Petition

Petition for reconsideration, supplemental analysis, and reopening of the record: PFAS Data Reporting and Recordkeeping under TSCA (FR Doc. 2025-19882)

Introduction and requested actions

This petition is submitted on behalf of interested parties that manufacture, import, process, or use articles and materials potentially containing PFAS. We support EPA's objective of obtaining reliable PFAS information but request that EPA remedy several procedural and analytical deficiencies in the final rule published November 13, 2025.

We ask EPA to take the following actions:
- If the Agency invoked the Administrative Procedure Act's "good cause" exception or adopted an immediately effective rule without adequate notice-and-comment, withdraw or stay the final rule and publish an NPRM, or at minimum reopen the rule for comment before enforcing any expanded or altered obligations.
- Prepare and make public a compliant Initial or Final Regulatory Flexibility Analysis, or convene an SBREFA small business review panel, as applicable, and consider less burdensome, statutorily permissible alternatives for small entities.
- Submit a revised Information Collection Request to OMB and publish the required 60-day and 30-day PRA notices, reflecting the rule's changed reporting elements, scope, and timing; display a valid OMB control number before enforcing any new or expanded collections.
- Provide a written UMRA statement and updated Executive Order 12866/14094 analysis if the rule imposes private-sector expenditures at or above the applicable threshold in any year, especially where compliance activities are bunched by new deadlines.

Background

EPA's 2023 PFAS reporting rule under TSCA section 8(a)(7) (88 FR 70516, Oct. 11, 2023; 40 CFR part 705) established one-time reporting for PFAS manufactured (including imported) since January 1, 2011, with recordkeeping requirements. In that rulemaking, EPA estimated very large private-sector burdens, including tens of thousands of affected entities and industry-wide costs on the order of hundreds of millions of dollars. Public materials surrounding the 2023 rule (the supporting statement for the ICR and EPA's economic analysis) described:
- Affected entities in the tens of thousands, including many small businesses and article importers.
- Total industry compliance costs in the range of approximately $800 million to $900+ million over the reporting period, with annualized costs exceeding $100 million depending on discount rate and compliance timing.
- Per-entity costs for small businesses that, for a non-trivial fraction, could exceed one percent of annual revenues due to extensive supply-chain due diligence and historical data reconstruction.

The Small Business Administration Office of Advocacy submitted comments in 2023 expressing concern that EPA's certification under the Regulatory Flexibility Act underestimated small-entity impacts and did not consider feasible alternatives tailored to small firms and article importers.

The November 13, 2025 final rule further modifies the PFAS reporting regime. The notice describes changes to definitions, scope, reporting elements and/or compliance dates. Those changes appear substantive, with direct impacts on who must report, what must be reported, and when.

Plausible deficiencies

1) APA good cause/notice-and-comment

If EPA invoked 5 U.S.C. 553(b)(B) or 553(d)(3) to bypass prior notice-and-comment or to make the rule immediately effective, that invocation is vulnerable. Good cause is "narrowly construed." Substantive changes that expand coverage to additional entities (for example, clarifying inclusion of impurities, byproducts, recyclers, contract manufacturers, or article categories), change definitions in ways that affect liability, or alter reporting elements and recordkeeping duties are precisely the types of policy choices for which public comment is useful and required.

- There is no evident emergency that precludes the ordinary process; the Agency has operated under the 2023 framework for two years, and any compliance dates can be adjusted prospectively through normal rulemaking.
- Courts routinely reject good-cause claims for rules labeled "technical" where the changes have real compliance effects or where comments could help avoid unintended consequences. The Agency should withdraw or stay any immediately effective provisions and accept pre-enforcement comment.

Requested remedy: Publish an NPRM on the 2025 amendments, or at minimum reopen the final rule for comment, delay effectiveness, and respond to significant comments before enforcing any expanded obligations.

2) Regulatory Flexibility Act/SBREFA

The 2025 rule appears to impose additional or altered burdens on small entities, many of whom are article importers, small processors, laboratories, recyclers, or niche manufacturers with limited regulatory staff. If the Agency certified under RFA section 605(b) that the rule would not have a significant economic impact on a substantial number of small entities, or did not convene a SBREFA panel where required, that certification is deficient for at least three reasons:

- Baseline impacts were already substantial. In 2023, EPA's own figures indicated hundreds of millions of dollars in private-sector costs and a very large small-entity footprint. Any expansion of scope, new data elements (e.g., waste management information, concentration data, downstream use descriptors), or re-opened historical lookbacks will materially increase small-entity burdens.

- Statutory constraints do not eliminate RFA duties. Even under TSCA section 8(a)(7), EPA retains discretion over reporting form, phasing, tiering, and streamlining consistent with statutory requirements. The RFA requires the Agency to consider alternatives to minimize small-entity burden, such as:
  - Tiered reporting and "short-form" submissions for entities with limited knowledge (e.g., certain article importers) and for PFAS present only as impurities or byproducts.
  - De minimis concentration thresholds for articles and mixtures where detection is not feasible or where information is not known or reasonably ascertainable, paired with a safe harbor for documented diligence.
  - Extended or staggered deadlines for small entities and supply-chain dependent reporters.
  - Template certifications that allow small firms to certify lack of knowledge after documented due diligence instead of exhaustive supply-chain surveys.
- New burdens require a revised FRFA/IRFA. If the 2025 rule redefines covered PFAS, adds process categories, or changes recordkeeping, the Agency must assess the incremental small-entity impact and consider alternatives. Relying on the 2023 analysis without updating the small-entity impact is inadequate.

Requested remedy: Withdraw the 605(b) certification (if used), prepare an IRFA or supplemental FRFA, convene a SBREFA panel for small manufacturers and article importers, and adopt less burdensome alternatives consistent with TSCA.

3) Paperwork Reduction Act

The 2025 rule changes who must collect, maintain, and submit information and/or the content of required submissions. Under the PRA, EPA must:

- Prepare and submit a revised ICR to OMB reflecting the incremental burden hours and costs of the 2025 amendments, publish the 60-day and 30-day notices, and obtain OMB approval before enforcing the new collection.
- Display a valid OMB control number and burden statement for the updated collection in the rule and on any reporting portal.

If EPA stated that the amendments impose "no additional burden," that assertion is not supportable if definitions and reporting elements have been expanded or clarified in ways that trigger new data searches or recordkeeping.

Even modest additions add up: for example, adding three new data fields that require supply-chain inquiries or internal technical review can add 2–5 hours per PFAS per reporter. Multiplied across thousands of reporters and records, this yields tens of thousands of additional hours. Using EPA's typical loaded wage rates for regulatory compliance in manufacturing sectors (approximately $70–$100/hour), each 10,000 hours translates to $0.7–$1.0 million in incremental private-sector cost. If deadlines are bunched, peak-year burden increases further.

Requested remedy: Publish a revised ICR with updated respondent counts, hour burdens, and cost estimates; seek OMB approval before enforcing any new or expanded information collection; and clarify that no party is required to respond to the new collection until a valid OMB control number is displayed.

4) Unfunded Mandates Reform Act

UMRA requires a written statement for any rule that may result in expenditures by the private sector of $100 million in 1995 dollars in any one year (adjusted for inflation; approximately $178 million in recent years). The 2023 baseline analysis indicated annualized costs exceeding $100 million, and the one-time nature of the PFAS lookback means compliance costs are concentrated in specific years around reporting deadlines. Any 2025 amendments that expand the universe of reporters, add data elements, or shift all filings into a narrower window can elevate peak-year expenditures above the UMRA threshold.

If the 2025 rule does not include an updated UMRA assessment and written statement addressing costs, benefits, least burdensome and most cost-effective alternatives, and impacts on small governments and tribes (where applicable), the analysis is incomplete.

Requested remedy: Prepare and publish an updated UMRA written statement, including peak-year expenditure estimates and consideration of less burdensome alternatives.

5) Executive Order 12866 and 14094

Given the magnitude of the PFAS reporting program, the 2025 amendments likely qualify as a significant regulatory action. If EPA designated the rule as “not significant” because it was styled as a technical or clarifying amendment, that designation should be reconsidered if the changes have real economic effects. A supplemental regulatory impact analysis should:

- Quantify incremental costs and benefits of the 2025 changes relative to the 2023 baseline.
- Evaluate reasonable alternatives that reduce burden while achieving the information objective (e.g., tiered reporting, templates, safe harbors, phased deadlines).

Requested remedy: Submit the rule to OIRA for review with a supplemental analysis, or publish a revised analysis in the docket and respond to public comment.

Concrete alternatives for EPA to consider

- Short-form certification option for entities with limited knowledge (especially article importers), allowing certification after documented due diligence in lieu of exhaustive data fields where information is not known or reasonably ascertainable.

- De minimis concentration thresholds for articles or mixtures where testing is impracticable, combined with a safe harbor for reasonable supply-chain inquiries.
- Tiered reporting that prioritizes higher-volume manufacturers first, with extended deadlines for small entities and article importers.
- Streamlined reporting for byproducts and impurities that do not have intended use, with recordkeeping rather than detailed submission unless the Agency identifies a specific need.

Conclusion

EPA should not enforce the 2025 amendments without first satisfying APA notice-and-comment requirements, the RFA/SBREFA, the PRA, UMRA, and Executive Order 12866/14094 obligations. We respectfully request that EPA withdraw or stay the final rule as necessary, publish an NPRM or reopen the docket for comment, prepare the required analyses, revise the ICR and obtain OMB approval, and adopt alternatives that achieve the Agency's objectives at lower cost, especially for small entities.

We would welcome the opportunity to provide further data on small-entity impacts and feasible alternatives and to participate in any SBREFA panel.

Respectfully,
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