
Environment & Energy Committee

HB 1694

Brief Description: Concerning logistical processes for the regulation of priority chemicals in consumer products.

Sponsors: Representatives Berry, Fitzgibbon, Ramel, Bateman and Duerr.

Brief Summary of Bill

- Designates firefighting personal protective equipment as a priority consumer product for Per-and Poly-fluoroalkyl (PFAS) chemicals under the 2019 law that directs the Department of Ecology (Ecology) to regulate priority chemicals in priority consumer products (Safer Products for Washington).
- Designates products identified in the PFAS chemical action plan as priority consumer products for PFAS under Safer Products for Washington.
- Requires Ecology to designate priority chemicals and priority consumer products, and to determine regulatory actions and adopt rules for those regulatory determinations, at least every five years, rather than precisely every five years.
- Eliminates the requirement that Ecology submit a report to the Legislature after designating a priority chemical or product and after making regulatory determinations, and instead provides for Ecology to notify the Legislature of such actions in conjunction with a publication of notice of the action in the Washington State Register.

Hearing Date: 1/14/22

Staff: Jacob Lipson (786-7196).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background:

Safer Products for Washington.

In 2019, legislation was enacted (Safer Products for Washington) that established an administrative process for the regulation by the Department of Ecology (Ecology) of priority chemicals in priority consumer products. Under this process, certain chemicals were defined as priority chemicals, including perfluoroalkyl and polyfluoroalkyl (PFAS) chemicals, polychlorinated biphenyls (PCBs), phthalates, organohalogen flame retardants (OFRs) and other flame retardants identified under the Children's Safe Products Act (CSPA), and phenolic compounds. Ecology is also authorized to designate additional chemicals as priority chemicals every five years if they meet qualifying criteria, consistent with a schedule established in the 2019 law.

Every five years, according to a specified schedule, Ecology must also:

- identify priority consumer products that include priority chemicals, taking into consideration specified criteria; and
- determine regulatory actions for the priority chemicals in priority consumer products. Regulatory actions may include a determination that no action is needed, may require manufacturers to provide notice of the use of a chemical, or may restrict or prohibit the manufacture, distribution, sale, or use of a priority chemical in a consumer product.

Ecology is required to make regulatory determinations for the initial round of statutorily-designated priority chemicals and their associated priority consumer products by June 1, 2022, and must adopt rules to implement those regulatory determinations by June 1, 2023. As of November 2021, Ecology has issued for public comment a draft report on regulatory determinations in which the following 11 combinations of priority chemicals in priority consumer products are proposed for regulatory determinations:

- flame retardants in electric and electronic enclosures;
- flame retardants in polyurethane foam;
- PFAS chemicals in aftermarket stain-and water-resistance treatments;
- PFAS chemicals in carpets and rugs;
- PFAS chemicals in leather and textile furnishings;
- PCBs in paints and printing inks;
- phenolic compounds in laundry detergent;
- phenolic compounds in thermal paper;
- phenolic compounds in food and drink can linings;
- phthalates in personal care and beauty products and fragrances; and
- phthalates in vinyl flooring.

Ecology must submit a report to the appropriate committees of the Legislature when identifying priority chemicals, identifying priority consumer products, or determining regulatory actions. Identification of priority chemicals, identification of priority consumer products, and regulatory determinations by Ecology do not take effect until the adjournment of the regular legislative session immediately following the Ecology action. Ecology may begin to evaluate priority

consumer products before the designation of priority chemicals take effect, may consider regulatory determinations before the designation of priority products take effect, and may initiate rulemaking before regulatory determinations take effect.

When identifying priority chemicals and priority consumer products, Ecology must notify the public, including via the Washington State Register, of the selection and publish a draft schedule for making determinations.

Regulation of PFAS Chemicals in Firefighting Personal Protective Equipment.

According to Ecology, PFAS chemicals are characterized by their resistance to oil, stains, grease, and water, as well as their durability, heat resistance, and anti-corrosive properties. Since 2018, state law has required manufacturers, importers, distributors, and other persons selling firefighting personal protective equipment (PPE) to provide written notice at the time of sale to purchasers of firefighting PPE that it contains PFAS chemicals, and the reasons that that PFAS chemicals are added to the firefighting PPE. The firefighting PPE subject to these disclosure requirements is clothing designed or intended to be worn by firefighting personnel, including jackets, pants, shoes, gloves, helmets, and respiratory equipment.

Persistent, Bioaccumulative Toxins.

In 2006, Ecology adopted a rule under state hazardous waste laws outlining the processes it follows for efforts to reduce and phase out the uses, releases, and exposures to persistent, bioaccumulative toxins (PBTs). The PBTs are substances with toxic or harmful effects on people or animals that have a lengthy decomposition time in the environment and accumulate up the food chain in the bodies of organisms, including people. Among other purposes, Ecology uses the PBT list to identify and prioritize candidates for the development of chemical action plans (CAPs). In developing a CAP, Ecology works with an external advisory committee to evaluate the chemical's uses, releases, impacts, and management. The CAP process concludes with the issuance of a report with recommendations for how to reduce or manage certain uses of the PBT and encourage safer alternatives to the PBT. Ecology completed a CAP for PFAS chemicals in November 2021, in which it identified a number of products as sources of or uses of PFAS chemicals, including:

- water-resistant clothing and gear;
- nonstick cookware and kitchen supplies;
- personal care products (including cosmetics and dental floss);
- cleaning agents;
- automotive products;
- floor waxes and sealants;
- ski waxes; and
- car waxes.

Summary of Bill:

PFAS in Priority Consumer Products.

Firefighting personal protective equipment (PPE) subject to disclosure requirements related to

the use of PFAS chemicals is considered a priority consumer product for PFAS chemicals for purposes of the Department of Ecology's (Ecology's) Safer Products Washington regulatory process.

Ecology may consider any product identified as a source or use of PFAS in its PFAS chemical action plan (CAP) published in November 2021 to be a priority consumer product for purposes of its Safer Products Washington regulatory process. Ecology may determine regulatory actions and adopt rules to implement those regulatory determinations, without first taking regulatory steps under Safer Products Washington to designate products identified as sources or uses of PFAS in the PFAS CAPs priority consumer products.

Ecology must determine an initial set of regulatory actions for PFAS in firefighting PPE and PFAS in CAP-identified products by June 1, 2024, and must adopt rules to implement these determinations by December 1, 2025.

Other Safer Products Washington Regulatory Process Changes.

At least every five years, Ecology must designate priority chemicals and priority consumer products, and must determine regulatory actions and adopt rules for those regulatory determinations, rather than requiring Ecology to take such actions precisely every five years according to the statutorily-specified schedule.

In order to designate a priority chemical or priority consumer product or make a regulatory determination for a priority chemical in a priority consumer product, Ecology must publish a notice in the Washington State Register and submit a notice to the appropriate committees of the Legislature, rather than submit a report to the Legislature.

Appropriation: None.

Fiscal Note: Requested on December 29, 2021.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.