

PFAS UPDATE: EPA KICKS OFF THE NEW YEAR WITH TSCA AND TRI ACTIONS

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SUMMARY

The United States Environmental Protection Agency (“EPA”) started the new year by finalizing two rules involving per- or polyfluoroalkyl substances (“PFAS”) under the [Toxic Substances Control Act](#) (“TSCA”) and the [Toxic Release Inventory](#) (“TRI”). The first rule requires industries to consult with EPA before using any of the designated 329 inactive PFAS substances. The second rule adds seven PFAS substances to the list of chemicals that entities must report. The details of the new rules are below, but these actions demonstrate EPA’s continued commitment to regulate PFAS substances under a wide range of environmental laws.

TSCA SIGNIFICANT NEW USE RULE (“SNUR”) ON THE USE OF INACTIVE PFAS SUBSTANCES

EPA has [issued a SNUR](#) prohibiting the use or reuse of 329 specific PFAS compounds without EPA’s prior review and approval. In the notice, EPA expresses its concern that inactive PFAS substances may present an unreasonable risk to human health or the environment. Notably, [EPA states](#) that “[a]n inactive designation means that a chemical substance has not been manufactured (including imported) or processed in the United States since June 21, 2006.”

Although the definition of inactive compounds suggests that the rule will have a limited impact on businesses’ current operations, here are some of the aspects of this rule that may affect your business:

APPLICATION

“The chemical substances for which EPA is finalizing a SNUR are the 329 PFAS that are both currently designated as inactive on the TSCA Inventory and that are not subject to an existing SNUR.” (pg. 1824);

NOTIFICATION

Entities must notify EPA **at least 90 days** before commencing any manufacture, importation, or processing of any identified PFAS substances. (pg. 1823);

EXEMPTIONS

“EPA has determined as significant new uses: manufacture (including import) or processing of inactive PFAS for any use except:

1. Importing or processing of inactive PFAS-containing articles; and/or
2. Manufacture (including import) or processing of inactive PFAS:
 - As impurities;
 - As byproducts not used for commercial purposes;
 - In small quantities solely for research and development;
 - For test marketing purposes;
 - For use as a non-isolated intermediate; or
 - Solely for export from the United States.” (pg. 1825)

This final rule is effective sixty days after the date of publication in the Federal Register, or on **March 11, 2024**. For additional information regarding this rule, refer to [EPA's TSCA Risk Management Website](#). The take away for business is to ensure that they do not currently use or reuse any of the 329 listed substances, and that they do not do so in the future.

TRI SUBSTANCES

EPA has added seven more PFAS substances to the list of chemicals that industries must report under the TRI program. The TRI program generally requires businesses that manufacture, process, or otherwise use listed chemicals to report the use if the total poundage exceeds the reporting threshold, which is 100 pounds for all of the listed PFAS compounds.

As a result of these recent additions, the number of PFAS substances subject to TRI reporting is now up to a total of 196. Companies will be required to include the seven additional PFAS substances in their 2024 reports, which will be due by **July 1, 2025**.

The [seven PFAS substances added to the TRI](#) are as follows:

- Ammonium perfluorohexanoate;
- Lithium bis[(trifluoromethyl)sulfonyl] azanide;

- Perfluorohexanoic acid (PFHxA);
- Perfluoropropanoic acid (PFPrA);
- Sodium perfluorohexanoate;
- 1,1,1-Trifluoro-N-[(trifluoromethyl)sulfonyl] methanesulfonamide; and
- Betaines, dimethyl(.gamma.-.omega.-perfluoro-.gamma.-hydro-C8-18-alkyl).

For additional information, refer to EPA's website entitled [Addition of Certain PFAS to the TRI by the National Defense Authorization Act](#). As discussed in BCLP's client alert, "[EPA eliminates TRI reporting de minimis exemption](#)", among other things, the *de minimis* exception does not apply to these substances, so any amount of these chemicals that is manufactured, processed, or otherwise used counts towards the threshold amount.

CONCLUSION

EPA has made it abundantly clear that it intends to continue to regulate PFAS substances, and these two rules issued in early January of 2024 underscore this commitment.

For more information on PFAS chemicals, and the regulatory and litigation risks that they pose, please visit our [PFAS webpage](#). If you believe that you may be impacted by these two rules, or if you have a question about a regulation in a specific jurisdiction, please contact Tom Lee, Bryan Keyt, John Kindschuh, or Emma Cormier at BCLP.

RELATED PRACTICE AREAS

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