

Alliance for Automotive Innovation

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Submitted electronically to: <https://hwtr.ecology.commentinput.com/?id=EPWsm>

February 5, 2023

Ms. Laura Watson, Director
Washington State Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

Ms. Stacey Callaway
Department of Ecology Hazardous Waste & Toxics Reduction Program
Safer Products for Washington
PO Box 47600
Olympia, WA 98504-7600

Dear Ms. Watson and Ms. Callaway:

The Alliance for Automotive Innovation¹ (Auto Innovators) appreciates the opportunity to provide comments to the Washington State Department of Ecology (Ecology) on its Safer Products Restrictions and Reporting (WAC 173-337) proposed rule.² Published on December 7, 2022, this proposed rule puts forward a regulatory program to implement the Pollution Prevention for Healthy People and Puget Sound Act (Chapter 70A,350 RCW) with an initial focus on ten product categories that Ecology presented to the Washington State Legislature in June 2022. These ten product categories include:

- PFAS in aftermarket stain- and water-resistance treatments, carpets and rugs, and leather and textile furnishings.
- Ortho-phthalates in personal care products (fragrances) and vinyl flooring.
- Organohalogen flame retardants in electric and electronic products.
- Flame retardants (as defined in RCW 70A.350.010) in recreational polyurethane foam.
- Phenolic compounds in laundry detergent, food and drink can linings and thermal paper.

We understand that Ecology has decided to move forward with its proposed regulatory approach without waiting for feedback and approval from the Washington State Legislature. In the event that the legislature does not approve each of Ecology's proposed chemical / product categories, Ecology will need to reevaluate and repropose parts or potentially all of this rulemaking. While we recognize Ecology's desire to move forward, we hope that Ecology recognizes the investment of resources not only from Ecology but also from the regulated community in furtherance of this effort. We would recommend that Ecology wait to hear from the legislature before further actions on this proposal are taken.

Our comments and recommendations focus on the first category, PFAS in aftermarket products, and more generally on a few precedent-setting issues that this proposed rule introduces. These include exemptions for replacement parts; a clarification of the definition of carpets and rugs; the need to provide CAS numbers for all PFAS chemicals subject to the rule; and Ecology's interpretation of preemption.

¹ From the manufacturers producing most vehicles sold in the U.S. to autonomous vehicle innovators to equipment suppliers, battery producers and semiconductor makers – Alliance for Automotive Innovation represents the full auto industry, a sector supporting 10 million American jobs and five percent of the economy. Active in Washington, D.C. and all 50 states, the association is committed to a cleaner, safer and smarter personal transportation future. www.autosinnovate.org.

² Available at <https://ecology.wa.gov/DOE/files/34/34868dd6-a7ea-4944-814f-010df10dde99.pdf> (hereinafter Proposed Rule).

I. Exemptions for replacement parts

The Washington State legislature has exempted motorized vehicles from designation as a priority consumer product under the Safer Products Restrictions and Reporting program:

Except as provided in (b) of this subsection, the department may not identify the following as priority consumer products under this section: . . . (vi) Motorized vehicles, including on and off-highway vehicles, such as all-terrain vehicles, motorcycles, side-by-side vehicles, farm equipment, and personal assistive mobility devices[.]³

Auto Innovators notes that this draft proposes to exclude “[p]riority consumer product repair and replacement parts manufactured before the effective date of the restriction.”⁴

However, it remains unclear to Auto Innovators how automotive replacement parts, service chemicals, and automotive accessories manufactured after the effective date of this rule would be treated. Obviously, replacement parts, accessories, and service chemicals will need to be manufactured for each model year of a vehicle well beyond the effective date of this proposed restriction. We assume that because vehicles are exempt from the scope of this program, that parts manufactured to replace parts in the original vehicle are also exempt. We request that Ecology make this clear in future iterations of this proposal or in the final rule. This would ensure consistency with federal regulations that require that replacement parts be available to repair vehicles for a minimum period of fifteen years.⁵ Clearly, consumers in the state of Washington will expect that they will be able to maintain their vehicles in safe and effective operating condition.

II. Clarification of the definition of carpets and rugs

We further request that Ecology clarify its definition of carpets and rugs to make clear that floor mats installed in vehicles and sold as replacement mats for vehicles are likewise exempt from this regulation. “Carpets and rugs” is currently defined to include: “(i) Carpets intended for indoor use or intended for outdoor use. (ii) Rugs intended for indoor use or intended for outdoor use, including carpeted mats.”⁶ Ecology further defines “intended for indoor use” to mean “a product designed primarily for use or storage inside buildings.”⁷ From this, it appears that vehicle carpets are not intended to be included; we suggest that this be explicitly clear in the definition of “carpets and rugs” itself.

We recommend the approach that California has adopted for its Safer Consumer Products Program, defining the “carpets and rugs” of interest as “any consumer product made from natural or synthetic fabric intended to be used as a floor covering inside commercial or residential buildings[.]”⁸ California additionally specifically excludes from the definition “[c]arpets and rugs intended solely for use inside airplanes, trains, ships, automobiles, light duty trucks, vans, buses, or any other vehicles, as well as aftermarket or replacement parts marketed solely for use in vehicles.”⁹ This more precise definition is being adopted by most states considering regulation of carpets and rugs containing PFAS chemicals, and excludes carpeting used in vehicles as well as replacement parts marketed solely for use in vehicles.

³ RCW 70A.350.030(5)(a).

⁴ Proposed Rule.

⁵ See 49 U.S.C. § 30120(a), (g).

⁶ Proposed Rule.

⁷ *Id.* (emphasis added).

⁸ 22 Cal. Code Regs. § 69511.4(a)(1) (emphasis added).

⁹ *Id.* at (a)(2)(b).

III. Need to provide CAS numbers for all PFAS chemicals subject to the rule

Ecology has provided CAS numbers for the chemicals proposed to be included in all other product categories except for the PFAS category. By providing CAS numbers, Ecology has made clear which chemicals, especially those within a larger class of chemicals, need to be reported.

Ecology proposes to define PFAS chemicals as follows: “Perfluoroalkyl and polyfluoroalkyl substances’ or ‘PFAS’ means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.”¹⁰ This definition is overly broad and could encompass thousands of individual chemicals, many of which have not been assessed for exposure or hazard potential and a large percentage of which have not been assigned individual CAS numbers.

We recommend that Ecology limit the scope of covered chemicals to a specified list that contains CAS numbers and make expressly clear that chemicals without CAS numbers are not subject to this chapter. By providing CAS numbers, Ecology will clearly define the universe of chemicals that require notification and further clarify reporting and restriction requirements. CAS numbers are critical to ensuring compliance with the notification requirements. Additionally, in order to provide both Ecology and the public with useful information, we suggest that if Ecology moves forward with this proposal, it is imperative that Ecology focus its activities on those PFAS chemicals that are of high concern and exclude those that have been determined to be of low concern. For example, Ecology should exclude substances with low exposure potential. This will also ensure that Ecology’s program is targeted and effective.

IV. Ecology’s interpretation of preemption

In its preliminary draft rule language, Ecology lays out the impact of federal preemption on chemicals subject to proposed rulemaking: “If either of the preemptive federal regulatory actions described in subsection (1) of this section occurs, manufacturers will, starting on the date of the relevant federal agency action, be subject to the requirements of WAC 173-337-060 [the reporting provision] with regard to the affected priority chemical in the affected priority consumer product, instead of the restriction imposed by this chapter.”¹¹

We believe this provision is overly burdensome and places a reporting requirement on the regulated community that could be duplicative of information submitted to the federal government and accessible to Ecology. We request that the proposed requirement be modified to reflect that if similar information is available from the federal government, then Ecology will access that information rather than requiring manufacturers to report it. Only if information is not available should Ecology consider a reporting requirement for actions that have been preempted by federal law.

V. Conclusion

In closing, Auto Innovators urges you to adopt these recommendations, many of which were included in our August 2022 comments to Ecology on its preliminary draft rule language for the potential new regulatory chapter, Chapter 173-337 Washington Administrative Code, Safer Products Restrictions and Reporting. Clarifying the exemption of motor vehicle replacement parts and accessories is critical. Without clarification, replacement parts could be subject to frivolous lawsuits and the ability of Washington state residents to repair their vehicles could be jeopardized. Similarly, the definition of carpets and rugs should clearly exclude automotive carpeting and mats. Our recommendation that Ecology specify CAS numbers for PFAS chemicals suggests a workable approach for identifying subject chemicals and allowing Ecology to focus on PFAS chemicals of known concern rather than a vast universe of chemicals, many of which have not been evaluated for exposure potential or toxicity. If Ecology chooses to collect information on all PFAS chemicals that fall within its broad definition, then it will need to assess the risk associated with each and every one to provide the public with meaningful

¹⁰ Proposed Rule.

¹¹ Proposed Rule.

information. And finally, we question Ecology's approach to preemption and request that Ecology avoid duplicative reporting.

We would be happy to discuss this recommendation further.

Sincerely,



Catherine M.W. Palin
Senior Attorney & Director of Environmental Policy

