

Have You Started Tracking PFAS for Your TRI?



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More Information

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Background

Established under Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), the Toxics Release Inventory (TRI) tracks the releases and waste management of toxic chemicals that may pose a threat to human health and the environment. Facilities in covered industry sectors must evaluate thresholds and, if reporting is triggered, report annually how much of each TRI-listed chemical is released to the environment and/or managed through treatment, disposal, recycling, or energy recovery.

What Has Changed?

On June 22, 2020 (85 FR 37354), Environmental Protection Agency (EPA) published a final rule adding 172 per- and polyfluoroalkyl substances to the list of regulated toxic chemicals and set the threshold at 100 lb/yr per PFAS chemical. The addition of these chemicals became effective immediately. Note that the PFAS were not explicitly identified as persistent bioaccumulative toxic (PBT) chemicals, so use of the de minimis exemption, Form A, and range codes on the Form R are still possibilities. Additional guidance on de minimis is expected from EPA. Facilities in TRI-covered industry sectors should track and collect data on these chemicals during 2020. Note that TRI reporting requirements state that a facility should use readily available data collected pursuant to other provisions of law or, where such data are not readily available, reasonable estimates of the amounts involved. Reporting on these chemicals will be due by July 1, 2021, for 2020 data.

- List of Added PFAS: <https://www.epa.gov/toxics-release-inventory-tri-program/list-pfas-added-tri-ndaa>
- The addition of PFAS by the National Defense Authorization Act and EPA do not change the core of TRI. EPA has simply added chemicals to the TRI list.
- A threshold still must be exceeded before the Form R (or A)/release reporting is required.

MANUFACTURE. Most facilities don't manufacture PFAS intentionally as a product. The majority of facilities need to examine activities at the facility to determine if PFAS are coincidentally manufactured (e.g., as a byproduct from combustion, treatment etc.). Calculations will be based on the best available information for both threshold and release calculations. There are no published emissions factors for air releases (e.g., in AP-42). A facility may have sampling data that should be examined for use under TRI, but sampling is not required.

PROCESS AND OTHERWISE USE. Facilities are dependent on the SDS to know what is in the materials purchased and used. If PFAS are included in Section 3: Composition or in Section 15: Regulatory Information, then the compounds must be included in the threshold determination. If PFAS are not on the SDS, then no further effort is required (e.g., no sampling, no requests for more extensive SDSs, etc.). The Supplier Notification requirements of Section 313 require manufacturers to include toxic chemical information in the SDS. Updated SDSs may be received by the facility as they are updated to add PFAS information. Older aqueous film-forming foams (AFFF), used to control petroleum pool fires, commonly contained one or more PFAS. Charging the system and using the AFFF to fight a fire are both threshold activities.

EXEMPTIONS. The available exemptions can still be applied. Materials used for structural maintenance, motor vehicle maintenance, personal use etc. are all still exempt even if they contain PFAS. As noted above, the de minimis exemption can still be used with clarifications from EPA pending.

REMEDIATION/CLEAN-UP ACTIVITIES. Remediating (treating) a toxic chemical is not a threshold activity. As a result, if PFAS are being treated, the amount does not factor into thresholds. Toxic chemicals used to perform the treatment are potentially subject to TRI reporting as those chemicals meet the criteria of otherwise use. If reporting for PFAS is triggered based on other activities, then the remediation activity is included on the Form R in the appropriate sections (sent off site in Section 6.2, on-site treatment in Section 7A, and the corresponding data elements in Section 8). Facilities must also check the remediation/treatment activity to determine if a new PFAS is created (coincidentally manufactured) as a byproduct of the treatment. That amount would apply to the manufacture threshold.

- The amount present on site is simply a data element on the Form R. It does not factor into threshold calculations.
- The amount that is already in the environment, such as a contamination plume, is also not included in thresholds or Form R release calculations. The releases reported on the Form R are limited to releases that occurred in the calendar year being reported.

Action Items for Facilities

- Examine SDSs for existing/currently used materials for the presence of PFAS as a component of the materials. If the facility has a material tracking system that includes complete compositions, this is a relatively easy effort. If not, then materials can be reviewed in priority order based on amount of materials used or if that type of material is expected to include PFAS.
- SDSs received should be examined to determine if they are new or updated. Now that PFAS are TRI chemicals, they should be part of supplier notification in Section 15 of the SDS. If so, then the regulatory information needs to be examined for new PFAS information. An updated SDS could be researched online, but technically this step is not required for any material under TRI. Realistically, common materials (such as paints, degreasers, fuels, and others) rarely contain PFAS; however, in certain industries and in certain products they are a key ingredient. In addition, PFAS were assigned a lower reporting threshold, 100 lb/yr, and a careful threshold calculation is warranted.
- Watch for EPA guidance – EPA will likely provide additional guidance and resources in preparation for the upcoming reporting cycle. Our PFAS Technical Practice Group tracks the EPA PFAS Action Plan, so our account managers are well-informed about the latest federal and state guidance.

