

August 31, 2022

Department of Ecology  
Washington State  
[SaferProductsWA@ecy.wa.gov](mailto:SaferProductsWA@ecy.wa.gov)

RE: Preliminary Draft Rule Language for a potential new chapter (Chapter 173-337 Washington Administrative Code [WAC], Safer Products Restrictions and Reporting)

To Whom it May Concern:

On behalf of the American Apparel & Footwear Association (AAFA), I am providing these comments on the Preliminary Draft Rule Language for a potential new chapter (Chapter 173-337 Washington Administrative Code [WAC], Safer Products Restrictions and Reporting), particularly as it relates to Perfluoroalkyl and polyfluoroalkyl substances (PFAS).

AAFA is the nation's leading trade association representing apparel, footwear, and other sewn products companies, and their suppliers, which compete in the global market. Representing more than 1,000 world famous name brands. AAFA is the trusted public policy and political voice of the apparel and footwear industry, its management, and shareholders, its three million U.S. workers, and its contribution of more than \$350 billion in annual U.S. retail sales. Our members do business in Washington State, throughout the United States, and globally, providing us a comprehensive perspective on how to implement successful and effective chemical management programs for consumer goods.

While the preliminary draft rule language does not directly affect the apparel and footwear industry, 1) consumers do use aftermarket stain- and water-resistance treatments on our products and 2) the preliminary draft rule will establish a precedent for future rulemakings which may include apparel and footwear.

AAFA fully supports the intent of the preliminary draft rule. However, unless certain changes are made, the preliminary draft rule will have many unintended consequences including market disruption, economic loss to businesses and to the workers they employ.

**AAFA offers recommendations that, if adopted, would make this preliminary draft rule workable, stronger, more effective, and provide a science-based approach that will put us on a path to bring safe and more sustainable alternatives online in an orderly manner.**

We deploy our association's extensive expertise in trade, brand protection, supply chain management, and manufacturing to help our members navigate the complex regulatory environment, lower costs, and grow their sustainability and product safety efforts. With our members engaged in the production and sale of clothing and footwear, we are on the front lines of product safety. It is our members who design and execute the quality and compliance programs that stitch product safety into every garment and shoe we make. To support our members in this effort, AAFA has taken the lead in educating our industry through alerts, webinars, and conferences on the development, interpretation, and implementation of product safety standards and regulations.

The preliminary draft rule would ban the use of the entire class of PFAS chemicals in the three listed priority products by January 1, 2025. Although the preliminary draft rule presents an admirable goal, it lacks the details or sufficient time horizon needed to effectively implement a phaseout of per- and poly-fluoroalkyl substances (“PFAS”).

AAFA and our members are proud advocates for regulatory requirements that can effectively protect human health and the environment. Indeed, many of our members routinely exceed regulatory requirements, and many are already in the process of phasing out the use of intentionally added PFAS. But this is not an overnight process. Companies must implement new testing regimes that can be expensive to design as PFAS consumer products testing remains in its infancy. Companies must also responsibly deal with existing inventory, even in the absence of federal or state direction on what should be done with such articles. And companies must change supply chain processes to achieve compliance for the wide range of PFAS chemicals and uses and ensure that new alternatives are indeed safe. These changes take years to effectively accomplish – particularly as it is happening in multiple industries at the same time – and the preliminary draft rule does not provide the runway necessary to implement those changes.

The preliminary draft rule sets a strict effective date of January 1, 2025. Simply put, manufacturers, retailers, and others need more time to research and develop potential alternative materials; evaluate performance characteristics and consumer acceptance; ensure that any alternative material does not hurt workers, consumers, or the environment; commercialize new products; and transition existing inventories and product portfolios. We urge the adoption of January 1, 2027. Without this change, disruption to retailers and consumers would be severe.

Revisions should further include a sell-through safe harbor provision that allows retailers and manufacturers to fully process any remaining inventory. Given global supply chain constraints that have hit apparel and footwear retailers particularly hard, product availability for replacements is not assured and is likely to exacerbate economic harm on this sector. A rigid compliance deadline without appropriate sell through provisions for products produced before the date of implementation would have unintended consequences from an environmental perspective. Manufacturers and retailers will be forced to move goods through the 50-state regulatory patchwork, increasing greenhouse gas (GHG) emissions for each product. Should sale be prohibited, unsold items may wind up being disposed of in landfills, causing additional solid waste burdens. Replacement materials have generally shown shorter durability, and the replacement of durable products, with lower performing, shorter lifetime products will require consumers to replace those products more frequently, significantly increasing aggregated GHG emissions output during production of the replacements, not to mention extra consumer expense. For these reasons, we recommend clear language that allows for sell through of products produced on or before December 31, 2025.

Even more important, we request that the preliminary draft rule clarify how much PFAS would constitute “intentionally added” PFAS. The preliminary draft rule currently defines intentionally added as “Ecology presumes the detection of total fluorine indicates the intentional addition of PFAS.”

AAFA recommends a 100 parts per million (ppm) testing threshold for total organic fluorine be added to create clear and consistent guidelines as to what constitutes intentionally added PFAS. Such a threshold is necessary because:

- Studies have repeatedly demonstrated that PFAS is pervasive and endemic in our environment, which means that trace elements of total fluorine are likely to be detected in any product, even if no PFAS is intentionally added to the product;
- Currently, testing and test methods are only available for 30-50 PFAS chemicals, out of the thousands of chemicals that comprise the PFAS class of chemicals;
- Even for those 30-50 individual PFAS chemicals, tests cannot accurately and consistently detect those chemicals below 100ppm for total fluorine; and
- Other states have proposed or used the 100ppm total organic fluorine threshold in their PFAS regulations.

As such, AAFA strongly recommends a 100ppm total fluorine threshold to define intentionally added.

Finally, AAFA applauds the federal preemption language included in the preliminary draft rule (Page 6, "045 Federal Preemption"). The continued proliferation of PFAS legislation/regulation at the state and local level threatens to create a patchwork of regulations that are confusing and contradictory, making it impossible for any company to come into compliance. We recommend that the section be more clearly defined to explicitly state that any restrictions would be preempted by Federal regulation.

AAFA appreciates the opportunity to submit these comments. AAFA looks forward to continuing to work with the Department of Ecology on the policies and regulation of potentially harmful substances in consumer products for the benefit of public safety and public health. In the meantime, our members will continue to design and execute the quality and compliance programs that emphasize product safety for every individual who steps into our member's apparel and footwear products.

Thank you for your time and consideration in this matter. Please contact Nate Herman on my staff at (301) 775-7633 or [nherman@aafaglobal.org](mailto:nherman@aafaglobal.org) if you have any questions or would like additional information.

Sincerely,



Stephen Lamar  
President and CEO  
American Apparel & Footwear Association (AAFA)