TREXIN INSIGHT PAPER

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EXPLORING FEDERAL PFAS REGULATIONS

A brief history and current state of US Federal PFAS Regulations.

INTRODUCTION

The United States Environmental Protection Agency (EPA) has, since its formation in 1970, sought to "protect human health and the environment".[1] Historically, this has been achieved by taking action in myriad forms from imposing restrictions on lead-based paint to establishing standards surrounding air pollution.[2] Recently, the EPA, like much of the public, has turned its attention to per-polyfluoroalkyl substances (PFAS), a brief introduction to which is available here. In this Trexin Insight Paper (TIP), the second in an ongoing series about these substances, we will examine current federal regulations imposed by the EPA before turning our eyes to the future to discuss upcoming and proposed federal regulations.

HISTORY OF REGULATIONS

To understand the federal regulations surrounding PFAS that may be imposed in the future, we must first understand the federal regulations that exist right now. Perhaps unsurprisingly, the EPA has had its eye on PFAS longer than the public has. In 2002, the EPA issued a "significant new utilization rule" (SNUR) stating that, "This rule requires manufacturers and importers to notify [the] EPA at least 90 days before commencing the manufacture or import of [PFAS]…".[3] Notably, this rule applied to a mere 75 PFAS which belong to a class of nearly 13,000 chemicals as currently counted by the EPA.[4] In 2007, the EPA banned an additional 183 PFAS from being manufactured or imported to the US.[5] Following this, there were a few rules approved, such as the requirement to monitor six PFAS in public water systems (PWIs) and mandating the reporting new PFAS use in carpeting, the components thereof, or the treatment thereof.[6][7] Aside from new, minor rules like these, the EPA instituted mainly action plans, rule proposals, and health advisories between 2007 and 2019.[8][9][10]

NEW REGULATIONS

Strong, consistent action by the EPA to regulate the manufacture and distribution of PFAS didn't resume until early this decade. In June of 2020, the EPA finalized a rule first initiated in 2015 requiring EPA review and approval before a manufacturer could resume the usage of long-chain PFAS that had previously been phased out.[11] Among the most important and sweeping regulations put forth by the EPA was the EPA's rule stating that, "Any entities, including small entities, that have manufactured (including imported) PFAS in any year since 2011 will have 18 months following the effective date of this rule to report PFAS data to [the] EPA."[12] Following this rule, qualifying entities will be required to

[1] https://www.epa.gov/aboutepa/our-mission-and-what-we-do
[2] https://www.epa.gov/history/milestones-epa-and-environmental-history
[3] https://www.govinfo.gov/content/pkg/FR-2002-12-09/pdf/02-31011.pdf
[4] https://cdxapps.epa.gov/oms-substance-registry-services/substance-list-details/490
[5] https://www.govinfo.gov/content/pkg/FR-2007-10-09/pdf/E7-19828.pdf
[6] https://www.epa.gov/dwucmr/third-unregulated-contaminant-monitoring-rule
[7] https://www.regulations.gov/document/EPA-HQ-OPPT-2012-0268-0034
[8] https://www.epa.gov/sites/default/files/2016-01/documents/pfcs_action_plan1230_09.pdf
[9] https://www.regulations.gov/document/EPA-HQ-OPPT-2013-0225-0001
[10] https://www.epa.gov/sites/default/files/2015-09/documents/pfoa-pfos-provisional.pdf
[11] https://www.regulations.gov/document/EPA-HQ-OPPT-2013-0225-0232
[12] https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/tsca-section-8a7-reporting-and-recordkeeping

report their PFAS data to the EPA by May 2025. Small manufacturers will have an additional 6 months, meaning that they're required to report their PFAS data by November of 2025.

FUTURE REGULATIONS

In addition to the already-existing rules, the EPA has proposed additional regulations. For instance, the EPA proposed new rules that would categorize specific PFAS as "hazardous" under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).[13] This rule is expected to be finalized in 2024. To the EPA, PFAS represent an environmental threat on par with coal ash, climate change, and air pollutants.[14] For this reason, the EPA recently "finalized a rule that prevents companies from starting or resuming the manufacture or processing of 329 PFAS that have not been made or used for many years without a complete EPA review and risk determination", and " announced the automatic addition of seven PFAS to the list of chemicals covered by the Toxics Release Inventory".[15]

The EPA isn't the only federal body in the United States turning its attention to PFAS. In 2019, the National Defense Authorization Act (NDAA) was passed by the House and Senate and ultimately signed into law.[16] This law, among other things, "immediately added certain per- and polyfluoroalkyl substances (PFAS) to the list of chemicals covered by the Toxics Release Inventory… and provided a framework for additional PFAS to be added to [Toxic Release Inventory] on an annual basis."[17] Following the momentum of this law, US Representatives introduced the PFAS Action Act, a bill which, if passed and signed into law, "establishes requirements and incentives to limit the use of [PFAS]…and remediate PFAS in the environment," in 2021 and again in late 2023.[18][19]

CONCLUSION

Since the turn of the century, and even more so in recent years, the EPA has begun to place regulations on the use of PFAS. However, it isn't the only body to do so. As mentioned at the end of this TIP, the US legislature has also recently begun to introduce laws regulating the use of PFAS. In the next two TIPs in this series, we will examine the existing and proposed regulations against PFAS both at the state level in the US, and the international level in places like the European Union. To learn more about PFAS and how Trexin can help you meet these regulations, click here or reach out to one of Trexin's PFAS Advisors, whose information is listed below.

This TIP was written by Kenneth Beymer. Kenneth welcomes comments and discussion on this topic and can be reached at kenneth.beymer@trexin.com.

[13] https://www.epa.gov/superfund/proposed-designation-perfluorooctanoic-acid-pfoa-and-perfluorooctanesulfonic-acid-pfos
[14] https://www.epa.gov/newsreleases/epa-announces-federal-enforcement-priorities-protect-communities-pollution
[15] https://www.epa.gov/pfas/key-epa-actions-address-pfas
[16] https://www.congress.gov/116/plaws/publ92/PLAW-116publ92.pdf
[17] https://www.epa.gov/toxics-release-inventory-tri-program/addition-certain-pfas-tri-national-defense-authorization-act#:~:text=On%20December%2020%2C%202019%2C%20the,TRI%20list%20of%20reportable%20chemicals.
[18] https://www.congress.gov/bill/117th-congress/house-bill/2467
[19] https://www.congress.gov/bill/118th-congress/house-bill/6805/text?s=1&r=10#:~:text=Introduced%20in%20House%20(12%2F14%2F2023)&text=To%20require%20the%20Administrator%20of,and%20Liability%20Act%20of%201980