



Innovative Products For **Home. Work. Life.**

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via electronic transmission

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Subject: HCPA Comments on Preliminary Draft Rule Language¹ for Safer Products for Washington

The Household & Commercial Products Association² (HCPA) appreciates the opportunity to offer comments to the Washington Department of Ecology (Department) regarding the Safer Products for Washington program's Preliminary Draft Rule Language. While successful implementation of the Safer Products for Washington program can help reduce exposure for consumers, HCPA has several concerns with the preliminary draft rule language and offers the following suggestions.

HCPA is a voluntary, non-profit U.S. trade association representing approximately 240 companies engaged in the manufacture, formulation, distribution, and sale of products for the household, institutional, commercial, and industrial use. HCPA member companies manufacture and/or market products that may be impacted by this program.

In general, HCPA understands the desire to regulate chemicals by class in which chemicals can be identified as sharing properties and risks, and thus are evaluated and regulated together in one rulemaking. However, HCPA believes that more comprehensive analysis needs to be considered to account for variability of substances within a class to account for differing inherent toxicity and risks. HCPA urges the Department to include a pathway in which stakeholders can identify an individual substance for further discussion so that the toxicological endpoints are considered in the context of whether the class-based regulation is appropriate for an individual substance.

¹ Preliminary Draft Rule Language can be found at https://www.ezview.wa.gov/Portals/_1962/Documents/saferproducts/PreliminaryDraftRuleLanguage_Cycle1_August2022.pdf

² The Household & Commercial Products Association (HCPA) is the premier trade association representing companies that manufacture and sell \$180 billion annually of trusted and familiar products used for cleaning, protecting, maintaining, and disinfecting homes and commercial environments. HCPA member companies employ 200,000 people in the U.S. whose work helps consumers and workers to create cleaner, healthier and more productive lives.

HCPA would also like a better understanding of when the Department will utilize its internal procedures to protect CBI. Does this apply to information submitted into the Ecology-designated notification database? If not, how will CBI be protected when a company submits information through the database? Further, when companies respond to the Department and rebut the claim that their product contains a priority chemical, how will companies be expected to provide their evidence, and will that be treated as CBI? It would be beneficial for the Department to discuss how CBI will be handled across the various data collection points so that companies are at ease to provide such information.

HCPA thanks the Department for the opportunity to offer the following comments and suggestions for specific sections of the Preliminary Draft Rule Language.

I. HCPA Comments on Section 025 - Acronyms and Definitions

HCPA would like to provide the following comments and suggestions regarding the definitions used within the preliminary draft rule language and suggestions on potential revisions, as well as additional terms that HCPA believes need to be defined.

a. Inclusion of a definition for “Commercial Product”

HCPA understands that the definition of “Consumer Product” comes specifically from the law and in general does not have an issue as it relates to the residential component. However, HCPA believes that commercial should also be defined as it is unclear what worker applications are in or out of scope without a definition. For instance, are janitorial products used within an industrial setting a commercial product or an industrial product because of the setting? As the scope of “Commercial Product” is unclear, HCPA suggests that a definition is included.

HCPA would like to offer the following definition for “Commercial Product”:

“Commercial Product” means use within the confines of, or on property necessary for the operation of buildings such as hospitals, schools, libraries, auditoriums, and office complexes.

b. Modification of the definition of “Intentionally Added Chemical”

HCPA believes there may be scenarios where a substance that is a byproduct or an impurity within a chemical that is not intentionally added by a product manufacturer but may have a functional effect in the final product depending on the level, could meet the current definition as proposed in the preliminary draft. Thus, HCPA suggests using the definition of “intentionally added ingredient” from the California Cleaning Product Right to Know Act of 2017,³ which is:

³ The California Cleaning Product Right to Know Act of 2017 can be found at https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB258

“Intentionally added ingredient” means a chemical that a manufacturer has intentionally added to a designated product and that has a functional or technical effect in the designated product, including, but not limited to, the components of intentionally added fragrance ingredients and colorants and intentional breakdown products of an added chemical that also have a functional or technical effect in the designated product.

c. Modification of the definition of “Ortho-phthalate”

Substitute Senate Bill 5135,⁴ also known as the Pollution Prevention for Healthy People and Puget Sound Act, defines “Phthalates” as synthetic chemical esters of phthalic acid while the draft rule designates the specific Ortho-phthalate isomer. Correspondingly, HCPA notes that the definition of “Ortho-phthalate” needs to be more specific because the functional group on the aromatic ring could occur at a specific position depending on whether the group is an ortho-, meta-, or a para- position.

HCPA recommends the following definition for “Ortho-phthalate”:

“Ortho-phthalate” means synthetic chemical esters of phthalic acid in which the molecule has the substituent adjacent to the primary carbon on the aromatic compound.

II. HCPA Suggestions and Request for Clarity on Section 065 - Reporting Requirements

As currently drafted, HCPA isn’t clear on the hierarchy of the responsible party of who should report. HCPA believes that the hierarchy found within Washington’s Plastic Law⁵ would provide the clarity that responsible parties need.

Washington’s Plastic Law uses the term “Producer” for the responsible party and the hierarchy is as follows:

"Producer" means the following person responsible for compliance with minimum postconsumer recycled content requirements under this chapter for a covered product sold, offered for sale, or distributed in or into this state:

- (i) If the covered product is sold under the manufacturer's own brand or lacks identification of a brand, the producer is the person who manufactures the covered product;
- (ii) If the covered product is manufactured by a person other than the brand owner, the producer is the person who is the licensee of a brand or trademark under which a covered product is sold, offered for sale, or distributed in or into this state, whether or not the trademark is registered in this state, unless the manufacturer or brand owner of the covered product has agreed to accept responsibility under this chapter; or

⁴ Available at <https://lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/Senate/5135-S.SL.pdf>

⁵ See 70A.245.010 at <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.245.010>

(iii) If there is no person described in (i) and (ii) of this subsection over whom the state can constitutionally exercise jurisdiction, the producer is the person who imports or distributes the covered product in or into the state.

III. HCPA Comments on Section 110 - PFAS

HCPA has concerns with the Department using Total Organic Fluorine (TOF) analysis will overestimate the amount of the intentionally added PFAS. Critically, HCPA notes that TOF analysis measures all fluorine materials associated with organic fluorine and does not identify an individual substance. As there are organic substances which contain fluorine that do not meet the definition of PFAS, HCPA believes that this will create an unnecessary burden on both the Department and on the regulated community. Further, EPA has noted⁶ that TOF testing can often contain inorganic fluorine. There are more specified methods currently under development, such as the EPA Draft Method 1621: Screening Method for the Determination of Adsorbable Organic Fluorine (AOF) in Aqueous Matrices by Combustion Ion Chromatography (CIC) released in April of this year and the Total Oxidizable Precursor (TOP) assay. Tests like these can predict the accelerated degradation and release of many polymeric PFAS but can still have limitations in their ability to reflect a product's life cycle and small changes in laboratory protocol may result in large differences in measured PFAS. HCPA encourages the Department to work with industry and intergovernmental agencies to ensure that the analytical testing utilized allows for robust and accurate results reflective of intentionally added PFAS.

IV. HCPA Comments on Section 111 - Ortho-Phthalates

In addition to HCPA's previous comment and suggestion regarding the definition of Ortho-Phthalates, HCPA appreciates the opportunity to provide additional feedback for this section.

From Substitute Senate Bill 5135, it is HCPA's understanding that the Department may not identify drugs or biological products regulated by the Food and Drug Administration as priority consumer products. Thus, HCPA was surprised to see the applicability of ortho-phthalates to fragrances used in products, regardless of whether the product contains drug ingredients regulated by the FDA. HCPA believes that this subsection should not only not apply to "Active ingredients in products regulated by the FDA as drugs," but should also not apply to "products regulated by the FDA as drugs." This would add the clarity as to whether or not a drug product is regulated, regardless of the ingredients that a personal care product may contain. Another option for the Department is to define "personal care products" and exclude drugs regulated by FDA.

HCPA also would like to raise concerns with how "intentionally added" ortho-phthalate could be treated. For instance, how would the Department determine if an ortho-phthalate was

⁶ https://www.epa.gov/system/files/documents/2022-04/draft-method-1621-for-screening-aof-in-aqueous-matrices-by-cic_0.pdf

intentionally added if the detection of a substance was due to an unintended contamination within the product, whether that contamination came unintentionally from the fragrance or another source? HCPA believes this is an example of why the definition of “intentionally added chemical” needs to be revised as previously suggested.

V. HCPA Comments on Section 113 - Alkylphenol Ethoxylate

HCPA believes that a definition for laundry detergent needs to either be present within section 025 Acronyms and Definitions or within this section so that the scope of this section is clear to the regulated community. HCPA suggests that “Laundry Detergent” means a type of cleaning agent used for cleaning dirty laundry.

To the best of HCPA’s knowledge, our members have long since reformulated their laundry detergent products to not include alkylphenol ethoxylates. Thus, HCPA supports the 1,000 ppm *de minimis*, as well as the compliance schedule of January 1, 2025. With that said, HCPA also thinks that if the Department believes that it detects a product to contain more than 1,000 ppm of an alkylphenol ethoxylate within a laundry detergent, that there be a process so that a company can investigate their batch production and determine the source of the contamination.

VI. Conclusion

HCPA appreciate the opportunity to provide these comments and requests. HCPA looks forward to working with the Department and other stakeholders to ensure the residents of Washington continue to have access to the products that improve their daily lives. Please do not hesitate to contact HCPA if the Department would like to discuss our comments.

Respectfully submitted,



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