

# BACK TO THE PFUTURE

Required reporting of historical PFAS use poses risks going forward.

## HIGHLIGHTS

The U.S. Environmental Protection Agency (EPA) recently established a one-time per- and polyfluoroalkyl substances (PFAS) reporting rule pursuant to the federal Toxic Substances Control Act (TSCA). Most companies that manufactured or imported certain PFAS chemicals or PFAS-containing “articles” from 2011 through 2022 (even if only once) must submit detailed information about those PFAS subject to the rule, compound by compound, to EPA by January 11, 2026. Virtually every domestic manufacturer and importer of consumer or industrial materials is now subject to this new reporting requirement. The scope and definitions of key terms in the rule (e.g. manufacture) are nuanced and compliance obligations should be evaluated carefully. The below provides a high-level summary of Shipman’s strategic approach for manufacturers/importers to comply with this new, significant rule and implications going forward. Further details on each step are provided on the following page.

### STEP 1: ASSEMBLE THE RIGHT PFAS TEAM

- Assemble a team comprised of in-house personnel, legal counsel and an environmental expert/consultant with TSCA expertise
- Engage an outside environmental expert/consultant through counsel to maximize attorney-client privilege benefits, where possible
- Develop a strategic approach to collect and report only relevant information required for compliance to minimize potential regulatory and third-party adverse actions and liabilities (e.g., consider developing a standard operating procedure)

### STEP 2: COMPLETE RELEVANT DUE DILIGENCE

- Understand where and how PFAS could have been intentionally introduced into your products and/or operations (directly or indirectly)
- Evaluate where/how to collect “reasonably ascertainable” details sufficient to comply with the required reporting categories
- Request necessary clarifications on due diligence findings internally and from suppliers

### STEP 3: UNDERSTAND AND MITIGATE POTENTIAL RISKS

- Consider how government agencies, plaintiff lawyers, customers and employees might use reported data to support future PFAS-related claims (Note: other public PFAS reports have led to litigation)
- Evaluate applicability of TSCA’s confidential business information protections
- Address any potential compliance gaps revealed during the due diligence process
- Consider voluntary self-disclosures to relevant state/federal agencies, if applicable

### STEP 4: APPROPRIATELY DOCUMENT FINDINGS

- Complete required draft reports/forms under privilege with sufficient time for the team to review and comment
- Consider preparing an internal memo, regardless of whether a company is required to report, that documents the evaluation performed, how results were addressed and why certain information was and was not disclosed (if any)

### STEP 5: REPORT AND MAINTAIN RECORDS

- Submit reports electronically through [EPA’s CDX platform](#) by January 11, 2026 (“small” importers of PFAS-containing articles have until July 11, 2026)
- Associated records must be maintained for five years

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## Additional Details

### INTRODUCTION:

The U.S. Environmental Protection Agency (EPA) recently established a one-time per- and polyfluoroalkyl substances (PFAS) reporting rule pursuant to the federal Toxic Substances Control Act (TSCA). Most companies that manufactured or imported certain PFAS or PFAS-containing “articles” from 2011 through 2022 (even if only once) must submit detailed information about those PFAS subject to the rule, compound by compound, to EPA by January 11, 2026. The reports require information on chemical identity, categories of use, volumes manufactured and processed, byproducts, environmental and health effects, worker exposures and disposal methods. **The rule is broad by design and applies to virtually all manufacturers and importers, even those who may never have had any reporting obligations under TSCA.**

With PFAS present in so many industrial and consumer products, most manufacturers and importers will have something to report. Domestic manufacturers and importers not typically subject to TSCA reporting regulations should undertake proper due diligence to determine their compliance obligations and implications going forward. The scope and definitions of key terms in the rule (e.g. manufacture) are nuanced and compliance obligations should be evaluated carefully.

### STEP 1 – ASSEMBLE THE RIGHT PFAS TEAM

Every U.S. manufacturer and importer should assemble a multidisciplinary team to develop a strategic approach for the collection and reporting of required PFAS business information to comply with the rule but also to minimize potential future liability. This may include developing a comprehensive standard operating procedure (SOP) detailing the methodologies for gathering information and the results of the company’s inquiries. For example, consider including an environmental expert/consultant and legal counsel with TSCA experience. Engaging an outside environmental expert/consultant through legal counsel is typically recommended as it can offer attorney-client privilege protections, as discussed below.

### STEP 2 – COMPLETE RELEVANT DUE DILIGENCE

It is important to note that “articles” incorporating a PFAS-containing substance (e.g., items with defined shapes as part of their end function, such as non-stick cookware; clothing treated with a PFAS-based stain repellent; furniture treated with a PFAS-containing coating to resist surface smudging) are subject to the new TSCA reporting rule. Many manufacturers and importers that have previously been exempt from TSCA reporting *will* be subject to this PFAS-specific rule. The due diligence plan should be scoped in a way that makes sense for each business and may require a robust analysis of a business’s entire supply chain. The rule does **not** require entities to test for PFAS; however, manufacturers and importers must report information that is **“known or reasonably ascertainable.”** The initial due diligence step should confirm whether reporting is necessary and whether additional information will be needed from suppliers and/or internal personnel to address the required reporting categories in EPA’s reporting form.

### STEP 3 – UNDERSTAND AND MITIGATE POTENTIAL RISKS

The internal due diligence effort may identify information demonstrating potential compliance gaps when the reports are submitted to EPA and become public records. Such information may include, for example, the use of chemicals that should be (but are not yet) registered on EPA’s TSCA inventory, data inconsistent with other governmental reports, missed filings required to be made under other reporting requirements (e.g., Chemical Data Reporting, Tier II, Toxics Release Inventory), occupational safety concerns, incomplete safety data sheets or product liabilities (e.g., design defects or false advertising). While TSCA allows certain confidential business information (CBI) to be protected, the definition of CBI is narrowly crafted and EPA’s process to claim CBI must be followed. In some cases, voluntary self-disclosures to EPA (and state environmental agencies) may be advisable.

Although not the intent of this reporting rule, government agencies, plaintiff lawyers, customers and even employees also might use reported data to support PFAS-related claims. In fact, the plaintiffs’ bar can be expected to seek submitted information under federal and state Freedom of Information Acts to provide potential fodder for private party lawsuits. Notably, a large personal care products company was sued recently in a proposed class action in California based on required disclosures under Maine’s reporting rule. Engaging experienced legal counsel early to help facilitate the team’s work and potentially protect certain communications under attorney-client privilege can be vital to offset litigation risks.

### STEP 4 – APPROPRIATELY DOCUMENT FINDINGS

Manufacturers/importers with domestic facilities subject to the new rule must report information for each facility individually, broken down by year from 2011 through 2022. This process should be handled methodically to avoid redundancies. We recommend that companies consider the preparation of a final internal memo that documents the process used for seeking the relevant information, how results were addressed and why certain information was and was not disclosed (e.g., some PFAS may be out of scope, some PFAS may be used but not manufactured or imported by the reporting company). Even if a company determines no report is required pursuant to the new rule, documenting the results of the due diligence effort can be critically important to addressing any future EPA compliance inquiry or inspection.

### STEP 5 – REPORT AND MAINTAIN RECORDS

Most companies must file their reports by January 11, 2026 on the standard reporting form to be provided by EPA. Companies reporting exclusively as “small” importers of PFAS-containing articles have until July 11, 2026. Article importers (of any size) have the option of using a more streamlined reporting form with fewer technical categories than the standard form. All reports must be submitted through EPA’s online [Central Data Exchange \(CDX\)](#). Records of this reporting event must be maintained for five years.

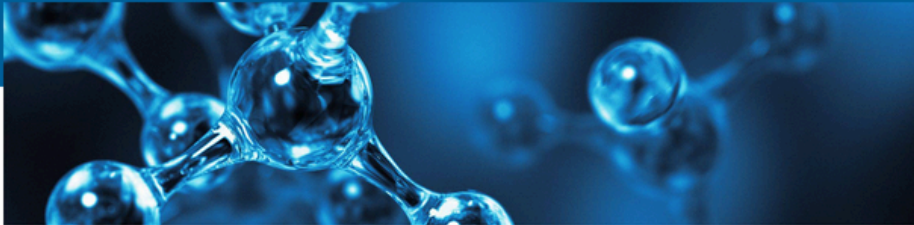
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Per- and polyfluoroalkyl substances (PFAS) are a class of thousands of “emerging contaminants” used in various manufacturing operations, firefighting foam, food packaging, textiles, cosmetics and many other products. Often referred to as “emerging contaminants” – given recent developments (including the proliferation of articles in the popular press reporting on PFAS found in food packaging and bottled water), it would be unwise to assume they are anything but “emerged” contaminants.



**The Regulatory Status of PFAS**

Click to view this brief video summary of the current regulatory status of PFAS.

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**PFAS: Risk Management Planning**

Click to view this brief video summary containing information about risk management planning for PFAS.

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**PFAS: Transactions**

Click to view this brief video summary of federal and state due diligence requirements with respect to transactions involving PFAS.

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PFAS are ubiquitous in the environment, are mobile, bioaccumulate and do not easily break down in the environment or human body - all of this has earned them the designation of “forever chemicals”. These human-made chemicals encompass ~4,000 different compounds, many around since the 1940s. PFAS are found in commonly encountered products, including non-stick coatings, waterproof fabrics, firefighting

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