

October 12, 2023

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

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

The Honorable Roger Wicker
Ranking Member
Committee on Armed Services
United States Senate
Washington, DC 20510

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

Dear Chairmen Reed and Rogers and Ranking Members Wicker and Smith:

The undersigned associations strongly urge you to remove Section 333 from the final National Defense Authorization Act for Fiscal Year 2024 (FY 24 NDAA) conference agreement that would restrict procurement of certain products containing **per- and polyfluoroalkyl substances (PFAS)**.

PFAS are a very broad class of chemistries that make possible a wide variety of everyday, ubiquitous products, including semiconductors, cellphones, textiles, renewable energy, and medical devices that virtually all Americans use every day. F-gases are also essential for public safety, such as firefighting in certain sensitive environments like airplane cabins and have no effective substitutes. All PFAS are not the same. Each individual PFAS has its own unique properties, uses, and environmental profile. Accordingly, Congress should not mandate a blanket approach to PFAS when considering legislation. In addition, due to the varying characteristics of the cleanups that might be necessary, Congress should ensure that DoD, states, and private parties have a full toolbox of cleanup technologies and should avoid creating improper biases against any cleanup technology through legislation.

The following are several critical concerns for which we urge you to oppose inclusion of this language and provides suggestions to help narrow the focus and impact:

- **A consensus, consistent definition in federal policy is needed.** The definition of “PFAS” contained in the provision is far too broad. The Senate Environment and Public Works (EPW) Committee recently released a bipartisan discussion draft of PFAS legislation that would provide a working definition of “PFAS” for certain regulatory purposes. In our comments on that legislation, we noted (and endorsed as an appropriate approach) that EPW’s proposed definition recognizes, among other things, that there are some PFAS, such as fluoropolymers, that are of low concern and do not merit significant regulatory attention.

We also suggested in our comments that EPW follow the definition of PFAS enacted in Delaware and West Virginia that included two fully fluorinated carbon atoms and excluded f-gases, which are essential to meeting our responsibilities under the Kigali

Amendment to the Montreal Protocol to phasedown HFCs. We respectfully urge your committees to take a similar approach.

- **Product bans are not effective policy.** Section 333 expanded the list of restricted products, honing-in on twelve additional chemistries beyond PFOA and PFOS, which have largely been the focus of federal policies. Durable federal policy should recognize the many important uses of PFAS that yield significant societal benefits without any risk to human health or the environment, and, in many instances, for which non-PFAS substitutes are not currently available. Many of these uses of PFAS are critical to U.S. national security including apparel and footwear that protect and are critically important to the military readiness of our warfighters.

The Administration opposed a similar provision in its Statement of Administration Policy (SAP) on the 2022 House NDAA, stating that it was concerned that the language would prohibit DoD from procuring a wide range of items. Significantly, the provision would undermine DoD’s procurement process including specific performance standards that the agency has established for specific product applications to meet specific performance criteria including worker safety. These standards are essential for protecting the safety and health of America’s military personnel.

- **Product restrictions are premature.** The DoD just submitted a report on critical uses of “PFAS” required under the FY 2023 NDAA. That report should inform any future actions regarding procurement.

We stand ready to work with you to ensure that the conference agreement includes the most scientifically valid approach to protect human health and the environment.

Sincerely,

American Coatings Association
American Chemistry Council
American Fuel and Petrochemical Manufacturers
American Petroleum Institute
Council of Industrial Boiler Owners
National Association of Chemical Distributors
National Council of Textile Organizations
National Mining Association
National Oilseed Processors Association
Plastics Industry Association
Printing UNITED Alliance
U.S. Chamber of Commerce

cc: Members of the House and Senate Armed Services Committees