

# The Advisor

## **Businesses should proactively assess PFAS usage ahead of tightening restrictions**

**BUSINESSES SHOULD REVIEW, LIMIT FOREVER CHEMICALS**

Businesses should review and limit their use of PFAS – or “forever chemicals” – as federal and state restrictions surrounding these substances tighten and insurance coverage for companies using these chemicals becomes more difficult to obtain.

PFAS are a group of manmade chemicals used in everything from nonstick cookware to cosmetics to food packaging. Also known as forever chemicals, these substances are water-, oil- and heat-resistant, which means they don't break down easily in the environment or in the body. Studies conducted by the U.S. Environmental Protection Agency have shown that because use of PFAS is widespread, and because these chemicals last such a long time, PFAS are found in drinking water, soil, food, and the air.

While much remains unknown about the risks of PFAS, research from the Centers for Disease Control and Prevention indicates high levels of exposure to the most common of these chemicals are linked to adverse health effects, such as developmental delays in children; fertility problems; increased risk of prostate, kidney and testicular cancers; obesity; and lowered ability to fight off infections.

PFAS have been around since the 1940s, but attitudes surrounding their continued use – and the regulations that govern that use – are changing. Some of the most notable shifts businesses should be aware of include:

- **Heightened federal and state regulations:** The EPA has proposed several regulations regarding PFAS, including designating two of the most widely used PFAS as hazardous substances. Under the proposed rule, any entity releasing these PFAS into the environment would be required to notify local emergency responders, and the EPA would have the authority to recover cleanup costs from parties deemed potentially responsible. Several states also are implementing bans on the use of PFAS in certain products, such as food packing and products for children.
- **Insurance exclusions:** It's becoming more difficult to obtain both general liability and environmental insurance coverage that does not include a PFAS exclusion. “Claims-made” policies are especially vulnerable, as these new exclusions are likely to extend to historical unknown environmental claims – meaning even if a claim involving PFAS is made for an incident that occurred in the past, the claim won't be covered if the current policy contains a PFAS exclusion.

- **Lawsuits:** Thousands of lawsuits related to PFAS already have been filed in federal court. While cases initially focused on the companies that manufactured PFAS, lawsuits increasingly are moving downstream and targeting companies that use PFAS in their products.

### **With regulations surrounding PFAS pending, now is an appropriate time for businesses to proactively assess their risk exposure by:**

- Administering a supply chain assessment and determining if and at what points PFAS are used
- Examining historical use of PFAS
- Consulting an industrial hygienist to discuss risks associated with the chemicals used and exploring ways to source alternatives
- Understanding before buying: In both asset — and especially stock merger and acquisition — transactions, conduct appropriate due diligence to uncover any current and/or historical PFAS chemical use

At Schauer Group, our advisors are committed to helping your business manage risk as it relates to PFAS. We negotiate the broadest insurance coverage possible and are available to help source experts who can assist in supply chain research and the exploration of alternative materials. Please reach out to your Schauer Group representative if you'd like to discuss this topic further.

### **ABOUT SCHAUER GROUP**

Schauer Group, Inc. is an independently owned insurance and risk management advisory firm, providing risk management, business insurance, human capital services, employee benefits, contract surety, and personal insurance to clients nationwide. With an industry-leading 95 percent client retention rate, Schauer Group is committed to attracting and developing the region's top talent and giving back to the communities where associates live and work.

**Note:** This communication is for informational purposes only. It is not intended to be construed as legal or financial advice and should not be relied on as such. No material contained within this website should be construed or relied upon as providing recommendations in relation to any specific legal, financial, investment, or insurance product. Before making any commitment of a legal, financial, investment, or insurance nature, you should seek advice from a qualified and registered practitioner or adviser who can appraise your specific needs. Schauer Group, Inc. disclaims any and all liabilities incurred as a result of reliance upon the information presented herein.

### **SOURCES**

**U.S. Environmental Protection Agency | Key EPA Actions to Address PFAS**  
<https://www.epa.gov/pfas/key-epa-actions-address-pfas>

**U.S. Environmental Protection Agency | Notice of Proposed Rulemaking: Designating PFOA and PFOS as CERCLA Hazardous Substances**  
[https://www.epa.gov/system/files/documents/2022-09/Overview%20Presentation\\_NPRM%20Designation%20of%20PFOA%20and%20PFOS%20as%20CERCLA%20Hazardous%20Substances.pdf](https://www.epa.gov/system/files/documents/2022-09/Overview%20Presentation_NPRM%20Designation%20of%20PFOA%20and%20PFOS%20as%20CERCLA%20Hazardous%20Substances.pdf)

**U.S. Environmental Protection Agency | NPRM Questions and Answers**  
[https://www.epa.gov/system/files/documents/2022-11/NPRM%20Questions%20and%20Answers\\_508.pdf](https://www.epa.gov/system/files/documents/2022-11/NPRM%20Questions%20and%20Answers_508.pdf)

**Bloomberg Law | PFAS Bans, Restrictions Go Into Effect in States in 2023**  
<https://news.bloomberglaw.com/environment-and-energy/pfas-bans-restrictions-go-into-effect-in-states-as-year-begins>

**Centers for Disease Control and Prevention | Per- and Polyfluorinated Substances (PFAS) Factsheet**  
[https://www.cdc.gov/biomonitoring/PFAS\\_FactSheet.html#:~:text=The%20per%20and%20polyfluoroalkyl%20substances,stains%2C%20grease%2C%20and%20water.](https://www.cdc.gov/biomonitoring/PFAS_FactSheet.html#:~:text=The%20per%20and%20polyfluoroalkyl%20substances,stains%2C%20grease%2C%20and%20water.)

**U.S. Environmental Protection Agency | Our Current Understanding of the Human Health and Environmental Risks of PFAS**  
<https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas>

**Thompson Coburn LLP | A brief primer on PFAS litigation: Trends and future disputes**  
<https://www.thompsoncoburn.com/insights/publications/item/2022-08-25/a-brief-primer-on-pfas-litigation-trends-and-future-disputes>



© 2023 SCHAUER GROUP. ALL RIGHTS RESERVED.  
**[schauergroup.com](https://www.schauergroup.com)** **800.874.6615**  
THE NATION'S FIRST ISO REGISTERED INDEPENDENT INSURANCE AGENCY