliance schedule.** The restriction in (c) of this subsection takes effect on January 1, 2025.

(c) **Restriction.**

(i) No person may manufacture, sell, or distribute a priority consumer product described in (a) of this subsection that contains an intentionally added ortho-phthalate used as a solvent or fixative for fragrance ingredients.

This does **not** apply to a priority consumer product described in (a) of this subsection manufactured before January 1, 2025.

(ii) Ecology presumes the detection of ortho-phthalates **not** listed in the ingredients, indicates the intentional addition of ortho-phthalates as solvents or fixatives for fragrance ingredients.

(iii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information:

(A) The name and address of the person submitting the statement.

(B) A statement that an ortho-phthalate was **not** intentionally added as a solvent or fixative. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that an ortho-phthalate was **not** intentionally added.

(2) **Vinyl flooring.**

(a) **Applicability.** Priority consumer products. This subsection applies to vinyl flooring.

(b) **Compliance schedule.** The restriction in (c) of this subsection takes effect on January 1, 2025.

(c) **Restriction.** No person may manufacture, sell, or distribute a priority consumer product described in (a) of this subsection that contains more than 1,000 ppm of any ortho-phthalate, individually or combined.

This does **not** apply to a:

(i) Priority consumer product described in (a) of this subsection manufactured before January 1, 2025.

(ii) Repair part or replacement part manufactured before January 1, 2025.

(iii) Priority consumer product refurbished with repair or replacement parts manufactured before January 1, 2025.

[]

NEW SECTION

WAC 173-337-112 Flame retardants. (1) Electric and electronic products with plastic external enclosures, intended for indoor use.

(a) **Applicability.**

(i) Priority consumer products. This subsection applies to electric and electronic products with plastic external enclosures, intended for indoor use that are powered by either of the following:

(A) Standard 120 volt outlets and designed for up to 20 amp circuit;

(B) Battery.

(ii) This subsection does **not** apply to:

(A) Electric and electronic products with plastic external enclosures, intended for outdoor use.

(B) Consumer products that receive power only when they are hard-wired into and permanently part of the fixed electrical wiring of a building. This includes wiring devices, control devices, electrical distribution equipment, and lighting equipment.

(C) Products regulated by the FDA as medical devices.

(D) Products designed to use nonelectric heating energy sources, such as natural gas.

(iii) This subsection does **not** apply to the following parts of the priority consumer products described in (a) of this subsection.

(A) Inaccessible electronic component, such as printed circuit boards and internal fans.

(B) Internal parts that are removable and replaceable, but not accessible once the product is in its fully assembled and functional form.

(C) Plastic external enclosure parts that weigh less than 0.5 grams.

(D) Screens. This subsection does apply to the plastic enclosure surrounding the screen.

(E) Wires, cords, cables, switches, light bulbs, and connectors.

(b) **Compliance schedule.**

(i) Group definitions.

(A) "**Group 1**" means a person or entity whose gross sales equal or exceed \$1,000,000,000 in 2022.

(B) "**Group 2**" means a person or entity whose gross sales are less than \$1,000,000,000 in 2022.

(ii) Electronic displays and televisions compliance schedule.

(A) The restriction in (c) of this subsection takes effect on January 1, 2025, for persons or entities in Group 1 or Group 2 who manufacture, sell, or distribute:

- Electronic displays described in (a) of this subsection;
- Televisions described in (a) of this subsection.

(B) This does **not** include the following priority consumer products:

- All-in-one video conference systems;
- Displays that are integrated with appliances and are not available for purchase as separate products by end-users;
- Projectors;
- Virtual reality headsets.

(iii) Group 1 compliance schedule.

(A) The restriction in (c) of this subsection takes effect on January 1, 2026, for persons or entities in Group 1 who manufacture, sell, or distribute a priority consumer product described in (a) of this subsection. This includes:

- All-in-one video conference systems;
- Displays that are integrated with appliances and are not available for purchase as separate products by end-users;
- Projectors;
- Virtual reality headsets.

(B) This does **not** include the following priority consumer products described in (a) of this subsection:

- Electronic displays described in (a) of this subsection;
- Televisions described in (a) of this subsection.

(iv) Group 2 compliance schedule.

(A) The restriction in (c) of this subsection takes effect on January 1, 2027, for persons or entities in Group 2 who manufacture, sell, or distribute a priority consumer product described in (a) of this subsection. This includes:

- All-in-one video conference systems;
- Displays that are integrated with appliances and are not available for purchase as separate products by end-users;
- Projectors;
- Virtual reality headsets.

(B) This does **not** include the following priority consumer products described in (a) of this subsection:

- Electronic displays described in (a) of this subsection;
- Televisions described in (a) of this subsection.

(c) **Restriction.**

(i) No person may manufacture, sell, or distribute a priority consumer product described in (a) of this subsection that has a plastic external enclosure that contains intentionally added organohalogen flame retardants.

This does **not** apply to a:

(A) Priority consumer product described in (a) of this subsection manufactured before the applicable compliance schedules in (b) of this subsection;

(B) Repair part or replacement part manufactured before the applicable compliance schedules in (b) of this subsection;

(C) Priority consumer product refurbished with repair or replacement parts manufactured before the applicable compliance schedules in (b) of this subsection.

(ii) Ecology presumes the detection of:

(A) Total bromine concentrations above 1,000 ppm indicate intentionally added organohalogen flame retardants.

(B) Total chlorine concentrations above 1,000 ppm indicate intentionally added organohalogen flame retardants.

(C) Total fluorine concentrations above 1,000 ppm with less than 5,000 ppm total phosphorus indicate intentionally added organohalogen flame retardants.

(iii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information:

(A) The name and address of the person submitting the statement;

(B) A statement that an organohalogen flame retardant was **not** intentionally added. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that an organohalogen flame retardant was **not** intentionally added.

(2) **Electric and electronic products with plastic external enclosures, intended for outdoor use.**

(a) **Applicability.**

(i) Priority consumer products. This subsection applies to electric and electronic products with plastic external enclosures, intended for outdoor use that are powered by either of the following:

(A) Standard 120 volt outlets and designed for up to 20 amp circuit;

(B) Battery.

(ii) This subsection does **not** apply to:

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

(B) Consumer products that receive power only when they are hard-wired into and permanently part of the fixed electrical wiring of a building. This includes wiring devices, control devices, electrical distribution equipment, and lighting equipment.

(C) Products regulated by the FDA as medical devices.

(D) Products designed to use nonelectric heating energy sources, such as natural gas.

(iii) This subsection does **not** apply to the following parts of the priority consumer products described in (a) of this subsection:

(A) Inaccessible electronic component, such as printed circuit boards and internal fans;

(B) Internal parts that are removable and replaceable, but not accessible once the product is in its fully assembled and functional form;

(C) Plastic external enclosure parts that weigh less than 0.5 grams;

(D) Screens. This subsection does apply to the plastic enclosure surrounding the screen;

(E) Wires, cords, cables, switches, light bulbs, and connectors.

(b) **Compliance schedule.** The reporting requirement in (c) of this subsection takes effect on January 1, 2024.

(c) **Reporting.** The manufacturer must provide notice that the priority consumer product described in (a) of this subsection, contains an intentionally added organohalogen flame retardant. The manufacturer must provide notice to ecology in accordance with WAC 173-337-060.

(i) Ecology presumes the detection of:

(A) Total bromine concentrations above 1,000 ppm indicate intentionally added organohalogen flame retardants.

(B) Total chlorine concentrations above 1,000 ppm indicate intentionally added organohalogen flame retardants.

(C) Total fluorine concentrations above 1,000 ppm with less than 5,000 ppm total phosphorus indicate intentionally added organohalogen flame retardants.

(ii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information:

(A) The name and address of the person submitting the statement;

(B) A statement that an organohalogen flame retardant was **not** intentionally added. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that an organohalogen flame retardant was **not** intentionally added.

(3) **Recreational covered wall padding made from polyurethane foam.**

(a) **Applicability.**

(i) Priority consumer products. This subsection applies to recreational covered wall padding made from polyurethane foam.

(ii) This subsection does **not** apply to the priority consumer products listed in subsection (4)(a)(i) of this section.

(b) **Compliance schedule.** The reporting requirement in (c) of this subsection takes effect on January 1, 2024.

(c) **Reporting.** The manufacturer must provide notice that the priority consumer product described in (a) of this subsection, contains an intentionally added priority chemical listed in (c)(i) of this subsection. The manufacturer must provide notice to ecology in accordance with WAC 173-337-060.

(i) Priority chemicals.

(A) Organohalogen flame retardant.

(B) The following organophosphate flame retardants:

- Ethylhexyl diphenyl phosphate (EHDPP, CAS RN: 1241-94-7);
- Isopropylated triphenyl phosphate (IPTPP, CAS RN: 68937-41-7);
- Tributyl phosphate (TNBP, CAS RN: 126-73-8);
- Triorthocresyl phosphate (TCP, CAS RN: 1330-78-5);
- Triphenyl phosphate (TPP, CAS RN: 115-86-6).

(ii) Ecology presumes the detection of:

(A) Total bromine concentrations above 1,000 ppm indicate intentionally added organohalogen flame retardants.

(B) Total chlorine concentrations above 1,000 ppm indicate intentionally added organohalogen flame retardants.

(C) Total fluorine concentrations above 1,000 ppm indicate intentionally added organohalogen flame retardants.

(D) Organophosphate flame retardants listed in (c)(i) of this subsection (individual or combined) at concentrations above 1,000 ppm indicate intentionally added organophosphate flame retardants.

(iii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information:

(A) The name and address of the person submitting the statement;

(B) A statement that an organohalogen flame retardant or an organophosphate flame retardant listed in (c)(i) of this subsection, was **not** intentionally added. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that an organohalogen flame retardant or an organophosphate flame retardant was **not** intentionally added.

(4) **Other recreational products made from polyurethane foam.**

(a) **Applicability.**

(i) Priority consumer products. This subsection applies to:

(A) Recreational covered flooring made from polyurethane foam;

(B) Recreational covered mats made from polyurethane foam;

(C) Outdoor recreational products made from polyurethane foam;

(D) Uncovered recreational products made from polyurethane foam.

(ii) This subsection does **not** apply to:

(A) Recreational covered wall padding made from polyurethane foam.

(B) Outdoor playground equipment.

(b) **Compliance schedule.** The restriction in (c) of this subsection takes effect on January 1, 2025.

(c) **Restriction.** No person may manufacture, sell, or distribute a priority consumer product described in (a) of this subsection that contains an intentionally added priority chemical listed in (c)(i) of this subsection, individually or combined.

This does **not** apply to a priority consumer product described in

(a) of this subsection manufactured before January 1, 2025.

(i) Priority chemicals.

(A) Organohalogen flame retardant.

(B) The following organophosphate flame retardants:

• Ethylhexyl diphenyl phosphate (EHDPP, CAS RN: 1241-94-7);

• Isopropylated triphenyl phosphate (IPTPP, CAS RN: 68937-41-7);

• Tributyl phosphate (TNBP, CAS RN: 126-73-8);

• Triorthocresyl phosphate (TCP, CAS RN: 1330-78-5);

• Triphenyl phosphate (TPP, CAS RN: 115-86-6).

(ii) Ecology presumes the detection of:

(A) Total bromine concentrations above 1,000 ppm indicate intentionally added organohalogen flame retardants.

(B) Total chlorine concentrations above 1,000 ppm indicate intentionally added organohalogen flame retardants.

(C) Total fluorine concentrations above 1,000 ppm indicate intentionally added organohalogen flame retardants.

(D) Organophosphate flame retardants listed in (c)(i) of this subsection (individual or combined) at concentrations above 1,000 ppm indicate intentionally added organophosphate flame retardants.

(iii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information:

(A) The name and address of the person submitting the statement;

(B) A statement that an organohalogen flame retardant or an organophosphate flame retardant listed in (c)(i) of this subsection, was **not** intentionally added. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that an organohalogen flame retardant or an organophosphate flame retardant was **not** intentionally added.

[]

NEW SECTION**WAC 173-337-113 Alkylphenol ethoxylates. Laundry detergent.**

(1) **Applicability.** Priority consumer products. This subsection applies to laundry detergent.

(2) **Compliance schedule.** The restriction in subsection (3) of this section takes effect on January 1, 2025.

(3) **Restriction.** No person may manufacture, sell, or distribute a priority consumer product described in subsection (1) of this section that contains more than 1,000 ppm of any alkylphenol ethoxylates, individually or combined.

This does **not** apply to a priority consumer product described in subsection (1) of this section manufactured before January 1, 2025.

[]

NEW SECTION**WAC 173-337-114 Bisphenols. (1) Drink can linings.****(a) Applicability.**

(i) Priority consumer products. This subsection applies to drink can linings.

(ii) This subsection does **not** apply to food can linings.

(b) **Compliance schedule.** The restriction in (c) of this subsection takes effect on January 1, 2025.

(c) Restriction.

(i) No person may manufacture, sell, or distribute a priority consumer product described in (a) of this subsection that contains a bisphenol-based epoxy can liner, excluding TMBPF-based epoxy can liners.

This does **not** apply to a priority consumer product described in (a) of this subsection manufactured before January 1, 2025.

(ii) Ecology presumes the detection of a bisphenol, excluding TMBPF, indicates a bisphenol-based epoxy can liner.

(iii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information:

(A) The name and address of the person submitting the statement;

(B) A statement that the priority consumer product does **not** contain a bisphenol-based epoxy can liner. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that the priority consumer product does **not** contain a bisphenol-based epoxy can liner.

(2) Food can linings.**(a) Applicability.**

(i) Priority consumer products. This subsection applies to food can linings.

(ii) This subsection does **not** apply to drink can linings.

(b) **Compliance schedule.** The reporting requirement in (c) of this subsection takes effect on January 1, 2024.

(c) **Reporting.** The manufacturer must provide notice that the priority consumer product described in (a) of this subsection, contains a bisphenol-based epoxy can liner. This does **not** include TMBPF-based epoxy can liners.

The manufacturer must provide notice to ecology in accordance with WAC 173-337-060.

(i) Ecology presumes the detection of a bisphenol, excluding TMBPF, indicates a bisphenol-based epoxy can liner.

(ii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information:

(A) The name and address of the person submitting the statement;

(B) A statement that the priority consumer product does **not** contain a bisphenol-based epoxy can liner. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that the priority consumer product does **not** contain a bisphenol-based epoxy can liner.

(3) **Thermal paper.**

(a) **Applicability.** Priority consumer products. This subsection applies to thermal paper.

(b) **Compliance schedule.** The restriction in (c) of this subsection takes effect on January 1, 2025.

(c) **Restriction.** No person may manufacture, sell, or distribute a priority consumer product described in (a) of this subsection that contains more than 200 ppm of any individual bisphenol.

This does **not** apply to a priority consumer product described in (a) of this subsection manufactured before January 1, 2025.

[]