# OPPOSE HB 3512

Our organizations, representing a cross section of manufacturers, consumer product companies, retailers and other employers, are writing to convey our opposition to HB 3512, legislation that proposes to regulate certain products containing perfluoroalkyl or polyfluoroalkyl substances (PFAS).

Collectively, we support the responsible production, use and management of fluorinated substances, including regulatory requirements that are protective of human health and the environment, taking into consideration the diversity of physical and chemical properties and the environmental and health profiles of these substances. However, as introduced, HB 3512 is inconsistent with similar PFAS in product laws enacted in other states, including broad definitions that could present significant compliance challenges for product manufacturers, failure to consider any potential conflicts with federal requirements for the covered products listed in the bill, and creating an onerous enforcement mechanism. For these reasons, we urge your NO vote on HB 3512.

**Background**

HB 3512 is built on a foundation that incorrectly characterizes all PFAS substances as equal, regardless of any unique properties and uses, environmental and health profiles, potential exposure pathways, and any potential risk. PFAS substances can be a solid (e.g., fluoropolymers), liquid (e.g., fluorotelomer alcohols) or a gas (e.g., hydrofluorocarbon refrigerants). The fundamental physical, chemical, and biological properties of solids, liquids and gases are clearly different from one another. The very distinct physical and chemical properties of the three types demonstrate how varied they are and how imposing a "one-size fits all" approach as proposed would be inappropriate.

**Issues**

- The definition of "intentionally added" is inconsistent with similar laws in other states, posing unique challenges for product manufacturers doing business in Oregon. The phrase "known or should have known…" introduces a level of subjectivity into the determination of whether PFAS is intentionally added, which complicates implementation and enforcement. It also fails to consider unintentional contaminants that are beyond a manufacturer's control (e.g. cross-contamination, background levels, and other variabilities, etc.). This section may also have the unintended impact of discouraging the use of recycled materials to use as feedstock in making new products. New York defines an "intentionally added chemical" as a chemical in a product that serves an intended function in the product component.

- The definition of "cookware" is expansive and as written, could include ovens, ranges, microwave ovens, air fryers, blenders, etc. Furthermore, the bill makes no differentiation between internal or external components, nor does it consider whether there is the potential for any exposure.

- Refrigerators are included as a "covered product" but like cookware, it is unclear whether this means the entire appliance, internal electronic components, refrigerants, or something else.

- The broad definition of "packaging" likely includes consumer packaging, industrial applications, and packaging used to ship products into and throughout Oregon. The number of businesses impacted is likely to be significant.

- Language in Section 2 states that a "manufacturer of a covered product shall provide to a person that offers a covered product for sale in this state with a certificate of compliance stating that the covered product does not contain ***any*** intentionally added perfluoroalkyl or polyfluoroalkyl substances." Given the broad definition of intentionally added and no di minimis threshold for triggering compliance, this language could put manufacturers at risk of being out of compliance for the mere detection of a PFAS molecule.

- The proposed "single-carbon" definition included in Section 16 is overly broad and lacks scientific basis. While the science on PFAS continues to evolve, we do know that there is extreme variation among the thousands of PFAS, both in terms of toxicological profile and risk/exposure scenarios. Any definition for PFAS entered into Oregon statute should be science-based and align with EPA's definition from their most recent ruling under the Toxic Substances Control Act related to PFAS regulation.

- The enforcement language in Section 3 appears to be overly aggressive and completely unnecessary and could lead to manufacturers having to recall products or cease sales. Language in Section 4 provides that "there is a rebuttable presumption that the presence of total fluorine in a covered product indicates that the covered product contains an intentionally added perfluoroalkyl or polyfluoroalkyl substance." This language would inappropriately presume that inorganic fluorine (not PFAS) is PFAS and detectable levels of PFAS are intentionally added when this type of test may also detect background levels not attributable to the manufacturer of the product.

- The 2027 effective date is unrealistic given the scope of products impacted and the complexity of domestic and global supply chains. The compliance process is unclear and, as structured, the bill contains onerous reporting requirements in which untold numbers of certificates must Ensuring manufacturers have the necessary information to meet compliance obligations will require significantly more time.

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# Specific Issues with HB 3512

**Definitions**

- "Cookware" definition is very expansive and as written, could include ovens, ranges, microwave ovens, air fryers, blenders, etc. No differentiation between internal/external components or possibility of exposure to user.
- "Covered product" includes
    - Broad "refrigerator" category. Does this mean the entire appliance? Internal components? Refrigerants?
    - Textiles: products, like vehicle seats, flooring, etc that need to be produced with flame retardant for safety reasons.
    - Some products are required by Federal law to include PFAS products, raising question over federal pre-emption and whether the bill addresses
    - Need to apply medical device exemption to all products, not just juvenile (FDA regulated for safety)
- "Intentionally added" definition needs many changes
    - Adds regulatory uncertainty and is inconsistent with other states definitions.
    - Could be interpreted to include post-consumer recycled material (PCR) as it includes *"if a manufacturer knew or should have known that the process would introduce…"* This would create difficulty in meeting other requirements, such as PCR content, in other bills.
- "Packaging"
    - Unclear regarding various types of packaging: industrial, consumer, secondary, tertiary, etc.
    - This definition could include components like mold release agents
    - Few other laws that include 'packaging' as a covered product.
    - The definition is so broad to include just about everything, including things like signs, newspapers, and other "marketing materials". Additionally, the definition will include things like pallets, totes, wraps and other items used to transport items and materials. Banning of these items will virtually shut down the ability for business to conduct commerce.
    - Regarding consumer packaging, the RMA already covers its management
        - *OAR 340-090-0900 (20)-Life Cycle Evaluations* defines "intentionally added" and gives exemptions for post-consumer recycled materials, which HB 3512 does not.
        - In its Program Plan, CAA will require all responsible end markets to have a "Chemical Management System" in place to address chemicals of concern, which will presumably include PFAS. This will require them to report and disclose any exposures to these chemicals.
        - The RMA and CAA will require far tighter restrictions than what is in HB3512.
            - Including "Packaging" in HB 3512 is redundant.

**Section 2 – Certificate of Compliance**

- No di minimis threshold, could put manufacturers at risk of being out of compliance for the mere detection of a PFAS molecule.
    - PFAS may already be persistent in the environment due to releases months or years earlier that did not involve a manufacturer. There should be limits and exemptions for such detections.
- Definition is circular, lacking clarity or distinction between manufacturer and person (which could be the same)
- What does "certification" require (rulemaking, clarity for manufacturers): Why can't it be simpler (like posting on website?)
- Gives no guidance on how many times the manufacturer needs to provide the certificate of compliance
    - Does the certificate need to be included with every shipment?
- The section seems to interfere with interstate commerce as a business may not import covered products from a neighboring state. It is also silent about exporting covered products to a neighboring state.
- Does not provide exemptions for business-to-business transactions. Certain businesses may purchase or sell materials to other businesses without significantly modifying the chemical nature of the material (such as PCR feedstocks). For example, manufacturers purchasing recycled resin feedstocks. Such businesses should be held harmless.

**Section 4 – Enforcement**

- Overly aggressive, unnecessary, including injunctive relief, which could lead to manufacturers having to recall products or cease sales.
- "Rebuttable presumption" language presumes detectable levels of PFAS are intentionally added when this type of test may also detect background levels not attributable to the manufacturer of the product.
- Unclear the triggers for AG review and request manufacturer information and is duplicative when the AG can already bring a civil action and obtain manufacturer information.
- The compliance mechanism is ill-defined and unworkable under the current language. The bill contains no details on how it would work, what the certificates would look like, who would have to keep them, etc.

**Section 5 – Implementation**

- Compliance by 2027 is unachievable: given the scope of products impacted and the complexity of domestic and global supply chains. Ensuring manufacturers have the necessary information to meet compliance obligations will require significantly more time.
- Application of giving a single product category a different implementation date ("outdoor apparel") demonstrates acknowledgement of compliance timeline issues.