

WSR 24-11-148
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF ECOLOGY
[Order 24-01—Filed May 22, 2024, 7:45 a.m.]

Subject of Possible Rule Making: The Washington department of ecology (ecology) started a rule making to develop new chapter 173-339 WAC, Cosmetic products restrictions. Ecology is conducting this rule making to:

- Make cosmetics safer for consumers and the environment.
- Reduce consumers' and workers' exposure to formaldehyde.
- Address the disproportionate harms caused by cosmetic products in overburdened communities and vulnerable populations.
- Reduce the amount of formaldehyde entering the environment.

Under the authority of chapter 70A.560 RCW, Toxic-Free Cosmetics Act, ecology may adopt a rule that identifies chemicals used in cosmetic products that release formaldehyde (formaldehyde releasers) and adopt restrictions for the identified formaldehyde releasers. This rule may include:

- Restrictions that apply to the use of specified formaldehyde releasers used in cosmetic products.
- Allowances for products currently in the chain of commerce—stockpiled or available for purchase.
- Compliance schedules.
- Definitions of key terms such as "intentionally added."
- Other requirements or restrictions allowed by law.

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

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: People use cosmetic products every day to clean their bodies or alter their appearance. Cosmetic products include items such as makeup, perfume, shampoo, hair gels, body wash, deodorant, hand lotion, and shaving cream. These products can contain chemicals that are toxic to people and the environment.

In the Chemicals in Cosmetics Used by Washington Residents Report (January, 2023), ecology and the department of health found that many cosmetic products contain toxic chemicals. Some products disproportionately marketed to women of color, such as hair relaxers and skin lightening creams, often contain toxic chemicals.

Some chemicals used in cosmetic products release formaldehyde, which exposes people to the chemical when they use the product. Formaldehyde can cause cancer, harm brain function, increase the risk of asthma, and irritate eyes and skin. Exposure can also lead to allergic reactions. Cosmetic products also can release formaldehyde into indoor and outdoor air. Formaldehyde can also enter wastewater streams as products are washed down the drain.

In 2023, Washington state adopted chapter 70A.560 RCW to ensure the safety of cosmetic products and protect Washington residents from toxic exposure. The law:

- Restricts the manufacture, sale, and distribution of cosmetic products containing nine chemicals or chemical classes.
- Directs ecology to assess the hazards of chemicals or chemical classes that can provide the same or similar function as the re-

stricted chemicals or chemical classes and make that information available to the public.

- Directs ecology to implement initiatives to support small businesses that manufacture cosmetic products, and to support independent cosmetologists and small businesses that provide cosmetology services in efforts to transition to safer cosmetic products.
- Authorizes ecology to adopt a rule that restricts the use of specified formaldehyde releasers in cosmetic products.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The federal Environmental Protection Agency regulates toxic chemicals through the Toxic Substance Control Act. The federal Food and Drug Administration regulates cosmetic products under the authority of the federal Food Drug and Cosmetic Act and the Fair Packaging and Labeling Act. Many states regulate chemicals in consumer products or have proposed regulations. Ecology will consider these regulations when developing requirements and will coordinate with these agencies as necessary.

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

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

Additional comments: Get involved in this rule making by: Signing up for email announcements; attending summer webinars. Our next webinar will occur on June 11, 2024. See our events listing web page for more information; or using our online comment form to provide feedback on draft rule requirements, the rule-making process, and our efforts to implement chapter 70A.560 RCW. [Contact agency for links.]

Ecology will extend an offer for government-to-government consultation with tribal governments during each phase of the rule making. Ecology will also complete an environmental justice assessment in compliance with RCW 70A.02.06[0] as part of this rule making.

May 21, 2024
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