

EPA PROPOSES NEW PFAS REQUIREMENTS UNDER TSCA

Jun 15, 2021

The Environmental Protection Agency (“EPA”) has announced it is taking three actions with respect to per- and polyfluoroalkyl substances (“PFAS”) under the Toxic Substances Control Act (“TSCA”): (1) proposing a rule that is designed to enact reporting requirements for PFAS products that are manufactured or imported in the United States; (2) eliminating guidance that EPA asserts weakened the Significant New Use Rule (“SNUR”) regarding long-chain PFAS; and (3) publishing a final rule that incorporates three additional PFAS substances into the Toxics Release Inventory (“TRI”).

Recordkeeping and Reporting Requirements

EPA’s proposed recordkeeping requirements, published on June 10, 2021, would require that certain businesses to electronically report information to EPA regarding any PFAS substances. Significantly, the definition of “PFAS substances” is “any chemical substance or mixture that structurally contains the unit R-(CF₂)-C(F)(R’)R”. Both the CF₂ and CF moieties are saturated carbons. None of the R groups (R, R’ or R”) can be hydrogen.” (see page 44). The rule includes a long list of compounds that qualify, but it appears that the intent is for the reporting requirement to apply broadly to all PFAS compounds, rather than specific subsets of PFAS compounds.

These reporting requirements apply to any manufacturer or importer who produced or imported PFAS substances or articles containing PFAS substances after January 1, 2011. The rule estimates that at least 1,364 chemical substances may trigger the reporting requirements. Impacted businesses must submit all information to EPA one year following the effective date of the final rule.

These regulations do not require reporting any materials that are excluded from the definition of “chemical substance” in TSCA section 3(2)(B). However, there are no exemptions for small manufacturers, de minimis amounts, or byproducts.

If you have further questions, please do not hesitate to reach out to BCLP. EPA is accepting public comments for 60 days after the date of publication of this rule in the Federal Register. EPA is seeking comment on all aspects of the proposal, but has specifically requested comments on the scope of the rule (chemicals subject to reporting, information on environmental, health and safety

effects, etc.), economic impact on businesses, the timeline for reporting, means to avoid duplicative reporting, and more.

Guidance for the July 2020 SNUR

In January of 2021, EPA issued a compliance guide that according to EPA now, “[inappropriately narrowed the scope and weakened the SNUR.](#)” Following this current action, the rule will continue to be applicable, although the guidance document is no longer in effect. EPA also does not intend to issue a new guidance document.

The compliance guide relaxed, among other things, whether certain imported articles were covered by the SNUR. Additionally, the compliance guide limited what would be considered a “surface coating” subject to the SNUR. Now that the compliance guide has been withdrawn, the rule will govern as to the definition of “surface coatings.”

If desired, the July 2020 SNUR is available at [the following link](#).

Adding PFAS Substances to the TRI

On June 3, 2021, EPA added three PFAS substances to the TRI:

- Perfluorooctyl Iodide;
- Potassium Perfluorooctanoate; and
- Silver Perfluorooctanoate

The three PFAS additions became effective as of January 1, 2021, and reporting for these PFAS substances will be due to EPA by [July 1, 2022](#).

Conclusion

These three efforts underscore the initiative that the current administration is taking with respect to regulating PFAS substances pursuant to its TSCA authority. This trend will undoubtedly continue. As noted above, EPA is accepting public comments on the proposed recordkeeping requirements, so feel free to contact BCLP if you would like to discuss that process, and whether a public comment might benefit your business or industry.

For more information on PFAS chemicals, and the regulatory and liability risks that they pose, please visit our [PFAS webpage](#). If you have a question about how to manage PFAS risk in any jurisdiction, contact Tom Lee, John Kindschuh, or any other member of our PFAS team at Bryan Cave Leighton Paisner LLP.

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