

The webinar will begin shortly.

# Safer Products for Washington: Rulemaking Discussion

Implementing RCW 70A.350: The Pollution Prevention for Healthy People and Puget Sound Act

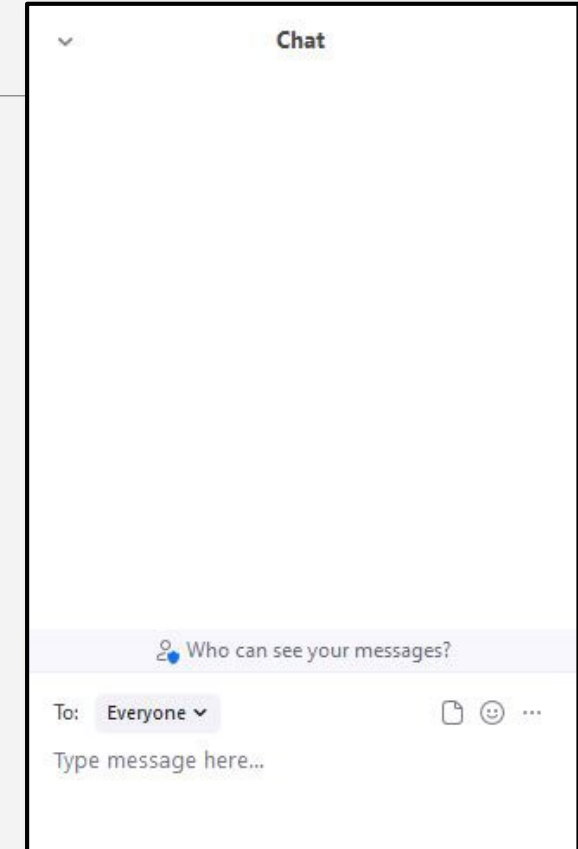
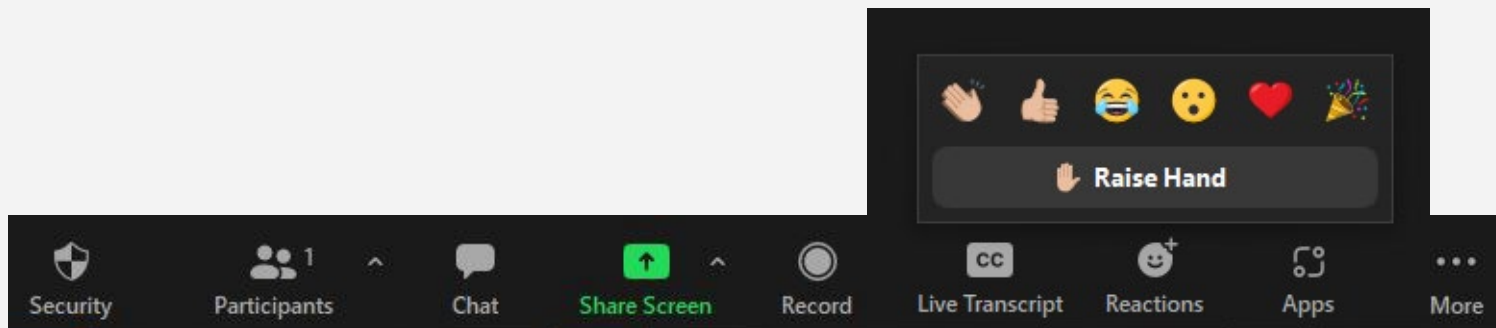
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AUGUST 16 and 18, 2022



# Zoom logistics

- Send technical issues to the **host** in chat
- Send questions, comments, and discussion to **everyone** in chat
- Participants muted until we get to discussion



# Safer Products for Washington: Rulemaking Discussion

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From Ecology: Cheryl Niemi, Marissa Smith, Saskia van Bergen, Craig Manahan, Sascha Stump, Rae Eaton, Kimberly Goetz, Stacey Callaway, Lauren Tamboer, Autumn Falls, Amber Sergent.



From Health: Barb Morrissey, Holly Davies, Elinor Fanning, Emily Horton.

# Today's schedule

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1. Safer Products for Washington program overview
2. Where we are in the rulemaking process
3. Overview of the preliminary draft rule
4. Discuss preliminary rule requirements
5. Next steps





# Section 1. Safer Products for Washington overview



# Safer Products for WA background

- Implementation program
  - Law signed in May 2019
  - Reduce toxic chemicals in consumer products
- Working to protect:
    - People
    - Sensitive populations and species
    - Our environment

# Safer Products for Washington implementation process

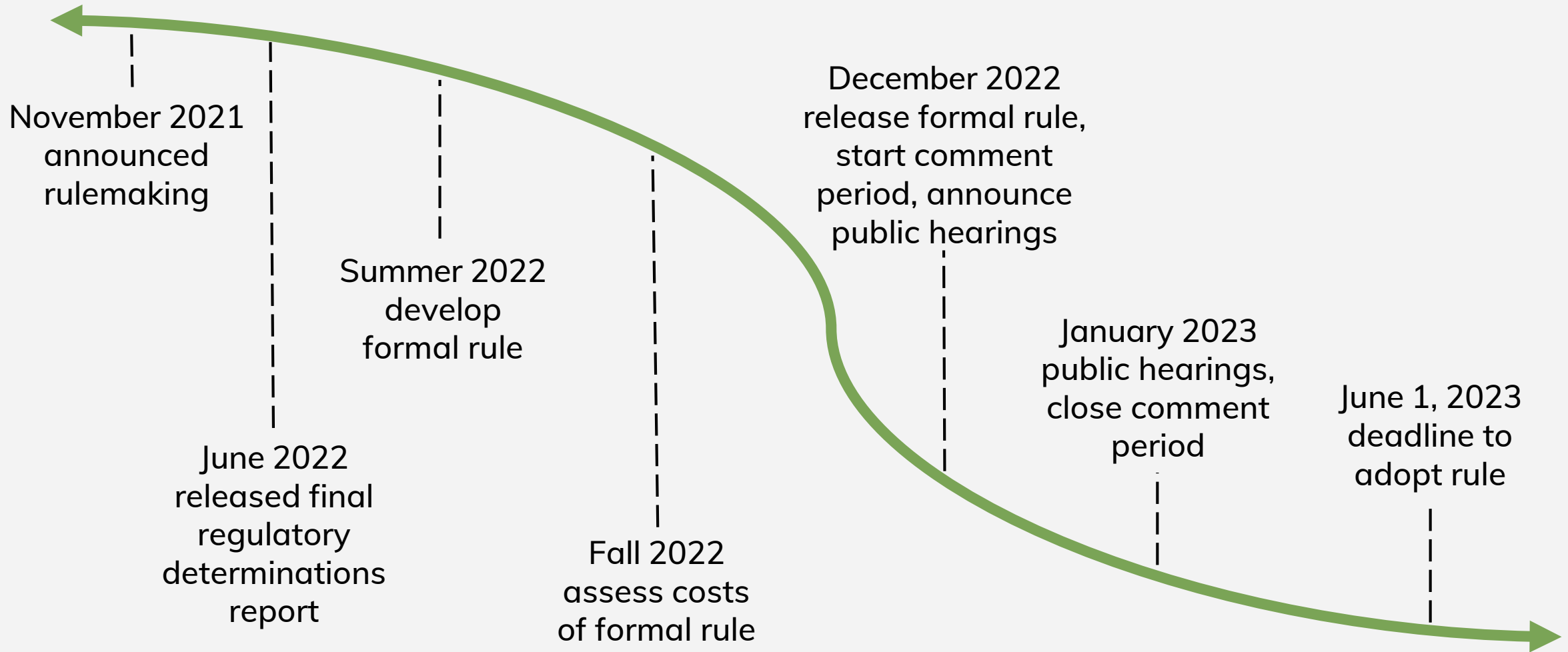




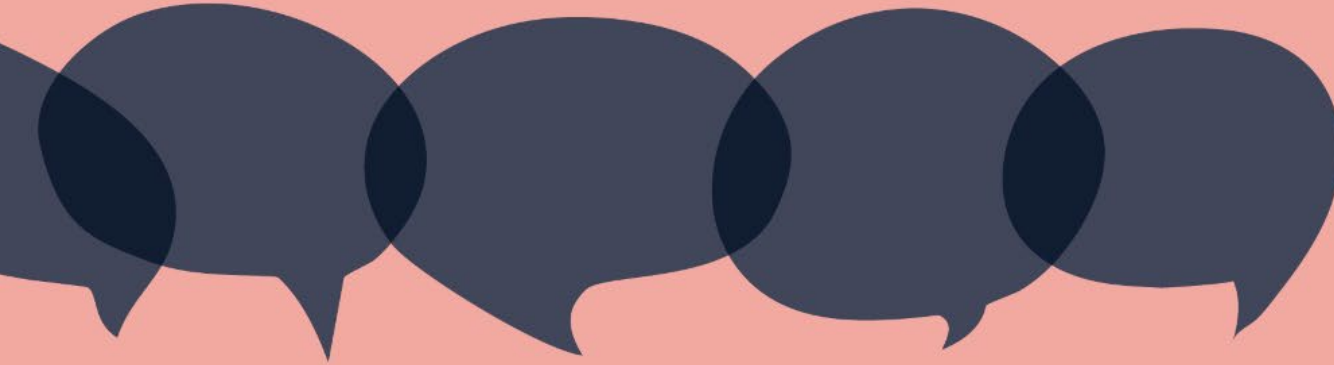
Section 2. Where we are in the rulemaking process



# Safer Products for Washington rulemaking process



# We value your feedback



Now until August 31, share feedback by:

- Commenting during this webinar.
- Using our online comment form.
- Emailing our team.
- Requesting a meeting with our team.

Dec. 2022 – Jan. 2023, share feedback by:

- Submitting formal comments.
- Attending public hearings.



## Section 3. Overview of the preliminary draft rule

# Preliminary draft rule structure

## Part A – General

- 010 Authority and purpose
- 015 Applicability
- 020 Requesting an exemption
- 025 Acronyms and definitions
- 030 Enforcement and penalties
- 035 Appeals
- 040 Severability
- 045 Federal preemption
- 050 Relation to other laws and rules
- 055 Environmental justice
- 060 Previously owned priority  
consumer products
- 065 Reporting requirements

## Part B – Chemicals and consumer products

- 110 PFAS
- 111 Ortho-phthalates
- 112 Flame retardants
- 113 Alkylphenol ethoxylates
- 114 Bisphenols

# Applicability (section 015)

## This chapter applies to persons who:

- Manufacture, sell (including but not limited to wholesale, online, or retail), or distribute priority consumer products containing priority chemicals in Washington state.
- Intentionally add priority chemicals in the production of priority consumer products in Washington state.
- Use a priority consumer product that contains a priority chemical in Washington state.

## This chapter doesn't apply to:

- Consumer products excluded from the law our Safer Products for Washington program implements.
- Consumer products purchased outside of Washington state.
- Consumer products transported or stored in Washington state as part of interstate commerce.
- Consumer product replacement components manufactured before the effective date of the restriction.
- The recycling or disposal of existing stock.

# Requesting an exemption (020)

## Requesting an exemption

- A person required to comply with this chapter may request an exemption from the requirements of this chapter. They must:
  - Submit a request to Ecology.
  - Provide justification.
- Examples
  - Product has specific performance requirements not compatible with safer alternatives (outdoor electronics).
  - Using a chemical within the priority chemical class that meets our within-class criteria for safer.



# Definitions (025)



- Consumer product
- Electronic product
- External enclosures
- Intended for indoor use
- Intended for outdoor use
- Intentionally added chemical
- Inaccessible electronic component
- Manufacturer

# Environmental justice (055)

## Environmental justice (EJ) is:

Fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

## Environmental justice goals

- Achieve the highest attainable environmental quality and health outcomes for all people.
- Adopt a racial justice lens.
- Engage communities meaningfully.
- Be transparent.
- Be accountable.





# Environmental justice (055)



## Questions

- What ideas do you have for addressing environmental justice (EJ) when implementing, administering, and enforcing these rules?
- How should the rule incorporate EJ?
  - How can limits protect sensitive populations disproportionately exposed to toxic chemicals?
  - How else should we consider equity and EJ in decision-making for our Safer Products for Washington program?
- What language related to equity and EJ should we use in the rule?

# Previously owned products (060)

## Situation

- Some regulations allow the resale of regulated products with priority chemicals.
- Restricting secondhand stores could prevent underserved communities from accessing more affordable product options.
- People who buy previously owned products are exposed to chemicals.
- Secondhand stores typically don't know their products contain priority chemicals.

## Example language

No person may knowingly sell (including but not limited to wholesale, online, or retail) or distribute a previously owned restricted priority consumer product that contains a priority chemical.

## Ecology's goals

- Equitably reduce exposure to toxic chemicals in consumer products.
- Use best available information to reduce sales of previously owned products with priority chemicals.
- Ensure availability of previously owned products.
- Minimize impact to resale businesses.

# Part B – Chemicals and consumer products (110 – 114)

## Sections

- 110 PFAS
- 111 Ortho-phthalates
- 112 Flame retardants
- 113 Alkylphenol ethoxylates
- 114 Bisphenols

## Reporting

- Applies to four chemical-product combinations.

## Restrictions

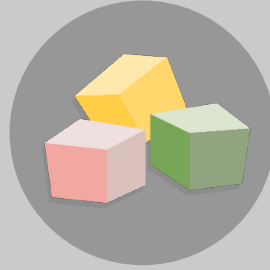
- Applies to ten chemical-product combinations.
  - Five have “intentionally added.”
  - Five have numeric limits.
- Seven include rebuttable presumptions.

# Reporting requirements (065)

This applies to four product categories:



Leather and textile furniture and furnishings intended for outdoor use (PFAS)



Recreational covered wall padding made from polyurethane foam (organohalogen and organophosphate flame retardants)



Food can linings (bisphenols)



Plastic external enclosures of electric and electronic products intended for outdoor use (organohalogen flame retardants)

# Reporting requirements (065)

## Notification requirements

- Date requirement starts = January 1, 2024
- Notify Ecology annually.
- Only report when manufacturer uses a priority chemical.
- Use the Interstate Chemicals Clearinghouse (IC2) High Priority Chemicals Data System to notify Ecology.
- Include the name of the chemical and its CAS RN, the product, a description of the function of the chemical, and the total concentration.



# Restrictions – rebuttable presumption

## Overview

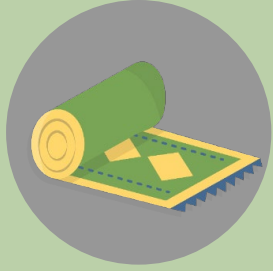
- Applies to seven chemical-product combinations.
- Language tailored to each chemical-product combination.
- Example process
  - Ecology tests regulated PFAS product.
  - Ecology detects total fluorine in a regulated PFAS product and notifies manufacturer.
  - Manufacturer may rebut the presumption or work with Ecology to get to compliance.

## Example language

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

Manufacturers may rebut this presumption by submitting a statement to Ecology that includes the following information.

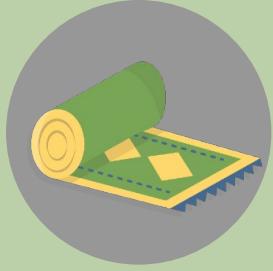
- Name and address of the person submitting.
- A statement that PFAS were not intentionally added and evidence supporting that statement. Include information, data, and sources relevant to demonstrate that the total fluorine is from a source other than intentionally added PFAS.



# PFAS (110)



Product	Date requirement starts	Limit
Aftermarket stain- and water-resistance treatments	2025-01-01	<ul style="list-style-type: none"><li>• Intentionally added</li><li>• Rebuttable presumption</li></ul>
Carpets and rugs	2025-01-01	<ul style="list-style-type: none"><li>• Intentionally added</li><li>• Rebuttable presumption</li></ul>
Leather and textile furniture and furnishings intended for indoor use	2026-01-01	<ul style="list-style-type: none"><li>• Intentionally added</li><li>• Rebuttable presumption</li></ul>
Leather and textile furniture and furnishings intended for outdoor use	2024-01-01	Not applicable—this product category has a reporting requirement.



# PFAS (110)



## Edits since June webinars

- Clarified that the carpets and rugs product category includes products intended for indoor or outdoor use.
- Clarified that the carpets and rugs product category includes carpeted mats.
- Changed “product that contains PFAS” to “product that contains intentionally added PFAS.”
- Clarified that the restriction does not apply to consumer products manufactured before the effective date.

## Questions

- Do you think changing “product that contains PFAS” to “product that contains intentionally added PFAS” addressed concerns about low-level contamination?
- What do you think of these changes?





# Ortho-phthalates (111)



Product	Date requirement starts	Limit
Fragrances in beauty products and personal care products	2025-01-01	<ul style="list-style-type: none"><li>• Intentionally added</li><li>• Rebuttable presumption</li></ul>
Vinyl flooring	2025-01-01	<ul style="list-style-type: none"><li>• 1,000 ppm</li><li>• Individual or combined</li></ul>



# Ortho-phthalates (111)



## Edits since June webinars

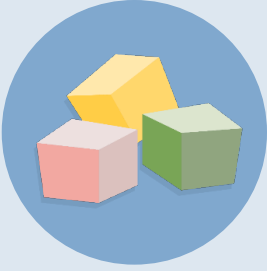
- Clarified that the fragrances product category includes fragrances used in beauty products and personal care products, regardless of whether the item contains drug ingredients regulated by the FDA.
- Changed the 100 ppm limit to a restriction on “intentionally added” ortho-phthalates in fragrances.
- Clarified that the restriction does not apply to consumer products manufactured before the effective date.

## Questions

- Does changing the 100 ppm limit to a restriction on “intentionally added” ortho-phthalates in fragrances address concerns about the limit?
- What do you think about these changes?



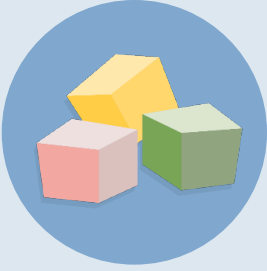
# Flame retardants (112)



Product	Date requirement starts	Limit
Plastic external enclosures of electric and electronic products intended for indoor use	2025-01-01 2026-01-01 2027-01-01	<ul style="list-style-type: none"><li>• 1,000 ppm individual</li><li>• 1,500 ppm combined</li><li>• Intentionally added</li><li>• Rebuttable presumption</li></ul>
Plastic external enclosures of electric and electronic products intended for outdoor use	2024-01-01	Not applicable—this product category has a reporting requirement.
Recreational covered wall padding made from polyurethane foam	2024-01-01	Not applicable—this product category has a reporting requirement.
Other recreational products made from polyurethane foam	2025-01-01	<ul style="list-style-type: none"><li>• 1,000 ppm individual or combined</li><li>• Rebuttable presumption</li></ul>



# Flame retardants (112)



## Edits since June webinars

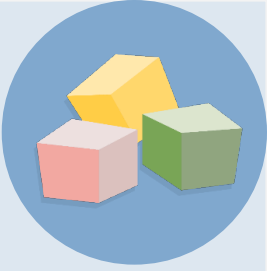
- Clarified applicability for the electronics product category by adding “powered by 120 volt outlets and designed for up to 20 amp circuit or powered by battery.”
- Excluded plastic external enclosure parts that weigh less than 0.5 grams to align with standards such as TCO and EPEAT.
- Expanded the exclusion of specific hardwired products to all hardwired products.

## Questions

- Is it more accurate or more useful for industry to use “volts” or should this applicability description use “watts?”
- Do you think excluding parts that weigh less than 0.5 grams will help manufacturers comply?
- What do you think about these changes?



# Flame retardants (112)



## Edits since June webinars

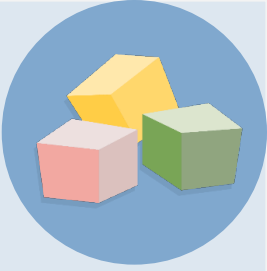
- Changed “product that contains organohalogen flame retardants” to “product that contains intentionally added organohalogen flame retardants.”
- Added a limit of 1,500 ppm for combined organohalogen flame retardants to match the UL 746H standard.
  - The revised limits are 1,000 ppm for individual organohalogen flame retardants and 1,500 ppm for combined organohalogen flame retardants.

## Questions

- Do you think changing “product that contains” to “product that contains intentionally added” addressed concerns about low-level contamination?
- Will a limit for individual and a limit for combined help manufacturers comply?
- Do you think this will hinder the use of post-consumer recycled materials?
- Do you have concerns about products containing organohalogen flame retardants from post-consumer recycled materials?
- What do you think about these changes?



# Flame retardants (112)



## Edits since June webinars

- For plastic external enclosures of electric and electronic products intended for indoor use, included three compliance schedules:
  - Jan. 1, 2025 for TVs and electronic displays
  - Jan. 1, 2026 for large businesses, not TVs or displays
  - Jan. 1, 2027 for small businesses, not TVs or displays

## Questions

- Do you think adding three groups for electronics addressed concerns around compliance schedules?
- Do you think these are the appropriate groups (TVs + displays, large business, small business) to use?
- How should Ecology define “large business” and “small business?”
- What do you think about these changes?

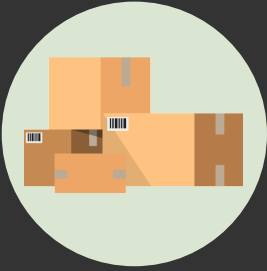


# Alkylphenol ethoxylates (113)

Product	Date requirement starts	Limit
Laundry detergent	2025-01-01	<ul style="list-style-type: none"><li>• 1,000 ppm</li><li>• Individual or combined</li></ul>



# Bisphenols (114)



Product	Date requirement starts	Limit
Drink can linings	2025-01-01	<ul style="list-style-type: none"><li>• Rebuttable presumption</li><li>• Excludes TMBPF</li></ul>
Food can linings	2024-01-01	Not applicable—this product category has a reporting requirement.
Thermal paper	2025-01-01	<ul style="list-style-type: none"><li>• 200 ppm</li><li>• Individual only</li></ul>





Let's take a 10 minute break





## Section 4. Discuss preliminary rule requirements

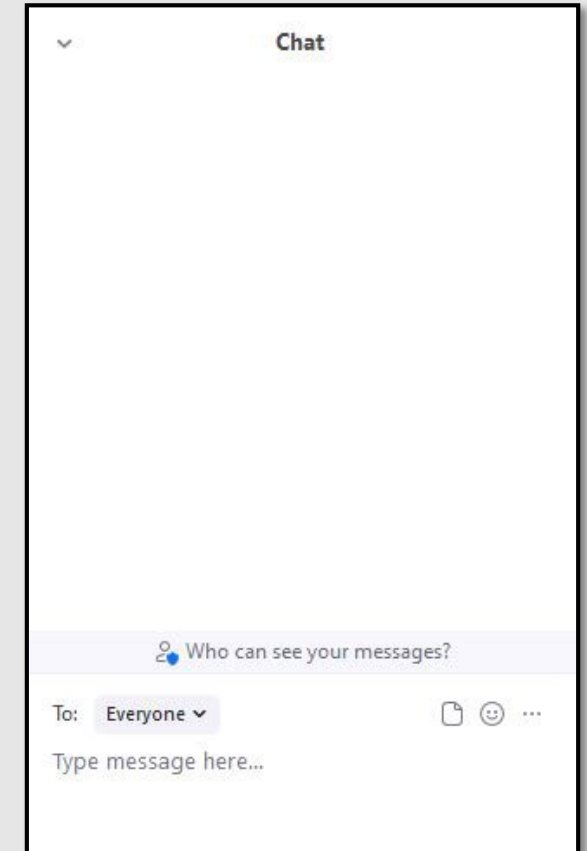
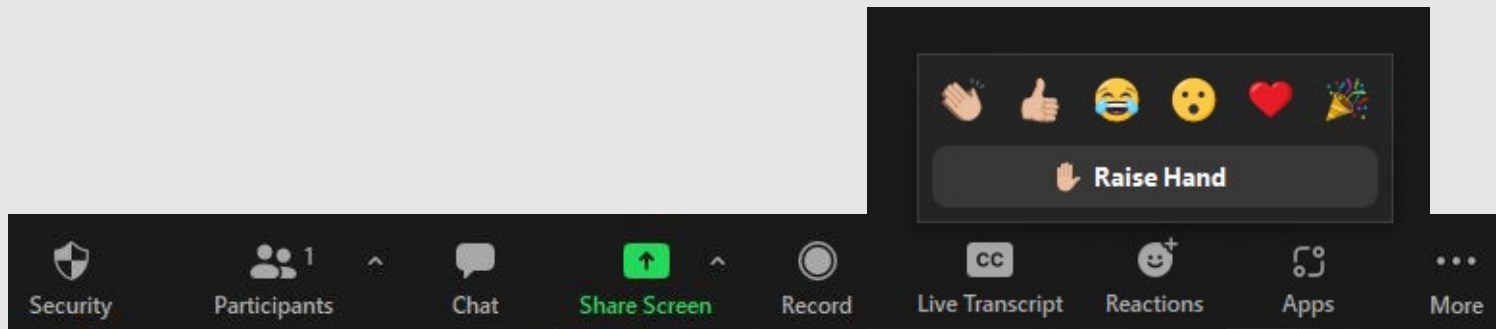
# Tell us what you think

## Seeking input on:

- Restrictions and limits
- Notification requirements
- Compliance schedules
- Anything else

## To provide feedback:

- Type your ideas in the chat 
- Raise your hand to share verbally 



# Discussion: What did we get right? What should we change?

Provide ideas, revised language, references to example regulations or industry practices, and justification.

## Feedback

- Laurie Valeriano, Toxic-Free Future: On environmental justice (EJ) questions—center EJ by having strongest regulations and ensure chemicals are not in products. Try to address where these chemicals are made, find info on use by certain populations, including disposal and incineration near impacted communities. Get as close to zero as possible, do not allow these chemicals in products. Women in particular bear the burden, passing it to babies through pregnancy and breastmilk. Law does not specify intentionally added chemicals and do not want this to become a loophole for process chemicals, recycled content, other ways chemicals end up in products. These are the most problematic chemicals. Until we send a message to supply chains that these chemicals are not okay, this is going to be an issue for the recycling stream and change will not happen. Phase out might be helpful but we need to get out of recycled content; must clean up the supply chain.

## Feedback

- John Gogol, Old Castle: From an industry standpoint, hear the passion of previous comment (from Laurie at TFF). Working as hard as we can to figure out how to solve this problem. Old Castle uses a lot of recycled material; experience with recycling TV enclosures that contain flame retardants. Had past issue in Oregon. If we want to ensure these chemicals go to zero, we need a solution for where to put old enclosures, or the regulations need to help us figure out the best and safest way to reuse them. This is a missing piece. Ecology mentioned enclosures generally over 25% recycled content—we would like to use 100%, but as stated, it is hard to know what is in the materials. Hard to know where post-consumer recycled content is coming from; do not know what the mix of flame retardants (FRs) might be. Pyrolysis is a way to drop out FRs from the material, also has drawbacks but enclosed processes can remove FRs from material.

# Discussion: What did we get right? What should we change?

Provide ideas, revised language, references to example regulations or industry practices, and justification.

## Feedback

- Cheri Peele, Toxic-Free Future: Changing from prohibition to intentionally added is problematic. If centering environmental justice, we need to look at levels in products. Manufacturers are often surprised they have contaminants of emerging concern in their products. It is their responsibility to make sure their products are clean, regardless of whether intentionally added or not. They need to protect vulnerable communities. Please take out the intentionally added language.
- David Adenuga, ExxonMobil: NHANES data does not show glaring differences in exposure to certain chemicals, for example phthalates. Need to provide additional evidence to justify claims. Washington state data on phthalates would be helpful, please send.

## Feedback

- Erika Schreder, Toxic-Free Future: On intentionally added language related to PFAS and flame retardants (FRs)—the way PFAS are manufactured, they can end up in the final product due to shared equipment, or as part of processing. Often companies do not intentionally put PFAS in, but it still ends up in the product due to use somewhere. Real concern about the “intentionally added” language. Companies need to take action to get [toxic chemicals] out of products. FRs are also a concern around this language—not uncommon to see FRs around the 1,000 ppm levels. Worried manufacturers do not have good controls over use mixtures; going to continue to see contamination and prevent recycling if we continue this cycle over and over.

# Discussion: What did we get right? What should we change?

Provide ideas, revised language, references to example regulations or industry practices, and justification.

## Feedback

- Bob Miller, Albemarle: Support environmental justice principles, seem to be disparities in where these chemicals are manufactured or disposed of and the populations affected. Those populations also subject to other challenges—such as economic disadvantage that leads to purchasing older products. Situation puts them at higher risk, but do not want to unfairly expose them to certain chemistries. Some populations cannot shift to newer products. For example, fire safety is important and we need to make sure these populations are protected. One concern we have is creating a situation where there are too many conditions for the supply chain to meet. On the concept of intentionally added, manufacturers are not adding chemicals to products that do not serve a function. Small quantities of some chemistries might be present as residuals but those are not performing a function, and are unintentionally incorporated as part of recycling. Some places are requiring minimum amount of recycled content; this creates difficulties when considering intentionally added and limits that are too low. What is the ultimate goal that Washington is trying to achieve?

## Feedback

- Erika Schreder, Toxic-Free Future: Need to think about exposures to communities where chemicals are manufactured and disposed of. For example, in an Alabama community where PFAS are manufactured, communities were exposed through water and farming. This adds to unacceptable exposures in communities and we need to stop using these chemicals in products when not needed. Chemicals can appear in the supply chain when intentionally added but not by the final product manufacturer.
- Ben Madison, Grundfos: Questioning whether the state of Washington has authority to regulate PFAS in another state (Ecology clarified we are not proposing this). As a manufacturer, we think the “intentionally added” language is the only reasonable approach at this point. As time goes on, a phase-in approach might be useful, but you need to clarify what that means. Does intentionally added mean by the final manufacturer or does it mean intentionally added at any point in the supply chain? This can be quite complex. Ecology should clarify this and not leave it open to interpretation.

# Discussion: What did we get right? What should we change?

Provide ideas, revised language, references to example regulations or industry practices, and justification.

## Feedback

- Laurie Valeriano, Toxic-Free Future: Manufacturers need to make decisions to remove. For example, the paper plant in Spokane resulting in PCB contamination and unable to make paper from recycled content—this issue has caused many other challenges and used lots of resources. Opportunity to stop now and not continue the problem and create problems later. Need to protect most vulnerable and put in place standards that will do so.
- David Adenuga, ExxonMobil: On phthalates, the criteria in the law for restriction is reducing a significant source or use of priority chemicals. Hard to see how this applies to vinyl flooring. Vinyl flooring manufacturers have moved away from phthalates. Under 1% in 2011 for exposure, this is likely less now. Is this restriction doing anything to reduce exposures? Do not see evidence that this is protecting sensitive populations and species (for example vinyl flooring). Ecology needs to clarify this. Questions whether there is scientific evidence that disadvantaged communities experience disproportionate exposure to phthalates. Please send biomonitoring data.

## Feedback

- Jared Rothstein, Consumer Brands Association: On bisphenols in food can linings, are the requirements for both human and pet food? For drink containers, Ecology should include a safe harbor level to ensure the restriction does not conflict with recycled content laws. A safe harbor level would be beneficial when bisphenols are present at extremely low levels due to recycled content.
- Laurie Valeriano, Toxic-Free Future: Good point on phthalates in flooring, this is a reason the level should be much lower. We should not be allowing phthalates to be recycled into new vinyl flooring. Huge concern for affordable housing—vinyl flooring is widely used. Proposed levels way too high. Washington state is making a choice not to allow phthalates in vinyl flooring, this is a hazard based law.
- David Adenuga, ExxonMobil: Little evidence that vinyl flooring containing phthalates is a concern from a health point of view. For example, California still allows the use of DINP in vinyl flooring even though DINP is on the Proposition 65 list, and has found no evidence linking health concerns to phthalates in vinyl flooring. Not saying it isn't a concern, but we need evidence.

# Discussion: What did we get right? What should we change?

Provide ideas, revised language, references to example regulations or industry practices, and justification.

## Feedback

- Reanna Bettencourt, Tacoma-Pierce County Health Department: Disadvantaged communities most often live in old housing. Old housing does not typically contain “new” vinyl or other toxic chemical containing products.
- Erika Schreder, Toxic-Free Future: On the extended timeline on PFAS in indoor furnishings, there is no reason to wait until 2026 for this. Industry has had time and 2025 should be enough time. Another concern is allowing manufacture up to the restriction date and allowing sale of those products. These chemicals have been listed for several years, plenty of time to make change. On phthalates in fragrances being only on ortho-phthalates in specific uses, concerned this creates an enforcement challenge because the agency will have to identify the purpose of phthalates in products. Would prefer not allowing phthalates.

## Feedback

- Bob Miller, Albemarle: On the outdoor products subject to reporting only, the hazard in outdoor use products does not change and still exists. Would be interested in understanding what needs to be provided for some indoor applications where fire or flammability standards are required or needed for liability reasons. Need to understand what information needs to be provided for exemption. Seems unequal for outdoor vs. indoor products. Do not believe that alternatives assessment was complete in how it was done—alternatives have their own issues. For example, washing out of products, this is the case for some alternatives in products and could be more detrimental. Fire safety is an important element and we also are concerned with safety of the environment and humans. Regrettable substitution pushed on manufacturers by bad regulations, wants a fact based discussion about decisions we make.
- Ben Madison, Grundfos: Just because the regulation development has been underway for some time, this cannot be a reason for shorter implementation times. Manufacturers can't be expected to take action across all products and restrictions until the language of the regulation is finalized and the actual restrictions and requirements are adopted.



# Discussion: What did we get right? What should we change?

Provide ideas, revised language, references to example regulations or industry practices, and justification.

## Feedback

- Bob Miller, Albemarle: Wants to acknowledge that regulation has been proposed for some time, but manufacturers cannot change due to potential for something, especially for one state out of 50. Timing of this is aggressive, but economic impact of manufacturing products and them not being able to be sold is large. Products in state after restriction date being permitted to be sold does not place undue burden on manufacturers.

## Feedback

- Laurie Valeriano, Toxic-Free Future: Would like ban to apply to both indoor and outdoor products. (Cheri Peele notes the alternatives assessment showed safer alternatives exist for indoor uses.) Dubious of the weathering standard changing the restriction [to reporting]. Large vs. small business differences also do not seem reasonable to base restriction dates on. This should be simplified—phase out organohalogen flame retardants in all products. Address contamination of waterways due to outdoor products as well. Industry opposition has spanned 20 years.

# Discussion: What did we get right? What should we change?

Provide ideas, revised language, references to example regulations or industry practices, and justification.

## Feedback

- Megan Liu, Toxic-Free Future: On flame retardants (FRs) in the supply chain, there are FRs going downstream. Concern that levels proposed for FRs are too high, need to get as close to zero as possible because the FRs will continue to get into the environment and expose folks downstream. There are studies of black plastic items containing FRs showing up in toys, kitchen products, other utensils. This exposes children, and FRs can migrate into children's saliva. These are reasons we need to get as close to zero as possible in the context of a circular economy.
- Derek Swick, Can Manufacturers Institute (CMI): CMI participated in past webinars and discussions, provided important info such as food cans not being a significant source of exposure to BPA in the U.S. Can lining applications use cured film that does not have significant migration into food or beverages. Biggest problem we have with process is we believe it is inappropriate for WA to attempt to regulate food packaging under Safer Products for Washington. Do not feel it is appropriate for states to regulate food contact materials regulated by FDA. Does not see FDA on the call and curious if FDA will attend stakeholder call later this week.

## Feedback

- Derek Swick, CMI: Does not feel food or drink can linings are consumer products similar to other products with proposed restrictions. Since 2008, manufacturers have halted production of can linings that use BPA. 95% of all food production has transitioned to alternative liners. CMI provided a study demonstrating this innovation in the sector. For the bisphenol section, there is some language that is not feasible and CMI will follow up with written comments. Supports extending time to provide comment, but not enough time for comments, encourage providing 30 days from today for comment. Will continue to engage with Ecology as they develop draft regulations. The challenge with timeframe is that CMI represents companies that make linings but those are sold to fillers made by brands and then sold to retailers. Deep supply chain from lining to on shelf—question extent that retailers are aware of this and engaged. Need to make sure you are reaching out to brands, retailers. This will be important for reporting requirement on bisphenols in food cans. Retailers may be more appropriate for reporting. Not sure if the right entities in supply chain are engaged. We need more time.

# Discussion: What did we get right? What should we change?

Provide ideas, revised language, references to example regulations or industry practices, and justification.

## Feedback

- Laurie Valeriano, Toxic-Free Future: On food cans, concerned about transition to vinyl or polyester in cans. Ecology should use authority to call in data on all ingredients used in liners so this is clearer. Concerns about populations exposed and chemicals used in these cans.
- Derek Swick, CMI: Again, FDA is not on this call and this is a gap that needs to be filled. Need to hear their approach in showing these linings are safe for their intended use in food cans. Hope that as part of the stakeholder process, Ecology actively reaches out to FDA to solicit feedback and input to incorporate into future work as the regulation is developed. Concerned this framework will duplicate efforts and hinder bringing innovation to the marketplace. BPA is an example of the can industry innovating to address chemicals of concern. Important for Ecology to request FDA involvement.

## Feedback

- Ben Gann, American Chemistry Council: On regulatory compliance—specifically the reporting requirement for organohalogen flame retardants in outdoor electric and electronic products—how does this interact with existing regulatory programs through the Children’s Safe Products Act? On rebuttable presumptions, are there existing programs in Washington or elsewhere that use this approach?
- Ben Madison, Grundfos: With all of the discussion about exposure hazards, how is this not directly related to the EPA requirements? In relation to Derek’s comments on FDA involvement—seems conversation shifts from environmental concerns, concerns with hazards to human health, etc. How does this connect in the big picture? The intention is to have the rule implemented by June 2023, reporting requirements by June 2024. Would suggest Ecology provide more time for reporting requirements. The level of detail required for reporting is difficult for a six month timeframe. Speaking for Grundfos, a year would be more reasonable to expect that level of detail across products. May be different for other industries.

# Discussion: What did we get right? What should we change?

Provide ideas, revised language, references to example regulations or industry practices, and justification.

## Feedback

- John Gogol, Old Castle: On recycled content, this can create issues for existing stock (for example, with Oregon ban sending electronics overseas). Encouraging companies to invest in technologies like pyrolysis might be a way to get organohalogen flame retardants out of recycled content.
- Laurie Valeriano, Toxic-Free Future: Wants to reiterate that ultimately we do not want to put things in landfills, but removing them from the recycling stream is needed to clean up the supply chain and reduce exposures. On APEs, saw the 1,000 ppm limit and looked at Safer Choice, which does not allow the chemical at all. Can this be used as a basis for alignment and a lower limit?

## Feedback

- Ben Madison, Grundfos: Has Washington looked at effects this will have on landfilled waste, etc., relating to recycling? Is there potential for this to end up in other products as a consequence (for example, organohalogen flame retardants)? Has Ecology done an evaluation on chemicals and products and what percentage they represent in the Washington market? For example, organohalogen flame retardants identified in plastic enclosures, was there an effort to identify what percentage of organohalogen flame retardant use in state was inside plastic enclosures? Is regulating plastic enclosures going to address 5% of organohalogen flame retardants? 50%?

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## Feedback

- Ben Gann, American Chemistry Council: Compliance question—on outdoor casings and enclosures, is the 2024 reporting requirement for products sold in Washington in 2023, or forward looking to 2024? Under the Children’s Safe Products Act, there are concentration ranges that companies report rather than specific values, are you planning to do something similar?
- Ralph Buoniconti, SABIC: Clarification question—during the development of this draft, PTFE as a drip inhibitor was discussed. In the proposed language, would PTFE used as a drip inhibitor be considered a flame retardant? What if PTFE is used as an anti friction/wear additive?
- Jane Rohde, Resilient Floor Covering Institute: Do you have a measurement in mind for disproportionate exposure and how we might measure this. We are currently using Climate and Economic Justice Screening Tool, beta version.

## Feedback

- Carmen Ng: Question—in 112(2) for use of organohalogen flame retardants in plastic external enclosures of outdoor electronics, is there a minimum limit (such as above 1,000 ppm) or target analyte (which organohalogen flame retardants) for reporting? Are non-intentionally added organohalogen flame retardants in scope of the reporting requirement, or is it excluded like it is in the restriction for 112(1) indoor products?
- Heather Covert, Glen Raven: For outdoor furniture and furnishings report requirements, only one company is required to report, but if a product has multiple components and only one has the priority chemical, does the component manufacturer or the product manufacturer report the use? Concern that if a component manufacturer sells PFAS-containing components to many manufacturers, Washington will end up with many duplicate reports of PFAS usage.
- Alex G.: Regarding total fluorine, will there be a distinction made between organic fluorine and inorganic fluorine? Inorganic fluorine may not necessary be PFAS. And will you be developing a test methodology that can be referenced to verify compliance?

# Discussion: What did we get right? What should we change?

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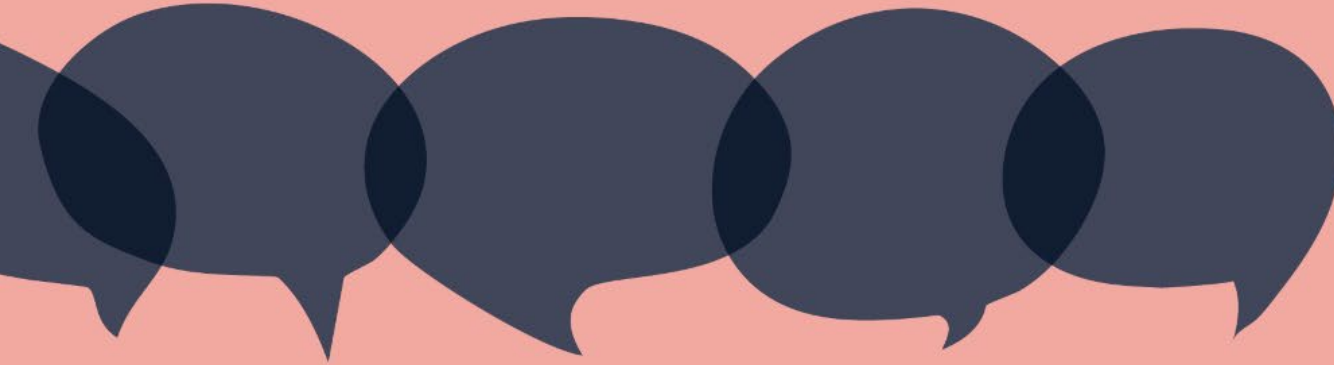
## Feedback

- Ben Gann, American Chemistry Council: On reporting requirements, when a component is the source of the priority chemical, but the seller has to report, would a private label that has a product made for their label be responsible for reporting?
- Ralph Buoniconti, SABIC: If PTFE is added for non-flame retardant use in enclosures and a company needs to rebut a positive fluorine detection, how would the company prove the function isn't used for a flame retardant? Would be interested in information that avoids disclosing formulations.
- Tim Shestek, American Chemistry Council: Are you planning to post a summary of the feedback that was received during these sessions?

## Feedback

- Heather Trim, Zero Waste Washington: Concerned that Washington is using intentionally added instead of very low limits. On environmental justice (EJ) concerns, would prefer to hear from members of communities that are overburdened, but toxic substances is fundamentally an EJ issue. Also concerned about the inclusion of a rebuttable presumption, since it bakes this language into the rule.
- Ben Gann, American Chemistry Council: For indoor electronics, what does the individual flame retardant limit mean with regards to reporting organohalogen flame retardant use above a 1,000 ppm limit?

# We value your feedback



Now until August 31, share feedback by:

- Using our online comment form.
- Emailing our team.
- Requesting a meeting with our team.

Dec. 2022 – Jan. 2023, share feedback by:

- Submitting formal comments.
- Attending public hearings.

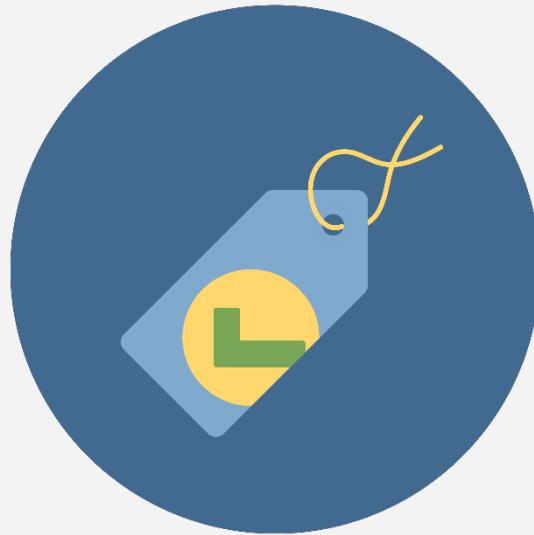


# Thank you for joining us!

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