U.S. EPA Finalizes PFAS Reporting Rule

Key Notes:

- Manufacturers and importers of PFAS-containing substances and articles must submit a one-time report to U.S. EPA by May 2025.
- The reporting period includes PFAS manufacturing and importing activities from 2011 – present.
- The rule requires reporting entities to report information that is known or reasonably ascertainable which will require companies to evaluate activities over the entire reporting period.

On October 11, 2023, U.S. EPA published its long-anticipated per- and polyfluoroalkyl substances (PFAS) reporting rule, which will go into effect on November 13, 2023. This rule will require current and past (2011 – present) manufacturers and importers of PFAS-containing substances, mixtures and articles to report data to EPA by May 2025.

Promulgated under U.S. EPA's authority under the Toxic Substances Control Act ("TSCA"), this rule imposes a one-time reporting obligation on all manufacturers of PFAS who have manufactured PFAS for a commercial purpose in any year since 2011. Because the definition of manufacturing under TSCA also captures imports, the rule will also place reporting obligations on entities who have imported PFAS-containing substances or articles during this time period. The preamble to the rule clarifies, however, that simply *receiving* PFAS from domestic suppliers or other domestic sources is not considered manufacturing PFAS for commercial purposes. Likewise, entities that process and/or use PFAS-containing substances in their operations only need to report if they have also manufactured or imported such substances.

The rule does not contain exemptions that manufacturers may be accustomed to with TSCA's Chemical Data Reporting (CDR). For example, under the CDR reporting program, an imported article containing a chemical substance would be exempt from CDR reporting. However, the PFAS reporting rule does not contain an exemption for importing an article containing PFAS, which likely expands its applicability to many importers who may be unfamiliar with reporting programs under TSCA. Further, unlike other TSCA reporting programs, the final rule does not specify a minimum threshold amount of PFAS in a given mixture, which may consequently trigger reporting obligations for products containing a *de minimis* amount of PFAS.

A notable change from the proposed rule is the definition of "PFAS" in the final rule. Rather than listing the included PFAS substances, U.S. EPA opted for a structural definition. U.S. EPA's intent in finalizing a structural definition is to capture PFAS that may not be known to it through the TSCA inventory or any other reporting means. Another key change is that U.S. EPA has extended the information-gathering phase of the rule to one year rather than the original six-month period. Accordingly, manufacturers may begin reporting their PFAS information to U.S. EPA on November 13, 2024, with a six-month reporting window closing on May 8, 2025.

Other features of the rule include provisions for entities to maintain CBI when completing their reporting, recordkeeping obligations, an outline of the information required to be reported to U.S. EPA, and provisions related to reducing reporting duplication and overlap between the rule and U.S. EPA's other TSCA reporting programs.

Despite the extended timeframe for reporting under the final rule, manufacturers and importers of PFAS, including mixtures and articles containing PFAS, will need to quickly develop diligence strategies to address the expansive period covered by the rule. A manufacturer is obligated to report information that is "known to or reasonably ascertainable" by the manufacturer. Thus, the rule imposes an obligation on entities to evaluate current and past manufacturing and importing activities for the past decade to evaluate if a reporting obligation exists.

Regardless of industry, we recommend all companies that have potentially manufactured or imported PFAS-containing substances or articles since 2011 evaluate the applicability of this important rule.

FOR MORE INFORMATION

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