



January 20, 2018

The Honorable Joe Fitzgibbon, Chair  
Washington House Environment Committee  
268A John L. O'Brien  
PO Box 40600  
Olympia, WA 98504-0600

**RE: HB 2658 – OPPOSE**

Dear Chairman Fitzgibbon:

The following organizations are opposed to HB 2658, legislation that would prohibit the use of per- and polyfluoroalkyl substances (PFAS) in food packaging pending the outcome of an assessment conducted by the Department of Ecology (ECY). Safety is a top priority for our industries, and we believe that consumers deserve to have confidence that the products they buy are safe for their intended uses. We invest significant resources in product and environmental stewardship and share a common commitment to advancing the safe and secure management of products and processes.

Unfortunately, we have several concerns with the bill as drafted, including:

- The use of fluorinated chemicals in food packaging is comprehensively regulated by the U.S. Food and Drug Administration (FDA), which has thoroughly reviewed the safety of these materials;
- The bill includes an entire class of chemistries yet makes no distinction between differing characteristics, structures, uses, potential for exposure or risk;
- The bill's definition of food packaging is overly-broad, and could affect cookware and commercial food handling equipment;
- The bill is premature given the current chemical action plan (CAP) process that ECY and the Department of Health (DOH) is conducting to evaluate PFAS chemistries in a variety of applications.

#### **WHY FLUORINATED CHEMICALS ARE USED IN FOOD PACKAGING**

It is important to note that only a small subset of fluorinated chemicals within the class of PFAS are used in food contact applications – fluorotelomer-based products and fluoropolymers. As written, the bill could affect all food contact applications.

Fluorotelomer-based products are sometimes used in specialized food packaging to prevent oil and grease from seeping through the packing material. This is useful for paper and paperboard packaging for

high-oil and high-grease content foods, such as popcorn bags, prepared-food wrappers, pizza boxes and disposable plates. Treatment prevents oil and grease from leaking through food packages onto clothing, furniture or car interiors; and increases the shelf life of some foods by providing an effective oil and moisture barrier. In heated food applications, such as popcorn bags, treatment prevents the migration of hot oil through the package to help prevent burns. Non-fluorinated alternatives for food packaging do not provide the same oil and grease protection properties and are more expensive.

Another category of PFAS, known as fluoropolymers, are specialty plastics used in repeat-use food contact applications such as cookware, tubing and hoses in soda and ice cream dispensers, and components of food processing equipment such as gaskets, sealants, and filters.

### **FOOD PACKAGING MATERIALS ARE SUBJECT TO STRICT REGULATION BY FDA**

All packaging materials that contact food – including coatings and other chemical components of food wrappers, cartons, containers, etc. -- are subject to regulation as "**food additives**" under Section 201(s) of the Federal Food Drug and Cosmetic Act (FFDCA).<sup>1</sup> FDA uses the term "**food contact substance**" to describe food additives from packaging materials.<sup>2</sup> Before a food contact substance can be sold or distributed in commerce it must be approved by FDA, and under the statute, FDA can only allow for use of a food contact substance if the agency concludes that there is sufficient scientific data to demonstrate that the substance is **safe for its intended use** in food packaging.<sup>3</sup>

In order to demonstrate that a food contact substance is safe for its intended use, FDA requires the manufacturer of that substance to submit extensive test data and scientific information regarding:

- The chemical composition of the food contact substance, including all impurities and potential degradation products;
- The levels of impurities and degradation products that may be released from the food contact substance under intended cooking conditions and the potential dietary concentrations of those substances;
- Toxicity data (and any other relevant health and safety data) on all impurities, degradation products and other components of the food contact substance.<sup>4</sup>

FDA can withdraw its acceptance of a food contact substance at any time if available data no longer demonstrate that the food contact substance is safe for its intended use.<sup>5</sup> If FDA withdraws its approval, the food contact substance can no longer be distributed in commerce.

FDA has determined that the fluorotelomer-based products and fluoropolymers currently used in food packaging and other food contact applications are safe for their intended use. Bear in mind any non-

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<sup>1</sup> Section 201(s) of the FFDCA (21 U.S.C. § 321(s)) defines "food additive" to include "any substance intended for use in . . . packaging, transporting, or holding food."

<sup>2</sup> Section 409 of the FFDCA (21 U.S.C. § 348) defines "food contact substance" to mean "any substance intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food . . ."

<sup>3</sup> See 21 U.S.C. § 348(h)(1).

<sup>4</sup> See 21 C.F.R. §170.101; FDA Form 3480 (available at: <http://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/ucm076880.pdf>)

<sup>5</sup> See 21 C.F.R. §170.105(a)

fluorinated alternative that ECY may determine is safer would still be subject to the same regulatory scrutiny by FDA as those chemistries currently being used in these applications.

### **CHEMICAL ACTION PLAN PROCESS SHOULD INFORM LEGISLATIVE ACTION**

As you know, ECY and DOH are developing “a chemical action plan identifying sources and recommending actions to reduce the use, release, and exposure to per- and poly-fluorinated alkyl substances (PFAS) in Washington. The plan is being developed in consultation with an advisory committee composed of representatives from industry and environmental stakeholders.”<sup>6</sup> Importantly, the CAP will “identify sources and provide recommendations on how to reduce or eliminate the most important sources.”<sup>7</sup>

Given the scientific complexity of these chemistries and their uses, it is essential that any legislation or regulation be prioritized to focus on those specific chemicals (or groups of chemicals) that present risk concerns and not targeted at commercially important chemicals that do not present real risk concerns.

ECY and DOH have been working in a transparent and science-based manner to collect and assess a large volume of health, safety and exposure data, and interim recommendations are expected to be released very soon. Because the science is complex and the data are voluminous, the CAP process should be completed before advancing legislation in this area.

HB 2658 would require ECY to set aside the work it has already invested and shift its resources to assessing a use that may very well be a lower priority. Given that the CAP process is already underway, we believe this legislation is premature.

For the above listed reasons, we urge you to hold HB 2658. Thank you for considering our views.

Sincerely,

American Chemistry Council  
American Forest & Paper Association  
Association of Washington Business  
FluoroCouncil  
Foodservice Packaging Institute  
Grocery Manufacturers Association  
National Association of Printing Ink Manufacturers  
Washington Beverage Association  
Washington Retail Association

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<sup>6</sup> <https://ecology.wa.gov/Waste-Toxics/Reducing-toxic-chemicals/Addressing-priority-toxic-chemicals/PFAS>

<sup>7</sup> <https://fortress.wa.gov/ecy/publications/documents/1604021.pdf>