

PFAS: TSCA LOOKBACK REPORTING, EPCRA REPORTING THRESHOLDS

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TSCA Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances,

88 Fed. Reg. 70516 (October 11, 2023)

Changes to Reporting Requirements for Per- and Polyfluoroalkyl Substances and to Supplier Notifications for Chemicals of Special Concern,

88 Fed. Reg. 74360 (October 31, 2023)

TSCA Section 8(a)(1)

“EPA may...require manufacturers and processors...maintain such records and submit such reports as the EPA Administrator may reasonably require.”

TSCA LOOKBACK REPORTING RULE



- > Persons who “manufacture” (or import) or who have manufactured PFAS in any year since January 1, 2011
- > Report to EPA, information regarding:
 - Chemical Identity of PFAS;
 - Uses;
 - Production volumes;
 - Byproducts;
 - Disposal;
 - Exposures; and
 - Existing information on environmental or health effects

Scope of Final Rule

- 1: **Covered** Substances / Entities
- 2: **Reporting** Requirement



> What substances are covered?

- Any chemical substance manufactured (including imported) for commercial purposes (including chemicals in mixtures), that are PFAS.
- Must be a TSCA “chemical substance”
 - Any organic or inorganic substance of a particular molecular identity, including
 - Any combination of such substances occurring in whole in part as a result of chemical reaction or occurring in nature, and
 - Any element or uncombined radical.
 - EXEMPTIONS:
 - (i) mixtures, (ii) pesticides, (iii) tobacco and tobacco products, (iv) nuclear materials, (v) pistols, firearms, revolvers, shells, cartridges, certain ammunition (bullets and shot), (vi) food, food additives, drugs, cosmetics, and devices.



> What substances are covered?

- Final Rule carves out the Mixture exemption from “chemical substance” definition.
- Must report on each chemical substance that is a PFAS, including as a component of a mixture.



> What substances are covered?

- TSCA has no statutory definition of PFAS.
- Final Rule contains “structural definition” of PFAS
- EPA Identified 1,462 PFAS which meet the structural definition from the TSCA Inventory of “known TSCA chemical substances.”



> What entities are covered?

- Anyone who manufactured (including imported) a PFAS for a commercial purpose in any year since January 1, 2011 through December 31, 2022.
- “Manufacture for a commercial purpose”



> Scope of “Manufacture for Commercial Purpose”?

- “Manufacturing” means only those entities manufacturing for commercial purpose.
- “Manufacturing for commercial purpose” means
 - Import, Production, or Manufacturing
 - Chemical substance or mixture containing a chemical substance
 - Purpose of obtaining an immediate or eventual commercial advantage for the manufacturer.



> Scope of “Manufacture for Commercial Purpose”?

– “Manufacture for commercial purpose” includes

- Commercial distribution; or
- Test Marketing or R & D (typically exempt)
- Includes the coincidental manufacture of PFAS as byproducts or impurities (typically exempt).
- Import of PFAS containing articles (specific design, end use dependent, no release).

“Simply *receiving* PFAS from domestic suppliers or other domestic sources is not, in itself, considered manufacturing PFAS for commercial purposes.”



> What is the Reporting Requirement?

- Reporting Standard – “Known or reasonably ascertainable by the manufacturer”
 - All information in a person’s possession or control;
 - All information that a reasonable person similarly situated, would be expected to know, possess, or control.
 - Must exercise due diligence (varies case to case)



> Known or Reasonably Ascertainable?

- Reasonable Inquiry within the full scope of their organization (not just info. known to managers / supervisors).
- Inquiries outside the organization:
 - Files maintained by manufacturer;
 - SDS or supplier notifications;
- Actual Data (e.g. measurements / monitoring data) not available:
 - Manufacturer/importer should consider whether “Reasonable Estimates” of such info. is ascertainable (mass balance calculations, emissions factors, best engineering judgment).



> Information That Must Be Reported?

- **Company and Plant Site Information:**
 - Each site at which a reportable PFAS is manufactured.
- **Chemical-specific Information:**
 - Common or trade name, chemical identity, representative molecular structure, physical form of each PFAS.
- **Categories of Use:**
 - Must report on industrial processing or use operations, consumer and commercial product categories, and concentrations of the PFAS.



> Information That Must Be Reported?

– Manufactured Amounts:

- For each year since January 1, 2011, must report the amount manufactured or imported for each PFAS.

– Byproduct Reporting:

- For each byproduct produced from the manufacture, processing, use, or disposal of a PFAS, companies must report Chemical Identity of the byproduct, any Releases of the byproduct, Volume of any releases.



> Information That Must Be Reported?

– Environmental and Health Effects:

- Existing info. concerning environmental and health effects of each PFAS.
- NOT limited to studies conducted or published since 2011.

– Worker Exposure Data:

- Number of individuals exposed to PFAS in their places of employment and duration of exposure.

– Disposal Data:

- Manner or method of disposal and any changes to the disposal methods or processes.

> Information That Must Be Reported?

– Streamlined Reporting:

- Importers of PFAS Containing Articles.
- Manufacturers of less than 10 kg / year for Research and Development (solely).

> Electronic Reporting / Timing of Report?

- All information must be submitted electronically (Central Data Exchange)
- One year “information collection period” (November 13, 2024)
- Followed by six-month reporting period (May 13, 2025)
 - Additional six months for “small manufacturers” ((1) less than \$120 m sales AND production volume of less than 100,000 lbs OR (2) less than \$12 m sales) whose reporting is only because of ARTICLE IMPORT. (November 13, 2025).

CHANGES TO EPCRA REPORTING OF PFAS



- > *Changes to Reporting Requirements for Per- and Polyfluoroalkyl Substances and to Supplier Notifications for Chemicals of Special Concern, 88 Fed. Reg. 74360 (October 31, 2023)***
- > The Rule makes revisions to EPA's Toxic Release Inventory (TRI) program relating to 196 specified PFAS.**
- > Collection of information will be used in future EPA rulemakings under other environmental statutes (CWA, CERCLA, and TSCA).**

> What are the Changes to PFAS TRI Reporting Requirements?

- 10 or more employees
- Manufacture, process, or otherwise use more than certain amount of a TRI-listed chemical per year.
- Must report releases of those chemicals.
- For specified PFAS, that threshold is 100 lbs.

> What are the Changes to PFAS TRI Reporting Requirements?

- The Rule added PFAS subject to TRI reporting to the list of “chemicals of special concern” (40 CFR 372.28).
- This eliminates the *de minimis* exemption (disregard amounts in mixtures at concentrations below 1% or 0.1% for carcinogens) for the 189 PFAS that must be reported under TRI
- Any quantity of PFAS manufactured, processed, or otherwise used counts toward the 100 lb. threshold.
- Could result in many products being identified as containing PFAS throughout the supply chain



> What are the Changes to PFAS TRI Reporting Requirements?

- Expands downstream notification obligations for PFAS-containing products.
- Under TRI, companies with SIC codes 20-39 who manufacture or process EPCRA 313 chemicals and then sell or otherwise distribute a mixture, must notify certain downstream purchasers.
- Typically, *de minimis* exemption applies (mixture or product contains < 1% chemical or < 0.1% of carcinogen).
- The rule removes this exemption.

> What are the Changes to PFAS TRI Reporting Requirements?

- Downstream purchaser must be notified if they themselves are a covered facility (SIC Code 20-39) or if the downstream purchaser might in turn sell or distribute the product to such a covered facility (for example, a wholesaler or distributor).

> Result?

- More information being reported by companies who already must report under TRI;
- More information on downstream customers who have small concentrations of PFAS in their products; and
- Downstream customers who didn't previously have knowledge, may now have their own reporting obligations.
- 2,000 additional facilities reporting

PFAS RECENT REGULATORY UPDATES



> Proposed Primary Drinking Water Regulation (March 2023)

- 6 Compounds
- 4.0 ppt

> Proposed Designation of PFOA and PFOS as Hazardous Substances (August 2023)

- EPA pushed timeline for final rule back to March 2024
 - Broader designations?
 - Waiting on Congress to act

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 - Implications?

> Proposed Designation of PFOA and PFOS as Hazardous Substances (August 2023)

– Implications?

- ASTM E 1527-21 – Phase I ESA Standard now suggests including PFAS review.
- Passive Receiver exemption?
- Existing Sites?
 - PFAS investigations required (annual report comment, five-year review)
 - Remedy modification?
- Closed Sites?
- Release reporting?
 - Until RQ chosen, default is ONE POUND.

PFAS RECENT REGULATORY UPDATES



- > **PFAS added to EPA's National Enforcement and Compliance Initiatives 2024-2027**
 - EPA's focus on holding “responsible those who manufactured PFAS and/or used PFAS in the manufacturing process”
- > **January 31, 2024 – EPA proposed adding nine PFAS compounds, their salts, and their structural isomers, to its list of hazardous constituents in RCRA regulations.**
 - Perfluorooctanoic acid, Perfluorooctanesulfonic acid, Perfluorobutanesulfonic acid, Hexafluoropropylene oxide-dimer acid, Perfluorononanoic acid, Perfluorohexanesulfonic acid, Perfluorodecanoic acid, Perfluorohexanoic acid, Perfluorobutanoic acid.



QUESTIONS?