

USEPA TO REQUIRE PFAS REPORTING

USEPA is proposing reporting and recordkeeping requirements for per- and polyfluorinated substances (PFAS) manufactured in any year since January 1, 2011 under the Toxic Substances Control Act (TSCA). The requirements apply to any manufacturer or importer of PFAS. The proposed rule was issued on June 28, 2021 at 86 FR 33926ff pursuant to the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116–92, Section 7351). This statute amended TSCA Section 8(a) in December 2019, adding Section 8(a)(7), titled “PFAS Data.” TSCA Section 8(a)(7) requires the Agency to publish a final rule no later than January 1, 2023. Small businesses subject to the proposed rule are expected to incur estimated per-firm costs of \$16,864 to \$92,390. (Unlike TSCA Section 8(a)(1), which expressly exempts small manufacturers and processors, TSCA Section 8(a)(7) provides no such exemption.)

The proposed rule lists at least 1,364 PFAS subject to the one-time reporting if manufactured or imported since January 1, 2011. This list, however, is not exhaustive. The rule defines PFAS as any per- and polyfluorinated substance that structurally contains the unit R-(CF₂)-C(F)(R')R'', where both the CF₂ and CF moieties are saturated carbons and none of the R groups (viz., R, R' or R'') are hydrogen.

PFAS information to be reported includes specific chemical identities (name, Chemical Abstract Service Numbers), uses, production or import volumes by category of use, byproducts, environmental and health effects, worker exposure data, and disposal practices.

For purposes of this rule, articles imported containing PFAS (e.g., as part of surface coatings), are included in the scope of reportable chemical substances. TSCA does not define articles, nor does the statute define articles as a category of substances exclusive of chemical substances.

The rule would require reporting entities to evaluate their current level of knowledge of their manufactured products (including imports), as well as evaluate whether there is additional information that a reasonable person, similarly situated, would be expected to know, possess, or control. An exercise of due diligence would be required as well as information-gathering activities that may be necessary. Such due diligence entails a reasonable inquiry within the full scope of the organization and may also entail inquiries outside the organization to fill any knowledge gaps. Such activities may include, but not necessarily limited to, phone calls or email inquiries to upstream and downstream suppliers, customers, employees, or other agents- e.g., individuals involved in research and development, import or production, or marketing of PFAS.

If a manufacturer or importer does not have actual data on PFAS, he or she would be required to make “reasonable estimates,” e.g., mass balance calculations, emissions factors, or best engineering judgment.

The one-time reporting of PFAS would be done over a period of 6 months, and begin 6 months after the effective date of the final rule. The report is to be prepared and submitted electronically through the Chemical Information Submission System (CISS) housed in CDX, USEPA’s web-based reporting portal.