

July 18, 2025

Washington State Department of Ecology  
300 Desmond Drive SE  
Lacey, WA

**RE: Regulation of PFAS in Priority Consumer Products as Defined in WAC 173-337**

Dear Washington State Department of Ecology,

On behalf of the American Apparel & Footwear Association (AAFA), we are providing feedback to the Department of Ecology (Ecology) regarding its proposed amendments to Chapters 173-337 WAC as part of the Safer Products for Washington (SPW) Cycle 1.5 rulemaking process.

We submit these comments to express our concerns with the presumption of intentionally added PFAS resulting from total fluorine testing and to request a recycled content exemption.

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 1,100 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 3.6 million U.S. workers, and its contribution of more than \$523 billion in annual U.S. retail sales. AAFA drives progress on three key priorities: Brand Protection; Supply Chain & Sourcing; and Trade, Logistics, & Manufacturing. AAFA approaches this 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.

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. In fact, our members are actively phasing out the avoidable use of intentionally added PFAS and our open-industry [Restricted Substances List](#) included PFAS as a class of chemicals for almost two years now.

AAFA and our members are proud advocates for regulatory requirements that can effectively protect human health and the environment. 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. In that spirit, we provide the following comments.

**Intentionally Added PFAS**

Throughout the proposed rule language, the text states 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."

As noted in previously submitted public comments, we staunchly 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. This assumption increases both the administrative cost to Ecology and burdens manufacturers with the effort associated with rebutting this presumption.

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 finding 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 consumers about the presence of chemicals that do not pose any realistic risk.

A total *organic* fluorine (TOF) approach would be preferable to total fluorine because it measures the presence of carbon-fluorine bonds, which is one of the defining characteristics of PFAS. However, even total organic fluorine testing 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 therefore only be used as a screening method to indicate the possible presence of PFAS rather than conclusive evidence of intentional PFAS use.

In addition to using a different testing method, we recommend that Ecology incorporate a de minimis threshold, consistent with other States, below which the presence of TOF 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 for total organic fluorine. This threshold would be consistent with various existing laws and standards.

We additionally recommend developing clear guidance on the "credible evidence" required to rebut the presumption of intentionally added PFAS.

### **Recycled Content Exemption**

In keeping with [Ecology's stated goals](#) of improved waste management and resource usage, and the exclusion from PFAS regulation for chemicals present from recycled materials, we strongly advocate for the explicit exemption from PFAS regulation for products made with at least 50 percent recycled content.

Our members are investing significant resources into textile-to-textile recycling technologies and creating products with next generation materials made with recycled content. To support the scaling of circular textile-to-textile recycling systems, consumers need to return old products, and they do. Our members are finding consumers regularly return decades-old products to brands' take-back programs or textile collection sites. These programs receive both products that were manufactured with intentionally added PFAS and products to which consumers have applied their own PFAS-containing waterproofing sprays

and treatments. It is not financially or logistically feasible to test all products that are re-collected for PFAS. A TOF test involves setting the product on fire, which eliminates its ability to be reused or recycled.

Textile products containing PFAS are entering recycling streams and will continue to do so for years after PFAS have been phased out. At present, available technologies are unable to consistently minimize legacy PFAS to concentrations below 100 ppm TOF. A recycled content exemption is absolutely necessary to enable the industry's transition to more sustainable and circular sourcing and production.

We look forward to continuing to work with Ecology 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 consideration of these requests.

Respectfully,



Chelsea Murtha  
Senior Director, Sustainability  
American Apparel & Footwear Association