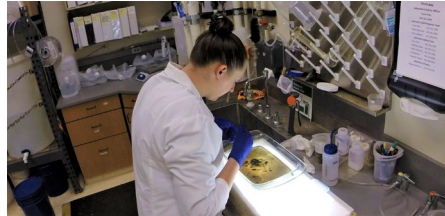


JUNE 2020 REGULATORY UPDATE

## Toxic Releases Inventory (TRI) Reporting Per- and Polyfluoroalkyl Substances (PFAS)



The chemicals included in the Emergency Planning and Community Right-to-Know Act (EPCRA) Section 313 list of reportable chemicals are routinely reviewed by the U.S. Environmental Protection Agency (EPA) and updated or revised as necessary. This list includes chemicals that are evaluated for reporting in the Form R or Toxic Releases Inventory (TRI) Report and for notification from suppliers (e.g., inclusion on a Safety Data Sheet).

On June 22, 2020, a final rule to revise the EPCRA Section 313 list of reportable chemicals at 40 Code of Federal Regulations (CFR) 372.65(d) to include 172 per- and polyfluoroalkyl substances PFAS was signed by the EPA.

### TRI Reporting

Starting in January 2020, these reportable PFAS chemicals will need to be included in a facility's FY2020 TRI Report that is due July 1, 2021.

Who does this apply to? This change applies to entities with an equivalent of 10 or more full-time employees in TRI-covered industry sectors (federal and private). To see if your industry sector is included, use EPA's search tool at <https://www.epa.gov/toxics-release-inventory-tri-program/tri-covered-industry-sectors>.

In addition, the affected entity would also have to process, manufacture, or otherwise use at least one of the 172 specific PFAS that have been added to the EPCRA Section 313 list of reportable chemicals. Simply having PFAS detected in groundwater does not meet the definition of process, manufacture, or otherwise use.

What activities are included in "process, manufacture, and otherwise use"? In this rule, the term "manufacture" means to produce, prepare, compound, or import an EPCRA Section 313 reportable chemical. The coincidental production of an EPCRA Section 313 reportable chemical. The term "process" means the preparation of a listed EPCRA Section 313 reportable chemical, after its manufacture, for distribution in commerce. Processing is usually the incorporation of an EPCRA Section 313 reportable chemical into a product. The term "otherwise use" means any use of an EPCRA Section 313 reportable chemical, including one contained in a mixture or other trade name product or waste, that is not covered by the terms manufacture or process.

What would an affected entity need to do? An affected entity would need to create and maintain records related to the processing, manufacture, or use of these specific PFAS chemicals. At the end of each year (January 1 – December 31), the amount of each of the chemicals would be compared to the applicable threshold amounts to evaluate whether the chemical has to be reported. Reporting would be required if a chemical exceeded the threshold amount.

What information is needed for a TRI Report? Reported information includes the amount of the chemicals onsite, amount released, included in products, recycled, disposed of onsite, and transferred offsite as well as information on that facility to which the material is transferred. Information about pollution prevention is also part of a TRI Report. Reporters must maintain detailed documentation of the data used to create a TRI Report. The de minimis concentration for perfluorooctanoic acid (PFOA) (CAS 335-67-1) as part of a mixture is 0.1%. The

other PFAS additions have a de minimis concentration level of 1% when part of a mixture. The manufacturing, processing, and otherwise use reporting thresholds for each of the listed PFAS is 100 pounds.

In summary, if an affected entity manufactures, processes, and otherwise uses >0.1% concentration PFOA in excess of 100 pounds, PFOA would need to be included in the facility's TRI Report. Likewise, if an affected entity manufactures, processes, and otherwise uses >1% concentration of the other listed PFAS chemicals in excess of 100 pounds, that chemical would need to be included in the facility's TRI Report.

### **Supplier Reporting (Safety Data Sheets)**

In addition to the annual TRI reporting, 40 CFR 372.45 requires suppliers of mixtures or trade name products to covered facilities to provide written notification which identifies the 172 PFAS by name and CAS number, declares the chemical(s) as being subject to Section 313 requirements, provides concentration (or range) in mixtures and other trade name products (not wastes), is sent with the first shipment of the year or attached to the SDS, and is updated whenever changes occur. The Regulatory Information section of the SDS should identify the 172 PFAS as subject to TRI reporting.

This requirement applies to you if (1) your facility's North American Industry Classification System (NAICS) code corresponds to Standard Industrial Classification (SIC) codes 20-39, (2) you manufacture/import or process at least one of the 172 PFAS, and (3) you sell or otherwise distribute a mixture or trade name product containing the toxic chemical to a to a TRI-covered industry sector.

### **What is TRI Reporting?**

TRI reporting (short for Toxic Release Inventory reporting, and also referred to as Form R reporting) is an annual report prepared by businesses that manufacture, process, or otherwise use hazardous chemicals as part of their operations. TRI reports are due July 1 every year, using data from the previous calendar year. Businesses must report the quantity of TRI chemicals and how they are using these chemicals using the EPA's TRI-MEweb system. Not every business needs to report, as there are reporting thresholds set by the EPA.

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