

Publications

EPA Working to Finalize New Reporting Rule for Thousands of PFAS Substances – Applicable to Everyone Who Manufactures, Produces or Imports (Including PFAS Containing Articles, Which Can Extend to Retailers)

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Jacob M. Bartlett

Kristin L. Watt

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The USEPA's latest proposal for additional per- and polyfluoroalkyl substances (PFAS) regulation is currently under agency review for finalization after the comment period on the proposed rule closed last week. The proposed rule, originally published in the Federal Register on June 28, 2021, calls for a one-time report of PFAS manufacture, use and disposal practices since 2011. The rule is proposed under USEPA's Toxic Substances Control Act (TSCA) authority and as required by the National Defense Authorization Act of 2020. As written, the proposed rule contains several aspects that significantly differ from TSCA's general Chemical Data Reporting (CDR) reporting requirements and from EPCRA's TRI reporting requirements for per- and polyfluoroalkyl substances (PFAS). These differences have the potential to be very burdensome to entities across various industries and include:

1. PFAS is defined broadly to require individual reporting of over 1,300 PFAS substances – compare this to the TRI rule, which required only 172 PFAS for 2020.
2. There is no *de-minimis* or small manufacturer exemptions – any amount of PFAS triggers reporting requirements.
3. There is no byproduct exemption – certain “waste” byproducts that are disposed of and not used may need to be reported.
4. Articles containing PFAS, even imported articles, are reportable.
5. Entities must report additional information beyond just the volumes of produced PFAS substances – this includes reporting information on the disposal and incineration of PFAS, estimates of

worker and commercial user exposure data, and submitting all environmental and health studies or published reports for each reported PFAS substance.

The proposed rule includes the same reporting standard as TSCA's CDR rule. Entities must report information that is "known or reasonably ascertainable." This includes an evaluation of known information and requires reasonable steps to obtain additional information from both upstream suppliers and downstream users. As proposed, reports would be due within one-year of the rule's effective date. Although the reporting deadline and the final requirements are still unknown, the proposed requirements and compressed reporting timeline makes it necessary for covered entities to start preparing now for how they will meet their reporting requirements.

If you have any questions on the proposed rule or on how to start a game-plan for compliance, please feel free to reach out to a Vorys environmental attorney.

Also consider attending an upcoming webinar "Current State of PFAS Litigation and Regulation: What You Need to Know," a joint effort between Vorys and Antea Group, on October 19, 2021. Registration details are available [here](#). Additional information on our environmental practice is available [here](#).