

Insights

NEW PFAS REPORTING REQUIREMENTS UNDER TSCA

Sep 24, 2020

SUMMARY

On July 27, 2020, the Environmental Protection Agency (“EPA”) finalized a significant new use rule (“SNUR”) for PFAS substances and other compounds under the Toxic Substances Control Act (“TSCA”), which was originally proposed in 2015. Although this is not the first SNUR for PFAS substances, it includes a new list of compounds, and may be important for your operations if those compounds are part of your business operations.

As described below, companies that manufacture, process, distribute, or import specific long-chain perfluoroalkyl carboxylate (LCPFAC) and perfluoroalkyl sulfonate chemical substances must notify EPA at least 90 days in advance of any manufacturing (including import), processing or distribution for a significant new use.

The final rule becomes effective on September 25, 2020.

What Chemicals Are Specifically Regulated?

LCPFAC chemicals are defined as “the long-chain category of perfluoroalkyl carboxylate chemical substances with perfluorinated carbon chain lengths equal to or greater than seven carbons and less than or equal to 20 carbons.”¹ EPA identified twenty LCPFAC substances in the rule, along with six additional PFOA substances and their salts.²

With respect to the subset of LCPFAC chemicals, these substances are as follows: Perfluorooctyl iodides; Tetrahydroperfluoro compounds; Perfluoro compounds; Pentacosafuoro compounds; Nonacosafuoro compounds; Thiols compounds; Silicic acid; Sodium salts; Polyfluoroalkyl betaine; Fluoroalkyl urethane; and Perfluorinated polyamine.³

What Does the Rule Require?

The final rule states the following: “You may be potentially affected by this action if you **manufacture (including import), process, or distribute in commerce chemical substances and**

mixtures in the class of long-chain perfluoroalkyl carboxylate (LCPFAC) and perfluoroalkyl sulfonate chemical substances.”⁴(emphasis added).

Practically speaking, this means that the following activities trigger the notice requirements under the SNUR:

- Manufacturing (including imports), processing, or distribution of LCPFAC chemical substances⁵“for any use that was no longer ongoing after December 31, 2015, as a significant new use;”⁶
- Manufacturing (including imports), processing, or distribution of LCPFAC chemical substances⁷ “and all other LCPFAC chemical substances for any use not ongoing as of January 21, 2015 . . . as significant new use;”⁸
- Certain LCPFAC chemical substances that are imported and used as surface coatings on articles;⁹and
- Importers of perfluoroalkyl sulfonate chemical substances as part of carpets.¹⁰

A company must also notify EPA at least 90 days prior to the import of the following: (1) a subset of LCPFAC chemicals as part of a surface coating on articles; and (2) perfluoroalkyl sulfonate chemical substances in carpets. The notification procedures to EPA are relatively substantial, highlighting aspects such as import and export notifications.

What are the Possible Exemptions?

There were numerous comments that were received and evaluated, including those requesting various exemptions. A brief summary of some of these discussions are listed below:

- **LCPFAC Use Exemption:** EPA specifically excluded certain ongoing activities for “significant new uses,” and these are categorized in this Federal Register amendment.¹¹
- **Research & Development/COVID-19 Exemption.** Some medical supplies and equipment may be used for biopharmaceutical research applications for the current pandemic, and therefore, are exempt from the rule.¹²
- **No De Minimis Exemption.** EPA will not establish a general minimum threshold amount, but will evaluate any exemptions on an individual basis.¹³
- **No Safe Harbor Provision.** EPA believes that a safe harbor approach undermines the regulatory process. The SNUR already states that uses which are ongoing at the time the SNUR was

issued are not “significant new uses,” and EPA believes that is sufficient to address the safe harbor issue.¹⁴

Conclusion

Businesses that manufacture, import, process, or distribute PFAS compounds should evaluate whether any of those compounds and activities are subject to the new SNUR, and if so, take the necessary steps to comply.

For more information on PFAS chemicals, and the regulatory and litigation 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.

1. Id. at 45112.

2. Id.

3. Id at 45111.

4. Id. at 45110.

5. See 40 CFR § 721.10536 for the formula for LCPFAC chemical substances.

<https://www.govinfo.gov/content/pkg/CFR-2019-title40-vol33/xml/CFR-2019-title40-vol33-sec721-10536.xml>

6. <https://www.federalregister.gov/documents/2020/07/27/2020-13738/long-chain-perfluoroalkyl-carboxylate-and-perfluoroalkyl-sulfonate-chemical-substances-significant> at 45111.

7. See 40 CFR § 721.10536 for the formula for LCPFAC chemical substances.

<https://www.govinfo.gov/content/pkg/CFR-2019-title40-vol33/xml/CFR-2019-title40-vol33-sec721-10536.xml>

8. <https://www.federalregister.gov/documents/2020/07/27/2020-13738/long-chain-perfluoroalkyl-carboxylate-and-perfluoroalkyl-sulfonate-chemical-substances-significant> at 45111.

9. Id. at 45112.

10. Id. at 45113.

11. <https://ecfr.federalregister.gov/current/title-40/chapter-I/subchapter-R/part-721/subpart-E/section-721.10536>

12. <https://www.federalregister.gov/documents/2020/07/27/2020-13738/long-chain-perfluoroalkyl-carboxylate-and-perfluoroalkyl-sulfonate-chemical-substances-significant> at 45118-19.

13. Id. at 45120.

14. Id. at 45120-21.

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