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Via https://www.regulations.gov

Mr. David Turk
Data Gathering, Management, and Policy Division (7406M)
Office of Pollution Prevention and Toxics
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460-0001

**RE: Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) Data Reporting and Recordkeeping Under the Toxic Substances Control Act (TSCA); Change to Submission Period [EPA-HQ-OPPT-2020-0549]**

Dear Mr. Turk:

The Independent Lubricant Manufacturers Association (ILMA or Association) commends the Environmental Protection Agency (EPA or Agency) for extending the reporting deadlines under the Toxic Substances Control Act (TSCA) rule for perfluoroalkyl and polyfluoroalkyl substances (PFAS). ILMA also appreciates the opportunity to comment on the rule and urges EPA to incorporate longstanding burden reduction mechanisms that provide meaningful relief to small businesses.

ILMA represents over 300 lubricant manufacturers, suppliers, and distributors—many of which are small businesses. The Association's members produce more than 25% of the automotive lubricants, 40% of industrial lubricants, and 70% of the metalworking fluids sold in North America. The lubricants industry supports the nation's critical infrastructure by ensuring the functionality and longevity of machinery, engines, and equipment across key economic sectors, including energy, transportation, agriculture, and manufacturing. This includes the essential role of metalworking fluids, which enable precision and durability in metal operations like automotive metal forming and aerospace component fabrication. From power generation and food production to air travel and rail operations, the reliability and availability of lubricant products are essential to keeping vital services running smoothly—with minimal friction.

The current approach to PFAS reporting under TSCA is unlawful because it deviates from the statute's protections to small businesses and EPA's longstanding practice of incorporating burden-reduction mechanisms in its Section 8(a) reporting regulations. Nothing in the National Defense Authorization Act for Fiscal Year 2020 (2020 NDAA) or in the regulatory structure of Section 8(a) justifies treating PFAS differently from other chemical substances listed on the TSCA Inventory. Absent clear legislative authority for such deviation, EPA must implement the safeguards afforded to small entities, adhere to its established regulatory precedent, and ensure burden reduction remains a guiding principle of chemical reporting under TSCA. Accordingly, ILMA urges the Agency to adopt the customary exemptions that have historically applied to Section 8(a) reporting—specifically, exemptions for small businesses, imported articles, and byproducts.

Please find our detailed comments below.

## I. EPA's PFAS Reporting Rule Disregards TSCA's Statutory Protections for Small Businesses.

The PFAS reporting rule unlawfully bypasses the statutory exemption for small businesses clearly embedded in TSCA Section 8(a). The statute's plain language and overall structure demonstrate a strong congressional intent to protect small entities from the burdens of expansive reporting and recordkeeping obligations. Specifically, TSCA requires EPA to consider the unique circumstances of small entities and to tailor reporting requirements accordingly.[1] After all, Congress included "a number of provisions which provide assurance that small business will not be overburdened by its requirements."[2] Thus, EPA must give effect to the express statutory exemption in Section 8(a) which seeks to provide relief to small entities.

The Agency's reliance on the 2020 NDAA to justify departing from the small business exemption is misplaced. The 2020 NDAA's modest provision requires PFAS reporting, but it does not override TSCA's reporting framework or its protective provisions for small entities. There is no indication that Congress intended to create a separate, more onerous regulatory regime for PFAS—and certainly not one that overrides TSCA's express exemptions and policy safeguards. After all, Congress "does not alter the fundamental details of a regulatory scheme in vague or ancillary provisions—it does not, one might say, hide elephants in mouseholes."[3] If Congress had intended to create such a framework, it would have done so explicitly.

EPA's reading effectively amends TSCA by eliminating the small business exemption for an entire class of substances without statutory support. Thus, ILMA urges EPA not to obliterate the burden reduction mechanisms specifically tailored to provide relief to small businesses based on a novel interpretation that cannot be squared with the text, structure, or legislative history of TSCA Section 8(a).

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[1] 15 U.S.C. § 2607(a)(1), (3).
[2] House Committee on Interstate and Foreign Commerce, Legislative History of the Toxic Substances Control Act Together With A Section-By-Section Index (1976), available at https://fluoridealert.org/wp-content/uploads/tsca.legislative-history.pdf
[3] *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001).

## II. EPA Should Incorporate Burden Reduction Tools into the PFAS Reporting Scheme Based on Its Long-Standing Practice.

Section 8(a)(5) explicitly asks EPA to factor burden reduction in the implementation of TSCA's reporting regime. Under the statute, the Agency must (1) avoid unnecessary or duplicative reporting, (2) minimize compliance costs, and (3) focus obligations on entities likely to have valuable information for risk management. As a result, EPA erected a regulatory program with a low-volume threshold and specific exemptions to reduce unnecessary burdens without undermining public health or environmental objectives, striking a balance between health and environmental protection and economic efficiency.

As a threshold matter, EPA should establish the 25,000 pounds per year volume level historically used under Section 8(a) reporting. In line with the policy of the statute, in 1986, the Agency established a low-volume annual threshold at 10,000 pounds "to better focus its information collection effort on substances representing a greater potential exposure concern and to provide certain reporting relief for those who manufacture only a small amount of a reportable substance."[4] In 2003, EPA raised the reporting threshold to 25,000 pounds to create consistency among other chemical disclosure programs—such as TSCA premanufacture notification and the Toxics Release Inventory (TRI)—and "reduc[e] the overall industry burden associated with this regulation."[5] For over 20 years, EPA has been able "to more efficiently identify those chemical substances warranting further, more in-depth review," while industry has complied without being unduly burdened.[6]

Establishing the customary 25,000 pounds per year per site threshold is critical to ensure regulatory consistency and to focus EPA's data collection on PFAS and uses most likely to present meaningful exposure risks. This threshold has served as a practical screening tool in Section 8(a) reporting, allowing the Agency to prioritize higher-volume substances while relieving smaller entities of the disproportionate compliance burden that comes with reporting trace or incidental uses.

Beyond the general volume threshold, EPA developed exemptions for covered entities manufacturing or importing reportable substances in limited circumstances or incidentally. Similar to the low-level volume threshold, these exemptions aimed to provide regulatory relief to stakeholders without compromising the quality of data under the regime. Specifically, the articles and byproduct exemptions were incorporated to prevent companies from conducting costly and often impractical trace-level examinations which offer limited value for risk evaluation.[7] And when EPA has deemed the removal of exemptions necessary, it has followed the statutory process outlined in Section 8(a). Here, the Agency has disregarded the process based on a novel interpretation that ignores the statutory and regulatory structure of the reporting regime.

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[4] Partial Updating of TSCA Inventory Data Base; Production and Site Reports, 51 Fed. Reg. 21442 (1986).
[5] TSCA Inventory Update Rule Amendments, 68 Fed. Reg. 856 (2003).
[6] *Id.*
[7] Supplemental Notice to Proposed Inventory Reporting Requirements; Draft Reporting Forms, 42 Fed. Reg. 53,805 (1977).

ILMA urges EPA to correct its approach and re-institute long-standing burden reduction mechanisms to allow for efficient data collection without overwhelming industry.

## III. EPA Should Establish a *De Minimis* Exemption as Burden Reduction Policy in Section 8(a).

Beyond incorporating the traditional exemptions applicable to reporting under Section 8(a), EPA should institute a *de minimis* threshold for mixtures consistent with agency practice under other reporting regimes, such as the TRI.[8] EPA has previously revised TSCA reporting to align with other regulatory programs, and doing so here would meaningfully reduce stakeholder burdens and avoid duplicative compliance obligations.

Burden reduction has been a hallmark of the TRI program since its inception. As EPA has acknowledged, "[t]hroughout the history of the TRI program the Agency has implemented measures to improve reporting efficiency and effectiveness and reduce the TRI reporting burden on the regulated community."[9] The *de minimis* exemption for mixtures was introduced early in the TRI program to "reduce the information development burden."[10]

EPA should adopt a similar approach under Section 8(a) by implementing a *de minimis* threshold to appropriately narrow the scope of reporting obligations. There is ample statutory authority to support such a modification, and doing so would preserve TSCA's policy objectives while reinforcing a consistent, risk-based reporting structure. To be clear, this recommendation applies broadly to Section 8(a) and is not limited to PFAS reporting.

## IV. Conclusion

ILMA appreciates the opportunity to comment on this regulatory matter. If you have any questions regarding this letter, please contact me or the Association's Regulatory Counsel, Jorge Roman (jroman@bmalaw.net).

Sincerely,

Holly Alfano
CEO

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[8] This comment presupposes a correction to PFAS reporting under the TRI program—specifically, the removal of PFAS from the list of chemicals of special concern due to the lack of statutory authority supporting such classification. Accordingly, we urge EPA to adopt a de minimis threshold applicable to PFAS under both TSCA Section 8(a) reporting and the TRI program.

[9] Toxics Release Inventory Reporting Forms Modification Rule, 70 Fed. Reg. 39932 (2005).

[10] Toxic Chemical Release Reporting: Community Right-to-know, 53 Fed. Reg. 4509 (1988) (explaining the rationale of the *de minimis* concentration exemption for mixtures and trade name products).