

PFAS TRI REPORTING DUE ON JULY 1, 2023

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SUMMARY

On July 1, 2023, eligible companies will need to submit their Toxics Release Inventory (“TRI”) annual reports. However, those reports may look a little different this year because companies will now have to consider, and in some cases report, their use of 180 PFAS substances.

I. TRI REPORTING REQUIREMENTS

The United States Protection Agency (“EPA”) has published two resources that may assist you in completing your TRI report: (1) [PFAS reporting resources](#); and (2) a website entitled “[Addition of Certain PFAS to the TRI by the National Defense Authorization Act.](#)” The reporting thresholds for all of the listed PFAS compounds are 100 pounds for manufacturing, processing, or use, which is lower than EPA’s usual thresholds for TRI reporting. For the purposes of this year’s report, the *de minimis* concentrations exemptions for manufacturers and suppliers are still applicable, so companies that manufacture, process or otherwise use any of the regulated PFAS compounds should evaluate whether or not they qualify for the exemptions.

Some of the more recognizable PFAS substances that are regulated are listed below:

- PFOA (Perfluorooctanoic acid);
- PFOS (Perfluorooctanesulfonate acid);
- PFDA (Perfluorodecanoic acid);
- PFHxS (Perfluorohexane sulfonic acid);
- PFNA (Perfluorononanoic acid);
- HFPO-DA or GenX (Hexafluoropropylene oxide-dimer acid);
- PFOSA (Perfluorooctane sulfonamide);

- PFBA (Perfluorobutanoic acid); and
- PFBS (Perfluorobutane sulfonate).

However, the [entire list](#) of PFAS substances companies need to report in the TRI report is extensive, and frustratingly includes a number of PFAS compounds that cannot currently be tested for using establish testing standards, raising concerns about the ability to obtain accurate information from suppliers regarding the content and concentrations of PFAS compounds. See also [40 CFR Part 372.65 \(d\) and \(e\)](#).

II. PROPOSED END TO THE *DE MINIMIS* EXEMPTION

As discussed in [BCLP's Client Alert](#), EPA introduced a [proposed rule](#) to the TRI reporting on December 5, 2022, which would classify PFAS compounds on the TRI as "Chemicals of Special Concern," do away with the *de minimis* exemptions, and require the use of Form R for reporting. [26 public comments](#) were submitted by various organizations and individuals, both in support of and in opposition to the proposed rule.

That proposed rule has not been approved and does not apply to this year's reports, but if it does go through as currently drafted it will have significant impacts on next year's TRI reporting for PFAS.

III. CONCLUSION

While annual TRI reporting is nothing new, the inclusion of 180 PFAS compounds is a significant new challenge that needs to be addressed well in advance of the July 1, 2023, deadline. This is particularly true given that vendors and ingredient suppliers do not always have a good understanding of the presence of PFAS chemicals in their products, particularly given the broad scope of the chemicals included on the TRI list, so providing accurate TRI reports will likely require significant discussion with upstream suppliers.

RELATED PRACTICE AREAS

- Environment
- PFAS Team

MEET THE TEAM



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