

US EPA Adds PFAS Chemicals to TRI Reporting

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Facilities used to a routine process for Toxics Release Inventory (TRI) reporting may be in for a surprise next summer when they prepare their reports for the 2020 Reporting Year. The United States Environmental Protection Agency (EPA) issued a final rule on June 22, 2020 to add 172 per- and polyfluoroalkyl substances, more commonly known as PFAS, to the TRI list of chemicals subject to reporting under the Emergency Planning and Community Right-to-Know Act (EPCRA) and the Pollution Prevention Act (PPA). EPA set a use threshold of 100 pounds for each listed substance.

Manufacturers, processors and others who utilize the listed PFAS must report them beginning in the 2020 Reporting Year for TRI reports due July 1, 2021. However, some facilities may not even be aware of PFAS in their operations. Now is the time for facilities to review their use of PFAS chemicals and begin keeping accurate records of usage to avoid time-consuming and costly mistakes in their reports for 2020.

Under § 313 of EPCRA, all facilities meeting certain criteria must report annual releases and other waste management activity quantities of listed chemicals and chemical categories over a reporting threshold. A facility meets the criteria for reporting if it has 10 or more full-time employees, is a federal facility or included in certain Standard Industrial Classification (SIC) codes, manufactures or processes a threshold amount of a chemical subject to reporting, and meets a threshold “annual reportable amount” of all releases on-site and off-site. PPA, § 6607, similarly requires facilities to report data on waste management and source reduction activities. The information reported under EPCRA and PPA is maintained in a publicly available database called the Toxics Release Inventory.

Per- and polyfluoroalkyl substances are a group of man-made chemicals that includes perfluorooctanoic acid (PFOA), perfluorooctanesulfonic acid (PFOS), and others, that have been manufactured since the 1940s. They are frequently used in cookware, clothing, furniture, household products, and other consumer goods. PFAS, coined “forever chemicals,” are considered “very persistent” in the body, because they do not break down and can accumulate over time leading to adverse health consequences.

On December 20, 2019, the National Defense Authorization Act for Fiscal Year 2020 (NDAA) added 14 PFAS to the EPCRA list of reportable toxic chemicals and identified additional PFAS subject to reporting based on listed criteria. To provide clarity on which PFAS meet the NDAA’s listed criteria, EPA released a list of 172 PFAS chemicals that are subject to TRI reporting under the act. EPA then published a final rule implementing the NDAA requirements for TRI.

EPA estimates that approximately 500 facilities will be required to report PFAS under the new rule, but it is likely that many more will be affected. The 100-pound threshold, which includes manufacturing, processing, and use of PFAS, is low given the prevalence of PFAS in the production of common consumer goods.

TRI reporting requires facilities to maintain records regarding chemical manufacturing, processing and use throughout the reporting year. For any affected facility, this will mean that reporting in July 2021 will rely on records of usage from

January 1, 2020-December 31, 2020. This can be unusually challenging because both amounts used, and how they were used, and the availability of relevant records may be affected by COVID-19 and its impacts on operations. It is important that facilities begin reviewing their inventories now to ensure the necessary records will be available come July 2021.

EPA determined that notice and comment on the action was unnecessary under the notice-and-comment requirements of the Federal Administrative Procedure Act. As such, the rule became effective immediately upon publication in the Federal Register.

EPA's final rule can be found [here](#).