



RETAIL INDUSTRY LEADERS ASSOCIATION

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January 15, 2021

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: Draft Compliance Guide for Imported Articles Containing Surface Coatings Subject to the Long-Chain Perfluoroalkyl Carboxylate and Perfluoroalkyl Sulfonate Chemical Substances Significant New Use Rule; Notice of Availability and Request for Comment, 85 Fed. Reg. 81466 (Dec. 16, 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) Draft Compliance Guidance for Imported Articles Containing Surface Coatings Subject to the Long-Chain Perfluoroalkyl Carboxylate and Perfluoroalkyl Sulfonate (LCPFAC) Significant New Use Rule (SNUR) (hereinafter "Draft Guidance").

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 potentially harmful 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.

As we noted in our April 17, 2020 comments on the Agency's proposed Supplement to its Proposed SNUR for LCPFAC,¹ some retailers have phased out some or all products manufactured using LCPFACs. However, given LCPFAC chemical properties (*i.e.*, persistence and mobility), many are ubiquitous in the environment, and may also be present in coatings in treated textiles, outerwear, cookware, and other articles sourced

¹ See RILA, [Comments re: Proposed Supplement to SNUR for LCPFAC](#) (April 17, 2020); Docket ID. EPA-HQ-OPPT-2013-0225-0227.

from areas outside the U.S. where these substances may still be used for their stain repellent, weather resistant, and other high-performance characteristics. Imported consumer goods may also contain *de minimis* amounts of LCPFACs from prior use of these substances and legacy manufacturing processes.

Comments

RILA appreciates EPA's effort to provide additional clarity in the Draft Guidance on the term "surface coating." EPA acknowledges that this draft guidance is limited in scope to this sole issue and it is unclear if the Agency intends to publish further guidance on other areas of the LCPFAC SNUR that would benefit from greater clarity.

RILA wishes to take this opportunity to highlight a few additional areas where guidance would be beneficial to retailers that may import LCPFAC-containing articles. RILA encourages the Agency to provide further guidance on the following:

I. Documentation to Support Compliance

The final SNUR and the Draft Guidance lack clarity on what documentation and other evidence importers should rely on to substantiate compliance with the LCPFAC SNUR. EPA should provide examples of documentation that can serve as sufficient evidence that an importer has verified compliance with the SNUR. In the past, RILA has provided feedback to the Agency on other TSCA rulemakings (e.g., the formaldehyde rule) that invoices and bill of lading documents are not appropriate documents for use in compliance statements. Each retailer importer may have a unique system for collecting documentation and certifications from suppliers to verify compliance. EPA should work with stakeholders to provide clarity around compliance documentation requirements.

II. Presence of Surface Coating

As RILA stated in its previous comments on the LCPFAC SNUR, retailers import millions of finished consumer products each year across a vast range of product categories. 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. 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 LCPFAC surface coatings. RILA urges EPA to provide further guidance to importers on how they can better determine which articles may contain LCPFAC surface coatings. For example, it would be helpful for EPA to clearly identify if there are categories of articles/points of origin that importers should target for additional scrutiny. Guidance on which articles to target would assist retailer importers to develop focused, effective, and efficient compliance programs while greatly reducing unnecessary product testing burdens. Without further clarity, retailers would have to "look for a needle in a haystack" and make broad assumptions and potentially test tens of thousands of products across multiple product categories in order to verify the compliance of a minimal number of products within the scope of the final LCPFAC SNUR.



III. Intentional vs Unintentional Presence of LCPFAC

RILA appreciates that EPA has addressed in its Draft Guidance that LCPFAC substances that are "unintentionally present" at the point of manufacture are not subject to the SNUR and are exempt from reporting. EPA specifies that "unintentional presence" includes LCPFAC substances that are only present in a surface coating as an impurity. While this clarity is helpful, it is unclear how impacted retailer importers can determine whether the presence of LCPFAC is intentional or unintentional. RILA encourages EPA to provide further clarity on how it will distinguish between an intentional and unintentional presence of a LCPFAC substance. Providing guidance that includes illustrative examples of intentional and unintentional presence would be useful. For example, it is unclear where recycled content fits with respect to analyzing whether a substance is intentionally present in a surface coating. EPA should expand its guidance to include specific scenarios where a substance is present unintentionally and is therefore not subject to the SNUR and its reporting requirements.

Conclusion

We greatly appreciate the opportunity to provide these brief comments on the Draft Guidance. We wish to reiterate RILA's and its member companies' commitment to providing safe and compliant products to U.S. consumers. We welcome engagement with the Agency on the areas identified for additional guidance identified above to assure compliance with the LCPFAC SNUR.

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
Senior Director, Regulatory Affairs and Compliance

