
HOUSE BILL 1694

State of Washington

67th Legislature

2022 Regular Session

By Representatives Berry, Fitzgibbon, Ramel, Bateman, and Duerr

Prefiled 12/23/21.

1 AN ACT Relating to logistical processes for the regulation of
2 priority chemicals in consumer products; amending RCW 70A.350.050,
3 70A.350.030, 70A.350.020, and 70A.350.040; and adding a new section
4 to chapter 70A.350 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 70A.350
7 RCW to read as follows:

8 (1) For purposes of the regulatory process established in this
9 chapter, the department may consider any product identified in the
10 department's final PFAS chemical action plan dated November 2021 as a
11 source of or use of PFAS chemicals to be a priority consumer product
12 under this chapter. No additional action, including publication in
13 the Washington State Register, is required for the department to
14 designate such a product as a priority consumer product for purposes
15 of this chapter. The department may, under the process established in
16 RCW 70A.350.040, determine regulatory actions and adopt rules to
17 implement those regulatory determinations.

18 (2) Firefighting personal protective equipment, as defined in RCW
19 70A.400.005, is established as a priority consumer product for PFAS
20 chemicals.

1 (3) For the products identified in this section, the department
2 is directed to:

3 (a) Determine an initial set of regulatory actions under this
4 chapter by June 1, 2024; and

5 (b) Adopt rules to implement the initial set of determinations of
6 regulatory actions under (a) of this subsection by December 1, 2025.

7 **Sec. 2.** RCW 70A.350.050 and 2020 c 20 s 1455 are each amended to
8 read as follows:

9 (1)(a) By June 1, 2020, and consistent with RCW 70A.350.030, the
10 department shall identify priority consumer products that are a
11 significant source of or use of priority chemicals specified in RCW
12 70A.350.010(12) (a) through (f).

13 (b) By June 1, 2022, and consistent with RCW 70A.350.040, the
14 department must determine regulatory actions regarding the priority
15 chemicals and priority consumer products identified in (a) of this
16 subsection. The deadline of June 1, 2022, does not apply to the
17 priority consumer products identified in section 1 of this act.

18 (c) By June 1, 2023, the department must adopt rules to implement
19 regulatory actions determined under (b) of this subsection.

20 (2)(a) By June 1, 2024, and at least every five years thereafter,
21 the department shall select at least five priority chemicals
22 specified in RCW 70A.350.010(12) (a) through (g) that are identified
23 consistent with RCW 70A.350.020.

24 (b) By June 1, 2025, and at least every five years thereafter,
25 the department must identify priority consumer products that contain
26 any new priority chemicals after notifying the appropriate committees
27 of the legislature, consistent with RCW 70A.350.030.

28 (c) By June 1, 2027, and at least every five years thereafter,
29 the department must determine regulatory actions for any priority
30 chemicals in priority consumer products identified under (b) of this
31 subsection, consistent with RCW 70A.350.040.

32 (d) By June 1, 2028, and at least every five years thereafter,
33 the department must adopt rules to implement regulatory actions
34 identified under (c) of this subsection.

35 (3)(a) The designation of priority chemicals by the department
36 does not take effect until the adjournment of the regular legislative
37 session immediately following the identification of chemicals, in
38 order to allow an opportunity for the legislature to add to, limit,

1 or otherwise amend the list of priority chemicals to be considered by
2 the department.

3 (b) The designation of priority consumer products by the
4 department does not take effect until the adjournment of the regular
5 legislative session immediately following the identification of
6 priority consumer products, in order to allow an opportunity for the
7 legislature to add to, limit, or otherwise amend the list of priority
8 consumer products to be considered by the department.

9 (c) The determination of regulatory actions by the department
10 does not take effect until the adjournment of the regular legislative
11 session immediately following the determination by the department, in
12 order to allow an opportunity for the legislature to add to, limit,
13 or otherwise amend the regulatory determinations by the department.

14 (d) Nothing in this subsection (3) limits the authority of the
15 department to:

16 (i) Begin to identify priority consumer products for a priority
17 chemical prior to the effective date of the designation of a priority
18 chemical;

19 (ii) Begin to consider possible regulatory actions prior to the
20 effective date of the designation of a priority consumer product; or

21 (iii) Initiate a rule-making process prior to the effective date
22 of a determination of a regulatory action.

23 (4)(a) When identifying priority chemicals and priority consumer
24 products under this chapter, the department must notify the public of
25 the selection, including the identification of the peer-reviewed
26 science and other sources of information that the department relied
27 upon, the basis for the selection, and a draft schedule for making
28 determinations. The notice must be published in the Washington State
29 Register. The department shall provide the public with an opportunity
30 for review and comment on the regulatory determinations.

31 (b)(i) By June 1, 2020, the department must create a stakeholder
32 advisory process to provide expertise, input, and a review of the
33 department's rationale for identifying priority chemicals and
34 priority consumer products and proposed regulatory determinations.
35 The input received from a stakeholder process must be considered and
36 addressed when adopting rules.

37 (ii) The stakeholder process must include, but is not limited to,
38 representatives from: Large and small business sectors; community,
39 environmental, and public health advocacy groups; local governments;

1 affected and interested businesses; an expert in scientific data
2 analysis; and public health agencies.

3 **Sec. 3.** RCW 70A.350.030 and 2020 c 20 s 1453 are each amended to
4 read as follows:

5 (1) (~~Every~~) At least every five years, and consistent with the
6 timeline established in RCW 70A.350.050, the department, in
7 consultation with the department of health, shall identify priority
8 consumer products that are a significant source of or use of priority
9 chemicals. The department must (~~submit a report~~) publish notice of
10 the priority consumer products identified under this section in the
11 Washington State Register and must submit a notice of this
12 publication to the appropriate committees of the legislature at the
13 time that it identifies a priority consumer product.

14 (2) When identifying priority consumer products under this
15 section, the department must consider, at a minimum, the following
16 criteria:

17 (a) The estimated volume of a priority chemical or priority
18 chemicals added to, used in, or present in the consumer product;

19 (b) The estimated volume or number of units of the consumer
20 product sold or present in the state;

21 (c) The potential for exposure to priority chemicals by sensitive
22 populations or sensitive species when the consumer product is used,
23 disposed of, or has decomposed;

24 (d) The potential for priority chemicals to be found in the
25 outdoor environment, with priority given to surface water,
26 groundwater, marine waters, sediments, and other ecologically
27 sensitive areas, when the consumer product is used, disposed of, or
28 has decomposed;

29 (e) If another state or nation has identified or taken regulatory
30 action to restrict or otherwise regulate the priority chemical in the
31 consumer product;

32 (f) The availability and feasibility of safer alternatives; and

33 (g) Whether the department has already identified the consumer
34 product in a chemical action plan completed under chapter 70A.300 RCW
35 as a source of a priority chemical or other reports or information
36 gathered under chapter 70A.430, 70A.405, 70A.222, 70A.335, 70A.340,
37 70A.230, or 70A.400 RCW.

38 (3) The department is not required to give equal weight to each
39 of the criteria in subsection (2)(a) through (g) of this section when

1 identifying priority consumer products that use or are a significant
2 source of priority chemicals.

3 (4) To assist with identifying priority consumer products under
4 this section and making determinations as authorized under RCW
5 70A.350.040, the department may (~~request~~) order a manufacturer to
6 submit a notice to the department that contains the information
7 specified in RCW 70A.430.060 (1) through (6) or other information
8 relevant to subsection (2)(a) through (d) of this section. The
9 manufacturer must provide the notice to the department no later than
10 six months after receipt of such a demand by the department.

11 (5)(a) Except as provided in (b) of this subsection, the
12 department may not identify the following as priority consumer
13 products under this section:

14 (i) Plastic shipping pallets manufactured prior to 2012;

15 (ii) Food or beverages;

16 (iii) Tobacco products;

17 (iv) Drug or biological products regulated by the United States
18 food and drug administration;

19 (v) Finished products certified or regulated by the federal
20 aviation administration or the department of defense, or both, when
21 used in a manner that was certified or regulated by such agencies,
22 including parts, materials, and processes when used to manufacture or
23 maintain such regulated or certified finished products;

24 (vi) Motorized vehicles, including on and off-highway vehicles,
25 such as all-terrain vehicles, motorcycles, side-by-side vehicles,
26 farm equipment, and personal assistive mobility devices; and

27 (vii) Chemical products used to produce an agricultural
28 commodity, as defined in RCW 17.21.020.

29 (b) The department may identify the packaging of products listed
30 in (a) of this subsection as priority consumer products.

31 (6) For an electronic product identified by the department as a
32 priority consumer product under this section, the department may not
33 make a regulatory determination under RCW 70A.350.040 to restrict or
34 require the disclosure of a priority chemical in an inaccessible
35 electronic component of the electronic product.

36 **Sec. 4.** RCW 70A.350.020 and 2020 c 20 s 1452 are each amended to
37 read as follows:

38 Every five years, and consistent with the timeline established in
39 RCW 70A.350.050, the department, in consultation with the department

1 of health, must (~~report~~) publish notice in the Washington State
2 Register and submit a notice of this publication to the appropriate
3 committees of the legislature its decision to designate at least five
4 priority chemicals that meet at least one of the following:

5 (1) The chemical or a member of a class of chemicals are
6 identified by the department as a:

7 (a) High priority chemical of high concern for children under
8 chapter 70A.430 RCW; or

9 (b) Persistent, bioaccumulative toxin under chapter 70A.300 RCW;

10 (2) The chemical or members of a class of chemicals are
11 regulated:

12 (a) In consumer products under chapter 70A.430, 70A.405, 70A.222,
13 70A.335, 70A.340, 70A.230, or 70A.400 RCW; or

14 (b) As a hazardous substance under chapter 70A.300 or 70A.305
15 RCW; or

16 (3) The department determines the chemical or members of a class
17 of chemicals are a concern for sensitive populations and sensitive
18 species after considering the following factors:

19 (a) A chemical's or members of a class of chemicals' hazard
20 traits or environmental or toxicological endpoints;

21 (b) A chemical's or members of a class of chemicals' aggregate
22 effects;

23 (c) A chemical's or members of a class of chemicals' cumulative
24 effects with other chemicals with the same or similar hazard traits
25 or environmental or toxicological endpoints;

26 (d) A chemical's or members of a class of chemicals'
27 environmental fate;

28 (e) The potential for a chemical or members of a class of
29 chemicals to degrade, form reaction products, or metabolize into
30 another chemical or a chemical that exhibits one or more hazard
31 traits or environmental or toxicological endpoints, or both;

32 (f) The potential for the chemical or class of chemicals to
33 contribute to or cause adverse health or environmental impacts;

34 (g) The chemical's or class of chemicals' potential impact on
35 sensitive populations, sensitive species, or environmentally
36 sensitive habitats;

37 (h) Potential exposures to the chemical or members of a class of
38 chemicals based on:

39 (i) Reliable information regarding potential exposures to the
40 chemical or members of a class of chemicals; and

1 (ii) Reliable information demonstrating occurrence, or potential
2 occurrence, of multiple exposures to the chemical or members of a
3 class of chemicals.

4 **Sec. 5.** RCW 70A.350.040 and 2020 c 20 s 1454 are each amended to
5 read as follows:

6 (1) Every five years, and consistent with the timeline
7 established in RCW 70A.350.050, the department, in consultation with
8 the department of health, must determine regulatory actions to
9 increase transparency and to reduce the use of priority chemicals in
10 priority consumer products. The department must (~~submit a report~~)
11 publish notice in the Washington State Register and submit a notice
12 of this publication to the appropriate committees of the legislature
13 at the time that it determines regulatory actions. The department
14 may:

15 (a) Determine that no regulatory action is currently required;

16 (b) Require a manufacturer to provide notice of the use of a
17 priority chemical or class of priority chemicals consistent with RCW
18 70A.430.060; or

19 (c) Restrict or prohibit the manufacture, wholesale,
20 distribution, sale, retail sale, or use, or any combination thereof,
21 of a priority chemical or class of priority chemicals in a consumer
22 product.

23 (2) (a) The department may order a manufacturer to submit
24 information consistent with RCW 70A.350.030 (4).

25 (b) The department may require a manufacturer to provide:

26 (i) A list of products containing priority chemicals;

27 (ii) Product ingredients;

28 (iii) Information regarding exposure and chemical hazard; and

29 (iv) A description of the amount and the function of the high
30 priority chemical in the product.

31 (3) The department may restrict or prohibit a priority chemical
32 or members of a class of priority chemicals in a priority consumer
33 product when it determines:

34 (a) Safer alternatives are feasible and available; and

35 (b) (i) The restriction will reduce a significant source of or use
36 of a priority chemical; or

37 (ii) The restriction is necessary to protect the health of
38 sensitive populations or sensitive species.

1 (4) When determining regulatory actions under this section, the
2 department may consider, in addition to the criteria pertaining to
3 the selection of priority chemicals and priority consumer products
4 that are specified in RCW 70A.350.020 and 70A.350.030, whether:

5 (a) The priority chemical or members of a class of priority
6 chemicals are functionally necessary in the priority consumer
7 product; and

8 (b) A restriction would be consistent with regulatory actions
9 taken by another state or nation on a priority chemical or members of
10 a class of priority chemicals in a product.

11 (5) A restriction or prohibition on a priority chemical in a
12 consumer product may include exemptions or exceptions, including
13 exemptions to address existing stock of a product in commerce at the
14 time that a restriction takes effect.

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