

August 26, 2019

The Honorable Jim Inhofe
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510

The Honorable Jack Reed
Ranking Member
Committee on Armed Services
United States Senate
Washington, DC 20510

The Honorable Adam Smith
Chairman
Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Mac Thornberry
Ranking Member
Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Inhofe, Ranking Member Reed, Chairman Smith, and Ranking Member Thornberry:

We, the undersigned associations, write to you regarding provisions in S. 1790 and H.R. 2500, the “National Defense Authorization Act for Fiscal Year 2020,” addressing the regulation of per- and polyfluoroalkyl substances (“PFAS”).

We appreciate the bipartisan approach taken thus far and recommend that any Congressional action enable the appropriate agencies to carry-out the risk-based approach established in existing U.S. environmental law and policy. As warranted, we support the regulation of specific PFAS chemicals, and it is important that Congress prioritize the cleanup of contaminated sites to protect communities.

As the Senate and the House of Representatives begin their conference deliberations, we urge you to oppose those provisions that would circumvent existing, well-established regulatory processes, predetermine outcomes using inadequate scientific data, and potentially inhibit effective cleanup of those PFAS that are of the greatest concern.

We therefore urge you to take the following actions:

Reject Provisions that Circumvent Existing Regulatory Authorities and Regulate PFAS as a Single Class

PFAS have a wide variety of physical and chemical properties and uses. Given this wide variation, it is inappropriate to circumvent existing regulatory authorities and regulate *all* PFAS as a single class. Rather, federal agencies with the relevant expertise should identify potential avenues for prioritizing individual or discreet groups of PFAS with similar properties that may otherwise require greater scrutiny based on hazard and exposure profiles.

Accordingly, we urge you to reject a number of specific provisions in H.R. 2500. Sections 330A, 330D, and 330O, however well-intentioned, are not productive approaches to addressing PFAS contamination. These amendments would require the U.S. Environmental Protection Agency (“EPA”) to designate all PFAS as hazardous substances under the

Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA” or “Superfund”) and otherwise circumvent the existing regulatory process for determining hazardous substances and wastes.

Section 330A would require EPA to add all PFAS to the list of toxic pollutants regulated by the Clean Water Act (“CWA”) and establish effluent and pretreatment standards, which would render them hazardous substances under CERCLA.

Section 330D would require all PFAS-containing “waste” to comply with the storage requirements provided for in Subtitle C of the Resource Conservation and Recovery Act (“RCRA”), even though PFAS-containing material has not been found to meet the RCRA criteria for hazardous waste.

Section 330O would require EPA to designate all PFAS as hazardous substances under CERCLA within one year.

Congress intended that CERCLA and RCRA decisions be made on the basis of science and the risk posed by particular substances. Accordingly, EPA should retain its traditional authority to assess the array of PFAS and ascertain which among them should be designated as hazardous substances or hazardous waste under CERCLA, the CWA, and/or RCRA based on risk, using the best available science. The Superfund program has a strong track record and EPA’s career scientists have the requisite expertise to examine PFAS.

These provisions would likely lead to slower cleanups because of a lack of analytical methods and environmental data for all PFAS, the potential reopening of a number of previously remediated sites, and the need to evaluate countless new sites. There is no scientific risk-based justification for the listing of most PFAS. Furthermore, these provisions could result in a significant additional program burden by increasing the number of potential responsible parties, including municipalities and small businesses without providing a reciprocal benefit to human health and the environment. This approach could also undermine and slow the progress made at existing remediation sites.

Similarly, Section 330B would circumvent the regulatory process and expertise of the Food and Drug Administration (“FDA”) by banning the use of PFAS in substances used to assemble or package meals ready-to-eat (“MREs”). The FDA has carefully studied and approved the use of short-chain PFAS for the continued production of safe and reliable food packaging based on the best available science. Congress should avoid duplicating regulatory efforts FDA has already fulfilled in regulating food packaging to ensure its safety.

Support Provisions that Provide Regulatory Agencies with the Proper Oversight and Funding Necessary to Evaluate and Address Specific Priority PFAS

Industry, manufacturers, and the government must work to address PFAS contamination. As has been the case with other chemicals of concern, Congress should provide oversight to assure a coordinated and timely government response and appropriate the funding necessary to support sound scientific research and the management, mitigation, and ongoing monitoring of specific PFAS.

Accordingly, we support a number of provisions in H.R. 2500 that would boost Agencies' abilities to assess and address specific priority PFAS. For example, Section 735 would authorize an additional \$5 million for the nationwide Agency for Toxic Substances and Disease Registry's PFAS health study included in the Fiscal Year 2019 National Defense Authorization Act. S. 1790 provides for identical funding for this study in Section 317.

Likewise, Section 330G would authorize \$5 million for the first year of a five-year study by the U.S. Geological Survey ("USGS") for PFAS contamination across the country. Provisions such as these would allow Congress to provide Agencies with the appropriate oversight and funding necessary to properly address PFAS contamination. However, it is important that USGS be required to coordinate with EPA and use scientifically-validated, EPA-approved sampling methods and analytical standards.

Adopt an Extended Timeline for the Phase Out of Aqueous Film-Forming Foam ("AFFF")

Currently, PFAS-containing AFFF is the only effective means for firefighters to swiftly and effectively contain and extinguish dangerous hydrocarbon fires, thus protecting human health and safety. As a result, federal agencies and the regulated community should be afforded sufficient opportunity to research and develop fluorine-free alternatives that provide the same safety benefits as those AFFF containing PFAS.

Section 316 of S. 1790 would prohibit the use of funds by DOD after October 1, 2022 for the procurement of AFFF containing PFAS that exceeds one part per billion. It would also require DOD to cease the use of such foams no later than October 1, 2023, but includes an exemption for the use of AFFF solely onboard ocean-going vessels.

Section 318 of H.R. 2500 would require DOD to publish a military specification for a fluorine-free firefighting foam by 2023 and prohibit the use of PFAS-containing AFFF on or after September 30, 2025. It would also provide DOD with a one-year waiver authority in the event that an alternative is not readily available.

We encourage you to negotiate a provision that would provide for or otherwise allow for the authorization of an extended timeline for phasing out the use of PFAS-containing AFFF, and adequate waiver authority in the event that an effective, commercially-available and compatible alternative is not readily available in the timeframe provided by the amended House and Senate NDAAs. At the time of this letter, no fluorine-free alternative to PFAS-containing AFFF exists that can effectively combat hydrocarbon fires.

We thank you for addressing this issue and look forward to working with you on this important matter as the legislative process continues.

Sincerely,

U.S. Chamber of Commerce
Airlines for America
Airports Council International – North America
American Chemistry Council

American Coatings Association
American Forest & Paper Association
American Fuel & Petrochemical Manufacturers
American Petroleum Institute

Flexible Packaging Association
International Liquid Terminals Association
National Association of Chemical
Distributors
National Association of Manufacturers
Petroleum Marketers Association of
America

Plastics Industry Association (PLASTICS)
Society of Chemical Manufacturers and
Affiliates
TRSA, the Linen, Uniform, and Facility
Services Association

cc: Members of the United States Senate and U.S. House of Representatives