

May 4, 2022

Ms. Lanelle Wiggins
RFA/SBREFA Team Leader
Office of Policy (1803A)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Submitted electronically via email

Re: TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances
Docket ID No. EPA-HQ-OPPT-2020-0549, 86 Fed. Reg. 33926 (June 28, 2021)

Dear Ms. Wiggins:

The National Rural Electric Cooperative Association (NRECA) appreciates the opportunity to participate as a Small Entity Representative (SER) and submit these comments to the Small Business Advocacy Review (SBAR) Panel convened for the Environmental Protection Agency (EPA) proposed reporting and recordkeeping rule for perfluoroalkyl and polyfluoroalkyl substances (PFAS) under Section 8(a)(7) of the Toxic Substances Control Act (TSCA).

NRECA is the national trade association representing nearly 900 local electric cooperatives and other rural electric utilities. America's electric cooperatives are owned by the people that they serve and comprise a unique sector of the electric industry. From growing regions to remote farming communities, electric cooperatives power 1 in 8 Americans and serve as engines of economic development for 42 million Americans across 56 percent of the nation's landscape. NRECA's members supply electricity to 92 percent of the Nation's persistent poverty counties. NRECA's member cooperatives include 63 generation and transmission (G&T) cooperatives and 831 distribution cooperatives. All but three of these cooperatives are considered small business entities as classified by the Small Business Administration (SBA) size standards.

The G&Ts generate and transmit power to distribution cooperatives that provide it to the end of line co-op consumer-members. Collectively, cooperative G&Ts generate and transmit power to nearly 80 percent of the distribution cooperatives in the nation. The remaining distribution cooperatives receive power directly from other generation sources within the electric utility sector. Both distribution and G&T cooperatives share an obligation to serve their members by providing safe, reliable, and affordable electric service.

Electric cooperatives operate at cost and without a profit incentive. Cooperatives do not have stockholders, and all costs are borne by the local cooperative consumer members. Therefore, cost-effective regulatory requirements that minimize unnecessary burdens are very important to cooperatives ability to provide affordable and reliable electricity to their members. Under the proposed rule's requirements, NRECA's

members could be deemed manufacturers due to purchases of imported articles that may contain PFAS. If NRECA's members are subject to its reporting and recordkeeping procedures, the proposed rule could impose substantial compliance and operational burdens as well as significant financial costs.

In the meeting outreach materials that EPA provided to the SERs for the SBAR Panel Outreach meeting on April 20, 2022, EPA included updated estimates on the impacts of the proposed rule on small entities, including both the number of affected small entities (129,544 small firms) and the estimated burden (\$768 million). NRECA appreciates that EPA has updated its Economic Analysis for the proposed rule and is seeking to better understand the number of small entities that may be subject to the proposed rule's requirements and the compliance burden involved. However, EPA's significant upward revisions to its original estimates has only heightened NRECA's concern that the proposed rule may affect its members and impose significant costs. NRECA looks forward to reviewing the draft Initial Regulatory Flexibility Analysis when EPA publishes it for public comment and encourages EPA to publish the entire updated draft Economic Analysis for public comment at the same time. Reviewing the updated draft Economic Analysis would provide small entities helpful context to understand and evaluate the potential compliance burden on their operations and meaningfully comment on the IRFA.

EPA Should Exclude Imported Articles

In the preamble to the proposed rule, EPA states that "articles containing PFAS, including imported articles containing PFAS (such as articles containing PFAS as part of surface coatings), are included in the scope of reportable chemical substances." 86 Fed. Reg. at 33930. EPA states that collecting information on PFAS-containing articles would be beneficial as it would improve the agency's knowledge because it currently does not have such data. *Id.* However, EPA also acknowledged that article manufacturers, including article importers, may not know whether the articles they import may contain PFAS or be able to reasonably ascertain if they contain PFAS. *Id.* Furthermore, EPA was unable to provide an estimate on the number of small entity importers of articles that would be subject to the proposed rule's requirements. *Id.* at 33935.

NRECA is concerned that it may be very burdensome for small entities, such as cooperatives, that may import or purchase imported articles to identify the types of imported articles that potentially contain PFAS. While the identity of their suppliers may be known, it may be particularly difficult or infeasible for a small entity that does not have chemical reporting experience to collect data to determine whether an article contains PFAS or provide "reasonable estimates" where the actual data is not known or reasonably ascertainable. *Id.* at 33957. The challenge of collecting data and providing reasonable estimates is made more complex because the proposed rule would affect entities that have manufactured (and imported) PFAS or articles that contain PFAS since January 1, 2011.

While EPA may obtain some additional information regarding PFAS-containing articles by making importers of articles subject to the proposed rule's requirements, NRECA believes the burdens on small entities will far outweigh the benefits, particularly in light of EPA's updated estimates of the proposed rule's impacts. NRECA strongly recommends that EPA exclude importers of articles from the proposed rule.

EPA Should Exempt Small Manufacturers and Small Businesses

Small entities have fewer resources than their larger counterparts and the vast majority of NRECA's members are considered small businesses. As noted above, electric cooperatives operate at cost and without a profit incentive. If NRECA's members are subject to this proposed rule's considerable reporting requirements, the burdens will not only affect the cooperatives but will be borne by their consumer members. NRECA urges EPA to exempt small manufacturers (as the term is defined under the TSCA Chemical Data

Reporting regulations) and small businesses (as that term is defined by SBA size standards) from the proposed rule's requirements.

NRECA appreciates EPA's consideration of its comments. If EPA has questions, please contact me at Viktoria.Seale@nreca.coop or (703) 907-5805.

Sincerely,

A handwritten signature in blue ink that reads "Viktoria Z. Seale". The signature is fluid and cursive, with the first name "Viktoria" being the most prominent part.

Viktoria Z. Seale
Regulatory Affairs Director