



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

October 16, 2024
Stacey Callaway
Department of Ecology
Hazardous Waste and Toxics Reduction Program
PO Box 47600
Olympia, WA 98504-7600
Email: SaferProductsWA@ecy.wa.gov

Re: Preliminary Draft Rule for Cycle 1.5 of Safer Products Restrictions and Reporting

Dear Ms. Callaway,

On behalf of the Household & Commercial Products Association¹ (HCPA) and its members, we want to convey our comments on the Preliminary Draft Rule for Cycle 1.5 of Safer Products Restrictions and Reporting. HCPA supports the efforts of the Washington Department of Ecology (Ecology) but would like to raise some key considerations to ease the implementation of the Safer Products regulations.

In general, PFAS are not intentionally added to the products manufactured by HCPA members. Still, in the few cases that have done so, companies are actively shifting away from relying on these chemistries where possible. We appreciate Ecology's efforts to move the marketplace but caution that overly aggressive or non-implementable timelines for restrictions may lead to regrettable substitutions. We also appreciate Ecology's efforts to solicit and incorporate stakeholder feedback into the regulation. We offer the following comments to help Ecology improve and refine the draft rule.

For years, HCPA has been a leading advocate for companies, helping them demonstrate their unwavering commitment to transparency, product stewardship, and sustainability. This commitment is aimed at protecting consumers and workers. It is highlighted by HCPA's support in the passage of the California Cleaning Products Right to Know Act,² a significant step towards transparency. It mandates the online and on-label disclosure of intentionally added ingredients, including PFAS. This allows the

¹ HCPA is the premier trade association representing the interests of companies engaged in the manufacture, formulation, distribution and sale of more than \$180 billion annually in the U.S. of familiar consumer products that help household and institutional customers create cleaner and healthier environments. HCPA member companies employ hundreds of thousands of people globally. HCPA represents products including disinfectants that kill germs in homes, hospitals and restaurants; air fresheners, room deodorizers, and candles that eliminate odors; pest management products for pets, home, lawn, and garden; cleaning products and polishes for use throughout the home and institutions; products used to protect and improve the performance and appearance of automobiles; aerosol products and a host of other products used every day.

² California Cleaning Products Right to Know Act, <https://legiscan.com/CA/text/SB258/id/1653091>

public and Ecology to readily identify products with intentionally added PFAS. HCPA also maintains a Product Ingredients Dictionary³ to aid companies' disclosure efforts and includes information about product categories, chemical classes, and ingredient functions.

As noted previously, PFAS is not intentionally added to the vast majority of HCPA members' products. This is especially the case with cleaning products. In the few instances that PFAS is intentionally added, it provides specific functionality, such as water repellency, stain resistance, or surface protection. We caution that the Regulatory Determinations Report to the Legislature⁴ implies that many cleaning products contain PFAS, but that is not the case. For this reason, we expect the proposed restrictions for cleaning products to have little impact on moving the marketplace. However, we are concerned that the regulatory requirements will be needlessly burdensome for manufacturers and Ecology.

HCPA cautions that while the Safety Data Sheet (SDS) can provide robust information on the hazards of a product and ways workers can protect themselves, we believe that the Department would be better served by utilizing the ingredient disclosures by companies as a result of California's Cleaning Product Right to Know Act. Under OSHA's Hazard Communication Standard⁵ (HCS), only hazardous substances defined by the HCS must be disclosed on the SDS at various thresholds (typically 1% or 0.1%). This is because OSHA is concerned about the workplace hazards presented to end-users. In our view, a better approach is to utilize California's Cleaning Product Right to Know Act, which requires disclosing *all* intentionally added ingredients, regardless of level and the presence of specified contaminants or byproducts at or above 100 ppm.

HCPA is concerned that the draft of the proposed rule focuses on total fluorine, which would trigger Ecology's presumption of intentionally added PFAS and leave manufacturers to rebut this presumption. Since total fluorine measurements cannot distinguish between *different* fluorinated compounds, this testing approach will likely capture non-PFAS-containing products. We suggest that total organic fluorine is a better screening method, measured according to standard quality control procedures and analytical validation. In addition, HCPA recommends the inclusion of a *de minimus* threshold of 100 parts per million (ppm) for total organic fluorine, consistent with Washington's Children's Safe Products Act (CSPA) for contaminants⁶. Implementing this standard would align the Safer Products for Washington program with other standards for regulating chemicals of concern. It is also unlikely that a product formulated with intentionally added PFAS would be below the 100 ppm threshold.

³ The HCPA Consumer Product Ingredients Dictionary, <https://www.productingredients.com>

⁴ Regulatory Determinations Report to the Legislature: Safer Products for Washington Cycle 1.5 Implementation Phase 3, <https://apps.ecology.wa.gov/publications/documents/2404023.pdf>

⁵ OSHA Hazard Communications Standard, <https://www.osha.gov/hazcom/rulemaking>

⁶ See CSPA Reporting at <https://ecology.wa.gov/regulations-permits/reporting-requirements/childrens-safe-products-act-reporting>

HCPA appreciates the definition of “Credible evidence” and encourages Ecology to develop guidance and provide examples to assist manufacturers in substantiation and Ecology with compliance and enforcement.

HCPA is concerned with the inclusion of the phrase “or in the manufacturing of the product” in the definition of “intentionally added.” The term is undefined and ambiguous and HCPA recommends the removal of the phrase.

HCPA is concerned with the definition of cleaning products and strongly encourages Ecology to define “Cleaning Products” to describe the category for manufacturers and ease Ecology’s enforcement efforts. HCPA recommends that Ecology look to Minnesota’s efforts and how their law has defined cleaning products and other categories.⁷ In addition, Ecology could benefit from reviewing the definitions under EPA’s National Volatile Organic Compound Emission Standards for Consumer Products⁸ and the California Air Resources Board (CARB) General Consumer Products Regulations⁹. In our experience, having well-defined product categories has helped manufacturers comply while developing efficacious products and providing regulators with appropriate tools for enforcement. Many companies are very familiar with this approach, and this would provide a well-managed way to ensure that companies properly formulate products and meet compliance requirements. For example, “all-purpose cleaner” is ambiguous as our members more commonly formulate products for a specific category of cleaner or general-purpose cleaners as defined by CARB.¹⁰

HCPA is also concerned that the definition of Cleaning Products includes “disinfectants.” Disinfectants are not cleaning products and are EPA-regulated antimicrobial pesticides under the Federal Insecticide, Fungicide and Rodenticide Act

⁷ Minnesota Statute 116.943 Products Containing PFAS. <https://www.revisor.mn.gov/statutes/cite/116.943#stat.116.943>

⁸ See <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-59/subpart-C/section-59.202>

⁹ See [https://govt.westlaw.com/calregs/Document/I9CE560501C2111ED89B8BED60A034ABF?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/I9CE560501C2111ED89B8BED60A034ABF?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

¹⁰ (59) “General Purpose Cleaner” means:

(A) for products manufactured before January 1, 2015: a product labeled to clean a variety of hard surfaces. “General Purpose Cleaner” includes, but is not limited to, products designed or labeled for general floor cleaning, kitchen, countertop, or sink cleaning, and cleaners designed or labeled to be used on a variety of hard surfaces such as stovetops, cooktops, or microwaves.

(B) for products manufactured on or after January 1, 2015: a product that is designed or labeled to clean hard surfaces in homes, garages, patios, commercial, or institutional environments. “General Purpose Cleaner” includes products that clean kitchens, sinks, appliances, counters, walls, cabinets or floors and products that claim to clean a variety of similar surfaces such as plastics, stone or metal. “General Purpose Cleaner” does not include “Single Purpose Cleaner” or “Furniture Maintenance Product.” See [https://govt.westlaw.com/calregs/Document/I9CE560501C2111ED89B8BED60A034ABF?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/I9CE560501C2111ED89B8BED60A034ABF?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

(FIFRA).¹¹ Disinfectants are critical in controlling the spread of disease and reducing harmful microbes such as influenza or the virus that causes COVID. Additionally, all-purpose cleaners could be FIFRA-regulated products¹². It should also be noted that the time necessary to meet EPA's registration requirements for approval of an antimicrobial pesticide would exceed the proposed timelines without considering the time necessary for reformulation. HCPA strongly recommends that Ecology strike the references to "disinfectants" from the cleaning products category and clarify that FIFRA-regulated products are out of scope.

HCPA appreciates the exemption that the restrictions and reporting do not apply to products with PFAS used as propellants. We encourage Ecology to develop guidance for these products to ease compliance.

HCPA notes that the definitions for priority consumer products in Automotive washes, Automotive waxes, and Floor waxes and polishes are well-defined.

HCPA is concerned that restriction dates refer to the "manufacture, sell, or distribute" while reporting dates refer to only "manufacture." Manufacturers can control the manufacture-by date, but it becomes difficult to manage once a product has been released to distribution or retail channels. HCPA recommends that the compliance dates follow a manufacture-by date for reporting and restriction dates. HCPA agrees with the compliance timelines so long as manufacture dates apply to both the restriction and reporting, with the caveat that disinfectants are not within the scope of cleaning products described earlier.

HCPA encourages Ecology to define the Hard surface sealer category and carefully define the applicable surfaces. South Coast Air Quality Management District Rule 1113 is a good possible resource to assist in developing a definition.¹³

HCPA appreciates the opportunity to provide comments and looks forward to working with Ecology throughout the regulatory process. Do not hesitate to contact me with any questions.

Sincerely,



Steven Bennett, Ph.D.
Executive Vice President, Scientific & Regulatory Affairs

¹¹ See <https://www.epa.gov/pesticide-registration/pesticide-registration-manual-chapter-4-additional-considerations>

¹² EPA maintains a FAQ for determining whether a product is a Cleaning product or pesticide, <https://www.epa.gov/pesticide-registration/determining-if-cleaning-product-pesticide-under-fifra>

¹³ See SCAQMD Rule 1113, <https://www.aqmd.gov/docs/default-source/rule-book/reg-xi/r1113.pdf>.