

CPSC Publishes RFI on PFAS in Consumer Products

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Joining a growing number of state and federal agencies, the U.S. Consumer Product Safety Commission (CPSC or Commission) is seeking information on uses of per- and polyfluoroalkyl substances (PFAS) in consumer products. In addition to work it began last year with ASTM International on consumer product standards related to PFAS, the CPSC released a [white paper](#) prepared by an external contractor back on July 14, 2023, and is now seeking comments on a [Request for Information \(RFI\) on PFAS in Consumer Products](#). Through its RFI, the Commission is soliciting feedback on, among other things, how to define PFAS, which the report acknowledges has “no single, universally accepted definition ... or authoritative list of substances.”

Illustrating the complex nature of questions on PFAS is the U.S. Environmental Protection Agency (EPA), which recently [added](#) certain PFAS to its list of chemicals of special concern subject to reporting under the Emergency Planning and Community Right-to-Know Act (EPCRA) and the Pollution Prevention Act (PPA). While EPA is seeking to regulate some PFAS chemicals under various provisions, it recognizes that there are thousands of PFAS with differing attributes. These chemicals have a wide variety of applications and are commonly used in consumer products such as non-stick cookware, raincoats, carpets, food containers, shoes, fabrics, polishes, waxes, paints, and cleaning products. Often referred to as “forever chemicals” because they degrade slowly, PFAS, as a category of chemicals, are subject to increasing scrutiny due to concerns that they may be harmful to humans and animals, even where evidence demonstrating such harms is lacking. Each of the thousands of substances that might be classified as part of the category has unique attributes, and there currently is no scientific evidence showing that all PFAS share an identical characteristic to support a blanket ban. Careful assessments of the performance and safety benefits that might be associated with each substance’s use are still needed.

CPSC White Paper on PFAS in Consumer Products

Ahead of its RFI, on July 14, 2023, CPSC, with RTI International, its external contractor, published a white paper giving an overview of current uses, regulations, and risk assessments of PFAS. The white paper suggests that “[r]eduction, and ultimately elimination, of PFAS use in consumer products and other applications is needed to reduce human exposure and associated adverse health outcomes,” while also acknowledging data gaps and uncertainties, including a lack of consensus on

what is considered a “PFAS.”

Certain PFAS, such as perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), have been studied in-depth; both of these chemicals were voluntarily phased out of production in the U.S. and are termed “legacy” PFAS. However, research on other PFAS substances is inconclusive or has failed to find a link to environmental or health harms. Given the lack of agreement on PFAS definitions, the white paper encourages building consensus “across definitions and interpretations across stakeholders ... to help with awareness, communication, and selection of proper substitutes.”

RFI on PFAS in Consumer Products

As part of an effort to fill gaps identified in the white paper, CPSC’s RFI, published on September 20, 2023, asks stakeholders to respond to a broad range of questions, such as definitions, current uses, potential uses, potential human exposures, and potential adverse human health effects associated with PFAS in consumer products. The Commission also asks for recommendations on specific PFAS and consumer products the CPSC should prioritize in assessments.

Comments are due November 20, 2023.

Is a CPSC Rulemaking on the Horizon?

While the RFI states that it “does not constitute or propose regulatory action, but rather is intended to inform the Commission and the public,” the wording of some questions and the white paper’s conclusions suggest otherwise and indicate that the CPSC is on a path towards a rulemaking. Any rulemaking must acknowledge the technical complexity of assessing differing chemistries and uses of PFAS, important safety and other benefits from certain uses, and the regulatory process Congress has mandated that the CPSC follow. In addition, any rulemaking related to PFAS would take years and first require convening a Chronic Hazard Advisory Panel (CHAP) under section 31 of the Consumer Product Safety Act (CPSA) to assess risks and provide recommendations. The last time a similar rulemaking was initiated was in 2017, when the Commission voted to begin a rulemaking that could result in prohibiting certain consumer products containing additive, non-polymeric organohalogen flame retardants (OFRs). That effort is still ongoing and demonstrates that any CPSC regulatory action—particularly one involving a large, complex category of chemistries—requires completion of the deliberative technical analysis required by Congress.

While federal action is ongoing, some states have already adopted limits or bans on some PFAS substances in certain consumer products, and state attorneys general in those states may be authorized to enforce those restrictions. For example, on October 17, 2023, California Attorney General Rob Bonta sent a [warning letter](#) to manufacturers, distributors, and sellers of food packaging and cookware informing them of their obligations under AB1200, which took effect on January 1, 2023. AB1200 prohibits certain classes of PFAS in covered food packaging and imposes labeling disclosure requirements for covered cookware. A number of similar laws exist or are pending in other states, so the regulatory landscape will likely grow more confusing as significant scientific and technical questions about PFAS chemistry, uses, and benefits and risks remain unanswered.

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