

## **USEPA Finalizes Rule Requiring Reporting of PFAS Data Under Toxic Substances Control Act (TSCA)**

On September 28, 2023, the United States Environmental Protection Agency (USEPA) finalized a new rule under the Toxic Substances Control Act (TSCA) that requires companies to report the manufacture or import of any per- and polyfluoroalkyl substances (PFAS) since 2011, including products containing PFAS. USEPA's announcement on the final rule can be found [here](#). TSCA provides USEPA with the authority to require reporting, record-keeping and testing, and impose restrictions related to chemical substances and/or mixtures.

The new rule is a statutory requirement under the FY2020 National Defense Authorization Act (NDAA) that requires all manufacturers (including importers) of PFAS and PFAS-containing products since January 1, 2011 to report the following information to USEPA:

- The covered common or trade name, chemical identity and molecular structure of each chemical substance or mixture;
- Categories or proposed categories of use for each substance or mixture;
- Total amount of each substance or mixture manufactured or processed, the amounts manufactured or processed for each category of use, and reasonable estimates of the respective proposed amounts;
- Descriptions of byproducts resulting from the manufacture, processing, use, or disposal of each substance or mixture;
- All existing information concerning the environmental and health effects of each substance or mixture;
- The number of individuals exposed, and reasonable estimates on the number of individuals who will be exposed, to each substance or mixture in their places of work and the duration of their exposure; and
- The manner or method of disposal of each substance or mixture, and any change in such manner or method.

USEPA originally proposed this rule in June 2021. The final rule expands on the definition of PFAS that was contained in the prerule by including 41 additional PFAS that were identified as being "of concern." In total, USEPA has determined that at least 1,462 PFAS that are known to have been made or used in the United States since 2011. Importantly, the vast majority of manufacturers and importers of PFAS will have a reporting obligation — the rule does not contain exceptions for things like PFAS byproducts, PFAS impurities in a product, or de minimis volumes of PFAS.

The final rule will go into effect 30 days after the rule is published in the Federal Register. Any entities, including small entities, that have manufactured or imported PFAS in any year since January 1, 2011 have 18 months from the effective date of the final rule to comply with the reporting requirements. For small entities whose reporting obligations are exclusively the result of importing into the United States PFAS contained in products have 24 months from the effective date of the rule to comply with its reporting obligations.

PFAS are a class of synthetic, man-made chemicals that have been used since the 1940s to make products that are resistant to water, heat, and oil. These products include cookware, carpets, clothing, fabrics for furniture, paper packaging for food, and other materials that are resistant to water, grease, or stains. They are also used in firefighting foams and in a number of industrial processes.

For questions about the new rule and complying with its reporting requirements, please contact David Edelstein at [dedelstein@archerlaw.com](mailto:dedelstein@archerlaw.com) or 856-354-3125, or Charles Dennen at [cdennen@archerlaw.com](mailto:cdennen@archerlaw.com) or 856-673-3932.

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