



RETAIL INDUSTRY LEADERS ASSOCIATION

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April 17, 2020

Via regulations.gov (EPA-HQ-OPPT-2013-0225)

ATTN: Tyler Lloyd, Chemical Control Division
Office of Pollution Prevention and Toxics
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW, Room 7405M
Washington, D.C. 20460-0001

***Re: Long-Chain Perfluoroalkyl Carboxylate and Perfluoroalkyl Sulfonate Chemical Substances;
Significant New Use Rule; Supplemental Notice of Proposed Rulemaking (EPA-HQ-OPPT-2013-0225-
0112; 85 Fed. Reg. 12479 (March 3, 2020))***

Dear Mr. Lloyd:

The Retail Industry Leaders Association (RILA) appreciates the opportunity to submit comments on the U.S. Environmental Protection Agency's (EPA) supplement to its proposed Significant New Use Rule (SNUR) for Long-Chain Perfluoroalkyl Carboxylate (LCPFAC) chemical substances.

By way of background, RILA's members include the largest and most innovative retailers. The retail industry employs over 42 million Americans and accounts for \$1.5 trillion in annual sales. RILA and its member companies strongly support the mission and goals of the EPA to protect human health and the environment, including preventing exposure risk from chemical substances that may be present in consumer goods and products. RILA members have robust compliance programs in place and work closely with trusted suppliers to ensure that all products that they sell meet or exceed all applicable U.S. safety standards and legal requirements.

Before turning to the substance of our comments, we wish to express our disappointment and surprise that EPA declined to grant the 15-day comment period extension requests submitted to the docket on March 25

and April 3.¹ It is not unusual for EPA and other federal agencies to grant brief comment period extensions, and there is perhaps no greater time when some flexibility has been warranted. In light of the unprecedented and ongoing COVID-19 crisis facing all Americans and industries, including retailers and other potential stakeholders, the 45-day comment period did not provide sufficient time for meaningful review and consensus building around retailer input on the proposed supplement to the LCPFAC SNUR. A brief extension would have provided stakeholders additional time to develop thoughtful and comprehensive comments while still providing adequate time for the EPA to meet its June 22, 2020 deadline under the National Defense Authorization Act (NDAA) of Fiscal Year 2020 to issue a final action on the LCPFAC SNUR.

The lack of time to develop meaningful industry comments is especially concerning because the supplement to the LCPFAC SNUR represents the first time that EPA will exercise its new authority under the 2016 Lautenberg Chemical Safety Act to address chemical substances in imported articles, including consumer products. We note that some retailers have phased out some or all products manufactured using LCPFACs. However, some LCPFAC substances are ubiquitous in the environment, and may also be present in coatings in treated textiles, outerwear, cookware, and other articles sourced from certain areas outside the U.S. where these substances may still be used for their stain repellent, weather resistant, and other high-performance characteristics. Additionally, imported consumer goods may contain *de minimis* amounts of LCPFACs left over from manufacturing processes and legacy use of these substances.

Retailers typically do not manufacture the finished consumer products they sell and have limited visibility into the manufacturing process and sourcing of raw materials and components. Instead, retailers have global supply chains and depend on a vast number of suppliers to provide the range and volume of products that U.S. consumers need and rely on for modern life. For a variety of reasons, including streamlining and enhancing efficiency of global supply chains, retailers often will import these products directly from overseas suppliers. As purchasers and importers of finished consumer products, retailers frequently are not supplied with information on product composition to the level of detail that would allow them to readily discern which imported products may contain LCPFACs (especially when only present in trace amounts) in order to verify compliance with the LCPFAC SNUR as proposed.

Additionally, retailers may not be able to obtain the required information on LCPFACs through independent finished product testing because current readily available testing methods (e.g., total fluorine) do not provide the precision necessary to differentiate LCPFACs from shorter-chain substances and other PFACs not covered under the SNUR. When one RILA member recently sought information from a testing lab on available test methods for LCPFACs, the lab informed the retailer that it has not yet developed testing methods for all the LCPFACs captured under the proposed SNUR.

Even if test methods are developed ahead of implementation of a final SNUR, the minimum cost to test a product for the presence of LCPFAC is estimated to be approximately \$150.00 per product tested. This

¹ See Chemical Users Coalition, [Notice of Intent to Comment on LCPFAC SNUR- Supplemental Notice of Proposed Rulemaking](#) (March 25, 2020); and Plastics Industry Association, [Request for Extension of Comment Period for LCPFAC; SNUR; Supplemental Proposal](#) (April 3, 2020); Docket ID EPA-HQ-OPPT-2013-0225.



may seem like a nominal cost to a large retailer. However, in this situation, a retailer may not have sufficient information to adequately narrow the scope of imported articles that potentially could contain an LCPFAC coating or trace amounts of LCPFAC, and as a result, would have to make broad assumptions and potentially test tens of thousands of products across several product categories in order to verify and comply with the proposed supplement to the LCPFAC SNUR. It also deserves mentioning that smaller and medium-sized retailers would have even less capacity to readily absorb these added costs and would not likely have sufficient volume leverage to pass costs down through their supply chains. In sum, from large national retail chains on down to small independent retailers, the overall administrative burden and costs of testing large numbers of products to find potential trace amounts of LCPFAC are significant.

Recommendations

Given the practical realities for a retailer importer to verify whether a product does or does not comply with the proposed LCPFAC SNUR, RILA makes three recommendations for the EPA to incorporate in its final supplement to the LCPFAC SNUR. First, RILA requests that EPA adopt a *de minimis* exemption for this SNUR and encourages the Agency to work with impacted stakeholders to refine the language for this exemption so that it adequately exempts trace LCPFACs amounts that may be present as impurities or manufacturing byproducts in imported articles. Second, RILA strongly urges that EPA allow importers to rely on supplier/manufacturer certifications for purposes of compliance. Manufacturers are in the best position to provide accurate information about the chemical composition of individual finished consumer products and any chemicals used during the manufacturing process. Lastly, RILA strongly recommends that EPA delay implementation to allow time for adequate supply chain verification and establishment of testing methods that will adequately capture and differentiate between all LCPFAC substances regulated under the SNUR.

We appreciate the opportunity to provide these brief comments on the proposed supplement to the LCPFAC SNUR. We wish to reiterate RILA's and its member companies' commitment to providing safe and compliant products to U.S. consumers, and we welcome further opportunities to engage with the Agency on this and other efforts that serve to protect consumers from exposure to toxic and unsafe products.

If you have any questions or need any additional information, please contact me at susan.kirsch@rila.org or (202) 866-7477.

Sincerely,

Susan Kirsch
Director, Regulatory Affairs and Compliance

