

PUBLICATION

New Toxic Release Inventory Requirements Apply for Many PFAS Chemicals – Prepare Now

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In February 2019, the U.S. Environmental Protection Agency (EPA) released a PFAS Action Plan subsequently updated in February 2020 regarding plans to regulate certain Per- and Polyfluoroalkyl Substances (PFAS). Congress, too, got into the act in December 2019 and adopted Section 7321 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116-92) (2020 NDAA). The 2020 NDAA required the listing of 14 chemicals by name and established the criteria for EPA to list other PFAS chemicals on the Toxic Release Inventory (TRI) list of reportable toxic chemicals. Pursuant to its plan, and the Congressional mandate, EPA has added 172 new PFAS chemicals to the TRI list.

Additionally, EPA published an Advance Notice of Proposed Rulemaking (ANPRM), with the comment period ending in February 2020, seeking public comment on which of the approximately 600 PFAS currently active in U.S. commerce that EPA should consider evaluating for potential addition to the TRI list. In other words, there is more regulation to come.

There may be as many as 5,000 PFAS chemicals. PFAS are persistent in the environment and because of this characteristic are often referred to as *forever chemicals*. PFAS have been used in commerce since the 1940s because many are resistant to grease, oil, water and heat. EPA has warned that some PFAS can lead to adverse health effects in humans and the environment, but many have not yet been studied. PFAS chemicals are used in everyday products such as stain resistant carpeting and upholstery fabrics, cleaning products and polishes, non-stick cookware, and fire-fighting foams.

The TRI is a reporting program of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), also referred to as Section 313 of Emergency Planning and Community Right-to-Know Act, which tracks the routine and accidental releases of certain toxic chemicals that may pose a threat to human health and the environment. Approximately 21,000 facilities across the country annually report on 767 individually-listed chemicals in 33 chemical categories as of January 2020. Counted among that list are the 172 new PFAS chemicals which now must be tracked and reported on an annual basis. The beginning period for the report of the 172 PFAS chemicals is January 2020, which means that the annual report due July 1, 2021 will have to include the annual data for the year 2020. The reporting threshold for TRI PFAS chemicals which are manufactured, processed, and otherwise used at a facility is 100 pounds per year.

While reports are not due until July 1, 2021, it is important that non-exempt facilities begin to keep good corporate records, document their work, and start preparing now for the new PFAS reporting requirements.

In addition to the 172 new PFAS chemicals being added to the TRI list, EPA and Congress plan additional legislative and regulatory action such as more scientific research, and setting new cleanup technology requirements and wastewater discharge limits.

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