

## EPA'S NONCOMPREHENSIVE LIST OF PFAS SUBJECT TO THE TSCA REPORTING RULE

Feb 12, 2024

### SUMMARY

In 2023, the United States Environmental Protection Agency ("EPA") issued a [final rule](#) under the [Toxic Substances Control Act](#) ("TSCA") which requires manufacturers, including importers, of certain per- and polyfluoroalkyl substances ("PFAS") to report PFAS manufactured in the United States, or imported into the United States for a commercial purpose between **January 1, 2011**, and **December 31, 2022**. The reporting system opens in **November 2024**, and most reports (except for small businesses) must be submitted by **May 8, 2025**, or 18 months after the effective date of the rule (see [§705.20](#) of the rule).

In this alert, BCLP and Ramboll Americas Engineering Solutions Inc. ("Ramboll") are collaborating to discuss EPA's recent publication of a non-exhaustive list of PFAS that fall within the structural definitions, and what that means for businesses that are working towards compliance with the reporting rule.

### ARE YOUR CHEMICALS ON THE LIST?

One of the key provisions in the rule is EPA's novel way of defining PFAS. Rather than following prior EPA precedent and identifying specific chemicals, EPA chose to provide three "structural definitions" which are intended to describe a class or family of compounds that are PFAS:

1.  $R-(CF_2)_n-CF(R')R''$ , where both the  $CF_2$  and  $CF$  moieties are saturated carbons;
2.  $R-CF_2OCF_2-R'$ , where  $R$  and  $R'$  can either be  $F$ ,  $O$ , or saturated carbons; and
3.  $CF_3C(CF_3)R'R''$ , where  $R'$  and  $R''$  can either be  $F$  or saturated carbons.

The scope of those definitions, and the question of whether certain PFAS fall within them, has been the subject of significant discussion.

When the rule was published in October 2023, EPA reported “the known universe of TSCA chemical substances meeting this rule’s definition of PFAS” (i.e., the number of chemicals on the TSCA Inventory or included in Low-Volume Exemption (“LVE”) claims) contains 1,462 unique chemical structures (see [40 CFR Part 705](#)). More recently, in January 2024, EPA published an [extensive list of chemicals](#) that meet the structural definitions of PFAS in the rule which are therefore subject to the reporting requirements.

As of this date of publication, the number of entries on EPA’s list of TSCA 8(a)(7) PFAS is 12,696. The 11,000+ increase in chemicals on the newly published list reflect the PFAS that *could* be subject to the new TSCA reporting requirements even though they are not on the current TSCA Inventory or in LVE claims. This list was published in EPA’s Substance Registry Services (“SRS”), the authoritative resource for information about chemical tracked or regulated by the EPA.

Not surprisingly, the list includes many of the more familiar and economically relevant PFAS that are subject to regulatory scrutiny such as:

- PFOA
- PFOS
- PFNA
- PFBS
- PFBA
- PFHxA

Several of these compounds are already the subject of enacted or proposed laws and regulations at the state and federal level, so their inclusion under the TSCA Reporting Rule is not particularly surprising. However, the list provided by EPA confirms that some of the more ubiquitous fluoropolymers used in a wide range of consumer products – including PTFE – also fall under the rule. The inclusion of PTFE will likely have significant implications for companies that import PFAS-containing consumer products - which in most cases will qualify as “articles” under the TSCA Reporting Rule – given the widespread use of PTFE and related coatings, especially during the 2011-2022 reporting period.

Additional chemicals that made the list of PFAS include some hydrofluorocarbons (“HFCs”), including 1,1,1,2-tetrafluoroethane (also known as HFC-134a) which is used in refrigeration and air conditioning systems, as a blowing agent in polyurethane foams, and a propellant for medical aerosols. Though not commonly included in the PFAS discussion from an environmental and regulatory perspective, HFCs do fall under the TSCA Reporting Rule’s structural definition of PFAS, and therefore, are reportable.

## WHAT DIDN'T MAKE THE LIST?

EPA's three-part structural definition of PFAS is notably different than some other definitions proposed in certain U.S. states, the EU, and even by EPA under other regulatory programs. The growing trend of defining PFAS as any substance with at least one fully fluorinated carbon atom was purposefully avoided by EPA in the TSCA Reporting Rule, as EPA determined that these are less likely to persist in the environment, and therefore, should not be subject to the same reporting requirements. This means that substances with a single fluorinated carbon such as certain pharmaceuticals or hydrochlorofluorocarbons including HCFC-123, a common fire suppression agent used in handheld fire extinguishers, are not included in the reporting rule and are not on the noncomprehensive list.

## CONCLUSION

As manufacturers and importers begin their 12-year lookback and prepare for the new rule, the scope of reportable PFAS is growing as EPA publishes updated lists of chemicals meeting the rule's structural definitions.

For more information on PFAS, and the regulatory and liability risks that they pose, please visit BCLP's [PFAS webpage](#). If you have a question about the TSCA reporting requirements, contact Tom Lee or John Kindschuh at BCLP, or Brian Drollette, PhD, at Ramboll.

## RELATED CAPABILITIES

- PFAS

## MEET THE TEAM



### **Thomas S. Lee**

San Francisco

[tom.lee@bclplaw.com](mailto:tom.lee@bclplaw.com)

+1 415 675 3447



### **John R. Kindschuh**

St. Louis

[john.kindschuh@bclplaw.com](mailto:john.kindschuh@bclplaw.com)

+1 314 259 2313

---

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon ([kathrine.dixon@bclplaw.com](mailto:kathrine.dixon@bclplaw.com)) as the responsible attorney.