

THE DISPERSER

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"Dispersing ideas among friends"

PROGRESS THROUGH COOPERATION

FPCA President Letter

Dear Current and Future FPCA Members,

Trusting this letter finds all of you and your families and business associates both safe and well. It seems that the last few letters have begun with Covid 19 updates and I guess this one is no different. The major difference is instead of good news, it seems we (FL) are now leading the nation in positive cases and hospitalizations.

Things were really looking positive a couple of months ago. What a change! This rapid increase is already causing several manufacturers to discontinue in-person visits again. We can only hope and pray that we can get this dreaded virus and it's variants under control soon and business returns to somewhat normal.

The business climate in FL is still very strong with housing and infrastructure construction at a hectic pace. Downside is a serious labor shortage in all markets including manufacturing. The raw material import situation has not improved at all. There are still container shortages, overcrowded docks, labor shortages and extended lead times for customs clearance and trucking, among other things. Best guestimate for any improvement is now early 2022 – but that is just a guess.

It certainly makes keeping customers happy a very difficult job. It really starts to get to you after a while.

As of this writing, the general meeting at Longboat Key Club on September 24-26 is still scheduled. You should have received the info for meeting/dinner/golf registration and also hotel reservations. If not please contact myself or Mary Bogan. We already have a good number of members signed up. Hope that includes you. It will be great to get together again for an enjoyable weekend. Looking forward to seeing all of you there.

As we continue to navigate these uncharted waters, I want to personally thank each of you for your support to the FPCA – Your Paint and Coatings Association.

Without you, we would not exist. Please promote FPCA to all suppliers and manufacturers who are not current members. We are only as strong as our numbers.

Again, please stay safe and well and we will see you in a few weeks at LBK.

Regards and
Have a Blessed Day
Eddie Saxon
FPCA President



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EPA Proposes Recordkeeping Requirements for PFAS, Seeks Comment

- July 12, 2021
- Government Affairs
- Contact: Riaz Zaman

EPA Proposes Recordkeeping Requirements for PFAS, Seeks Comment

On June 28, the U.S. Environmental Protection agency posted its [proposed Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances \(PFAS\)](#) under the Toxic Substances Control Act (TSCA). EPA will use submitted information to inform assessments of new and existing chemicals, drinking water restrictions and other regulatory initiatives related to PFAS.

EPA will accept comments through **Aug. 27, 2021**. EPA also recommends filing comments about data collection requirements by **July 28, 2021**, to assure consideration by the Office of Management and Budget. EPA is proposing to require persons that manufacture (including import) or have manufactured these chemical substances in any year since Jan. 1, 2011, to electronically report information regarding PFAS uses, production volumes, disposal, exposures, and hazards. Reportable information is any responsive information that is *known to or reasonably ascertainable by* the company. Companies would also be required to make reasonable estimates of measurements, monitoring or other data when not available.

Reportable PFAS Chemicals

In its proposed rule, EPA defines PFAS subject to reporting as:

Per- and polyfluoroalkyl substances or PFAS, for the purpose of this part, means any chemical substance or mixture that structurally contains the unit $R-(CF_2)_n-C(F)(R')R''$. Both the CF_2 and CF moieties are saturated carbons. None of the R groups (R , R' or R'') can be hydrogen.

The proposed rule also includes lists of PFAS substances as examples, although reporting is not limited to listed chemicals. Any chemical meeting the definition is subject to the reporting requirements. EPA includes lists identifying PFAS by:

- CAS registry number (Section 705.5(a))
- TSCA accession number (Section 705.5(b))
- LVE Case Number and CAS number (Section 705.5(c))
- LVE Case Number without CAS number (Section 705.5(d))
- Structural diagrams with CAS number (Section 705.5(e))

Reportable Information (Proposed Section 705.15)

EPA proposes requiring reporting information specified in proposed Section 705.15, often requiring companies to report using designated codes, including codes for industrial sector, use/function category and commercial product categories. The reporting period would begin six months after the effective date of the final rule and last for six months thereafter. Companies that have already reported covered information must inform EPA and are not required to resubmit.

At Section 705.15, EPA specifies details of reportable information, including:

- Company and plant site information
- Chemical identity by common or trade name, name as used on the TSCA Inventory, CAS Number, etc. Further, companies must specify type of chemical identity by listed code.



Cont. EPA Proposes Recordkeeping Requirements for PFAS, Seeks Comment

- Category of use, including category of processing, formulation, use in mixtures, etc., listed by each site downstream that receives the chemical, regardless of whether the site is controlled by the submitter.
- Consumer and commercial use information, by listing up to 10 categories of use, representing the majority of the submitter's downstream consumer and commercial uses of the PFAS chemical at issue. Submitter must estimate typical maximum concentration by weight for each product category identified. Submitters must also include amounts of PFAS chemical intended for use in consumer products intended for children of age 14 or younger.
- Annual manufacture and import volumes, designated by industry sector of use.
- Description of by-products resulting from manufacture, processing, use or disposal.
- All existing environmental and health effects information, including those published prior to 2011 (i.e. start date of reportable activities), informal unpublished information, and worker health monitoring data.
- Worker exposure data and/or reasonable estimates by listed code.
- Manner and method of disposal.

All reports must be accompanied by a certification statement from an authorized individual certifying that the company has submitted all information known to and reasonably ascertainable by the company and claims of confidentiality are true and accurate.

Record-keeping Requirements

Companies subject to reporting must maintain records documenting all information reported to EPA for a period of five years following the final date for submission.

Confidentiality

At proposed Sections 705.30 and 705.35, EPA references requirements for claims of confidentiality and substantiation from TSCA Section 14. Any claims of confidentiality and substantiating information must be filed at the time of submitting information. Companies can claim information as confidential except for chemical identities listed on the public TSCA Inventory, specified processing and use data elements and information that is not known to or reasonably ascertainable by the company.

Contact ACA's [Riaz Zaman](#) for more information.



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UPCOMING MEETINGS

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When: September 24 – 26, 2021

Where:

**Longboat Key Club
220 SANDS POINT ROAD,
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DISNEY

When: February 25 - 27, 2022

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FTC Issues Final Rule for “Made in USA” Label Statements

- July 26, 2021
- Government Affairs
- Contact: Riaz Zaman

On July 14, the U.S. Federal Trade Commission (FTC) published its [final rule regarding “Made in the USA” claims](#). The rule does not impose any new requirements on businesses. Instead, it codifies the FTC’s longstanding [enforcement policy statement regarding U.S.-origin claims](#). By codifying this guidance into a formal rule, FTC can impose penalties for non-compliance. The rule applies to product labels and promotional materials associated with direct sales of a product, including electronic and written promotional materials.

The rule prohibits marketers from including unqualified Made in USA claims on labels and promotional materials unless:

- Final assembly or processing of the product occurs in the United States;
- All significant processing that goes into the product occurs in the United States; and
- All or virtually all ingredients or components of the product are made and sourced in the United States.

The rule allows a marketer to seek an exemption, where evidence shows that an unqualified Made-in-USA claim is not deceptive and/or complies with alternative requirements designed to prevent fraud.

Background

In September 2020, ACA submitted comments to FTC on its then proposed rule for codifying requirements for “Made in the USA” (MUSA) label statements.

FTC considers products with more than a *de minimis* amount of components manufactured outside the United States as violating its MUSA requirements. In 1997, FTC formalized that policy in its [Enforcement Policy Statement on U.S. Origin Claims](#) (“Policy Statement”), elaborating that a marketer making an unqualified claim for its product should, at the time of the representation, have a reasonable basis for asserting that “all or virtually all” of the product is made in the United States.

In its comments, ACA noted that companies interpret the threshold of “all or virtually all ingredients” differently, using varying amounts of trace level components of foreign or unknown origin. As such, ACA sought additional FTC guidance for companies to assure labels meet FTC requirements, prior to modifying labels. ACA suggested that FTC provide additional guidance addressing percentage values and/or other guidance to assist manufacturers in determining the amount of trace components of foreign or unknown origin that can be included in a product, where the product is labeled with an unqualified “Made in USA” statement. Thresholds would promote consistent information to consumers.

ACA underscored further complication by changes in supply of raw materials: ACA member companies typically purchase raw materials from distributors; and these raw materials may be mixtures with some foreign produced components or raw materials in bulk form with a higher purity than mixtures. Due to these muddying factors, consumers may not receive consistent messaging with unqualified MUSA label statements. Thresholds and additional guidance from FTC would offer some clarification.

FTC issued the final rule with an effective date of Aug. 13, 2021, just 30 days after final publication. ACA had urged FTC to consider delaying the effective date by one to three years from publication, considering companies’ good faith efforts to comply and navigate changing consumer perception. This would allow time for sale of old products already in distribution, often placed in distribution several years prior, while companies replenish supply with products with updated labels. Delayed enforcement would be consistent with FTC’s statement that this rule would “strengthen its enforcement program and make it easier for businesses to understand and comply with the law.” FTC declined, explaining that its rule codified existing guidance. In FTC’s view the rule is clear as written. It therefore does not need to extend the effective date.



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DOT Publishes Spring 2021 Regulatory Agenda

- July 26, 2021 Government Affairs Contact: [Rhett Cash](#)

The U.S. Department of Transportation (DOT) recently released its [Spring 2021 Regulatory Agenda](#). Among the rulemakings and planned activities, DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA) will be working on proposed rules germane to regulatory reform and continued conversion of special permits.

ACA and its Transport Committee are closely following PHMSA developments of two agenda items: [Reducing Regulatory Burdens and Adoption of Petitions for Rulemaking](#) and [Harmonization with International Standards](#).

ACA is hopeful that as part of these regulatory initiatives, PHMSA will take up a rulemaking to harmonize the definition of 'aerosol' with international standards. This matter was the subject of a joint petition to PHMSA that ACA filed with the Household & Commercial Products Association (HCPA), Council on Safe Transportation of Hazardous Articles, Inc. (COSTHA), and National Aerosol Association (NAA). In that petition filed in 2017 and again in 2019, ACA and the allied organizations urged PHMSA to harmonize the U.S. Hazardous Materials Regulations (HMR) with applicable international regulations with regards to the classification, testing, and transport of aerosols. Specifically, HCPA, COSTHA, NAA and ACA asked PHMSA modify the definition of an aerosol to include certain non-refillable gas containers with or without a liquid, paste, or powder.

Petitions to PHMSA

The HMR provides a definition of an aerosol in §171.8:

Aerosol means any non-refillable receptacle containing a gas compressed, liquefied or dissolved under pressure, the sole purpose of which is to expel a nonpoisonous (other than a Division 6.1 Packing Group III material) liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.

ACA and the other groups underscored to PHMSA that this definition is inconsistent with the definition of an aerosol found in the UN Model Regulations (UNMR), the International Maritime Dangerous Goods (IMDG) Code, the International Civil Aviation Organization Technical Instructions on the Safe Transport of Dangerous Goods by Air (ICAO TI), and the Regulations governing European Road Transport (ADR). The UNMR and the European ADR have included the provision "with or without a liquid, paste or powder" in their definition of an aerosol since at least 1997. The petition also cited that there was (to date) no data on record of incidents as a result of this broader definition. Forty-nine countries are contracting parties to the ADR and dozens more use the international regulations in the ICAO TI and the IMDG Code which include the broader definition of an aerosol.

The UNMR provides the following definition of 'aerosol':

Aerosol or aerosol dispenser means a non-refillable receptacle meeting the requirements of 6.2.4 (embedded at end), made of metal, glass or plastics and containing a gas, compressed, liquefied or dissolved under pressure, with or without a liquid, paste or powder, and fitted with a release device allowing the contents to be ejected as solid or liquid particles in suspension in a gas, as a foam, paste or powder or in a liquid state or in a gaseous state.

The joint ACA petition notes that disharmony between these definitions leads to costly business operations based upon reclassification, marking and permit requirements. The definition used in the United States differs even from our largest export trading partners, Canada and Mexico. The ongoing additional expense to the U.S. economy is avoidable if the definition used in other international codes and regulations can be adopted by PHMSA. These commercial expenses include but are not limited to management efforts of Special Permits, container marking, special storage/distribution and tracking. The additional expenses are, of necessity, included in consumer pricing.

The petition notes that earlier discussions of this harmonization generated questions regarding safety of pure gas-containing systems. Safely containing pure propellant systems within specified aerosol containers (§178.33, §178.33a and §178.33b) is standard practice across the aerosol industry. Industry has set specifications with PHMSA to assure burst strength of containers utilized for all aerosol products, which the petition provides supporting documentation. Additionally, in the United States, PHMSA and the aerosol industry have a strong safety record for gas-only aerosols. For example, special permits (DOT-SP 10232, DOT-SP 14188, and DOT-SP 14286 to name a few) authorize small, pressurized containers of various gases, which meet the definition of a consumer commodity, to be reclassified as limited quantity or ORM-D and shipped with very broad exceptions. Shipment of products under these permits and classifications have shown excellent safety in distribution and market. The consensus position of HCPA, COSTHA, ACA and NAA is that there is no significant impact on safety concerning aerosol containers made of metal, plastic or glass containing a gas, compressed, liquefied or dissolved, with or without liquid, paste or powder.

ACA is optimistic that PHMSA will consider the advantages in harmonizing the aerosol definition in the HMR, and will initiate a rulemaking to effect such a change.



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EPA Announces Path Forward for TSCA Chemical Risk Evaluations

- July 12, 2021
- Government Affairs
- Contact: Riaz Zaman

On June 30, following an agency review of the prior administration's policies, the U.S. Environmental Protection Agency (EPA) announced several policy changes surrounding risk evaluations issued under the Toxic Substances Control Act (TSCA), including changes affecting the agency's first 10 chemical risk evaluations, completed in 2020. EPA states that these actions will ensure chemicals are used safely and all communities are protected.

The EPA review followed the Biden-Harris Administration's Executive Orders and other directives, including those on environmental justice, scientific integrity, and regulatory review, including President Biden's Executive Order: Protecting Public Health and Environment and Restoring Science to Tackle to Climate Crisis. That order directs federal agencies to review their actions to ensure that they meet statutory obligations, are guided by the best available science, ensure the integrity of federal decision-making, and protect human health and the environment.

TSCA requires EPA to review the risks associated with high-priority chemicals already on the market, then take action to manage any unreasonable risks found. The agency's June 30 announcement includes the following changes, as set forth below in an EPA press release.

Expanding Consideration of Exposure Pathways and Fenceline Community Exposure Using a Screening Level Approach

EPA stated in its announcement that, under the previous administration, the first 10 risk evaluations did not assess air, water, or disposal exposures to the general population because these exposure pathways were already regulated, or could be regulated, under other EPA-administered statutes such as the Clean Air Act, Safe Drinking Water Act, or Clean Water Act. The approach to exclude certain exposure pathways also resulted in a failure to address potential exposures consistently and comprehensively to potentially exposed or susceptible subpopulations, including fenceline communities (i.e., communities near industrial facilities), according to EPA.

EPA elaborated that in the original risk evaluation for 1,4-dioxane – and in a supplemental assessment – EPA did not evaluate certain exposure pathways or populations that could be considered potentially exposed or susceptible subpopulations. As such, EPA intends to re-open and update the 1,4-dioxane risk evaluation to consider whether to include additional exposure pathways, like drinking water and ambient air, and conditions of use where 1,4-dioxane is generated as a byproduct that were excluded from the supplemental and final risk evaluations. The agency plans to take public comment on any potential revisions to the 1,4-dioxane risk evaluation before finalizing them.

For six of the first 10 chemicals, EPA plans to further examine whether the policy decision to exclude certain exposure pathways from the risk evaluations will lead to a failure to identify and protect fenceline communities. These six chemicals are methylene chloride, trichloroethylene, carbon tetrachloride, perchloroethylene, NMP, and 1-bromopropane.

To determine if these six chemicals do present unreasonable risks to these communities, EPA says it is developing a screening-level approach to conduct ambient air and surface water fenceline assessments. This approach will use existing data and information to determine if there is the potential for unreasonable risk to fenceline communities associated with air and water exposures.



Cont. EPA Announces Path Forward for TSCA Chemical Risk Evaluations

If this approach yields information that there is no unreasonable risk to these communities, EPA intends to move forward to proposed risk management rulemakings. Alternatively, if the agency finds through the application of the screening-level approach that there may be unreasonable risk to these communities that cannot be addressed without supplementing the risk evaluation or through the risk management approaches the agency is already considering, EPA will conduct a more comprehensive exposure assessment of fence-line communities and supplement the risk evaluation for that chemical with the new information. EPA plans to make these screening approaches and methods, and their application to one or more chemicals, available for public comment and have them peer reviewed by the Scientific Advisory Committee on Chemicals later in 2021.

Use of Personal Protective Equipment

In its announcement, EPA states that in the final risk evaluations for the first 10 chemicals, the previous administration generally assumed that workers were always provided, and used, personal protective equipment (PPE) appropriately. However, data on violations of PPE use suggest that assumptions that PPE is always provided to workers, and worn properly, are not justified. As such, the agency believes that continued use of this assumption could result in risk evaluations that underestimate the risk, and in turn, risk management rules may not provide the needed protections.

EPA is therefore revisiting the assumption that PPE is always used in occupational settings when making risk determinations for a chemical. Instead, the agency plans to consider information on use of PPE, or other ways industry protects its workers, as a potential way to address unreasonable risk during the risk management process.

EPA notes that the first 10 risk evaluations already include exposure analysis with and without PPE. Therefore, removing this assumption does not create need for new analysis. However, this shift could change some of the conclusions about risk on some conditions of use for six of the first 10 chemicals for which “no unreasonable risk” findings were made based on the use of PPE. Specifically, this shift could impact conclusions about risk for some conditions of use for methylene chloride, 1-bromopropane, HBCD, NMP, perchloroethylene, and 1,4-dioxane.

Chemicals Moving to Risk Management

EPA stated that it has reviewed the risk evaluations issued for HBCD, PV29, and asbestos (part 1: chrysotile asbestos). EPA currently believes the risk evaluations are likely sufficient to inform the risk management approaches being considered and these approaches will be protective. Moving forward, EPA intends to reissue the risk determinations that amend the approach to PPE and include a whole chemical risk determination for these three chemicals. The agency is also working expeditiously on risk management, and believes the proposed rules for these three chemicals will likely be the first of the 10 to be ready for release.

Whole Chemical Approach

Under the previous administration, EPA made separate unreasonable risk determinations for every condition of use of a chemical. The current administration plans on making one determination of unreasonable risk for each chemical, when it is clear that a majority of conditions of use warrant that determination. EPA states that it will continue to evaluate each condition of use separately, but the final agency determination of “unreasonable risk” will be for the chemical in its entirety, rather than each use. For the first 10 chemicals, EPA will withdraw final determinations for conditions of use with findings of “no unreasonable risk” to issue findings of “unreasonable risk” for each chemical, where justified. EPA will seek comments on this approach. To date, EPA has not identified a comment period.



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