



Alliance for Telomer Chemistry Stewardship

April 15th, 2021

Attn: House Human Services Committee

Dear Chair Pugh and Members of the House Human Services Committee:

The Alliance for Telomer Chemistry Stewardship (ATCS) is a global organization that advocates on behalf of C6 fluorotelomer-based products. Our members are leading manufacturers of fluorotelomer based products. Our mission is to promote the responsible production, use, and management of fluorotelomer based products, while also advocating for a sound science- and risk-based approach to regulation. Fluorotelomer-based products are versatile chemistries with wetting and spreading features, as well as unique properties that repel water, oil and stains. These unique characteristics make fluorotelomers a critical component of first responder gear, medical garments, paints and coatings, upholstery, class B firefighting foam, among other uses that families and businesses across the world rely on.

On behalf of the members of ATCS, we respectfully request that, with respect to S 20, you: (i) update definitions such as PFAS, food packaging and firefighting foam; (ii) allow for use of AFFF only when in firefighting emergencies in Class B liquid fires; (iii) align food packaging regulations to that of the FDA while strike additional food packaging language that is presently covered by the FDA; and, (iv) allow for the continued sale, distribution and use of affected products that are already in commerce in Vermont as of the effective date of the act.

About per- and polyfluoroalkyl substances (PFAS)

PFAS are a diverse universe of chemistries with a wide range of critical uses. For instance, fluorotelomers (one type of PFAS) are used in food packaging applications, but are also currently being used in medical garments, hospital gowns, drapes and divider curtains to create a barrier that provides life-saving protection against infections and transmission of diseases like COVID-19 in hospitals. Another type of PFAS, fluoropolymers, are integral to COVID-19 testing equipment and the medical technology that is saving lives across the globe. For example, fluoropolymers are used as coatings for the tubing in COVID-19 test kits because of their unmatched durability, low friction, and extreme heat resistance. They are also used in surgically implantable medical devices, increasing the lifetime of implants and reducing the likelihood of infection and invasive surgery.

The chemical industry supports a comprehensive approach to managing per- and polyfluoroalkyl substances that helps to ensure protection of human health and the environment. This includes appropriate, science-based policies and regulations.

Food Packaging is Strictly Regulated by the Food and Drug Administration

Food packaging is strictly regulated by the Food and Drug Administration (FDA), and substances used in food packaging (also referred to as “food contact substances”) must complete a rigorous review process before they may be sold or distributed in the US. As part of this review, FDA requires the submission of extensive information on the food contact substance itself, as well as any potential impurities or degradation products, thus, the PFAS compounds currently authorized for use in food packaging in the US are supported by a robust body of scientific data that has been comprehensively reviewed by FDA.¹

Because of recent increased attention to the family of PFAS and the use of certain PFAS chemistries in food packaging, FDA has undertaken a reassessment of these applications (see <https://www.fda.gov/food/chemicals/and-polyfluoroalkyl-substances-pfas>). In connection with this reassessment, manufacturers of the majority of PFAS products used in fiber-based food packaging agreed to a voluntary phase-out leading to the discontinuation of sales these products for use in food packaging as of January 1, 2024. As reflected in its announcement of this agreement, FDA concluded that this phase-out period is needed to avoid unnecessary food supply chain and market disruptions.

The effective date of the bill should be extended to avoid hardship and disruption

Over the past few years, food manufacturers and the food packaging industry have faced intensifying pressures to “de-select” the use of PFAS. Because of these intensifying deselection pressures, various segments of the food packaging industry have been searching for acceptable alternatives to PFAS products. This search has revealed that for some types of food packaging, the process of identifying and qualifying suitable alternatives is normally a multi-year endeavor. However, the COVID-19 pandemic is adding substantially to this timeline. In particular, many mills and packaging converters are operating at limited capacity and not engaging in research and development activities at this time. They are also not allowing external visitors into their facilities, which is a further impediment to identifying and evaluating potential PFAS alternatives.

In addition, as a result of the pandemic the food service industry now relies on takeout and delivery for its survival, and this will likely continue until the COVID-19 pandemic is largely under control in the US, most likely when vaccinations have been widely administered. These modified services depend heavily on PFAS products including, in particular, molded fiber takeout containers and disposable tableware (e.g. disposable plates). As a result, food service establishments in Vermont must make a substantial portion of their income through takeout or delivery service, and this trend is likely to continue for the foreseeable future. Thus, because of the COVID-19 pandemic, takeout and delivery have become an economic lifeline for the food service industry, and takeout packaging and service ware made using PFAS chemistry have become essential survival tools for these businesses. It is unrealistic to expect that, in

¹ The majority of PFAS used in paper-based food packaging (short-chain fluorotelomer-based side-chain polymers) are polymers that are not bioavailable; therefore, their hazards are characterized by their potential breakdown products, including perfluorohexanoic acid (PFHxA). PFHxA is well studied with a robust body of data demonstrating it does not present a significant risk to human health or the environment. PFHxA is not carcinogenic, mutagenic, or genotoxic, and not an endocrine disruptor. PFHxA is also not a reproductive or developmental toxicant. In addition, detections of PFHxA in the environment and humans are extremely low. Some environmental and biomonitoring programs stopped testing for PFHxA because it was not being detected. This includes the Centers for Disease Control’s nationwide biomonitoring program – National Health and Nutrition Examination Survey (NHANES).

the midst of this massive disruption, affected businesses will have the resources to identify and evaluate new packaging solutions and secure new supply chains for those vital solutions.²

The disruptions in the food supply chain caused by the COVID-19 pandemic have resulted in a large spike in the cost of groceries. For example, the month of April saw the largest increase in grocery store prices in the US in nearly 50 years, and the single largest hike in cereal and bakery product prices on record, going back to the pre-Depression days of the early 20th century. Moreover, there appears to be broad consensus that the steep rise in food prices is largely the result of breakdowns in the food supply chain, rather than a shortage of food per se. This suggests that, for the foreseeable future, there will be even greater need for reliable, proven direct-to-consumer food packaging. Until the pandemic abates, it would be inappropriate to burden the already-fragile food supply chain with the difficult tasks of identifying new packaging suitable for use and planning for a major shift in the types of packaging options available.

It also must be emphasized that the dramatic increases in food prices has come at a time when roughly 30 million workers have lost their jobs or are receiving supplemental benefits, and roughly 1 in 6 American households now believed to be "food insecure." Forcing packaging manufacturers and food companies to find and switch to new and, most likely, more expensive packaging materials will undoubtedly increase costs further, threatening even greater food insecurity than currently exists in the US as a result of the COVID-19 pandemic. Furthermore, the extended timeline outlined would aid compliance and implementation with the nation and neighboring States that do not have bans.

AFFF Is the Most Effective Method for Class B Fires

For high hazard fires where lives are on the line and significant property damage is threatened, the most effective and reliable firefighting agent is crucial to protecting lives and essential property assets. Fluorinated firefighting foams such as Aqueous Film Forming Foams (AFFF) and Alcohol Resistant Aqueous Film Forming Foams (AR-AFFF) made with C6 Fluorosurfactants are produced to meet the most stringent specifications (including military) to combat fuel-based fires. They are proven by recent extensive and rigorous NFPA Research Foundation and US Naval Research Laboratory testing to be the most effective foams currently available to fight flammable liquid fires occurring in many military, industrial, and aviation situations. It is widely recognized their use is essential in protecting Major Hazard Facilities (MHFs).

Fluorosurfactants used in modern AFFF formulations are supported by a robust body of data demonstrating they do not present a significant risk to human health or the environment. The C6 fluorotelomer-based surfactants used in AFFF have been thoroughly reviewed by regulators prior to introduction into commerce, are subject to ongoing review, and are supported by a robust body of rigorous scientific health and safety data.

² In addition, public health authorities including the Centers for Disease Control and Prevention (CDC) are recommending that, to slow the spread of SARS-CoV-2, restaurants utilize disposable, single-use dishes for the foreseeable future. For example, the CDC's Interim Guidance for Restaurants and Bars recommends that restaurants "[u]se disposable food service items (utensils, dishes)" upon reopening. Increased reliance on disposable plates for public health reasons will likely persist until such time as the COVID-19 pandemic is substantially under control in the US; it is not a short-term need. PFAS-treated packaging products are essential to fulfilling this increased need, and it would be irresponsible to force the food packaging and food service industries to search for, let alone deploy, alternatives to these products until the pandemic abates.

This assessment has also included review of potential breakdown (degradation) products. As reflected in the published scientific literature, studies have found that one of the primary potential breakdown products, perfluorohexanoic acid (PFHxA or C6 acid), does not cause cancer (NTP 2018; Klaunig et al. 2015; Loveless et al. 2009); does not disrupt endocrine (hormone) activity (Borghoff et al. 2018); does not cause reproductive or developmental harm (Loveless et al. 2009; Iwai et al. 2019, Iwai and Hoberman 2014); does not build up in the human body and does not become concentrated in the bodies of living organisms (Chengelis et al. 2009b; Iwai and Hoberman 2014; Russell et al. 2013, 2015; Nilsson et al. 2010, 2013; Fujii et al. 2015; Guruge et al. 2016; Gannon et al. 2011, 2016).

For these reasons, respectfully request that you: (i) update definitions of PFAS, food packaging and firefighting foam; (ii) allow for use of AFFF only when in firefighting emergencies in Class B liquid fires; (iii) align food packaging regulations to that of the FDA while strike additional food packaging language that is presently covered by the FDA; and, (iv) allow for the continued sale, distribution and use of affected products that are already in commerce in Vermont as of the effective date of the act.

Thank you for your consideration and we look to work with the Committee and bill sponsors on this language.

Sincerely,

Shawn Swearingen
Director, Alliance for Telomer Chemistry Stewardship