
To: Laboratory Products Association
Date: July 22, 2021
Subject: Bill Summary: H.R. 2467, The PFAS Action Act of 2021

OVERVIEW

On July 21, the House [approved](#) “The PFAS Action Act of 2021” ([H.R. 2467](#)), a comprehensive bill requiring the Environmental Protection Agency (EPA) to regulate “forever chemicals” called Per- and polyfluoroalkyl substances (collectively, “PFAS”).

The bill was approved by a 241-183 vote, with 23 Republicans supporting the bill. Most Republicans on the Energy and Commerce committee opposed the bill and argued for a more limited approach to addressing PFAS, but the bill received bipartisan support in its final passage.

The White House announced their support for the bill on Monday in a [statement](#), but the legislation’s path forward in the Senate remains unclear as the Senate has not yet introduced a companion bill. A similar House-approved measure on PFAS died in the last Congress.

Senate Environment and Public Works Committee Ranking Member Shelley Moore Capito (R-WV) has pushed the EPA to get more aggressive on PFAS regulation, which has plagued her state for decades. Capito said she needed to look more closely at H.R. 2467 before she could support it. But PFAS is “obviously a topic I am really interested in,” she said.

Senate EPW Chair Tom Carper (D-DE) has said he has worked on the issue with the bill’s House sponsor Rep. Debbie Dingell (D-MI) and Capito and that “we are going to continue our conversation on where we go from here.” Senator Ed Markey (D-MA), who also sits on the environment panel, said he is “very optimistic” that the Senate would act on PFAS this Congress.

Summary

Under H.R. 2467, the EPA would have to take several steps to regulate and mitigate pollution from per- and polyfluoroalkyl substances (PFAS). PFAS are a class of more than 9,000 durable chemicals used as nonstick agents to make some cookware and in firefighting foam. PFAS exposure has been linked to adverse health conditions such as cancer, and the chemicals have been found in groundwater near facilities that use them, including military installations.

The measure includes language that would:

- Effectively bar the manufacturing of new PFAS, also called “forever chemicals.”

- Direct the EPA to establish drinking water standards for the chemicals and designate certain PFAS as hazardous substances under the law that governs the Superfund cleanup program.
- Authorize \$1 billion over five years for grants to support implementation of a new PFAS pretreatment standard at public water treatment works.
- Authorize \$550 million over five years for a grant program to support the installation of treatment technologies.

Manufacturing

The bill would effectively bar the manufacture of new PFAS chemicals by requiring the EPA to automatically designate any processing notice regarding PFAS as posing an “unreasonable risk” to human health or the environment and to issue an order blocking the activity. The requirement would end five years after the bill’s enactment.

The measure would also permanently disqualify PFAS processing or manufacturing from exemptions to EPA notification requirements. Under the manager’s amendment, the exemptions would remain available for PFAS manufactured only for scientific experimentation or chemical research related to drugs and medical devices.

Superfund

The EPA, within one year of the bill’s enactment, would have to designate perfluorooctanoic acid (PFOA), perfluorooctanesulfonic acid (PFOS), and any salts that produce them as hazardous substances under 1980 Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which governs the Superfund program. Salts refer to solids that produce the acids when dissolved.

Within five years of enactment, the agency would have to determine whether all PFAS chemicals should be designated as hazardous substances under CERCLA individually or in groups. Designation under CERCLA triggers reporting requirements related to the chemicals and enables federal response—including assessment and treatment—to releases or threatened releases.

The bill would exempt airports from liability for cleaning up PFAS related to fire suppression if the Federal Aviation Administration required its use and it was done in accordance with FAA standards.

Drinking Water Standards

The EPA would issue a primary drinking water regulation for PFAS under the 1974 Safe Drinking Water Act within two years of the bill’s enactment. At a minimum it would have to include standards for PFOA and PFOS.

The standards would have to protect the health of subpopulations that are at increased risk. The agency could extrapolate to reach conclusions on the risks and effects of a category of PFAS based on the known characteristics of chemicals that are part of the category.

The EPA would have to allow alternative control and testing procedures to measure the level of any PFAS, the total levels of all PFAS, and the total levels of organic fluorine in drinking water. The agency would publish any alternative procedure in the Federal Register within one year of validating it.

The EPA would publish a health advisory on any PFAS not subject to a drinking water regulation, or for any such category of the chemicals, within one year of finalizing a toxicity value for it or of validating an effective control and testing procedure, whichever is later. It could forgo the requirement if it determines that an advisory isn't justified because contamination is unlikely. The agency could include any PFAS on a list of contaminants not regulated under the Safe Drinking Water Act that may require regulation. The list is produced by the EPA every five years. The agency couldn't impose financial penalties for violations of the PFAS drinking water regulation until five years after the rule has been issued.

PFAS Air Pollution

The EPA would have to issue a rule within 180 days of the bill's enactment to add PFOA, PFOS, and their salts to the list of hazardous air pollutants under the Clean Air Act. It also would have to determine within five years whether to list any other PFAS.

No more than 365 days after a rule is issued, the agency would have to revise the list to include categories and subcategories of major sources of PFAS in the rule. It would have to determine within five years of the bill's enactment whether to add other PFAS to the hazardous air pollutants list.

Toxicity Testing

The EPA would have to require all PFAS makers and processors to conduct comprehensive toxicity testing of the chemicals to develop better understanding of their health and environmental effects. The agency could divide the chemicals into categories with different testing requirements based on their hazard characteristics or properties.

A proposed rule to implement the testing requirements would be due six months after the bill's enactment and a final rule would have to be issued within two years of enactment.

Pretreatment Standard and Grants

The bill would direct the EPA to establish effluent limitations and pretreatment standards under the Clean Water Act for PFOA, PFOS, and any salts that produce them. It would have to issue a rule within four years that would apply to point sources associated with the following types of operations:

- Organic chemicals, plastics, and synthetic fibers.
- Pulp, paper, and paperboard.
- Textile mills.

Under the manager's amendment, the following categories would also have to be covered by the rule:

- Electroplating.
- Metal finishing.
- Leather tanning and finishing.
- Paint formulating.
- Electrical and electronic components.
- Plastics molding and forming.

The EPA also would have to publish human health water quality criteria for the chemicals within three years of enactment.

The measure would authorize \$200 million per year in fiscal 2022 through 2026 for the EPA to award grants as large as \$100,000 to public water treatment works to implement PFAS pretreatment standards.

The manager's amendment would remove language from the bill requiring the EPA to review PFAS discharges from different types of point sources and determine whether to add any measurable PFAS to a list of toxic pollutants under the Federal Water Pollution Control Act.

Community Water System Grants

The measure would direct the EPA to establish a grant program to support community water systems that implement treatment technologies for PFAS, including the chemical GenX. It would authorize \$125 million in each of fiscal 2022 and 2023, and \$100 million per year afterward through fiscal 2026.

In the first two years, \$25 million of those amounts would be authorized for capital costs dating from Oct. 1, 2014.

To be eligible, water systems would have to demonstrate that their water contains PFAS and certify that current treatment technology isn't sufficient to remove all detectable PFAS or meet relevant water standards and health advisories. The agency would publish a list of "the most effective" eligible technologies every two years. It would have to prioritize funding for water systems that serve disadvantaged communities, that will cover at least 10% of the costs, that demonstrate the capacity to maintain the treatment technology, or that principally obtain their drinking water from a single aquifer under an the EPA [sole source aquifer program](#). Grant funding couldn't be used to pay for tax-favored bonds.

Amendments & Exclusions

Amendments lawmakers approved to the bill would exclude PFAS used for research and development related to medicines, medical devices, and personal protective equipment needed to protect health care providers.

The amended bill also would add the electroplating, metal finishing, leather tanning and finishing, paint, plastics molding, and electrical and electronic components industries to those for which the EPA must establish Clean Water Act effluent limits and pretreatment standards. The standards would cover PFOA and PFOS.

And the amended bill would authorize a five-year \$100 million grant program to allow schools to test for and remediate PFAS. That funding would be [in addition](#) to the \$1.5 billion over fiscal years 2022-2026 that the bill would authorize for state and community water system grants. Authorized money, however, is not guaranteed, requiring the need for money to come through the annual appropriations process.

The bill would establish a five-year moratorium on the EPA's approval of new PFAS into commerce while chemical manufacturers generate toxicity and other test data on existing forms of the chemicals.

Other Provisions

The EPA would have to issue rules governing the disposal by incineration of materials containing PFAS to ensure that it eliminates all PFAS while minimizing air emissions of the chemicals, complies with the Clean Air Act and storage regulations, and is performed at a licensed facility.

The agency, within one year of the bill's enactment, would have to revise its [Safer Choice label program](#) to ensure that any pots, pans, cooking utensils, carpeting, clothing, or furniture with the label don't contain PFAS.

The EPA also would have to:

- Explore methods to prevent surface water contamination by GenX.
- Issue guidance on minimizing the use of firefighting foam and other equipment containing PFAS to reduce first responders' risk of exposure.
- Set up a website with information on testing household well water.
- Adopt a risk-communication strategy for informing the public about PFAS hazards.

The bill also would:

- Prohibit release of PFAS into water systems by industrial sources unless the operator has notified the relevant water treatment works about the type and amount of the chemical, whether it's susceptible to treatment, and whether it would interfere with the treatment works' operation.
- Expand eligibility for EPA grants to address emerging contaminants to include U.S. territories, in addition to states.

Industry Opposition

Multiple industries and some governmental groups oppose the bill. They include the American Chemistry [Council](#), the chemical industry's primary trade association, and a [coalition](#) of water, governmental and other organizations including the American Council of Engineering Companies, the U.S. Conference of Mayors, and National Association of Clean Water Agencies.

The American Chemistry Council [objects](#) to the bill as a “one-size-fits all approach to regulating the wide variety of PFAS chemistries.”

Republicans such as Cathy McMorris Rodgers (R-WA) repeated on Wednesday previous statements about the bill crippling the aerospace, medical, semiconductor, pipeline, and other industries, which have parts that rely on PFAS. The bill acts as a defacto ban on materials that are critical for America, she said.

Dingell and other Democrats countered that the bill directly targets only PFOA and PFOS, and neither are made in the the U.S. The bill won't prevent every PFAS chemical from being used in products society needs, but it will make sure ones that need to be cleaned up are, said House Majority Leader Steny Hoyer (D-MD).

The water, waste, and air regulations that the bill mandates in the near term would apply to those two chemicals. But the bill requires the EPA to gather information about others and determine whether and what regulations are needed for them.