



Federal PFAS Policy & Regulatory Outlook



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Capitol Hill veteran Jim Barnette concentrates his public policy practice on energy, telecommunications, healthcare, consumer protection, and the environment, with a focus on congressional oversight and investigations. During a span of nearly 20 years, serving four different chairmen, Jim served as general counsel to the U.S. House of Representatives Committee on Energy and Commerce. In this role, he helped enact more than 100 public laws, including the landmark Medicare Modernization Act (MMA), the Gramm-Leach-Bliley Act (GLBA), and legislation in areas as diverse as bioterrorism preparedness, energy, telecommunications reform, consumer protection, and Internet commerce.



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Jim Reilly is an experienced leader and skilled strategist with a proven ability to achieve his clients' policy goals at both the national and international levels. Jim leverages his relationships with federal lawmakers and regulators, and draws on his experience advocating on behalf of major organizations to manage threats, opportunities, and trends impacting today's policy landscape. He has a track record of creating practical, bipartisan solutions to climate, infrastructure, energy, and environmental issues.



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Allison Foley advises clients on environmental and administrative issues critical to the utility, manufacturing, and real estate industries. As part of this practice, Allison helps clients navigate compliance challenges while managing risk and mitigating liability in the context of site remediation and redevelopment and various complex real estate transactions. Allison also advises clients on regulatory considerations related to chemical management and risk evaluation. This work includes regulatory advocacy on existing environmental and consumer product regulations involving the Environmental Protection Agency (EPA), the Federal Trade Commission (FTC), and the Consumer Product Safety Commission (CPSC).



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Julie Michalski focuses on product liability, environmental, and toxic tort matters for her clients in the chemical, pharmaceutical, manufacturing, and energy spaces. Her practice revolves around the intersection of law and science as she advises clients on risk management and litigation strategy at all stages. Julie is experienced in matters concerning historic contaminants and substances of emerging concern, such as per- and polyfluoroalkyl substances (PFAS) and microplastics.

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Venable Focus on PFAS and Emerging Contaminants

Venable's interdisciplinary team brings together professionals in legislation, regulation, litigation, and investigations to provide holistic assistance to clients with evaluating, defending, and advancing their interests associated with PFAS.

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PFAS Resources

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The Federal Legislative Landscape

Background: Federal Legislative History

- U.S. Congressional attention to PFAS matters is relatively new
- The short legislative history provides keen insight into the overall PFAS policy debate

Flurry begins in 2019, starting with a bang –

Federal Legislative History – 116th Congress (2019 – 2020)

116TH CONGRESS
1ST SESSION

H. R. 535

To require the Administrator of the Environmental Protection Agency to designate per- and polyfluoroalkyl substances as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 14, 2019

Mrs. DINGELL (for herself, Mr. UPTON, and Mr. KILDEE) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To require the Administrator of the Environmental Protection Agency to designate per- and polyfluoroalkyl substances as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “PFAS Action Act of 2019”.

1

2

SEC. 2. DESIGNATION AS HAZARDOUS SUBSTANCES.

Not later than 1 year after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall designate all per- and polyfluoroalkyl substances as hazardous substances under section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9602(a)).

○

**PFAS Action Act of
2019**

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Early PFAS Legislation: the PFAS Action Act of 2019

Three Michiganders (including the former *Republican* chair of the House Energy and Commerce Committee) sponsor in the wake of (1) Flint lead pipe crisis and (2) widespread reports of “PFAS” contamination in the state

Then Senate EPW Committee Chair Carper and Ranking Member Capito introduce companion in Senate (*52 cosponsors*)

The high-water mark for PFAS legislation, ever?

- Statutory CERCLA “hazardous substances” designations = enormous EPA power
- Various parties would be jointly and severally liable for the entire cost of PFOS and PFOA cleanup without regard to fault

Language offered as an amendment during House floor consideration of the FY 2020 National Defense Authorization Act (July 2019)

- Passed by *voice vote*
- Dropped in conference



The PFAS Action Act of 2019

In Committee (January 2020), modified and greatly expanded to include:

- Scaled-down hazardous substances designations (just PFOA and PFOS)
- Requirement that EPA decide on designations for “remaining” PFAS within 5 years
- Designation of PFOA and PFOS as “hazardous air pollutants” under the CAA
- Restrictions on PFAS incineration
- PFAS labeling regime
- TSCA premanufacturing notices
- Reported out of the House Committee on Energy and Commerce on a bipartisan vote

House floor consideration

- Amendment requiring EPA to adopt “PFAS” effluent standards under the Clean Water Act
- Passed by a vote of 247 – 151

No action taken in the Senate



116th Congress (2019-2020) – Other Legislative Activity

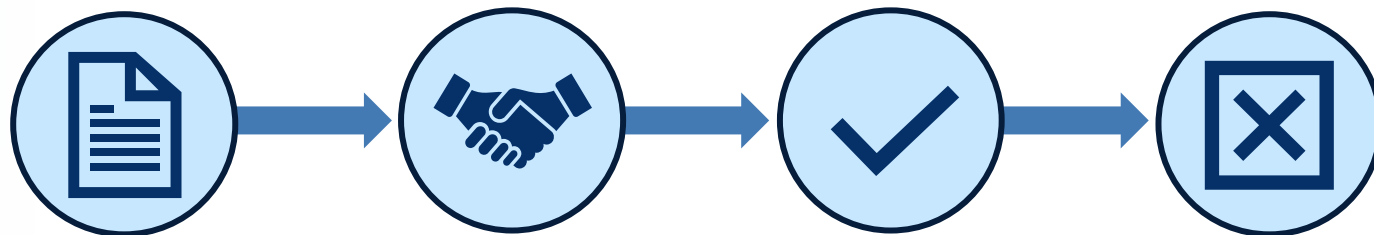


Senate Environment and Public Works Committee advances additional PFAS reporting requirements on a bipartisan basis

- Legislation approved as an amendment to the FY 2020 **National Defense Authorization Act (“NDAA”)** (section 7321) and becomes law
 - Automatic addition of nine PFAS to the Toxic Release Inventory (“TRI”)
 - New reporting requirements under section 8(a)(7) of the Toxic Substances Control Act (“TSCA”) for “any person that manufactures (including import) or has manufactured (including imported) PFAS or PFAS-containing articles in any year since January 1, 2011”

117th Congress (2021-2022) – PFAS Action Act Redux

Early 2021 sees a replay of action on the robust PFAS Action Act in the House



H.R. 2467,
introduced largely
unchanged from
previous House-
passed version

Advances through
committee on a
bipartisan basis

Passes largely
unamended on the
House floor by 241 –
183 (very slight drop) in
July 2021

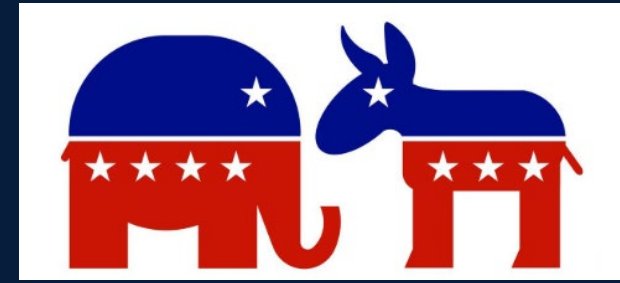
No further
action in the
Senate

117th Congress (2021-2022) – NDAA Developments

NDAA Developments/Action for FY 2023

- Prohibited DOD from purchasing firefighting equipment containing PFAS unless sufficiently protective equipment alternatives are unavailable. (**Sec. 345**)
- Required DOD to provide a list of PFAS uses it deems essential and provide regular briefings on its efforts to procure PFOA/PFOS-free items. (**Sec. 347**)

118th Congress (2023 – 2024): The Debate Matures



GOP takes control of the House (Senate remains Democratic)

- House pays scant attention

Center of attention: Carper/Capito Discussion Draft (Summer 2023)

- “PFAS” Definition (notably excludes fluoropolymers)
- Broad authorization for research dollars on PFAS and “emerging contaminants”
- Related hearings, but fails to advance

Much of the Hill discussion reactive to Biden regulatory agenda

- **“Passive receivers”** legislation in reaction to **CERCLA** hazardous substances rule

119th Congress Forecast

House

- More (less?) of the same under GOP control
- House Energy and Commerce under new full committee (Guthrie (KY)) and subcommittee (Griffith (VA)) leadership
 - Both will be aggressive on EPA oversight
 - Stand-alone PFAS legislation unlikely
 - TSCA user fees expire on June 26, 2026 (ten-year authorization under the Lautenberg Act)
 - Could be foundation for statutory reforms also
 - Vehicle for PFAS matters



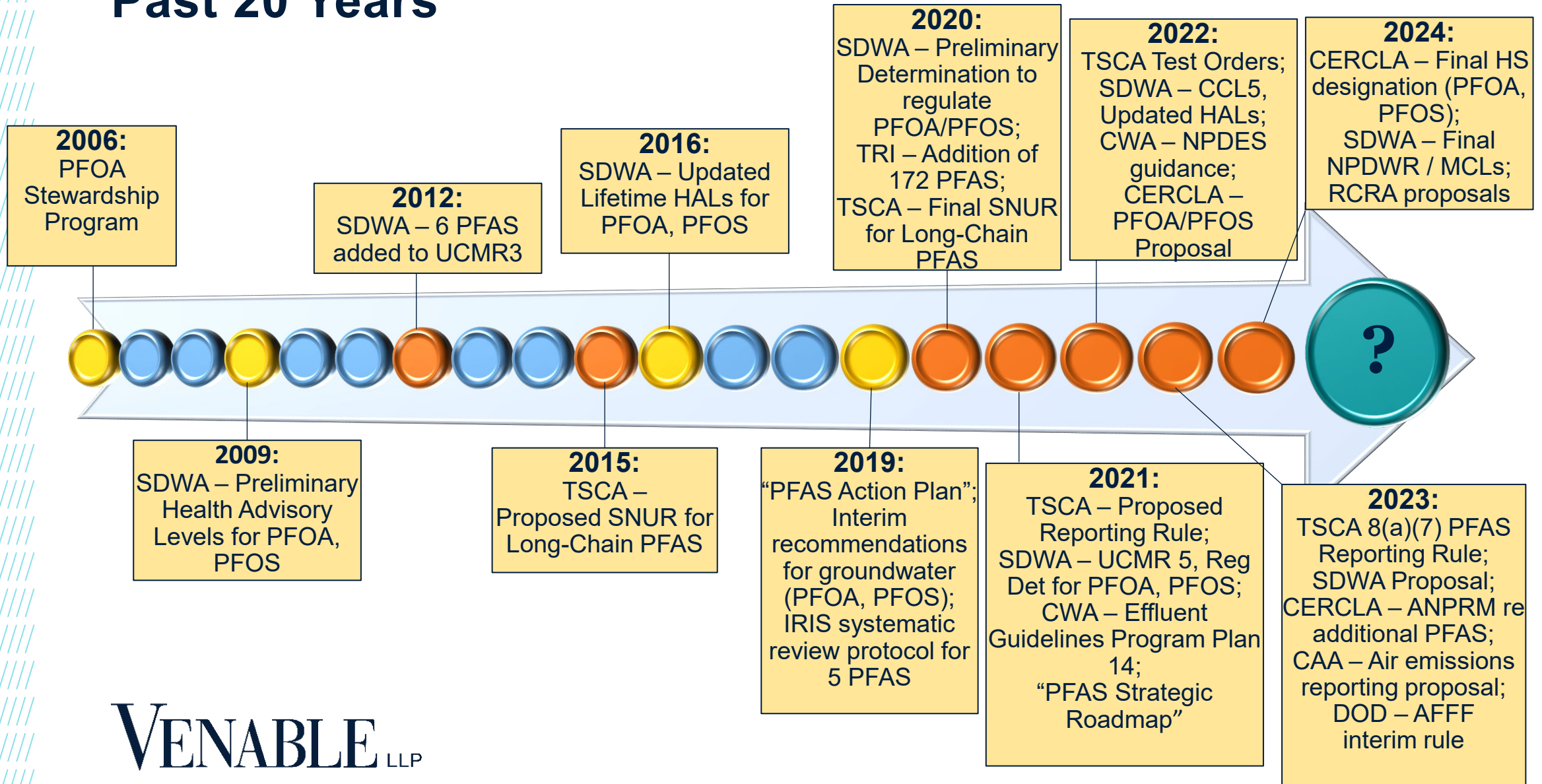
Senate

- New EPW Chair Capito (R-WV) has had consistent interest in PFAS policy
- Heavily engaged in Carper/Capito Discussion Draft
- Strong statements on “passive receivers”
- Whitehouse (D-RI), takes over for Carper but his agenda differs
- Oversight of EPA a priority
- Passive receiver debate will continue
- Attention on drinking water



The Federal Regulatory Landscape

Key Federal Actions Addressing PFAS: Past 20 Years



Safe Drinking Water Act: National Primary Drinking Water Regulation for PFAS



Final rule issued April 2024

- Establishes enforceable Maximum Contaminant Levels (MCLs)
 - PFOA and PFOS (individually) – 4 ppt
 - PFNA, PFHxS, GenX (individually) – 10 ppt
 - Mixtures of PFNA, PFHxS, GenX, and PFBS – Hazard Index (1.0)
- Also sets (unenforceable) Maximum Contaminant Level Goals (MCLGs)



Legal challenges

- Water utilities, chemical and manufacturing sectors' challenges consolidated in D.C. Circuit
- Court granted EPA's motion to hold litigation in abeyance for 60 days pending Agency review of the Biden-era rule



Designation of PFOA/PFOS as Hazardous Substances Under CERCLA (Superfund)

Final rule published May 8, 2024; effective July 8, 2024



- First time EPA exercising authority under CERCLA §102(a) to designate hazardous substances based on “substantial danger” to the public health or welfare of the environment
- EPA focused cost review on immediate regulatory burden (release reporting > 1 lb in 24 hours)
- Major “indirect” (but clearly foreseeable) impacts –
 - Reopeners
 - Complications for real estate and other transactions
 - Chilling effect on reuse/redevelopment of brownfields/industrial properties
 - Lack of certainty regarding landowner liability protections, continuing obligations
 - Litigation – uncertainty regarding allocation; actions for cost recovery, contribution from other PRPs



EPA has developed enforcement policy regarding “passive receivers”



Legal challenges

- Pending in DC Circuit

TSCA Section 8(a) Reporting Rule – Manufacturers/Importers of PFAS



Final rule issued October 2023

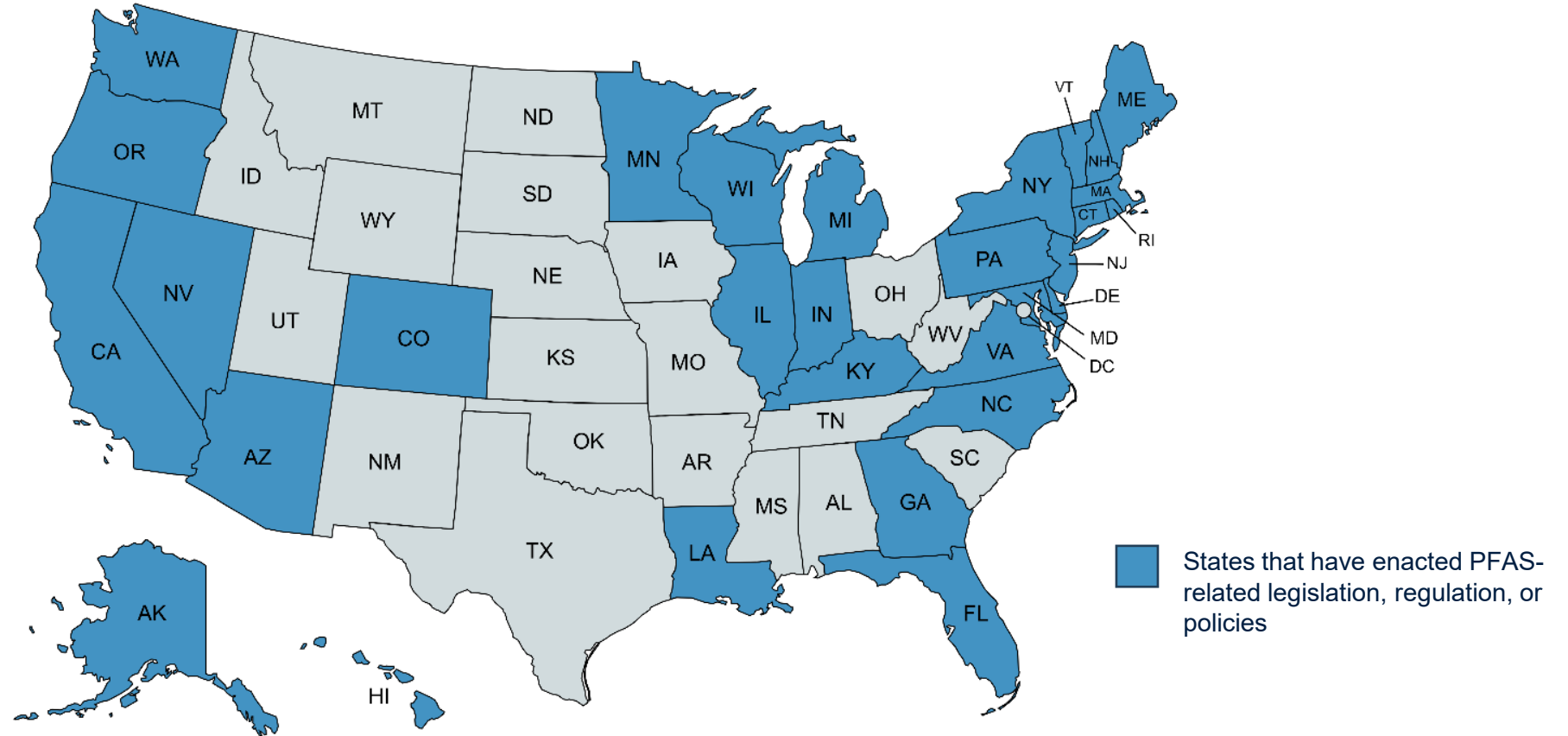
- Imposes one-time reporting obligation on manufacturers of PFAS between 2011-2022
 - “Manufacture” includes import
 - EPA extended rule to import of PFAS-containing articles
 - No exemption for *de minimis* amounts, or production of byproducts/impurities
- Applies “known or reasonably ascertainable” standard; EPA’s diligence expectations?
- Compliance challenge: Difficulties ascertaining details of historical import activity



Implementation challenges

- In late 2024, EPA pushed reporting window back eight months (now opening July 2025)
 - Cited technical challenges, budget limitations
 - Six-month reporting window for most entities; additional six months for small manufacturer article importers
- Uncertainty regarding diligence requirement, enforcement
- Questions re: how EPA, third parties will use the reported information

... And an Aside About State PFAS Activity



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Upcoming Webinars in the Series:

Insurance Coverage for PFAS Under Historical CGL and Modern Environmental Policies

Thursday, April 3, 2025 | 1:00 – 2:00 p.m. ET

From Litigation Trends to Mitigation Strategies: Examining the Impact of PFAS on Your Business

Thursday, May 15, 2025 | 1:00 – 2:00 p.m. ET

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Questions?

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