
ENGROSSED SUBSTITUTE HOUSE BILL 1694

State of Washington

67th Legislature

2022 Regular Session

By House Environment & Energy (originally sponsored by Representatives Berry, Fitzgibbon, Ramel, Bateman, Duerr, Callan, Macri, Harris-Talley, Hackney, and Frame)

READ FIRST TIME 01/31/22.

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. For such products, the department may, under the
16 process established in RCW 70A.350.040, determine regulatory actions
17 and adopt rules to 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~~) September 1, 2022, and consistent with RCW
14 70A.350.040, the department must determine regulatory actions
15 regarding the priority chemicals and priority consumer products
16 identified in (a) of this subsection. The deadline of September 1,
17 2022, does not apply to the priority consumer products identified in
18 section 1 of this act.

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

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

26 (b) By (~~June~~) September 1, 2025, and at least every five years
27 thereafter, the department must identify priority consumer products
28 that contain any new priority chemicals after notifying the
29 appropriate committees of the legislature, consistent with RCW
30 70A.350.030.

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

35 (d) By (~~June~~) September 1, 2028, and at least every five years
36 thereafter, the department must adopt rules to implement regulatory
37 actions identified under (c) of this subsection.

38 (3)(a) The designation of priority chemicals by the department
39 does not take effect until the adjournment of the regular legislative

1 session immediately following the identification of chemicals, in
2 order to allow an opportunity for the legislature to add to, limit,
3 or otherwise amend the list of priority chemicals to be considered by
4 the department.

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

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

16 (d) Nothing in this subsection (3) limits the authority of the
17 department to:

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

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

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

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

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

39 (ii) The stakeholder process must include, but is not limited to,
40 representatives from: Large and small business sectors; community,

1 environmental, and public health advocacy groups; local governments;
2 affected and interested businesses; an expert in scientific data
3 analysis; and public health agencies.

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

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

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

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

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

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

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

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

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

34 (g) Whether the department has already identified the consumer
35 product in a chemical action plan completed under chapter 70A.300 RCW
36 as a source of a priority chemical or other reports or information
37 gathered under chapter 70A.430, 70A.405, 70A.222, 70A.335, 70A.340,
38 70A.230, or 70A.400 RCW.

1 (3) The department is not required to give equal weight to each
2 of the criteria in subsection (2)(a) through (g) of this section when
3 identifying priority consumer products that use or are a significant
4 source of priority chemicals.

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

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

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

17 (ii) Food or beverages;

18 (iii) Tobacco products;

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

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

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

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

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

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

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

1 ((Every)) At least every five years, and consistent with the
2 timeline established in RCW 70A.350.050, the department, in
3 consultation with the department of health, must (~~report~~) publish
4 notice in the Washington State Register and submit a notice of this
5 publication to the appropriate committees of the legislature its
6 decision to designate at least five priority chemicals that meet at
7 least one of the following:

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

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

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

13 (2) The chemical or members of a class of chemicals are
14 regulated:

15 (a) In consumer products under chapter 70A.430, 70A.405, 70A.222,
16 70A.335, 70A.340, 70A.230, or 70A.400 RCW; or

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

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

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

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

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

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

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

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

37 (g) The chemical's or class of chemicals' potential impact on
38 sensitive populations, sensitive species, or environmentally
39 sensitive habitats;

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

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

5 (ii) Reliable information demonstrating occurrence, or potential
6 occurrence, of multiple exposures to the chemical or members of a
7 class of chemicals.

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

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

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

20 (b) Require a manufacturer to provide notice of the use of a
21 priority chemical or class of priority chemicals consistent with RCW
22 70A.430.060; or

23 (c) Restrict or prohibit the manufacture, wholesale,
24 distribution, sale, retail sale, or use, or any combination thereof,
25 of a priority chemical or class of priority chemicals in a consumer
26 product.

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

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

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

31 (ii) Product ingredients;

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

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

35 (3) The department may restrict or prohibit a priority chemical
36 or members of a class of priority chemicals in a priority consumer
37 product when it determines:

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

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

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

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

9 (a) The priority chemical or members of a class of priority
10 chemicals are functionally necessary in the priority consumer
11 product; and

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

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

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