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TSCA REPORTING AND RECORDKEEPING REQUIREMENTS FOR PFAS

BACKGROUND

- Mandated by the 2020 NDAA
- Required to develop a rule that “requires each person who has manufactured a chemical that is a [PFAS] in any year since 2011”
- Chemical identity and structure, production, use, exposure, disposal, health and environment effects, etc.

ESTIMATED COSTS

2021

\$10.8 million

2022

\$876 million

FINAL RULE

- Effective November 13, 2023
- **One-year** information collection period, followed by a **six-month** reporting period.
 - An additional six-months is granted to small manufacturers.

SCOPE OF COVERED ENTITIES

- Anyone who has manufactured (**including imported**) a PFAS for a commercial purpose in any year since January 1, 2011.
- Includes coincidental manufacture of PFAS as byproducts or impurities.
- Persons who have only processed, distributed in commerce, used, and/or disposed of PFAS are *not* required to report.

MANUFACTURE FOR COMMERCIAL PURPOSE

Import, production, or manufacturing of a chemical substance or mixture containing a chemical substance with the purpose of obtaining an immediate or eventual commercial advantage for the manufacturer.

REPORTING CONSIDERATIONS

- No exemption for articles
- No *de minimis* exemption
- Includes PFAS present in chemical mixtures
- Limited small business relief

DEFINITION OF PFAS

Includes at least one of these three structures:

- $R-(CF_2)-CF(R')R''$, where both the CF_2 and CF moieties are saturated carbons;
- $R-CF_2OCF_2-R'$, where R and R' can either be F , O , or saturated carbons; and
- $CF_3C(CF_3)R'R''$, where R' and R'' can either be F or saturated carbons.

DATA ELEMENTS

- Chemical Identity
- Production Volumes
- Industrial Uses
- Commercial Uses
- Consumer Uses
- Byproducts
- Worker Exposure
- Disposal
- Environmental and Health Effects

REPORTING STANDARD

Known or reasonable ascertainable.

All information in a person's possession or control, plus all information that a person similarly situated might be expected to possess, control, or know.

May include inquiries outside the organization to fill knowledge gaps.

KNOWN OR REASONABLY ASCERTAINABLE

- Marketing studies
- Sales reports
- Customer surveys
- Safety Data Sheets
- Supplier Notifications
- Information from Chemical Abstract Service or Duns & Bradstreet

REPORTING AND RECORDKEEPING

- All information must be submitted electronically through Central Data Exchange (CDX).
- EPA developing Chemical Information Submission System (CISS).
- Retain records that document any information reported to the EPA for **five years**, beginning on the last date of the information submission period.

DUPLICATIVE REPORTING

- Previously submitted data
- Same PFAS in that same year
 - Chemical Data Reporting
 - Toxic Release Inventory
 - Greenhouse Gas Reporting Program
 - TSCA sections 8(d) and 8(e)
 - Reporting a PFAS byproduct on its own reporting form

TOXICS RELEASE INVENTORY

ENHANCED REPORTING

- All PFAS currently listed and any future PFAS added to TRI will have a 100 pound reporting threshold.
- All PFAS will automatically be added to the chemicals of special concern list.
- Removed the availability of the *de minimis* exemption for purposes of the Supplier Notification Requirements for **all chemicals** on the list of chemicals of special concern.

LEGISLATIVE UPDATES

U.S. SENATE

- Committee on Environment and Public Works
 - Committee Chair Carper (D - DE) and Ranking Member Moore Capito (R-WV) are working on bipartisan PFAS legislation.
- PFAS User Registry, Information Clearinghouse, Technology Development
- Disagreement among Senators about CERCLA liability may derail bipartisan efforts.

RESOURCES

- [EPA Instructions for Reporting PFAS Under TSCA Section 8\(a\)\(7\)](#)
- [EPA Small Entity Compliance Guidance for TSCA Section 8\(a\)\(7\)](#)
- [Final TSCA 8\(a\)\(7\) PFAS Reporting and Recordkeeping Rule Text](#)
- [Final Reporting Requirements for PFAS and to Supplier Notifications of Chemicals of Special Concern: Community Right-to-Know Toxic Chemical Release Reporting Rule Text](#)