July 13, 2022

TO THE MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES:

The American Chemistry Council (ACC) strongly supports the rigorous, well-established scientific and administrative process Congress has designed for the regulation of chemicals management in the United States. We are deeply concerned with language in and amendments to H.R. 7900, the National Defense Authorization Act for Fiscal Year 2023, that would circumvent the ongoing regulatory process for per- and polyfluoroalkyl substances (PFAS), restrict procurement of certain PFAS-containing products, threaten the supply chain for critical products and technologies, impose restrictions on disposal that will hinder cleanup, and dramatically escalate the cleanup costs for the Department of Defense (DoD) at eligible sites.

PFAS chemistries are vital to U.S. priorities relative to climate, sustainability, defense, and domestic supply chain resiliency. This includes critical uses that rely on PFAS technology, including semiconductors; advanced material defense applications; high-capacity batteries for electric vehicles and energy storage; alternative energy sources, such as solar, wind and green hydrogen; and 5G and smart device technologies, just to name a few.

Given the breadth and importance of these chemistries, as well as the desire to focus efforts on those priority substances that have the potential for environmental release and exposure, it is important that any regulation of PFAS take into account the differences within this broad family of chemistry and the many critical uses. This is increasingly being recognized by regulatory authorities and scientific organizations, including the U.S. EPA. All PFAS are not the same. Individual chemistries have their own unique properties and uses, as well as environmental and health profiles. We are committed to safe, innovative, and sustainable technologies and products that provide essential benefits to consumers, while protecting human health and the environment. Product safety provides the foundation of consumer trust, and our member companies devote significant resources to achieve this effort.

Any federal action should not address PFAS as a class or with predetermined outcomes that circumvent the regulatory process. Instead, regulation of any PFAS chemical should be based on the weight of the scientific evidence as it relates to potential health effects and environmental protection. The NDAA for Fiscal Years 2019-2022 contained provisions that took pivotal steps toward meeting those goals. In fact, many of the PFAS-related provisions in the current bill were already addressed in previous NDAAs.

ACC urges you to ***strike*** the following provisions from H.R. 7900:

- ***Section 342, Modification to Restriction on Department of Defense Procurement of Certain Items Containing Perfluorooctane Sulfonate or Perfluorooctanoic Acid.*** This provision would expand the DoD's existing procurement restriction, which is currently

limited to two PFAS chemistries (PFOS and PFOA), to ***all*** perfluoroalkyl substance or polyfluoroalkyl substances. It would also significantly expand the existing list of banned PFAS-containing items. Section 342 would restrict substances that have been deemed safe for their intended use and that do not present a risk to human health or the environment. It would also undermine DoD's procurement process, including specific performance standards that the agency has established for certain product applications to meet performance criteria, including for safety. These standards are essential for protecting the safety and health of America's military personnel. Just a few key examples include:

- Woven and nonwoven textiles/clothing where PFAS provide the chemical barrier necessary to protect military healthcare and active-duty personnel against contact with microbiological contaminants, including blood-borne pathogens, viruses and bacteria, as well as other chemical and biological threats.
- Breathable, waterproof membranes in textiles that provide a barrier against wind and rain, and help prevent hypothermia and resistance to extreme temperatures.
- Ballistic properties of protective equipment including gear and surface treatments assuring required bullet-proof/bullet resistant performance.

Section 342 is a significant expansion of the current procurement restrictions that were just enacted by Congress, and which are still being implemented by DoD. The Biden Administration acknowledged as much in its Statement of Administration Policy, warning that Section 342 "would create operational strains." Expanding this provision would set a dangerous precedent for other critical defense applications, including aerospace, electronics and high-speed telecommunications equipment.

- ***Section 344, Standards for Response Actions with Respect to PFAS Contamination.*** This provision would require any DoD response actions for nine specific PFAS substances to meet or exceed the most stringent state or federal standard or health advisory level. Section 344 is unnecessary and redundant because DoD is already acting in this space. This provision would undermine DoD's existing response actions and could divert critical resources from other higher priorities with little or no public health benefit. Moreover, the use of lifetime health advisories as regulatory standards in Section 344 is not appropriate. EPA health advisories are non-regulatory and are intended to serve as general guidance for lifetime exposure. The Agency's revised LHAs for PFOA and PFOS are based on assessments that are currently being reviewed by EPA's Science Advisory Board. Rather than wait for the outcome of this peer review, EPA has announced new Advisories that are 3,000 to 17,000 times lower than those released by the Obama Administration in 2016. The additional cost to clean up the nearly 700 sites under investigation by DoD could be significant, possibly in the tens of billions of dollars. Finally, EPA has already begun the regulatory process under existing law to determine cleanup levels for PFOA and PFOS; Section 344 would circumvent these authorities and create an inappropriate and non-scientific precedent for cleanups on private or non-defense federal and state sites.

In addition, ACC urges you to ***oppose*** the following amendments:

- ***Amendment #78, sponsored by Rep. Pappas (D-NH)***, which would require EPA to develop water quality criteria under the Clean Water Act for all measurable PFAS or classes of PFAS within two years, and develop effluent limitation guidelines (ELGS) and standards for all measurable PFAS or classes of PFAS within four years for specific industry sectors. ACC supports development of water quality criteria and ELGs for substances and sectors that meet established criteria, but this is too broad (all PFAS) and circumvents established processes by mandating certain approaches and pre-determining certain regulatory outcomes. EPA is also already working on this as part of its PFAS Roadmap. Finally, this includes an overly broad definition of PFAS which is not scientifically accurate or appropriate.

- ***Amendment #834, sponsored by Rep. Levin (D-MI)***, which would extend the moratorium on PFAS incineration enacted by the FY22 NDAA and require a report to Congress on the progress of DoD's implementation of on-site PFAS destruction technologies not requiring incineration. ACC supports the evaluation of alternative PFAS destruction technologies but opposes an extended moratorium on incineration. Incineration (high-temperature thermal destruction) is a recognized best-available technology for treating and disposing of certain chemicals and wastes. Enactment of this amendment would prevent utilizing best available technology (thermal destruction) to manage and remediate priority PFAS—essentially undermining all existing and planned clean-up efforts at or around defense related facilities.

- ***Amendment #872, sponsored by Rep. Ross (D-NC)***, which would define PFAS as containing "at least one fully fluorinated carbon atom." PFAS are a diverse family of chemistry that includes a broad range of substances with different physical, chemical, and toxicological properties and uses. It is neither scientifically accurate nor appropriate to group all PFAS together or take a one-size-fits-all regulatory approach for this wide range of substances. Moreover, the broad definition proposed by this amendment would pull in a wide range of beneficial technologies and uses that pose no threat to human health or the environment, including many that are vital to U.S. priorities relative to climate, sustainability, defense, and domestic supply chain resiliency, as well as important medical applications like pharmaceuticals and asthma treatments.

ACC and its members stand ready to work with Members of Congress and all stakeholders to ensure scientifically based decisions are made to protect human health and the environment. We also strongly support bipartisan efforts to fund our Department of Defense and give our men and women in uniform the resources they need. However, we urge you to oppose legislative language and amendments in the FY2023 NDAA that circumvent the regulatory process, prohibit procurement of critical materials, disrupt supply chains, unnecessarily escalate DoD cleanup costs, and hinder safe disposal of fluorinated chemistries.

Sincerely,

Chris Jahn
President and CEO