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PFAS Update – Federal Reporting

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TSCA PFAS Reporting Now Starts in 2025

- WHO: Applies to manufacturers of PFAS (including importers in any year between 2011-2022).
- WHAT: EPA list of PFAS plus any other PFAS that meet the definition in the rule. No exemption for articles.
- WHEN: Reporting delayed by EPA due to CDX challenges.
* Reporting period starts **July 11, 2025**, with reports generally due in 6 months January 11, 2026. Small importers of articles have a year - until July 11, 2026 – to file.



Point of Entry = Manufacture for Commercial Purpose

- Consistent with the TSCA definition of manufacture at 40 C.F.R. § 705.3:
 - Manufacture means to **import** into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202)), **produce**, or manufacture **for commercial purposes**. (emphasis added).
- Manufacture of reportable PFAS may be either intentional **OR** inadvertent.

PFAS reporting time period

- July 11, 2025: Reporting begins on the same date for everyone.
- January 11, 2026: Reports due. Generally there is a 6 month reporting period.
- July 11, 2026: Reports due. Extra 6 months of time to submit reports applies only to small manufacturers and only for imported articles.



“Mixed” reports – articles and nonarticles

- If a small manufacturer imports or manufactures PFAS that are not in the form of an article, the January 11, 2026 deadline applies for those products.
- In other words, a small company with articles and non-article obligations may report in one or two phases. It would not be penalized for reporting the articles earlier if they just wanted to report once.



Reporting for furniture manufacturers and importers

- Domestically manufactured furniture is an article. Articles made in the US are exempt.
- Domestically sourced ingredients are exempt from reporting.
- Inadvertent manufacture of PFAS during furniture manufacture is reportable.
- Furniture manufacturers that do not meet the definition of “small manufacturer” must report by January 11, 2026.
- Any reports for PFAS in a non-article form are due by January 11, 2026 for small and large manufacturers/importers.
- Furniture manufacturers that 1) meet the definition of small manufacturer and 2) are only reporting for import articles have more time to report for these products – until July 11, 2026.



Definition of a small manufacturer

- 40 C.F.R. § 705.3: Two standards and either one can be used.
- First standard. A manufacturer (including importer) of a substance is small if its total annual sales, when combined with those of its parent company (if any), are less than \$120 million. However, if the annual production or importation volume of a particular substance at any individual site owned or controlled by the manufacturer or importer is greater than 45,400 kilograms (100,000 lbs), the manufacturer (including importer) **will not qualify** as small for purposes of reporting on the production or importation of that substance at that site, unless the manufacturer (including importer) qualifies as small under paragraph (2) of this definition.



Definition of a small manufacturer, cont.

- Second standard. A manufacturer (including importer) of a substance is small if its total annual sales, when combined with those of its parent company (if any), are less than \$12 million, regardless of the quantity of substances produced or imported by that manufacturer (including importer).



Reporting Choice for Imported Articles: EPA Instructions

- Section 2.3, p. 2-8 – Article importers have the option to use a **streamlined article import form**.
- No conditions for selection – just use it.
- Selecting this form reduces the information you need to report.
- No obligation to seek out chemical identity. Still need information on product

Example 2-3. Example Company I begins importing an article containing Example PFAS I in 2017 and continues importing the article through 2022. Example PFAS I provides stain resistance in a finished textile product. Example Company I does not produce or import any other products containing Example PFAS I.

Because Example PFAS I is only imported in an article, Example Company I reports for this chemical using the streamlined article importer form.

Streamlined article import reporting: no due diligence on chemical identity required.

- EPA REPORTING INSTRUCTIONS, Section 4.13.1, p. 4-66:
Note that not all submitters are required to initiate joint submissions.
Article importers using the article importer reporting form will not be required or have the option to initiate joint submissions.
- EPA REPORTING INSTRUCTIONS, Section 4.5.6, p. 4-19:
Importers of articles using the streamlined article import form are not required to assert or substantiate CBI claims for chemical identity. Therefore, joint submissions are not required or enabled for article importers.

THERE IS NO FORM RIGHT NOW. IT REMAINS UNDER DEVELOPMENT.



Information requirements

* streamlined article import form only

1. Company and plant site information of the submitter, authorized official, and technical contact.
2. NAICS code, Dun & Bradstreet (D&B) number, other site identifiers for each site.
3. Trade name, specific chemical name and associated CASRN, Accession number, LVE number, generic name, and molecular structure, as applicable. *If specific chemical identity is not known, due diligence to identify a joint submitter is necessary.*
4. For joint submissions, contact information for the supplier, a trade name or other designation for the chemical substance, and a copy of the request to the supplier or other entity.
5. Selected code designations for the categories of industrial processing and use, industrial sector(s), and function.
6. Up to ten commercial and consumer product code designations, functional purpose, and whether the product is intended for children (14 years or less).
7. For each consumer and commercial product category, a range for the estimated typical maximum concentration, by weight, per year.
8. For each PFAS at each site, whether the imported PFAS is physically present at the site, site-limited, or recycled on-site.
9. The physical form(s) of the PFAS as it is sent off-site from each site. If the PFAS is site-limited, each physical form of the PFAS at the time it is reacted on-site to produce a different chemical is needed.
10. The total amount of PFAS manufactured (including imported) per year, amounts for each category of use, and separated reporting for the amount domestically manufactured or imported per site.
11. For each reported combination of industrial processing, use, sector, and function, the estimated percentage, rounded off to the closest 10 percent, of total production volume of each PFAS.
12. For each reported consumer and commercial product category, the estimated percentage, rounded off to the closest 10 percent, of the site's total production volume.
13. The volume directly exported of each PFAS domestically manufactured or imported at each site.
14. Each byproduct produced from the manufacture, processing, use, or disposal of a PFAS, if it is released to the environment and in what quantity.
15. All existing information concerning the environmental and health effects of each substance or mixture.
16. The number of workers exposed, type of activity, daily and annual exposure duration estimates for each activity, maximum exposure and duration.
17. Releases to air, water, and land, the manner or method of disposal of each substance or mixture, and any change in such manner or method.



Reporting Standard – “Known to or Reasonably Ascertainable”

40 C.F.R. § 705.3

“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.”

Key Elements

1. Submitters must conduct a reasonable **internal** inquiry, which includes:
 - Relevant, not just managerial, employees.
 - Information in possession or control of that site, subsidiaries or general partnerships.
 - Files maintained such as marketing studies, sales reports, or customer surveys;
 - Standard references showing use information or concentrations of chemical substances in mixtures. What is standard may vary by company. EPA gives two examples - Safety Data Sheets and a Supplier Notification.
 - Company knowledge must be taken into account.
2. Also includes reasonable level of proactive inquiry **with customers/suppliers**.
 - Directly and/or through their websites.
 - No requirement to secure a response.
3. **No need to conduct new testing** or new surveys for purposes of this rule.



Rule Specific CBI Requirements

From EPA PFAS webinar <https://www.epa.gov/system/files/documents/2024-02/tsca-8a7-jan-2024-webinar.pdf>

- **Generic names**
 - Generic names/descriptions for PFAS chemical identities need to contain “fluor”
- EPA will not make CBI determinations for chemical identity for article importer reports
- **No CBI claims can be made for the following data elements.**
 - PFAS chemicals on the public inventory or LVEs where identity is not claimed as CBI.
 - General processing and use code information.
 - Public identifiers of CBI PFAS substances (LVE numbers, accession numbers etc.).
 - Submitted health and safety data (with exceptions).
- **These CBI claims do not require substantiation:**
 - Production volume information.
 - Certain information related to joint submitters.



New TRI reporting proposed rule on PFAS

- WHO: Requires reporting by facility owner/operators for covered NAICS codes. Includes 337—Furniture and Related Product Manufacturing.
- WHAT: Report facility environmental releases, waste management information, pollution prevention and recycling data for TRI listed chemicals. Articles are exempt.
- WHEN: Annual reporting due July 1 each year.
- EPA is proposing to add 16 individual PFAS and 15 PFAS categories representing over 100 individual PFAS. Comment period open through December 7, 2024
 - 100 lb threshold for reporting for manufacturing, processing and use. All PFAS in a given category count towards the 100 lb reporting threshold for the category.
 - Reclassifies some previously individually listed PFAS as part of the PFAS categories in the proposal



TRI and articles

- The articles exemption states that if a toxic chemical is present in an article at a covered facility, that facility is not required to consider the amount of the toxic chemical(s) contained in the article when calculating reportable quantities of TRI-listed chemicals.
- Applicable guidance: 2009 interpretations with regard to wood treatment and proposed rule. <https://www.regulations.gov/docket/EPA-HQ-TRI-2009-0602>.



Federal PFAS Regulatory Summary

- Reporting of PFAS continues to increase.
- Delayed now until 2025.
- Use the time to do your due diligence.
- Streamlined reporting under TSCA for imported articles.
- TRI PFAS list is growing, articles are exempt, but certain wood treatment activities may not be.

Questions?

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