

March 9, 2022

The Honorable Shalanda D. Young
Acting Director
Office of Management and Budget
Washington, DC 20503

The Honorable Brenda Mallory
Chair
Council on Environmental Quality
Washington, DC 20506

The Honorable Michael Regan
Administrator
Environmental Protection Agency
Washington, DC 20460

Ms. Gina McCarthy
National Climate Advisor
White House Office of Climate
Policy
Washington, DC 20500

Re: Executive Order 14057 on "Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability"

Dear Director Young, Chair Mallory, Administrator Regan, and Ms. McCarthy:

The undersigned organizations write to express our strong concern over the inclusion of language relating to perfluoroalkyl or polyfluoroalkyl substances ("PFAS") in two recent documents issued by the Administration: 1) a December 8, 2021, Memorandum to Departments and Agencies ("the Memorandum") on "Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability;" and 2) the Environmental Protection Agency's (EPA) February 2022, updated "Framework for the Assessment of Environmental Performance Standards and Ecolabels for Federal Purchasing" ("the Framework"). We urge you to engage stakeholders regarding the Memorandum's PFAS language, which is otherwise focused on implementing the President's December 8, 2021, Executive Order on "Catalyzing America's Clean Energy Economy Through Federal Sustainability" (the "Sustainability EO"), well before it further implements federal procurement policies in this area. We suggest that you provide the opportunity for public comment on the Framework and its approach.

The Memorandum includes this paragraph below in a section otherwise devoted to "Sustainable Acquisition and Procurement":

Consistent with section 208 of the E.O., agencies should prioritize substitutes for products that contain perfluoroalkyl or polyfluoroalkyl substances (PFAS). To the maximum extent practicable and consistent with statutory mandates, agencies should avoid the procurement of PFAS-containing covered items, as defined in section 333 of Public Law 116-283, as amended.

This language is concerning for several reasons and has the potential to undermine the overall objectives of the Sustainability EO as well as the Administration's critical supply chain priorities.

First, neither section 208 nor the rest of the Sustainability EO makes any mention of PFAS. There does not seem to be any link between the proposed restrictions on PFAS procurement and the Sustainability EO's broader goal of addressing climate change.

PFAS-containing products play a vital role in addressing climate change and other sustainability objectives across numerous industries. For instance, PFAS play a vital role in renewable energy both for solar and wind generation. PFAS coatings are used to increase the efficiency of panels to absorb the sun's radiation and prevent dust buildup on the panels. And they are also a vital component of state-of-the-art battery technologies needed to support renewable energy, provide heat transfer in semiconductor processing, and form the critical sealants to prevent harmful emissions at industrial facilities. With the Sustainability EO's target of providing 100 percent carbon pollution-free electricity by 2030, every electron of renewable energy will be needed to make progress on this ambitious goal.

Second, neither the Sustainability EO nor the Memorandum discuss exactly why "agencies should prioritize substitutes" for PFAS-containing products. The new EPA framework seems to be inconsistent with the EO and PL 116-283. There is no administrative record to support these suggestions. Just the opposite is true: the Office of Management and Budget has questioned the feasibility of such limitations: "it is concerned with section 317 which would prohibit DOD from procuring a wide range of items that may contain PFAS. If implemented in its current form, it would not be feasible for DOD to test all of these items to determine if they contain PFAS. In addition, some of these products may not have PFAS-free alternatives available."¹ During the FY 2022 National Defense Authorization Act legislative process, Congress considered PFAS procurement restrictions for the Department of Defense before it ultimately agreed with the Administration's SAP and removed the provision. Weeks after issuing the Memorandum, the President signed legislation explicitly requiring the Comptroller General to perform a study over the next six months on the very topics covered by the Memorandum. Such a study is necessary to address the inconsistencies among the "covered items" in the Memorandum, under the law, and the new Framework, something on which the administration should seek public involvement. They also establish no process for assessing the safety, efficacy, and equivalent performance of any potential alternatives to the PFAS-containing procurements that the documents include.

PFAS are a broad class of chemistry with very different physical and chemical properties and very different uses. It is not scientifically accurate or appropriate to group all these substances together or treat them all the same. EPA's recent PFAS Roadmap recognizes this and outlines additional efforts to define, subcategorize, assess, and regulate this important chemistry.

Finally, EPA should seek public input prior to updating its Framework, which only mentions PFAS once:

¹ Statement of Administration Policy, H.R. 4350 – National Defense Authorization Act for Fiscal Year 2022, Office of Management and Budget (September 21, 2021) at 4.

The EO and accompanying Federal Sustainability Plan identify the EPA Recommendations as a key tool to help federal purchasers identify sustainable products and services to meet President Biden's goal of net-zero emissions from federal procurement by 2050 and the avoidance of products containing perfluoroalkyl or polyfluoroalkyl substances (PFAS).

We again urge that your offices conduct some form of public and stakeholder involvement and invite public comment before any implementation of the PFAS language in the Memorandum and the EPA Framework.

Sincerely,

Advanced Medical Technology Association
Aerospace Industries Association
Alliance for Automotive Innovation
American Apparel & Footwear Association
American Chemistry Council
American Coatings Association
American Coke and Coal Chemicals Institute
American Fuel and Petrochemical Manufacturers
American Home Furnishings Alliance
American Petroleum Institute
Associated General Contractors of America
Association of Home Appliance Manufacturers
Auto Care Association
Council of Industrial Boiler Owners
Flexible Packaging Association
Fluid Sealing Association
National Association of Printing Ink Manufacturers
National Council of Textile Organizations
National Oilseed Processors Association
Plastics Industry Association
PRINTING United Alliance
TRSA – The Linen, Uniform and Facility Services Association
U.S. Chamber of Commerce