

PFAS UPDATE: EPA PROPOSES REPORTING ON THE LAST 10 YEARS OF MANUFACTURE OR IMPORT OF PRODUCTS CONTAINING PFAS

Sep 07, 2021

The Environmental Protection Agency (“EPA”) is proposing new reporting requirements for Per- and Polyfluoroalkyl Substances (“PFAS”) that would require manufacturers, including importers, to report on their manufacture or import of products containing any PFAS compounds in any year looking back to January 1, 2011. The stated intent of this new requirement under the Toxic Substances Control Act (“TSCA”) is so that EPA can “better characterize the sources and quantities of manufactured PFAS in the United States.” [See 86 FR 121 \(June 28, 2021\).](#)

EPA has explained that the Proposed Rule would apply to all chemical substances and mixtures that used a PFAS substance and were manufactured or imported between January 1, 2011 and the effective date of the final rule. [See 86 FR 121 \(June 28, 2021\).](#) A chemical substance is defined broadly at [40 CFR §720.30\(e\)](#), but this definition is subject to some exclusions. EPA indicates that at least 1,364 PFAS substances qualify as a chemical substance, and accordingly, are subject to this Proposed Rule. [See 86 FR 121 \(June 28, 2021\).](#)

[A public comment period is currently ongoing](#), and all comments are due by **September 27, 2021**. Potentially affected businesses should consider submitting public comments after reviewing the topics listed below. As drafted, the Proposed Rule has the potential to impose significant reporting obligations on companies that may not understand or appreciate that the products they manufacture or import contain PFAS.

Does This Proposed Rule Apply to My Business?

This Proposed Rule applies to all products manufactured, sold, or imported in the United States from 2011 through the present, which contain a PFAS chemical substance. EPA has identified the following industries as among those which may be affected:

- Petroleum and Coal Product Manufacturing;
- Chemical Manufacturing;

- Unlaminated Plastics Film and Sheet Manufacturing;
- Electronics and Electrical Components;
- Abrasive Product Manufacturing;
- Machinery Manufacturing;
- Navigation, Aeronautical, and Nautical System Equipment;
- Appliances;
- Containers;
- Wood Products;
- Automobile Manufacturing;
- Metal Service Centers;
- Chemical and Allied Products Merchant Wholesalers; and
- Gasoline Stations.

See [86 FR 121 \(June 28, 2021\)](#).

Impacted products may include personal care products and cosmetics, non-stick cookware, water resistant apparel and outdoor equipment, water and soil resistant furniture, food packaging and containers, and polishes or waxes.

Most TSCA Exemptions Do Not Apply

Your business may be exempt from other reporting obligations under TSCA, but the Proposed Rule eliminates many of the standard exceptions. For example, small manufacturers and processors are not exempt from reporting and recordkeeping requirements under the Proposed Rule. There also are no exemptions for impurities, research and development, or byproducts. See [86 FR 121 \(June 28, 2021\)](#).

What Information Is Requested?

The Proposed Rule requires manufacturers and importers to report PFAS information, which includes:

- Chemical identities;
- Categories of use;

- Production volume;
- Byproducts;
- Environmental and health effects;
- Exposure (duration and number of persons affected); and
- Disposal methods.

Business will have one year following the effective date of the final rule to submit all of the required information to EPA electronically.

In response to the information requested in this Proposed Rule, several questions arise. First, are companies currently monitoring this information? Second, how long will it take companies to gather this information? Finally, does EPA have both the resources and the ability to record ten years of this information?

Topics for Public Comment

EPA is collecting public comments through **September 27, 2021**. “EPA encourages all interested persons to submit comments on the issues identified in this Notification and to identify any other relevant issues as well. This input will assist the Agency in developing a final rule that successfully addresses information needs while minimizing potential reporting burdens associated with the rule.” See 86 FR 121 (June 28, 2021).

The following are the topics that EPA has identified for public comment:

1. Identifying the chemical substances that would be subject to reporting;
2. Considerations for the Agency’s economic analysis;
3. Submission period;
4. Duplicative reporting;
5. Scope of environmental and health effects information collected;
6. Additional information or data elements;
7. EPA’s use and publication of certain non-confidential business data;
8. Joint submissions; and
9. Small manufacturers.

Of course, EPA will accept comments on any other relevant topics, including the extent of the effort a company must conduct to search its records over the past ten years in order to comply with the reporting requirements. The public comment period provides industry a meaningful opportunity to help EPA understand the full scope and impacts of its proposal, as well as a chance to suggest modifications to the Proposed Rule

Conclusion

New PFAS regulations are a constant feature in the environmental news cycle, but this sweeping reporting requirement is one of the broadest regulations proposed to date, and something that individual businesses and industry groups should focus on because of its broad implications. In addition to the administrative burden, and potential enforcement risk posed by the initial compliance requirement, the information reported to EPA will provide a comprehensive database of all products manufactured using this chemistry, which can then be used as a roadmap for future litigation and regulatory enforcement actions.

RELATED PRACTICE AREAS

- PFAS Team

MEET THE TEAM



Thomas S. Lee

San Francisco

tom.lee@bclplaw.com

[+1 415 675 3447](tel:+14156753447)



John R. Kindschuh

St. Louis

john.kindschuh@bclplaw.com

[+1 314 259 2313](tel:+13142592313)

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be "Attorney Advertising" under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP's principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.