



September 27, 2021

Comment Clerk

ID: [EPA-HQ-OPPT-2020-0549-0001](#)

Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460

RE: Toxic Substances Control Act Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances Docket #EPA-HQ-OPPT-2020-0549-0001

The Association of Clean Water Administrators (ACWA), the Association of State Drinking Water Administrators (ASDWA), and the Environmental Council of the States (ECOS) appreciate the opportunity to comment on the “Toxic Substances Control Act Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances” proposed rule. ACWA, ASDWA, and ECOS are nonpartisan organizations representing the voices of state and territorial clean water, drinking water, and environmental agencies and leaders. The following comments are intended to address this proposed rule, but do not necessarily reflect the concerns of individual states.

Our collective state, tribe, interstate, and territorial (“states”) members face many challenges in addressing PFAS through state programs and legal authorities, PFAS data gaps chief among them. As we have written before, states value federal leadership on PFAS and as such, we applaud the increasingly holistic, whole-of-government approach to understand, assess, address, and remove PFAS from the environment and prevent PFAS from entering the environment from all contributing media. This includes requiring reporting and record keeping under the Toxic Substances Control Act (TSCA), which represents one of the strongest tools the federal government can deploy to understand PFAS occurrence and prevent PFAS’ introduction into the environment. Given our level of understanding of PFAS’ prevalence across manufacturing sites, products, and the environment relative to its persistence and prevalence in the United States, we fully support EPA promulgating a robust, comprehensive and transparent reporting and recordkeeping rule to help advance the federal and state governments’ understanding of, and ability to act on, PFAS.

Establish Consistent Annual PFAS Reporting Requirements

We support the intent and general approach of this proposed rule and appreciate its concise design and language. However, we urge the Agency to not use this rulemaking opportunity as a one-time data call for the rule’s reporting period, but instead enact a regular and consistent ongoing reporting requirement that applies annually. In this way, the Agency can both help shorten the time lag between a PFAS’ use or manufacture and the

collection of subsequent data, as well as support regulatory certainty by indicating to manufacturers and users of existing or new PFAS analytes that federal TSCA reporting and recordkeeping requirements must be met in the future.

Provide Easy Access to Reporting Data

Of paramount importance will be data sharing with states, their environmental media programs (surface water, drinking water, air, etc.), and the public. Given TSCA Section 8(a)(7)'s silence on how information collected under the rule can be shared and used, EPA should clarify in this rulemaking opportunity that it intends to share such information with its state co-regulators, who conduct many of the same activities noted in the proposed rule's Supplementary Information Section II (E). We understand that certain data sharing constraints may be unavoidable but believe the collected data should be shared transparently and openly to enhance approaches and actions on PFAS across jurisdictions. While the proposed rule notes the EPA Administrator's authority to share collected data among relevant federal agencies, we request greater clarity and certainty that states will be able to access collected data in a simple and efficient manner, as well as whether EPA intends to deviate from existing processes to share data collected under federal authorization with its state coregulators. This will be especially important in the Confidential Business Information (CBI) context – simplifying and minimizing states' effort to obtain such data from EPA will expedite states' next steps on PFAS. Please also work with states directly to address data management logistics and challenges related to accessing and protecting CBI.

Require Reporting of PFAS in Articles

States strongly support requiring reporting for PFAS in articles, which constitutes a new but important reporting requirement under TSCA. Determining where PFAS is used in articles and products has been a major preoccupation of researchers to better understand the sources and possibilities for exposure to these chemicals. Despite the need for this information, it is understandable that manufacturers and businesses facing these new requirements may be resistant, given that the use of PFAS in product components is often not disclosed by suppliers and often even suppliers are unaware of the use of PFAS in the products they sell. For this reason, we would support phasing in the reporting requirements for PFAS in articles, to provide more time for those reporting to gain understanding and knowledge regarding this potential requirement.

Amend the PFAS Structural Definition and Applicability to Include Entire Class of PFAS

Specific to a PFAS definition in § 705.3, we support a scope that is both all-encompassing of PFAS activities to date but can also account for evolving PFAS chemistry into the future. State experts have expressed concerns that the structural PFAS definition in this rule, as proposed, may exclude certain PFAS that do not contain a two-carbon chain with one fully fluorinated carbon. Such PFAS already exist and can be detected, such as perfluoro-2-methoxyacetic acid (PFMOAA). Per the proposed rule's purpose, we are confident that this was not the Agency's intent and recommend amending the rule's PFAS definition and applicability approach (i.e., TSCA PFAS inventory of PFAS + a substance or mixture's chemical structure) of PFAS to include any analytes within the entire class of compounds.

We encourage EPA to consult with states in addressing this. Relatedly, we note our appreciation of EPA's effort to use fewer, more-cohesive PFAS definitions across programs and statutes. In that effort, the potential exclusion of PFAS with unique chemical structures should remain a priority consideration for the future.

Limit CBI PFAS Data Reporting Exemptions

States support thorough and well-enforced reporting requirements. We firmly believe that any reporting exemptions due to CBI need to be valid and well-explained. § 705.30 as proposed includes important and relevant questions to this effect, but EPA should clarify as high a reporting burden as possible for obtaining a CBI exemption. In general, we support limiting any PFAS data reporting exemptions on the basis of CBI. EPA efforts to reduce this burden and/or expansively grant CBI exemptions will only perpetuate gaps of PFAS data that jurisdictions and the public need. Furthermore, states concur with many of the proposed reporting requirements, which would aid targeted state actions on PFAS.

Require Analytical Methods Reporting

We recommend that EPA require analytical methods and testing standards to be included in the information and data elements reported in this rule. Analytical methods from PFAS manufacturers would provide EPA and states with the spectral chemical signature of a compound, helping fill current gaps in the development of EPA methods to identify PFAS, track their sources, and evaluate exposure routes for human health and environmental impacts. Manufacturer analytical methods for chemicals with similar structures could also potentially be used as surrogates to help identify larger subgroups or classes of PFAS. The total number of PFAS compounds that current EPA analytical methods can test for is very small compared to the universe of thousands of PFAS. Use of Total Organic Fluorine (TOF) and Total Oxidizable Precursor (TOP) methods are promising for conducting screening and non-targeted analyses of fluorinated compounds, but also pose technical challenges and are not able to identify individual compounds at the parts per trillion levels needed for analyses by states and utilities.

Clarify and Require Reporting when the Specific PFAS is Not Known or Reasonably Ascertainable

In response to the Agency's request for comments, we support including a data field that would allow reporting for generic names or descriptions of PFAS in the event the reporting entity is aware they have produced or imported PFAS but cannot reasonably ascertain the specific PFAS identity. While imprecise, these data would support some jurisdictions in the course of various PFAS actions. However, the use of this data field should be viewed by reporting entities as a "last resort". We urge EPA to clarify this in the rule and to strongly enforce reporters' use of this data field to prevent its misuse and, by extension, maintain the fidelity and value of the collected information. Further, we support maintaining Section 705.30(a)(2)(iii) as written, which bars reporters using this generic data field (on the basis of an analyte being "not known or reasonably ascertainable") from also asserting a confidentiality claim.

Work with States to Ensure PFAS Reporting Addresses Needs Across Programs

Lastly, we urge EPA to work with its state partners – across administrative levels and environmental media offices – to better understand how state actions can be supported by this rulemaking opportunity. While states and EPA share many activities that can be supported by data collected under this proposed rule, states also maintain unique programs and authorities, and EPA should strive to understand how this rule could be tailored to meet the needs of states across programs. We are confident that information gathered by this rule, as informed by states’ needs, will not only help states assess and address impacts to water resources and the environment from PFAS, but also better inform policy and regulatory decision-making across environmental media within each program that serves to protect human health at the national, state, and local levels.

Thank you for your considering the comments provided in this letter that are needed to ensure effective public health and environmental protection. Please contact Julia Anastasio, ACWA’s Executive Director at 202-756-0600 or janastasio@acwa-us.org; Alan Roberson, ASDWA’s Executive Director at 730-812-9507 or aroberson@asdwa.org; or Don Welsh, ECOS’ Executive Director at 202-266-4929 or dwelsh@ecos.org to provide more information or to ask questions.

Sincerely,



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