

Welcome to the workshop and public hearing for the Safer Products for WA rulemaking

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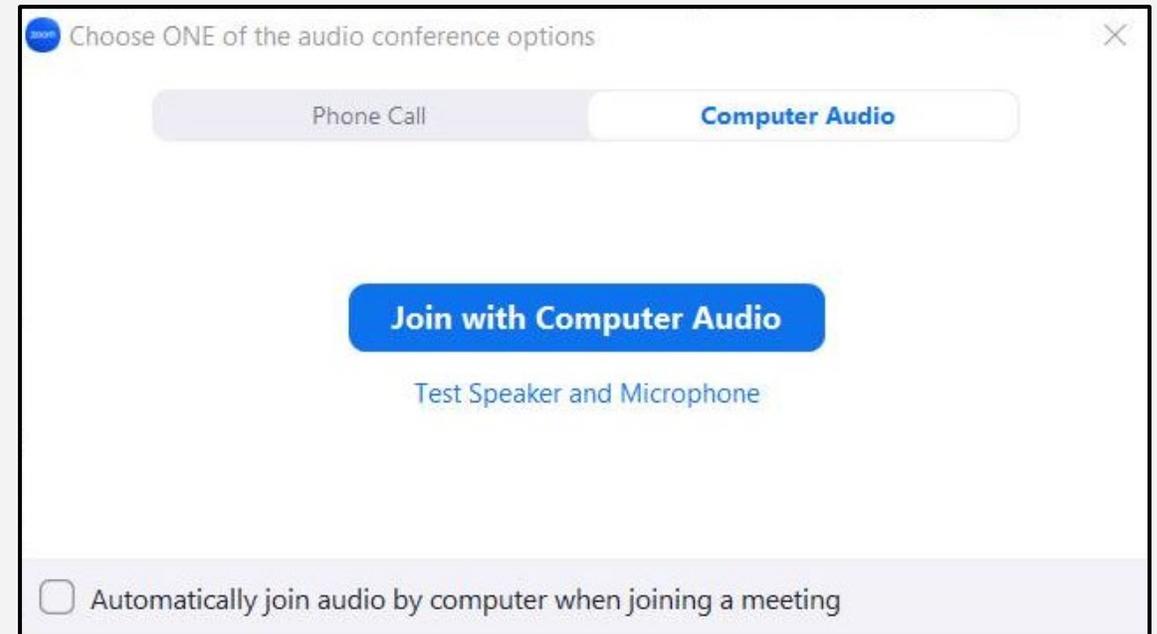
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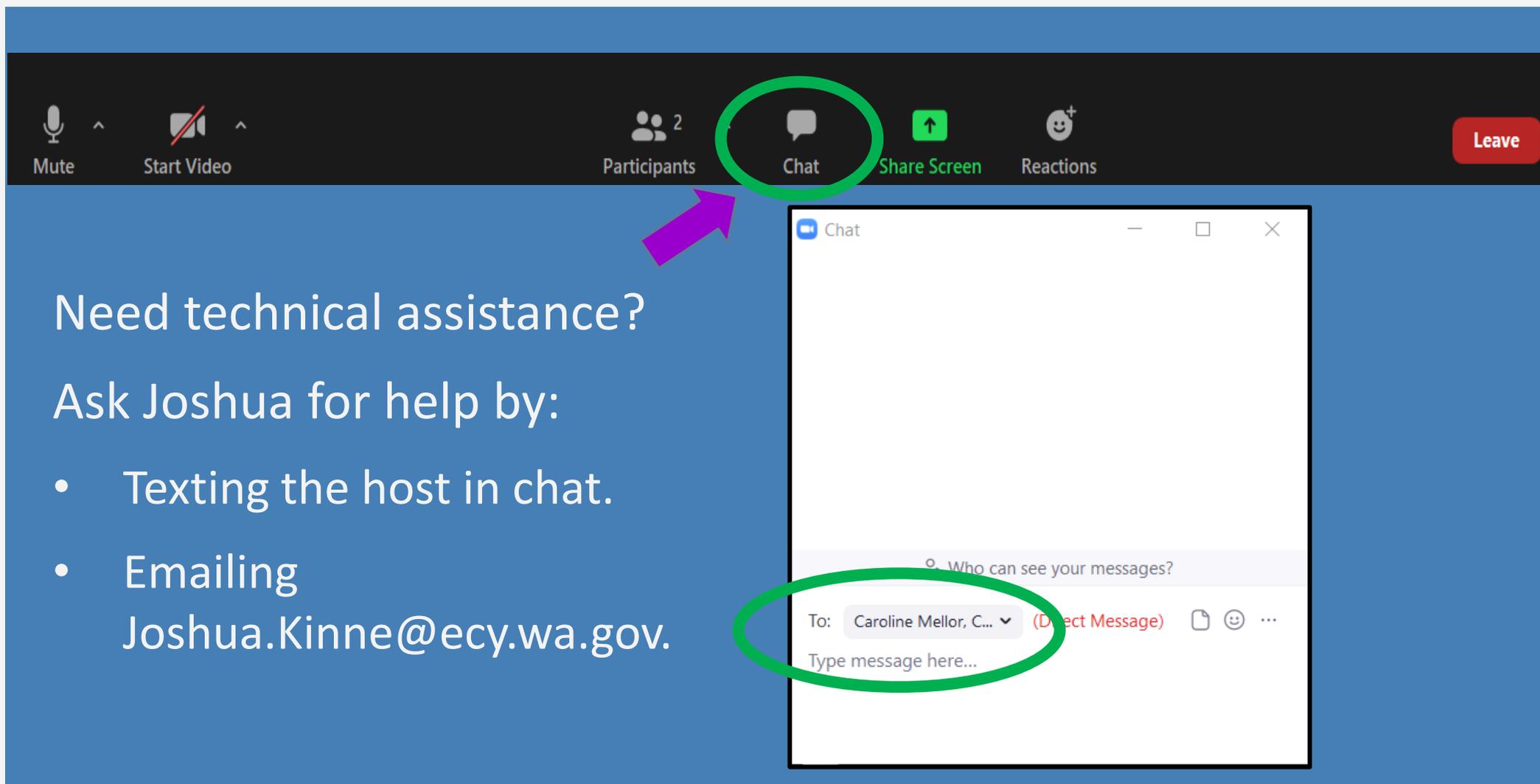


Safer Products for Washington: Workshop and Hearing for Proposed Rule

January 18 and 19, 2023



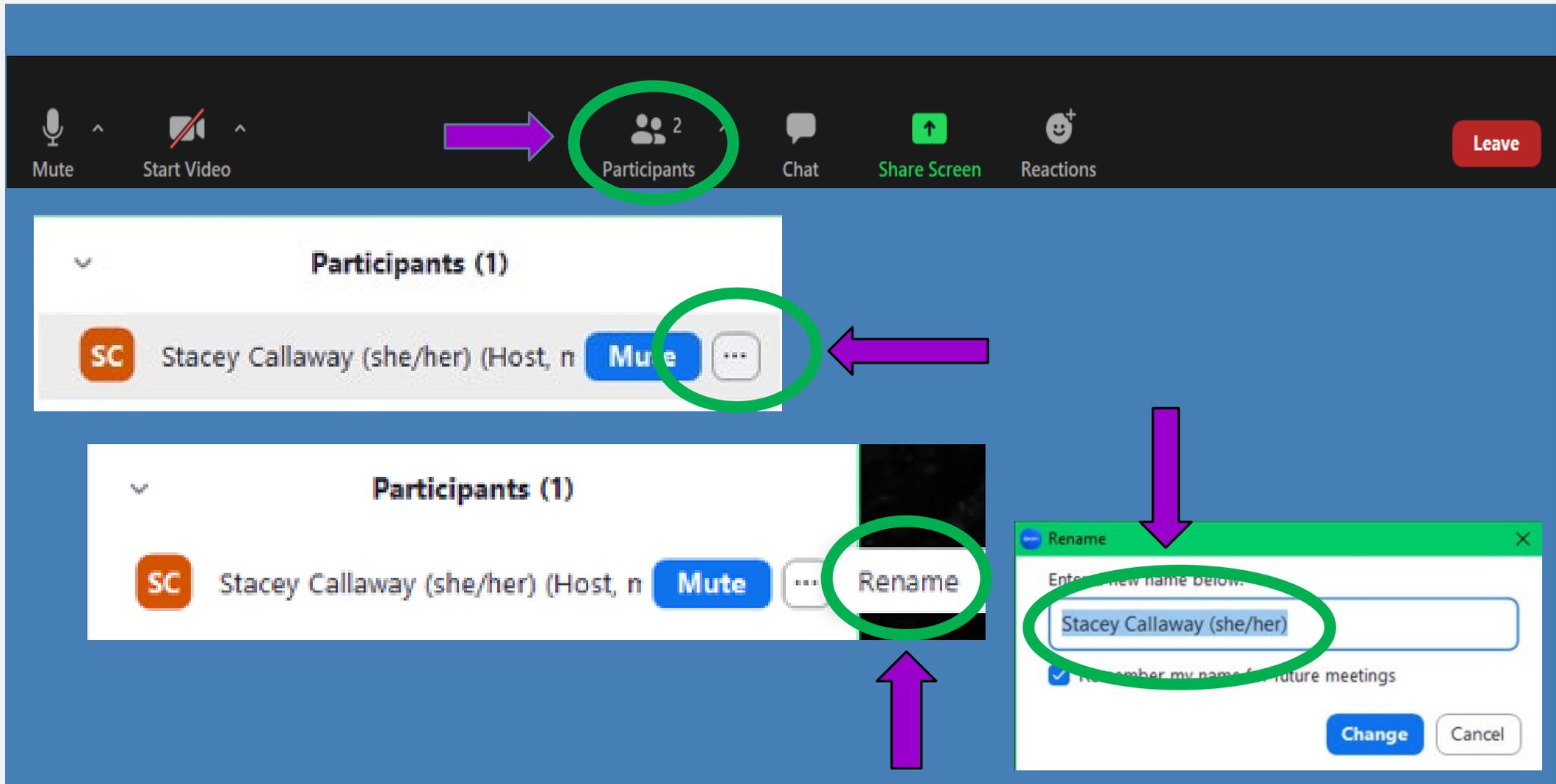
How to use the “chat” function



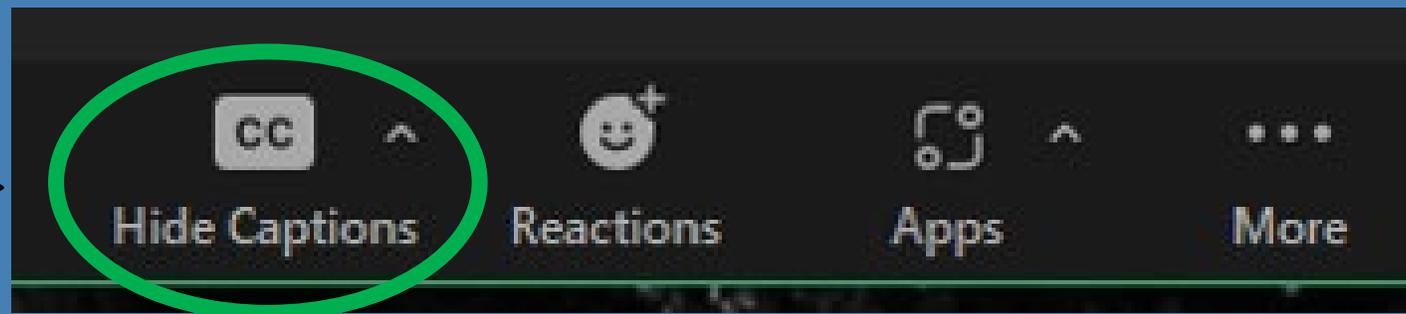
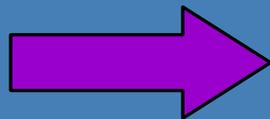
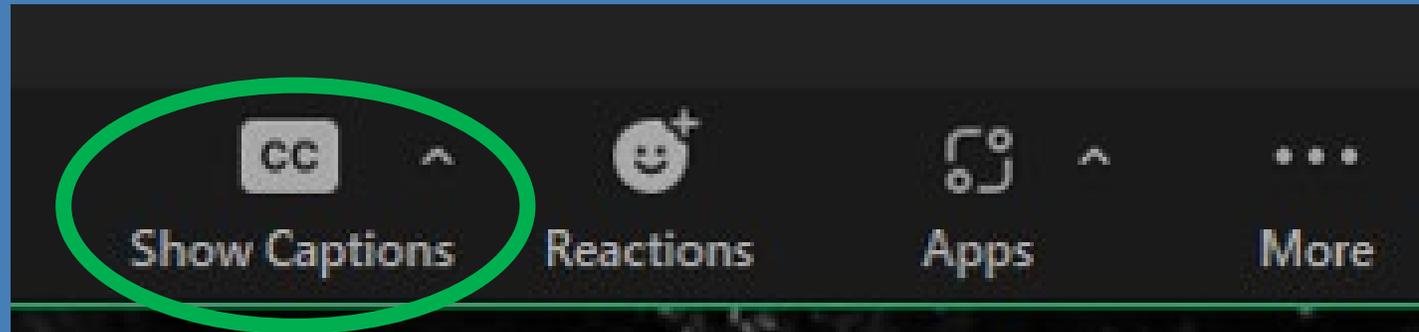
Need technical assistance?
Ask Joshua for help by:

- Texting the host in chat.
- Emailing
Joshua.Kinne@ecy.wa.gov.

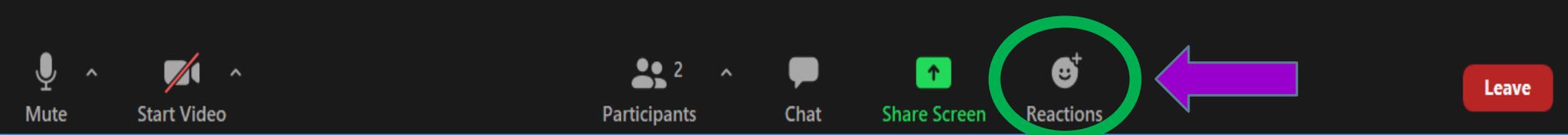
How to change your name



How to turn on captions

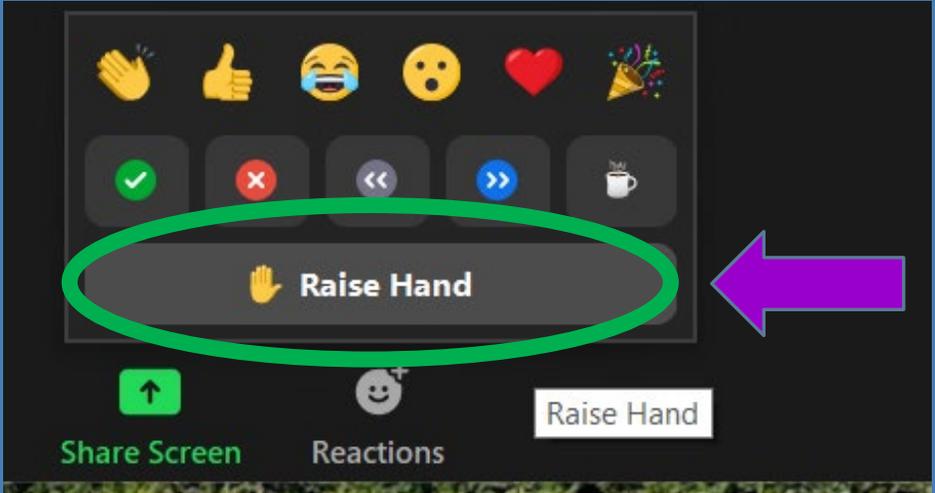


How to use the “Raise Hand” function



Mute Start Video Participants Chat Share Screen Reactions Leave

Use the raise hand function to indicate you have a question or wish to testify.



Share Screen Reactions Raise Hand

Now, let's test it.
Raise your hand if you want to testify today.



Introducing our team

- Stacey Callaway: rulemaking lead
- Chanele Holbrook: hearing officer
- Joshua Kinne: technical assistance
- Dr. Marissa Smith: lead toxicologist
- Kimberly Goetz: policy lead
- Cheryl Niemi: project lead
- Holly Davies: DOH toxicologist
- Autumn Falls: facilitator

Today's schedule

1. Presentation on the proposed rule
2. Q&A session
3. 10-minute break
4. Hearing
5. Thank you!



Announcements and next steps

- Workshops and hearings
 - January 18 at 10:00 AM
 - January 19 at 5:30 PM
- Comment period closes on **February 5, 2023**
- Final decision before June 1, 2023

Ground rules

- Silence your cell phones.
- Limit background noise when speaking.
- Use respectful language.
- Be mindful of the length of questions and testimony.
- Speak in order called.





Safer Products for Washington: Rule workshop and hearing



Workshop topics

1. Safer Products for Washington program overview
2. Rulemaking process and timeline
3. Developing the proposed rule
4. Proposed rule
5. Next steps



Section 1. Safer Products for Washington overview



Safer Products for WA background

- Implementation program
- Law signed in 2019
- Reduce toxic chemicals in consumer products
 - Working to protect:
 - People
 - Sensitive populations and species
 - The environment

Safer Products for Washington implementation process



Priority chemicals in proposed rule

Chemical class	Potential health hazards	Potential environmental hazards
PFAS	<ul style="list-style-type: none"> • Carcinogenicity • Immunotoxicity • Liver toxicity • Reproductive and developmental toxicity 	<ul style="list-style-type: none"> • Persistent • Bioaccumulative • Orca Task Force recommendation
Ortho-phthalates	<ul style="list-style-type: none"> • Endocrine disruption • Reproductive and developmental toxicity 	<ul style="list-style-type: none"> • Pervasive • Clean-up site recontamination • Orca Task Force recommendation
Flame retardants	<ul style="list-style-type: none"> • Carcinogenicity • Endocrine disruption • Neurotoxicity 	<ul style="list-style-type: none"> • Pervasive • Persistent • Bioaccumulative • Orca Task Force recommendation
Phenolic compounds	<ul style="list-style-type: none"> • Endocrine disruption • Neurotoxicity • Reproductive and developmental toxicity 	<ul style="list-style-type: none"> • Pervasive • Orca Task Force recommendation

Outreach and stakeholder involvement

Examples of outreach resources

- Three websites
- 22 webinars
- Many updates via email list
- Public comment survey
- Three public comment periods
- Focus sheets and infographics
- Blog posts, social media content, articles
- Videos in English and Spanish
- Storymaps in English and Spanish

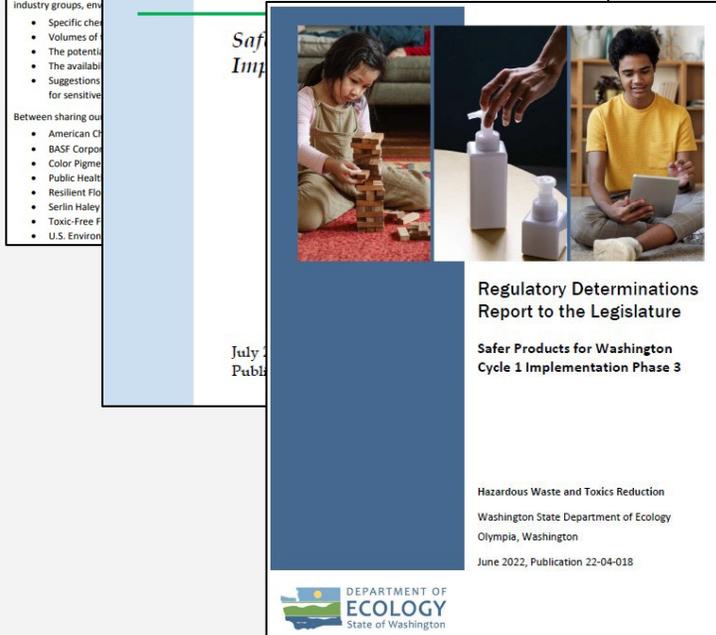
2019



2020



2022



(reports required by law)



(storymap)

Stakeholders

**Manufacturers
(small and large)**

**Environmental
advocacy groups**

Consumers

Legislators

**Industry associations
and lobbyists**

**Retail and
wholesale sellers**



**Community-based
organizations**

Public

**State and local
governments**

Phases 3 and 4 overlap

Phase 3

- Determine if regulatory actions are needed
- Submit report to Legislature (June 2022)

Phase 4

- Conduct rulemaking to implement regulatory actions
- Adopt rule (June 2023)

Regulatory actions in the report

- Restrictions on 10 chem-product combinations
- Reporting requirements on 4 chem-product combinations



Section 2. Rulemaking process and timeline

Rulemaking process

RCW 34.05 – Administrative Procedure Act

CR-101 - announcement

- Announce the start of rulemaking.
- Explain the subject and goal of the rulemaking.
- Provide an approximate timeline.

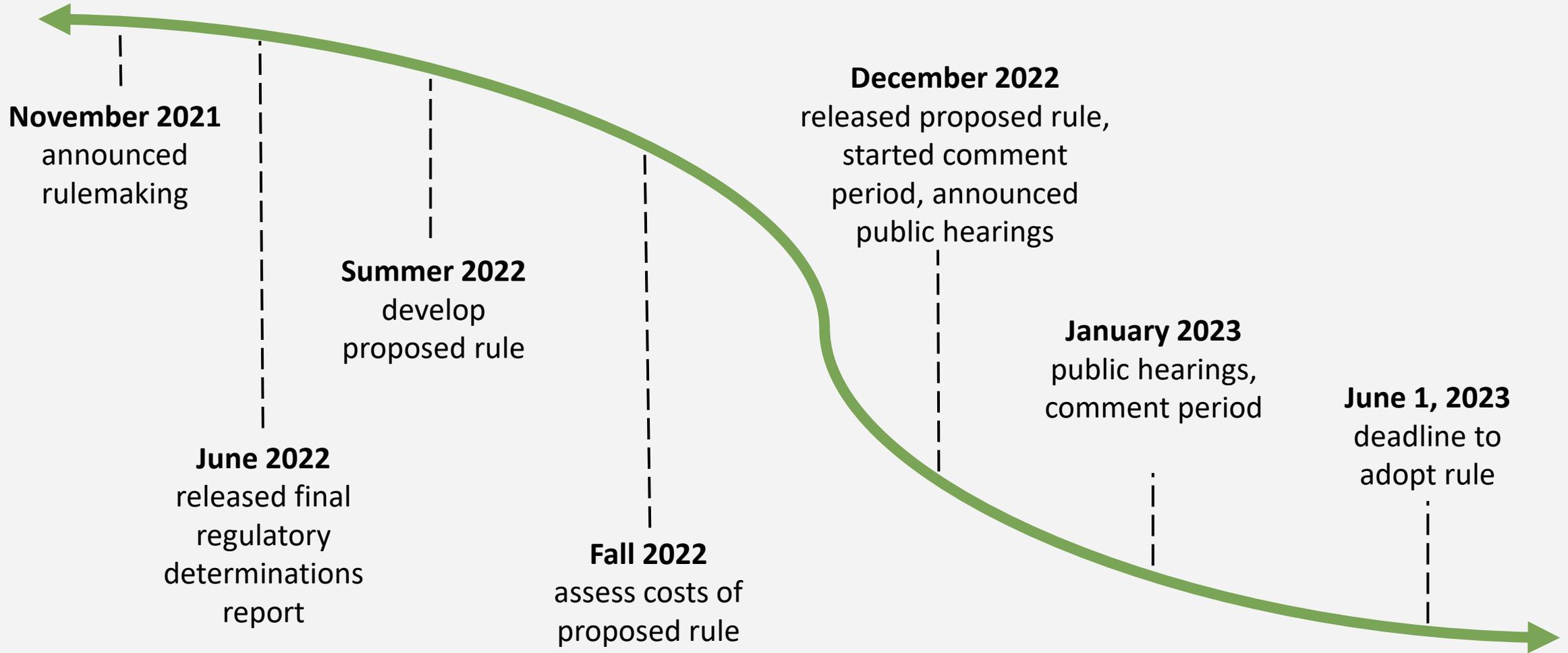
CR-102 - proposal

- Work with stakeholders.
- Develop rule requirements.
- Assess:
 - Costs and benefits.
 - Environmental impacts.
 - Least burdensome alternatives.
- Release the proposed rule.
- Host hearings and a public comment period.

CR-103 - adoption

- Review comments.
- Revise the rule based on comments.
- Respond to comments.
- Finalize econ and SEPA documents.
- Director decides to adopt or not adopt.

Rulemaking timeline





Section 3. Developing the proposed rule

Transition from report to proposed rule

Regulatory actions (3 options)

- Restriction
- Reporting
- No action

Steps to develop proposed rule

- Jun. propose regulatory actions
host webinars
- Jul. meet stakeholders
develop preliminary draft
- Aug. share preliminary draft
host webinars
informal comment period
develop formal draft
- Fall assess impacts and benefits

Preliminary regulatory analyses

Preliminary cost-benefit analysis. Least-burdensome alternative analysis.
Administrative Procedure Act determinations. Regulatory Fairness Act compliance.

Chemical Class	Cost – Low	Costs – High	Benefits – Low	Benefits – High
PFAS	\$0	\$18,300,000	\$110,000,000	\$1,252,000,000
Ortho-phthalates	\$0	\$22,000,000	\$798,000,000	\$942,000,000
Flame retardants	\$0	\$57,300,000	\$780,000,000	\$780,000,000
Bisphenols	\$0	\$12,000,000	\$2,618,000,000	\$2,618,000,000
Total	\$0	\$109,600,000	\$4,306,000,000	\$5,592,000,000



Section 4. Proposed rule

Proposed rule structure

Part A – General

- 010 Authority and purpose
- 015 Applicability
- 020 Requesting an exemption
- 025 Acronyms and definitions
- 030 Enforcement and penalties
- 035 Severability
- 040 Federal preemption
- 045 Relation to other laws and rules
- 050 Equity and environmental justice
- 055 Previously owned priority consumer products
- 060 Reporting requirements
- 065 Confidential business information

Part B – Chemicals and consumer products

- 110 PFAS
- 111 Ortho-phthalates
- 112 Flame retardants
- 113 Alkylphenol ethoxylates
- 114 Bisphenols

Applicability (section 015)

This chapter applies to any person who:

Manufactures, sells (including but not limited to wholesale, online, or retail), or distributes a priority consumer product that contains a priority chemical in Washington state.

This chapter doesn't apply to:

- Consumer products excluded from Chapter 70A.350 RCW.
- Consumer products purchased outside of Washington state.
- Consumer products transported or stored in Washington state solely for sale or distribution to consumers outside of Washington state.
- Priority consumer product repair and replacement parts manufactured before the effective date of the restriction.
- Priority consumer products refurbished with repair or replacement parts manufactured before the effective date of the restriction.
- The recycling or disposal of existing stock.

Requesting an exemption (020)

Requesting an exemption

- A person required to comply with this chapter may request an exemption from the requirements of this chapter. They must:
 - Submit a request to Ecology.
 - Provide justification.
 - Certify their request and the information they submit.
- Examples of objective factors Ecology will use to evaluate requests
 - The chemical is functionally necessary and there is no alternative.
 - It's not possible to comply with the restriction and another legally imposed requirement.
 - An unforeseen event limited the availability of alternatives.



Definitions (025)



- Consumer product
- Existing stock
- External enclosures
- Inaccessible electronic component
- Intended for indoor use
- Intended for outdoor use
- Intentionally added chemical
- Manufacturer

Federal preemption (040)

- Federal regulatory actions that could preempt the enforcement of a restriction in the rule.
 - U.S. EPA takes an action under the Toxic Substances Control Act.
 - U.S. Consumer Product Safety Commission takes an action under the Consumer Product Safety Act.
- If a federal action preempts the enforcement of a restriction in rule, the manufacturer must comply with reporting requirements instead of the restriction.



Equity and environmental justice (050)

Environmental justice (EJ) is:

Fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

Environmental justice goals

- Achieve the highest attainable environmental quality and health outcomes for all people.
- Adopt a racial justice lens.
- Engage communities meaningfully.
- Be transparent and accountable.



Previously owned products (055)

Proposed language

No person may sell or distribute a previously owned priority consumer product that they know violates a restriction in this chapter.

Ecology's goals

- Equitably reduce exposure to toxic chemicals in consumer products.
- Use best available information to reduce sales of previously owned products with priority chemicals.
- Minimize impact to resale businesses.

Does not apply to a:

- Priority consumer product that has a reporting requirement.
- Priority consumer product manufactured before the effective date of the restriction.
- Repair or replacement part manufactured before the effective date of the restriction.
- Priority consumer product refurbished with repair or replacement parts manufactured before the effective date of the restriction.

Part B – Chemicals and consumer products (110 – 114)

Sections

- 110 PFAS
- 111 Ortho-phthalates
- 112 Flame retardants
- 113 Alkylphenol ethoxylates
- 114 Bisphenols

Reporting

Applies to four chemical-product combinations.

Restrictions

- Applies to ten chemical-product combinations.
 - Seven have “intentionally added.”
 - Three have numeric limits.
- Seven include rebuttable presumptions.

Reporting requirements (060)

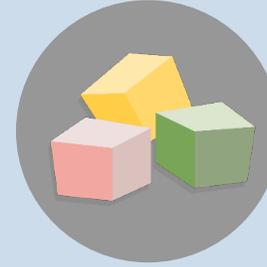
Applies to these four product categories:



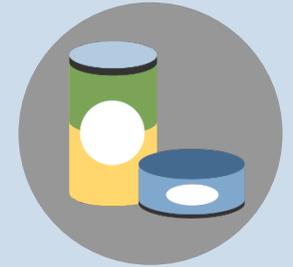
Leather and textile furniture and furnishings intended for **outdoor** use
(PFAS)



Plastic external enclosures of electric and electronic products intended for **outdoor** use
(organohalogen flame retardants)



Recreational covered wall padding made from polyurethane foam
(organohalogen and organophosphate flame retardants)



Food can linings
(bisphenols)

Reporting summaries (110, 111, 114)

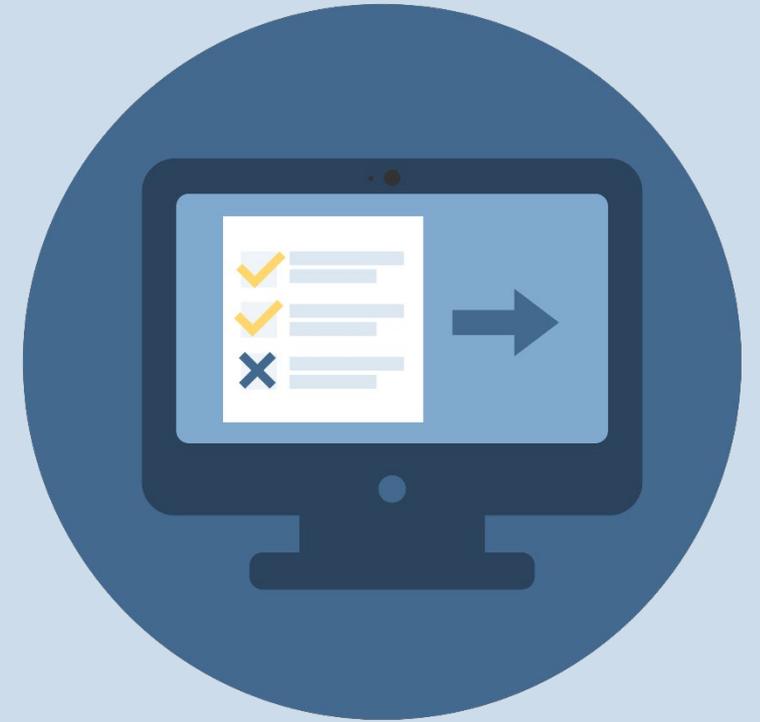
Applies to these four product categories:

Chemical	Product	Start date	Limit
PFAS	Leather and textile furniture and furnishings intended for outdoor use	2025-01-01 (report due)	<ul style="list-style-type: none"> • Intentionally added • Rebuttable presumption
Flame retardant	Electric and electronic products with external enclosures, intended for outdoor use	2025-01-01 (report due)	<ul style="list-style-type: none"> • Intentionally added • Rebuttable presumption (1,000 ppm)
Flame retardant	Recreational covered wall padding made from polyurethane foam	2025-01-01 (report due)	<ul style="list-style-type: none"> • Intentionally added • Individual or combined • Rebuttable presumption (1,000 ppm)
Bisphenol	Food can linings	2025-01-01 (report due)	<ul style="list-style-type: none"> • Rebuttable presumption • Excludes TMBPF

Reporting requirements (060)

Notification requirements

- Start collecting data on Jan. 1, 2024.
- Submit first notification by Jan. 1, 2025.
- Notify Ecology annually.
- Only report when consumer product contains an intentionally added priority chemical.
- Use the Interstate Chemicals Clearinghouse (IC2) High Priority Chemicals Data System to notify Ecology.
- Include the name of the chemical and its CAS RN (if it exists), the product, a description of the function of the chemical, and the concentration range.



Restriction summaries (110 – 114)

Chemical	Product	Start date	Limit
PFAS	Aftermarket stain- and water-resistance treatments	2025-01-01	<ul style="list-style-type: none"> • Intentionally added • Rebuttable presumption
PFAS	Carpets and rugs	2025-01-01	<ul style="list-style-type: none"> • Intentionally added • Rebuttable presumption
PFAS	Leather and textile furniture and furnishings intended for indoor use	2026-01-01	<ul style="list-style-type: none"> • Intentionally added • Rebuttable presumption
Ortho-phthalates	Fragrances in beauty products and personal care products	2025-01-01	<ul style="list-style-type: none"> • Intentionally added • Rebuttable presumption
Ortho-phthalates	Vinyl flooring	2025-01-01	<ul style="list-style-type: none"> • 1,000 ppm • Individual or combined

Restriction summaries (110 – 114)

Chemical	Product	Start date	Limit
Flame retardants	Electric and electronic products with external enclosures, intended for indoor use	2025-01-01 2026-01-01 2027-01-01	<ul style="list-style-type: none"> • Intentionally added • Rebuttable pres. (1,000 ppm)
Flame retardants	Other recreational products made from polyurethane foam	2025-01-01	<ul style="list-style-type: none"> • Intentionally added • Individual or combined • Rebuttable pres. (1,000 ppm)
Alkylphenol ethoxylates	Laundry detergent	2025-01-01	<ul style="list-style-type: none"> • 1,000 ppm • Individual or combined
Bisphenols	Drink can linings	2025-01-01	<ul style="list-style-type: none"> • Rebuttable presumption • Excludes TMBPF
Bisphenols	Thermal paper	2025-01-01	<ul style="list-style-type: none"> • 200 ppm • Individual only

Rebuttable presumption

Overview

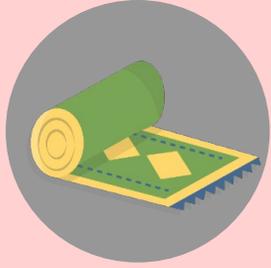
- Applies to 11 chemical-product combinations. Both restrictions and reporting requirements.
- Language tailored to each chemical-product combination.
- Example process
 - Ecology tests regulated PFAS product.
 - Ecology detects total fluorine in a regulated PFAS product and notifies manufacturer.
 - Manufacturer may rebut the presumption or work with Ecology to get to compliance.

Example language

Ecology presumes the detection of total fluorine indicates the intentional addition of PFAS.

Manufacturers may rebut this presumption by submitting a statement to Ecology that includes the following information.

- The name and address of the person submitting the statement.
- A statement that PFAS were **not** intentionally added. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that PFAS were not intentionally added.



PFAS (110)



Product	Start date	Regulatory action	Limit
Aftermarket stain- and water-resistance treatments	2025-01-01	Restriction	<ul style="list-style-type: none">• Intentionally added• Rebuttable presumption
Carpets and rugs	2025-01-01	Restriction	<ul style="list-style-type: none">• Intentionally added• Rebuttable presumption
Leather and textile furniture and furnishings intended for indoor use	2026-01-01	Restriction	<ul style="list-style-type: none">• Intentionally added• Rebuttable presumption
Leather and textile furniture and furnishings intended for outdoor use	2025-01-01 (report due)	Reporting	<ul style="list-style-type: none">• Intentionally added• Rebuttable presumption

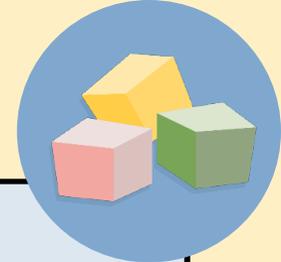


Ortho-phthalates (111)



Product	Start date	Regulatory action	Limit
Fragrances in beauty products and personal care products	2025-01-01	Restriction	<ul style="list-style-type: none">• Intentionally added• Rebuttable presumption
Vinyl flooring	2025-01-01	Restriction	<ul style="list-style-type: none">• 1,000 ppm• Individual or combined

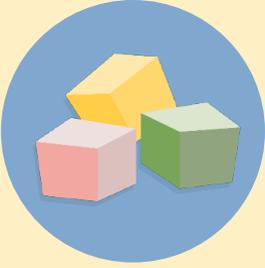
Flame retardants (112)



Product	Start date	Regulatory action	Limit
Electric and electronic products with plastic external enclosures, intended for indoor use	2025-01-01 2026-01-01 2027-01-01	Restriction	<ul style="list-style-type: none"> • Intentionally added • Rebuttable presumption (1,000 ppm)
Electric and electronic products with plastic external enclosures, intended for outdoor use	2025-01-01 (report due)	Reporting	<ul style="list-style-type: none"> • Intentionally added • Rebuttable presumption (1,000 ppm)
Recreational covered wall padding made from polyurethane foam	2025-01-01 (report due)	Reporting	<ul style="list-style-type: none"> • Intentionally added • Individual or combined • Rebuttable presumption (1,000 ppm)
Other recreational products made from polyurethane foam	2025-01-01	Restriction	<ul style="list-style-type: none"> • Intentionally added • Individual or combined • Rebuttable presumption (1,000 ppm)



Flame retardants (112)



Electric and electronic products with plastic external enclosures, intended for **indoor** use

Compliance schedules

- Jan. 1, 2025 TVs and electronic displays
- Jan. 1, 2026 Group 1
- Jan. 1, 2027 Group 2

Group definitions

- Group 1 = a person or entity whose gross sales equal or exceed 1 billion dollars in 2022.
- Group 2 = a person or entity whose gross sales are less than 1 billion dollars in 2022.

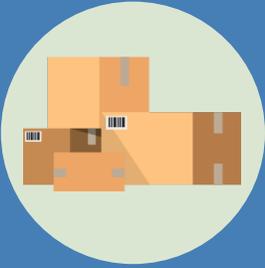


Alkylphenol ethoxylates (113)

Product	Start date	Regulatory action	Limit
Laundry detergent	2025-01-01	Restriction	<ul style="list-style-type: none">• 1,000 ppm• Individual or combined

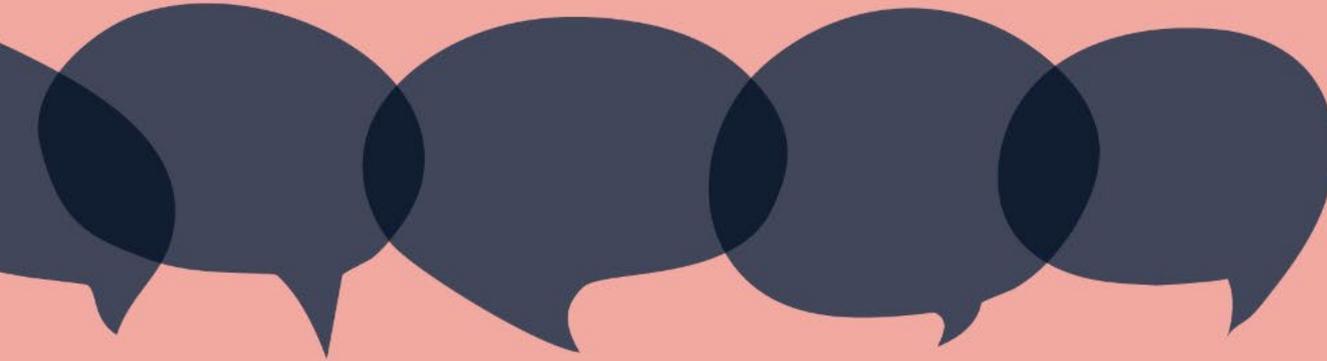


Bisphenols (114)



Product	Start date	Regulatory action	Limit
Drink can linings	2025-01-01	Restriction	<ul style="list-style-type: none">• Rebuttable presumption• Excludes TMBPF
Food can linings	2025-01-01 (report due)	Reporting	<ul style="list-style-type: none">• Rebuttable presumption• Excludes TMBPF
Thermal paper	2025-01-01	Restriction	<ul style="list-style-type: none">• 200 ppm• Individual only

Next steps

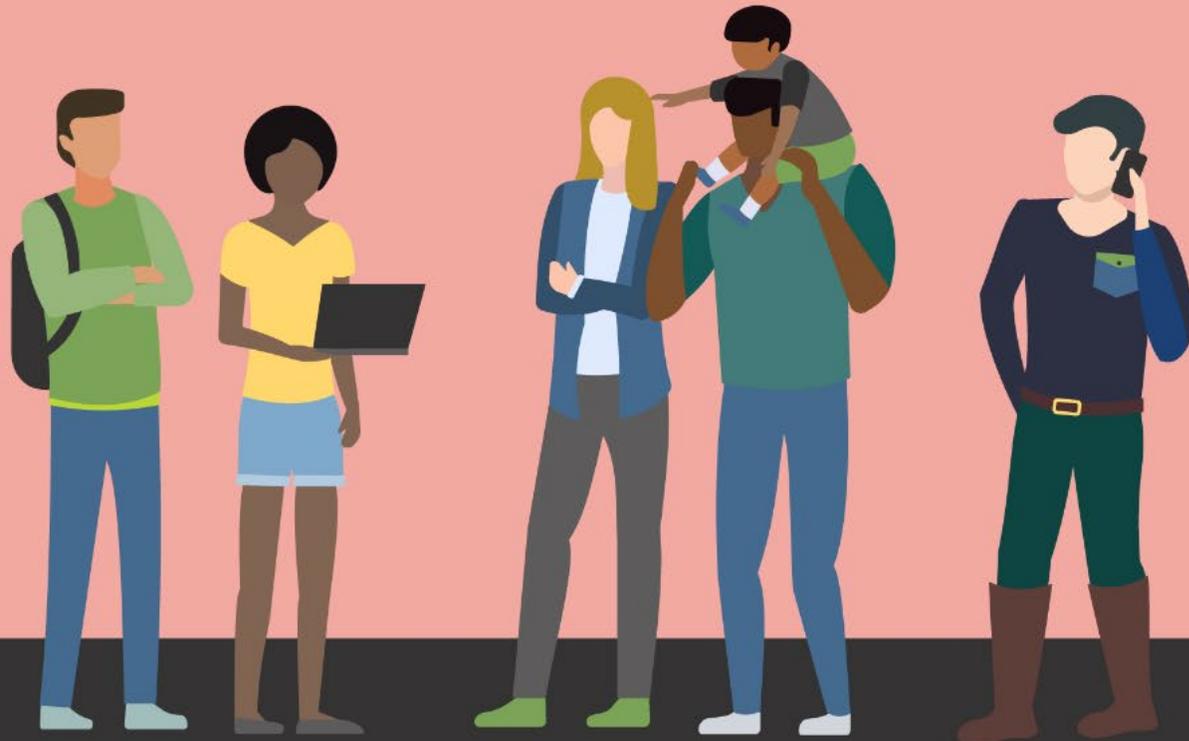


Now until **February 5**, share feedback by:

- Providing verbal testimony at today's hearing.
- Using our online comment form.
- Emailing our team.

When the comment period closes, we'll:

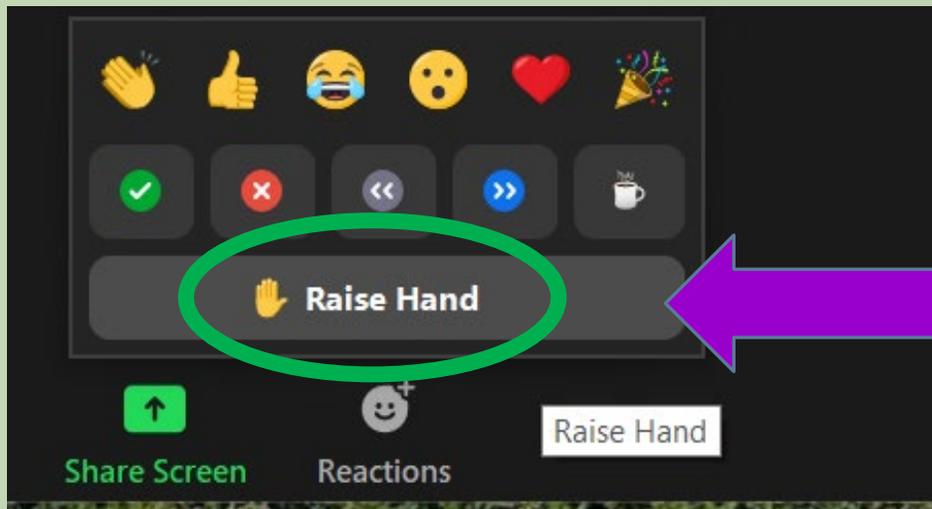
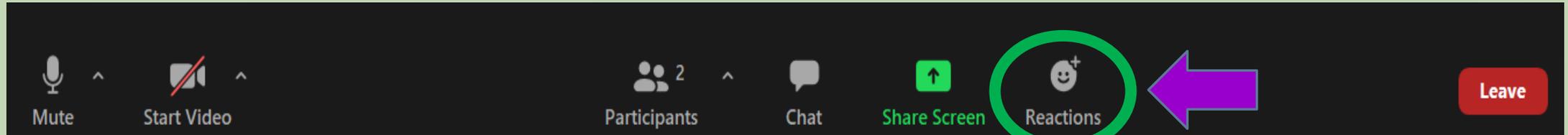
- Review comments and revise the proposed rule.
- Respond to comments and develop the CES.
- Finalize the econ and SEPA analyses.
- Present to the ECY director.
- Deadline to adopt = June 1, 2023



Q&A session guidelines

- Keep questions focused on the proposed rule and the rulemaking process.
- Save formal testimony for the hearing. Up next.
- If you use the chat, use the drop down to ask questions of “All Panelists.”
- Respect all voices and don’t interrupt.
- Thank you!

How to use the “raise hand” function

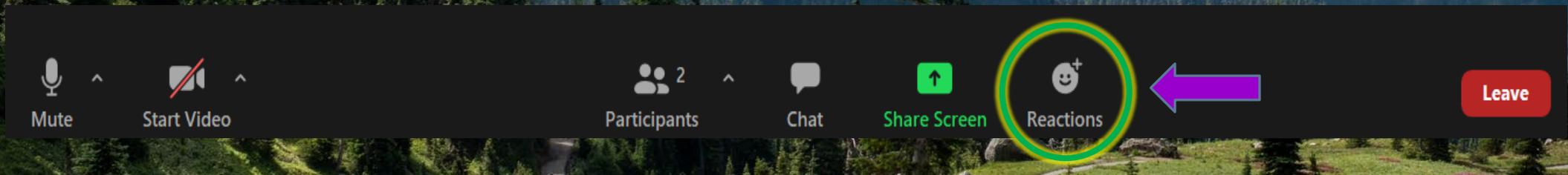


Locate the **Reaction** button in your toolbar.

Click **Raise Hand**.

Questions

Ask questions now or email our team:
SaferProductsWA@ecy.wa.gov



Mute Start Video Participants 2 Chat Share Screen Reactions Leave

The image shows a Zoom meeting control bar with several icons. The 'Reactions' icon, which is a smiley face with a plus sign, is circled in green and has a purple arrow pointing to it from the right. Other icons include a microphone for 'Mute', a video camera for 'Start Video', a group of people for 'Participants' (with a '2' next to it), a speech bubble for 'Chat', a green square with an upward arrow for 'Share Screen', and a red button for 'Leave'.



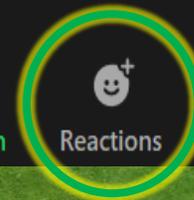
Let's take a 10-min. break



DEPARTMENT OF
ECOLOGY
State of Washington

Public hearing

Limit testimony to 3 min.



Submitting written comments

Online

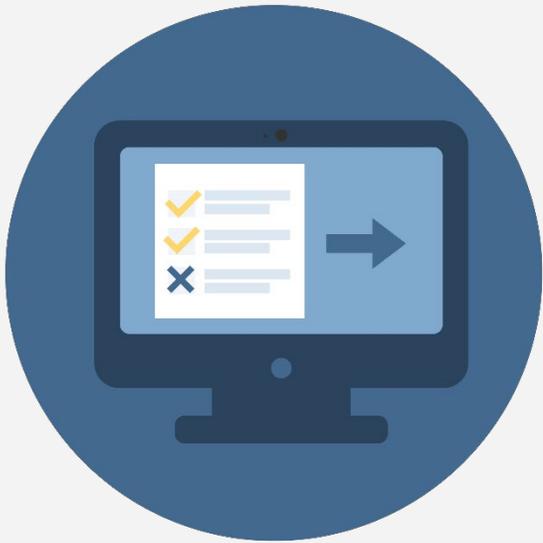
<https://hwtr.ecology.commentinput.com/?id=EPWsm>

Mail to:

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

Comment due February 5

Thank you for joining us!



SaferProductsWA@ecy.wa.gov



ecology.wa.gov/Safer-Products-WA



Chapter 70A.350 RCW