

PFAS Reporting Rules - - What Every Company Need to Know



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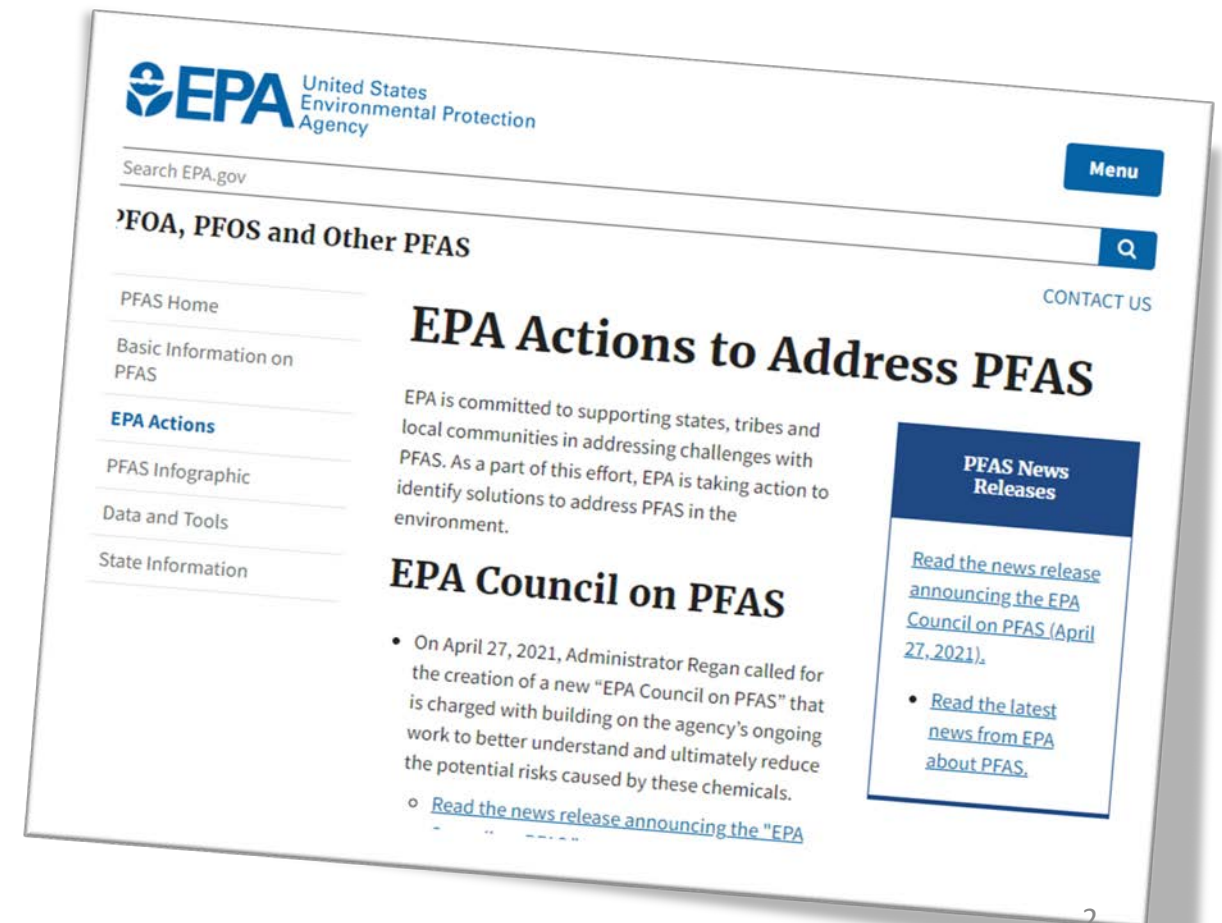


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Webinar Topics

- Overview of Proposed Reporting Rule
- Key Issues
- Other Per- and Polyfluoroalkyl Substances (PFAS) Rulemakings



Overview of Proposed Reporting Rule

- **National Defense Authorization Act (NDAA) History**
- **PFAS Definition/Scope**
- **Entities Subject to Reporting**
- **What Must Be Reported**
- **Recordkeeping**

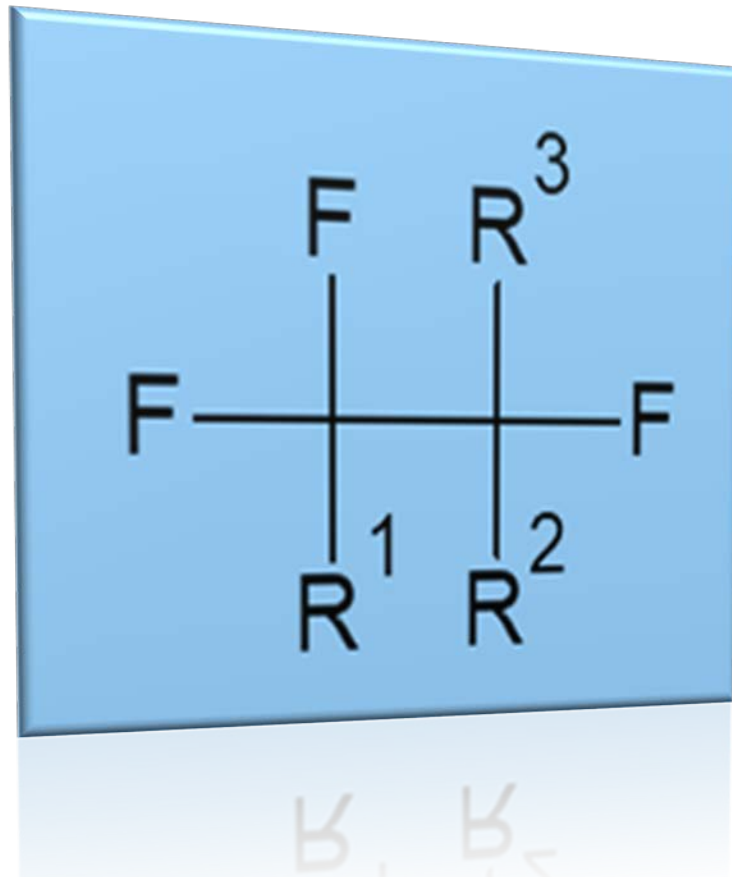
NDAA History

- **The Fiscal Year 2020 NDAA amended Toxic Substances Control Act (TSCA) Section 8(a) to add Section 8(a)(7)**
- **TSCA Section 8(a)(7) requires the U.S. Environmental Protection Agency (EPA) to promulgate a rule by January 2, 2023, that requires “each person who has manufactured” a PFAS in any year since January 1, 2011, to submit certain information to EPA**

Proposed TSCA Section 8(a) PFAS Rule

- On June 28, 2021, EPA proposed a TSCA Section 8(a) rule to require reporting on PFAS manufactured in the United States
- The proposed rule would require all manufacturers (including importers) of PFAS in any year since 2011 to report information related to chemical identity, categories of use, volumes manufactured and processed, byproducts, environmental and health effects, worker exposure, and disposal

PFAS Definition/Scope



- EPA proposes that a PFAS includes any substance that has at least two fluorine atoms on one saturated carbon and at least one fluorine on an adjacent saturated carbon with neither carbon bound to a hydrogen where none of R¹, R², or R³ is H

PFAS Definition/Scope

- Based on this definition, EPA provides a list of more than 1,000 substances listed on the TSCA Inventory and a list of low volume exemption (LVE) substances that would be subject to reporting
- EPA is clear that its list is not a complete list – rather, individual manufacturers and importers must evaluate substances against the categorical definition to determine if reporting is required

CASRN	Chemical name
76-14-2	Ethane, 1,2-dichloro-1,1,2,2-tetrafluoro-
76-15-3	Ethane, 1-chloro-1,1,2,2-pentafluoro-
76-16-4	Ethane, 1,1,1,2,2,2-hexafluoro-
76-19-7	Propane, 1,1,1,2,2,3,3,3-octafluoro-
115-25-3	Cyclobutane, 1,1,2,2,3,3,4,4-octafluoro-
124-73-2	Ethane, 1,2-dibromo-1,1,2,2-tetrafluoro-
306-91-2	Phenanthrene, 1,1,2,2,3,3,4,4,4a,4b,5,5,6,6,7,7,8,8,8a,9,9,10,10,10a-tetracosafuorotetradecahydro-
306-94-5	Naphthalene, 1,1,2,2,3,3,4,4,4a,5,5,6,6,7,7,8,8,8a-octadecafluorodecahydro-
307-24-4	Hexanoic acid, 2,2,3,3,4,4,5,5,6,6,6-undecafluoro-
307-30-2	1-Octanol, 2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-pentadecafluoro-
307-34-6	Octane, 1,1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-octadecafluoro-
307-35-7	1-Octanesulfonyl fluoride, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-
307-55-1	Dodecanoic acid, 2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,12-tricosafuoro-
307-60-8	Dodecane, 1,1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,12-pentacosafuoro-12-iodo-
307-63-1	Tetradecane, 1,1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,13,13,14,14-nonacosafuoro-12-iodo-
307-70-0	1-Undecanol, 2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11-eicosafuoro-
307-98-2	2-Propenoic acid, 2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-pentadecafluorooctyl ester.
311-89-7	1-Butanamine, 1,1,2,2,3,3,4,4,4-nonafluoro-N,N-bis(1,1,2,2,3,3,4,4,4-nonafluorobutyl)-

Entities Subject to Reporting

- The proposed rule applies to all manufacturers (including importers) of PFAS in any year since 2011
- “Manufacture” includes anyone who has manufactured for commercial purposes:
 - For commercial distribution, including test marketing
 - For use by manufacturer, including as a research and development (R&D) product or as an intermediate
 - Produced coincidentally (*e.g.*, byproducts and impurities)
 - Produced during end-use (*e.g.*, formed during resin curing)
 - Produced as a result of ageing or weathering



What Must Be Reported

- Requires reporting related to chemical identity, categories of use, volumes manufactured and processed, byproducts, environmental and health effects, worker exposure, and disposal
- Manufacturers must report information to the extent that the information is “known to or reasonably ascertainable by” the manufacturer
- “Known to or reasonably ascertainable by” would be defined to include “all information in a person’s possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know”

What Must Be Reported

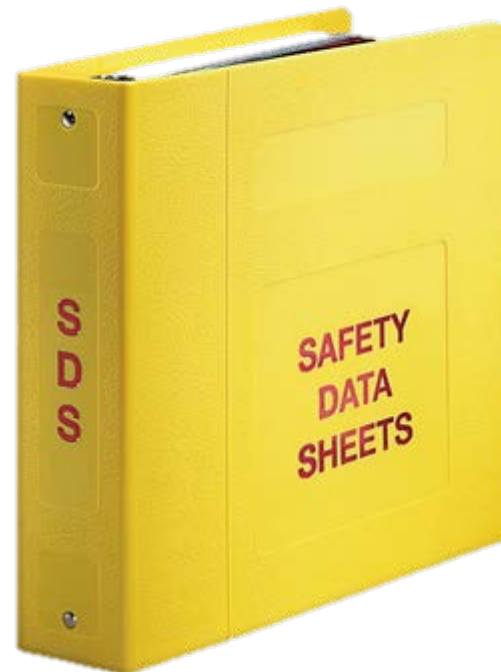
- **Types of information that are considered to be in a manufacturer's possession or control, or that a reasonable person similarly situated might be expected to possess, control, or know, include:**
 - **Files maintained by the manufacturer, such as marketing studies, sales reports, or customer surveys**



What Must Be Reported

- **Types of information that are considered to be in a manufacturer's possession or control, or that a reasonable person similarly situated might be expected to possess, control, or know, include:**

- **Information contained in standard references showing use information or concentrations of chemical substances in mixtures, such as a safety data sheet (SDS) or a supplier notification**



What Must Be Reported

- **Types of information that are considered to be in a manufacturer's possession or control, or that a reasonable person similarly situated might be expected to possess, control, or know, include:**
 - **Information from the Chemical Abstracts Service (CAS) or from Dun & Bradstreet**
 - **The proposed rule states that this information may also include knowledge gained through discussions, conferences, and technical publications**



Recordkeeping Requirements

- Each person who is subject to the reporting requirements would be required to retain records that document any information reported to EPA
- EPA proposes a five-year recordkeeping period, beginning on the last date of the submission period



Issues for Comment

- **Identifying chemicals subject to reporting (*i.e.*, specific PFAS and whether to include imported articles)**
- **Considerations for the economic analysis**
- **Submission period**
- **Potential duplicative reporting concerns**
- **Scope of “existing environmental and health information” collected**
- **Additional data elements or information collected**
- **EPA’s use and publication of non-confidential business information (CBI) data**
- **Joint submissions allowed when necessary**
- **Small manufacturer considerations (*i.e.*, regulatory and non-regulatory assistance and outreach)**
- **Comments are due September 27, 2021**

Key Issues

- **Absence of exemptions**
 - **No exemption for small businesses**
 - **No exemptions for byproducts, impurities, or polymers**
 - **No exemption for PFAS-containing articles (including articles containing PFAS as part of surface coatings)**
 - **No exemptions for substances formed during end-use, product ageing, or weathering**
 - **No exemption for non-isolated intermediates**

Key Issues

➤ Level of diligence

- Not clear if the standard of “known or reasonably ascertainable” used for chemical data reporting (CDR) will apply; EPA states that it does, but also states that it expects that reporters ask suppliers

Key Issues

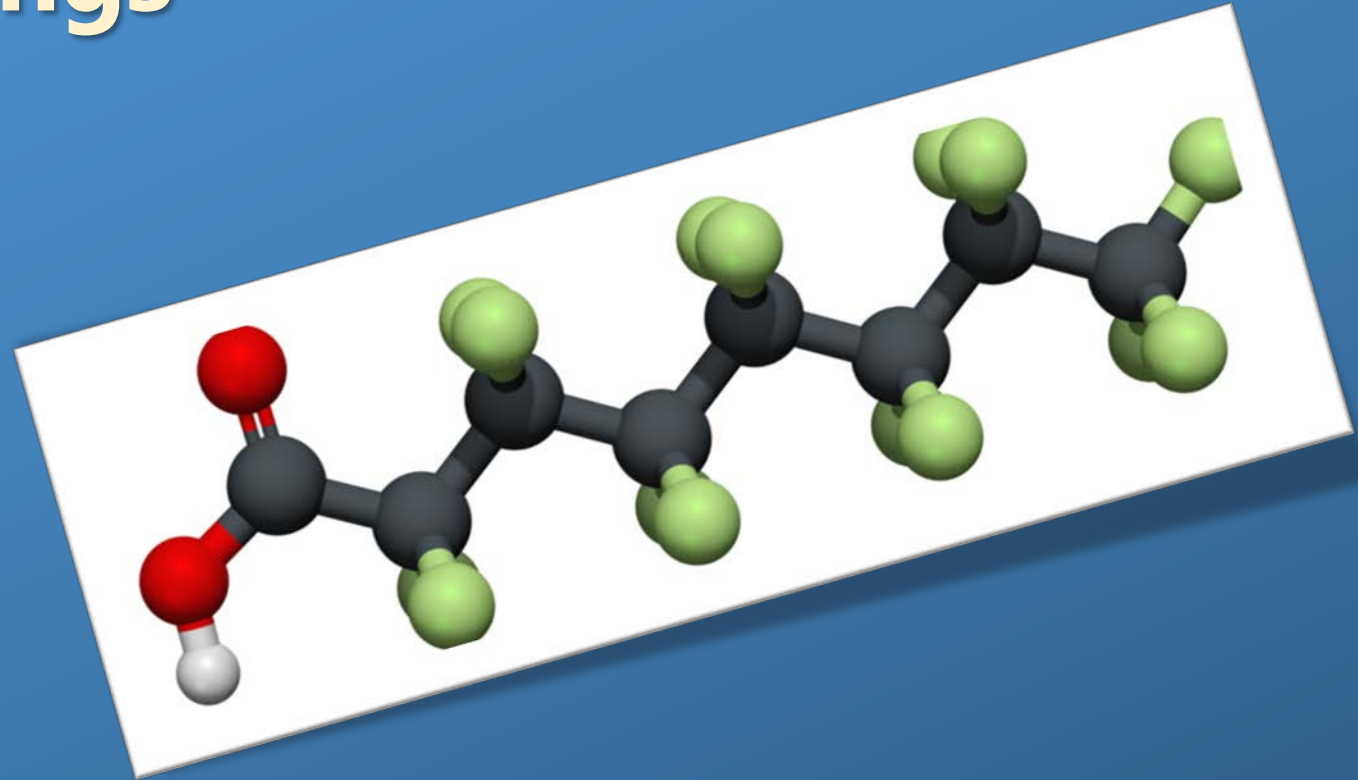
- **EPA's vast underestimate of the effort required to report for ten years of retrospective manufacture and imports, especially for articles**

Key Issues

- **Avoidance of unnecessary/duplicative records**
 - Information that has been submitted under CDR may be referenced rather than re-submitted
 - Only information submitted for the primary reporting years is likely to be sufficient, however, to satisfy the reporting requirement

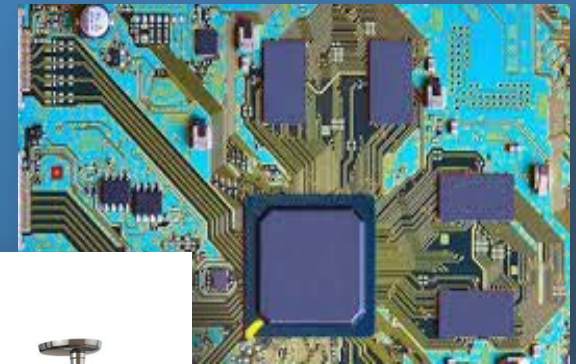
Other PFAS Rulemakings

On July 27, 2020, EPA promulgated a final SNUR for LCPFAC and perfluoroalkyl sulfonate chemical substances



Articles containing certain LCPFAC as a surface coating and carpet containing perfluoroalkyl sulfonate chemical substances can no longer be imported into the United States without EPA review

This action means that articles like textiles, carpet, furniture, electronics, and household appliances that could contain certain PFAS chemicals cannot be imported into the United States unless EPA reviews and approves the use or puts in place the necessary restrictions to address any unreasonable risks



Other PFAS Rulemakings



Courtesy State of Washington Dept. of Ecology



- **EPA's New Chemicals Program is implementing a new strategy for reviewing and managing LVE requests for PFAS**
- **EPA "generally expects" that it will deny pending and new LVE submissions for PFAS**

PFAS LVE Stewardship Program



- The goal is to stop the ongoing manufacture of PFAS under previously approved LVEs that have not gone through the full premanufacture review process
- Companies may choose to withdraw their LVEs and certify that they will no longer manufacture or import those PFAS
- Alternatively, companies may choose to withdraw their LVEs following submission and review of a premanufacture notice (PMN)

Other PFAS Rulemakings

On June 3, 2021, EPA published a final rule adding three PFAS to the Toxics Release Inventory (TRI) list

The screenshot shows the EPA's Toxics Release Inventory (TRI) Program webpage. At the top is the EPA logo and a search bar. Below the navigation bar, the title "Toxics Release Inventory (TRI) Program" is displayed. A large image of a house with a blue overlay box titled "TRI Resources for Communities" is featured. The overlay box contains text about getting an overview of the TRI Program and a link to visit the webpage for communities. Below the image, there is a section titled "What is the TRI?" which explains that the TRI is a resource for learning about toxic chemical releases and pollution prevention activities. To the right of this section is a "Sign Up for TRI Emails" form with an input field for an email address and a "sign up" button.

EPA United States Environmental Protection Agency

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CONTACT US

Toxics Release Inventory (TRI) Program

TRI Resources for Communities

Get a basic overview of the TRI Program, find local TRI facilities, learn how your community can use the TRI, and more.

◦ [Visit the webpage for communities](#)

1 2 3

What is the TRI? The Toxics Release Inventory (TRI) is a resource for learning about toxic chemical releases and pollution prevention activities reported by industrial and federal facilities. TRI data support informed decision-making by communities, government agencies, companies, and others. Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) created the TRI.

Sign Up for TRI Emails

Enter your email

sign up

- **Added because they are now subject to a SNUR under TSCA**
- **Reporting forms for these PFAS will be due by July 1, 2022, for reporting year 2021 data**
- **Follows on 172 PFAS added for reporting year 2020**
- **EPA anticipates the automatic addition of more PFAS, including perfluorobutane sulfonic acid (PFBS)**

	A	B
1	CASRN	TRI Chemical Name
2	335-93-3	Silver(I) perfluorooctanoate
3	507-63-1	Perfluorooctyl iodide
4	2395-00-8	Potassium perfluorooctanoate
5		
6		

◀ ▶
Introduction
RY20 TRI non-CBI PFAS (172)
RY21 TRI non-CBI PFAS (3)
All TRI non-CBI PFAS (175)

Q&A



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THANK YOU

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