

ISRI

New England

New PFAS Regulation and Potential Impact on Metals Recyclers

As we have previously covered in this newsletter, environmental regulators are increasing their focus on PFAS (perfluoroalkyl and polyfluoroalkyl), the so-called “forever chemicals” which have been found throughout our environment. Last month, the U.S. Environmental Protection Agency published a final rule requiring manufacturers of PFAS substances to undertake a massive self-reporting effort to EPA. The rule (40 CFR Part 705) applies to “any entity” that, at any time since 2011, manufactured, produced (including as a byproduct), or imported certain PFAS chemicals for a commercial purpose. Reporting entities must disclose the type of PFAS chemical, volume, uses (by the entity or downstream in the marketplace), byproducts, disposal information, and worker exposure.

The scope of the rule is breathtaking and potentially applies to metals recyclers given that many reusable products and materials that come into a recycling yard for processing could contain PFAS. The new regulation covers manufacturers, producers and importers, regardless of size. There is no minimum quantity of reportable PFAS. The amounts in mixtures must be reported, as well as the volume (in pounds) of PFAS-containing articles. The rule applies to PFAS substances or mixtures containing at least one of three chemical substructures, an estimated 1,462 PFAS chemicals.

EPA estimates that 97% of the firms potentially affected by the rule are small businesses, for a total of 128,051 small PFAS manufacturers and article importers. An EPA Initial Regulatory Flexibility Analysis and Updated Economic Analysis performed on the proposed rule estimated per-firm costs for manufacturers to be \$6,553 to \$1,800,068 and per-firm costs for article importers to be \$4,046 to \$224,734. Interestingly, EPA suggests that only a small portion of the firms will ultimately have relevant known or reasonably ascertainable information to comply with the rule. Thus, only 13,021 small entities are estimated to report.

Advances in testing technology have spurred greater attention to PFAS chemicals’ prevalence and persistence in the environment, animal tissue, and human blood serum. Laboratory studies using animals and epidemiological studies of humans show a possible association of some PFAS substances with adverse health effects, including liver damage, decreased fertility, thyroid disease, and cancer. EPA expects data reported from the new rule will support future “activities and programs” under several environmental statutes. The disclosures may also provide evidence that the public or regulators could use to claim that entities are liable for injuries, cleanups, or cost recovery.

ISRI-National has been hard at work tracking and organizing responses to this most burdensome and complex regulation. ISRI submitted comments to the proposed rule seeking reporting exclusions or exemptions, but those were rejected by EPA. ISRI will continue to advocate to EPA for clarifications and interpretations that may bypass or lessen obligations imposed on materials recyclers. The deadline for reporting under the new regulation is May 2025. Until that time, we expect that ISRI's full court press to EPA on behalf of the ISRI membership will intensify. Stay tuned for updates as that effort continues.

ISRI Lobbyist Network: Lithium-Ion Batteries Up Next

As we have previously reported, ISRI-National staff and the ISRI Government Relations Committee have established a regular monthly video meeting targeted for Chapter lobbyists, counsel and officers. Individual company representatives are free to join any monthly call as well. So far, the discussions have focused on some of the recycling industries most pressing issues such as environmental justice, metal theft, and catalytic converter legislation. We call to the Chapter's attention the next zoom meeting on December 11 at 3pm. The main topic for discussion is lithium-ion batteries, a major source of fires at recycling facilities. Any Chapter member who wants to join this meeting should contact Justin Short, ISRI's Manager for Government Relations at jshort@isri.org.

Catalytic Converter Update

All states, except Wyoming, now have some form of specific catalytic converter theft law. The Massachusetts and Connecticut laws went into effect in 2023 and 2022 respectively. Most of these laws have common themes running through them requiring purchasers of converters to keep detailed records on sellers and prohibiting purchases from persons who are not the owner of the vehicle from which the converter originated or otherwise do not operate businesses in the automotive or recycling industry. Interestingly, according to the National Insurance Crime Bureau the average number of catalytic converters thefts is down by about 50% in 2023 compared to 2022. The drop in thefts is generally attributed to the steep drop in market price for the precious metals contained in catalytic converters and not because of the proliferation of metal theft laws across the country. ISRI-National has published a Toolkit on catalytic converters which provides guidance to metals recyclers interested in purchasing and selling these items. The Toolkit is available through the members only section of the ISRI website.

Special thanks to Gail Magenau Hire of Burns & Levinson for her assistance in writing the PFAS piece.



David P. Rosenblatt

Partner | Real Estate, Environmental

drosenblatt@burnslev.com | 617.345.3684