

Oregon's TOXIC COSMETIC PRODUCT Act (SB546)

431A.330 Definitions. As used in ORS 431A.330 to 431A.349:

(1) "Chemical" means

- (a) A substance with a distinct molecular composition and the breakdown products of the substance that form through decomposition, degradation or metabolism; or
- (b) A group of structurally related substances and the breakdown products of the substances that form through decomposition, degradation or metabolism.

(2) "Class of chemicals" means a group of chemicals that are related or similar based on their structure, use, physical property, radiological property or other factors.

(3) "Contaminant" means trace amounts of chemicals that are incidental to manufacturing and that serve no intended function in the product component, including but not limited to:

- (a) Unintended by-products of chemical reactions during the manufacture of the product component;
- (b) Trace impurities in feedstock;
- (c) Incompletely reacted chemical mixtures; and
- (d) Degradation products

(4)(a) "Cosmetic product" means an article intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance, and any article intended for use as a component of such an article.

(b) "Cosmetic product" includes cosmetics marketed to professionals.

(c) "Cosmetic product" does not include:

- (A) Soap;
- (B) Dietary supplements; or
- (C) Food and drugs regulated by the United States Food and Drug Administration.

(5) "De minimis level" means:

- (a) For a chemical that is an intentionally added chemical, the practical quantification limit; or
- (b) For a chemical that is a contaminant, a concentration of 100 parts per million.

(6) "Formaldehyde releasing agent" means a chemical that releases formaldehyde.

(7) "Intentionally added chemical" means a chemical in a product that serves an intended function in the product component

(8)(a) “Manufacturer” means any person that produces a cosmetic product or an importer or domestic distributor of a cosmetic product.

(b) “Manufacturer” does not mean:

(A) A retailer that sells to consumers cosmetic products produced by a third party.

(B) A grocery wholesaler or grocery retailer that contracts with a third party to produce cosmetic products on behalf of and under the brand of the grocery wholesaler or grocery retailer.

(c) For the purposes of this subsection, “importer” means the owner of the product.

(9) “Ortho-phthalates” means esters of ortho-phthalic acid.

(10) “Perfluoroalkyl and polyfluoroalkyl substances” means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

(11) “Practical quantification limit” means the lowest concentration of a chemical that can be reliably measured within specified limits of precision, accuracy, representativeness, completeness and comparability during routine laboratory operating conditions. [2023 c.575 §1]

431A.335 List of high priority chemicals of concern in cosmetic products; practical quantification limits.

(1)(a) The Oregon Health Authority shall adopt by rule and maintain a list of high priority chemicals of concern used in cosmetic products and practical quantification limits for each of those chemicals.

(b) The authority may include a class of chemicals on the list. If the authority includes a class of chemicals on the list, the authority may exclude from the list specific members of the class of chemicals that do not share the same hazards as the other members of the class of chemicals.

(2) In adopting by rule the practical quantification limits for chemicals or classes of chemicals on the list, the authority shall consider guidance developed by the State of Washington and other federal, state, international and nongovernmental organizations with the applicable expertise.

(3) The authority shall post the list of high priority chemicals on its website. For each high priority chemical or class of high priority chemicals on the list, the authority shall post information regarding the known health impacts associated with exposure to the chemical or class of chemicals.

(4) The authority shall review and revise the list of high priority chemicals every three years. In completing the revisions under this subsection, the authority:

(a) Shall consider adding or removing a chemical or class of chemicals from the list of high priority chemicals if the chemical or class of chemicals is added to or removed from a list maintained by another state agency, another state or a federal agency that the authority has identified by rule as a list intended to identify high priority chemicals; and

(b) May remove a chemical or class of chemicals from the list of high priority chemicals if the authority determines that the chemical or class of chemicals is no longer being used in cosmetic products.

(5) The authority shall update the list of high priority chemicals on its website within one year after the date on which a chemical or class of chemicals is added to or removed from the list. [2023 c.575 §2]

Note: 431A.335 becomes operative January 1, 2027. See section 6, chapter 575, Oregon Laws 2023.

431A.340 Manufacturer notice requirements. A manufacturer of a cosmetic product sold or offered for sale in this state that contains a chemical included on the list adopted and maintained under ORS 431A.335 in an amount at or above a de minimis level shall include a notice for Oregon consumers on the manufacturer's website. The notice must contain:

(1) Information that satisfies all of the labeling requirements pursuant to the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq. and the federal Fair Packaging and Labeling Act, 15 U.S.C. 1451 et seq.; and

(2) A list of chemicals or classes of chemicals intentionally added to the product if the chemicals or classes of chemicals are identified by the authority as:

(a) A chemical or class of chemicals on the list of high priority chemicals of concern used in cosmetic products adopted and maintained under ORS 431A.335; or

(b) A chemical or class of chemicals identified by a state agency, another state, a federal agency or an accredited research university, or by other information deemed authoritative by the Oregon Health Authority on the basis of credible scientific evidence, as known to:

(A) Harm the normal development of a fetus or child or cause other developmental toxicity;

(B) Cause cancer, genetic damage or reproductive harm;

(C) Disrupt the endocrine system;

(D) Damage the nervous system, immune system or organs or cause other systemic toxicity;

(E) Be persistent, bioaccumulative and toxic; or

(F) Be very persistent and very bioaccumulative as determined by the authority by rule. [2023 c.575 §3]

Note: 431A.340 becomes operative January 1, 2027. See section 6, chapter 575, Oregon Laws 2023.

431A.345 Prohibition on certain intentionally added chemicals or classes of chemicals.

(1) A manufacturer may not knowingly manufacture, sell, offer for sale, distribute for sale or distribute for use in this state any cosmetic product that contains any of the following intentionally added chemicals or classes of chemicals above the practical quantification limit:

- (a) Ortho-phthalates;
- (b) Perfluoroalkyl and polyfluoroalkyl substances;
- (c) Formaldehyde (CAS Registry Number 50-00-0) and formaldehyde releasing agents;
- (d) Methylene glycol (CAS Registry Number 463-57-0);
- (e) Mercury and mercury compounds (CAS Registry Number 7439-97-6);
- (f) Triclosan (CAS Registry Number 3380-34-5);
- (g) m-Phenylenediamine and its salts (CAS Registry Number 108-45-2); and
- (h) o-Phenylenediamine and its salts (CAS Registry Number 95-54-5).

(2) A manufacturer may not knowingly manufacture, sell, offer for sale, distribute for sale or distribute for use in this state any cosmetic product that contains lead or lead compounds (CAS Registry Number 7439-92-1) at 10 parts per million or above, or as otherwise determined by the Oregon Health Authority by rule.

(3) Notwithstanding ORS 431A.330 (4)(c)(C), the prohibition on chemicals under this section applies to cosmetic products even if the product contains drug ingredients regulated by the United States Food and Drug Administration. [2023 c.575 §4]

Note: 431A.345 becomes operative January 1, 2027. See section 6, chapter 575, Oregon Laws 2023.

431A.349 Civil penalty for violation of ORS 431A.340 or 431A.345; rules; statements of compliance.

(1) The Oregon Health Authority may impose a civil penalty on a manufacturer of cosmetic products for a violation of any provision of ORS 431A.340 or 431A.345.

(2) For purposes of assessing civil penalties under this section, a violation consists of a single course of conduct with regard to an entire cosmetic product line that is sold or offered for sale in this state.

(3) The authority shall adopt by rule a schedule of civil penalties for violations of ORS 431A.340 or 431A.345. A civil penalty may not exceed \$5,000 for the first violation. A civil penalty may not exceed \$10,000 for the second and each subsequent violation.

(4) In imposing a penalty under this section, the authority shall consider the following factors:

(a) The past history of the manufacturer incurring a penalty in taking all feasible steps or following all feasible procedures necessary or appropriate to correct any violation.

(b) Any prior violations of statutes, rules, orders or permits pertaining to high priority chemicals of concern used in cosmetic products or the chemicals or classes of chemicals listed in ORS 431A.345.

(c) The gravity and magnitude of the violation.

- (d) Whether the violation was a sole event, repeated or continuous.
- (e) Whether the violation was a result of an unavoidable accident, negligence or an intentional act.
- (f) The violator's cooperativeness and efforts to correct the violation.
- (g) The economic and financial conditions of the manufacturer incurring a penalty.

(5) If the authority has reason to believe that a cosmetic product that contains a high priority chemical of concern used in cosmetic products is being sold or offered for sale in this state in violation of ORS 431A.340, the authority may request that the manufacturer provide a statement of compliance on a form provided by the authority. The manufacturer must submit the statement of compliance within 10 days after receipt of a request. To prove compliance with ORS 431A.340, the manufacturer must:

- (a) Show that the cosmetic product does not contain the high priority chemical of concern used in cosmetic products at or above a de minimis level; or
- (b) Show that the manufacturer complied with the notice requirements of ORS 431A.340.

(6) If the authority has reason to believe that a cosmetic product that contains a chemical or class of chemicals listed in ORS 431A.345 is being manufactured, sold, offered for sale, distributed for sale or distributed for use in this state in violation of ORS 431A.345, the authority may request that the manufacturer provide a statement of compliance on a form provided by the authority. The manufacturer must submit the statement of compliance within 10 days after receipt of a request. To prove compliance with ORS 431A.345, the manufacturer must show that the cosmetic product does not contain the intentionally added chemicals or class of chemicals listed in ORS 431A.345 above the practical quantification limit. [2023 c.575 §5]