

January 22, 2024

Meredith Marshburn
Department of Ecology - HWTR
300 Desmond Dr. SE
Lacey, WA 98503

**RE: Draft Regulatory Determinations Report to the Legislature: Safer Products for Washington
Cycle 1.5 Implementation Phase 3 - Publication 23-04-062**

Dear Meredith Marshburn:

On behalf of the American Apparel & Footwear Association (AAFA), I am providing these comments regarding Draft Regulatory Determinations Report to the Legislature: Safer Products for Washington Cycle 1.5 Implementation Phase 3, which recommends reporting requirements and restrictions on the use of per and polyfluoroalkyl substances (PFAS) in apparel and gear.

The American Apparel & Footwear Association (AAFA) is the national 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 more than three million U.S. workers, and its contribution of \$470 billion in annual U.S. retail sales. AAFA approaches all of its work through the lens of purpose-driven leadership in a manner that supports each member's ability to build and sustain inclusive and diverse cultures, meet and advance ESG goals, and draw upon the latest technology.

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.

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 AAFA [added](#) the entire PFAS chemicals class to our open-industry [Restricted Substances List](#) in February 2023. We are actively supporting members in their efforts to phase out this chemical class, including by working to educate and support the entire supply chain in finding and utilizing safer PFAS alternatives.

Still, regulation plays a critical role in furthering our industry's efforts, but only if regulations are designed properly, serve their purpose, and are properly enforced. That is why we launched the [THREADS Sustainability and Social Responsibility Protocol](#). We believe that the *THREADS Protocol* will

speed up the development of policies that are effective and catalyze meaningful progress. *THREADS* calls for policies that are:

- Transparently Developed and Enforced
- Harmonized Across Jurisdictions and Industries
- Realistic in Terms of Timelines
- Enforceable
- Adjustable
- Designed for Success
- Science-Based

In that spirit, we offer these comments to assist Ecology execute the Safer Products for Washington Program Cycle 1.5 regulations in a way that prevents adding to an increasingly complicated patchwork of state-based regulations of PFAS that are creating compliance burdens for the industry and inhibiting crucial sustainability and circularity work, all while the industry is already working to phase out PFAS use.

PFAS Restrictions

At present, both California and New York have enacted legislation (CA AB 1817, NYS AB 994) that restricts the use of intentionally added PFAS in textiles, apparel, and footwear starting January 1, 2025. Vermont (S. 25) is also considering legislation that mirrors that enacted in California and New York. Given existing restrictions in two of the largest U.S. markets, brands and retailers are treating the restrictions as though they apply to the entire United States. Thus, an additional state-level restriction on PFAS in apparel is unnecessary. However, if Ecology is determined to pursue a restriction, we ask the department to take the following into consideration:

- **Sell-through language is necessary:** The strict sales prohibitions included in the existing and proposed legislation did not adequately account for time needed for industry to fully phase out or for the post-pandemic softening of consumer demand. This means the industry will have significant volumes of unsold inventory come January 1, 2025 and there is currently no recommended disposal option for products containing PFAS. We recommend adopting a sell-through provision that allows the sale of products manufactured before January 1, 2025. Allowing existing inventory to be sold off provides additional time for identification of safe destruction methods before consumers are finished with the product.
- **Definitions and exemptions must align:** Significant care has been taken to align definitions and exemptions in existing requirements. To date, it is unclear precisely what is included in Ecology's definition of "apparel and gear." We recommend aligning definitions with those used in California and New York. It is important that products are consistently covered or exempted. For instance, exemptions and derogations for personal protective equipment, products for use by the U.S. Defense Department and outdoor apparel for severe wet conditions are all the result of significant deliberation. Changes in those definitions will create unnecessary compliance burdens, as well as potentially conflict with Food and Drug Administration and Department of Defense requirements.
- **Science based testing thresholds are required:** While existing restrictions focus on intentionally added PFAS, unintentional contamination is a significant concern. It is crucial that any restrictions include a science-based safe harbor level to account for contamination. California has adopted an 100ppm Total Organic Fluorine (TOF) testing threshold.

Theoretically, a TOF result of less than 100ppm demonstrates the PFAS found in the item was not intentionally added, because the presence of PFAS below 100ppm would not provide the item any characteristics associated with intentionally added PFAS (e.g. water resistance or chemical/oil repellency). However, this particular threshold is not universally applicable (for instance, products utilizing [recycled material](#) may test above the threshold, even if no PFAS were added from the recycling point onward). Additionally, there is not a standardized test method for Total Organic Fluorine. We encourage Ecology to adopt and utilize a science-based standard for delineating between intentional addition and unintentional contamination.

PFAS Reporting Requirements

The Draft Regulatory Determinations Report recommends the adoption of reporting requirements for certain apparel and footwear. Given that the industry is committed to phasing out the use of PFAS and that other states have restricted the use of PFAS in apparel and footwear products, we question the utility of an ongoing reporting requirement. By the time a requirement is enacted, what will be left to sell is dwindling quantities of legacy inventory and given the limitations of testing, it is not clear useful information will be gained from such a requirement.

Further, Ecology should be aware that implementation of PFAS-related reporting requirements for consumer goods in other states has gone poorly due to requirements that do not reflect the reality of available test methods and the broadness of the PFAS class. Notably, Maine was the first state to enact a reporting requirement for PFAS in products and has had such trouble executing the statutory requirements they [have delayed implementation](#). Work is still ongoing to rework Maine's requirements. Should Ecology pursue a reporting requirement, it must be done with the understanding that:

- **PFAS testing in consumer products is complicated:** The PFAS class has anywhere between 4,000 and 14,000 individual chemicals. With the number of chemicals in the class undefined, it follows that there is no approved test methodology that can individually identify all PFAS chemicals in a consumer product. In fact, there is not a single EPA approved test method for consumer products. While the industry has largely been utilizing Total Fluorine or Total Organic Fluorine testing as a proxy for the presence of PFAS, these tests do not identify individual PFAS and are also capable of capturing fluorine that is not connected to the use of PFAS (and again, there is not a standardized method for Total Organic Fluorine).
- **Exemptions are necessary to support circularity:** The industry is working to stand up resale, repair, and recycling initiatives. It is not feasible to conduct testing on used or repaired products or their components and they should be exempted from reporting requirements. Similarly, for materials and components made of recycled content, testing adds significant additional costs to materials that are already more expensive than their virgin counterparts and the results can be less reliable, depending on the consistency of the feedstock. Requiring testing will inhibit uptake of more sustainable options. Products utilizing recycled components should be able to disclaim the use of intentionally added PFAS from the point of recycling forward and be exempt from reporting requirements.

Research on Alternatives

Ecology provided some examples of the research conducted on potential alternatives to PFAS. While Ecology has identified some materials that provide some level of water resistance or repellency utilizing certain weaving technologies, it is not clear those would always be suitable alternatives to durable water repellent (DWR) treated textiles. Additionally, it does not appear that Ecology has identified alternatives for any non-fabric components that can be part of apparel and gear. We recommend Ecology continue work on identifying safer alternatives for all parts of apparel and gear.

Conclusion

We appreciate the opportunity to submit comments and we believe there are opportunities for further collaboration. We look forward to working with Washington State on the regulation of substances in consumer products for the benefit of consumer product safety and public health. In the meantime, our members continue to design and execute the quality and compliance programs that emphasize product safety for every individual who steps into our apparel and footwear products.

Thank you for your time and consideration in this matter. Please contact Chelsea Murtha of my staff at cmurtha@aafaglobal.org if you have any questions or would like additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Lamar". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Stephen Lamar
President & CEO
American Apparel & Footwear Association