

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Health Authority- Public Health Division

333

Agency and Division

Administrative Rules Chapter Number

Adoption of rules to implement the Toxic Free Cosmetics Program (SB 546, 2023)

Rule Caption

Statutory Authority: ORS 431A.335

Other Authority:

Stats. Implemented: ORS 431A.330-431A.349

Need for the Rule(s): The 2023 Oregon State Legislature passed Senate Bill (SB) 546 (Oregon Laws 2023, chapter 575) establishing the Toxic Free Cosmetics Program. ORS 431A.335 directed the Oregon Health Authority (OHA) to develop rules to implement this new program.

Documents Relied Upon, and where they are available:

- SB 546: <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB546>
- ORS 431A.330-431A.349: https://www.oregonlegislature.gov/bills_laws/ors/ors431A.html

Statement Identifying How Adoption of Rule(s) Will Affect Racial Equity in This State:

SB 546 (Oregon Laws 2023, chapter 575) prohibits the sale of cosmetics that contain certain chemicals known to cause negative health outcomes. Some of these chemicals are commonly found in products used primarily in communities of color, including formaldehyde, mercury, and lead. Formaldehyde is commonly used in hair straightening products, mercury is found in skin-lightening creams, and lead has been found in hair extensions/braids. Adopting rules to implement a regulatory program that bans the sale of cosmetic products that contain these chemicals will prevent exposure and improve health outcomes in communities of color and improve racial equity in Oregon.

In addition to the prohibited chemicals, SB 546 also directs OHA to develop a list of high-priority chemicals of concern used in cosmetic products. Manufacturers of cosmetic products that contain one or more chemicals on this list will be required to include a notice for Oregon consumers on the manufacturer's website informing them of the potential health effects associated with the chemical(s) in their product. This will allow consumers to be better informed about the products that they purchase. These rules require manufacturers to link to the OHA's Toxic Free Cosmetics website, where additional information will be available in multiple languages and meet accessibility requirements.

Many professionals working as beauticians, estheticians, and hair stylists are people of color, immigrants, or women owned small businesses, and they may be disproportionately affected by these rules.

Fiscal and Economic Impact:

Manufacturing companies that produce and sell cosmetic products that contain prohibited chemicals will experience an economic loss, as they will not be able to sell their product in Oregon. The manufacturer will be required to remove prohibited chemicals and reformulate their cosmetic products if they would like to continue selling their products in Oregon. This reformulation is likely to come at a cost to the manufacturer.

Professions that currently utilize cosmetics banned by these regulations, including beauticians, estheticians, and hair stylists, will need to find alternative products to do their job. These products may have higher costs and may not be as readily available. Consumers will have fewer options to choose from when purchasing cosmetic products, and the remaining options may come at a higher cost.

This statute also directs OHA to develop a list of high-priority chemicals of concern used in cosmetic products. This list is to be adopted into rule and must be revised every three years. Manufacturers producing cosmetics that contain one or more chemicals on the list will be required to post notifications on their website containing health warnings about the chemical(s) of concern in their product. Adding this notification will require staff time and may have a negative impact on the number of products sold by the company.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): OHA will be solely responsible for implementing and enforcing the Toxic Free Cosmetics Program. The Oregon Legislature provided position authority (0.75 FTE) and a budget of \$270,392 per biennium to implement this program. This budget covers personnel costs, services and supplies, legal costs, toxicologist consultation, and contracting costs with analytical laboratories. No other units of government are expected to be impacted by these rules. Consumers of cosmetic products will be required to find alternative products which may not be readily available and/or come at an increased cost.

2. Cost of compliance effect on small business (ORS 183.336): ORS 183.310(10) defines small business as "a corporation, partnership, sole proprietorship or other legal entity formed for the purpose of making a profit, which is independently owned and operated from all other businesses, and which has 50 or fewer employees."

- a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

These rules will impact over 4,500 *businesses in Oregon that provide hair, nail, and skin care services (beauticians, estheticians, hair stylists, etc.). It will also impact Oregon businesses that manufacture cosmetics that contain chemicals on the prohibited list. There are between 24-30 ** cosmetics and personal care manufacturing companies headquartered or operating in Oregon. It is unknown how many of these companies are considered small businesses or if they utilize chemicals prohibited by these regulations.

- [PoiData.io](#) (Skin Care & Aesthetic Services) & [BYTE SCRAPER](#) (Nail Salons)
- ** [PoiData.io](#) (cosmetic Manufacturers) & [Thomasnet](#) (Personal Care Product Suppliers & Manufacturers)

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

Companies that manufacture cosmetic products containing prohibited chemicals will be required to remove those products from sale in Oregon. Manufacturers will also be required to notify consumers if their product contains any chemicals listed on the high-priority chemicals of concern for use in cosmetics. This notification must be provided on the manufacturer's website, requiring staff time to set up the website to display the notification.

c. Equipment, supplies, labor and increased administration required for compliance:

Manufacturers will not be able to sell products that contain prohibited chemicals in Oregon, which will have a negative impact on sales. Staff will be required to shift delivery of prohibited products away from the Oregon market and will need to ensure online purchases are not allowed in the state. Manufacturers will need to include notifications on their websites regarding products that contain high-priority chemicals of concern for use in cosmetics. This will require staff time to set up and maintain.

How were small businesses involved in the development of this rule?

Two small businesses participated in the Rule Advisory Committee to develop the Oregon Administrative Rules to implement the regulation.

Administrative Rule Advisory Committee consulted?: Yes.

If not, why?:

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