

Calendar No. 256

118TH CONGRESS }
1st Session }

SENATE

{ REPORT
118-118

PFAS-FREE PROCUREMENT ACT OF 2023

—
R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 2283

TO PROHIBIT THE PROCUREMENT OF CERTAIN ITEMS
CONTAINING PERFLUOROOCTANE SULFONATE (PFOS) OR
PERFLUOROOCTANOIC ACID (PFOA) AND PRIORITIZE THE
PROCUREMENT OF PRODUCTS NOT CONTAINING PFAS



NOVEMBER 30, 2023.—Ordered to be printed

—
U.S. GOVERNMENT PUBLISHING OFFICE

49-010

WASHINGTON : 2023

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

GARY C. PETERS, Michigan, *Chairman*

THOMAS R. CARPER, Delaware	RAND PAUL, Kentucky
MAGGIE HASSAN, New Hampshire	RON JOHNSON, Wisconsin
KYRSTEN SINEMA, Arizona	JAMES LANKFORD, Oklahoma
JACKY ROSEN, Nevada	MITT ROMNEY, Utah
JON OSSOFF, Georgia	RICK SCOTT, Florida
RICHARD BLUMENTHAL, Connecticut	JOSH HAWLEY, Missouri
LAPHONZA R. BUTLER, California	ROGER MARSHALL, Kansas

DAVID M. WEINBERG, *Staff Director*

LENA C. CHANG, *Director of Governmental Affairs*

CHELSEA A. DAVIS, *Professional Staff Member*

WILLIAM E. HENDERSON III, *Minority Staff Director*

CHRISTINA N. SALAZAR, *Minority Chief Counsel*

ANDREW J. HOPKINS, *Minority Counsel*

LAURA W. KILBRIDE, *Chief Clerk*

Calendar No. 256

118TH CONGRESS }
1st Session }

SENATE

{ REPORT
{ 118-118

PFAS-FREE PROCUREMENT ACT OF 2023

NOVEMBER 30, 2023.—Ordered to be printed

Mr. PETERS, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 2283]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 2283) to prohibit the procurement of certain items containing perfluorooctane sulfonate (PFOS) or perfluorooctanoic acid (PFOA) and prioritize the procurement of products not containing PFAS, having considered the same, reports favorably thereon with an amendment, in the nature of a substitute, and recommends that the bill, as amended, do pass.

CONTENTS

	Page
I. Purpose and Summary	1
II. Background and Need for the Legislation	2
III. Legislative History	3
IV. Section-by-Section Analysis of the Bill, as Reported	4
V. Evaluation of Regulatory Impact	4
VI. Congressional Budget Office Cost Estimate	5
VII. Changes in Existing Law Made by the Bill, as Reported	5

I. PURPOSE AND SUMMARY

S. 2283, the *PFAS Free Procurement Act of 2023*, would implement procurement restrictions on a set of covered products containing certain types of perfluoroalkyl or polyfluoroalkyl substances (PFAS) across the federal government, specifically perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA). Prohibiting the procurement of covered items that contain PFOS or PFOA would establish consistency in federal procurement guidance by ensuring civilian agencies are held to the same standards as the Department of Defense (DoD). This bill would also direct agencies to

prioritize the procurement—where available and practicable—of covered items that do not PFAS. These measures would aid in protecting the public, including federal workers, veterans, and seniors, from exposure to harmful PFAS chemicals.

II. BACKGROUND AND NEED FOR THE LEGISLATION

PFAS are manufactured chemicals that can be found in industrial and consumer products. PFAS are often referred to as “forever chemicals” because they do not break down in the environment or in living organisms.¹ A growing list of over 9,000 PFAS chemicals threaten the health of workers, consumers, and communities.² PFAS are found in everyday household products, including stain-resistant fabrics, water-repellent clothing, and nonstick cookware.³ PFAS chemicals are also found in industrial production and waste, which can lead to pervasive contamination of soil and water.⁴

In June 2022, the Environmental Protection Agency (EPA) updated its drinking water health advisories for the two most widely studied PFAS—PFOA and PFOS—after finding that negative health effects can occur with concentrations of PFOA or PFOS in water that are near zero and below EPA’s ability to detect at this time.⁵

Research suggests that in the U.S. population, most people have been exposed to PFAS, specifically PFOA and PFOS, which has been monitored through blood samples and studies collected by the Centers for Disease Control and Prevention (CDC).⁶ CDC research has found that PFAS chemicals may be present in the blood of up to 97% of Americans, but full exposure is difficult to monitor due to the continued development of new types of PFAS chemicals used in products.⁷ According to the CDC, people can be exposed to PFAS through a variety of means, including by using or coming into contact with consumer products that contain PFAS.⁸

Exposure to PFAS chemicals is associated with negative health impacts. Studies have suggested that humans exposed to PFAS may have an increased risk of kidney or testicular cancer, increased cholesterol levels, changes in liver enzymes, small decreases in infant birth weights, decreased vaccine response in children, and increased risk of high blood pressure or pre-eclampsia in

¹Harvard T.H. Chan School of Public Health, *Protecting Against ‘Forever Chemicals’* (Mar. 16, 2023).

²Center for Disease Control and Prevention, The National Institute for Occupational Safety and Health, *Per- and polyfluoroalkyl substances (PFAS)* (www.cdc.gov/niosh/topics/pfas/default.html) (accessed June 15, 2023).

³Center for Disease Control and Prevention, Agency for Toxic Substances and Disease Registry, *Per- and Polyfluoroalkyl Substances (PFAS)* (www.atsdr.cdc.gov/pfas/activities/index.html) (accessed June 15, 2023).

⁴U.S. Environmental Protection Agency, *Our Current Understanding of the Human Health and Environmental Risks of PFAS* (www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas) (accessed June 15, 2023).

⁵U.S. Environmental Protection Agency, *EPA Announces New Drinking Water Health Advisories for PFAS Chemicals, \$1 Billion in Bipartisan Infrastructure Law Funding to Strengthen Health Protections* (June 15, 2022).

⁶Center for Disease Control and Prevention, Agency for Toxic Substances and Disease Registry, *Per- and Polyfluoroalkyl Substances (PFAS), PFAS in the U.S. Population* (www.atsdr.cdc.gov/pfas/health-effects/us-population.html) (accessed June 15, 2023).

⁷National Institute of Environmental Health Sciences, *Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS)* (<https://www.niehs.nih.gov/health/topics/agents/pfc/>) (accessed June 15, 2023).

⁸Centers for Disease Control and Prevention, National Biomonitoring Program, *Per- and Polyfluorinated Substances (PFAS) Factsheet* (May 2, 2022) (https://www.cdc.gov/biomonitoring/PFAS_FactSheet.html#:~:text=PFAS%20Exposure%20in%20People,using%20products%20that%20contain%20PFAS.).

pregnant women.⁹ In a June 2022 study, the National Institute of Environmental Health Sciences found that “higher levels of PFAS mixtures were significantly associated with higher risk of all-cause mortality” and that “PFOS concentrations were positively correlated with all-cause, heart disease, and cancer mortality.”¹⁰

In response to mounting consensus on the immunotoxicity associated with exposure to PFOS and PFOA, American manufacturers ceased its domestic production in 2002 and 2015, respectively.¹¹ However, PFOA and PFOS are still produced internationally, and can be imported to the United States through products such as leather, apparel, carpet, coatings, and textiles.¹² To protect the health and safety of service members, the Fiscal Year 2021 National Defense Authorization Act closed this loophole, prohibiting DoD from procuring any covered item that includes PFOS or PFOA beginning on April 1, 2023.¹³ Covered items include nonstick cookware or cooking utensils for use in kitchens or dining facilities, as well as upholstered furniture, carpets, and rugs that have been treated with stain-resistant coatings.

The *PFAS Free Procurement Act of 2023* is modeled directly on DoD’s prohibition on the procurement of covered items that contain PFOA and PFOS, in order to mitigate harmful effects resulting from PFAS exposure.¹⁴ This bill aims to ensure consistent procurement guidance across government and to improve the safety of Americans who are exposed to government-procured items, including federal employees, veterans, and seniors. The bill would also codify existing procurement guidance, directing agencies to prioritize the procurement—where available and practicable—of covered items that do not contain perfluoroalkyl or polyfluoroalkyl substances (PFAS).¹⁵

III. LEGISLATIVE HISTORY

Chairman Gary Peters (D–MI) introduced S. 2283, the *PFAS Free Procurement Act of 2023*, on July 12, 2023, with original cosponsors Senator Susan Collins (R–ME) and Senator Jerry Moran (R–KS). The bill was referred to the Committee on Homeland Security and Governmental Affairs. Senator Lisa Murkowski (R–AK) joined as a cosponsor on July 18, 2023.

The Committee considered S. 2283 at a business meeting on July 26, 2023. At the business meeting, Senator Peters offered a substitute amendment to the bill, as well as a modification to the substitute amendment, that made technical changes to the bill and

⁹ Center for Disease Control and Prevention, Agency for Toxic Substances and Disease Registry, Per- and Polyfluoroalkyl Substances (PFAS) and Your Health, What are the health effects of PFAS? (www.atsdr.cdc.gov/pfas/health-effects/index.html) (accessed June 15, 2023).

¹⁰ Xue Wen et al., *Exposure to Per- and Polyfluoroalkyl Substances and Mortality in U.S. Adults: A Population-Based Cohort Study*, *Environmental Health Perspectives* (June 22, 2022).

¹¹ National Toxicology Program, U.S. Department of Health and Human Services, *Immunotoxicity Associated with Exposure to Perfluorooctanoic Acid (PFOA) or Perfluorooctane Sulfonate (PFOS)* (Mar. 22, 2023) (<https://ntp.niehs.nih.gov/whatwestudy/assessments/noncancer/completed/pfoa>).

¹² Airforce Civil Engineer Center, *Frequently Asked Questions About PFOS/PFOA* (<https://www.afcec.af.mil/What-We-Do/Environment/Per-and-Polyfluoroalkyl-Substances/Frequently-Asked-Questions/#:~:text=PFOS%2FPFOA%20are%20no%20longer,%2C%20textiles%2C%20rubber%20and%20plastics>) (accessed July 31, 2023).

¹³ Public Law No: 116–283, Title III, Subtitle B, Sec. 333.

¹⁴ U.S. Department of Defense, *Department of Defense Announces Prohibition in DFARS on Certain PFOS and PFOA Procurement* (Sept. 28, 2022).

¹⁵ Executive Office of the President, *Memorandum for the Heads of Executive Departments and Agencies* (Dec. 8, 2021) (<https://www.whitehouse.gov/wp-content/uploads/2021/12/M-22-06.pdf>).

specified covered items that would be prohibited from procurement by federal agencies. The Committee adopted the modification to the Peters substitute amendment and adopted the substitute amendment, as modified, by unanimous consent, with Senators Peters, Hassan, Sinema, Rosen, Padilla, Paul, Lankford, and Hawley present.

The bill, as amended, was ordered reported favorably by roll call vote of 7 yeas to 1 nay, with Senators Peters, Hassan, Sinema, Rosen, Padilla, Ossoff, and Lankford voting in the affirmative, and Senator Paul voting in the negative. Senators Carper, Blumenthal, Johnson, Romney, Scott, Hawley, and Marshall voted yea by proxy, for the record only.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section establishes the short title of the bill as the “PFAS-Free Procurement Act of 2023.”

Section 2. Prohibition on procurement of certain items containing perfluorooctane sulfonate (PFOS) or perfluorooctanoic acid (PFOA)

This section prohibits the head of an executive agency from entering into a procurement contract for covered items containing PFOS or PFOA, beginning October 1, 2025.

Section 3. Priority procurement of products not containing PFAS

This section requires the head of an executive agency to prioritize the procurement of covered items that do not contain PFOS or PFOA to the extent practicable and applicable.

Section 4. Definitions

This definition defines the terms “executive agency” and “covered items” in the context of this Act. Covered items include nonstick cookware and cooking utensils, furniture, carpets, and rugs.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office’s statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 2283, PFAS-Free Procurement Act of 2023			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on July 26, 2023			
By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
Direct Spending (Outlays)	0	*	*
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	*	*
Spending Subject to Appropriation (Outlays)	0	*	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply? Yes	
		Mandate Effects	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between -\$500,000 and \$500,000.			

S. 2283 would prohibit executive branch agencies, starting on October 1, 2025, from procuring cookware, utensils, carpets, furniture, and other items containing certain perfluorooctane sulfonate or perfluorooctanoic acid compounds. Those substances fall within a larger group of “forever chemicals,” per- and polyfluoroalkyl substances (PFAS), which are widely used compounds that decompose slowly over time. The bill also would require agencies to prioritize the procurement of PFAS-free products where available and practicable.

Executive Order 14057, related Presidential memorandums, and the Federal Sustainability Plan restrict the use of PFAS-containing products. In addition, under current law, the Department of Defense is prohibited from procuring similar items that contain PFAS. Thus, CBO estimates that the costs of the bill would be less than \$500,000 over the 2023–2028 period; any spending would be subject to the availability of appropriated funds.

Enacting S. 2283 could affect direct spending by some agencies that are allowed to use fees, receipts from the sale of goods, and other collections to cover operating costs. CBO estimates that any net changes in direct spending by those agencies would be negligible both because use of PFAS-containing products by federal agencies is already limited and because most of the affected agencies that are allowed to use fees can adjust amounts collected to reflect changes in operating costs.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was reviewed by Christina Hawley Anthony, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation would make no change in existing law, within the meaning of clauses (a) and (b) of subparagraph 12 of rule XXVI

of the Standing Rules of the Senate, because this legislation would not repeal or amend any provision of current law.

