CPSC Collecting Data on PFAS in Consumer Products

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September 21, 2023

The Consumer Product Safety Commission (CPSC) is initiating a wide-ranging data collection effort on the use and presence of per- and polyfluoroalkyl substances (PFAS) in consumer products. As detailed in a September 30 *Federal Register* Notice and Request for Information ("ROI"), CPSC is requesting public comments by November 30, 2023. The information could provide the basis for a future rulemaking that may restrict or ban PFAS in a broad swath of consumer products.

CPSC is looking for information not only on uses and the presence of PFAS, but also potential exposure and toxicological effects.

Use or Potential Uses of PFAS in Consumer Products

- Definition of PFAS "including which chemical substances should be considered a [PFAS], which chemical substances should be excluded from consideration as a PFAS, and which PFAS are considered in commerce." This is a critical element of the scope of any CPSC action and has been the subject of debate as states generally have taken a broad view of covered PFAS in their own product-specific regulations, notably including short- and long-chain PFAS. This approach captures thousands of PFAS formulations. While only a relatively small number of PFAS have been the subject of toxicological assessments, the precautionary approach assumes that all or most PFAS share common toxicological characteristics;
- PFAS potentially used or present in consumer products or product categories;
- Specific PFAS and products to prioritize for assessment; and
- Products or materials that may be sources of PFAS, including for "intentional uses" (chemical identity and physical form, functional purpose, and measurements or estimates of levels and concentrations) and incidental occurrence (sources of contaminants, chemical identity and physical form, degradation of substances or materials in products to PFAS, and measurements or estimates of levels/concentration).

Potential Human Exposures to PFAS Associated with Consumer Products Use

- Emissions data from indoor use of PFAS-containing products;
- Migration of PFAS from products into saliva, gastrointestinal fluid, or skin;
- Exposure and risk data, including contact exposures from direct use of consumer products and mediated exposures such as through emission of PFAS from products to surfaces, indoor dust, or indoor air;

- Data related to specific exposure pathways from consumer product sources;
- Data measurements, or estimates on PFAS intake, uptake, clearance, half-life, or occurrence in people;
- Data on the relative source contribution of consumer product(s) or ingestion of indoor dust, or inhalation of indoor air compared with other relevant sources such as drinking water or food associated with estimates of aggregate exposures; and
- “Highly exposed” populations that may use certain consumer products “for a greater than average magnitude, frequency, or duration based on habits, practices, and characteristics specific to that population group.”

Potential Adverse Human Health Effects

- Reports and data on whether individual PFAS, subclasses, or categories of PFAS have potential for adverse human health effects; and
- Any information on additional sources of data and other information that CPSC should consider not already included in the Docket, available here.

Consumer product manufacturers or retailers should monitor CPSC’s efforts and consider filing comments by the November 30 deadline to help shape a future rule making. In our experience, it is usually best to engage with a regulator early in the process rather than be forced to react later after the agency forms a policy position or proposal. Data can be submitted confidentially - or potentially through an association of companies - to minimize potential adverse public perception.

Given the prominence of PFAS on the regulatory agenda for numerous federal and state agencies, and the high level of media attention being paid to the issue, it is not surprising that CPSC is initiating action.