April 11, 2025

To: EPA Principal Deputy Assistant Administrator Nancy Beck
EPA Deputy Assistant Administrator Lynn Dekleva

From: American Coatings Association (ACA)
Heidi McAuliffe, ACA VP Government Affairs
Riaz Zaman, ACA Sr. Counsel Government Affairs
Suzanne Chang, Counsel, Government Affairs

Re: Chemical Regulatory Reform – potential TSCA and EPCRA rules to include in a list for rescission or modification, or enforcement discretion.

The American Coatings Association ("ACA")[1] appreciates the opportunity to provide suggestions related to TSCA regulations to advance the agency's regulatory reform efforts. The Association's membership represents 90% of the paint and coatings industry, including downstream users (or processors) of chemicals, as well as chemical manufacturers. Our membership includes companies that manufacture paint, coatings, sealants and adhesives and their raw materials whose operations, manufacturing processes and products are directly affected by EPA regulations implementing TSCA. ACA is eager to assist EPA in developing an effective system for chemical risk evaluations with successful implementation of the *Lautenberg Act's* mandates, while reducing unnecessary or redundant regulatory requirements. To that end, please consider the following issues and related suggestions:

Reporting Requirements

1) Revisions to the TSCA 8(c) Reporting requirements under 40 CFR 717.17(b)
   a) ACA's requests EPA to rescind 40 CFR 717.17(b) entirely.
   b) In the alternative, clarify specific instances in which EPA will require records to be submitted (e.g. in response to an inspection) and to specify that records submitted under this provision do not represent best available science and will not be used for purposes of Risk Evaluation (e.g. MBOCA FR Notice).

[1] ACA is a voluntary, non-profit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory and judicial issues, and provides forums for the advancement and promotion of the industry through educational and professional development services. ACA's membership represents over 90 percent of the total domestic production of paints and coatings in the country.

c) The purpose of the regulation is to maintain and submit records of *significant adverse reactions to health or the environment* alleged to have been caused by the substance or mixture. EPA is authorized to notify requirements by federal register notice or individual notification.

d) Justification: The regulation is redundant of existing authority under TSCA. The requirement is vague, overbroad and likely to result in collection of non-contextualized information that is not reflective of the *best available science* for Section 6 (risk evaluation) purposes. The regulation does not provide clear parameters regarding when EPA can request records and the purpose of the submission. Because of the potential for data that is not of sufficient quality, EPA should not use this rule for compliance and enforcement matters related to record-keeping requirements. EPA also should not use collected information for risk evaluations, PMN evaluations, etc.

2. Revision or rescission of listing of 16 high priority chemicals in 40 CFR 716.120, triggering reporting of "unpublished health and safety studies."

a) ACA seeks recission of this requirement for the 16 high priority substances as finalized in 90 FR 11899 (March 13, 2025), EPA Docket No. EPA-HQ-OPPT-2023-0360-0059.
As an alternative, ACA suggests the following amendments:
- establishing a *de minimis* level triggering the requirement, while
- establish an exemption from data submission for companies that manufacture or import only as an impurity or by-product.
- establish exemptions based on SDS listing thresholds or at a minimum specify that downstream importers can rely on information provided in an SDS.
- Modify the "known to" due diligence standard so companies are not responsible to list studies identified via a database search.
- extending the reporting period to 180 days after finalizing the rule.
- limit the use of unpublished data that does not meet TSCA's standards for scientific integrity and/or TSCA's requirement of being fit for purpose.

b) Justification: The requirement is vague and over-broad, potentially resulting in submission of non-contextualized information that is not reflective of the *best available science*. Failure to establish thresholds triggering reporting imposes an unnecessary burden on industry.
Requirement is not required by statute. The statute indicates at 15 USC 2607(d)(1) that:
> *"the Administrator may exclude certain types or categories of studies from the requirements of this subsection if the Administrator finds that submission of lists of such studies are unnecessary..."*

Export Notifications

3) ACA requests revisions to the TSCA 12(b) Annual notification requirements at 40 CFR 707.65(a)(1)(i) by changing reporting to one time reporting for all types of Export Notification instead of annual notification.

a) Justification: Annual reporting is unnecessary and burdensome on industry. Filing of the annual report does not provide EPA or the public with useful information.

4) Revisions to the TSCA 12(b) *intent to export* language at: 40 CFR 707.65(a)(2)

a) EPA should remove language in the cited regulation regarding notification of "intent to export." It remains unclear as to when this intent is formed, such that it triggers the requirement. Instead, EPA should require notification of actual export within a reasonable timeframe, extended from the current 7-day notification period. ACA suggests 30 to 90 days from the date of actual export.

b) Justification: The current requirement is vague, overly burdensome and the costs and burdens outweigh the speculative public benefits. Further the section is not required by statute and the statute doesn't specify timing.

PFAS Reporting Rule (TSCA 8(a)(7))

5) Revisions to the TSCA 8(a)(7) Rule – 40 CFR Part 705

a) Focus rule so upstream PFAS manufacturers submit information.
Add exemptions to 40 CFR 705.12 for articles, byproducts, impurities, R&D, low volume (<2500 lb).

b) Restrict the universe of reportable chemicals to those chemicals listed by CAS and/or TSCA Accession number in the proposal, while addressing confidential chemicals on a case-by-case basis by requesting information from the company claiming confidentiality.

c) Restrict reportable chemistries to thresholds identified on OSHA compliant SDS.

d) Clarify that the "known to or reasonably ascertainable by" standard of due diligence allows reliance on SDS for the purpose of this rule.

e) EPA should exempt small businesses from reporting purely based on TSCA Section 8(a)(1) and the unique compliance burden faced by small businesses.

f) EPA should reduce the scope of reportable data that applies to years in the beginning of the lookback period, since this information is unlikely to yield the best available science.

g) Justification: The NDAA grants EPA authority to determine the scope of data required for submission. The current requirement is likely to result in redundant data submissions that are not required by statute and are overly burdensome to both EPA and industry. As such, these burdens do not outweighed public benefits. Further, EPA has not specified how such a broad data collection effort will be used to advance PFAS regulation. It raises concerns that EPA will rely on information that does not represent the best available science. EPA should prioritize recent data which accurately reflects the current state of science and use of chemicals.

TSCA Section 8(a)(5) requires EPA, to the extent feasible, to (A) not require unnecessary or duplicative reporting, (B) minimize compliance costs on small manufacturers and processors, and (C) apply any reporting obligations to those persons likely to have information relevant to effective implementation of TSCA.

SNUR Requirements (see also ACA summary regarding PMN-related regulatory requirements)

6) ACA requests modifications to TSCA SNURs with manufacturing/import time limits for which the required testing under the Consent Order has been completed, as well as requirements for submitting testing that is also included in the Consent Order
    a) Rescind time limits on commercial activities included in some final SNURs, based on additional testing required under the Consent Order where those testing requirements are complete.
    For example, Alkanes, C22-30, chloro, as stipulated in the SNUR at 40 CFR 721.11077(a)(2)(i), requires: *Manufacture (and import) are limited to 5 years*.
    b) Justification: The manufacturing and import time limit requirements in the SNUR are unnecessary when testing is completed pursuant to a Consent Order, but also required in a SNUR. As a result, it creates a significant administrative burden to file a SNUN, for continued use of a chemical, as the time period for the SNURs expiration approaches. At a broader level, the requirement unnecessarily impedes economic development, requiring downstream customers of the original PMN submitter to expend resources managing the supply chain, to avoid disruptions in supply.
    The time limits on SNUR requirements also apply to imports, preventing re-importation of products originally manufactured in the United States, but sent to abroad for additional processing. Re-import requires submission of a SNUN which often aligns exactly with the original PMN submission. The submission is duplicative and unnecessary. The SNUN submission often requires the same tests already submitted by the original PMN submitter under terms of the Consent Order.
7) ACA also requests that EPA update SNURs with outdated volume reporting requirements. In consent orders and SNURs, EPA often includes a requirement to report volumes, while developing testing data. EPA will require manufacturing in lower volumes, prior to submission of test data. But, once testing is complete, EPA does not update SNURs or consent orders, still requiring reporting of volumes. This reporting requirements create an undue burden on industry.
8) EPA's proliferation of SNURs also triggers CDR reporting for manufacturers and importers of small amounts of 2,500 lbs or more per year. ACA recommends that EPA modify the CDR reporting requirement, as this creates a significant and perhaps unintended reporting burden on industry.
9) EPA should formally rescind proposed SNURs that have been outstanding for several years and are clearly not proceeding towards being finalized. These proposals trigger 12(b) export notification requirements, imposing an unnecessary reporting requirement on industry. ACA is currently developing a list of eligible SNURs and would welcome the opportunity to provide additional information.

Import Certification Requirements

10) Modification to TSCA 13 Import Certification policy statements at 40 CFR 707.20(c)

a) EPA should modify the rule to indicate that submission of a TSCA Compliance Certification Statement to EPA under TSCA Section 13 is not required where U.S. Customs and Border Protection has not refused entry of a shipment due to alleged non-compliance with TSCA. Further, the Certification Statement should not need to be maintained for the five-year period.

b) In the alternaitive, EPA should require only that the Certification Statement is created and kept for 5 years by the importer but specify that it doesn't need to be directly submitted to EPA.

c) Justification: This change would more clearly align with TSCA Section 13. The current certification submission and record-keeping requirement in 40 CFR 707.20 goes beyond the statutory requirement placing an undue burden on industry. The current requirement is duplicative since the shipment is still required to be in compliance with TSCA Inventory requirements and all other provisions of TSCA. Failure to comply results in severe penalties aggregating on a per day basis.

Polymer Exemption

11) EPA suggests several revisions to the Polymer Exemption rule at 40 CFR 723.250. The polymer exemption has become critical for the development of new products, since the Lautenberg Amendments have lead to increased backlog and delay in the PMN process. ACA strongly suggests streamlining the polymer exemption to facilitate more effective use of the exemption.

a) EPA should rescind the requirement to annually report to EPA the number of substances manufactured under the exemption at 40 CFR 723.250(f).

   i. Justification: The requirement goes beyond what is required by the statute and the costs and burdens do not outweigh public benefits. Providing the number of substances manufactured under the exemption provides no useful information to the public or EPA.

b) EPA should modify the list of reactants from which polyester may be made at 40 CFR 723.250(e)(3) to allow polymers of low concern to qualify that would otherwise need a PMN. EPA should include both isomer specific and broad/non-isomer specific CAS numbers for currently listed exempt monomers, including:

   i. Anhydrides (often used as a diacid and not for anhydride functionality) – concern is also addressed in "reactive functional group"; derivatives of similar compounds – esters, amides of carboxylic acids are allowed as part of carboxylic acid groups, anhydrides are functionally no different

   ii. Inclusion of stereoisomers of existing listed chemicals, especially UVCB since their structures are undefined under CAS

   iii. Justification: The current procedure, requiring a PMN, is not required by statute, for polymers of low concern. As a result, the PMN submission requirement is unnecessary and overly burdensome. The polymer

exemption was designed to streamline approval of these substances, without going through the PMN process.

c) EPA should modify the definition at 40 CFR 723.250(b) of "reactive functional group" to specify location of groups to clarify chemistries of concern. The current requirement is overly restrictive and is inclusive of groups that are known to *not* cause a risk. The definition can be better scoped to accommodate polymers of low concern.

d) EPA should modify the recordkeeping requirements at 40 CFR 723.250(j)

i. Preferred: Allow for polymer exemption certification from suppliers for imported polymers to meet the record submission requirement. That is, the supplier must meet criteria in Section 723.250(j):
   - that the polymer meets the definition of polymer;
   - polymer is not excluded from the exemption;
   - polymer meets the exemption criteria;
   - supplier is responsible for maintaining records according to the recordkeeping requirements and will provide the records to US EPA within 15 working days of written request from EPA

ii. Alternative: Restrict the above to either: Suppliers with a US presence; US suppliers; or only to re-imported PE polymers that were originally manufactured in the United States.

iii. Justification: Not required by statute, overly burdensome, duplicative, impedes technological innovation and economic development – restricts conducting business if a company cannot re-import products made in the United States.

10. TSCA – Request enforcement discretion for the reasons noted above:

- TSCA 8(c) – 40 CFR Part 717
- TSCA 12(b) – 40 CF Part 707 Subpart D
- TSCA 13 Import Certification
- Notice of Activity Form B
- Polymer exemption documentation replication when supplier states it meets the requirements

11. EPCRA / TRI Notifications and Listings:

1) EPA should maintain the *de minimis* exemption at 40 CFR 372.45(d)(1)
   a) EPA should maintain the *de minimis* requirements that apply to chemicals listed in 372.28(a) (*chemicals of special concern*) and any additional chemicals listed therein, so that the *de minimis* exemption is available for TRI chemicals of special concern.
   b) Justification: Under the approach proposed by the prior administration, EPA would list chemicals of special concern without a *de minimis* triggering downstream notification and reporting requirements. This approach is not clearly authorized by the statute. The statute requires further analysis of toxicity prior to listing, while establishing a *de minimis*. Further, removing the *de minimis* for these chemicals is not required to

adequately warn of any risks associated with storage and use. Removal of the *de minimis* exemption presents significant compliance challenges, with companies adopting varying limits of quantitation, to the extent quantifying amounts is even possible. Further, ACA recommends *not* listing PFAS chemicals as *chemicals of special concern* at this time, without conducting analysis of the listing criteria in EPCRA § 313(d)(2) for each chemical.[2]

2) Regarding revisions to the proposed supplier notification rule requiring companies to begin providing supplier notification for chemicals newly added to the Toxic Release Inventory (TRI) list before the new chemical is listed in the regulation.
   a) ACA is opposed to this proposal and recommends that EPA not finalize it.
   b) As an alternative approach, clarify that supplier notification requirements do not apply to PFAS automatically added by the NDAA until after the chemical is listed in the regulation (40 CFR 372.65)
   c) Justification: The proposed approach is not required by statute, and it is overly burdensome, potentially requiring updates to downstream notification within an unusually short time period. ACA has submitted detailed comment into the rulemaking docket.

Congressional Review Act Issues

12. EPA-identified issues under the *Congressional Review Act*:

ACA supports further review and amendment of:

- EPA's Risk Evaluation Procedural Rule:
  1) ACA supports revocation of this rule so the *whole chemical approach* is no longer codified as part of EPA's procedures. As consistently noted in ACA's comments on the matter, the whole chemical approach leads to an inaccurate understanding of risk and raises the potential for imposing unnecessary risk mitigation requirements.
  2) EPA must factor existing risk mitigation requirements and practices into its exposure evaluation.

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[2] This issue also affects non-PFAS chemistries. For example, naturally-occurring substances are also affected. If finalized, suppliers would struggle to identify maximum theoretical values for trace metals in a product, for the purpose of downstream notification. Establishing clear de minimis values would promote consistency in notification. Suppliers cannot certify that their materials do not contain *any* level of various trace metals and other relevant impurities. They certify materials contain "less than" an amount, typically at whichever level they test to. It is impossible to prove a negative. The approach proposed by EPA (i.e. listing without *de minimis* thresholds) results in inconsistent and meaningless information conveyed to downstream buyers.

EPA's guidance for TRI reporting suggests that when you have information such as "contains < 100 ppm" of a substance, companies are expected to report. This is not *best available science* as it's poor data.
It is reasonable to establish a low *de minimis* for *chemicals of special concern*, such as 100 ppm, but it is not reasonable to do away with the *de minimis* altogether. Multiple agencies are utilizing 100 ppm as a *de minimis* for various PFAS regulations, such as the California juvenile products rule, which defines "regulated PFAS" as PFAS that is intentionally added or "the presence of PFAS in a product or product component at or above 100 ppm, as measured in total organic flourine." Additionally, MPCA's (Minnesota Pollution Control Agency's) FAQs regarding implementation of the MN PFAS in Products Law (Amara's Law) establishes an informal benchmark of 100 ppm total organic fluorine to signal the potential for intentionally added PFAS during screening assessments.

- New Chemical Review Procedural Rules – EPA supports revocation of this rule as it fails to address critical issues in EPA's new chemical review program. Please see ACA's supplemental document detailing issues and related suggestions to improve EPA's new chemical review program and related rules.

Sincerely,

Heidi McAuliffe
Vice President, Government Affairs
American Coatings Association
hmcauliff@paint.org
202-719-3686

Suzanne Chang
Counsel, Government Affairs
American Coatings Association
schang@paint.or

Riaz Zaman
Sr. Counsel, Government Affairs
American Coatings Association
rzaman@paint.org

901 NEW YORK AVENUE NW, SUITE 300 • WASHINGTON, DC 20001 • T 202.462.6272 • F 202.462.8549 • www.paint.org