

EPA Analysis Addresses Costs of “Forever Chemical” Reporting Rule

The U.S. Environmental Protection Agency (EPA) has weighed in on industry concerns regarding the financial and recordkeeping burden of its "forever chemical" reporting rule that will affect manufacturers and importers across a variety of industries.

On Friday, November 25, 2022, the EPA released its Initial Regulatory Flexibility Analysis (IRFA) related to the proposed rule requiring PFAS reporting by manufacturers. The PFAS reporting rule was proposed in June 2021 and drew criticism from industry groups for the potential economic impact, particularly on small businesses. The EPA's new analysis acknowledges that the cost of implementation for industry groups, particularly article importers, is far greater than the agency originally estimated.

The IRFA includes findings on: (1) the type and number of small entities that the proposed rule may impact; (2) the estimated burden and costs of the proposed rule on small entities; and (3) potential regulatory flexibility alternatives. In its updated analysis, the EPA estimates more than \$875 million in industry costs to implement the PFAS reporting rule, up from its original \$10.8 million figure. The IRFA details several potential revisions to the rule, intending to minimize the impact on small businesses.

The proposed PFAS reporting rule, under Section 8(a)(7) of the Toxic Substances Control Act, is an information-collecting rule and does not attempt to reduce risks related to PFAS. It would require all manufacturers (including importers) of PFAS in any year since 2011 to report the following information to the EPA:

- PFAS chemical identity
- Categories of use
- Volumes manufactured and processed
- Byproducts
- Environmental and health effects
- Worker exposure
- Disposal

The categories of small business manufacturers and importers expected to be affected by the rule include construction, manufacturing, wholesale trade, retail

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Since the proposed rule was published in June 2021, the EPA received data and feedback through public comments to update its small entity impact analysis. The additional information revealed that the proposed rule would significantly impact small entities.

The IRFA details feedback on the proposed rule from a Small Business Advocacy Review panel, small business advocates and trade associations. Key takeaways include:

- Small businesses subject to the rule should expect to incur approximately \$863,483,965 in costs for one-time reporting, including costs related to rule familiarization, Article Importer Compliance Determinations, form completion, CBI Claim Substantiation, recordkeeping, and Central Data Exchange Registration and Electronic Signature;
- An estimated 234 manufacturing firms and 351 sites are expected to be subject to the proposed rule's reporting requirements;
- An estimated 13,116 small business importer of articles are expected to be subject to the proposed rule's reporting requirements; and
- Approximately 93% of manufacturers and 97.3 percent of article importers affected by the proposed rule are small businesses, for a total of 127,794 affected small firms.

To ease these burdens on industry and particularly small businesses, the EPA has suggested potential changes to the rule, including:

- **Exemptions for certain small businesses.** The EPA is considering exempting from reporting requirements small businesses whose annual total sales are less than a certain threshold, either \$2 million, \$6 million or \$12 million, and is also considering a longer reporting timeline for businesses below the threshold.
- **A finite list of PFAS subject to the rule.** Rather than giving a structural definition of PFAS that creates uncertainty as to covered substances, the EPA is considering limiting the rule scope to a finite list of known PFAS.
- **Annual reporting thresholds.** The EPA is considering annual volume thresholds—either 2,500 or 25,000 pounds—that would trigger reporting requirements to avoid impact on small businesses importing only a handful of articles containing small quantities of PFAS.
- **Reporting exemptions.** The EPA is considering providing reporting exemptions for research and development substances, byproducts, impurities, recyclers and intermediates.



Because compliance with some reporting requirements may require special skill or expertise, the EPA assumes that a portion of affected manufacturers and importers will rely on consultant attorneys for assistance with understanding reporting requirements, while others will rely on in-house technical staff. The EPA is specifically seeking comment on whether professional skills are needed for compliance determination, form completion, CBI claim substantiation and recordkeeping. The EPA is also seeking comment on the estimated hours that firms, particularly small firms, will spend on interpreting the structural definition of PFAS and whether firms will contract any outside help.

The IRFA is [available for public comment](#) until December 27, 2022. Because the compliance burden may be significant, manufacturers and importers should review and submit comments this month before the EPA finalizes its PFAS reporting rule.

For questions regarding the proposed rule or PFAS regulation generally, please contact [Guy Temple](#), [Danielle Marocchi](#) or any member of Reinhart's [Product Liability and Safety Team](#).

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