



February 28, 2023

The Honorable Fong Hawj
Chair, Senate Environment, Climate, and Legacy Committee
Saint Paul, MN 55155

RE: SF 834 – PFAS prohibited in certain products, disclosure required
Position: Oppose

Dear Chair Hawj:

The Alliance for Automotive Innovation (Auto Innovators) is writing to **express our opposition to the provisions of SF 834**, which raise serious challenges for automakers, including unrealistic timelines, overly broad definitions, and failure to provide consideration for trade secret and intellectual property issues. SF 834 will also unnecessarily duplicate efforts at the federal level.

The Alliance for Automotive Innovation is the leading advocacy group for the auto industry, representing 39 innovative manufacturers and value chain partners who together produce the most light-duty vehicles sold in the United States. Members include U.S. and international motor vehicle manufacturers, original equipment suppliers, technology and other automotive-related companies and trade associations.

Because of the complexity of regulating such a broad range of chemicals, the bill should focus on regulating PFAS of known health concerns by distinguishing between chemicals that may cause harm and chemicals that do not. Our concerns are further detailed below.

Specific PFAS Should Be Regulated Based on Risk

By definition, the universe of PFAS chemicals requiring disclosure under SF 834 is tremendously wide, capturing over 10,000-plus unique chemical substances. This appears to be without discernment regarding the actual levels of risk and concern to humans and the environment of these thousands of chemicals. SF 834 explicitly ignores that the broad use of the term PFAS incorporates exceptionally different physical, chemical, environmental, and biological properties. Not all PFAS chemistries are the same, and they should not be managed under a single regulatory reporting class. This bill is overly broad, lacks scientific justification, and imposes an extremely onerous obligation on the automotive industry with no apparent or obvious benefits to the public.

Because there is no standard definition for PFAS chemicals, current legislative efforts default to this basic definition which could, according to recent National Institute for Occupational Safety and Health (NIOSH) data include over 9,000 synthetic chemicals¹² including hydrofluorocarbons (HFC), PFOA,

¹ GAO, 2022, TECHNOLOGY ASSESSMENT Persistent Chemicals: Technologies for PFAS Assessment, Detection, and Treatment, Report <https://www.gao.gov/products/gao-22-105088>

² <https://www.cdc.gov/niosh/topics/pfas/default.html>

PFOS and high molecular weight fluoropolymers to give a few examples. EPA's Toxcast database increases that estimate to 12,034 chemicals.³ When defaulting to this definition no distinction is made between chemicals that are harmful and those that are not.

The automotive industry recommends that statutes and regulations:

1. Should not combine PFAS chemicals into one large class of substances for regulatory or reporting purposes. A clear distinction must be made between those chemicals that may cause harm and those that do not.
2. Focus on PFAS of known health concern.
3. Exclude breakdown products and byproducts of PFAS that are not intentionally added.
4. Exclude hydrofluorocarbons, hydrofluoro-olefins, hydrochlorofluoro-olefins, fluoriodocarbons, hydrochlorofluorocarbons, and chlorofluorocarbons that are used refrigerants as define in ISO 817:2014, Refrigerants — Designation and safety classification.
5. Exclude high molecular weight fluoropolymers.
6. Do not include analytical testing as part of a PFAS compliance strategy until such time as the scientific methods for measurement of PFAS in products and product components are generally available.
7. Exclude PFAS that are approved or intended for use as FDA approved drug.
8. Exclude PFAS that are no longer manufactured and have an existing SNUR to prohibit the import or manufacture, including the import or manufacture in articles.

Redundant Data Collection Effort

Currently the U.S. Environmental Protection Agency (EPA) is proposing reporting and recordkeeping requirements for PFAS under the Toxic Substances Control Act (TSCA). That proposed rule, when finalized, will require manufacturers (including those who import) to report information regarding uses, production volumes, disposal, exposures, and hazards for any level of PFAS in products. SF 834 would implement redundant state-level reporting that would replicate the data elements that will be federally required under TSCA Section 8(a)(7). Considering that implementation of SF 834 would be extraordinarily costly for the State, the auto industry, and other regulated entities, if Minnesota wants this sort of information it should instead leverage the data that will be collected under federal efforts to inform PFAS management policy.

Proposed Timelines are Unachievable

SF 834 requires reporting no later than January 1, 2025. The bill also calls for rulemaking to address the notice reporting. This aggressive timeline and lack of clear standards, which are essential elements for the regulated community to develop complete compliance plans, make SF 834 challenging from a compliance standpoint. The auto industry produces complex consumer goods. Vehicles contain thousands of complex components, with multiple subcomponents (up to 30,000 at the lowest component level). Additionally, the automotive global supply chain has a very complex structure. The automotive original equipment manufacturer (OEM) is often up to ten tiers removed from the raw material supplier.

Collecting the required data to report under SF 834 would be a tremendous resource and financial burden, one that the auto industry likely would struggle to complete within the timeframe provided for in the bill.

³ <https://comptox.epa.gov/dashboard/chemical-lists/pfasmaster>

In addition, SF 834 proposes a complete phase-out of PFAS in consumer products by 2030. Without question, a very high number of consumer products contain PFAS, and if this phase-out becomes law, Minnesota can expect a deluge of requests that PFAS uses be found as “currently unavoidable.” PFAS are found throughout automobiles, playing critical durability, flammability, safety, and environmental roles to make vehicles the long-lasting, hardy, and safe products they are today. The likelihood of a complete phase-out of PFAS as defined in SF 834 in cars and trucks is unlikely; therefore, the bill threatens to completely prohibit sales of motor vehicles starting in 2030.

No Consideration for Trade Secret and Intellectual Property Issues

SF 834 calls for the commissioner of the Pollution Control Agency to collect these notices; however, the bill appears to make no consideration for trade secret and intellectual property issues when it comes to the reporting entities. Auto manufacturers sign confidentiality agreements with suppliers contractually protecting confidential information and trade secrets. Without any provisions to enable protection of that sort of information, manufacturers will be forced to choose between compliance with the law and regulations and compliance with their contractual obligations.

Considerations from other States

Other states have struggled with implementing PFAS reporting and ban statutes or have scrapped legislation altogether. Maine, which passed the first major PFAS reporting and ban legislation of this kind, is now struggling to implement it. Despite adding a hire to their Department of Environmental Protection, they failed to have in place an online reporting portal or even an implementing regulation by the statutory start date of January 1, 2023, and it appears those tasks will not be completed for at least a few more months. Considering those circumstances and continuing confusion, Maine has granted around 2,000 extensions of the reporting deadline. And in the state of California, often at the vanguard of environmental regulation, Governor Newsom in September 2022 vetoed AB 2247, a PFAS reporting bill, citing concerns over costs and the duplication of federal efforts.

Conclusion

Though the rationale for such a reporting requirement may appear to be self-evident, the serious compliance obligation creates an unprecedented imposition of cost and burden both to the State and the automotive industry with little to no benefit, as there are federal efforts underway to collect similar data.

Thank you in advance for your consideration of our position.

Sincerely,



Josh Fisher
Senior Director, State Affairs
Alliance for Automotive Innovation