

On January 5 and 6, 2022, the Washington State Departments of Ecology and Health hosted public input sessions to update stakeholders on the regulatory determinations in the Safer Products for Washington program's [Draft Report to the Legislature on Regulatory Determinations](#)¹ published in November 2021 and hear their input.

Note: This document outlines the questions attendees asked during the webinar as well as the answers the Safer Products for Washington team provided. Find the input stakeholders shared during the webinar in the [public comments summary](#)² on our [public comments webpage](#).³ If you have questions, contact us at SaferProductsWA@ecy.wa.gov.

Questions and answers

Q: Will the earliest effective date for restrictions of product categories still be June 1, 2024?

A: Yes, that's correct. Rules must be adopted by June 1, 2023, and we must provide at least one year from rule adoption before restrictions can take effect. The earliest date they could take effect would be June 1, 2024. We have not yet determined any timelines for compliance for any of the potential restrictions we outlined. During the rulemaking process, we will work out the specifics of timelines (and any potential extensions beyond the year) in collaboration with our stakeholders. If you have a concern about product reformulation timelines, that feedback is really helpful to us, and we would appreciate hearing it during the current comment period.

Q: When regulations are finalized and approved by Legislature—when will the requirements take effect?

A: The earliest possible date that the restrictions would take effect is June 1, 2024. We will know following the 2024 legislative session whether the Legislature decided to modify our potential restrictions and reporting requirements at all. But the Legislature doesn't "approve" the regulatory actions per se, the rulemaking process is a stand-alone process. The reports to the Legislature outline what we're proposing to adopt during rulemaking. The Legislature can change that, but they are not actually approving the regulations.

Q: Will the effective date be based on date of manufacture? If not, how are existing inventories of products to be addressed?

A: Many stakeholders have expressed that the date of manufacture should be what we apply in terms of compliance. We recognize there are a lot of product categories here where existing stocks and inventories in warehouses are a concern, so we're certainly considering that, but have not yet made a decision. Any input you would be willing to share about your industry in terms of the existence of stocks and inventories is helpful for us to better understand your supply chain. We will address whether compliance will be based on the date of manufacture during the rulemaking process.

¹ <https://apps.ecology.wa.gov/publications/summarypages/2104047.html>

² [https://scs-public.s3-us-gov-west-](https://scs-public.s3-us-gov-west-1.amazonaws.com/env_production/oid100/did200002/pid_202268/assets/merged/lb3li7x_document.pdf?v=6WT)

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³ <https://hwtr.ecology.commentinput.com/comment/extra?id=HWQc5>

Q: When will you be announcing a schedule to talk about actual regulatory limits (concentrations) before June 1?

A: Right now, we are focused on wrapping up our current public comment period, and when that is finished we'll transition to focusing on planning rulemaking engagement activities. We'll try to give you as much notice as we can for any engagement opportunities we plan to offer between February and June, as we collaborate with stakeholders on the draft rule. We will likely host some virtual listening sessions, but we're still figuring out what form that will take. If you have preferences for how you would like to engage with us during rulemaking, we encourage you to share that feedback with us so we can structure this process in a way that's best for you to provide feedback. Keep an eye on your inbox because our email list will be the primary way we communicate next steps and opportunities to get involved.

Q: With regard to the safer alternatives review for bisphenols in beverage can linings... It's interesting that rather than looking to the Food and Drug Administration (FDA) who approves these can linings, a private company's certification was selected as the criteria for deeming an alternative beverage can lining to be considered safer. Can you comment on how this method for deeming linings safer was determined?

A: The FDA does approve things for use in food contact materials, such as can linings. But we also know that they have approved bisphenols in can linings, which are concerning both from an environmental and a human health standpoint. These products can expose people to endocrine disrupting chemicals, and we've seen relatively high levels of leaching from can linings into food. Our approach is different from the FDA. The FDA looks at risk, and we are looking at hazard to try and determine whether it's possible to avoid the use of the chemical by using something that's safer. In taking that approach, we want to look at whether the chemicals used in the lining are less hazardous than bisphenols. We set transparent criteria ([Appendix C in the draft report](#)⁴) that we used to determine the hazards of alternatives. In this case particularly, we looked for alternatives that had already been evaluated against criteria as or more protective than our own. We found that the Cradle to Cradle™ criteria was more protective than ours in almost every case, was third-party verified, and had a clear and open process for assessing products. With the many concerns about sharing confidential business information, these certifications can help us assess products without businesses sharing their formulations with us.

Q: Is there built into your timeline working with other state agencies, with their contract and procurement specialists, to make sure all their current contracts with items of concern and items that will be restricted can be analyzed and identified in advance of restrictions?

A: This is a great suggestion, and state procurement is definitely something we consider. We haven't made any specific plans in the context of these restrictions. One place to start is the safer certifications section of our draft report, where we outline certification programs that meet our criteria for safer. It could be helpful to start looking for products that go well above compliance and are actually using the safer alternatives. We would like to bring in specialists who are experts on state procurement and connect with you further about this, so we can make sure we hear your input and ideas.

⁴ <https://apps.ecology.wa.gov/publications/documents/2104047.pdf#page=229>

Q: To confirm, will the June 1, 2022, report to Legislature include the limits, or will the draft rule with limits be a separate document or action?

A: The draft report that's out for public comment now and that we will finalize and submit to the Legislature by June 1 of this year will not have any details beyond what we presented today. It outlines a general overview of the safer, feasible, available analysis and then reviews how that analysis led to our draft regulatory determinations. The draft rule, with all those limits and specifics, will be a separate document. We will go through the formal rulemaking process Ecology uses in order to collaborate with stakeholders to work out those specifics. You shouldn't expect to see any of those details in the final June 1 report we submit to the Legislature.

Q: Can you clarify (in light of your recent answers) when we will see a more formal form of a proposed rule(s) and where such a more specific set of proposals will be published?

A: In terms of the timeline, ideally in the rulemaking process we would release a preliminary draft to show stakeholders what might be in the rule. Because of our tight timeline in statute, we had to do these processes at the same time (the draft report and starting rulemaking). We are not sure yet whether we will release a full preliminary draft rule, but we will definitely be sharing examples from other authorities to get your feedback on those requirements. We hope to be able to share a preliminary draft by June of this year, but, at minimum, we will review examples from other authorities to get your feedback. We plan to release the formal draft of the rule in December 2022, which would start the process for a formal public comment period and hearings in early 2023. In terms of where we publish the materials, we will use the same pathways we've been using for this program throughout the process. We will use our stakeholder webpage and our email list, and will make sure there are many pathways to hear the information and ensure stakeholders are aware of the engagement opportunities going forward. That said, feedback about how you would like to hear from us is always welcome, and we can certainly adjust accordingly.

Q: Since there are two of these sessions, will Ecology distribute the combined public comments, for all to get the benefit of the comments from both sessions?

A: We will create a [summary recap of the comments](#)⁵ from both the morning and evening sessions of this meeting, and we will share them in the same location as all the rest of our [public comments](#)⁶ for stakeholders and others to review.

Q: When would the economic impact analysis be completed? Would it be in the final version of this report that goes to the Legislature?

A: Our team started working on the economic impact analysis, but they cannot complete it until we have a draft rule, so we are at the very beginning of that process. When we release the formal draft of the rule at the end of this year, the economic impact analysis will also be available for those who want to review it.

⁵ https://scs-public.s3-us-gov-west-1.amazonaws.com/env_production/oid100/did200002/pid_202268/assets/merged/lb3li7x_document.pdf?v=6WT CRVF9N

⁶ <https://hwtr.ecology.commentinput.com/comment/extra?id=HWQc5>

Q: Were paint bases compared to similar paint bases, like highly pigmented, deep tones compared only to other deep tones and pastel bases that are lightly pigmented to only other pastel bases? If not, the resulting determination that there are available alternatives may be an incorrect determination since highly pigmented paints use the same pigment as lighter colors, but more of it, so the levels will calculate much higher and give a false assumption that alternatives are available (apples to oranges comparison).

A: We appreciate this input. We are definitely aware of differences in pigment concentrations in different types of paints based on pastels versus deep colors. In the chapter on paints and inks in our draft report, we discuss this at a high level. But since we're considering paints as a whole, these differences wouldn't make a huge difference in our analysis. Much of our data came from the colorants used in paints, so we took a diluted value of the PCB concentrations based on that. Please let us know if further clarification would be helpful here.

Q: Regarding the organohalogen flame retardants (OFRs) in electric and electronic enclosures, will Ecology provide the Chemical Abstracts Service Registry Numbers (CAS numbers) for the specific chemicals prohibited? Companies will have a difficult time surveying the supply chain without CAS numbers. We are also wondering if Ecology is willing to limit the OFRs prohibited to the 30 OFRs that are required to be reported by EPA.

A: As of now, our proposed regulatory determination is for the class of organohalogen flame retardants, so not the 30 EPA is working on, nor the 161 outlined in the National Academies of Science (NAS) report. We didn't find any data to suggest that any organohalogen flame retardants ought to be treated differently than the class as a whole. However, we recognize that many of the individuals you work with in your supply chain might not be chemists and could find the term "organohalogen" confusing. So we're working on developing compliance support, which could include a list of the most commonly used organohalogen flame retardants as well as screening methods you could use to have more productive conversations across your supply chain. We're also aware there may be other ways to communicate through the supply chain outside of just CAS numbers.

Q: I read the report more from a copy editing standpoint. Will that formatting input be considered? Can I review the first section of the report again, in case I have any other input on this?

A: Thank you for the input you provided us regarding the formatting of the report. We're going to look through that feedback as a team and make sure we integrate any changes you suggest that we are able to. You are always welcome to read any section of the report again and share any additional feedback you would like, whether it builds on your previous feedback or not. The [Draft Determinations section](#)⁷ outlines how we got to this point, our stakeholder advisory process, how we made the draft determinations, and what they are. This is a good section to read for an overview if you are time limited.

⁷ <https://apps.ecology.wa.gov/publications/documents/2104047.pdf#page=17>

Q: Will the updates of pages 16 – 29 be on the stakeholder website, with the formatting changes I suggested?

A: We will review the comments we received and publish the final report by June 1. Stakeholders wouldn't see an updated version of the report until we submit that final version. However, if you would like to have an individual discussion with our team to review the changes you suggested and go over how they were used, we're always happy to set up a time to do that.

Q: The presenters have asked for stakeholder input from February to June, but the comment period ends in January. Could you please clarify? Can informal comments be made after January 28?

A: The public comment period on the draft report closes January 28, and we encourage you to share any feedback you have during that time. From February to June, we will work with stakeholders to determine the specifics of the regulatory actions we proposed in the draft report—things like concentration limits and time to compliance. We expect lots of feedback regarding specific details of these potential restrictions beyond January 28, as we work with stakeholders during rulemaking. Please keep an eye on your email because our email list will be a key way we contact stakeholders to share engagement opportunities. We encourage you, if you have feedback to share, to do so early, so we can incorporate it in the draft rule.

Q: You proposed a reporting requirement for BPA in food can linings, but the industry reported that pretty much all cans tested in Washington were polyester blend or vinyl, which is also concerning. What is your plan to address that? Because it's very concerning that these plastics are being used and recycled.

A: Currently, our proposed regulatory determination for food can linings is a reporting requirement for all bisphenols, not just BPA. This is an iterative process, so we can certainly revisit food cans and bisphenols and continue to look for safer alternatives in the future. But at this point, it is unlikely that we will have enough information to identify a safer alternative in food can linings for this cycle of our program. There are many cases where a product has more than one chemical of concern, and the other chemicals you mentioned in can linings could potentially be candidates for us to assess in the future. We encourage you to share input (even now!) about other products or chemicals you'd like to us to consider in the future.

Q: Regarding food and beverage can linings, it was implied that reporting would not be required if safer alternatives were identified. However, if I understand correctly, the existing materials will still require reporting. Is that correct?

A: In our draft report, we proposed a reporting requirement for bisphenols in food can linings, and a restriction on bisphenols in drink can linings. That's because for beverage cans we were able to identify safer, feasible, and available alternatives. So for drink can linings, if we implemented this regulatory determination, there would not be a reporting requirement for drink cans because the bisphenols would be restricted in those products.

Q: I know we're focused on the current 11 product categories, but suggestions for the next cycle came up. Could you remind us what the criteria is that you're using to pick chemicals for the next round and what input you're looking for from stakeholders?

A: There is a list of specific criteria outlined in the statute on which we base our list of priority chemicals and priority products for the first two legislative reports we write. Our next round of priority chemicals will be due to the Legislature in June 2024. We're not working on that yet, but you'll hear from us, and there will be opportunities to share input. The criteria for the next round of chemicals is described in detail in the law, including looking at things that are already regulated in Washington or elsewhere, and considering the hazards associated with the chemical.

Q: Is the current intent to restrict flame retardants in all electronic devices with plastic casings, or certain devices, or certain casings?

A: The product category is currently written to include any device casing that is made of plastic and is used to house an electric or electronic component. We are only looking at the casing itself, not the internal components it's housing. But as of now, that product category is not limited to certain types of electric or electronic devices. Further, we are also only proposing restricting organohalogen flame retardants in these products, not all flame retardant chemicals.