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PFAS REGULATORY STATUS

Toxic Substances Control Act (TSCA) Section 8(a)(7) Reporting and Recordkeeping Requirements for Per- and Polyfluoroalkyl Substances (PFAS)

2024

WHAT'S HAPPENING

The Environmental Protection Agency (EPA) is requiring companies that manufacture and/or import per- and polyfluoroalkyl substances (PFAS), whether on its own, in mixtures, or in articles into the United States (US) in any year since 1 January 2011, to submit certain information to EPA under the Toxic Substances Control Act (TSCA).

Information regarding PFAS uses, production volumes, byproducts, disposal, exposures, and existing information on environmental or health effects are required to be reported. Whilst the reporting deadline is 8 May 2025 for companies, small companies have an additional six months (until 10 November 2025) to submit their reports to EPA.

1976

TSCA became the first significant legislation regulating industrial chemicals in the USA.

2016

TSCA underwent significant amendments under 'The Frank R. Lautenberg Chemical Safety for the 21st Century Act.' Among those amendments, authority has been bestowed on EPA to determine and address unreasonable risk for existing substances. EPA's process for ensuring the safety of existing chemicals includes prioritization of the chemicals for risk evaluation, conducting risk determinations, and managing the risk. EPA identified 10 chemicals that would be assessed first.

1982

EPA published an inventory of 62,000 industrial chemicals reported to be in use.

2020

EPA finalized its obligations under TSCA section 8(a)(7), as amended by the National Defense Authorization Act for Fiscal Year 2020 (FY 2020 NDAA) and created a more comprehensive database of previously manufactured PFAS to improve the Agency's understanding of PFAS in commerce and support actions to address PFAS exposure and contamination.

2023

EPA published a Final Rule, which provides reporting and recordkeeping requirements for companies that have manufactured and/or imported PFAS since 1 January 2011.

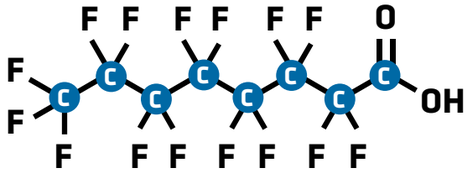
2025

The reporting period opens on 11 July 2025 and ends on 22 January 2026 for all manufacturers (or importers) except for small manufacturers (or importers) for which the submission deadline is 11 July 2026.

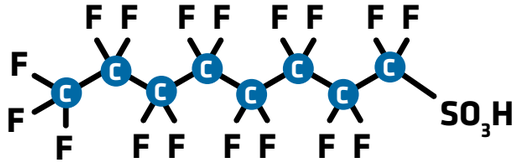
DESCRIPTION AND USES

There is no universally accepted definition of PFAS that encompass thousands of synthetic substances used in industry and consumer products since the 1940s. This complicates how they are regulated and affect the scope under each regulation.

However, in general, PFAS are characterized as having carbon atoms linked to each other and bonded to fluorine atoms at most (per-) or all (poly-) of the available carbon bonding sites.



PFOA - Perfluorooctanoic Acid



PFOS - Perfluorooctane Sulfonic Acid

The carbon-fluorine bond is one of the strongest single bonds in chemistry, which is why many PFAS are persistent and break down very slowly in the environment. The Organization for Economic Co-operation and Development (OECD) has published CAS Numbers for more than 4,700 PFAS.

PFAS DEVELOPMENT TIMELINE

1930

1940

DuPont chemist discovers Teflon and polytetrafluoroethylene (PTFE)

1950

3M invents PFOA and other C8 compounds

DuPont enters market with Teflon

1960

Navy works with 3M to develop aqueous film forming foam (AFFF)

3M patents Lightwater AFFF

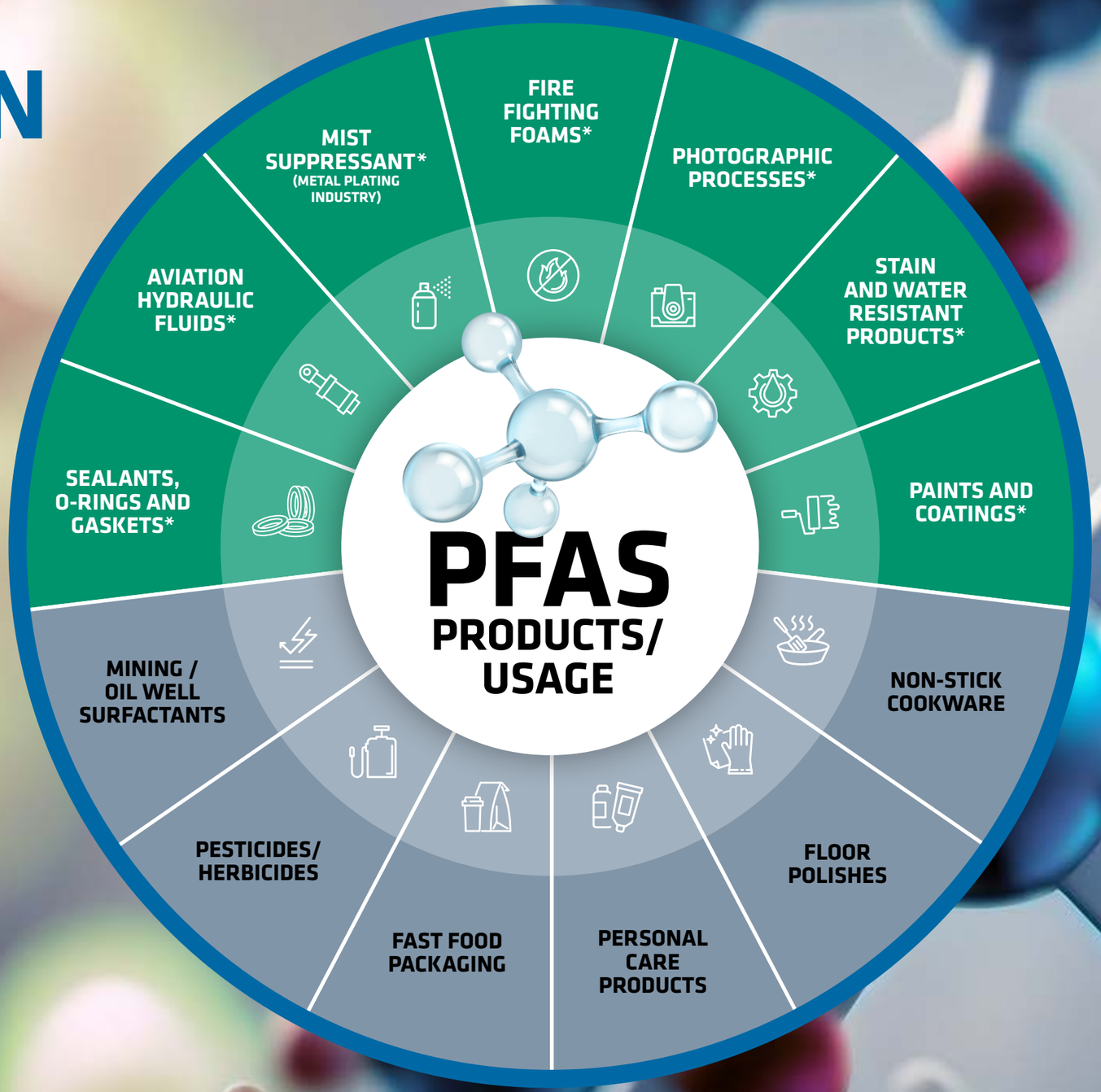
1970

First US Military specifications for AFFF

DESCRIPTION AND USES

PFAS have been gaining global public and regulatory attention for several years. Their widespread use across various sectors, coupled with regulatory and public concerns about PFAS potential effects on human health and the environment, has prompted action to significantly decrease or eliminate PFAS manufacture and use.

* USED IN A&D INDUSTRY



APPLICABILITY

This rule applies to manufacturers and importers of PFAS containing products and articles. It is emphasized that articles are not exempt from this regulation making it additionally challenging to obtain all needed information on PFAS.

The definition of manufacture and articles can be found in 40 C.F.R. Section 705.3.

WHAT IS AN ARTICLE?

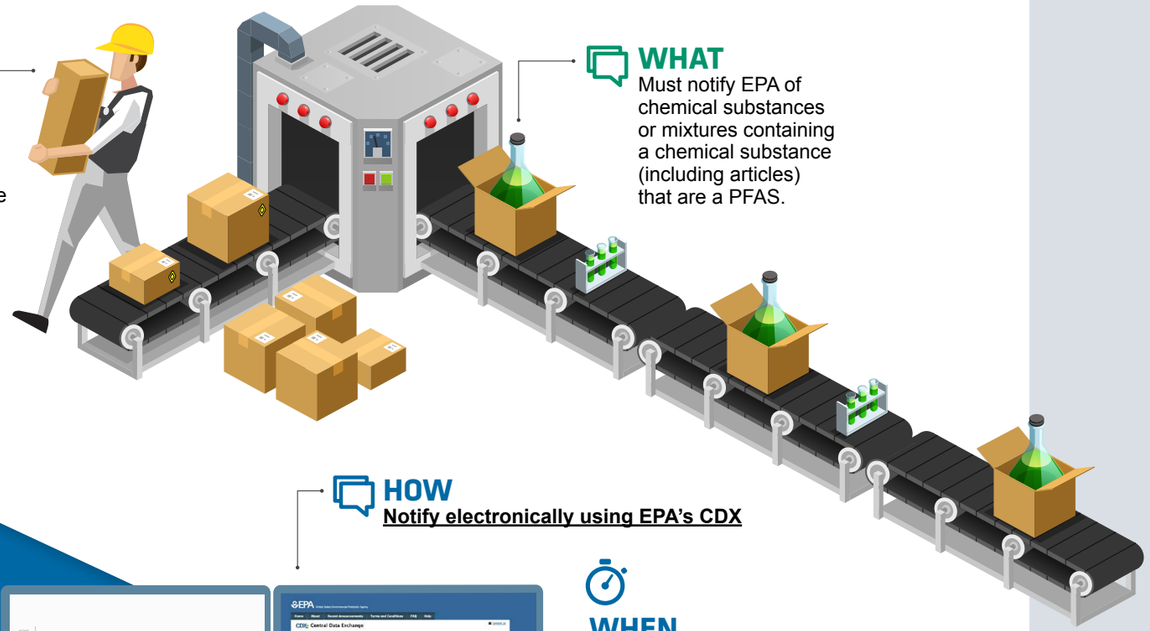
1. An item which is formed to a specific shape or design during manufacture,
2. which has end use function(s) dependent in whole or in part upon its shape or design during end use, and
3. which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the article, and that result from a chemical reaction that occurs upon end use of other chemical substances, mixtures, or articles; except that fluids and particles are not considered articles regardless of shape or design.

EXAMPLES OF PRODUCTS, INCLUDING ARTICLES, THAT MAY CONTAIN PFAS

- SEMICONDUCTOR FABRICATION
- LUBRICANTS
- SEALS
- COATINGS
- HYDRAULIC FLUIDS
- CORROSION INHIBITORS
- HEAT TRANSFER FLUIDS
- LIFESAVING EQUIPMENT
- INSULATED WIRES/CABLES
- LCD/LED DISPLAYS
- OPTICAL FIBERS
- FLUORINATED GASES
- FOAM-BLOWING AGENTS
- SOLVENTS
- TEXTILES
- METAL PLATING / MFG ADDITIVES

REPORTING REQUIREMENTS

Manufacturers and/or importers must identify chemical substances containing PFAS that were manufactured or imported from 1 January 2011 – 31 December 2022 (LOOKBACK PERIOD)



WHO
Companies that ***manufactured*** or ***imported*** PFAS for a commercial purpose during the lookback period.

WHAT
Must notify EPA of chemical substances or mixtures containing a chemical substance (including articles) that are a PFAS.

HOW
Notify electronically using EPA's CDX

WHEN
Most reporting would be required by 22 January 2026. ***NOTE:*** Small manufacturers* that are article importers have until 11 July 2026.

PFAS COVERED BY THE REPORTING RULE

PFAS either on their own or in mixtures and in articles that meet at least one of the following three structures, are covered under the Final Rule:

$R\text{-}(CF_2)\text{-}CF(R)R''$
where both the CF_2 and CF moieties are saturated carbons

$R\text{-}CF_2OCF_2\text{-}R'$
where R and R' can either be F, O, or saturated carbons

$CF_3C(CF_3)R'R''$
where R' and R"" can either be F or saturated carbons

EPA has published two PFAS lists that meet the above definition (at least one of the three structures) and thus reportable under the Rule:

Comp Tox Chemicals Dashboard PFAS List

(does not include polymers or unknown or variable compositions, complex reaction products, and biological materials (UVCBs))

SRS PFAS List

These PFAS lists are non-exhaustive—any PFAS that meet the definition of one of the three structures will be subject to reporting. Fluoropolymers that meet the above definition are in scope as well.

Entities that have only processed, distributed in commerce, used and/or disposed of PFAS are not required to report under this Rule, unless they also have manufactured PFAS for a commercial purpose.

SMALL MANUFACTURERS*

EPA is granting an additional six month for reporting to small manufacturers (as defined at 40 CFR 704.3) whose reporting obligations under this rule are exclusively from article import.

Small manufacturers are defined as manufacturers and/or importers whose i) total annual sales, when combined with those of its parent company, are less than $120 million, and the annual production volume of a chemical substance is less than 100,000 pounds, or ii) total annual sales, when combined with those of its parent company, are less than $12 million.

REGULATORY OBLIGATIONS

I: Report

EPA is requiring that PFAS manufacturers and importers submit information for each PFAS, for each year in which that substance was manufactured since January 1, 2011. The information include:

- Company and plant site information
- Chemical identifiers, such as the common/trade name of the PFAS, and CAS number
- Categories of use and concentration ranges
- Manufactured/imported amount
- By-product reporting
- Environmental and health effects
- Worker exposure data
- Disposal data

In section 705.18 of the Code of Federal Regulations, EPA is allowing streamlined reporting for article importers and research and development substances where information requested in section 705.15 is not known or reasonable ascertainable. The streamlined reporting would include the following:

- Company and plant site information
- Chemical-specific information:
  - common or trade name
  - chemical identification, molecular structure
  - generic name, etc.
- Categories of use:
  - industrial processing and use information
  - industrial activities sector
  - sector specific function categories
  - consumer and commercial use information
  - product specific function categories
  - consumer or commercial use designations
  - in or on consumer products intended for children
  - estimated maximum concentration
- Imported article production volume
- Any additional information requested by EPA in the rule including supplemental attachments

II: Known to or reasonably ascertainable information

The PFAS Rule requires companies to submit known to or reasonably ascertainable information to EPA. This means “all information in a person’s possession or control, including all information that a reasonable person similarly situated might be expected to possess, control, or know.” Companies must make reasonable efforts to gather the necessary information.

This may include making internal inquiries (within the company) and contacting suppliers to find out if PFAS is contained in the products they manufactured or imported. However, EPA has clarified that no new testing or surveys are required.

If a company does not know or cannot reasonably make estimates for the necessary information, they may indicate such information as “Not Known or Reasonably Ascertainable (NKRA).” For further information, see EPA’s guidance documents on the Assessing and Managing Chemicals under TSCA webpage – “Instructions for Reporting PFAS Under TSCA Section 8(a)(7)” and “Small Entity Compliance Guidance.”

CONTINUED

REGULATORY OBLIGATIONS

III: Confidential Business Information (CBI)

In line with TSCA Section 14, companies may claim the following information as CBI:

- Chemical identifiers, such as the chemical substance name and CAS number, that are not on the public (non-confidential) TSCA inventory
- Company identifier
- Production volume/amount

Exceptions for information considered to be CBI include:

- Chemical identifiers for PFAS on the public (non-confidential) TSCA inventory
- Generic chemical names
- Low Volume Exemption numbers
- The Inventory Accession Number on the confidential TSCA Inventory (underlying chemical identity can be claimed as CBI)
- When a response is left blank or designated as not known or reasonably ascertainable

Prior CBI claims from other TSCA submissions also need to be renewed as part of the PFAS reporting under the Final Rule.

IV: Duplicative reporting and joint submissions

EPA permits duplicative reporting and joint submissions under certain circumstances. If a company that is subject to the Final Rule previously submitted the requested information to EPA for that same PFAS in that same year, duplicative information does not need to be submitted again.

EPA allows for companies subject to the Final Rule to submit joint submissions with their suppliers who want to protect the identity of the PFAS- containing products.

V: Recordkeeping

Companies must retain relevant records, such as the information reported to EPA, for a period of five years beginning on the last day of the submission period

WORTH THE RISK?

Per Sections 15 and 16 of TSCA, penalties for non-compliance with TSCA requirements, including reporting, may include civil fines of up to $37,500 and criminal fines of up to $50,000 per day per violation. Penalties may also include imprisonment for up to one year.

PENALTIES MAY BE ISSUED FOR FAILING TO:

REPORT
information by the deadline

MAINTAIN
records of the information for reporting for a period of five years beginning on the last day of the submission period

ALLOW
inspections to assure compliance (according to TSCA Section 11)

RESPOND
to a request for information from EPA

PROVIDING FALSE
or misleading information—Companies must submit all known or reasonably ascertainable information and be able to demonstrate that they have made reasonable efforts to do so

RISK MITIGATION

IDENTIFY
in your chemical inventory whether reportable PFAS that are subject to section 8(a)(7) are present in your products, processes, facilities, and the supply chain.

ENGAGE
with site programs and engineering groups to understand where products containing the regulated PFAS are used.

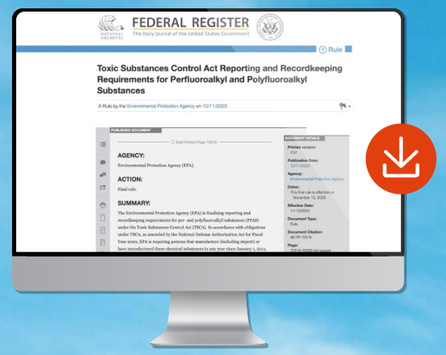
DETERMINE
how this regulatory reporting requirement impacts your business including your supply chain and if your company qualifies for streamlined reporting.

REPORT
if you have determined that your company is a manufacturer (including importer) of a reportable PFAS you must report.

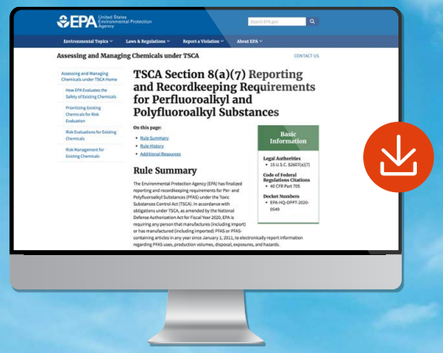
COMMUNICATE
this factsheet with others in your company and supply chain.

RESOURCES

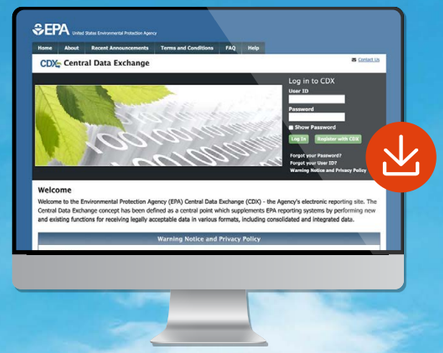
Final Rule



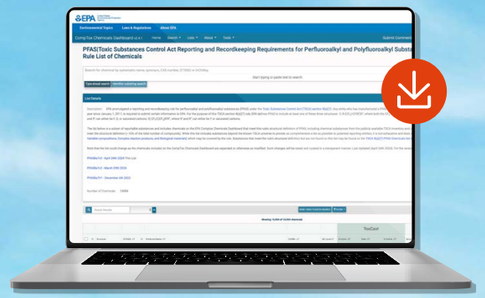
Assessing and Managing Chemicals Under TSCA (EPA webpage on the rule)



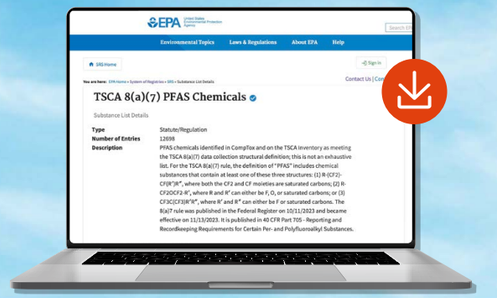
EPA Central Data Exchange



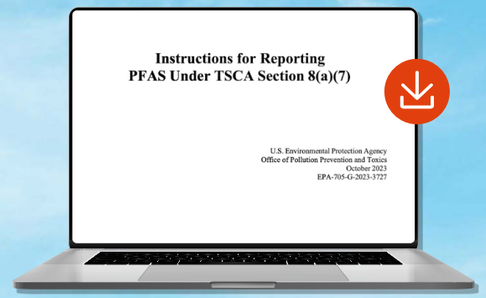
IAEG Review of Aerospace and Defense Dependencies and Regulatory Action relating to Per- and polyfluorinated alkyl substances (PFAS)



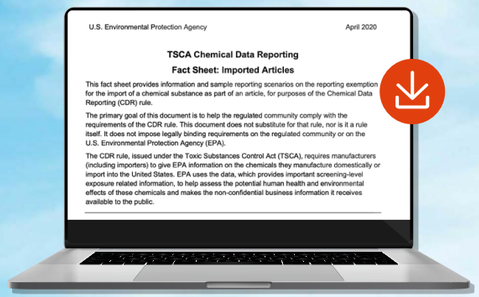
Comp Tox Chemicals Dashboard PFAS List



SRS PFAS List



TSCA-8a7-reporting-instructions-10-11-23.pdf (EPA.gov)



Fact_sheet_imported_articles_04.28.2020.pdf (EPA.gov)

IAEG VISION 2025

IAEG INTERNATIONAL AEROSPACE ENVIRONMENTAL GROUP

LEADING EDGE SOLUTIONS ACROSS THE VALUE CHAIN

TACKLE CLIMATE CHANGE

CHAMPION CHEMICAL STEWARDSHIP

FOSTER SUSTAINABILITY

ENGAGE SUPPLY CHAIN

RESPONSIBLE & SUSTAINABLE AEROSPACE INDUSTRY

A RECOGNIZED GLOBAL BODY FOR AEROSPACE & DEFENSE

61 MEMBER COMPANIES

70% OF GLOBAL AEROSPACE AND DEFENSE INDUSTRY ARE IAEG MEMBERS

$521B COMBINED ANNUAL 2022 REVENUES FOR IAEG (FULL) MEMBERS

$740B TOTAL GLOBAL AEROSPACE INDUSTRY 2022 REVENUES

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