

# California DTSC Finalizes Priority Product Listing of Carpets and Rugs Containing PFAS Triggering Reporting Requirements

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On July 1, 2021, the California Department of Toxic Substances Control (DTSC) [adopted](#) a new “Priority Product” under the state’s Safer Consumer Products (SCP) Program: carpets and rugs containing perfluoroalkyl or polyfluoroalkyl substances (PFAS). Businesses that manufacture, import, distribute, sell, or assemble carpets and rugs containing PFAS that are sold in California will have until August 30, 2021 to provide DTSC notice and will need to evaluate alternatives to using PFAS by December 28, 2021.

## Key Takeaways:

- Manufactures of carpets and rugs containing PFAS that are sold in California will be affected, although there are a number of exceptions.
- Responsible entities for carpets and rugs containing PFAS must submit a Priority Product Notification (PPN) to DTSC by August 30, 2021. Responsible entities must then submit additional analyses and documentation by December 28, 2021.
- Although the primary responsibility for compliance rests on manufacturers, other responsible entities must also stay informed. Responsibility for compliance falls to the importer, retailer, or assembler if the manufacturer has failed to comply with the requirements and DTSC has posted the information on the Failure to Comply List.

## Background

The SCP is California’s green chemistry law. Under the SCP Program, DTSC is required to identify and prioritize chemicals of concern and evaluate consumer products containing those chemicals to

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limit exposure to, or reduce the hazards associated with, the use of the chemicals in consumer products. As Beveridge & Diamond previously outlined [here](#) and [here](#), DTSC designates a consumer product and chemical of concern as a Priority Product when it finds that (1) the product risks exposure to the chemical, and (2) there is a potential for one or more exposures to contribute to or cause significant or widespread adverse impacts.

Responsible entities then must notify DTSC if they produce, assemble, import, or sell a Priority Product; conduct an alternatives analysis (which requires evaluation and comparison of a Priority Product and one or more alternatives to determine whether a safer, feasible alternative exists); and submit an Alternatives Analysis Report to DTSC. Based on the results of the alternatives analysis, DTSC can impose a range of regulatory responses to address the hazard or potential exposure, including:

1. Require additional product information for consumers.
2. Impose use restrictions on chemicals and products.
3. Prohibit the sale of a product; require engineering controls.
4. Require end-of-life management.
5. Order funding for green chemistry research.

DTSC noticed his particular proposed designation in February 2020, held a [hearing](#) in May 2020, accepted public [comments](#), and revised the analysis supporting the designation, with details available [here](#). This is the fourth final and effective Priority Product designation by DTSC to date. A complete list of Priority Products that have been proposed or adopted by DTSC under the SCP Program is available [here](#).

## Scope of Priority Product

This Priority Product designation covers all PFAS, an approach that can make compliance difficult. PFAS include about 5,000 substances. The designation does not differentiate between various potential exposure pathways or toxicity levels, but rather groups all PFAS substances together.

DTSC identified carpets and rugs as a major source of PFAS because a large percentage of the PFAS produced worldwide are used to treat carpets, rugs, and other home textiles to confer water, stain, and oil resistance. The regulation specifically pertains to all consumer products containing PFAS that are intended to be used as a floor covering inside commercial or residential buildings. The regulation contains a number of exceptions, including: carpets and rugs intended solely for outdoor use, resilient floor coverings, artificial turf, wall hangings and coverings, table mats, and camping sleeping mats. In addition, the regulation does not apply to carpets and rugs intended solely for use inside airplanes, trains, ships, or vehicles.

## Reporting Requirements and Next Steps

Responsible entities must evaluate now whether carpets or rugs that are sold in California contain PFAS. If the floor coverings do not contain PFAS, no further action is required. Responsible entities whose carpets and rugs contain PFAS must submit a Priority Product Notification (PPN) to DTSC by

August 30, 2021. After submitting a PPN, responsible entities must then submit one of the following by December 28, 2021:

- a Chemical Removal Intent/Confirmation Notification
- a Product Removal Intent/Confirmation Notification
- a Product-Chemical Replacement Intent/Confirmation Notification, or
- a Preliminary Alternatives Analysis Report.

While manufacturers have the principal duty to comply with the regulation, other responsible entities may include importers, assemblers, or retailers of carpets and rugs containing PFAS. If the manufacturer fails to comply with the regulation, then importers must cease to place the Priority Product in the stream of commerce in California, and retailers or assemblers must cease ordering the Priority Product and submit a Cease Ordering Notification to DTSC.

The designation may be subject to legal challenge, which could potentially stay the notice and reporting deadlines. Public comments raised issues with regulating PFAS as a class, equating persistence with toxicity, and disputing DTSC's supporting information.

For now, businesses subject to the designation will need to evaluate the scope of the designation and notice requirements. Businesses that sell other consumer products in California that contain PFAS need to continue to track DTSC's rulemaking. DTSC has currently proposed listing food packaging as well as treatments used on converted textiles or leathers, such as carpets, upholstery, clothing, and shoes, containing PFAS.

*Ashley Campfield, a Summer Associate, also contributed to this article.*

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