

Publications

USEPA's Final PFAS Reporting Rule Requires 12-Year Lookback for PFAS Manufacturers and Importers

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USEPA announced on September 28, 2023, that it would publish a final rule requiring retroactive PFAS reporting (the PFAS Reporting Rule) that will have major impacts on industry members who interact with PFAS.

What businesses are covered by the PFAS Reporting Rule?

The PFAS Reporting Rule applies to anyone who has manufactured or imported a PFAS for a commercial purpose in any year since January 1, 2011, including as a component of a mixture or a coincidentally manufactured byproduct or impurity. Importers of PFAS-containing articles are considered PFAS manufacturers.

The Rule defines PFAS using a structural definition that encompasses 1,462 PFAS.

What will the PFAS Reporting Rule require?

The PFAS Reporting Rule will create a 12-year lookback period, requiring covered businesses to report a broad variety of PFAS information, including PFAS chemical identity and structure, production, use, byproducts, exposure, disposal, and health and environmental effects.

Covered businesses will be required to report their PFAS information to the extent it is "known to or reasonably ascertainable by them," a due diligence standard 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." This standard is intended to require covered businesses to conduct a reasonable inquiry within the full scope of their organization, and may also entail outside inquiries to upstream suppliers or downstream users.

The Rule also requires a five-year retention period for all relevant records following the submission period.

Are there any exemptions to the PFAS Reporting Rule?

There are no blanket exemptions; there will be a limited exemption for businesses that perform certain municipal solid waste management activities. The Rule also provides streamlined reporting form options for article importers, and R&D substances manufactured in volumes < 10 kg per year.

When do businesses have to report?

Covered businesses will be required to report their PFAS information within 18 months of the effective date of the final rule. Small manufacturers solely reporting information on article imports will have an additional 6 months to report.

The PFAS Reporting Rule will go into effect 30 days after it is officially published in the Federal Register. A pre-publication version of the PFAS Reporting Rule is available [here](#).

Vorys actively monitors PFAS regulations and litigation. If you have questions about the new PFAS Reporting Rule, please contact your Vorys attorney or Kristin Watt (klwatt@vorys.com), Susan Harty (sbharty@vorys.com), Nina Webb-Lawton (niwebb@vorys.com), or Brooke Zentmeyer (bnzentmeyer@vorys.com).