

DRAFT Chapter 173-339 WAC Cosmetic Products Restrictions

Introduction

This is the preliminary draft rule for a potential new chapter in the Washington Administrative Code (WAC): “Chapter 173-339 WAC: Cosmetic Products Restrictions.” It includes draft restrictions on chemicals that release formaldehyde (formaldehyde releasers). If you have questions about this preliminary draft rule, contact us at ToxicFreeCosmetics@ecy.wa.gov.

How to use this document

Make your voice heard and tell us what you think about the draft requirements in the preliminary draft rule. What did we get right? What should we change?

Step 1. Read the preliminary draft rule.

Step 2. Consider our questions.

Look for sections with a dark blue background to find questions on draft requirements in the preliminary draft rule.

Step 3. Provide feedback.

We encourage you to provide feedback on any element of the preliminary draft rule.

- Share your feedback during our online discussion on July 23, 2024, at 9 a.m. [Join the webinar](#).¹
- [Send us your feedback](#)² before the comment period closes on August 13, 2024.

Tips for providing feedback

- Tell us what you support and what you disagree with.
- Suggest specific language. This helps our team understand what change you want.
- Use examples to illustrate concerns and explain your feedback.
- Provide supplemental information. Include references supporting your concerns, (such as regulations, sales data, market information, or brand and product information).
- Offer solutions. Suggest ways we can address your concerns.

We'll use your feedback to improve our approach and write the formal draft rule. In fall 2024, we'll share the formal draft rule and provide another public comment period.

¹ ecology.wa.gov/events/hwtr/tfca/cosmetics-rulemaking-webinar

² ecology.wa.gov/events/hwtr/tfca/tfca-rulemaking-comment

WAC Sections

Part A – General

- 010 Authority and purpose.
- 015 Applicability.
- 020 Acronyms and definitions.
- 025 Enforcement and penalties.
- 030 Severability.
- 035 Relation to other laws and rules.
- 040 Equity and environmental justice.
- 045 Confidential business information (CBI).

Part B – Chemicals in Cosmetic Products

- 110 Formaldehyde releasers.

Part A – General

010 Authority and purpose.

- (1) **Authority.** [Chapter 70A.560 Revised Code of Washington](#) (RCW) authorizes the Washington state department of ecology (ecology) to:
 - (a) Implement, administer, and enforce chapter 70A.560 RCW.
 - (b) Regulate toxic chemicals in cosmetic products.
- (2) **Purpose.** This chapter implements chapter 70A.560 RCW.
 - (a) This chapter provides a regulatory framework to reduce the use of toxic chemicals used in cosmetic products by establishing restrictions on chemicals that release formaldehyde (formaldehyde releasers).
 - (b) This chapter establishes:
 - (i) Actions applicable persons must take related to manufacturing, distributing (including distributing for sale and distributing for use), selling, or offering for sale (including wholesale, online, or retail) cosmetic products containing restricted chemicals in and into Washington state.
 - (ii) The enforcement process ecology will use if manufacturers fail to comply with this chapter or chapter 70A.560 RCW.

015 Applicability.

- (1) This chapter applies to any person who manufactures, distributes, or sells or offers for sale a cosmetic product in or into Washington state.
- (2) Cosmetic products
 - (a) This chapter applies to cosmetic products, regardless of whether or **not** the product contains drug ingredients regulated by the United State food and drug administration (FDA).
 - (b) This chapter does **not** apply to:
 - (i) Cosmetic products excluded from chapter 70A.560 RCW.
 - (ii) Cosmetic products transported or stored in Washington state solely for sale or distribution to consumers outside of Washington state.
 - (iii) Drug ingredients regulated by the FDA.
 - (iv) Prescription drugs approved by the FDA.
 - (v) The recycling or disposal of existing stock.

020 Acronyms and definitions.

Unless ecology determines the context requires otherwise, the following definitions apply for the purposes of this chapter.

"Alias" means a synonym for a chemical or chemical in a class listed in this chapter identified using a recognized authoritative source deemed appropriate by ecology.

"Chemical abstracts service registry number" or **"CAS RN"** means the number assigned to identify 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*.

"Cosmetic product" has the same meaning as "cosmetic product" defined in [RCW 70A.560.010](#) and "cosmetic" defined in [RCW 69.04.011](#):

The term "cosmetic" means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such article; except that such term shall not include soap.

"Distributing" includes distributing for sale and distributing for use.

"Ecology" means the Washington state department of ecology.

"Environmental justice" has the same meaning as in [Chapter 70A.02 RCW](#):

"Environmental justice" means the 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, rules, and policies. Environmental justice includes addressing

disproportionate environmental and health impacts in all laws, rules, and policies with environmental impacts by prioritizing vulnerable populations and overburdened communities, the equitable distribution of resources and benefits, and eliminating harm.

“**Existing stock**” means cosmetic products possessed by an in-state retailer at the time a restriction takes effect.

“**FDA**” means the United States food and drug administration.

“**Formaldehyde**” means formaldehyde (CAS RN 50-00-0).

“**Intentionally added chemical**” or “**intentionally added**” means a chemical that serves an intended function in the final product, or in the manufacturing of the product or its ingredient.

Definition of “Intentionally added”

Overview

The preliminary draft rule includes a definition of “intentionally added.” Chapter 70A.560 RCW restricts specific intentionally added chemicals, but it doesn’t define “intentionally added.”

Question

Is there anything unique about cosmetic products that needs to be captured in this definition of “intentionally added?”

Resources

- [Chapter 70A.560 RCW: Cosmetic Products—Toxic Chemicals](#)³
- [Chapter 173-337 WAC: Safer Products Restrictions and Reporting](#)⁴

“**Manufacturer**” has the same meaning as in RCW 70A.560.010:

“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.

“**Overburdened community**” has the same meaning as in RCW 70A.02.010:

“Overburdened community” means a geographic area where vulnerable populations face combined, multiple environmental harms and health impacts, and includes but is not limited to highly impacted communities as defined in RCW 19.405.020.

³ app.leg.wa.gov/RCW/default.aspx?cite=70A.560

⁴ app.leg.wa.gov/WAC/default.aspx?cite=173-337

“**ppm**” means parts per million.

“**RCW**” means Revised Code of Washington.

“**Sell**” or “offering for sale” includes wholesale, online, and retail.

“**Sensitive population**” means a group of people who may be or is disproportionately or more severely affected by chemicals, such as: (a) men and women of childbearing age; (b) infants and children; (c) pregnant women; (d) communities that are highly impacted by toxic chemicals; (e) persons with occupational exposure; and (f) the elderly.

“**U.S.C.**” means the United States Code.

“**Vulnerable populations**” has the same meaning as in RCW 70A.560.010:

“Vulnerable populations” means population groups that are more likely to be at higher risk for poor health outcomes in response to environmental harms, due to: (i) Adverse socioeconomic factors, such as unemployment, high housing and transportation costs relative to income, limited access to nutritious food and adequate health care, linguistic isolation, and other factors that negatively affect health outcomes and increase vulnerability to the effects of environmental harms; and (ii) sensitivity factors, such as low birth weight and higher rates of hospitalization.

“Vulnerable populations” includes but is not limited to: (i) racial or ethnic minorities; (ii) low-income populations; (iii) populations disproportionately impacted by environmental harms; and (iv) populations of workers experiencing environmental harms.

“**WAC**” means Washington Administrative Code.

025 Enforcement and penalties.

- (1) Any violation of this chapter is subject to the enforcement and penalty sanctions of chapter 70A.560 RCW.
- (2) In accordance with chapter 70A.560 RCW:
 - (a) A manufacturer that produces a product or imports or domestically distributes a product in or into Washington in violation of 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.

030 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.

035 Relation to other laws and rules.

In addition to the requirements of this chapter and chapter 70A.560 RCW, other laws, rules, and ordinances may apply to cosmetic products containing restricted 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 cosmetic products.

040 Equity and environmental justice.

(1) To strengthen the integration of equity and environmental justice considerations when implementing, administering, and enforcing chapter 70A.560 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, vulnerable populations, 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 strategies to remove barriers include:

- Covering costs related to childcare and food.
- Complying with requirements of the Americans with Disabilities Act (ADA).
- Accommodating other accessibility needs.
- Compensating community members for lived experience and expertise.

Community input may inform decision-making related to:

- Cosmetic products of interest (including product types and brands).
 - Rule requirements.
 - Compliance approach.
- (c) Use existing data and information to document potential exposure disparities when identifying formaldehyde releasers and cosmetic products. Examples of data and information include lived experience, peer-reviewed scientific studies, government reports and data, demographic information, market-based research, and other sources reviewed by ecology.
 - (d) Prioritize chemicals and cosmetic products where regulatory actions may reduce disproportionate exposure in overburdened communities and among vulnerable and sensitive populations.

- (e) Work toward equitable access to safer cosmetic products. This includes but is not limited to considering overburdened communities' and vulnerable 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.

Equity and environmental justice

Overview

The preliminary draft rule includes language about addressing environmental justice when implementing, administering, and enforcing Chapter 70A.560 RCW. Our equity and environmental justice goals include:

- Achieving the highest attainable environmental quality and health outcomes for all people.
- Adopting a racial justice lens.
- Engaging communities meaningfully.
- Being transparent and accountable.

Question

What ideas do you have for addressing environmental justice when implementing, administering, and enforcing Chapter 70A.560 RCW?

Resources

- [Chapter 70A.02 RCW – Environmental Justice](#)⁵
- [Washington State Office of Equity](#)⁶
- [Washington State Department of Ecology Environmental Justice](#)⁷
- [Washington State Department of Health Environmental Justice](#)⁸

⁵ app.leg.wa.gov/RCW/default.aspx?cite=70A.02&full=true#70A.02

⁶ equity.wa.gov/

⁷ ecology.wa.gov/About-us/Who-we-are/Environmental-Justice

⁸ doh.wa.gov/community-and-environment/health-equity/environmental-justice

045 Confidential business information (CBI).

A person who intends to submit information to ecology may request that ecology treat that information as confidential as provided in [RCW 43.21A.160](#) by providing appropriate documentation supporting the request.

Part B – Chemicals in Cosmetic Products

110 Formaldehyde releasers.

(1) Restriction

(a) Restricted formaldehyde releasers

No person may manufacture, sell, or distribute a cosmetic product described in WAC 173-339-015 (2) that contains the following intentionally added formaldehyde releasers including aliases of the chemical name or CAS RN.

(i) First set of formaldehyde releasers

Item	Chemical name	CAS RN
1	DMDM Hydantoin	6440-58-0
2	Diazolidinyl Urea	78491-02-8
3	Imidiazolidinyl Urea	39236-46-9
4	Quaternium-15	4080-31-3; 51229-78-8
5	Tosylamide/Formaldehyde Resin (PTSAF)	25035-71-6
6	2-Bromo-2-Nitropropane-1,3-Diol (Bronopol)	52-51-7
7	Sodium Hydroxymethyl-glycinate	70161-44-3
8	Polyoxymethylene Urea	9011-05-6; 68611-64-3
9	Glyoxal	107-22-2
10	Methenamine	100-97-0

(ii) Second set of formaldehyde releasers

Item	Chemical name	CAS RN
11	1,3,5-Triethylhexahydro-s-triazine	7779-27-3
12	1,3-Dimethyl-4,5-dihydroxyethylene-urea	3923-79-3
13	2,2',2''-(hexahydro-1,3,5-triazine-1,3,5-triyl) triethanol (HHT)	4719-04-4

Item	Chemical name	CAS RN
14	3,4,4-trimethyloxazolidine	75673-43-7
15	4,4-Dimethyloxazolidine	51200-87-4
16	5-Bromo-5-Nitro-1,3-Dioxane (Bronidox)	30007-47-7
17	7-Ethylbicyclo-oxazolidine (Bioban CS1246)	7747-35-5
18	Benzylhemiformal	14548-60-8
19	Bioban CS-1135	81099-36-7
20	Bioban P-1487	37304-88-4
21	Bis(benzyloxy)methane (Trade name Preventol D2)	2749-70-4
22	Dihydroxydi-methyloethylene-urea, methylated	68411-81-4
23	Dimethylhydantoin formaldehyde (DMHF)	26811-08-5; 9065-13-8
24	Dimethyloldihydroxy-ethyleneurea	1854-26-8
25	Dimethyloethylen-eurea	136-84-5
26	Dimethylolpropyleneurea	3270-74-4
27	Dimethylol Glycol	3586-55-8
28	Dimethylol urea	140-95-4
29	Dimethylol Urea	68002-18-6
30	Dimethyl Oxazolidine	5625-90-1
31	Forcide 78	77044-78-1
32	Glyoxalurea	3720-97-6
33	MDM Hydantoin	116-25-6; 27636-82-4; 16228-00-5
34	Methylal	109-87-5
35	Methylol urea	1000-82-4
36	N-methylethanolamine	34375-28-5
37	N-Methylol-chloracetamide	2832-19-1
38	N,N '-Methylenebis(5-methyloxazolidine)	66204-44-2
39	Paraformaldehyde	30525-89-4
40	Polyoxymethylene	9002-81-7

Item	Chemical name	CAS RN
41	Polyoxymethylene Melamine	9003-08-1
42	Tetramethylol-glycoluril	5395-50-6
43	Thiazolidine-4-carboxylic acid	60731-25-1
44	Timonacic	444-27-9
45	Tris-Hydroxymethyl-nitromethane	126-11-4
46	Tris(N-hydroxyethyl) hexahydrotriazine	25254-50-6
47	Tris(N-Hydroxyethyl) Hexahydrotriazine	461-72-3

- (b) Ecology presumes the detection of formaldehyde indicates the intentional addition of a restricted formaldehyde releaser or formaldehyde. Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information.
- (i) The name and address of the person submitting the statement.
 - (ii) A statement that a formaldehyde releaser was **not** intentionally added. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that a formaldehyde releaser and formaldehyde were **not** intentionally added. Ecology determines what qualifies as “credible evidence” on a case-by-case basis.

Restriction and compliance

Overview

The preliminary draft rule includes a restriction on formaldehyde releasers, two sets of formaldehyde releasers, and a compliance strategy.

Questions

- Restriction
 - Do you have concerns about the way the restriction is worded?
 - Do you have suggestions for wording it differently?
- Formaldehyde releasers
 - Does the first set of formaldehyde releasers reflect the formaldehyde releasers with the highest prevalence of use in cosmetics?
 - What other formaldehyde releasers are important to you and your business? And why? What products use these formaldehyde releasers?
 - Do you have information on:
 - Additional formaldehyde releasers?
 - Which formaldehyde releasers are used in cosmetics?
 - Types of cosmetic products that contain each formaldehyde releaser?
- Compliance strategy
 - Do you have concerns about the way the compliance strategy in WAC 173-339-110(1)(b) is worded?
 - Do you have suggestions for wording it differently?

(2) Compliance schedule

- (a) First set of formaldehyde releasers compliance schedule
- (i) The restriction in (1)(a)(i) of this section takes effect on July 1, 2026.
 - (ii) An in-state retailer in possession of cosmetic products on the date that the restriction in (1)(a)(i) takes effect may exhaust their existing stock through sales to the public until July 1, 2027.
- (b) Second set of formaldehyde releasers compliance schedule
- (i) The restriction in (1)(a)(ii) of this section takes effect on July 1, 2027.
 - (ii) An in-state retailer in possession of cosmetic products on the date that the restriction in (1)(a)(ii) of this section takes effect may exhaust their existing stock through sales to the public until July 1, 2028.

Compliance schedules**Overview**

The preliminary draft rule includes compliance schedules for the restriction on formaldehyde releasers. Chapter 70A.560 RCW states that restrictions on the first set of formaldehyde releasers may take effect on or after January 1, 2026, and the restrictions on the remaining set of formaldehyde releasers may take effect on or after January 1, 2027.

Questions

- Do these dates balance protecting human health and the environment while also being feasible for manufacturers?
- If not, how would you change the dates and why?
- Do you have information about potential costs related to complying with the draft compliance schedules?



ToxicFreeCosmetics@ecy.wa.gov
ecology.wa.gov/TFCA
360-407-6700

**ADA Accessibility**

To request an ADA accommodation, contact us at 360-407-6700, by email at hwtrpubs@ecy.wa.gov, or visit ecology.wa.gov/accessibility. For Relay Service or TTY call 711 or 877-833-6341.