Now & Next
Environmental Alert—Advanced Manufacturing

January 5, 2025

A New Year: Advanced Manufacturing and PFAS under the Trump Administration

By Alison B. Torbitt and Aaron B. Goldman

How manufacturers are responding to the EPA's regulatory shifts for PFAS under CERCLA, SDWA, and TSCA.

What's the impact?

- **PFOA/PFOS listings remain in force**: Superfund liability, reporting, and enforcement for PFOA and PFOS will continue, with DOJ defending the rule and PRP focus likely to intensify.
- **Framework Rule coming for future PFAS listings**: EPA intends to propose a CERCLA Section 102(a) framework to standardize cost and implementation considerations, reducing ad hoc designations.
- **Passive receiver exposure persists**: Although provided a SDWA compliance deadline extension, municipalities, POTWs, and other receivers face continued regulatory and enforcement uncertainties, while EPA collects cost–benefit data and explores options within existing authority.
- **TSCA PFAS reporting narrowed**: EPA has proposed to restore traditional exemptions, shorten the reporting window, and concentrate obligations on original manufacturers under Section 8(a)(7)'s manufacture and import regulations.

The 2025 proposed rules under the Trump Administration recalibrate PFAS (per- and polyfluoroalkyl substances) policy—preserving strong federal focus on perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), while limiting near-term expansion of PFAS obligations elsewhere. Advanced manufacturers must continue to consider PFOA and PFOS, but may get breathing room on other regulatory actions. Read below for insights on a new year in PFAS regulation.

Implications for PFAS compounds other than PFOA and PFOS

The US Environmental Protection Agency (EPA) announced that it will retain the CERCLA hazardous substance designations for PFOA and PFOS and will initiate a rulemaking to establish a uniform framework for future hazardous substance designations under CERCLA Section 102(a). At the same time, the EPA underscored the ongoing challenge of "passive receiver" liability—entities such as municipalities and utilities that did not manufacture or intentionally use PFOA/PFOS but received them in feedstocks, products, or waste materials—and indicated that a durable solution will likely require Congressional action. The US Department of Justice (DOJ) has submitted a court filing on the EPA's behalf in litigation concerning the PFOA/PFOS listings, and the EPA emphasized that it will continue to collect cost–benefit information as it implements the 2024 rule.

The EPA's announcement preserves the immediate legal status quo for PFOA and PFOS under CERCLA, while signaling a shift toward a more formal process for any future designations. Potentially responsible parties should expect continued attention to PFOA and PFOS in site investigations, allocations, and private-party cost recovery. For companies with potential CERCLA exposure—local governments, manufacturers, water and wastewater systems, solid waste facilities, and others navigating PFAS risks—the key question now is how EPA's contemplated "Framework Rule" under Section 102(a) and the agency's focus on passive receiver issues (e.g. publicly-owned water treat and wastewater treatment plants) will affect other PFAS chemistries that are not currently listed.

The EPA's plan to develop a section 102(a) "Framework Rule" signals a shift toward a more standardized, economics-informed approach to any future hazardous substance listings. The EPA has indicated that the framework will guide how the agency evaluates costs to manufacturers, passive receivers, consumers, and the broader economy, reflecting a commitment to "disciplined analysis and rigorous review."

For passive receivers, EPA reiterated that its authority is constrained and that statutory changes are the most durable pathway to limiting strict, retroactive CERCLA liability for entities that did not manufacture or generate PFOA/PFOS, but instead only received them through normal

operations. In the near term, this suggests continued uncertainty for the broader regulated community, even as EPA gathers data and explores policy options within its existing authority.

Intersection with May 14, 2025, EPA's SDWA and CERCLA Announcement

As detailed in its May 14, 2025, announcement, the EPA announced its intent to extend public water systems' compliance deadlines for PFOA and PFOS drinking water standards from 2029 to 2031. Originally, these drinking water standards were promulgated in April of 2024 under the Biden administration pursuant to authority under the Safe Drinking Water Act (SDWA). In addition to providing more time for municipalities and water utilities to come into compliance with PFOA and PFOS standards, the EPA also announced its "intent to rescind the regulations and reconsider the regulatory determinations for PFHxS, PFNA, HFPO-DA (commonly known as GenX), and the Hazard Index mixture of these three plus PFBS." Subsequently, in ongoing litigation, the EPA filed a motion to vacate Biden-era SDWA PFAS regulations for all PFAS compounds *except* PFOA and PFOS.

Taken together, these two regulatory shifts—EPA's September 2025 announcement that it will advance a CERCLA Section 102(a) "Framework Rule" and its May 2025 decision to stop defending the SDWA regulation of PFHxS, PFNA, HFPO-DA, and mixtures with PFBS—work in tandem to narrow near-term drinking-water obligations while potentially creating a unified method for advancing regulation of other PFAS compounds and substances generally under CERCLA. The intersection is consequential. Utilities and municipalities may see reduced SDWA regulatory scope beyond PFOA/PFOS, but PFOA/PFOS CERCLA exposure remains unchanged. Manufacturers and significant contributors should expect continued cleanup and cost-recovery risk for PFOA and PFOS. At the same time, any effort to regulate other substances (including PFAS compounds other than PFOA and PFOS) will be slower and more analytically constrained by any forthcoming "Framework Rule." This would echo the current administration's skepticism of broader PFAS regulation, reflected in the May rollback.

Proposal to Narrow PFAS Reporting under TSCA Section 8(a)(7)

Section 8(a)(7) of the Toxic Substances Control Act (TSCA), added by Congress in 2019, directs EPA to require a one-time submission of information from any person who has manufactured or imported PFAS from 2011 to 2022. On October 11, 2023, EPA finalized the proposed rule and codified it at 40 CFR Part 705 (2023 Rule). The 2023 Rule established one-time reporting obligations for manufacturers and importers of PFAS substances, including PFAS in mixtures and manufactured items (*i.e.*, articles), to the extent information is known to or reasonably ascertainable. This reporting obligation included information on the chemical identity of each PFAS, quantities imported or manufactured during the covered period, processing and uses,

byproducts resulting from manufacture and use, and worker exposure. However, the 2023 Rule had no traditional TSCA exemptions found for other substances, such as exemptions for articles, *de minimis* concentrations, byproducts not used for commercial purposes, and impurities unintentionally present in other chemical substances.

On November 13, 2025, the EPA released a proposed rule (2025 Proposed Rule) to significantly narrow the scope of the 2023 Rule. The 2025 Proposed Rule would restore traditional TSCA exemptions and shorten the reporting window, while retaining the 2011 to 2022 lookback period and a broad structural definition of PFAS. Specifically, EPA's proposed rule would incorporate several long-standing TSCA exemptions for the following: imported articles; *de minimis* concentrations below 0.1% in mixtures and articles; impurities; byproducts not used for a commercial purpose; non-isolated intermediates (typically temporary, reactive substances used and destroyed within a manufacturing process, without being removed from equipment); and PFAS manufactured in small quantities solely for research and development purposes. The comment period for the 2025 Proposed Rule closed on December 29, 2025. The agency also sought comment on adding a production volume threshold, though no threshold is currently proposed.

The EPA framed the changes as aligning reporting obligations with those most likely to possess relevant information and reducing burdens inconsistent with TSCA Section 8(a)(5)'s prohibition against unnecessary or duplicative reporting, and executive order deregulatory directives. EPA emphasized that the 2023 Rule, absent exemptions, risked disproportionate burdens—particularly on small businesses and article importers—without a clear statutory directive. The agency anticipates significant cost reductions if the 2025 Proposed Rule is finalized, positing that the revised scope preserves essential information from those most likely to have it, particularly original PFAS manufacturers, while avoiding duplicative or low-value reporting.

Application to manufacturing

Amid ongoing regulatory uncertainty, many manufacturers are adopting practices that minimize PFAS-related risk and preserve operational and transactional flexibility. Some of these changes touch upon Phase I environmental site assessments, Phase II investigations, disclosure schedules, merger-and-acquisition agreements, supplier questionnaires, and internal compliance records. Careful consideration behind the documented use, storage, handling, transportation, and disposal of PFOA- and PFOS-containing substances may help avoid unintended admissions, reduce ambiguity in negotiations and diligence, and align documentation with current regulatory standards.

Given that PFOA and PFOS remain the focal point of enforcement and cost recovery, manufacturers are evaluating the potential benefits and risks of sampling process wastewater, effluents, and finished products for PFOA and PFOS. Before initiating testing, prudent members of the regulated community will evaluate whether confidentiality protections and legal privilege

can be structured to cover sampling plans, communications, and results. Ideally, any such analysis will account for the practical tension between getting ahead of compliance issues and generating information that may carry disclosure obligations or become discoverable. When testing proceeds, it is critical to ensure that objectives are clear and sampling methodologies are defensible, while also confirming that chain-of-custody procedures, laboratory selection, and data validation support future regulatory and transactional needs.

When replying to inquiries from customers, vendors, or regulators regarding PFAS content in products or processes, obtaining the assistance of legal counsel will assist in crafting clear, compound-specific, defensible responses, where required. Addressing PFOA and PFOS explicitly—whether present, absent, or below detection limits—allows manufacturers to maintain transparency, with the understanding that other compounds may be subject to future regulation under a standardized framework. Under a unified internal approach, manufacturers will carefully vet draft responses for consistency across marketing materials, product and process specifications, safety data sheets, contractual representations, and ESG reporting, all to avoid conflicts and preserve sound legal positions.

Many manufacturers are taking stock of governance, supply-chain engagement, and transactional practices in light of this shifting regulatory landscape. Common updates include using diligence questionnaires to elicit compound-specific disclosures from suppliers and aligning contractual representations and indemnities with the current emphasis on PFOA and PFOS. The 2025 Proposed Rule on TSCA complements the Trump Administration's broader recalibration of PFAS policy—preserving a strong federal focus on PFOA/PFOS liability under CERCLA, while limiting near-term expansion of PFAS obligations elsewhere.

For passive receivers and municipalities, reduced TSCA reporting by article importers may lower immediate administrative burdens, but does not resolve CERCLA exposure related to PFOA/PFOS, nor the data gaps that could inform future regulatory actions. Original PFAS manufacturers would continue to shoulder the core reporting obligations, including downstream processing and use information that may still shed light on PFAS use in articles.

Attorneys on Nixon Peabody's Environmental Team stand ready to assist clients with developing creative legal strategies to derisk transactions and manage regulatory exposures related to PFOA and PFOS, as well as PFAS that may come under regulation.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

Alison B. Torbitt
415.984.5008
atorbitt@nixonpeabody.com

Aaron B. Goldman
585.263.1216
agoldman@nixonpeabody.com