

**AMENDMENT TO RULES COMMITTEE PRINT 118-**

**25**

**OFFERED BY MR. ISSA OF CALIFORNIA**

Add at the end the following:

1 **SEC. \_\_\_\_ . CERCLA EXEMPTIONS FOR PFAS.**

2 (a) GENERAL DEFINITIONS.—In this section:

3 (1) COVERED PERFLUOROALKYL OR  
4 POLYFLUOROALKYL SUBSTANCE.—The term “cov-  
5 ered perfluoroalkyl or polyfluoroalkyl substance”  
6 means a non-polymeric perfluoroalkyl or  
7 polyfluoroalkyl substance that contains at least 2 se-  
8 quential fully fluorinated carbon atoms, excluding  
9 gases and volatile liquids, that is a hazardous sub-  
10 stance (as defined in section 101 of the Comprehen-  
11 sive Environmental Response, Compensation, and  
12 Liability Act of 1980 (42 U.S.C. 9601)).

13 (2) INDIAN TRIBE.—The term “Indian Tribe”  
14 has the meaning given the term in section 4 of the  
15 Indian Self-Determination and Education Assistance  
16 Act (25 U.S.C. 5304).

17 (b) AGRICULTURE PFAS LIABILITY PROTECTION.—

18 (1) PROTECTED ENTITY DEFINED.—In this  
19 subsection, the term “protected entity” means a per-

1 son engaged in the production or harvesting of agri-  
2 cultural products (as defined in section 207 of the  
3 Agricultural Marketing Act of 1946 (7 U.S.C.  
4 1626)).

5 (2) EXEMPTION.—No person (including the  
6 United States, any State, or an Indian Tribe) may  
7 recover costs or damages from a protected entity  
8 under the Comprehensive Environmental Response,  
9 Compensation, and Liability Act of 1980 (42 U.S.C.  
10 9601 et seq.) for costs arising from a release to the  
11 environment of a covered perfluoroalkyl or  
12 polyfluoroalkyl substance.

13 (3) SAVINGS PROVISION.—Nothing in this sub-  
14 section precludes liability for damages or costs asso-  
15 ciated with the release of a covered perfluoroalkyl or  
16 polyfluoroalkyl substance by a protected entity if  
17 that protected entity acted with gross negligence or  
18 willful misconduct in the discharge, disposal, man-  
19 agement, conveyance, or storage of the covered  
20 perfluoroalkyl or polyfluoroalkyl substance.

21 (c) RESOURCE MANAGEMENT PFAS LIABILITY PRO-  
22 TECTION.—

23 (1) DEFINITIONS.—In this subsection:

24 (A) COMPOST.—The term “compost” has  
25 the meaning given the term in section 205.2 of

1 title 7, Code of Federal Regulations (or a suc-  
2 cessor regulation).

3 (B) PROTECTED ENTITY.—The term “pro-  
4 tected entity” means an owner or operator (as  
5 defined in section 101 of the Comprehensive  
6 Environmental Response, Compensation, and  
7 Liability Act of 1980 (42 U.S.C. 9601)) of—

8 (i) a solid waste management facility  
9 (as defined in section 1004 of the Solid  
10 Waste Disposal Act (42 U.S.C. 6903)); or

11 (ii) a facility that processes compost  
12 for sale or distribution to the public.

13 (2) EXEMPTION.—Subject to paragraph (3), no  
14 person (including the United States, any State, or  
15 an Indian Tribe) may recover costs or damages from  
16 a protected entity under the Comprehensive Envi-  
17 ronmental Response, Compensation, and Liability  
18 Act of 1980 (42 U.S.C. 9601 et seq.) for costs aris-  
19 ing from a release to the environment of a covered  
20 perfluoroalkyl or polyfluoroalkyl substance.

21 (3) REQUIREMENTS.—Paragraph (2) shall only  
22 apply if the release of a covered perfluoroalkyl or  
23 polyfluoroalkyl substance by a protected entity re-  
24 sulted from—

1 (A) the disposal or management of any re-  
2 siduals or byproduct of municipal solid waste in  
3 accordance with a permit issued under the Fed-  
4 eral Water Pollution Control Act (33 U.S.C.  
5 1251 et seq.), the Solid Waste Disposal Act (42  
6 U.S.C. 6901 et seq.), or similar State or local  
7 authority;

8 (B) the disposal or management of bio-  
9 solids consistent with section 405 of the Fed-  
10 eral Water Pollution Control Act (33 U.S.C.  
11 1345); or

12 (C) the application or processing of com-  
13 post in accordance with State law.

14 (4) SAVINGS PROVISION.—Nothing in this sub-  
15 section precludes liability for damages or costs asso-  
16 ciated with the release of a covered perfluoroalkyl or  
17 polyfluoroalkyl substance by a protected entity if  
18 that protected entity acted with gross negligence or  
19 willful misconduct in the discharge, disposal, man-  
20 agement, processing, conveyance, or storage of the  
21 covered perfluoroalkyl or polyfluoroalkyl substance.

22 (d) WATER SYSTEMS PFAS LIABILITY PROTEC-  
23 TION.—

24 (1) PROTECTED ENTITY DEFINED.—In this  
25 subsection, the term “protected entity” means—

1 (A) a public water system (as defined in  
2 section 1401 of the Safe Drinking Water Act  
3 (42 U.S.C. 300f));

4 (B) a publicly or privately owned or oper-  
5 ated treatment works (as defined in section 212  
6 of the Federal Water Pollution Control Act (33  
7 U.S.C. 1292));

8 (C) a municipality to which a permit under  
9 section 402 of the Federal Water Pollution  
10 Control Act (33 U.S.C. 1342) is issued for  
11 stormwater discharges;

12 (D) a political subdivision of a State or a  
13 special district of a State acting as a wholesale  
14 water agency; and

15 (E) a contractor performing the manage-  
16 ment or disposal activities described in para-  
17 graph (3) for an entity described in any of sub-  
18 paragraphs (A) through (D).

19 (2) EXEMPTION.—Subject to paragraph (3), no  
20 person (including the United States, any State, or  
21 an Indian Tribe) may recover costs or damages from  
22 a protected entity under the Comprehensive Envi-  
23 ronmental Response, Compensation, and Liability  
24 Act of 1980 (42 U.S.C. 9601 et seq.) for costs aris-

1       ing from a release to the environment of a covered  
2       perfluoroalkyl or polyfluoroalkyl substance.

3           (3) REQUIREMENTS.—Paragraph (2) shall only  
4       apply if a protected entity transports, treats, dis-  
5       poses of, or arranges for the transport, treatment, or  
6       disposal of a covered perfluoroalkyl or  
7       polyfluoroalkyl substance—

8           (A) in a manner consistent with all appli-  
9       cable laws at the time the activity is carried  
10      out; and

11          (B) during and following the conveyance or  
12      treatment of water under Federal or State law,  
13      including through—

14           (i) the management or disposal of bio-  
15      solids consistent with section 405 of the  
16      Federal Water Pollution Control Act (33  
17      U.S.C. 1345);

18           (ii) the discharge of effluent in ac-  
19      cordance with a permit issued under sec-  
20      tion 402 of the Federal Water Pollution  
21      Control Act (33 U.S.C. 1342);

22           (iii) the release or disposal of water  
23      treatment residuals or any other byproduct  
24      of drinking water or wastewater treatment  
25      activities, such as granulated activated car-

1 bon, filter media, and processed waste  
2 streams; or

3 (iv) the conveyance or storage of  
4 water for the purpose of conserving or re-  
5 claiming the water for water supply.

6 (4) SAVINGS PROVISION.—Nothing in this sub-  
7 section precludes liability for damages or costs asso-  
8 ciated with the release of a covered perfluoroalkyl or  
9 polyfluoroalkyl substance by a protected entity if  
10 that protected entity acted with gross negligence or  
11 willful misconduct in the discharge, disposal, man-  
12 agement, conveyance, or storage of the covered  
13 perfluoroalkyl or polyfluoroalkyl substance.

14 (e) FIRE SUPPRESSION PFAS LIABILITY PROTEC-  
15 TION.—

16 (1) DEFINITIONS.—In this subsection:

17 (A) LAWFUL DISCHARGE.—The term “law-  
18 ful discharge”, with respect to an aqueous film  
19 forming foam agent, means a release of the  
20 aqueous film forming foam agent through  
21 equipment calibration, firefighter training, a  
22 timed-response drill, a scheduled release, an  
23 emergency response activity, or the use of a fire  
24 suppression system.

1 (B) PROTECTED ENTITY.—The term “pro-  
2 tected entity” means an entity with a fire sup-  
3 pression system installed, or otherwise in use,  
4 in accordance with applicable Federal, State,  
5 and local fire codes that uses an aqueous film  
6 forming foam that contains a covered  
7 perfluoroalkyl or polyfluoroalkyl substance.

8 (2) EXEMPTION.—Subject to paragraph (3), no  
9 person (including the United States, any State, or  
10 an Indian Tribe) may recover costs or damages from  
11 a protected entity under the Comprehensive Envi-  
12 ronmental Response, Compensation, and Liability  
13 Act of 1980 (42 U.S.C. 9601 et seq.) for costs aris-  
14 ing from a release to the environment of a covered  
15 perfluoroalkyl or polyfluoroalkyl substance.

16 (3) REQUIREMENT.—Paragraph (2) shall only  
17 apply if the release of the covered perfluoroalkyl or  
18 polyfluoroalkyl substance resulted from the lawful  
19 discharge of an aqueous film forming foam in con-  
20 nection with a fire suppression system that—

21 (A) conforms to applicable Federal, State,  
22 and local fire codes; and

23 (B) is compliant with the most recently ap-  
24 proved engineering standards at the time of the  
25 discharge.



1           (4) SAVINGS PROVISION.—Nothing in this sub-  
2           section precludes liability for damages or costs asso-  
3           ciated with the release of a covered perfluoroalkyl or  
4           polyfluoroalkyl substance by a protected entity if the  
5           protected entity—

6                   (A) acts with gross negligence or willful  
7                   misconduct in the discharge of the covered  
8                   perfluoroalkyl or polyfluoroalkyl substance; or

9                   (B) continues to use an aqueous film form-  
10                  ing foam agent in the fire suppression system  
11                  of the protected entity on or after the date that  
12                  is 5 years after the date on which approved en-  
13                  gineering standards were updated to no longer  
14                  require the use of an aqueous film forming  
15                  foam.

16          (f) AIRPORTS PFAS LIABILITY PROTECTION.—

17                  (1) SPONSOR DEFINED.—In this subsection, the  
18                  term “sponsor” has the meaning given the term in  
19                  section 47102 of title 49, United States Code.

20                  (2) EXEMPTION.—Subject to paragraph (3), no  
21                  person (including the United States, any State, or  
22                  an Indian Tribe) may recover costs or damages from  
23                  a sponsor, including a sponsor of the civilian portion  
24                  of a joint-use airport or a shared-use airport (as  
25                  those terms are defined in section 139.5 of title 14,

1 Code of Federal Regulations (or a successor regula-  
2 tion)), under the Comprehensive Environmental Re-  
3 sponse, Compensation, and Liability Act of 1980 (42  
4 U.S.C. 9601 et seq.) for costs arising from a release  
5 to the environment of a covered perfluoroalkyl or  
6 polyfluoroalkyl substance.

7 (3) REQUIREMENTS.—Paragraph (2) shall only  
8 apply—

9 (A) if the release of a covered  
10 perfluoroalkyl or polyfluoroalkyl substance by a  
11 sponsor resulted from the use of an aqueous  
12 film forming foam; and

13 (B) if the use described in subparagraph  
14 (A) was—

15 (i) required by the Federal Aviation  
16 Administration for compliance with part  
17 139 of title 14, Code of Federal Regula-  
18 tions (or successor regulations); and

19 (ii) carried out in accordance with  
20 Federal Aviation Administration standards  
21 and guidance on the use of that substance.

22 (4) SAVINGS PROVISION.—Nothing in this sub-  
23 section precludes liability for damages or costs asso-  
24 ciated with the release of a covered perfluoroalkyl or  
25 polyfluoroalkyl substance by a sponsor if that spon-

- 1 sor acted with gross negligence or willful misconduct
- 2 in the use of an aqueous film forming foam.

