

[Updates](#)

October 24, 2023

EPA Finalizes PFAS Reporting Rule



The U.S. Environmental Protection Agency (EPA) published a final [reporting rule](#) under the Toxic Substances Control Act (TSCA) on October 11, 2023, which requires manufacturers of per- and polyfluoroalkyl substances (PFAS) and PFAS-containing products to report information on PFAS dating back to 2011.

PFAS are long-lasting chemicals used to make a wide range of products resistant to heat, water, oil, and corrosion.^[1] PFAS have been a regulatory priority of the [Biden-Harris administration](#) and [EPA](#), and [EPA's new rule](#) is the next major step in understanding how PFAS have historically been used and in what quantities. The rule will require significant compliance efforts by industry; EPA estimates the industry burden at approximately 11.6 million hours and a cost of \$876 million.

Covered Entities

The PFAS reporting rule applies to anyone that has manufactured, for a commercial purpose, a chemical substance or mixture containing a chemical substance (including articles ^[2]) defined as PFAS at any time since January 1, 2011.^[3] The reporting requirements also extend to entities that have imported articles containing covered PFAS chemicals into the United States, as well as to PFAS-containing byproducts and impurities produced during the manufacturing process.^[4] The reporting rule does not establish any *de minimis* thresholds or minimum production volumes. If an entity has manufactured in (or imported into) the United States PFAS or an article containing PFAS, then it is required to report.

EPA [clarifies](#) that entities "who solely process, distribute, and/or use PFAS, and do not manufacture (including import) PFAS for a commercial purpose, are not required to report under this rule." Therefore, retailers have no reporting obligations under the rule, provided they did not also import products containing PFAS. In addition, noncommercial research and development (R&D) activities—such as scientific experimentation, research, or analysis conducted by academic, government, or independent not-for-profit research organizations (unless the

activity is intended for eventual commercial purposes)—are not subject to the reporting requirements [under the rule](#).

Reportable Information

Covered entities must report the following information, to the extent known or reasonably ascertainable by them, [\[5\]](#) to EPA for each site where the covered PFAS chemical was manufactured:

- Company and plant site information, including the highest level U.S. parent company details.
- Chemical-specific information, including common or trade name, chemical identity, molecular structure, and the physical form of the PFAS (e.g., powder or liquid).
- Categories identifying how the PFAS chemical is used, including the sector, function, and consumer/commercial product categories of the use.
- Concentrations of PFAS in consumer or commercial products.
- Manufactured amounts and production volumes.
- Identification of byproducts resulting from the manufacturing, processing, use, or disposal of PFAS.
- Existing environmental and health effects of each reported PFAS chemical.
- Information about worker exposure to PFAS.
- PFAS disposal data.

Streamlined and Joint Reporting

Manufacturers required to report as an importer of an article containing PFAS will have an option to use a streamlined reporting form that focuses on known or reasonably ascertainable information about PFAS contained in the imported article. [\[6\]](#)

EPA is also enabling a joint submission option in which a manufacturer whose supplier does not voluntarily provide required information can initiate a request to allow the supplier to confidentially provide this information to EPA. Suppliers will also have the option to share reporting tool requests throughout their own supply chains.

Compliance Deadlines

The reporting rule is effective November 13, 2023. There is a one-year information-gathering period, and then the reporting tool will open for a six-month period. Final reports for most covered entities are due to EPA on May 8, 2025 (18 months after the effective date). For article importers that utilize the streamlined reporting process and meet the small manufacturing requirement under 40 C.F.R. § 704.3, [\[7\]](#) EPA is giving an additional six months for reporting, with final reports due on November 10, 2025 (24 months after the effective date). The rule also contains provisions allowing reporting manufacturers to claim confidential business information (CBI) protection for reported information.

Next Steps

Entities will need to assess whether they have reporting obligations under the new rule and, if so, for which chemical substances/articles. Although not required under the rule, EPA is encouraging entities to keep a record of any decision that the entity does not have a reporting obligation. Reporting entities will want to begin the information collection process as early as possible to ensure sufficient time to coordinate with suppliers or downstream users, review collected information for CBI claims, and timely submit the information to EPA.

Endnotes

[1] Although widely known for being present in firefighting foam, PFAS chemicals can be found in many consumer products, including food packaging, cosmetics, personal care products, furniture, carpets, textiles, and apparel.

[2] An "article" is a manufactured item that: (1) is formed to a specific shape or design during manufacture; (2) has end-use functions dependent upon its shape or design; and (3) has either no change of chemical composition during its end use or has changes of composition which do not serve a commercial purpose separate from the article. 40 C.F.R. § 704.3.

[3] 40 C.F.R. § 705.5 (to be codified); 40 C.F.R. § 705.10 (to be codified).

[4] See 15 U.S.C. § 2602(9) (definition of manufacturer) and 40 C.F.R. § 705.10 (to be codified).

[5] "Known or reasonably ascertainable by" means all information in a person's possession or control, plus all information that a reasonable, similarly situated person might be expected to possess, control, or know. 40 C.F.R. § 704.3.

[6] There is also a streamlined reporting option for R&D substances below a certain threshold.

[7] See 40 C.F.R. § 705.20.

© 2023 Perkins Coie LLP

Authors

Explore more in

[Environment, Energy & Resources](#) [Outdoor](#) [Retail & Consumer Products](#) [Food & Beverage](#)

Related insights

Update

[**President Trump Creates “Make America Healthy Again” Commission**](#)

Update

[**FERC Meeting Agenda Summaries for February 2025**](#)