July 14, 2023

U.S. Senate Environment & Public Works Committee
410 Dirksen Senate Office Building
Washington, DC 20510

To Whom it May Concern:

The Sustainable PFAS Action Network (SPAN) appreciates the opportunity to provide comments regarding the “Draft PFAS Package” developed for consideration by the Senate Environment and Public Works (EPW) Committee.

SPAN is a coalition of per- and polyfluoroalkyl substances (PFAS) users and producers committed to sustainable, risk-based PFAS management. Our members advocate for responsible policies that provide assurance of long-term environmental protection while recognizing the important contribution that certain PFAS have made to economic growth and competitiveness in global markets. PFAS are integral to a vast number of sectors in the American economy. Renewable energy, auto manufacturing, defense contracting, semiconductor production, medical devices and pharmaceuticals are just some of the industries that are inadvertently impacted by unnecessarily broad state-level PFAS legislation and implementing regulations. SPAN was formed to encourage responsible, risk-based PFAS regulations that are implemented to protect the environment and human health while maintaining America’s economic edge.

**Importance of Federal Legislation and EPA Leadership**

Before summarizing our major comments for your consideration, we want to emphasize the importance of Federal leadership on PFAS – both by Congress and the EPA. The past several years have seen a proliferation of legislative proposals (many enacted) at the state level. SPAN has engaged in many of those state legislative processes. A common motivator behind many, if not all, state proposals is a widespread perception that the Federal government is not moving swiftly or aggressively enough to address the perceived environmental and health threats posed by PFAS. While most 2023 legislative sessions have adjourned *sine die*, proposals for 2024 consideration are already taking shape. We believe that a failure to enact significant Federal legislation will motivate a continued year-to-year increase in state PFAS activity, in 2024 and beyond. SPAN’s experience at the state level leads us to believe that few if any states are equipped – financially or technically – to adequately address PFAS issues within their borders. Unfortunately, the legislation that gets considered is often simplistic – reflecting a “cut-and-paste” approach to legislative drafting.

**SPAN’s Core Principles**

Our comments below are informed by a set of principles that SPAN has developed to guide our participation in the Federal and state policy processes. These principles include advocating for:

- Aggressive identification and remediation of contaminated sites
• A uniform Federal policy in lieu of multiple state programs
• Narrowing the definition of PFAS to focus on substances most likely to exhibit characteristics affecting risk
• An effective and manageable program for reporting on commercially active PFAS and PFAS-containing products
• Science- and risk-based categorization of compounds and potential regulatory controls
• An efficient and constructive approval process for new PFAS alternatives that is modeled on the SNAP program for implementing the Montreal Protocol
• An essential-use exemption process with established criteria when categorical prohibitions are imposed
• Long-term PFAS emission reduction goals
• Sufficient funding for staff and PFAS-related resources at Federal and State levels

With these principles in mind, rather than commenting on every provision of the draft legislation, SPAN is electing to focus on specific topics concerning the draft legislation of greatest interest to SPAN’s members, including:

• An appropriate definition of PFAS for Federal regulatory purposes
• The importance that essential uses of PFAS be credibly identified
• The need to focus resources on risk categorization and prioritization
• Funding and technical assistance for states and disadvantaged local communities
• Funding for PFAS research and alternatives development
• Motivating faster EPA activity through imposition of deadlines and standards

Section 2 -- Defining PFAS
The definition is critical to the effective operation of the program, and may likely require additional discussion. To focus attention on the most high-risk and high-emissive compounds, and to most efficiently allocate limited government resources, SPAN recommends Section 2(4)(A) be amended to read "Perfluoroalkyl and polyfluoroalkyl substances" means a “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.”

Because SPAN is aware of concerns raised in other contexts about the scope of this definition, SPAN wants to state that our proposed definition includes within its scope:
   (i) fluorosurfactants
   (ii) PFOA, PFOS and their salts and precursors; and
   (iii) PFNA, PFHxS, PFBS, and HFPO-DA and their associated salts

Section 4 – National Academies Study on Uses of PFAS
SPAN supports the draft legislation objective to have the National Academy of Science, Engineering, and Medicine complete a study of both beneficial and nonessential uses of PFAS in commerce. SPAN supports the provision and recommends NAS also include in its assessment current uses of PFAS which are essential to the US, taking into account import PFAS applications that support: national defense and US security; exploration and understanding the seas, the
atmosphere, and space; achieving US economic independence and international competitiveness; achieving reductions in climate change; public health and welfare, including in medical devices, medical treatments, and delivery systems; agriculture and the food supply; and in the technologies and equipment that enable these uses.

Section 7 -- Risk Management and Communication Strategies
SPAN supports the provisions of Section 7 which require EPA to create a Clearing House and Risk Management Guide. SPAN recommends Section 7(a), the Risk Management and Communications section of the legislation, ensure the federal “Clearing House” that is developed include the technical tools (e.g., modeling programs, and related software) and information needed for the EPA and state agencies to: (1) identify the commercially active PFAS which are of the greatest concern (e.g., on the basis of their physical and chemical properties, and existing data concerning their health or environmental effects, and those known properties of structurally-similar substance), and (2) prioritize the substances that should be of greatest concern to a state government and the state’s residents. The Clearing House should provide technical guidance and access to data and software to enable a disciplined state-specific approach for identifying and prioritizing PFAS chemicals and uses that present the greatest potential risk to human health and the environment, and which do not. This should include, when available, access to non-confidential information EPA acquires through its upcoming final TSCA Section 8(a)(7) PFAS reporting rule (e.g., production data, use information, PFAS quantities emitted -- the principal variables that, taken together, define which PFAS should be prioritized for both research attention and careful management).

SPAN also recommends the Legislation make clear that the Risk Management Guide required by Section 7(b) include EPA guidance and recommendations for PFAS management methods, which methods represent the best practices, and which methods are effective for reducing PFAS exposures and emissions.

SPAN Recommends the Legislation be amended in Section 7(d) to require the Report to Congress include an EPA-developed list inclusive of examples of 25 commercially-active PFAS which EPA considers to be appropriate to prioritize for Risk Evaluation in accordance with Section 6 of TSCA.

Section 8 -- PFAS Research and Development
SPAN supports the Draft’s terms which will require EPA to engage in a research and technology program that will focus on, among other things, technologies for detecting PFAS and mitigating PFAS presence in the environment and in production processes and emissions streams. SPAN also is pleased to see the emphasis on improving our understanding of PFAS effects on human health and the environment, and to differentiate between PFAS on this basis. This could include using potential grouping approaches based on the best available information, the weight of the scientific evidence, and appropriate modeling techniques. We also support requiring EPA to identify PFAS exposure pathways of both greatest concern and lesser concern. These efforts will assist in the development of the tools and guidance for state and local governments required under Section 7 of the Draft.
SPAN recommends the Section also include EPA efforts to collaborate with scientists in the commercial, public, and academic sectors to encourage identification of PFAS alternatives for substitution in uses that currently present the greatest concern for human exposures and environmental releases. SPAN encourages such efforts to acknowledge that alternatives might need to initially include newly-developed PFAS which possess structural characteristics that make them technically suitable as substitutes, but which can be shown to present fewer risks than the existing substances they would replace. The legislation should encourage EPA to ensure that its new chemicals authorization process under Section 5 of TSCA encourages, rather than impedes, the development and market entry of technically-feasible alternatives, even novel PFAS with a reduced-risk profile.

Section 11 – Emergency Assistance for PFAS Remediation in Covered Communities
SPAN supports the objectives of Section 11 to increase funding for remediating PFAS contamination in general, and to prioritize a focus on disadvantaged communities.

Encouraging Faster EPA PFAS Activity
SPAN supports the science-based approach reflected in the Agency PFAS Roadmap and the ongoing efforts to implement it swiftly. At the same time, SPAN recommends the pace of EPA’s progress be improved, as EPA leadership is needed to enhance EPA’s credibility on PFAS with very active state legislatures that are creating a confusing, expensive, and untenable patchwork of State actions. Congress should consider whether this legislation should include additional milestones for key EPA actions to be completed under the Roadmap. If so, such new mandates and timelines must be complemented by adequate funding and staffing.

Investing in a Successful EPA New Chemicals Program
Finally, SPAN members place a priority on EPA’s ability to successfully administer the New Chemicals Program under the Toxic Substances Control Act (TSCA). In many industries, including those operated by SPAN Member Companies, maintaining a pipeline of new chemicals is key to process and product innovation, international competitiveness, and economic growth. Any new authority imposed on the Agency to deal with PFAS, or other emerging chemical risks, must be matched by parallel increases in financial and staffing resources. Failure to adequately invest such resources will degrade, rather than improve, the Agency's effectiveness, and increase, rather than decrease, the threat that certain existing chemical substances may present to public health and the environment.

In summary, SPAN thanks EPW staff for the opportunity to provide input on this important bill. We stand ready to collaborate with committee staff and others in Congress to advance effective and sustainable actions to address PFAS concerns.
Sincerely,

[Signature]

Kevin Fay  
Executive Director  
Sustainable PFAS Action Network (SPAN)