



EPA Adds Nine PFAS Chemicals to the Toxics Release Inventory Reporting List

On June 23, 2023, the U.S. Environmental Protection Agency (EPA) published a [final rule](#) updating the Toxics Release Inventory (TRI) chemical list to add nine more per- and polyfluoroalkyl substances (PFAS). This update, applicable starting in the 2023 reporting year, requires facilities subject to TRI reporting obligations that manufacture, process, or otherwise use any of the newly added PFAS in quantities exceeding 100 pounds in 2023 to report such uses to EPA by July 1, 2024 (and in future years, as applicable). The final rule increases the total number of TRI-listed PFAS to 189. The nine PFAS added to the TRI chemical list are available [here](#) and the complete list (through reporting year 2022) is available [here](#).

PFAS compounds or classes of PFAS are automatically added to the TRI effective January 1st of the calendar year following the occurrence of certain “triggers” enumerated in the National Defense Authorization Act for Fiscal Year 2020 (2020 NDAA), which was signed into law on December 20, 2019. Those triggers include the date on which: (1) EPA finalizes a toxicity value for the PFAS; (2) EPA makes a covered determination for the PFAS, i.e., a determination made by rule under the Toxic Substances Control Act (TSCA) section 5(a)(2) that a use of a PFAS or class of PFAS is a significant new use; (3) the PFAS is added to a list of substances covered by a covered determination; or (4) the PFAS to which a covered determination applies is added to the list published under section 8(b)(1) of TSCA and is designated as an active chemical substance under TSCA § 8(b)(5)(B). Section 8(b) of TSCA requires EPA to compile a list of each chemical substance manufactured, processed, or imported in the United States.

Passage of the 2020 NDAA added 172 PFAS to the TRI for reporting year 2020 and additional PFAS have been added every year since then (four PFAS each for reporting years 2021 and 2022 and the nine discussed herein for reporting year 2023).

During the listing process, businesses can claim that their use of a proposed PFAS is confidential business information (CBI) under the federal Administrative Procedure Act. EPA must review the CBI claims and determine whether the PFAS compound qualifies for protection from disclosure before adding the PFAS to the TRI. If EPA determines that a PFAS compound qualifies for protection from disclosure, EPA must list the compound or class of compounds in a way that does not disclose the protected information. If a PFAS compound or class of compounds falls under one of the triggering events listed above and is not subject to CBI protections, the chemical or class information is automatically added to the TRI reporting list.

Of the nine PFAS added to the TRI for reporting year 2023, four were added because they were declassified (see the final rule for details) and five were added because EPA finalized an applicable toxicity value for [PFBA and its related salts](#) in December 2022.

Related to expanding the TRI, on December 5, 2022, EPA published a

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[proposed rule](#) that would eliminate the *de minimis* exemption to reporting obligations for PFAS listed on the TRI. Generally, the *de minimis* exemption does not require facilities to report TRI-listed chemicals if their concentration in the mixtures or trade name products they import, process, or use is below 1% (or below 0.1% for carcinogens). EPA proposed to eliminate the exemption by adding all PFAS on the TRI to the list of “Lower Thresholds for Chemicals of Special Concern,” to which the *de minimis* exemption does not apply. If finalized, applicable facilities will no longer be able to report their PFAS-related uses on the simpler Form A (Alternate Threshold Certification Statement) and will instead have to use the more detailed Form R. The proposed rule would also eliminate the *de minimis* exemption from Supplier Notification Requirements, meaning purchasers of mixtures or trade name products containing TRI-listed PFAS would be made aware of the presence of PFAS in those products. The comment period for this proposed rule closed on February 3, 2023.

These rules are some of the many steps EPA has taken or intends to take toward achieving its goals outlined in the 2021 PFAS Strategic Roadmap (available [here](#)), with primary directives to (1) research; (2) restrict; and (3) remediate PFAS. As described in the Strategic Roadmap, EPA is taking a “whole-of-agency approach” to address PFAS throughout its lifecycle. By removing the *de minimis* exemption for TRI-listed PFAS and continuing to add PFAS to the TRI, EPA will gather additional information about PFAS and further restrict the manufacture and use of PFAS in industry and commerce, which reduces PFAS that may be present in wastewater discharges and drinking water sources.

As the federal and state governments continue to take action to address PFAS across many program areas, Babst Calland attorneys continue to track these developments and are available to assist you with PFAS-related matters. For more information on this development and other remediation matters, please contact Matthew C. Wood at (412) 394-6583 or mwood@babstcalland.com, Mackenzie M. Moyer at (412) 394-6578 or mmoyer@babstcalland.com, or any of our other [environmental attorneys](#).

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