ERM CLIENT ALERT

May, 2025

Reporting Obligations for PFAS: Responding to the Latest Developments

Creating resilient strategies to comply with regulations and manage business risk

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The PFAS reporting landscape is changing rapidly in the United States, with the latest federal developments delaying reporting and signaling intent to rewrite the rule. Despite the lack of clarity at the federal level, and proposed changes to EU rules, PFAS bans and restrictions continue to roll out from state legislatures, and global regulations still require significant investment in PFAS data collection and reporting. Now is the time to create resilient response strategies that support compliance and maintain market access critical to business success.

Rapid changes to regulations in the US and the EU are creating ongoing challenges for business.

Toxic Substances Control Act (TSCA) Reporting Rule

The TSCA reporting rule described in Section 8(a)(7) of TSCA requires companies that have manufactured (including as byproducts or impurities) or imported PFAS substances and/or PFAS-containing articles for a commercial purpose in any year since 1 January 2011 to report on those activities. The United States (US) Environmental Protection Agency (EPA) may eventually choose to regulate PFAS (in addition to the existing Significant New Use Rules) based upon the resulting data.

Companies must report information that is "known to or reasonably ascertainable by" the company, which requires them to perform a certain standard of due diligence. This reporting rule is challenging even for chemical sector companies used to complying with TSCA and has caught many companies outside the chemical sector unaware, as it includes reporting on so-called "articles" (parts and assemblies) which are commonly outside the scope of TSCA.

On 28 April, Lee Zeldin, the Administrator of the US EPA, announced the Agency's upcoming actions to address PFAS. The press release included the following statement: "Implement section 8(a)7 to smartly collect necessary information, as Congress envisioned and consistent with TSCA, without overburdening small businesses and article importers." While this statement implies that the US EPA will revise the reporting regulation to limit or eliminate the reporting requirement for articles, the Agency has not provided any details on this regulatory rollback. On 12 May, the Agency announced that it is pushing back the reporting deadline to 13 October 2026, and "is considering a separate action to reopen other aspects of this rule for public comment". As of 21 May, the US EPA has not provided any details on such actions on its web page.

Toxic Release Inventory (TRI) Reporting Program

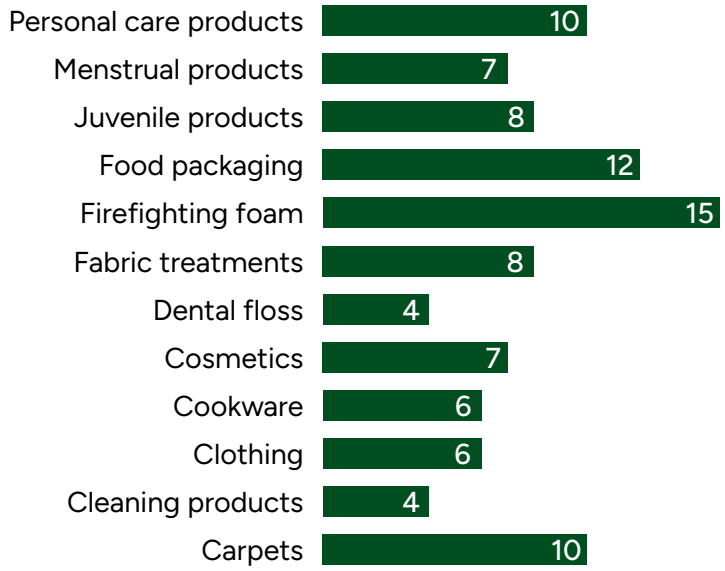
All PFAS currently regulated under the TRI Program have been designated as "Chemicals of Special Concern". As a result, ALL concentrations of regulated PFAS in mixtures, no matter how small, must be considered in TRI threshold applicability assessments starting with Reporting Year 2024 reports due by 1 July 2025 and annually thereafter. Since the initial ruling, US EPA has added 198 PFAS to the TRI Program, and the Agency announced on 28 April 2025 its intent to continue adding PFAS to the TRI Program "in line with Congressional Direction from the 2020 National Defense Authorization Act" (NDAA). Clarification on how this will impact the pending October 2024 Proposed Rule for TRI listing of additional PFAS under NDAA 7321(d) was not provided; public comment on this proposed rule ended 9 December 2024.

In a related development, the Emergency Planning and Community Right to Know Act (EPCRA) Supplier Notification requirements now require suppliers to disclose TRI-regulated PFAS and existing persistent, bioaccumulative, and toxic (PBT) chemicals on the "Chemicals of Special Concern" list at ANY concentration in their products. A company has 30 days to provide/correct their EPCRA Supplier Notifications once they learn of the presence of a TRI-regulated chemical in a product previously sold to a TRI-regulated customer. Collectively, this change involves hundreds of chemicals that now have to be disclosed at any known concentration in products.

US State PFAS Requirements

Multiple states in the US have promulgated regulations that ban or restrict PFAS in consumer products, as illustrated in Figure 1 , or require reporting.

Figure 1
Number of States with Restrictions or Bans



Source: State Action on PFAS in Consumer Products - Safer States

While there is uncertainty at the federal level, state authorities have moved to disclose, restrict, and ban PFAS entirely. In all, 17 states have passed a total of 115 class-based bans taking effect between 2020 and 2032.

Two bellwether states, California and Minnesota, illustrate the scope of regulations on PFAS in products.

- **California** has elected to eliminate, ban, or restrict PFAS in many products, and requires manufacturers to both justify and disclose the use of PFAS in products. State regulations include product end-of-life considerations, mandating that products containing PFAS cannot be labeled as compostable or recyclable.
- **Minnesota** Statutes 2023, section 116.943 (Amara's Law") requires product manufacturers to report products with intentionally added PFAS to the state by January 1, 2026, and will phase in bans on unnecessary uses of PFAS in products by 2032.

EU regulation on Registration, Evaluation, Authorization, and Restriction of Chemicals (REACH)

REACH includes current and proposed provisions for articles pertaining to PFAS. The designation of some PFAS as Substances of Very High Concern (SVHC) triggers communication and notification requirements for substances and for articles. Certain PFAS are subject to restriction provisions under REACH. More broadly, the Universal PFAS Restriction proposal aims to ban the manufacture, placing on the market, and use of all PFAS. The specific requirements of such a ban have been under discussion since 2023.

EU Corporate Sustainability Reporting Directive (CSRD)

Under CSRD, companies doing business in the EU must report on releases of SVHC, including some PFAS, and the measures they are taking to reduce pollution resulting from SVHC. The CSRD reporting requirement and other sustainability reporting schemes are driving US-based clients who sell their products globally to develop plans for product sustainability and circularity, and to seek to eliminate toxic chemicals.

While the EU Omnibus Regulation is attempting to streamline CSRD's reporting burden with other related legislation and may delay reporting deadlines, the specific ask for PFAS data is not going away, and the challenge of collecting this data remains.

For additional information on regulatory requirements and perspective on navigating the data demands of PFAS requirements, see ERM's market update of February 2025.

Regulations on PFAS in products are not the only pressures on businesses, consumer pressure and legal challenges are escalating

Consumers continue to demand PFAS-free products, and in response over 30 retail chains have committed to eliminating or reducing PFAS in food packaging, textiles, and/or other products. Lawsuits , related to PFAS in products proliferate. Some relate directly to the product itself, regarding, for example, PFAS-free claims or personal injury. Others focus on the potential emissions from making or using products and the contribution to contamination of drinking water or the environment. Shareholders who recognize such threats are pressuring some companies to deliver on commitments to make more sustainable products and to protect the company from business risks.

In 2019, the most recent year for which data are publicly available, industry reported that the manufacture and import of PFAS in the US totaled 679 million pounds. This may underestimate the total volume, as it did not include all PFAS or the manufacture or import of amounts below the threshold for reporting, or contained within articles.[1] In 2022, industry reported releasing approximately 159,000 lb of PFAS (total for 180 PFAS) to the environment.[2]

Publicly available data such as these can draw attention to specific facilities and, more broadly, spur outrage and calls for action to limit PFAS.

Sources:
1. https://www.epa.gov/trinationalanalysis/pfas
2. https://www.epa.gov/chemical-data-reporting/trends

Navigating PFAS Challenges

Creating resilient response strategies that support compliance

What is a company to do in such a rapidly changing regulatory environment? The news that the US EPA may be rolling back some reporting requirements has caused some companies to reconsider their compliance approach. In our working with companies across sectors, ERM has found these best practices to be crucial to a resilient strategy.

1 **Assess and articulate risk tolerance** – Different companies have varying appetites for compliance and business risk related to PFAS. Companies producing consumer products found in many homes – and sometimes the targets of lawsuits – often take a more conservative approach. Others, including those who manufacture goods for B2B customers, are more willing to accept some business risk and simply aim for a compliance program that is defensible under regulatory standards.

2 **Assess the landscape** – Consider which markets are essential to business success, and the stringency of current and proposed regulations in key regions. Evaluate the interests of other stakeholders, including customer inquiries and "retail regulations" on PFAS that can control access to important consumer bases. Finally, consider trends in litigation over PFAS in products.

3 **Understand your data** – Many companies have discovered just how little they know about the chemicals in their supply chain and how difficult it can be to link various sources of relevant information such as import records, bills of material, chemical composition information from suppliers, and customer communications. The challenge is particularly acute for companies that have grown by acquisition. While some reporting requirements such as those under TSCA may be scaled back, consider what your company needs to know for its own communications with customers and for compliance with regulations such as REACH or those promulgated by US states.

4 **Plan for contingencies** – As regulations on PFAS in products continue to emerge and discourage the use of PFAS, manufacturers may need to find new materials to use in their products. Reformulation takes time and often costs money. Assess the implications of the changing landscape for your supply chain and core products and plan strategically to minimize the impact on product manufacture and sale.

5 **Consider the possible business advantages** – PFAS-free claims must be carefully vetted for accuracy, supporting data, and compliance with regulations on product claims. Nonetheless, for some companies, positioning products as more sustainable can bring real business advantage.

The appeal of PFAS-free products can relate to a larger demand for more sustainable products.

In April 2024, the Sustainable Market Share Index™ provided the following insights about sales of more sustainable consumer packaged goods (CPG). Based upon purchasing data for 36 CPG categories:

- Products marketed as sustainable hold a 18.5% market share, despite high 2023 inflation driving strong store brand performance. Among branded players, sustainability-marketed products now hold a 21.2% share.
- Products marketed as sustainable achieved a 5-YR compound annual growth rate (CAGR) of 9.9%, outperforming its counterparts.
- As of 2022, sustainability-marketed branded products had a price premium of nearly 28% vs. conventionally marketed branded counterparts.

The fast-evolving landscape demands agility, a firm understanding of PFAS data and insights into the forces shaping constraints on the use of PFAS. Consideration of those forces – including expanding regulatory requirements and the concerns reflected in consumer demands, shareholder expectations, and litigation – are critical elements for shaping a thoughtful and resilient strategy for PFAS compliance.

How ERM Can Help

ERM works with global clients across the full value chain to develop and implement PFAS strategies that build long-term business resilience. We have decades of experience efficiently completing complex regulatory reporting under TRI/EPCRA and TSCA, from individual facilities to product and facility portfolios. We are closely following the latest regulatory developments and strategically advising our clients on compliance strategies. We work with our clients to improve confidence and accuracy in data and reporting. And when strategic action goes beyond reporting to reformulating, we help our clients to avoid regrettable substitution in identifying alternatives to PFAS.

Our team's deep experience with identifying and tracking PFAS in supply chains and product portfolios makes us an excellent partner to help you:

- Identify PFAS in the supply chain
- Assess regulatory requirements on PFAS in products and operations and implications for our clients
- Assist with upcoming reporting under TRI and TSCA for US-based operations
- Support company in determining and articulating risk profile
- Evaluate business risks related to PFAS in raw materials, products or operations, and the resulting potential for environmental release/exposure
- Assess hazards and risks of both PFAS and potential substitutesAssess "PFAS-free" claims or support messaging
- Specific to Reporting PFAS under CSRD – our experts can help companies:
  - Assess the need to report on releases of SVHC, including PFAS, and develop the report
  - Create and implement pragmatic plans to phase out the use of PFAS, incorporating safeguards to avoid so-called regrettable substitution
  - Track progress on PFAS goals
  - Identify pricing premiums that consumers will pay for more sustainable products
  - Tell your product's sustainability story that creates competitive advantage without greenwashing
- Evaluate the potential for PFAS to be emitted from site operations to contaminate drinking water sources or other environmental media
- Assess the potential business risks from PFAS in the context of mergers and acquisitions

ERM Can Help You Navigate the Complexities of PFAS Compliance

For more information, contact your current ERM consultant or any of our experts:

Lori Dinkelmann
EPCRA/TRI Reporting Lead Partner
Lori.dinkelmann@erm.com

Kate Sellers
TSCA Reporting Lead Technical Partner
Kate.sellers@erm.com

Beth Dederick
Sustainable Products and Supply Chain Partner
Beth.dederick@erm.com

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