HOUSEHOLD & COMMERCIAL PRODUCTS ASSOCIATION

Innovative Products For Home. Work. Life.

September 27, 2021
Stephanie Griffin
Data Gathering and Analysis Division (7401M)
Office of Pollution Prevention and Toxics
Environmental Protection Agency
1200 Pennsylvania Ave. NW, Washington, DC 20460–0001

Re: TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances (EPA–HQ–OPPT–2020–0549)

Dear Ms. Griffin,

On behalf of the Household & Commercial Products Association[1] (HCPA) and its members, we are submitting comments on the TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances (EPA–HQ–OPPT–2020–0549). HCPA supports the reporting and record-keeping requirements for Per- and Polyfluoroalkyl Substances (PFAS) under the Toxic Substances Control Act (TSCA) as amended by the National Defense Authorization Act for Fiscal Year 2020 and seeks to assist EPA in gathering that information in an effort to better characterize the sources and quantities of manufactured PFAS in the United States. While we do not expect a significant number of members to have reporting requirements under this rule, we do expect a significant impact upon our members as they perform due diligence given the scope of ingredients and product categories and timeframes associated with the rule.

HCPA urges EPA to build upon the lessons learned through multiple TSCA section 8(a) Chemical Data Reporting (CDR) cycles to make the rule practicable and to allow collection of meaningful information while fulfilling the legislative intent of Congress. In light of the complexity of the proposed retrospective reporting requirements, which cover a large number of identified substances encompassing many product categories, HCPA offers the following comments on the proposal.

[1] HCPA is the premier trade association representing the interests of companies engaged in the manufacture, formulation, distribution and sale of more than $180 billion annually in the U.S. of familiar consumer products that help household and institutional customers create cleaner and healthier environments. HCPA member companies employ hundreds of thousands of people globally. HCPA represents products including disinfectants that kill germs in homes, hospitals and restaurants; air fresheners, room deodorizers, and candles that eliminate odors; pest management products for pets, home, lawn, and garden; cleaning products and polishes for use throughout the home and institutions; products used to protect and improve the performance and appearance of automobiles; aerosol products and a host of other products used every day.

Scope of Rule Considerations

HCPA appreciates the efforts EPA has undertaken to identify substances within the scope of the proposed rule and having clarity of the full scope subject to reporting is a critical undertaking. We do caution that there are several areas that should be refined to provide greater clarity to the regulated community while improving the usefulness of information that the Agency receives.

The Proposed Rule mandates reporting for all PFAS. However, including all PFAS in scope of the reporting rule could unduly burden industry and likely duplicate information EPA already retains. HCPA recommends that EPA utilize existing data to supplant the reported data to the extent possible with already obtained data or for which substantial data is already publicly available, such as PFOA and PFOS. Examples of such excluded substances could include:

1. Substances reported under the Chemical Data Reporting Rule per 40 C.F.R. Part 711;
2. Substances identified as inactive on the TSCA inventory (677 are noted in the rule) or allow for minimal reporting thereof
3. Substances for which data is already publicly available, e.g., in scientific journals or EU REACH dossiers;
4. Substances for which information was submitted under the high production volume challenge program;
5. Substances for which EPA has already collected information under a consent agreement or test order.

HCPA notes that the proposed rule does not incorporate a reporting threshold for impurities or byproducts. HCPA recommends that EPA incorporate a *de minimus* threshold into the final regulation for impurities and byproducts to ease reporting requirements and focus reporting efforts on areas of greatest concern.

HCPA is concerned that while EPA acknowledges that importers of articles may not have knowledge of the presence of PFAS even after performing due diligence and so should document their due diligence accordingly. It's likely that due diligence will not be successful in large part because articles are expressly exempt from the TSCA import certification requirements under TSCA Section 13. HCPA is concerned that this provision places considerable reporting burden upon manufacturers with minimal benefit and HCPA recommends that EPA carefully consider exempting imported articles from the reporting requirements.

Additionally, the proposed rule indicates that within scope are all PFAS listed as active on the TSCA Inventory, including "confidential chemicals whose generic names do not contain 'fluor'…" and it is unclear how importers would know if a chemical were in scope if there is no discernible indication in the generic name of the presence of fluorine. HCPA recommends that EPA specifically indicate which substances meet this

reporting requirement or exempt such substances from reporting.

HCPA notes the proposed definition of "reasonably ascertainable" differs from the current CDR definition and would likely require significant supply chain diligence and increase the recording burden significantly beyond existing requirements. HCPA recommends that EPA revisit the existing "reasonably ascertainable" definition and determine whether the existing standard meets the necessary due diligence needs.

HCPA is concerned about the scope and number of individual data elements being requested in the proposed rule. There are numerous information elements not required for reporting under the CDR that have not been collected in the past, nor have electronic systems been designed to capture for articles. Additionally, while some of the elements are consistent with CDR, the scope is inconsistent with CDR if articles are also within scope. Existing industry systems are not currently designed to collect the significant number of additional data elements identified in the proposed rule, which increase the data collection and reporting time needed. HCPA recommends that EPA refine the data requirements to essential elements and should consider data elements similar to the CDR reporting elements.

HCPA also notes that "representative molecular structure" is a data requirement, but this will not be known to importers of PFAS that are considered CBI by the supplier. HCPA recommends that this data field be extended to include an allowance for not providing the representative molecular structure but utilize a "data field allowing reporters to provide generic names or descriptions in the event a manufacturer is aware they have produced or imported a PFAS but are not able to reasonably ascertain the specific PFAS identity".

The proposed rule does not discuss or anticipate how to deal with supplier trade secret information, other than a request for comments on adding joint submission functionality similar to CDR. TSCA Section 14 requires EPA to take appropriate measures to protect CBI, which is critical for fostering domestic innovation. HCPA has significant concerns that any information EPA were to disclose publicly could be easily accessed and used by competitors. Disclosure of this information that companies have researched, but not pursued commercially, would give competitors undue and valuable insight into competitors business knowledge and activity.

HCPA believes joint submissions should be allowed, when necessary, but points out that joint submissions can be a substantial burden for companies. EPA must take its time to consider and draft a workable solution that will allow compliance and reduce industry burden while still protecting CBI and trade secrets up, down and across the value chain.

Burden Estimate Considerations

HCPA is concerned that EPA has underestimated the burden upon both industry and EPA. As written, the EPA and industry burden associated with compliance is significant. In our view, the economic burden of this expansive reporting scope has not been adequately quantified and must consider the many hours it will take company staff to assess, gather, and comply with the reporting requirements, as well as the cost of electronic systems to be developed, tested, and deployed to capture the information, and submit the information to EPA via CDX. This a retrospective reporting requirement instituted long after the fact and will often rely upon older data that may in many cases exceeds the data retention times at companies. In addition, even if the data is retained, it may be in legacy systems, archived or contained in paper records that will appreciably complicate and increase the reporting burden.

Correspondingly, HCPA is concerned that a six-month reporting time-period for 10-year lookback period for the rule is published is an insufficient amount of time given the amount of data that will need to be searched. HCPA recommends a one-year period for gathering information followed by additional 6 months to allow for reporting.

Reliability of Data Considerations

HCPA does not take issue with the legislatively mandated 10-year reporting period but does note a few challenges that will limit the utility of the collected information.

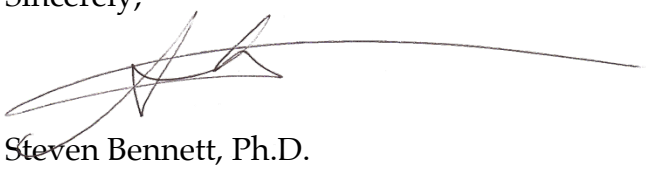
This a retrospective reporting requirement instituted long after the fact and will often rely upon older data that may, in many cases, exceed the data retention times at companies. In addition, even if the data is retained, it may be in legacy systems, archived, or contained in paper records that will appreciably complicate and increase the reporting burden.

The increased number of data elements introduces challenges with the availability of the additional data elements. For example, many manufacturers are accustomed to CDR data collection and readily capture the overlapping data elements, but the additional data elements would likely not be captured. This would cause manufacturers to obtain the additional information from other sources or if unsuccessful to mark these data elements as not "Known to or reasonably ascertainable by". HCPA would expect manufacturers to have readily accessible and relevant information from the most recent reporting year. However, as the reporting period goes further back in time the data may become less relevant, inaccessible, and less reliable. HCPA urges EPA to carefully weigh the benefit of including any of the additional data elements and recommends that EPA align the data elements with CDR reporting. As a possible alternative, HCPA suggests a primary reporting year for PFAS reporting, in which all data elements outlined in the proposed rule would be required

for the primary reporting year only while only production volume would be required for the prior years.[2] This approach would significantly ease the reporting burden while providing EPA with the necessary information on current PFAS products and uses consistent with TSCA 8(a)(7).

HCPA reiterates the importance of building upon the lessons learned through multiple CDR cycles to make the rule practicable and to allow collection of meaningful information while fulfilling the legislative intent of Congress. We thank you for your time and attention.

Sincerely,



Steven Bennett, Ph.D.
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Household & Commercial Products Association

[2] The primary reporting year is the most recent reportable calendar year prior to the final rule being published or the last year a manufacturing volume was reported for the PFAS of interest.