

**EPN Comments on IRFA and Updated Economic Analysis
for TSCA Section 8(a)(7) Proposed Rule
on Reporting and Recordkeeping Requirements for PFAS**
Docket No. EPA-HQ-OPPT-2020-0549
December 21, 2022

The Environmental Protection Network (EPN) is composed 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 November 25, 2022, publication of EPA's Initial Regulatory Flexibility Analysis (IRFA) and Updated Economic Analysis following completion of a Small Business Advocacy Review (SBAR) Panel for the Toxic Substances Control Act (TSCA) section 8(a)(7) proposed rule on reporting and recordkeeping requirements for Perfluoroalkyl and Polyfluoroalkyl Substances. We focus our comments on the SBAR Panel's recommendations to: 1) exempt all small chemical manufacturers and small importers of articles; 2) require reporting for a finite list of PFAS; 3) provide a reporting threshold; and 4) exempt reporting for imported articles, research and development substances, byproducts, impurities, recyclers, and intermediates.

EPN believes that these exemptions will limit the effectiveness of reporting and are contrary to the comprehensive scope of section 8(a)(7). The 2020 National Defense Authorization Act (NDAA) instructed EPA to require reporting of **all** the information categories listed in section 8(a)(2). We do not believe that EPA has discretion to select some of these categories for reporting and exempt others. Nor do we think Congress gave EPA any latitude to select which entities would be required to report. The NDAA specifically directed EPA to promulgate a rule "requiring *each person* who has manufactured a [PFAS] in any year since January 1, 2011," to file reports (emphasis added). The absolute nature of this requirement is clear. Thus, the specific PFAS produced or imported, the type of manufacturing or import activity, the manufacturing or import volumes involved, and other factors are all presumably immaterial to the scope of reporting.

The SBAR Panel has advocated for exemptions from the proposed rule similar to those included in section 8(a)(1) (the Chemical Data Reporting (CDR) rule). However, EPA has discretion in framing reporting requirements under section 8(a)(1) that is lacking in section 8(a)(7). For example, section 8(a)(7) contains no exemption for small business, articles, or small quantities of PFAS. Moreover, unlike the CDR rule, the goal of the PFAS reporting rule is to inform the in-depth cross-media risk evaluations and regulatory initiatives required to address a discrete chemical class of high concern to the public, Congress, and state and federal agencies. The proposed SBAR exemptions are not only barred by the plain language of section 8(a)(7) but would also undermine EPA's ability to use its authorities effectively to address these high-concern chemicals.

Exempt All Small Businesses

In the NDAA of 2020, Congress directed EPA to promulgate this TSCA section 8(a)(7) reporting rule because both the CDR and the Toxic Release Inventory (TRI) require so few entities to report on their production or importation of PFAS. As a result, EPA and the states are unaware of the sources and uses of

most of the PFAS in the U.S. and are unable to protect the public and the environment from the risks posed by those PFAS.

EPN opposes the SBAR Panel's recommendation to exempt all small businesses from this rule because this would likely result in very little of the critically needed data being reported to EPA. If all small businesses are exempt from reporting, EPA estimates 218 of the total 234 manufacturing firms (93%) would not report, and 127,576 of the total 131,157 article importers (97%) would not report. EPA has analyzed more reasonable regulatory alternatives in the IRFA, for example, exempting only businesses with total sales less than \$12M or less than \$6M. However, these more modest exemptions are not authorized under section 8(a)(7) and would result in a significant decrease in PFAS reports, ranging from 22% to 25%. EPA and the states cannot afford to lose this valuable information when the risks to public health and the environment are so great.

EPA should not agree to exempt small businesses from this new reporting rule, no matter how small business is defined, because the loss of critical data will likely be too great. The information generated by this rule is needed to understand the full lifecycle of PFAS. All manufacturers should be required to report because all of them release PFAS 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. All of the article importers should also be required to report because of environmental releases during use and disposal of these PFAS-containing articles.

Report on Finite List of PFAS

The SBAR Panel recommended that EPA replace the proposed rule's structural definition of reportable PFAS with a finite list of PFAS. EPN opposes this recommendation for two reasons. First, this recommendation conflicts with congressional intent that the new rule generate data beyond that already provided in CDR and TRI. CDR requires reporting only for those PFAS on the TRI and excludes polymers, while the proposed section 8(a)(7) rule requires reporting for all PFAS meeting the structural definition, including fluoropolymers. Second, this recommendation would result in a catastrophic decrease in PFAS reports because no PFAS with a Confidential Business Information (CBI) claim on chemical identity reported to EPA could be included in the list. In the proposed rule, EPA identified 1,364 PFAS that would fall under the structural definition. CBI claims would prevent about half of these chemicals from being listed, reducing the total to 578 PFAS. If anything, we recommend that EPA broaden its structural definition of PFAS. EPA's proposed definition excludes many high production-volume PFAS due to its unduly narrow requirement for the presence of at least two adjacent fully fluorinated carbons. Since EPA released its TSCA reporting proposal, the Organization for Economic Co-operation and Development (OECD) published a PFAS definition which applies to "fluorinated substances that contain at least one fully fluorinated methyl or methylene carbon atom (without any H/Cl/Br/I atom attached to it)." We believe that EPA's final rule should include the OECD definition.

Provide a Reporting Threshold

The SBAR Panel recommended that EPA implement a reporting threshold for this new rule, and EPA analyzed a regulatory alternative of using the CDR thresholds of a single site annual production volume of 25,000 pounds or 2,500 pounds for certain chemical substances. We see no basis in section 8(a)(7) for a volume-based exemption, and a reporting threshold would conflict with congressional intent that the new rule generate comprehensive information about PFAS use and exposure beyond that already provided in CDR and TRI. Second, providing any reporting threshold, whether or not it differs from the CDR

threshold, will have little effect on per-firm costs because the majority of costs stem from rule familiarization and article compliance determinations. Firms will still have to perform these tasks to determine if they meet the reporting threshold.

Exempt Imported Articles, Byproducts, Etc.

The SBAR Panel recommended that this rule provide the same reporting exemptions as the CDR rule for imported articles, research and development substances, byproducts, impurities, recyclers, and intermediates. EPN opposes this recommendation for two reasons. First, these exemptions conflict with the broad scope of reporting under section 8(a)(7). Second, they would eliminate EPA's only mechanism to get information on these types of PFAS. It is critical that EPA understand the types of manufacturing processes and reactions that can form PFAS or transform certain PFAS into different chemicals in order to characterize exposures and risks for PFAS. Byproducts are not well understood but are expected to occur during manufacturing, even when the manufacturing process does not directly use PFAS. Certain waste management activities such as incineration may manufacture PFAS as a coincidental byproduct, and EPA needs the reports required by this rule to document that formation. In addition, byproducts may be of great concern for environmental and public health. For example, some long-chain PFAS are byproducts of the manufacturing process for fluorinated polyolefins, and GenX chemicals can be produced as a byproduct of certain manufacturing processes. Historical PFAS information, even below *de minimis* levels, is important since PFAS are resistant to environmental and metabolic degradation, and continual releases will result in accumulating concentrations in the environment, humans, and wildlife.

Conclusion

EPN commends EPA for an excellent description of the benefits of this proposed section 8(a)(7) reporting rule. We believe these benefits would be reduced if EPA adopts the SBAR Panel recommendations regarding exemptions and a finite list of PFAS. The rule should remain comprehensive in scope to assure that it fills important information gaps on PFAS under TSCA and other EPA authorities. With the new information generated by this rule, EPA can better direct its limited resources toward high-priority risks.

EPN agrees with EPA's description of how this rule's reports will improve TSCA's new and existing chemical programs; the Safe Drinking Water Act's drinking water advisories and standards; the Clean Water Act's source water protection; the Clean Air Act's hazardous air pollutant controls; the Resource Conservation and Recovery Act's waste disposal; and the Comprehensive Environmental Response, Compensation, and Liability Act's cleanup programs. We also agree with EPA's description of this rule's benefits for state actions, environmental justice community risk assessments, and industry and NGO initiatives.