

Comments for State of Washington Department of Ecology, Priority Consumer Products Chapter 173-337 WAC Safer Products Restrictions and Reporting – Preliminary Draft Rule Language

September 6, 2022

Glen Raven is a private, family owned organization. We manufacture performance textiles for a variety of end uses. We applaud the Washington Department of Ecology on their efforts to reduce toxic chemicals in consumer products. The work that you are doing in a concerted effort with all stakeholders there is to be commended. Work going on in other states is not as organized, not as well laid out, hard to follow and comprehend, and often on a more compressed timeframe that makes compliance difficult. While certain pieces of your process may have shorter time frames than others, at least everything was well laid out in the beginning and easy to follow and understand what to expect when those reduced time frame pieces do come into play, stakeholders can be prepared to respond.

There are a few areas of the Preliminary Draft Rule Language for Safer Products for Washington that we really like and a few others that would be difficult to comply with, not only for us, but for our customers as well. We really like that you have been in touch with real stakeholders to get feedback on alternatives and what is in use today. We agree with your evaluation of the outdoor market conditions. There is no workable alternative for some of those outdoor products today.

After reviewing the Guidance for Reporting Chemicals in Children's Products to the State of Washington, the reporting requirements for this Safer Product Act seems to be clearer. In these comments, we tell you what we like with the guidance documents for Children's Safer products as well as what we like and what we would like to see change in the Preliminary Draft Rule for Safer Products. We take the opportunity to also comment on the Children's Safer Products Manufacturer's reporting guidance in hopes it will guide the reporting guidance document being written for Safer Products as well. In addition, we hope that it will shape the Safer Product requirements.

The Children's Safe product reporting guidance from both the website ([Reporting for Children's Safe Products Act - Washington State Department of Ecology](#)) and the document itself ([Children's Safe Products Reporting Rule - Manufacturer Guidance \(wa.gov\)](#)) are both very clear and transparent. On the website, the guidance spells out the two most important things that manufacturers need to know, when to report, and that it costs nothing to report. The manufacturer's reporting guidance document is also very clear.

1. We like that beginning on page 3 of the Children's Safe Products Reporting Rule document, it spells out that #1. manufacturers can submit one report for all products that fit into a single category. For the Safer Products Act, Manufacturers will require guidance on how to choose product categories (bricks) and hope that Ecology will provide that in the guidance document for Safer Products Act reporting requirement, much like you do in this document for children's products.
2. Page 3, #2 Manufacturers will need guidance on which product bricks to select for product components, like you have provided here.
3. Page 3, #3 a. We like that you can report ranges based on test results or manufacturing knowledge.

4. Page 3, #3 b. We like that manufacturers can report the highest amount that would be found in the product component for each product category.
5. Page 3, #3 c. We like that you differentiate practical quantitation limits for each chemical and we suggest a 50 ppm PQL for total fluorine for Safer Products Act as well. We suggest that you speak to Eurofins, SGS, or Galbraith Laboratories to determine feasible lab testing of total fluorine today. We suggest the combustion ion chromatography or combustion followed by ion selective electrode as a test method to capture total fluorine even from polymers. Extractable testing will not capture polymer content. We also suggest contacting Shari Franjevic, of Clean Production Action for guidance regarding this PQL/test method/reporting quantity.
6. Page 3, We're not clear on how to report chemical content by priority product – which, as an example, you require reporting for a chair - the chair manufacturer might have to report but the content will most likely only be in a product component, like the fabric or the coating of the wood of the chair. Would it make more sense to only report the product components that contain the PFAS? Otherwise, there will exist much duplicative reporting, as several different chair manufacturers may use the same performance fabric. Likewise, the same manufacturer may not only use the product component (fabric) on chairs, but they may use the same fabric for sofa's as well, for example. If the manufacturer of the product component could report the content as Performance Fabrics (of multiple colors and styles) with water and stain repellent and one range of PFAS (as total fluorine), it would simplify everyone's reporting duties.
7. Page 3, #3 d. We like the way that Ecology recognizes that chemicals can be present as a contaminant and only require reporting that content if the amount is above 100ppm. We hope this same qualification carries over to reporting guidance for the Safer Products Act as well. Otherwise, many products will be tied up with rebuttable presumptions as fluorine is everywhere.
8. For pages 4-16, we are hopeful that you will provide similar reporting guidance for the products and components for the Safer Products reporting requirements and also recognize the product bricks necessary for reporting. We have spent countless hours trying to determine which bricks might work for our products and it isn't very clear.
9. For page 17-20 the product component information is very clear and the examples are great! The inaccessible internal component reporting guidance is great as well.
10. For page 21, the reporting ranges are clear and concise and make logical sense.
11. For pages 22-26, we like the guidance for the PQL of each chemical and hope you lay out the same type of guidance for manufacturers of priority products for the Safer Products Act.
12. For page 27-29, we really like the guidance for reporting contaminants and due diligence and hope these transfer to the Safer Products Act as well. The examples on page 28 are great!

Here are comments specific to the **Preliminary Draft Rule Language for Safer Products** for Washington. The ones shown in Green font are of primary importance to us.

13. Beginning on page 2 of the draft document, the outline is great and easy to follow! On page 3, 015 Applicability is very clear to who and what this applies to and does not apply to.

14. On page 4, 020 Requesting an exemption, we like that you recognize that a need may arise where a company needs to request an exemption.
15. **The acronyms and definitions beginning on page 4 and continuing until page 6 are very clear and concise. We recommend adoption of the PFAS definition used in Delaware and other jurisdictions that is more scientific and requires not one but 'two fully fluorinated carbon atoms' and furthermore excludes polymers.**
16. We appreciate that you do include an appeals process beginning on page 6 section 035 and that you do recognize that other rules and laws may preempt or apply to these priority products.
17. On page 7 section 060 – we do have a concern for restricting the sale of previously owned products. Products will end up in a landfill or otherwise be disposed of, rather than be recycled. We have recycled over one million pounds of post-consumer and post-industrial fabrics over the past decade, and then reprocessed the fibers into new yarns and then into new fabrics. Will this rule terminate this type of recycling of used fabrics and clothing?
18. Regarding the Reporting Requirements section 065 on page 8 for (1) (b) we like that you allow either the manufacturer of the product or a trade organization representing the manufacturer to report. Though I am not sure many trade organizations will report for their constituents.
19. For page 8, (1) (c) we do appreciate the fact that only one reporting entity is required to submit the notification. Though we must determine how to best make that happen as for example, a product component manufacturer may not know the exact components that might end up on a priority product and sold into the state of Washington. So communication between the retailers, priority product manufacturers, and product component manufacturers need to be clear and reporting duties delineated well.
20. On page 8 (2) (a) It is good to have 31 days to report all that is necessary to report and it is good that reporting is only required one time per year. It isn't quite clear if the manufacturer is reporting for product content for the prior year, or upcoming year, so if that could be clarified, that would be great. It would make sense to report product content as of the reporting date.
21. On page 8 (2) (b) – We like that a notification of change is only required when the product no longer contains the priority chemical.
22. On page 8, (3) (a) and (b) – the product component manufacturer will most likely not know all the consumer products that their product components might go into and whether the components are sold into the state of Washington. We also acknowledge that for PFAS, many of the PFAS products that product component manufacturers use will not even be assigned a CAS number, **so content should be reported as Total Fluorine content, and not PFAS with a CAS number that doesn't likely exist, as that is what is measured.**
23. On page 9 (4) – We like that if no changes, we can copy data and resubmit, but it might be better if the software would just make a button that reads “no changes” (if this is even possible) and copies it for the user.
24. On page 9 (5) and (6), We are very appreciative that the specific formulations are not required and Ecology may allow us to report as CBI, as we don't want to tell our competitors how we make our materials work as that is not common knowledge.

25. On page 10, Part B 110 PFAS (1) (a) (i) – we appreciate that you call out aftermarket treatments and clarify in section (ii) that it does not apply to treatments applied during manufacture, as this has been a point of confusion in a lot of states.
26. On page 10, (1)(c) (i) We appreciate a restriction date that is far enough out that manufacturers can work through their inventories, if they haven't already begun that process. We appreciate the call out of products manufactured before the restriction date not being restricted. This allows for sell through of inventory that the manufacturers will have on hand before they can make a change and gives the supply chain time to work through those inventories, so they aren't stuck with disposing of them.
27. **On page 10, (1)(c) (ii) we feel strongly that there should be a limit of 100ppm or greater that indicates intentionally added PFAS. As noted in the Children's Safe Products work, contamination up to 100ppm is common, especially for other types of fluorine, not related to PFAS, so this limit of 100ppm will rule out the issue of contamination.**
28. On page 10, (1)(c) (iii) – we do appreciate the opportunity to rebut the presumption and hope that this doesn't become required for all products as most products will have some fluorine content due to the presence of Fluorine everywhere. However, we are concerned that the limit of any detectable fluorine might trigger civil action or set precedent in Washington or other states, intentionally or not.
29. Page 12 (3)(a)(i) and (ii) we appreciate the distinction between indoor and outdoor furniture as their end uses are significantly different.
30. On page 12 (3)(b) – we appreciate the restriction date of 2026 that gives the supply chain ample time to ensure they are no longer making and selling products with the priority chemicals. Anything shorter would be difficult for the companies to meet as it will take time for the supply chain of alternatives to be built up enough to be able to supply enough chemistry to meet the demand these changes are creating.
31. Page 12 (3)(c)(i) we really like that Ecology recognizes the importance of restricting products by the manufacturing date
32. **Page 12 (3)(c)(ii) – We do not support the idea that total fluorine detection indicates intentionally added PFAS. To improve responsible actions, we recommend a maximum allowed content of 100 ppm, like there are in other certifications and legislation today (GreenScreen for furniture and fabrics (CPA), Biodegradable Products Institute Compostable product requirements, California food packaging and cosmetic product legislation pieces). We commend use of laboratory test methods which utilize combustion ion chromatography or combustion followed by ion selective electrode for testing total fluorine. This captures all fluorine from polymers as well and therefore will be higher numbers than if only extractable testing is done. Another reason the 100ppm limit is recommended as this limit will then rule out the expected levels of fluorine found as contamination throughout the supply chain.**
33. Page 12 (3)(c)(iii) we appreciate the opportunity to rebut findings, but fear that fluorine will be found in all products, since PFAS are forever chemicals and found everywhere. We fear civil liabilities as well as the precedent this will set for other states and other statutes within Washington State.
34. On page 13 begins section (4)(a)(i) We appreciate the distinction between the indoor and outdoor products.

35. Page 13 (4)(b) the reporting requirement for 2024 is concerning as there is no guidance for reporting yet and there is no system to collect the data established yet either. We recommend changing the compliance date for reporting to 2027, which will enable resources to focus and achieve more elimination of PFAS in products. This will enable manufacturers to focus on completing conversion of Indoor product to PFAS alternatives and then applying those new technologies to complete conversion of Outdoor products. The reengineering of product and realignment of supply chains will be overwhelming otherwise. This move of deadline will give Ecology the time for the system to be built and for the manufacturer guidance to be written and comprehended.

36. We would also request clarification that the reporting requirement is for the content of PFAS in products to be sold into the state as of the reporting date, not prior year content.

Since this is the end of the requirements for furniture products, we will not comment on the other sections, only noting that other priority chemicals do have a 1000ppm detection limit even the total fluorine concentration requirement for organo-halogens. Our request for a 100ppm limit should be found reasonable.

Thank you so much for the opportunity to submit comments about both safer product regulations and documents. Again, we commend you for the work Ecology is doing to make products safer for their residents which will hopefully translate to other states following suit, or at least manufacturers making all products safer for wherever they are sold.

If you have any questions please do not hesitate to reach out to me directly.

Kind Regards,



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