



July 18, 2025

Stacey Callaway
Washington Department of Ecology
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RE: Comment on Use of Total Fluorine as a Compliance Trigger in WAC 173-337 Rulemaking

Dear Ms. Callaway,

On behalf of the Association of Washington Business, the state's largest and oldest trade association, I am writing to provide comments on the proposed amendments to Chapter 173-337 WAC as part of the Safer Products for Washington Cycle 1.5 rulemaking. Our members have two particular concerns in this version of the Safer Products Rulemaking. Our principal concern regards the use of **total fluorine detection as a compliance trigger** for presumed intentional PFAS use. The secondary concern relates to how PFAS would be treated in apparel using recycled materials.

We appreciate Ecology's intent to reduce toxic exposures and increase product transparency through proactive regulation of per- and polyfluoroalkyl substances (PFAS). However, we have concerns about the proposed **rebuttable presumption** approach that equates the detection of total fluorine with the intentional addition of PFAS.

Concerns with the Use of Total Fluorine

Total fluorine testing measures all fluorine atoms present in a sample—regardless of whether they originate from PFAS, non-PFAS fluorinated substances, or trace background contamination. This method does not distinguish between fluorine that is intentionally added and fluorine that may be:

- Present as an impurity or incidental contaminant,
- Associated with fluorinated compounds unrelated to PFAS (e.g., fluorinated polymers or processing aids),

- Present in concentrations that do not contribute to a product's function.

This approach creates significant uncertainty for manufacturers and may result in **false positives** that trigger reporting obligations or enforcement actions, even in cases where PFAS were not intentionally added.

Comparison to Other Jurisdictions

In contrast, California's Department of Toxic Substances Control (DTSC) under its Safer Consumer Products program focuses on known PFAS substances identified by Chemical Abstracts Service Registry Numbers (CAS RNs) and does not presume intentionality based solely on fluorine detection. This more targeted approach avoids over-inclusion and encourages clearer supply chain accountability.

Recommendation

We recommend Ecology:

1. **Reconsider the use of total organic fluorine as a sole trigger** for presuming intentional PFAS use. We suggest clarifying that TOF should be treated as an indicator that may warrant further investigation, rather than conclusive evidence on its own.
2. Consider establishing a **screening threshold or decision tree** to help distinguish background levels from meaningful PFAS content. If TOF levels exceed a defined threshold (e.g., 50 ppm to align with the upcoming California requirement), that should trigger follow-up targeted testing using LC-MS/MS methods such as ISO 23702-1. The rule should focus only on intentionally added PFAS above a practical threshold and exclude polymer-bound uses such as PTFE in cookware, where migration risk is low and alternatives are still limited. This approach would be consistent with how California and the EU are addressing similar scenarios under AB 1817 and the REACH Annex XV proposal.
3. **Develop clear guidance** on acceptable forms of "credible evidence" for rebutting the presumption, including examples of supplier certifications, test results, and documentation standards.
4. Explore aligning Washington's compliance approach more closely with other state and federal PFAS frameworks to promote regulatory consistency and reduce industry confusion. California and Minnesota both have separate programs and aligning would simplify compliance for national brands and manufacturers.

Treatment of Apparel with Recycled Materials

Our members also have questions about the treatment of apparel made with recycled materials. While the apparel may not have PFAS included, some of the feedstocks may have PFAS. A similar issue was managed during the Phase 1 regarding the use of recycled plastics with feedstock which

may contain chemicals of concern. We would like to see some clarification on how apparel would be treated under the 1.5 rule.

We support the goals of the Safer Products for Washington program and welcome continued dialogue to ensure the rule's implementation is effective, fair, and grounded in scientifically sound methodologies.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in blue ink, reading "Peter Godlewski". The signature is written in a cursive, flowing style.

Peter Godlewski
Government Affairs Director Energy Environment Water
Association of Washington Business