



SUSTAINABLE PFAS ACTION NETWORK

March 20, 2024

Chair David Bennett
House Environment & Natural Resources Committee
82 Smith St.
Providence, RI 02903

Re: Recommendations Regarding H7356

Dear Chair Bennett:

The Sustainable PFAS Action Network (SPAN) is writing to express concerns about H7356, regarding the use and sale of perfluoroalkyl and polyfluoroalkyl chemicals (PFAS) in Rhode Island. The legislation would ban the manufacture of all covered products by January 1, 2027, including artificial turf, carpets or rugs, cookware, cosmetics, fabric treatments, juvenile products, menstrual products, ski wax, and textile articles. The legislation also requires the registration of all PFAS-containing products sold in the state beginning January 1, 2028, and every year thereafter. The bill states the intention of the legislature to ban all uses of PFAS by December 31, 2032, unless considered unavoidable.

Background on SPAN

SPAN is a coalition of PFAS users and producers committed to sustainable, risk-based PFAS management. Our members advocate for responsible policies grounded in science that provide assurance of long-term human health and environmental protection while recognizing the critical need for certain PFAS materials for U.S. economic growth and global competitiveness. In a recent study by INFORUM, a Washington-based economic consulting firm, it was reported that critical PFAS-using industries (e.g., automotive, aerospace, air conditioning and refrigeration, medical device and pharmaceutical, battery, and semiconductor industries) contribute more than \$1 trillion to the U.S. gross domestic product each year, accounting for more than six million U.S. jobs, while providing annual wages estimated to exceed \$600 billion. SPAN was formed with the objectives of ensuring legislators and regulatory agencies are aware of the essentiality of products generated by our members while simultaneously supporting practical regulatory programs focused on protecting human health and the environment and maintaining America's global economic edge.

Comments Regarding H7356

SPAN has been active in several state-level PFAS policy discussions for two years, and has enjoyed a productive and cordial dialogue with policymakers. There are aspects of H7356, such as the legislation's initial focus on nonessential consumer-use products, that SPAN is supportive of. These features reflect a willingness on behalf of the bill sponsor and Committee members to collaborate on responsible and sustainable solutions to PFAS-related concerns. However, SPAN encourages states to adopt a risk-based approach to PFAS management. Accordingly, SPAN suggests several changes to the legislation (as

discussed below) that would improve implementation and make it more focused on risk mitigation. SPAN looks forward to working with the legislature to implement an effective alternative approach.

Definition of PFAS

The legislation defines PFAS as “substances that include any member of the class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.” This definition is far too broad for the portions of the law focused on reducing risk from consumer products. The use of such an overly broad definition for PFAS will bring into scope virtually any product containing a fluorinated carbon atom without regard to whether the presence of such a substance in a manufactured product will present a risk to the user or the environment. Such a broad scope will lead to unintentional noncompliance by manufacturers and impose burdensome oversight and enforcement responsibilities for state policymakers, as similar requirements have done in Maine. SPAN believes that it would be more practical and reasonable for PFAS to be defined as:

“a group of synthetic perfluoroalkyl and polyfluoroalkyl substances, and their known degradation products, that contain two sequential fully fluorinated carbon atoms, excluding polymers, gases, and volatile liquids, but including side chain fluorinated polymers.”

Similar definitions have been adopted in Delaware, Virginia, and West Virginia. SPAN would like to emphasize that this proposed definition includes within its scope the substances responsible for the PFAS found in human blood and the environment, such as:

- (i) fluorosurfactants
- (ii) PFOA, PFOS and their salts and precursors; and
- (iii) PFNA, PFHxS, PFBS, and HFPO-DA and their associated salts

Recent federal PFAS requirements have included a more targeted, chemical-structural definition far narrower than the “one fully-fluorinated carbon atom” definition. In September, the U.S. Environmental Protection Agency (EPA) released final rules for PFAS reporting pursuant to TSCA Section 8(a)(7), and a few months earlier EPA published its new framework for TSCA New Chemicals Review of PFAS Premanufacture Notices (PMNs) and Significant New Use Notices (SNUNs), which “outlines EPA’s planned approach when reviewing new PFAS and new uses of PFAS to ensure that these chemicals & uses do not present unreasonable risk to human health and the environment”. The definition used by EPA in these rules is a structural definition approach that relies on the presence of at least two fluorinated carbons. EPA states that this definition covers approximately 1,500 compounds which have previously been identified to EPA in a regulatory context, of which fewer than 1,000 are believed to be commercially active in U.S. commerce during the pertinent period. The U.S. Senate Environment & Public Works Committee also released draft PFAS legislation utilizing the “two fully fluorinated carbon atom” definition as it’s backbone in June 2023. These definitions cover significantly fewer than the estimated 14,000 substances that would be covered by the definition in this legislation.

Class-Wide Reporting Program

Currently, H7356 would require a manufacturer of PFAS or a product or product component containing intentionally-added PFAS to register the amount of PFAS in a product beginning January 1, 2028, and every year thereafter. This provision would, especially with the bill’s current definition of PFAS, place undue burdens on state regulators as well as product manufacturers and users, with little environmental

gain in the way of PFAS contamination remediation. In Maine, the only state that has thus far attempted to implement a class-wide PFAS reporting program, the Department of Environmental Protection granted an estimated 4,000 extensions to the state's initial reporting requirement before further delaying the requirement by two years. It would require an unrealistic amount of time and money for the Department of Environmental Management to implement a similar program. Similar legislation in New Jersey was recently amended to eliminate a similar reporting requirement, due to the complexity and burdensome nature of such a program.

The reporting program outlined in H7356 would also unnecessarily duplicate efforts currently underway at U.S. EPA. As previously stated, in September 2023, U.S. EPA released final rules for PFAS reporting pursuant to TSCA Section 8(a)(7). This rule will require all manufacturers and importers in the U.S. to report PFAS usage, to a reasonably-ascertainable extent, from 2011 to 2023. This federal program also utilizes a more targeted definition that focuses on compounds with a similar chemical structure to those known to have caused contamination issues. SPAN would strongly recommend that instead of instructing DEM to create another program, the legislature require a report be released following the release of data from EPA to determine if further action needs to be taken in Rhode Island.

Focus on Consumer Products & Risks of Class-Wide Approach

SPAN supports the bill's initial focus on consumer-use products, and would encourage Rhode Island to focus on this targeted approach to PFAS management, rather than embracing an unnecessary class-wide approach with the inclusion of the broad reporting program. An effective PFAS management program should prioritize limitations on nonessential consumer products, as the bill begins by doing, and subsequently focusing any state-level efforts on targeting the most hazardous chemicals and the likely exposures that result from their known uses, rather than attempting to report and form policy based on all PFAS-containing products sold in the state, many of which have been approved for their end-use by federal agencies.

Experts in the federal government have warned against using a class-wide approach to PFAS management. In comments to the European Union on a class-wide approach to PFAS-based prohibitions being considered there, the U.S. State Department noted that the proposal is "broad", and that it is important to "ensure the safe use of those substances already in commerce, particularly for uses critical to the functioning of society." The State Department also noted that the overly-broad approach under consideration in the European Union would have vast impacts on international trade, and does not provide the amount of time needed to find suitable alternatives. Also, in a report on mission-critical PSAS uses released in October 2023, the Department of Defense stated that "If future PFAS legal and regulatory frameworks ignore the OECD caution on the use of its PFAS definition and seek to broadly restrict the use of PFAS based on chemical structure, there could be extensive economic, industrial competitiveness, and quality-of-life impacts to society."

Risk-Based PFAS Policy

SPAN has been closely involved in state-level PFAS discussions since our formation, and our members are familiar with best practices to adequately address PFAS contamination issues while maintaining our economic strength and progress. SPAN promotes sustainable risk-based policy approaches at the state level, guided by a uniform federal approach. To summarize, SPAN strongly encourages Rhode Island to adopt a PFAS management program that includes:

- Adoption of a targeted definition focusing on commercially-active compounds and excluding those such as polymers and gasses, which are unlikely to present risks in consumer product applications
- Focus on consumer-use products rather than “commercial” and “industrial” uses and those used in “making other products”
- Prioritization of compounds and control actions based on potential risk
- Development of specific and realistic long-term PFAS remediation plans for contaminated sites
- Include additional exemptions for federally-approved products and compounds, as well as PFAS that are critical or essential to society, clean energy production, and national defense.

Conclusion. Given our concerns regarding H7356, SPAN recommends that the legislation be amended to reflect the more sustainable and risk-based policy outlined in this letter. SPAN has been encouraged by the productive dialogue we have had with policymakers in Rhode Island, and we look forward to working on a constructive solution together.

Thank you for your consideration. Please do not hesitate to reach out if you have any questions or need any further information.

Sincerely,

A handwritten signature in black ink that reads "Kevin Fay". The signature is written in a cursive, flowing style.

Kevin Fay
Executive Director
Sustainable PFAS Action Network (SPAN)