

FINAL STATEMENT OF REASONS

SAFER CONSUMER PRODUCTS REGULATIONS – Listing Treatments Containing Perfluoroalkyl or Polyfluoroalkyl Substances for Use on Converted Textiles or Leathers as a Priority Product

Department of Toxic Substances Control reference number: R-2020-04
Office of Administrative Law Notice Reference Number: 2021-0915-01

Table of Contents

UPDATED INFORMATIVE DIGEST	2
Changes to Existing Statutes or Regulations	2
GENERAL INFORMATION	2
Update to the Initial Statement of Reasons	2
Mandates on Local Governments and School Districts	2
Alternatives Considered	2
Small Business Alternatives Considered.....	4
SUMMARY OF COMMENTS AND RESPONSES.....	4
List of Commenters and their Affiliations	4
Summary of Objections and Recommendations	6

UPDATED INFORMATIVE DIGEST

Changes to Existing Statutes or Regulations

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action dated September 24, 2021.

GENERAL INFORMATION

Update to the Initial Statement of Reasons

As authorized by Government Code section 11346.9, subsection (d), the Department of Toxic Substances Control (DTSC) incorporates by reference the Initial Statement of Reasons (ISOR) prepared for this rulemaking. DTSC published the proposed regulatory text, ISOR, Economic and Fiscal Impact Analysis, and supporting documents for public review and comment on September 24, 2021. This public review and comment period concluded on November 8, 2021.

DTSC received a total of eight comments. DTSC did not make any substantive changes to the regulation. The following corrections are non-substantive changes to the regulatory text because they do not materially alter the requirements or conditions of the proposed rulemaking action.

Section 69511. General. Corrected punctuation in subsections (b)(4) and (b)(5).

Mandates on Local Governments and School Districts

DTSC has determined that this regulatory action will not result in mandates to any local agencies or school districts.

Alternatives Considered

For the reasons set forth in the ISOR, the responses to comments received, and in this Final Statement of Reasons, DTSC determined that no alternative considered by the agency other than Alternative 1 would be more effective in carrying out the purpose for which the regulatory action was proposed, or would be as effective and less burdensome to affected private persons, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law than the action taken by DTSC.

Alternative 1: List treatments containing perfluoroalkyl or polyfluoroalkyl substances (PFASs) for use on converted textiles or leathers as a Priority Product.

This is the chosen alternative, because it is the only alternative effective in achieving the purposes of the regulations.

Alternative 2: List treatments containing long-chain perfluoroalkyl acids (PFAAs) and their precursors for use on converted textiles or leathers as a Priority Product.

While they may be present in imported treatment products for use on converted textiles or leathers, long-chain PFAAs and their precursors have been phased out from domestic use following U.S. Environmental Protection Agency (EPA)'s 2010/2015 voluntary Stewardship Program. Shorter-chain PFAAs, which form the basis for currently used PFASs in treatments for use on converted textiles or leathers, show potential for some of the same adverse health hazards as their longer-chain counterparts, including developmental toxicity, endocrine toxicity, hematotoxicity, hepatotoxicity, neurodevelopmental toxicity, and reproductive toxicity. To meaningfully protect California's people and environment, DTSC decided to include treatments containing any PFASs for use on converted textiles or leathers in its Priority Product designation.

Alternative 3: List treatments containing PFAAs and their precursors for use on converted textiles or leathers as a Priority Product.

Side-chain fluorinated polymers, which are PFAA precursors, are the main type of PFAS in treatments for use on converted textiles or leathers. However, perfluoropolyethers, which may not be PFAA precursors, can also be used in these products. DTSC is concerned about perfluoropolyethers as well, because they are persistent, may contain PFAAs as impurities, and may degrade into PFAAs if incinerated. Incineration for energy recovery is a common end-of-life fate for converted textiles or leathers in California. Additionally, in a letter submitted during DTSC's regulatory public comment period for another proposed Priority Product, 3M, one of the manufacturers of treatments for converted textiles and leathers, explained that there is at least one fluoropolymer emulsion used as an aftermarket cleaning product for carpets and other such textile products. Fluoropolymers are manufactured using PFAAs, leading to extensive environmental contamination, contain PFAA impurities, and may degrade to PFAAs if incinerated. Given the known hazard traits, replacing currently-used PFASs in treatments for converted textiles or leathers with other members of the PFAS class could constitute a regrettable substitution. Therefore, to adequately protect California's people and environment, DTSC decided to include treatments containing any PFASs for use on converted textiles or leathers in its Priority Product designation.

Small Business Alternatives Considered

DTSC has not identified reasonable alternatives that would lessen any adverse impact on small business.

SUMMARY OF COMMENTS AND RESPONSES

List of Commenters and their Affiliations

Table 1 lists the organizations and individuals that provided comments during the previously mentioned comment period and the number DTSC assigned to their comment letters. Most of the comment letters cover more than one theme. To organize the comments, DTSC numbered individual letters, as shown, then assigned a number to each individual comment. For example, the number “CL13-3” refers to the third comment in the comment letter numbered 13. Table 2 presents an index of individual comments and the responses.

Table 1: List of Commenters

#	Commenter	Affiliation
CL1	Hannah Ray	Green Science Policy Institute
CL2	Martha Tremblay	Los Angeles County Sanitation Districts
CL3	Doug Kobold	California Product Stewardship Council
CL3	Anna Reade	Natural Resources Defense Council
CL3	Andria Ventura	Clean Water Action
CL3	Sharyle Patton	Commonweal Biomonitoring Resource Center
CL3	Sarah Doll	Safer States
CL3	Nancy Buermeyer	Breast Cancer Prevention Partners
CL3	Heidi Sanborn	National Stewardship Action Council
CL3	Nick Lapis	Californians Against Waste
CL3	Bill Allayaud	Environmental Working Group
CL3	Laurie Valeriano	Toxic-Free Future
CL3	Beth Rattner	Biomimicry Institute
CL3	Rebecca Burgess	Fibershed
CL3	Nicholas Brown	Fashion Revolution
CL3	Connie Ulasewicz	CBUProductions
CL3	Sarah Packer	Center for Environmental Health
CL4	Nsedu Obot Witherspoon	Children’s Environmental Health Network
CL5	Greg Kester	California Association of Sanitation Agencies
CL6	Imani Jenkins	Textron Specialized Vehicles

#	Commenter	Affiliation
CL7	Jennifer Liss Ohayon	Silent Spring Institute
CL7	Laurel Schaidler	Silent Spring Institute
CL7	Summer-Solstice Thomas	Silent Spring Institute
CL8	Travis L Willard	Innovative Chemical Technologies, Inc. (ICT)

Table 2: Index of Comments

Comment #	Location in Comment Letter	Page # in FSOR
CL1-1	entire letter	13
CL2-1	page 1, paragraph 2, sentence 1 page 2, paragraph 1, sentence 3	7
CL2-2	page 2, paragraph 2, sentence 2	12
CL3-1	page 1, paragraph 1 page 1, paragraph 2, sentence 1 page 2, paragraph 4, sentence 2	7
CL3-2	page 1, paragraph 2, sentence 3	9
CL4-1	entire letter, especially: <ul style="list-style-type: none"> • page 1, paragraph 1, sentences 1 and 2 • page 2, paragraph 5 	7
CL5-1	entire letter, especially: <ul style="list-style-type: none"> • page 1 • page 2, paragraph 1, sentence 1 • page 2, paragraph 3, sentence 3 • page 2, paragraph 4, sentence 1 • page 3, paragraph 2, sentences 2 and 5 • page 3, paragraph 3, sentence 1 	7
CL5-2	page 3, paragraph 2, sentence 3	7
CL5-3	page 3, paragraph 2, sentence 3	9

Comment #	Location in Comment Letter	Page # in FSOR
CL6-1	paragraph 1, sentence 1	10
CL6-2	paragraphs 2 and 3	11
CL6-3	paragraph 4	12
CL7-1	page 1, paragraph 3, sentence 1	8
CL7-2	page 1, paragraph 3, sentence 2 page 3, paragraph 2, sentence 3	8
CL7-3	page 1, paragraph 3, sentence 3 page 2, paragraph 1, sentence 6 page 2, paragraph 2, sentence 7 page 3, paragraph 4	7
CL8-1	page 1, paragraphs 5 and 6 page 2, paragraph 1	10
CL8-2	page 2, paragraph 2, sentence 2	11
CL8-3	page 2, paragraph 2, sentence 3	8

Summary of Objections and Recommendations

DTSC received eight comment letters during the comment period from September 24 through November 8, 2021. The comments fall into one of the following categories:

- I. Support of the rulemaking – comments supporting DTSC’s conclusions and the proposed Priority Product listing;
- II. Definition of the Candidate Chemical – comments regarding the definition of the class of PFASs;
- III. Definition of the Priority Product – comments asking to expand or restrict the definition of the Priority Product;
- IV. Compliance with the rulemaking – comments requesting additional time to comply with the rulemaking;

- V. Existing regulations – comments related to duplication with existing regulations;
- VI. Requests for information – comments requesting additional information or study results to be shared regularly;
- VII. Study results – comment providing product testing results.

DTSC grouped and summarized the comments according to the listed themes, presenting summaries and responses in each section.

Comments in Support of the Rulemaking

Comments: CL2-1, CL3-1, CL4-1, CL5-1, CL7-3

Comment Summary: These comments express general support for DTSC’s proposal to regulate treatments containing perfluoroalkyl or polyfluoroalkyl substances for use on converted textiles or leathers as a Priority Product. The use of these products has been shown to be a significant source of human and ecological exposure to PFASs, especially via inhalation. Sensitive subgroups whose bodies are in close contact with these chemicals, such as young children, will benefit from promoting a healthier environment. DTSC’s leadership will protect Californians from toxic and bioaccumulative chemicals such as PFASs, whose use is an impediment to achieving a circular economy. Consumers currently cannot reliably avoid PFASs by selecting green certified products or using information on product labels. DTSC’s proposal to list treatments containing perfluoroalkyl or polyfluoroalkyl substances for use on converted textiles or leathers as a Priority Product aligns with the mission of the organizations of the commenters to protect human health and the environment. Sanitation Districts are concerned about the presence of PFASs in these products because of their potential to enter wastewater and solid waste facilities. Source control measures are preferable to imposing a burden on public sewer systems. The evidence assembled by DTSC supports the conclusion that treatments containing perfluoroalkyl or polyfluoroalkyl substances for use on converted textiles or leathers meet the criteria for regulation as a Priority Product, documenting the potential exposures and adverse impacts and end-of-life effects.

DTSC Response: DTSC acknowledges the commenters’ support.

No changes were made to the proposed regulations or supporting documents based on these comments.

Comment: CL5-2

Comment Summary: The commenter recommends that in order to address the sources of PFASs, their production and use at manufacturing facilities should be phased out in favor of safer alternatives.

DTSC Response: The proposed regulations, listing treatments containing perfluoroalkyl or polyfluoroalkyl substances for use on converted textiles or leathers as a Priority Product, require manufacturers to notify DTSC if they manufacture the Priority Product and either replace the chemical of concern, stop selling the Priority Product in California, or conduct an Alternatives Analysis. Therefore, phasing out the use of PFASs in these products is one possible outcome of these proposed regulations, but it is not a requirement of the regulations.

No changes were made to the proposed regulations or supporting documents based on this comment.

Comment: CL7-1

Comment Summary: The commenters support DTSC's assessment that exposures to textiles and leathers treated with PFASs present significant health risks to consumers.

DTSC Response: DTSC acknowledges the commenters' support.

No changes were made to the proposed regulations or supporting documents based on this comment.

Comments Regarding the Definition of the Candidate Chemical

Comment: CL7-2

Comment Summary: The commenters support DTSC naming the entire class of PFASs as the Candidate Chemical for this rulemaking due to the shared hazard traits and risk of regrettable substitutions in consumer products. Grouping PFASs as a class is also supported by the American Public Health Association and several expert scientists.

DTSC Response: DTSC acknowledges the commenters' support.

No changes were made to the proposed regulations or supporting documents based on this comment.

Comment: CL8-3

Comment Summary: The commenter expresses concerns about grouping all chemicals containing at least one fully fluorinated carbon atom as a class for the purpose of this proposed rulemaking.

DTSC Response: For the purpose of this proposed rulemaking, DTSC's definition of the PFAS class is the one adopted in the California Environmental Contaminant Biomonitoring Program's Priority List, which is one of the authoritative lists that comprise DTSC's Candidate Chemicals list. The definition is incorporated by reference in sections California Code of Regulations, title 22, 66260.11(a)(71) and 69511.4(b)(1). This definition refers to chemicals with at least one C_nF_{2n+1} moiety. Therefore, DTSC's PFAS definition does not include all chemicals containing at least one fully fluorinated carbon atom. Furthermore, as explained in the technical document, all PFASs that meet DTSC's definition, or their degradation, metabolism, or reaction products display at least one hazard trait according to the California Code of Regulations, title 22, sections 69401 et seq. It is impractical to regulate such a large class of chemicals individually. To meet the goal of the Safer Consumer Products (SCP) Regulations to identify safer substitutes for hazardous ingredients in consumer products sold in California, DTSC is treating PFASs as a class and encouraging manufacturers to consider non-PFAS alternatives during the Alternatives Analysis process.

No changes were made to the proposed regulations or supporting documents based on this comment.

Comments Regarding the Definition of the Priority Product

Comment: CL3-2, CL5-3

Comment Summary: The commenters recommended that DTSC expand the product definition to include treatments containing PFASs added to textiles and leathers during the manufacturing process. In order to effectively address the sources of PFASs, their production and use at manufacturing facilities for textiles, carpets, clothing, and other consumer products, domestic and foreign, should be phased out in favor of safer alternatives.

DTSC Response: DTSC can only designate consumer products that fall under the product categories included in the current Priority Product Work Plan (PPWP)¹ as Priority Products. Treatments for converted textiles or leathers fall under the PPWP category of "cleaning products", however treatments added during the textile and leathers manufacturing process do not fall under any of the PPWP categories. Additionally, DTSC can only address consumer products sold in California. The vast majority of textile and leather products sold in California and treated with PFASs during

¹ <https://dtsc.ca.gov/wp-content/uploads/sites/31/2021/04/Final-2021-2023-Priority-Product-Work-Plan.pdf>

manufacturing are manufactured outside of California, which means that the sale of the treatments typically occurs outside of California and is outside DTSC's jurisdiction.

Nevertheless, DTSC agrees with the commenters that the use of treatments containing PFASs during the manufacturing of textiles and leathers is also of concern. On July 1, 2021, DTSC adopted regulations listing carpets and rugs containing PFASs as a Priority Product, and DTSC may pursue regulation of other converted textiles or leather products containing PFASs in the future.

No changes were made to the proposed regulations or supporting documents based on this comment.

Comment: CL8-1

Comment Summary: DTSC's definition of "consumer product" is very broad, including virtually any item purchased by any entity in the state of California. Therefore, this definition would also apply to fabric treatments purchased by medical facilities, law enforcement, and other first responders. Fluorinated textile treatments protect the safety of workers in these occupational settings.

DTSC Response: DTSC acknowledges the commenter's concerns. The SCP Regulations are designed to avoid regrettable substitutions and ensure that product safety is not compromised. As such, the proposed regulations do not ban the Candidate Chemical or the Priority Product. If the proposed regulations become effective, manufacturers of the Priority Product will need to notify DTSC within 60 days of the effective date of the regulations. Following the notification, manufacturers may choose to remove or replace the Candidate Chemical or to stop selling the Priority Product in California, but they also have the option to perform an Alternatives Analysis to determine whether the Candidate Chemical or its function are necessary in the product, whether there are safer alternatives, and what the tradeoffs are. Any regulatory response that DTSC subsequently takes will be informed by the treatments manufacturers' Alternatives Analysis and can vary from manufacturer to manufacturer. If the outcome of the Alternatives Analysis does not reveal safer alternatives, the SCP Regulations provide a variety of regulatory responses, including requiring investment in developing green chemistry or engineering solutions and providing information to consumers.

No changes were made to the proposed regulations or supporting documents based on this comment.

Comments Regarding Compliance with the Rulemaking

Comment: CL6-1

Comment Summary: The commenter requests more time to identify where PFASs are used in their business.

DTSC Response: DTSC's proposed regulations pertain to treatments containing perfluoroalkyl or polyfluoroalkyl substances for use on converted textiles or leathers. If the proposed regulations become effective, manufacturers who make this Priority Product for sale in California will have to notify DTSC within 60 days by submitting a Priority Product Notification (PPN). Therefore, the commenter does not need to assess the use of PFASs in their entire business, only in these specific products. If they are unable to determine whether PFASs are used in any treatments for converted textiles or leathers that they manufacture for sale in California, they can err on the side of caution and still submit a PPN to comply with the regulations.

No changes were made to the proposed regulations or supporting documents based on this comment.

Comment: CL6-2

Comment Summary: The commenter requests a minimum of seven years to become compliant with the regulations and requests time to find an alternative to PFASs.

DTSC Response: If these proposed regulations become effective, manufacturers of the Priority Product must submit a Priority Product Notification (PPN) to DTSC within 60 days, informing DTSC that they manufacture the Priority Product. Subsequently, manufacturers have several options to remain in compliance, including preparing an Alternatives Analysis (AA), which is a multi-year process. Based on the results of the AA, DTSC will take a regulatory response, which again will be a multi-year process. Therefore, DTSC believes that there will be sufficient time for any manufacturer to comply with these regulations and any subsequent regulatory responses.

No changes were made to the proposed regulations or supporting documents based on this comment.

Comments Regarding Existing Regulations

Comment: CL8-2

Comment Summary: The U.S. EPA has already addressed the use of, and exposure to, long-chain PFASs. Additional rulemaking at the state level is unnecessary and burdensome to formulators nationwide and consumers in California.

DTSC Response: DTSC has determined that no other state or federal regulatory programs provide adequate protection against the potential hazard traits and exposures associated with the proposed Priority Product. While significant, U.S. EPA's actions do not provide the same level of public health and environmental protection that would be provided by designating treatments containing perfluoroalkyl or polyfluoroalkyl substances for use on converted textiles or leathers as a Priority Product.

There are several differences between U.S. EPA's and DTSC's approach. For instance, U.S. EPA's work is based on a risk assessment approach. DTSC, however, considers the potential human and ecological exposures and the potential for significant or widespread adverse impacts, which provides a greater level of protection. Additionally, U.S. EPA's focus on reducing the manufacture and use of long-chain PFASs does not address the creation of safer products. By listing this Priority Product, DTSC is asking manufacturers to consider whether PFASs are necessary in treatments for converted textile or leathers, and whether there are safer alternatives to PFASs. By focusing on safer products, the SCP Regulations provide a higher level of protection, as well as aim for a different goal, than U.S. EPA's actions on long-chain PFASs.

Lastly, as the commenter points out, U.S. EPA's actions have reduced the use and exposure to long-chain PFASs. However, shorter-chain PFASs (which are currently the main type of PFASs found in treatments for converted textiles or leathers) show evidence for some of the same hazard traits as their longer-chain counterparts, including developmental toxicity, endocrine toxicity, hematotoxicity, hepatotoxicity, neurodevelopmental toxicity, reproductive toxicity, persistence, mobility in the environment, and lactational and transplacental transfer. To meaningfully protect California's people and environment, DTSC is including all members of the PFAS class in its Priority Product designation.

No changes were made to the proposed regulations or supporting documents based on this comment.

Comments Regarding Requests for Information

Comment: CL2-2

Comment Summary: The commenters recommend that DTSC provide in the public record any additional information available that links the proposed Priority Product to exposures and potential adverse impacts specifically in California.

DTSC Response: All data available to DTSC was provided in the Technical Report that accompanies this proposed rulemaking.

No changes were made to the proposed regulations or supporting documents based on this comment.

Comment: CL6-3

Comment Summary: The commenter requests that EPA provides information on how it conducts studies and regularly shares its study results.

DTSC Response: If the commenter is referring to the federal EPA, this request is beyond the scope of DTSC's authority. If the commenter is referring to DTSC's work, DTSC held public workshops to present its study results and seek input from its stakeholders on January 31, 2017 and December 9, 2019.²

No changes were made to the proposed regulations or supporting documents based on this comment.

Comment Regarding Study Results

Comment: CL1-1

Comment Summary: In the spring of 2021, the commentator conducted a study to measure the total fluorine content of six waterproofing products that claimed to be PFAS-free. All six samples contained less than the method's limit of detection of 40 parts per million (ppm) total fluorine. Thus, it was determined that these six products, some of which had been recently reformulated, likely do not contain perfluoroalkyl or polyfluoroalkyl substances.

DTSC Response: DTSC thanks the commenter for providing this information that will be helpful in subsequent stages of the process.

No changes were made to the proposed regulations or supporting documents based on this comment.

² <https://dtsc.ca.gov/scp/safer-consumer-products-workshops-events/>