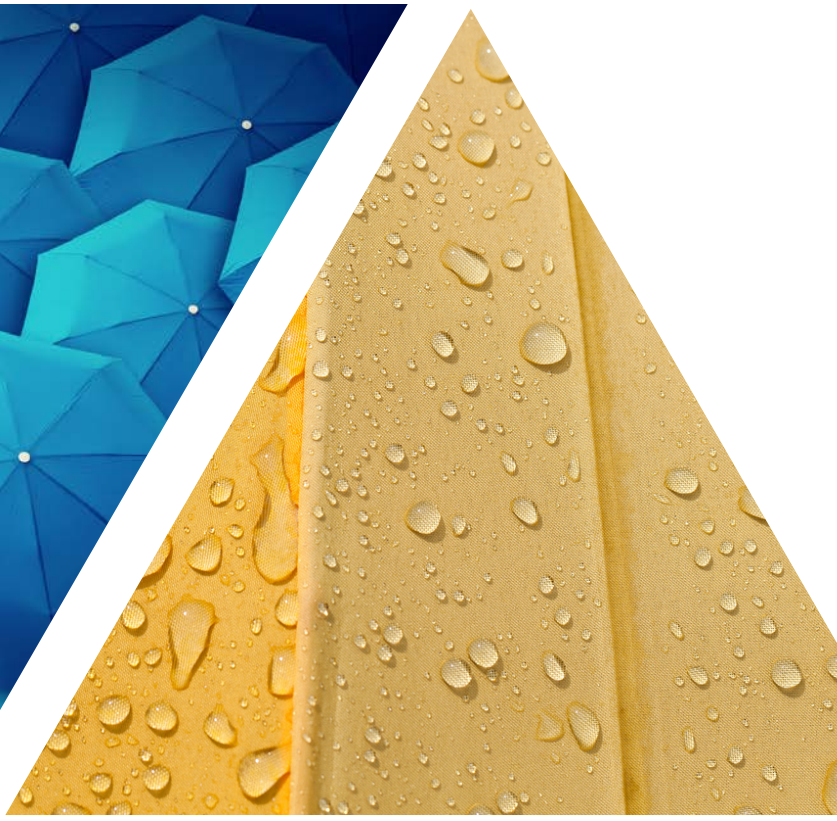
PFAS

Bans, Restrictions, Reporting, and Minimizing Liability

What to know now, and what to expect



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Introduction

Perfluoroalkyl and polyfluoroalkyl substances (PFAS) are attracting global legal, regulatory, commercial, and litigation attention as no other "emerging contaminant" has.

Companies producing, processing, distributing, and/or using these substances must be aware of these global legal developments and take steps now to minimize legal, regulatory, and commercial risk.

Bergeson & Campbell, P.C. and The Acta Group have been deeply engaged in the science, law, and policy of PFAS for years.

We outline in this document key regulatory developments that reflect an incessant global demand for information on the manufacture, regulatory classification, testing, processing, distribution, and use of PFAS, and the legal and commercial implications of these developments.

We also identify measures stakeholders could consider to prepare for the new normal -- the relentless global drive to eliminate PFAS except in highly-regulated and explicitly approved applications deemed essential.

In the United States and globally, the number of bans, restrictions, and reporting requirements for PFAS increases seemingly daily.

The European Union (EU) is currently considering a proposal to restrict more than 10,000 PFAS under the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) regulation. If adopted, this would be the most extensive regulatory restriction on PFAS to date, in one of the world's largest markets. Other jurisdictions are considering similar measures.

The stakes are high. Companies must stay informed of the latest developments, ascertain which legal requirements apply and how each may impact business operations and risk profiles, take proactive measures as appropriate to ensure compliance with any applicable requirements, and seek to minimize legal liability.

The need to balance commercial imperatives with legal, commercial, and stewardship sensitivities is not easy, and companies need all the help they can get to make sound, informed decisions.

This document offers a high-level outline of considerations, focusing on the most significant bans and restrictions, the most impactful potential legal developments regarding PFAS, and the most important steps chemical product manufacturers should be taking now to identify, diminish, and supplant PFAS in their supply chains.

We would be pleased to provide additional information and assist with PFAS-related scientific, regulatory, or legal questions that you may have.

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CONTENTS:

What Are PFAS?

PFAS are a group of widely used man-made organic chemical substances. They contain alkyl groups on which all or many of the hydrogen atoms have been replaced with fluorine. Well known PFAS contain fully fluorinated carbon chains of various chain lengths attached to a functional group, like carboxylic or sulfonic acids. Such groups are called perfluorinated acids and include perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS).

Shorter chain PFAS have been developed more recently to substitute the longer chain ones. In this context, an important distinction is the one between "long chain" and "short chain" PFAS. The PFAS group also includes polymers: e.g., fluoropolymers, perfluoropolyethers, and side-chain fluorinated polymers.

According to the U.S. government, some 4,000 chemicals are considered PFAS and are used to make fluoropolymer coatings and products that resist corrosion, grease, water, stains, and heat. The carbon-fluorine bond is the chemical backbone of PFAS and one of the shortest and strongest bonds known to exist. The bond makes PFAS highly resistant to breakdown, hence their nickname "forever chemicals." They are found in consumer and industrial applications, including non-stick coating in cookware, stain-resistant clothing, furniture, food packaging, adhesives, electrical insulation wire, tank linings, and firefighting foams.

Is This PFAS?

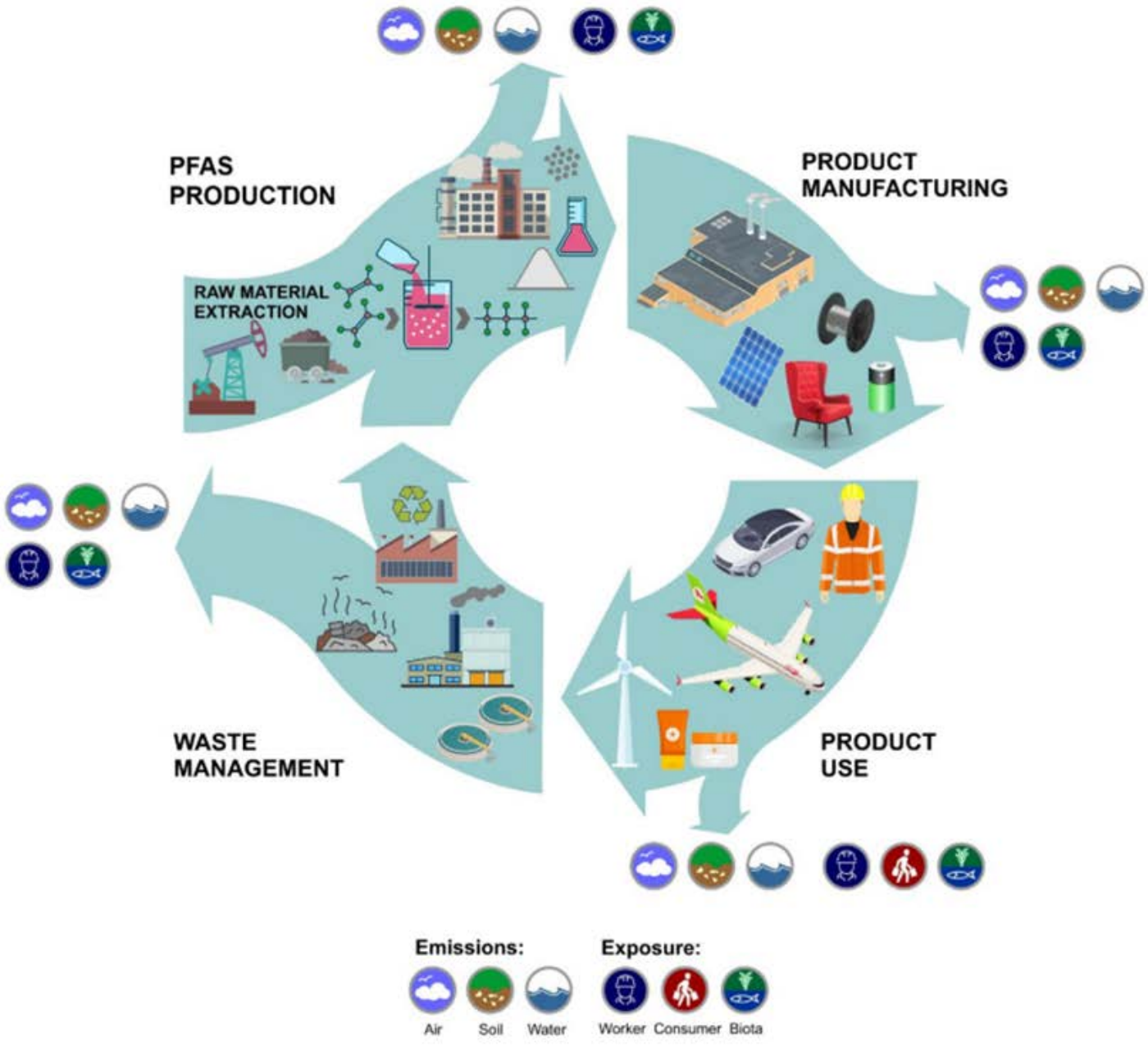
A critical issue vexing stakeholders is the uncertainty regarding whether a particular chemical substance is a PFAS.

B&C and Acta chemists, toxicologists, and regulatory specialists live by the maxim "data rules."

Our professionals follow the data and expertly review compositional and manufacturing information to assist clients in determining chemical identity to be absolutely certain a regulatory initiative is jurisdictionally relevant.

In 1999, the U.S. Centers for Disease Control and Prevention (CDC) measured at least 12 PFAS in human blood serum, indicating exposure to these chemicals in the U.S. population. PFAS contamination in humans and in the environment is believed to be pervasive.

While the measurable presence of a substance in serum alone tells us nothing about whether that presence causes an adverse effect, it is clear people do not want PFAS to contaminate their bodily fluids, consumer products, or groundwater supplies.



Source: https://ec.europa.eu/environment/pdf/chemicals/2020/10/SWD_PFAS.pdf

PFAS Regulation in the United States

The current regulatory landscape in the United States is primarily focused on PFAS in the soil or drinking water given their potential to facilitate exposure to humans. On October 18, 2021, the U.S. Environmental Protection Agency (EPA) announced its PFAS Strategic Roadmap, laying out a whole-of-agency approach to addressing PFAS.

The Strategic Roadmap is centered on three guiding strategies: increase investments in **research**; leverage authorities to take immediate action to **restrict** PFAS chemicals from being released into the environment; and **remediate** PFAS contamination.

EPA is also focusing on enforcement of measures to restrict PFAS. Many PFAS are subject to Toxic Substances Control Act (TSCA) Significant New Use Rules (SNUR) or Consent Orders that provide specific conditions with which a company must comply for the manufacture, processing, distribution, or disposal of the substance.

EPA has also in the recent past stepped up issuance of information requests and notices of inspection to companies subject to SNURs or Consent Orders for PFAS. Due to EPA's strong focus on controlling and remedying the damage caused by PFAS, EPA can be expected to make use of its extensive TSCA enforcement authorities to penalize non-compliance with SNURs, Consent Orders, or other provisions applicable to PFAS.

States are also moving at a faster pace and are enacting comprehensive regulations that restrict or ban PFAS in a broad range of products. Most frequently, states restrict or ban the use of PFAS in firefighting foams, food contact materials, pesticides, and consumer products. Some of these state bans are now in effect, while others will become effective in the upcoming years. EPA proposed national primary drinking water regulations (NPDWR) for certain PFAS on March 29, 2023. Certain states have passed or are proposing maximum contaminant levels (MCL) for certain types of PFAS in groundwater or wastewater.

Most of these state regulations involve reporting requirements for PFAS and apply to companies marketing products in a state. These regulations are increasing at a rapid pace, and the scope of PFAS reporting and/or bans is extensive. Maine, for example, enacted a law in 2021 that would essentially ban any product containing intentionally added PFAS as of January 1, 2030, with narrow exemptions. Companies can expect similar bans to be enacted in other states as well.

Knowing about these developments is essential. ***Preparing to comply*** with them is another matter, requiring careful and strategic consideration of legal and commercial factors involving litigation, insurance, and brand-management expertise.

More Information:

- Biden Administration Announces Multi-Agency Plan to Confront PFAS Pollution; EPA Releases Strategic Roadmap **(Oct. 19, 2021)**
- Maine Proposes Rule to Clarify Reporting Requirements for PFAS in Products **(Feb. 17, 2023)**
- GAO Recommends Actions to Improve DOD's Ability to Prevent the Procurement of Items Containing PFAS **(May 3, 2023)**
- Maine Governor Signs Bill Postponing PFAS Reporting Requirement **(June 9, 2023)**
- Minnesota Will Require Manufacturers to Report Intentionally Added PFAS and Will Ban Intentionally Added PFAS in Certain Product Categories Beginning January 1, 2025 **(June 14, 2023)**

B&C and Acta professionals assist clients with evaluating potential liabilities in chemical product lifecycles and supply chains. Identifying precisely where in the supply chain PFAS may enter will often influence the regulatory status of a PFAS and will certainly influence business operations and commercial options.

Our professionals develop innovative and resilient product stewardship and compliance strategies based on this information to help identify and manage risk and thus minimize potential liability.

Where Are PFAS?

Expanding U.S. Requirements

Proposed Rule to Require Reporting on PFAS Manufactured in the United States

The fiscal year 2020 (FY2020) National Defense Authorization Act (NDAA) amended TSCA to add Section 8(a)(7), mandating that EPA promulgate a rule "requiring each person who has manufactured a chemical substance that is a [PFAS] in any year since January 1, 2011" to report certain information.

EPA's June 2021 proposed rule would require all manufacturers (including importers) of PFAS in any year since 2011 to report information related to chemical identity, categories of use, volumes manufactured and processed, byproducts, environmental and health effects, worker exposure, and disposal. EPA states that the proposed rule will help it better understand the sources and quantities of PFAS manufactured in the United States and support its research, monitoring, and regulatory efforts.

This reporting standard will require submitters to conduct a reasonable inquiry within the full scope of their organization (not just the information known to managerial or supervisory employees). This standard also entails inquiries outside the organization to fill gaps in the submitter's knowledge. Such activities may include phone calls or e-mail inquiries to "upstream suppliers or downstream users or employees or other agents of the manufacturer, including persons involved in the research and development, import or production, or marketing of the PFAS." 86 Fed. Reg. at 33928.

Key aspects of the proposed rule include:

- No exemption for small businesses. EPA states that it views the statutory language that "'each person who has manufactured a chemical substance that is a perfluoroalkyl or polyfluoroalkyl substance' shall be subject to the rule" to mean that Congress's intent was to require small businesses to report as well.
- No exemption for PFAS produced as byproducts.
- No exemption for PFAS-containing articles (including articles containing PFAS as part of surface coatings). EPA acknowledges that some article manufacturers, including importers, may meet the "not known or reasonably ascertainable" criterion.

Senate Committee Seeks Stakeholder Comment on Draft PFAS Legislation

The Senate Committee on Environment and Public Works announced on June 22, 2023, that Senators Tom Carper (D-DE), Chair of the Committee, and Shelley Moore Capito (R-WV), Ranking Member of the Committee, have released draft PFAS legislation for stakeholder comment. According to the press release, the bipartisan package seeks to improve the mitigation and remediation of PFAS contamination. The Committee sought stakeholder comments on the draft legislation by July 3, 2023.

The press release states that the draft legislation seeks to achieve the following goals:

- Support EPA's Ability to Address PFAS for Communities through Infrastructure and New Technologies: The press release notes that EPA "is already working to finalize drinking water standards, hazardous substance designations, and risk assessments for PFAS," among other federal actions to respond to PFAS contamination. The draft legislation includes provisions that:
  - Set a **September 30, 2024**, deadline for EPA to complete its ongoing rulemaking process to set drinking water standards for specific PFAS;
  - Support the ability of states to inventory industrial users of PFAS within their borders;
  - Authorize grant programs for the development of treatment technologies for PFAS; and
  - Create a prize competition to encourage innovation in the development of technologies that can help identify PFAS in the environment, prevent further contamination, and remediate or destroy PFAS.
- Expand EPA Science Related to PFAS: According to the press release, EPA has gaps in its knowledge and available scientific information about this large class of substances. The legislation will help EPA fill these gaps and build public support to address growing public concerns. This draft bill includes provisions that:
  - Provide a consistent and practical definition of PFAS compounds for use by federal agencies, state governments, and other entities;
  - Help bolster understanding of beneficial and nonessential uses of PFAS in commerce;
  - Direct EPA to create a clearinghouse of state and private-sector best practices to support informed decision-making on these chemicals; and
  - Direct EPA to work with an external standards-setting organization to supplement its work on PFAS standards -- including for detection, reduction, destruction, remediation, and verification.

- Assist Communities Dealing with PFAS Contamination: The contamination from PFAS is widespread, and communities are continuing to grapple with challenges driven by these chemicals. This draft legislation includes provisions that:
  - Amend the Safe Drinking Water Act (SDWA) State Response to Contaminants program, as amended in the Infrastructure Investment and Jobs Act, to allow states to assist individual well owners; and
  - Authorize a new emergency response program to support our most vulnerable communities plagued by acute contamination issues.

More Information:

- EPA Announces Three PFAS Actions, Including Proposed TSCA Section 8(a) Reporting Rule (June 11, 2021)
- Podcast -- New PFAS: Is Anything NOT Reportable? -- A Conversation with Richard E. Engler, Ph.D., All Things Chemical® podcast, *also available as a transcript*, released July 8, 2021
- EPA Seeks Comment on Initial Regulatory Flexibility Analysis on Proposed PFAS Reporting Rule (Nov. 29, 2022)
- Senate Committee Seeks Stakeholder Comment on Draft PFAS Legislation by July 3,2023 (June 22, 2023)

Toxics Release Inventory (TRI) Reporting for PFAS

TRI data are reported to EPA annually by facilities in certain industry sectors, including federal facilities, that manufacture, process, or otherwise use TRI-listed chemicals above certain quantities. The data include quantities released into the environment or otherwise managed as waste. The 2020 NDAA identifies certain regulatory activities that automatically add PFAS or classes of PFAS:

- EPA issuing a final toxicity value; and
- Being subject to a SNUR.

More Information:

- EPA Requires TRI Reporting for Five Additional PFAS (July 19, 2022)
- EPA Proposes SNUR for PFAS Designated as Inactive on the TSCA Inventory (Jan. 27, 2023)
- EPA Implements Statutory Addition of Certain PFAS to TRI Beginning with Reporting Year 2023 (June 26, 2023)

Proposal to Designate PFOA and PFOS as CERCLA Hazardous Substances

Last August, EPA proposed to designate PFOA and PFOS, "two of the most widely used PFAS," as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The proposal will include the salts and structural isomers of PFOA and PFOS. The rulemaking would require entities to report immediately releases of PFOA and PFOS that meet or exceed the reportable quantity (RQ) of one pound or more in a 24-hour period. More recently, in April 2023, EPA issued an advance notice of proposed rulemaking on various PFAS under CERCLA to seek public input on whether to seek similar CERCLA designation of other PFAS.

Entities potentially affected include:

- PFOA and/or PFOS manufacturers (including importers and importers of articles);
- PFOA and/or PFOS processors;
- Manufacturers of products containing PFOA and/or PFOS;
- Downstream product manufacturers and users of PFOA and/or PFOS products; and
- Waste management and wastewater treatment facilities.

Implementation of the proposed rule is expected to jump-start extraordinary remediation activities resulting in significant CERCLA-related cleanups, demands for cost recovery, re-opening of "cleaned-up" sites, and private litigation. The insurance industry is bracing for the impact.

More Information:

- EPA Will Propose to Designate PFOA and PFOS as CERCLA Hazardous Substances (Aug. 29, 2022)
- Lynn L. Bergeson, "EPA Targets PFAS Cleanup," *Chemical Processing* (Sept. 23, 2022)
- Webinar on Demand -- Analyzing the EPA's Proposal to List PFAS Chemicals as Hazardous Substances (Jan. 30, 2023)
- EPA Holds CERCLA PFAS Enforcement Listening Session (Mar. 17, 2023)
- EPA Publishes ANPRM Seeking Information to Assist in Consideration of Future CERCLA Regulations Regarding PFAS (Apr. 13, 2023)

How Should We Report PFAS?

B&C and Acta professionals regularly assist clients with recordkeeping and reporting obligations and developing business-sensitive supply chain communication strategies and business documents that reflect critical information elicited in these communications.

Stakeholders are increasingly being asked to report PFAS-related information and doing so accurately, consistently, and smartly is crucial for compliance purposes and to ensure supply chain and corporate brand integrity.

Drinking Water Standards

In March 2023, EPA announced the first-ever national drinking water standard for six PFAS. The propsed NPDWR would regulate PFOA and PFOS as individual contaminants and will regulate four other PFAS -- perfluorononanoic acid (PFNA), perfluorohexane sulfonic acid (PFHxS), perfluorobutane sulfonic acid (PFBS), and hexafluoropropylene oxide dimer acid (GenX chemicals) -- as a mixture.

The proposal requires monitoring of the six PFAS consistent with EPA's long-established monitoring frameworks where monitoring frequency depends on previous results. Public notification would be required if monitoring detects these PFAS at levels exceeding the standard.

Public water systems would be required to take actions to reduce the levels of these PFAS if they exceed the regulatory standards, by:

- Removing these chemicals through various types of treatment; or
- Switching to an alternative water supply that meets the standard.

More Information:

- President Biden's FY 2024 Budget Includes Additional Funding for TSCA and Funding to Address PFAS Pollution (Mar. 14, 2023)
- EPA Proposes First-Ever National Drinking Water Standard for Six PFAS (Mar. 16, 2023)
- Senate Committee Hearing on EPA's Proposed FY 2024 Budget Addresses TSCA, PFAS (Mar. 23, 2023)

Canadian, European, and UK Regulation

Canada's Draft State of PFAS Report

On May 20, 2023, Canada published a Canada Gazette notice announcing the availability of its Draft State of Per- and Polyfluoroalkyl Substances (PFAS) Report (Draft Report). Canada proposes to conclude that the class of PFAS meets one or more criteria set out in Section 64 of the Canadian Environmental Protection Act, 1999 (CEPA). According to the notice, the Minister of the Environment and the Minister of Health (the ministers) propose to recommend that the class of PFAS be added to the CEPA Schedule 1 List of Toxic Substances. The Draft Report provides a qualitative assessment of the fate, sources, occurrence, and potential impacts of PFAS on the environment and human health to inform decision-making on PFAS in Canada. The ministers have released a risk management scope document for PFAS to initiate discussions with stakeholders on the development of risk management options. Comments on the Draft Report and risk management scope document were due July 19, 2023.

The risk management scope document outlines the proposed risk management options under consideration for the class of PFAS, which has been proposed to be harmful to the environment and human health. According to the risk management scope document, while there are various potential sources of PFAS in Canada, exposure sources of concern include firefighting foams containing PFAS, and other sources and products that contain PFAS. In particular, Canada is considering:

- Regulatory and/or non-regulatory controls to minimize environmental and human exposure to the class of PFAS from firefighting foams;
- Gathering information necessary to identify and prioritize options for reducing environmental and human exposure from the class of PFAS from other sources and products; and
- Aligning with actions in other jurisdictions, where appropriate.

REACH Restriction Proposal

The EU's Annex XV restriction proposal, which was released for public comment on March 22, 2023, would restrict more than 10,000 PFAS under the REACH regulation. The national authorities of Denmark, Germany, the Netherlands, Norway, and Sweden submitted the proposal after finding risks in the manufacture, placement on the market, and use of PFAS that, in their view, pose risks to human health and the environment that are not adequately controlled and need to be addressed throughout the EU and the European Economic Area (EEA).

The restriction proposal analyzes various risk management options and concludes that a REACH restriction is the preferred risk management option. According to the restriction proposal, the best option to avoid PFAS emissions to the environment during manufacture, production, and use of PFAS-containing articles and at the waste stage is to prohibit the manufacture and use of PFAS to the largest extent possible.

The restriction proposal analyzes the likely impacts of a full ban that would enter into force after a transition period of 18 months and proposes the following use-specific, time-limited restriction options:

- A full ban 18 months after the restriction enters into force of manufacture and placement on the market of all PFAS for which alternatives are known and can be available in adequate quantities;

- A five-year derogation when there is "sufficiently strong evidence" that alternatives are in development but their implementation within the 18-month transition period is not feasible technically or economically;
- A 12-year derogation when there is "sufficiently strong evidence" that technically and economically feasible alternatives will not be available within the five-year derogation window, or may require regulatory approval or certification that cannot be completed within the five-year timeframe; and
- Time-unlimited (only for a limited number of specific uses; applies to active ingredients regulated in plant protection products, biocidal products, and medicinal products for human or veterinary use).

More Information:

- ECHA Publishes Proposal to Restrict More Than 10,000 PFAS under REACH (Feb. 13, 2023)
- ECHA Convenes Online Information Session Regarding the Proposal to Restrict More than 10,000 PFAS under REACH (Apr. 7, 2023)
- HSE Publishes RMOA for PFAS (Apr. 12, 2023)
- Canada Begins Public Consultation on Draft State of PFAS Report, Proposes to Recommend Adding PFAS to CEPA Schedule 1 (May 25, 2023)

Acta Offices and Global Partners

What Are the Global Implications of PFAS?

Acta's U.S., UK, and EU professionals assist clients to manage worldwide supply chain communication and compliance planning. Our scientists, lawyers, and regulatory affairs specialists can ensure a consistent science-based compliance approach that seamlessly reflects jurisdictional variations in PFAS restrictions.

While the EU is considering a ban of more than 10,000 PFAS, the United Kingdom's (UK) Health and Safety Executive (HSE) has published a regulatory management options analysis (RMOA) for PFAS. The RMOA is a preliminary step used within the UK REACH framework. Using a modification of the definition of PFAS developed by the Organization for Economic Cooperation and Development (OECD), a definition that excludes substances with a single, isolated methylene group (*i.e.*, $-CF_2-$) from consideration as PFAS, the RMOA "reduces the number of PFAS in scope to hundreds, maintaining focus on substances that are persistent degradation products of PFAS." Based on scientific evidence, the UK considers that the excluded substances are not transformed to highly persistent substances that pose human health or environmental concerns. The restriction proposal in the EU, however, uses a broader definition that is aligned with OECD's, but more than doubles the number of PFAS substances.

The RMOA states that based on initial considerations of likely effectiveness and efficiency of options -- and considering the Precautionary Principle -- HSE concludes that it would be appropriate to consider initiating risk management measures with regard to certain uses of PFAS, including preparing background dossiers to support UK REACH restrictions of PFAS, such as:

- The use and disposal of fire-fighting foams where non-PFAS alternatives are available;
- Other wide dispersive uses such as the application of coatings or use of cleaning agents; and
- The manufacture and placing on the market of consumer articles from which PFAS are likely to be released into air, water, or soil, or directly transferred to humans. This includes textiles, upholstery, leather, apparel, rugs and carpets, paints, varnishes, waxes and polishes, and cleaning products. Consideration may be given to other consumer articles if other gaps are identified in consultation with other legislative regimes such as food contact materials.

The effects of whatever final approach is adopted by the EU are years away, but U.S. companies take note. The EU's approach will have a profound impact on the global economy and inevitably impact manufacturing practices and standards far beyond the EU. It is the first concrete step taken by one of the world's strongest economies to signal that PFAS as a chemical category will be phased out.

Expanding Commercial Liability

Remediation Liability under CERCLA

EPA is widely expected to designate PFOA and PFOS as CERCLA hazardous substances. Under CERCLA, multiple parties may be held jointly and severally liable for cleanup costs at designated sites, even if the release occurred decades ago and contributed only marginally to the PFOA or PFOS contamination, and even if the site was previously remediated for other contaminants.

Companies that own or operate PFOA- and PFOS-contaminated sites, or that have been involved in the manufacture, distribution, or disposal of PFOA- and PFOS-containing products, could face litigation and the associated cost.

Property/Personal Injury Liability

Thousands of lawsuits have already been filed alleging personal injury and property damage allegedly caused by PFAS. The remediation of sites under CERCLA will almost certainly drive new litigation, implicating a new class of potential defendants. Companies will need to manage the fallout and assess the potential for legal action and prepare accordingly.

Product Liability

The plaintiffs' bar has never wanted for creativity, and those skills are being deployed with vigor in the PFAS litigation area. There are a growing number of consumer product liability cases seeking class action certification alleging the *presence* of PFAS in purchased products and asserting fraud, various breaches of implied or express warranty, negligent misrepresentation, state consumer protection provisions, and unfair competition claims, among other novel theories of liability. Our blog on the class action lawsuit filed against Tom's Wicked Fresh mouthwash that was found to contain measurable concentrations of PFAS is an excellent example of how consumer protection laws can be used as a cudgel to weaponize state laws that are intended to protect against marketing practices. Demonstrating personal injury beyond modest economic injury is not necessary to elicit an adverse ruling, significant transaction costs, and unwanted reputational injury and brand damage.

PFAS litigation is expanding. PFAS manufacturers and the product manufacturers intentionally adding PFAS to their products have been embroiled in litigation for years and likely will bear the greatest burden in terms of cleanup/remediation/medical monitoring/personal injury liability.

Product manufacturers marketing products with intentionally added PFAS are, however, now increasingly at risk, depending on the products' applications. These marketers should be pursuing all the risk minimizing/mitigating strategies, including reformulation, labeling/disclosure, and contractual protections/waivers, as appropriate, to minimize liability.

Product manufacturers marketing products with detectable levels of PFAS that did not intentionally add PFAS, but their products are found to contain PFAS for any number of reasons, are increasingly at risk, particularly in consumer products that resonate with consumers, including cosmetics (Coty), undergarments (Thinx), outer garments (REI), mouthwash (Tom's), and many more.

What to Do?

In the current legal, regulatory, and commercial landscape and with the likely outlook over the coming decade, companies must develop a PFAS gameplan. A company must consider all aspects of its supply chain and understand where PFAS might enter it.

Given the ubiquity of these chemicals, PFAS may enter a supply chain in an astonishing number of ways -- intentionally added, unintentionally added (byproduct, contaminant), or manufacturing process water contaminant. The maddening reality is PFAS is literally everywhere, so the potential for liability is correspondingly open-ended.

A PFAS gameplan must include at least these elements:

Ascertain where in the supply chain of a product line there might be PFAS:

- Eliminate the source of the PFAS, if possible, and/or reformulate the product.
- If it is not possible, for whatever reason, to reformulate, it is essential to ensure continued market access. Clarify as much as possible what is known about each PFAS species: composition, performance, properties, uses, applicable bans, restrictions, or reporting requirements, and develop a plan to protect market access.

Ensure your operations are fully informed about PFAS regulations, pending trends and proposed regulations:

- Global bans and restrictions could affect companies, even if they do not have an active presence in the markets in question.
- Develop now detailed justifications for PFAS that are essential and seek protections under domestic and international regulatory frameworks for exemptions and derogations that reflect the essential nature and functionality of PFAS that can and should enjoy extended market-life protections.

Assess business options, including insurance policies, contractual indemnifications, and related private-party risk mitigation measures:

- Conduct an insurance audit and shore up deficits as much as possible.
- Review supply agreements and related commercial agreements with a view toward seeking indemnifications from suppliers to provide as much contractual protection as possible.
- Revisit your company's product component certification program to ensure the protections your company seeks and the assurances your company is providing are state of the art.
- Assess if your company's procurement policies are "PFAS sensitive." In other words, confirm your supply chain, research and development (R&D) activities, and product development policies disallow PFAS at every step of the process.

How We Can Help

The professionals of B&C and Acta have unparalleled experience in scientific, legal, policy, and regulatory issues related to PFAS. Our robust science team includes seven Ph.D. chemists and toxicologists, including former senior EPA scientists and directors of regulatory compliance at Fortune 500 companies. Our attorneys, scientists, and regulatory specialists have worked on some of the toughest compliance issues of the last three decades, assisting clients in planning, product defense, and business strategy development.

Our services include:

Chemical Product Review --

- Assist in the identification of PFAS in chemical products
- Assist with reporting obligations related to PFAS
- Assist with labeling and notice requirements

Recordkeeping and Reporting Assistance

Regular Updates on PFAS Legislative and Regulatory Developments

Marketing and Response to PFAS Awareness

Strategic Business Advice --

- Map consumer/market PFAS developments and legal and industry mandates
- Planning and budgeting

Visit our PFAS Resource Center:

www.lawbc.com/page/pfas-resource-center

We would be pleased to provide additional information and assist with PFAS-related scientific, regulatory, or legal questions that you may have.

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