

EPN COMMENTS ON TSCA PFAS REPORTING REQUIREMENTS

July 28, 2021

The Environmental Protection Network (EPN) is comprised of almost 550 U.S. Environmental Protection Agency (EPA) alumni volunteering their time to protect the integrity of EPA, human health, and the environment. We harness the expertise of former EPA career staff and confirmation-level appointees to provide insights into proposed regulations and policies that have an impact on public health and environmental protections.

EPN appreciates the opportunity to provide these comments on the June 28, 2021, proposed rule “TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances.” Our comments on this rule are based on the [recommendations EPN provided to EPA in April 2021](#) on how to accelerate protection of public health and the environment from PFAS chemicals. We focus our comments today on which entities should be covered by this reporting rule, what type of information should be required, and the extent to which non-confidential business information should be provided to the general public.

Entities covered by rule

EPA should expand the rule beyond manufacturers (and importers) to cover all facilities processing PFAS in any year since January 1, 2011. Section 8 authorizes EPA to collect information from processors as well as manufacturers, and processors are responsible for a significant portion of PFAS chemicals. EPA must include all of these entities in order to address that portion of the full life cycle of PFAS chemicals that begins with the manufacture of PFAS chemicals as a raw material and ends with the use of that raw material in various manufacturing processes and industrial/commercial applications to create consumer and commercial products containing or treated with PFAS. All of these facilities must be required to report since all of them release PFAS chemicals to the environment through wastewater and stormwater discharges, fugitive and stack emissions, accidents and spills, disposal of PFAS-containing or PFAS-treated materials, and the general wear and tear of consumer products (whether made in the U.S. or imported). In response to EPA’s specific request for comment, EPN supports the rule’s inclusion of imported articles containing PFAS because those articles can pose risks to the American people during their use and disposal.

Information required for submittal

EPA must use this TSCA reporting rule to require industry to provide existing chemical test standards and analytical methods for measuring PFAS chemicals in products and environmental media where they are not available to the agency. TSCA section 8 grants EPA the authority to compel the submission of information that is “known” or “reasonably ascertainable” by chemical manufacturers and processors, including “all existing information concerning the environmental and health effects of such substance or mixture.” This section is broad enough to require the submission of analytical methods, which are key to determining the presence of a chemical in products and in air, water, and soil and are therefore key to evaluating routes of exposures and potential human health and environmental impacts. EPA has been aware that PFAS chemicals pose risks to human health and the environment since the 1990s, but it was not until the 2010s that analytical methods with detection limits in water low enough to be commensurate with the levels of potential human health effects became widely available. To date, EPA only has analytical methods for 29

PFAS in drinking water and has not finalized analytical methods for PFAS in air, surface/ground water, and wastewater. EPA has also not certified a non-target method, such as Total Organic Fluorine (TOF) or Total Oxidizable Precursor Assay (TOPA). EPA's current analytical methods for PFAS chemicals represent a small fraction of all PFAS used commercially and found in the environment, and as such provide little support for regulation by the air, water, and solid waste programs. EPA must use its TSCA section 8 authority to get industry to provide this critical information when it is available but not in the public domain.

Public availability of submitted data

In response to EPA's request for comment on the extent to which non-confidential business information (non-CBI) submitted under this reporting rule should be made publicly available, EPN urges the agency to provide all non-CBI information to the general public as quickly as possible. This transparency is critical to support the ongoing efforts of many states, local governments, and academia to understand and prevent exposures to these toxic chemicals in products, air, water, soil, and solid waste. As the Safer States organization has documented in [their database tracking state actions](#), a number of states are moving more quickly than the federal government to address PFAS contamination. The information submitted by industry in response to this reporting rule would provide states and others with the location of major sources and uses of PFAS, the analytical methods to measure PFAS in products and the environment, and the human health and ecological toxicity data to assess PFAS impacts. TSCA section 14(b) limits the extent to which health and safety studies can be withheld from the public as confidential business information, so these studies, including their raw data, should be made publicly available as soon as possible. EPN also recommends that EPA evaluate whether TSCA section 14(b) limits on classifying health and safety studies as CBI need to be expanded to cover other critical information currently withheld from the public.

In conclusion, EPN applauds EPA for proposing this rule so quickly in recognition of the urgent need to get industry to provide information critical for protecting public health and the environment. We urge the agency to use the full authority of TSCA section 8 to get comprehensive information from all PFAS manufacturers and processors in the U.S. and to make all non-CBI submissions publicly available as soon as possible.