

October 16, 2024

Washington State Department of Ecology  
300 Desmond Drive SE  
Lacey, WA 98503  
Submitted via [Public Comment Form](#)

## **RE: Safer Products for Washington (SPWA) Cycle 1.5 preliminary draft rule requirements**

Dear Washington State Department of Ecology,

The undersigned organizations appreciate the opportunity to provide feedback to the Department of Ecology (Ecology) regarding the Safer Products for Washington (SPWA) Cycle 1.5 preliminary draft rule requirements. We jointly submit these comments to express our concerns with various provisions proposed in the preliminary draft rule. We also request to meet jointly with the appropriate Ecology staff to further discuss our concerns and potential solutions.

The below written comments, ordered by rule section within Chapter 173-337 of the Washington Administrative Code, speak to the contents of the preliminary draft rule released by Ecology for comment beginning September 18, 2024.

### **Section 020**

#### **“Credible evidence” definition.**

The preliminary draft rule proposes to define “credible evidence” as “information, data, or sources relevant to demonstrate that a priority chemical was **not** intentionally added to a priority consumer product. Ecology determines what qualifies as ‘credible evidence’ on a case-by-case basis.” This definition will apply to the presumption that the detection of total fluorine indicates the intentional addition of perfluoroalkyl and polyfluoroalkyl substances (PFAS), both for the existing regulations and the ones newly proposed in this draft.

While we acknowledge Ecology’s effort to provide more clarity in this area, we are concerned that this new definition may have the opposite effect. Assuming relevance would be left up to Ecology to determine, this provision is made worse by the codification of a case-by-case approach. Such an approach does not provide regulatory certainty for producers, but instead leaves them to guess as to what the Department will find “relevant.” This will lead to wasted resources for producers to track down or develop information that may later be deemed irrelevant or unnecessary and for Ecology to review such information.

Therefore, we request to amend the definition as follows:

“Credible evidence” means information, data, or sources ~~relevant to demonstrate~~**ing** that a priority chemical was not intentionally added to a priority consumer product. ~~Ecology determines what qualifies as “credible evidence” on a case-by-case basis.~~ **If Ecology finds**

**that the information, data, or sources do not demonstrate that a priority chemical was not intentionally added to a priority consumer product, Ecology shall provide the producer an opportunity to appeal the finding or provide additional credible evidence.**

## **Section 110**

### **Total fluorine detection standard**

Throughout the rule language, both in the existing provisions and the newly-proposed ones, there is language stating that, “Ecology presumes the detection of total fluorine indicates the intentional addition of PFAS.” Furthermore, the language allows manufacturers to rebut the presumption through the submission of “credible evidence.”

We strenuously object to this approach, as it is not reasonably tailored and ignores the reality of chemical composition and testing for numerous products. Fundamentally, the existing provision improperly assigns *intention* to include PFAS based on the presence of fluorine and thus ignores unavoidable trace impurities, thus increasing administrative cost and effort associated with rebutting this presumption. This is in addition to our concern with the current drafting of the “credible evidence” definition, which we addressed previously in this letter.

Total fluorine (TF) is an inappropriate standard by which to presume the presence of PFAS. Fluorine can be found in fluoride salts and in water and soil naturally. As such, using a TF approach will result in Ecology turning up numerous “false positives” where products containing fluorine but not PFAS are found. This will create tremendous strain on the Department’s resources, as well as on the manufacturers who will be responsible for disputing irrelevant, frivolous detections. Moreover, a TF approach risks confusing and “overwarning” consumers about the presence of chemicals that do not pose any realistic risk. While not the most precise method for detecting PFAS, a total organic fluorine (TOF) approach would be preferable to total fluorine because it measures the presence of carbon-fluorine bonds that is one of the defining characteristics of PFAS. However, even total organic fluorine has its limitations as an indicator of PFAS because it, too, is overinclusive and will necessarily include organic fluorine from non-PFAS sources. TOF should only be used as a screening method, as it is prone to identifying inorganic fluorides or other organofluorine substances that do not meet Washington’s definition of PFAS. Neither TF nor TOF should be used as a proxy or surrogate for the amount of PFAS in a product or product component. Additionally, these methods should not be used to make conclusive statements about the type, source, or concentration of any specific PFAS or group of PFAS substances. Regarding TOF, the U.S. EPA, in its recently updated draft guidance on PFAS disposal and destruction offers the following caution:

*TOF analysis is an ongoing research area: data users must recognize the benefits of receiving general screening data for a wide array of potentially present PFAS, while also recognizing the limitations and uncertainties inherent in not knowing which PFAS or class of PFAS is present in the sample, including uncertainties associated with potential health risk. In addition, to minimize the risk of PFAS false positives, techniques within a validated method or methods must be developed that demonstrate effective separation and removal of inorganic fluorine from organic fluorine (Koch et al., 2020). TOF is not specific to PFAS, and any fluorine-containing*

*compounds (e.g., pesticides, pharmaceuticals) that are retained during extraction would be included in the organic fluorine measurement.<sup>1</sup>*

The same can be said of TF. Ecology should also review TOF protocols used by manufacturers or others for the extraction and accounting for inorganic fluorine according to standardized, validated protocols. In cases where any other method identified in Section (A)(1)(e) can be used, the Department should require manufacturers to use it.

In addition to using a different testing method, we recommend that these rules incorporate a de minimis threshold below which the presence of total organic fluorine should not be presumed to be intentionally added. Such low concentrations pose a much lower chance of exposure and may be present in a product in trace amounts due to processes or contamination outside of the responsible manufacturer's control. Use of a de minimis threshold is consistent with Washington's Children's Safe Products Act (CSPA), which sets various tolerance levels for certain chemicals and specifically sets a threshold for determining contaminants at 100 parts per million (ppm) ([See WAC 173-334-080 1 \(b\)](#)). To be consistent with the CSPA, we recommend establishing a de minimis threshold of 100 ppm for total organic fluorine in this preliminary draft rule. This threshold would be consistent with various existing laws and standards, including for California's ban on PFAS in plant fiber-based food packaging and BPI's PFAS-free Certification Scheme.

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Thank you for your consideration of these written comments regarding the preliminary draft rule for Cycle 1.5 of the Safer Products for Washington program. We appreciate Ecology staff's time and assistance throughout the process, including their stakeholder engagement and the opportunity to provide this feedback. We look forward to the continued dialogue with Ecology and await your response regarding a request to meet to discuss the foregoing concerns and potential solutions. Please feel free to contact the following contacts for each organization.

Respectfully submitted,

Association of Washington Business

Consumer Health Products Association

Juvenile Products Manufacturers Association

American Apparel and Footwear Association

The Center for Baby and Adult Hygiene Products

The American Chemistry Council

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<sup>1</sup> U.S. Environmental Protection Agency. Interim Guidance on the Destruction and Disposal of Perfluoroalkyl and Polyfluoroalkyl Substances and Materials Containing Perfluoroalkyl and Polyfluoroalkyl Substances—Version 2 (2024). April 8, 2024. Page 58. <https://www.epa.gov/system/files/documents/2024-04/2024-interim-guidance-on-pfas-destruction-and-disposal.pdf>.