EPA TSCA PFAS Reporting Rule Finalized: Definition by Structure

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On September 28, 2023, the EPA finalized a rule that will provide the public with the largest-ever dataset of per- and polyfluoroalkyl substances (PFAS) manufactured in the United States through the Toxic Substances Control Act (TSCA). Any entities, including small ones, that have manufactured (including imported) PFAS from 2011 on will have 18 months following the effective date of this rule to report PFAS data.

Assistant Administrator for the Office of Chemical Safety and Pollution Prevention Michal Freedhoff stated, “The data we'll receive from this rule will be a game-changer in advancing our ability to understand and effectively protect people from PFAS.”

As to the definition of PFAS, a subject met with uncertainty, the EPA has chosen to include a structural definition. Chemical substances that include at least one of the following structures, are considered “PFAS”:

+ R-(CF2)-CF(R')R'', where both the CF2 and CF moieties are saturated carbons;
+ R-CF2OCF2-R', where R and R' can either be F, O, or saturated carbons; and
+ CF3C(CF3)R'R'', where R' and R'' can either be F or saturated carbons.

The EPA is compiling a list of substances that comport with this definition from Inventory, LVEs and the CompTox Chemicals Dashboard and will be made available in the CompTox Chemicals Dashboard. Critically, a substance that is not included in this list but still falls under the definition of a “chemical substance” under TSCA is subject to the rule if the substance has been manufactured “for a commercial purpose since 2011.”

The prepublication notice states that the definition was developed to focus on substances most likely to persist in the environment. The first sub-structure listed above does not include substances that only have a single fluorinated carbon, or unsaturated fluorinated moieties (e.g., fluorinated aromatic rings and olefins) and is focused on the substances most likely to be persistent in the environment. Further, the EPA explains that for this rule it is “unnecessary to extend reporting requirements to substances that only have a single fluorinated carbon or unsaturated fluorinated moieties and are therefore less likely to persist in the environment, unlike substances like PFOA, PFOS and GenX.”

The second sub-structure noted above is intended to capture certain fluorinated ethers, while the third structure is intended to capture branching for highlight fluorinated substances that would not be covered due to their non-adjacent fluorinated carbons.

Importantly, the EPA notes that various organizations or programs may have different needs or purposes aside from this reporting rule and that different definitions of the term “PFAS” may be more appropriate for other purposes.

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