

Regulatory Alert

Global Environmental and Chemical Regulations, Policies, and Standards

Alert 30



Changes to Reporting Requirements for Per- and Polyfluoroalkyl Substances and to Supplier Notifications for Chemicals of Special Concern; Community Right-to-Know Toxic Chemical Release Reporting Region: USA

WHY IS THIS ALERT IMPORTANT?

Under the [Emergency Planning and Community Right-to-Know Act](#) (EPCRA) and the [National Defense Authorization Act](#) (NDAA), the Environmental Protection Agency (EPA) has added certain perfluoroalkyl and polyfluoroalkyl substances (PFAS) to the List of Chemicals of Special Concern ([40 CFR 372.28](#)). Reporting requirements for chemicals under this list are more stringent and not eligible for burden-reducing reporting options. As a result, facilities cannot avail of *de minimis* exemption or the use of Form A and are subject to limits on range reporting. Additionally, the *de minimis* exemption is unavailable for supplier notification purposes. If your company manufactures, imports, handles, or disposes PFAS listed as chemicals of special concern in 40 CFR 372.28, you are subject to [changes in reporting requirements](#).

EPA is taking this action to increase the data collected for certain PFAS. The agency has deemed that removing burden-reduction options will increase the number of [Toxic Release Inventory](#) (TRI) reports and the information provided on such reports. EPA expects this action to produce a complete picture of PFAS releases and waste management quantities for the agency and the public.

This Regulatory Alert outlines the relevant background and details the changes to reporting that have come into effect starting 1 January 2024. For Reporting Year 2024, the reporting forms are due by 1 July 2025 and 196 PFAS are reportable.

Penalties associated with non-compliance to EPCRA requirements will apply with being unable to meet the changed requirements.

INTENDED AUDIENCE

This Regulatory Alert is intended for IAEG members and their supply chain that manufacture, process, use, or dispose PFAS listed under 40 CFR 372.28

EXECUTIVE SUMMARY

PFAS are man-made substances used in various commercial and industrial applications. The carbon-fluorine bonds in these compounds render them highly resistant to breakdown, resulting in [environmental persistence](#). Some PFAS have also been shown to accumulate and persist in the human body. Based on such findings, regulatory oversight of PFAS has been significantly increasing.

In December 2019, the NDAA was signed into law. It included two provisions that automatically add PFAS to the TRI List. TRI tracks the management of certain toxic chemicals. Additional PFAS are added to TRI annually under NDAA¹.

Starting Reporting Year 2024, reporting requirements for TRI-listed PFAS have changed. Effective on 30 November 2023, all PFAS included on the TRI are added to the list of Lower Thresholds for Chemicals of Special Concern (chemicals of special concern). EPA has lower reporting thresholds for chemicals of special concern since they consider that even small releases of such chemicals are of concern:

- » starting in Reporting Year 2024, the above-mentioned PFAS are designated chemicals of special concern – the *de minimis* exemption, Form A Certification, and range reporting are no longer available for TRI reporting of PFAS
- » the *de minimis* exemption is also unavailable for supplier notification purposes (for PFAS and all other chemicals of special concern)

No exemptions and exclusions apply. The regulatory requirements for chemicals of special concern apply to all TRI-listed PFAS.

BACKGROUND ON REGULATION

Emergency Planning and Community Right-to-Know Act (EPCRA)

In 1986, the [EPCRA](#) was passed in response to concerns regarding risks associated with storing and handling hazardous and toxic chemicals to assist communities in planning for chemical emergencies. Under EPCRA, requirements are established for federal, state and, local governments; Indian tribes; and industry for emergency planning and reporting on hazardous and toxic chemicals. This increases public access to information on chemicals at individual facilities, their uses, and environmental releases. States and communities, working with facilities, can use the information to improve chemical safety and prepare for chemical emergencies, thereby protecting public health and the environment. Emergency release notification requirements are required if an extremely hazardous substance (EHS) is produced, used or stored at a facility, as per [Sections 311 and 312](#) of the EPCRA.

EPCRA [Section 313](#) – also known as the TRI – requires certain facilities that manufacture, process, or otherwise use listed toxic chemicals in amounts above reporting activity threshold levels to report their environmental releases and other waste management quantities of such chemicals annually.

In general, chemicals covered by the TRI Program are those that cause one or more of the following:

- » cancer or other chronic human health effects
- » significant adverse acute human health effects
- » significant adverse environmental effects

¹ Specifically, PFAS that meet the criteria in Section 7321(c) of the NDAA are deemed added to the TRI list on January 1 of the year after specific criteria are met. Through this provision, the NDAA will continue to add PFAS to the TRI list over time as additional PFAS meet the criteria outlined in 7321(c).

Toxic Release Inventory Reporting

Facilities subject to TRI reporting must complete annual reports detailing how much of each TRI-listed chemical is released (i.e. emitted to the air/water/land disposal) to the environment and/or managed through recycling, energy recovery, and treatment. These reports are also known as TRI reports. If the reporting threshold for a chemical (through manufacturing, processing, or otherwise used) is exceeded within a calendar year by a facility, that same facility must report environmental releases and other waste management quantities of the chemical.

Substances on the TRI List are subject to *de minimis* limits rather than reporting thresholds. These limits refer to the minimum percentage concentration of a toxic chemical (as determined by the TRI List) within a mixture of chemicals subject to reporting.

The TRI List also includes substances that meet the criteria for persistence and bioaccumulation (PBTs). EPA considers PBTs to remain in the environment for long periods, to not readily be destroyed, and to build up or accumulate in body tissue. PBT chemicals have lower thresholds and do not have a *de minimis* limit (except for supplier notification purposes) since all amounts need to be included in threshold calculations.

National Defense Authorization Act (NDAA)

On December 20, 2019, the NDAA was signed into law. Among other provisions, Section 7321 identifies certain regulatory activities that if met automatically add PFAS or classes of PFAS to the TRI List of reportable chemicals. First, section 7321(b) of the NDAA added to the TRI List, effective 1 January 2020, 14 chemicals by name and/or CAS Number and additional PFAS that met specific criteria. On 22 June 2020, EPA updated the TRI List to reflect the 172 non-CBI² PFAS added to TRI by section 7321 (b) of the NDAA. The NDAA established a manufacture, processing, or otherwise use reporting threshold of 100 pounds for each PFAS added to the TRI List. Additional PFAS are added to the TRI List annually by the NDAA if they meet certain criteria.

APPLICABILITY

Under NDAA, PFAS or classes of PFAS are added to the TRI List of reportable chemicals beginning January 1 of the calendar year after any one of the following dates:

- » Final Toxicity Value: The date on which EPA finalizes a toxicity value for the PFAS or class of PFAS
- » Significant New Use Rule: The date on which EPA makes a covered determination for the PFAS or class of PFAS
- » Addition to Existing Significant New Use Rule: The date on which the PFAS or class of PFAS is added to a list of substances covered by a covered determination
- » Addition as an Active Chemical Substance: The date on which the PFAS or class of PFAS to which a covered determination applies is:
 - added to the list published under section 8(b)(1) of the Toxic Substances Control Act (TSCA) and designated as an active chemical substance under TSCA section 8(b)(5)(A) or
 - designated as an active chemical substance under TSCA section 8(b)(5)(B) on the list published under TSCA section 8(b)(1)

² CBI refers to Confidential Business Information

Effective 30 November 2023, the reporting of TRI-listed PFAS has changed. EPA has added all PFAS included on the TRI to the list of chemicals of special concern (40 CFR 372.28). This aligns reporting requirements for these PFAS with other chemicals of special concern. For Reporting Year 2024, 196 PFAS are reportable. A complete list of the PFAS added to the TRI List can be found at this [EPA page on the TRI program](#).

RELEVANT DATES

- » Effective: 30 November 2023
- » Reporting requirements: Reporting forms due by 1 July 2025 for Reporting Year 2024

REGULATORY OBLIGATIONS

EPA has deemed that due to the strength of the carbon-fluorine bonds, PFAS persist in the environment, which allows PFAS concentrations to build up over time; therefore, even small releases can be of concern. Thus, like reporting of persistent, bioaccumulative, and toxic (PBT) chemicals, EPA is disallowing reporting facilities to continue using burden reduction tools (*de minimis* levels, Form A, and range reporting) for TRI-listed PFAS.

Removal of *De Minimis* Exemption

The *de minimis* exemption allows facilities to not consider concentrations of TRI-listed chemicals in Unit IV., 1% (0.1% for carcinogens) in mixtures or other trade name products they import, process, or use in making threshold calculations, release, and waste management determinations. Since the *de minimis* level is based on relative concentration rather than a specific amount, applying this exemption to TRI-listed PFAS could allow facilities to exclude significant quantities of such PFAS from TRI reporting. For example, if a facility imports, processes, or otherwise uses 100,000 pounds of a mixture or trade name product containing 0.5% of a listed PFAS, 500 pounds (or five times the reporting threshold) would be disregarded. EPA considers this exclusion inconsistent with a concern for small quantities of PFAS. Many PFAS are used in products below the established *de minimis* levels, and the continued availability of the exemption for PFAS would permit facilities to discount those uses.

Form A Usage Disallowed

Form A allows facilities to certify a simplified reporting form if they do not exceed 500 pounds for the total annual reportable amount for that chemical and that their amounts manufactured, processed, or otherwise used do not exceed one million pounds. Form A does not include any information on releases or other waste management, nor does it include source reduction information or any other chemical-specific information other than the chemical's identity. All chemicals of special concern³ are excluded from Form A eligibility. Given that even small quantities of PFAS may result in elevated concentrations in the environment, EPA believes it would be inappropriate to allow a reporting option that would exclude information on some releases. Thus, EPA removed the availability of the use of Form A for PFAS to be consistent with their concern for understanding small quantities of PFAS.

Limits on Range Reporting

For chemicals not classified as chemicals of special concern, for specific data elements (Part II, Sections 5, 6.1, and 6.2 of Form R), the reportable quantity may be reported either as an estimate or by using the range codes

³ except certain instances of reporting lead in stainless steel, brass, or bronze alloys

that have been developed. Currently, TRI reporting provides three reporting ranges: 1–10 pounds, 11–499 pounds, and 500–999 pounds⁴. For PFAS, use of ranges could reduce data accuracy because the low or the high-end range numbers may not be that close to the estimated value, even considering inherent data errors. EPA has deemed that for PFAS, it is crucial to have accurate data regarding the amount released since concern may be tied to even small quantities of a substance.

Elimination of the Supplier Notification Requirement *De Minimis* Exemption

The *de minimis* exemption to the Supplier Notification Requirements allows suppliers to not provide notifications for mixtures or trade name products containing the listed toxic chemicals if the chemicals are present at concentrations below 1% of the mixture (0.1% for carcinogens). The *de minimis* exemption is not a small quantity exemption but a small concentration exemption. Therefore, it is possible that significant quantities of chemicals of special concern can be overlooked by reporting facilities if suppliers can use the *de minimis* exemption. For example, if a mixture or trade name product contains 0.9% of a listed PFAS and 100,000 pounds of the product is purchased, the supplier need not provide notification, and the purchaser could be unaware of and not account for 900 pounds of PFAS.

EPA has concluded that it is important and necessary to eliminate the supplier notification *de minimis* exemption for PFAS added to the TRI List pursuant to sections 7321(b) and 7321(c) of the NDAA because if that exemption were to remain in place the Agency may fail to collect information on amounts of PFAS that significantly exceed the reporting threshold. In addition, eliminating the use of the *de minimis* exemption for supplier notification purposes for all other chemicals of special concern ensures that potentially significant quantities of such chemicals are not overlooked by reporting facilities.

Impact of Listing Certain PFAS on the Chemicals of Special Concerns List

The regulatory text has been revised to add PFAS currently on TRI pursuant to 7321(b) and 7321(c) of the NDAA to the list of chemicals of special concern. Additionally, the revised regulatory text provides that all PFAS added to TRI pursuant to sections 7321(b) and 7321(c), regardless of the date of their addition, are included on the chemicals of special concern list.⁵ As with PFAS currently on the TRI List, future PFAS added to the TRI List will have a 100-pound reporting threshold. There are no exemptions or exclusions to these changes.

RISKS TO AEROSPACE AND DEFENSE

Companies must submit all known or reasonably ascertainable information and be able to demonstrate that they have made reasonable efforts to do so. Failure to do so may result in penalties. EPA investigates cases of EPCRA non-compliance and may issue civil penalties, including monetary fines, and may also require correction of the violation.

EPCRA Section 325(c) states: "Any person who violates any requirements of Section 313 shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation" for each day a violation continues. Therefore, the facility can be assessed a penalty for each Form R not submitted or

⁴ For larger releases and off-site transfers for further waste management of the toxic chemical, the facility must report the whole number.

⁵ It is likely that some of the substances will be subject to confidential business information claims, in which case EPA must follow the process outlined in section 7321(e) of the NDAA.

Regulatory Alert



submitted incorrectly, and the penalty can be assessed per day. EPA assesses penalties on a per toxic chemical per facility basis, which may include per day penalties, depending on the circumstances of the violation.

USEFUL LINKS

[Changes to Reporting Requirements for Per- and Polyfluoroalkyl Substances and to Supplier Notifications for Chemicals of Special Concern; Community Right-to-Know Toxic Chemical Release Reporting](#)

[Emergency Planning and Community Right-to-Know Act \(EPCRA\)](#)

[National Defense Authorization Act \(NDAA\)](#)

[Toxic Release Inventory](#)

[Chemical Substances of Special Concern](#)

[PFAS added to the TRI List](#)

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