Priority Products Report to the Legislature: Safer Products for Washington Cycle 2, Phase 2 Comment Summary

DEPARTMENT OF ECOLOGY
State of Washington

Overview

The Department of Ecology, in consultation with the Department of Health, (we) provided multiple pathways for interested parties, stakeholders, and the public to give feedback on our Cycle 2 Draft Identification of Priority Products Report to the Legislature.[1] We received over 50 comments.

This document outlines some of the consistent questions and comments we received. It includes information on how we considered the feedback when developing the Identification of Priority Products Report to the Legislature, Safer Products for Washington Cycle 2, Phase 2 final report.[2]

This report does not recommend any regulatory action. During the next phase of implementation, we'll evaluate whether safer alternatives to priority chemicals in the priority products are feasible and available. Following this, we will make regulatory determinations for priority consumer products in the report by June 2027.

If you have questions or concerns, please contact us at SaferProductsWA@ecy.wa.gov.

Frequently asked questions

How do I access the comments you received about the report?

Visit our comments page[3] to review the comments we received through our online comment form and via email.

[1] apps.ecology.wa.gov/publications/summarypages/2404049.html
[2] apps.ecology.wa.gov/publications/summarypages/2504030.html
[3] hwtr.ecology.commentinput.com/comment/extra?id=9gHGTCx2EV

How do you use suggestions from comments on the report?

Our team appreciates the thoughtful feedback from interested parties, stakeholders, and Washington communities. We integrated many suggestions and changes including:

- Removing a priority product category.
- Adding a priority chemical class to an existing priority product category.
- Adding new references and information.
- Reorganizing and clarifying sections of the report.
- Including additional discussion of performance requirements for products.
- Making editorial revisions and corrections.

We removed cleaning and household care products as a priority product.

In our draft report, we included cleaning and household care products that contain phthalates or formaldehyde and formaldehyde releasers as a draft priority product.

We received several comments that expressed concern with this category and the information used to support its prioritization. In our draft, we noted that the data we have suggests there are significant uses of phthalates and formaldehyde, and formaldehyde releasers in some of these products, but that we want to learn more about their use. That's because there is uncertainty in the concentration of these chemicals used and their prevalence across cleaning and household care products due to limited disclosure. We still want to strengthen our understanding of the use of these chemicals in cleaning and household care products, as well as the landscape of potential alternatives.

We considered the resources it would take to identify safer alternatives in this large category of products based on what we already know and the information we still need. We anticipate that a substantial commitment of time and effort will be required to identify and evaluate potential alternatives for phthalates and formaldehyde, and formaldehyde releasers in these products.

Based on the above, we determined that cleaning and household care products that contain phthalates or formaldehyde and formaldehyde releasers should not be prioritized at this time. We'll continue to monitor for new information on the use of these chemicals in cleaning and household care products and the ongoing work by the EPA that overlaps with these product-chemical combinations. We may revisit these products in a future cycle of the program as we learn more.

We added alkylphenol ethoxylates (APEs) as a priority chemical class for architectural paints.

In our draft report, we proposed prioritizing architectural paints that contain PFAS (per- and polyfluoroalkyl substances) as a priority product. We expanded this product to include APEs as a priority chemical class. This was due to several factors, including:

- PFAS and APEs can both serve the same chemical function in paint formulations as surfactants, and this means APEs could be a regrettable substitute for PFAS.
- Many manufacturers have phased out APEs in paints, but we found evidence that some paints still contain them.
- There is a large volume of paint used in Washington each year. APEs used in paints have the potential to impact sensitive species in Washington as they break down into persistent aquatic toxicants.

How are products carried forward from previous cycles of Safer Products for Washington, and do you need to relist products for them to be considered each cycle?

We plan to continue work on several products from previous review cycles of Safer Products for Washington.

Once a product has been prioritized by the program, it remains a priority product for future cycles.

From our first cycle, our program will continue to work on printing inks that contain PCBs. We are continuing to work on printing inks in part due to ongoing interest from the public and other agencies in reducing sources of PCBs to the environment in Washington.

We are continuing work on four products from our short implementation cycle (Cycle 1.5) that focuses on products that contain PFAS, those are:

- Cookware and kitchen supplies
- Firefighting Personal Protective Equipment (PPE)
- Hard surface sealers
- Floor waxes and polishes

In that short cycle we recommended reporting requirements for PFAS in floor waxes and polishes, and in firefighter PPE because we were unable to identify safer alternatives that were feasible and available. However, the landscape of PFAS use in products is changing quickly. For that reason, we are continuing to work on these products to determine whether safer alternatives may now be feasible and available, as we anticipate some of the market may be moving away from using PFAS in these products.

We did not assess whether safer alternatives to PFAS in cookware and kitchen supplies, or hard surface sealers, were feasible and available during that short cycle due to staff limitations. For that reason, we are evaluating these products as part of this cycle.

In addition, during the 2024 legislative session, RCW 70A.350.110[4] was amended to identify motor vehicle tires containing 6PPD as a priority product. The statute directs us to determine regulatory actions and adopt rules for these products.

For all the priority products described in this section, we will work to identify safer, feasible, available alternatives and make regulatory determinations by June 2027.

Why didn't you prioritize a certain product?

Many consumer products contain priority chemicals and may also meet the criteria for designation as priority products under Safer Products for Washington. We prioritized the products listed in the report based on the information provided and our program's capacity to do the work.

While prioritizing products, we focused on opportunities to:

- Reduce exposures in people with a focus on sensitive populations.
- Reduce contamination of ecosystems with a focus on sensitive species.

We based our decisions to prioritize products on public input, peer-reviewed science, and other relevant information. For more information on the methods used to prioritize products, please refer to Chapter 1 of the Technical Supporting Documentation for Identification of Priority Products Report to the Legislature.[5]

General comments

Some comments shared suggest that Safer Products for Washington should not regulate chemicals by class.

We implement the Safer Products for Washington program through the Toxic Pollution law.[6] It gives us the authority to consider chemicals by class. This approach helps us avoid assuming chemicals with no data are safe and helps prevent regrettable substitutions where one chemical is restricted and replaced with a similar and equally or more toxic chemical.

[4] apps.leg.wa.gov/rcw/default.aspx?cite=70A.350&full=true#70A.350.110
[5] apps.ecology.wa.gov/publications/summarypages/2504031.html
[6] app.leg.wa.gov/rcw/default.aspx?cite=70A.350

Some respondents noted that specific chemicals do not share all the hazards associated with the priority chemical class and should be excluded.

We recognize that chemical classes show toxicological diversity. That's why we developed a process for separating a particular chemical from the broader class when we find evidence that it is safer than others in the class. Learn more in Appendix C (Criteria for Safer) of our Cycle 1 Regulatory Determinations Report to the Legislature.[7]

We may refine our Criteria for Safer in how we consider specific chemicals within priority chemical classes in the future. Feedback from interested parties on how to improve our process for identifying less hazardous within-class priority chemicals, with consideration of both the diversity and similarity of chemicals in the class is appreciated.

We received feedback that specific products should be excluded from the priority product category due to differences in performance requirements.

We intentionally kept the scope of priority product categories broad for flexibility in the next phase of implementation when we determine regulatory actions. We consider performance as part of our analysis of feasibility when evaluating safer alternatives before recommending regulatory actions. As part of that analysis, we may find that specific products should be considered separately from the broader product category due to factors such as performance requirements.

For example, in our Cycle 1 Regulatory Determinations Report to the Legislature, published in June 2022, we made separate determinations for some products used indoors and those used outdoors. We found that safer alternatives were feasible and available for electric and electronic enclosures intended for indoor use, but not for those intended for outdoor use. Therefore, we recommended a restriction on organohalogen flame retardants in electric and electronic enclosures intended for indoor use, and a reporting requirement for electric and electronic enclosures intended for outdoor use. In May 2023, we adopted those regulatory actions in the Safer Products Restriction and Reporting rule (Chapter 173-337 WAC).[8]

[7] https://apps.ecology.wa.gov/publications/SummaryPages/2204018.html
[8] https://app.leg.wa.gov/WAC/default.aspx?cite=173-337

We heard concerns that priority product categories are too broad and include products with different performance requirements or applications.

We scoped the priority products in the report based on our understanding of the use or presence of priority chemicals in those products across the product category. We intentionally kept the scope of priority products broad. This allows for flexibility in the next phase of implementation when we determine regulatory actions.

Defining narrow product categories at this phase of implementation could limit our ability to recommend effective regulatory actions for these chemical-product combinations. As we make these decisions in the next phase of implementation, we intend to focus our recommended regulatory actions on specific product types and applications where we identify safer, feasible, and available alternatives.

We may exclude subsets of products from the scope of our regulatory determinations if we find safer alternatives are only feasible and available for a subset of the product category. We'll consider new information on products when making regulatory determinations and evaluate whether it is appropriate to narrow the scope of any regulatory recommendations for priority products.

Some respondents suggest that Safer Products for Washington should use a risk assessment to determine whether to list priority products.

Often, governments restrict toxic chemicals in consumer products only after a process called **risk assessment** demonstrates significant harms are occurring. **Risk** is a combination of a chemical's toxicity and how much people are exposed to the chemical. Ecology and the Department of Health widely use risk assessments for things like setting drinking water limits and clean-up levels, but risk assessments don't prevent the use of toxic chemicals.

Risk assessments need information about how we're exposed to chemicals and how they might be toxic to us or sensitive species. Often, scientists lack information about the chemicals in consumer products because:

- Not every chemical on the market has a full hazard assessment.
- People are exposed to chemicals in ways that aren't always clear or well-studied.

This can lead to an incomplete picture. If you assess a risk based on only part of the exposure, it's easy to underestimate the risk. When it comes to toxic chemicals in consumer products, this could mean you often don't see a risk from a single consumer product. However, most people use multiple consumer products, creating multiple potential sources of exposure over time. In addition, the chemicals in products people use collectively can eventually reach our environment.

To regulate toxics in consumer products, we use an approach that's focused on preventing pollution. A risk assessment approach answers, "What is the highest level of exposure we can accept?" Instead, our **hazard-based approach** asks, "Where are the opportunities to reduce exposure to toxic chemicals by using safer alternatives?" This allows us to reduce the use of a toxic chemical before it harms people or the environment. This improves human and wildlife health and reduces environmental cleanup costs.

We received feedback noting that products that use priority chemicals provide benefits to society.

Consumer products provide us with convenience and benefits. However, some consumer products also contain priority chemicals. The statute directs Ecology to identify safer, feasible, and available alternatives if we recommend a restriction on priority chemicals in any priority products. We identify possible alternatives so people can still benefit from those products if a priority chemical is restricted.

Respondents shared that other governments or regulatory agencies have reached different conclusions for priority chemicals used in priority products identified in the report.

Different regulatory programs use their own decision-making frameworks and might come to different conclusions. For example, one regulatory program might use a risk evaluation to make regulatory decisions, while another might use a hazard-based framework.

Safer Products for Washington is implemented under Chapter 70A.350 RCW.[9] Under this law, when identifying priority chemicals, we focus on the hazards associated with chemical classes. The law also has criteria we use for identifying priority products, such as the volume of the product sold in the state and the potential for exposure in sensitive populations. Some regulatory agencies may use a different approach to determine whether to restrict chemicals in products, such as determining an acceptable level of risk. We considered information and rationales in reports by other government and regulatory agencies when identifying priority products for the Safer Products for Washington program.

[9] app.leg.wa.gov/rcw/default.aspx?cite=70A.350

Some respondents noted that some of the priority chemicals and products we have prioritized are also being worked on by the US EPA, and suggested we should wait to see what actions they take.

We are monitoring the status of ongoing work by the EPA, including risk evaluations under the Toxic Substances Control Act (TSCA). There is considerable uncertainty in the timelines and outcomes of many of these evaluations by the EPA. For some evaluations, such as formaldehyde, the EPA is further along in its process and has already made a risk determination with risk management actions pending. For other evaluations, the EPA is early in its process. While we consider EPA's evaluations to inform our decisions, those evaluations do not delay our own work. We continue to implement our program as directed by state statute. We took this information into account when prioritizing consumer products for this cycle of Safer Products for Washington.

We heard concerns about the rationale used to support the determination that products are significant sources of or uses of priority chemicals.

We determined that the priority products identified were significant sources of or uses of priority chemicals after considering the criteria in RCW 70A.350.030.[10] For the products we prioritized this cycle, priority chemicals either are a significant part of the product composition, or there is a high number or volume of those products sold or present in Washington—most priority products share both these characteristics.

The priority products identified also have the potential to expose people or the environment to priority chemicals during use, disposal, or decomposition. For more information used to support the identification of priority products, please see Supporting Documentation for Priority Products: Safer Products for Washington Cycle 2 Implementation Phase 2.

Comments on specific products

Some respondents commented that PVC and PVDC plastic packaging should not be prioritized due to similar lifecycle issues with other plastic packaging materials.

Many plastic polymers used in packaging share lifecycle characteristics such as the generation of microplastics during production, use, and disposal. However, PVC and PVDC are different in that they are produced using hazardous organochlorine

[10] app.leg.wa.gov/RCW/default.aspx?cite=70A.350.030

substances such as vinyl chloride. They also contain chlorine as part of their chemical structure.

Chlorine content creates challenges for recycling PVC and PVDC and can reduce the recyclability of other plastics in mixed waste streams. In addition, chlorine-containing plastics can generate dioxins if burned at the end of life. Dioxins are persistent, bioaccumulative, and highly toxic organochlorine substances.

Based on these and other considerations described in the report, we determined that PVC and PVDC plastic packaging should be a priority product for the Safer Products for Washington program, so we can evaluate potential safer, feasible, and available alternatives to PVC and PVDC used in plastic packaging.

We received requests to prioritize other products made from plastics, such as PVC and polystyrene, in building products.

There are many products made from plastics, such as PVC and polystyrene, that could be prioritized in the Safer Products for Washington program. Most plastics share some adverse lifecycle characteristics due to the chemicals used in their manufacture and their persistence in the environment at the end of life.

Respondents requested that we prioritize building materials made from PVC in addition to plastic packaging. We prioritized plastic packaging made from PVC and PVDC in part due to the higher waste generated by packaging products relative to their share of overall use for these plastics. Many of the adverse impacts on health and the environment associated with PVC are related to manufacturing and disposal.

Most plastic packaging is disposed of the same year it is produced or used. In contrast, many building products made from PVC are designed as durable products, with a service lifespan of a decade or more. These factors, along with consideration of our resources in the program, led to our decision not to prioritize building materials made from PVC for this cycle.

Respondents also requested that we prioritize plastic products made from polystyrene based on the use of ethylbenzene in manufacturing. We found that ethylbenzene is used in an earlier production step to make styrene, which is then used to manufacture polystyrene found in products. We anticipate this would impede our ability to identify safer, feasible, and available alternatives to ethylbenzene used in the manufacture of polystyrene products and hinder potential regulatory actions.

We acknowledge that many of the lifecycle issues we highlighted for plastic packaging are also true of building products made from plastics such as PVC, but we determined packaging was a more suitable priority product for the program at this time. We may prioritize other plastic products in future cycles of Safer Products for Washington.

Some respondents commented that sealants, caulks, and adhesives should not be prioritized for ortho-phthalates

We found that ortho-phthalates are often used in sealant, caulk, and adhesive formulations at relatively high concentrations and function as plasticizers. Plasticizers are often added at levels from 0.1%-40% in these product formulations to help meet performance needs, such as making the products more flexible or easier to apply.

Ortho-phthalates used in these products are associated with hazards to human health and the environment. In addition, the information we collected suggests there is a potential for exposure to ortho-phthalates from these products in sensitive populations, including children and workers.

These factors informed our decision to move forward with the identification of sealants, caulks, and adhesives that contain ortho-phthalates as a priority product.

We received requests to prioritize other products that contain lead, in addition to jewelry and accessories.

Lead and lead compounds are used in many consumer products. Ecology, with the help of the Department of Health and other state agencies, published a Washington State Lead Chemical Action Plan[11] in 2009, that characterized uses of lead, including in consumer products. The plan described the negative impacts of lead on public health and the environment.

The largest releases of lead from consumer products in Washington[12] to the environment are from ammunition, fishing weights, and wheel weights.

We prioritized jewelry and accessories containing lead and cadmium for this cycle due to data showing their continued presence in these products and the potential for exposure in children. We determined that other products were more appropriate as priorities for our work in this cycle of Safer Products for Washington, rather than including additional products containing lead. We recognize the importance of reducing lead exposure for public health and anticipate that consumer products containing lead will be a continued focus in future cycles of the program.

We heard that for subsets of priority products, there are no suitable alternatives that can meet the performance requirements for those products.

For some products, we heard that there are no suitable alternatives to using priority chemicals or that priority chemicals are used to meet specific performance requirements. Some examples of specific products from comments are:

[11] apps.ecology.wa.gov/publications/SummaryPages/0907008.html
[12] https://apps.ecology.wa.gov/publications/documents/1103024.pdf

- Organohalogen flame retardants are used in spray-foam insulation to meet building code requirements.
- PFAS are used to provide important performance characteristics in paints used on infrastructure such as bridges and stadiums.
- PVC and PVDC are used in packaging for pharmaceuticals and food.

We recognize that the performance requirements of specific product applications among the priority products we identified vary, and that alternatives may not be feasible or available for some applications. The information shared by manufacturers on performance requirements is helpful for our continued work in the program. We'll consider these performance requirements when evaluating alternatives in the next phase of implementation before recommending any regulatory actions.

Publication Information

This report is available on the Department of Ecology's website at https://apps.ecology.wa.gov/publications/SummaryPages/2504025.html.

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[13] www.ecology.wa.gov/contact