

## WSR 23-12-044

## PERMANENT RULES

## DEPARTMENT OF ECOLOGY

[Order 21-01—Filed May 31, 2023, 8:06 a.m., effective July 1, 2023]

Effective Date of Rule: Thirty-one days after filing.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: In June 2022, the Washington state department of ecology (ecology) submitted the Regulatory Determinations Report to the legislature, as directed by RCW 70A.350.050 (1)(b). During the 2023 session, the legislature had the opportunity to review the report and provide additional directions to ecology. The 2023 legislative session ended on April 23, 2023, and the legislature did not direct ecology to amend the Regulatory Determinations Report. Therefore, the regulatory actions took effect and ecology adopted rules implementing the regulatory actions, as directed by RCW 70A.350.050 (1)(c).

Purpose: On May 31, 2023, ecology adopted new chapter 173-337 WAC, Safer products restrictions and reporting. This new chapter establishes a regulatory program to reduce toxic chemicals in consumer products and increase product ingredient transparency, as directed by chapter 70A.350 RCW. Consumers use hundreds of items every day, many of which contain chemicals that are hazardous to human health and the environment. Ecology adopted a new rule to regulate hazardous chemicals in consumer products.

The adopted rule:

- Implements regulatory actions reported to the Washington state legislature in June 2022.
- Creates reporting requirements and restrictions for manufacturers, distributors, and retailers of priority consumer products that contain priority chemicals. These include:
  - o Per- and polyfluoroalkyl substances in aftermarket stain- and water-resistance treatments, carpets and rugs, and leather and textile furnishings.
  - o Ortho-phthalates in vinyl flooring and in personal care product fragrances.
  - o Organohalogen flame retardants in electric and electronic products.
  - o Flame retardants (as defined in RCW 70A.350.010) in recreational polyurethane foam.
  - o Phenolic compounds in laundry detergent, food and drink can linings, and thermal paper.
- Addresses existing stock, repair and replacement parts, refurbished products, and previously owned products.

Citation of Rules Affected by this Order: New chapter 173-337 WAC, Safer products restrictions and reporting.

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

Adopted under notice filed as WSR 22-24-107 on December 7, 2022.

Changes Other than Editing from Proposed to Adopted Version: Minor changes to the proposed rule filed on December 7, 2022 in WSR 22-24-107:

- In response to comments we received.
- To ensure clarity and consistency.
- To meet the intent of the authorizing statute.

- To facilitate effective program implementation.

To review the changes and reasons for making them, see the concise explanatory statement available on the safer products for Washington rule-making web page.

A final cost-benefit analysis is available 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, for Washington relay service or TTY call 711 or 877-833-6341, email saferproductswa@ecy.wa.gov, website <https://apps.ecology.wa.gov/publications/summarypages/2304032.html>.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 17, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 31, 2023.

Laura Watson  
Director

OTS-4159.3

**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 of priority chemicals in priority consumer products.

(b) This chapter establishes:

(i) Actions applicable persons must take related to manufacturing, distributing, or selling or offering to sell (including, but not limited to, wholesale, online, or retail) priority consumer products containing priority chemicals in and into Washington state.

(ii) The enforcement process ecology will use if manufacturers fail to comply with this chapter.

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#### NEW SECTION

**WAC 173-337-015 Applicability.** (1) This chapter applies to any person who manufactures, distributes, or sells or offers to sell a priority consumer product that contains a priority chemical in or into Washington state.

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

(a) Consumer products excluded from chapter 70A.350 RCW.

(b) Consumer products transported or stored in Washington state solely for sale or distribution to consumers outside of Washington state.

(c) The recycling or disposal of existing stock.

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#### 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 including, but not limited to, the following, when evaluating 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 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 satisfies the requirements in subsections (3) and (4) of this section is temporarily exempt from the requirements from which they requested an exemption until ecology makes a decision on their request.

(6) A person adversely affected by ecology's initial decision about a request for exemption from the requirements of this chapter may request review of that decision by the ecology director or their designee. Ecology's final decision is **not** subject to further administrative review.

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#### 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 external part of the finished 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, or both.

**"FDA"** means the United States Food and 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 function are **not** flame retardants if 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 **not** "intended for outdoor use" as defined in this chapter.

**"Intended for outdoor use"** means a product designed for use in an outdoor setting and to maintain functionality after exposure to ultraviolet (UV) light, exposure to water, or immersion.

**"Intentionally added priority chemical"** or **"intentionally added"** means a chemical that serves an intended function in the final product or in the manufacturing of the product or part of the product. Chemicals present from the use of recycled materials are **not** considered "intentionally added priority chemicals."

**"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.

**"Previously owned product"** means a priority consumer product owned by an end user or consumer, regardless of whether that end user purchased the product.

**"Priority chemical"** means a chemical or chemical class identified by ecology as a priority chemical under chapter 70A.350 RCW, or a chemical or chemical class identified in chapter 70A.350 RCW, or both.

**"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"** or **"offering to 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.

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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.

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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.

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NEW SECTION

**WAC 173-337-040 Federal preemption.** (1) This section applies if 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 regarding the affected priority chemical in the affected priority consumer product, instead of the restriction imposed by this chapter.

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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, restrictions, or limitations on regulated consumer products.

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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 and reduce barriers in equitable participation.

Examples of barriers and needs include child care, food costs, the Americans with Disabilities Act (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.

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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 manufactured before the effective date of the restriction, as listed in WAC 173-337-110 through 173-337-114, even if the priority consumer product was refurbished after the effective date of the restriction.

(b) Repair part or replacement part that was made to refurbish a priority consumer product that was manufactured before the effective date of the restriction, as listed in WAC 173-337-110 through 173-337-114.

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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 the person submitting the notification 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.

(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 or product categories that contain 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.

(4) 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.

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

(a) Specific formulations.

(b) 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.

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

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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.

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**PART B - CHEMICALS AND CONSUMER PRODUCTS**NEW 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 for application to textile and leather consumer products.

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

(C) Aftermarket stain-resistant and water-resistant treatments for application 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, even if the priority consumer product was refurbished after January 1, 2025.

(B) Repair part or replacement part that was made to refurbish a priority consumer product described in (a) of this subsection that was 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, even if the priority consumer product was refurbished after January 1, 2026.

(B) Repair part or replacement part that was made to refurbish a priority consumer product described in (a) of this subsection that was 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.**

(i) The reporting requirement in (c) of this subsection takes effect on January 1, 2024.

(ii) The reporting party must submit a notification to ecology in accordance with WAC 173-337-060:

(A) By January 31, 2025.

(B) Annually thereafter by January 31st.

(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.

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#### 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, even if the priority consumer product was refurbished after January 1, 2025.

(ii) Repair part or replacement part that was made to refurbish a priority consumer product described in (a) of this subsection that was manufactured before January 1, 2025.

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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, lighting equipment, sensors, dimmers, controllers, and life safety systems and devices.

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

(D) Consumer 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 finished product is in its fully assembled and functional form.

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

(D) Screens, but this subsection does apply to the plastic external 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 worldwide gross sales equal or exceed \$1,000,000,000 in 2022.

(B) "**Group 2**" means a person or entity whose worldwide 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) The compliance schedule in (b)(ii) of this subsection does **not** apply to 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.

- Displays with a screen area smaller than or equal to 100 square centimeters or 15.5 square inches.

- Projectors.

- Virtual reality headsets.

(iii) Group 1 compliance schedule.

(A) The restriction in (c) of this subsection takes effect on January 1, 2027, for persons or entities in Group 1 who manufacture, sell, or distribute a priority consumer product described in (a) of this subsection. The compliance schedule in (b)(iii) of this subsection applies to:

- All-in-one video conference systems.

- Displays that are integrated with appliances and are not available for purchase as separate products by end-users.

- Displays with a screen area smaller than or equal to 100 square centimeters or 15.5 square inches.

- Projectors.

- Virtual reality headsets.

(B) The compliance schedule in (b)(iii) of this subsection does **not** apply to 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, 2028, for persons or entities in Group 2 who manufacture, sell, or distribute a priority consumer product described in (a) of this subsection. The compliance schedule in (b)(iv) of this subsection applies to:

- All-in-one video conference systems.

- Displays that are integrated with appliances and are not available for purchase as separate products by end-users.
- Displays with a screen area smaller than or equal to 100 square centimeters or 15.5 square inches.
- Projectors.
- Virtual reality headsets.

(B) The compliance schedule in (b)(iv) of this subsection does **not** apply to 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, even if the priority consumer product was refurbished after the applicable compliance schedules in (b) of this subsection.

(B) Repair part or replacement part that was made to refurbish a priority consumer product described in (a) of this subsection that was 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 in the homogeneous material indicate intentionally added organohalogen flame retardants.

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

(C) Total fluorine concentrations above 1,000 ppm with less than 5,000 ppm total phosphorus in the homogeneous material 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, lighting equipment, sensors, dimmers, controllers, and life safety systems and devices.

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

(D) Consumer 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 finished product is in its fully assembled and functional form.

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

(D) Screens, but this subsection does apply to the plastic external enclosure surrounding the screen.

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

(b) **Compliance schedule.**

(i) The reporting requirement in (c) of this subsection takes effect on January 1, 2024.

(ii) The reporting party must submit a notification to ecology in accordance with WAC 173-337-060:

(A) By January 31, 2025.

(B) Annually thereafter by January 31st.

(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 in the homogeneous material indicate intentionally added organohalogen flame retardants.

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

(C) Total fluorine concentrations above 1,000 ppm with less than 5,000 ppm total phosphorus in the homogeneous material 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.**

(i) The reporting requirement in (c) of this subsection takes effect on January 1, 2024.

(ii) The reporting party must submit a notification to ecology in accordance with WAC 173-337-060:



(A) By January 31, 2025.

(B) Annually thereafter by January 31st.

(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 in the homogeneous material indicate intentionally added organohalogen flame retardants.

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

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

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

(C) Total fluorine concentrations above 1,000 ppm in the homogeneous material 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 in the homogeneous material 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.

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#### 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.

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#### NEW SECTION

##### **WAC 173-337-114 Bisphenols. (1) Drink cans.**

(a) **Applicability.**

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

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

(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 cans.**

(a) **Applicability.**

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

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

(b) **Compliance schedule.**

(i) The reporting requirement in (c) of this subsection takes effect on January 1, 2024.

(ii) The reporting party must submit a notification to ecology in accordance with WAC 173-337-060:

(A) By January 31, 2025.

(B) Annually thereafter by January 31st.

(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.**

(i) Priority consumer products. This subsection applies to thermal paper.

(ii) This subsection does **not** apply to consumer products regulated by the FDA as medical devices.

(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 bisphenols.

This does **not** apply to a priority consumer product described in (a) of this subsection manufactured before January 1, 2026.

(ii) Ecology presumes the detection of bisphenol concentrations above 200 ppm indicate intentionally added bisphenols.

(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 a bisphenol was **not** intentionally added. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that a bisphenol was **not** intentionally added.

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