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U.S. EPA Releases Final Rule for PFAS Reporting Under TSCA

On September 28, the U.S. Environmental Protection Agency (EPA) announced a final rule (the Final Rule) concerning PFAS (per- and polyfluoroalkyl substances) reporting under the Toxic Substances Control Act (TSCA) that significantly expands record-keeping and reporting requirements relating to PFAS. PFAS are synthetic chemicals that have been used since the 1940s and are found in many consumer and industrial products, including firefighting foam, Teflon, lubricants and stain-resistant fabrics. PFAS are known as "forever chemicals" because they break down very slowly once released into the environment due to their water-repellant and heat-resistant qualities. EPA's new TSCA regulations are being promulgated pursuant to amendments made to TSCA in December 2019, which added TSCA section 8(a)(7) requiring EPA to promulgate a rule "requiring each person who has manufactured a chemical substance that is a [PFAS] in any year since January 1, 2011 to report information described in TSCA section 8(a)(2)(A)." Of note, the Final Rule addresses the following.

Reporting Information

The Final Rule requires persons who manufacture PFAS "for a commercial purpose" to report on the following categories of information:

- "The common trade name, chemical identity and molecular structure of each substance or mixture for which a report is required;
- Categories or proposed categories of use for each substance or mixture;
- Total amount of each substance or mixture manufactured or processed, the amounts manufactured or processed for each category of use, and reasonable estimates of the respective proposed amounts;
- Descriptions of byproducts resulting from the manufacture, processing, use, or disposal of each substance or mixture;
- All existing information concerning the environmental and health effects of each substance or mixture;
- The number of individuals exposed, and reasonable estimates on the number of individuals who will be exposed, to each substance or mixture in their places of work and the duration of their exposure; and
- The manner or method of disposal of each substance or mixture, and any change in such manner or method."

Broadened Definition of PFAS

Under the Final Rule, PFAS is defined as containing one of the following three chemical structures:

- "R-(CF_2)-CF(R')R", where both the CF_2 and CF moieties are saturated carbons;
- R-CF_2OCF_2-R', where R and R' can either be F, O, or saturated carbons; and
- $CF_3C(CF_3)$R'R", where R' and R" can either be F or saturated carbons."

By adopting a technical definition of PFAS, EPA is not bound by a list of specific PFAS; as long as the chemical structure is consistent with one of the chains described above, the Final Rule applies to it. According to EPA, the Final Rule will cover over 1,450 currently known PFAS. Importantly, the definition of "manufacture" for the purposes of the Final Rule also includes

"import," meaning that even if a person is not engaged in the actual manufacturing of PFAS but is importing PFAS, the import triggers reporting requirements. It is also important to note that the Final Rule impacts not just manufacturers of PFAS but anyone who manufactures materials containing PFAS for a commercial purpose, "including as a component of a mixture." This "includes the coincidental manufacture of PFAS as byproducts or impurities."

Scope

EPA notes in its publication notice that "persons who have only processed, distributed in commerce, used and/or disposed of PFAS" are not covered by the Final Rule's reporting requirements, which means that the reporting requirement is not extended to persons processing PFAS-containing municipal solid waste (MSW) streams for destruction or disposal due to the heterogeneous nature of those waste streams. However, facilities that import PFAS-containing waste, including MSW, for the purpose of recycling or reuse (e.g., the import of carpet for recycling) may trigger reporting requirements, as it is assumed such importers would have knowledge of or at least be aware of the nature of these materials and how they will be processed or used. EPA further notes in its publication notice that "simply *receiving* PFAS from domestic suppliers or other domestic sources" does not necessarily subject a person to reporting requirements under the Final Rule. The Final Rule further excludes noncommercial research and development activities from the definition of "manufacture for commercial purposes."

Effective Date

For businesses other than small businesses, submissions are due 730 days from publication of the Final Rule in the *Federal Register* (likely in the fall of 2025). For small businesses, submissions are due 548 days after the Final Rule is published in the *Federal Register* (likely in the spring of 2025). A prepublication notice of the Final Rule can be found here. If you or your organization would like to learn more about PFAS reporting requirements under TSCA, please reach out to one of the attorneys in the sidebar.

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