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Ms. Nancy Beck
Principal Deputy Assistant Administrator
Office of Chemical Safety and Pollution Prevention
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington D.C. 20460

Re: Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) Data Reporting and Recordkeeping Under the Toxic Substances Control Act (TSCA); Revision to Regulation, Docket No. EPA-HQ-OPPT-2020-0549.

Dear Ms. Beck,

Thank you for the opportunity to submit comments in response to the U.S. Environmental Protection Agency's (EPA) Notice of Proposed Rulemaking (NPRM) concerning Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) Data Reporting and Recordkeeping Under the Toxic Substances Control Act (TSCA); Revision to Regulation. In these comments, we, the Associated General Contractors of America (AGC), will support the proposed rule's reading of the National Defense Authorization Act for Fiscal Year 2020 (NDAA) and help EPA refine the scope of the proposed exemptions.

AGC is the nation's leading construction trade association. It dates to 1918 and today represents more than 28,000 member firms including construction contractor firms both union and open-shop, suppliers, and service providers. Through a nationwide network of 87 chapters in all 50 states, D.C., and Puerto Rico, AGC contractors are engaged in the construction of the nation's highways, bridges, utilities, airports, transit systems, public and private buildings, water works facilities and multi-family housing units, among other projects critical to the economy.

As a representative for contractors who do not manufacture PFAS but may have imported PFAS incidentally over the years in articles, we at AGC are strongly in favor of the proposed rule.¹ In the proposal, EPA smartly recognizes that it would be impossible for importers of articles that may have been made with PFAS to verify the goods contain PFAS and comply by reporting their presence. We're grateful for that common sense. TSCA, as amended by the NDAA, is best read to allow EPA to require only that information that will be relevant to EPA in its efforts to regulate PFAS. We hope our comment is relevant to any reviewing party.

¹ PFAS are widely used across the economy and can be present in articles and materials relevant to construction (e.g., carpeting, coatings, sealants, and waterproofing membranes), meaning contractors may encounter PFAS through routine project activities and materials handling. AGC, General Contractors: Questions and Considerations Related to PFAS (Oct. 2025), <https://news.agc.org/wp-content/uploads/2025/10/PFAS-Questions-and-Considerations-Final.pdf>.

I. The NDAA is Best Read to Exclude Importers of Articles

Executive Order 14219 directed agencies to initiate a process for reviewing regulations for consistency with the best reading of the statute. In this proposed rule, EPA “proposes to conclude that the NDAA is best read as excluding articles and targeting the reporting requirement to manufacturers of the PFAS themselves.” We agree with EPA for the following reasons:

A. The plain text of the NDAA is targeted towards chemical substances, not articles.

The authority for PFAS reporting requirements under TSCA is Pub. L. [116-92](#), the 2020 NDAA. Section 7351 of that law is titled “PFAS DATA CALL” and reads as follows:

“Section 8(a) of the Toxic Substances Control Act (15 U.S.C. 2607(a)) is amended by adding at the end the following: “(7) PFAS DATA.—Not later than January 1, 2023, the Administrator shall promulgate a rule in accordance with this subsection requiring **each person who has manufactured a chemical substance** that is a perfluoroalkyl or polyfluoroalkyl substance in any year since January 1, 2011, to submit to the Administrator a report that includes, for each year since January 1, 2011, the information described in subparagraphs (A) through (G) of paragraph (2).”

The plain text of the amendment clearly identifies the manufacture of chemical substances as the trigger for compliance, not the manufacture of articles containing PFAS.

B. The policy goals of TSCA are targeted towards chemical substances and mixtures, not articles.

Congress often uses a statement of policy or goals to help guide the meaning of a statute. In [Pub. L. 94-469](#), the 94th Congress did exactly that for the Toxic Substances Control Act.² 15 U.S.C. 2601(b)(1) says that “[i]t is the policy of the United States that ... adequate information should be developed with respect to the effect of **chemical substances and mixtures** on health and the environment and **that the development of such information should be the responsibility of those who manufacture and those who process such chemical substances and mixtures.**”

Again, Congress specifically identifies chemical substances and mixtures as the target of regulation – not articles that might contain trace amounts of PFAS.

C. TSCA should be read only to impose reasonable and prudent requirements.

Section 2(c) of TSCA says that “it is the intent of Congress that the Administrator shall carry out this chapter in a **reasonable and prudent manner.**”³ In the proposed rule, EPA rightly recognizes that a *de minimis* exemption is reasonable and prudent because reporting on such trace amounts

² 15 U.S.C. 2601(b).

³ 15 U.S.C. 2601(c).

would be a pointless expenditure of effort.⁴ Reporting on trace amounts of PFAS inherent in imported articles would be equally so.

The requirement would be pointless because, as the proposed rule acknowledges, EPA will still receive information on the incorporation of PFAS in articles.⁵ And duplication is not only pointless, but *ultra vires* as well. “TSCA section 8(a)(5)(A) directs the Agency, to the extent feasible, to not require unnecessary or duplicative reporting.”⁶

It is also pointless because of its futility. Importing businesses weren’t required to test or identify PFAS during the reporting period. It’s unreasonable to expect that they would have obtained that information in the first place, much less retain it for more than a decade. And it’s prudent to consider the futility of the efforts required by the original rule.

D. Requiring reporting from importers of articles exceeds EPA’s authority.

We agree with the proposed rule that the reporting requirements on imported articles exceeds EPA’s authority under TSCA. The Harmonious-Reading Canon says that the provisions of a text should be interpreted in a way that renders them compatible, not contradictory⁷. As explained above, requiring importers of articles to conduct retroactive trace chemical analysis tests on articles imported during the lookback period is fundamentally incompatible with TSCA’s “reasonable and prudent” limitations.

TSCA, both in its statement of policy and statement of intent, as well as in the plain text of its NDAA amendment, is clearly designed to regulate chemical substances and mixtures. Imported articles, however, are not chemical substances or mixtures. Reading it to include articles contradicts the statute and provides no value to EPA.

II. The Imported Articles Exemption Should Include Packaging Materials

There is confusion among our members regarding packaging materials. If the import of articles is exempted from reporting, are the packaging materials an article came with exempt as well? Many packaging materials, like tape and styrofoam, contained PFAS until recently. Requiring reporting on packaging materials would render the imported articles exemption completely useless. After all, every article is imported with packaging materials.

Reporting requirements on packaging materials would be just as futile as imported articles. Our members do not collect that information. EPA should make clear in the final rule that packaging

⁴ “Congress is always presumed to intend that pointless expenditures of effort be avoided, such authority is inherent in most statutory schemes, by implication.” (internal quotation marks omitted); *Ober v. Whitman*, 243 F.3d 1190, 1194 (9th Cir. 2001); *EDF, Inc. v. EPA*, 82 F.3d 451, 466-467 (D.C. Cir. 1996).

⁵ “The rule requires manufacturers to report on processing and use (both industrial and consumer/commercial) for their manufactured PFAS, such as any incorporation in articles ([40 CFR 705.15\(c\)](#)).” 90 FR 50923.

⁶ *Id.* TSCA § 8(a)(5)(A) (15 U.S.C. § 2607(a)(5)(A)).

⁷ A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts*, p.180 (2012).

materials are exempt from reporting for all the same reasons as imported articles and *de minimis* levels: futility and lack of value.

III. The Proposed Rule Reduces Costs for Contractors

The original rule imposed costs related to rule familiarization, staff time for record review and retrieval, recordkeeping, due diligence, and opportunity costs. Small business contractors, subcontractors, and specialty trade firms are disproportionately burdened by these requirements. Without the proposed exemptions, our small business members would have been required to undertake costly and time-consuming efforts to identify imported articles and determine their chemical composition. Lacking the technical resources and expertise to accurately identify these chemicals, such efforts would have been impractical and unlikely to yield meaningful results. Moreover, any information obtained would have had little or no value to EPA. We appreciate EPA's recognition of these challenges and certify that the proposed exemptions will result in cost reductions for contractors.

IV. EPA Should Explore Pre-emption of State PFAS Reporting Requirements

To streamline compliance and reduce duplicative efforts, we encourage the Agency to assess whether preemption of state reporting requirements is permissible under TSCA. Many states, such as Minnesota, are enacting laws requiring reporting on PFAS. The establishment of a consistent national framework for PFAS reporting would allow contractors certainty regarding the applicability of exemptions and their obligations under TSCA.

V. Conclusion

Thank you for your work refining EPA's PFAS reporting requirements. Provided packaging materials are exempt; we strongly support the proposed rule. Please feel free to reach out with any clarifying questions or requests for additional information.

Very Respectfully,



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