

EPA ISSUES NOTICE OF PROPOSED TRI RULEMAKING FOR PFAS SUBSTANCES

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In February 2019, the United States Environmental Protection Agency (EPA) released its per- and polyfluoroalkyl substance (PFAS) Action Plan (Action Plan), detailing its proposed approach to addressing concerns related to the substance. PFAS are a class of chemicals that are persistent in the environment due to their resistance to heat, oils, stains, grease and water. Due to their pervasive nature, they have been dubbed the “forever chemicals.” In furtherance of one of its identified goals in the Action Plan, the EPA is asking for public input on potentially adding PFAS to the list of chemicals that companies are required to report as part of the Toxics Release Inventory (TRI) that is required under Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA).

The TRI is a public database with information about the use of listed chemicals which tracks their management and associated activities, and focuses on ensuring availability of information to those interested. U.S. facilities in different industry sectors must report annually how much of each chemical is released to the environment and/or managed through recycling, energy recovery, and treatment. At present, PFAS are not included on the list of chemicals that must be reported on the TRI. However, with the progressing understanding of the dangers these chemicals may pose, the EPA is seeking to add clarity and consistency to PFAS management.

The EPA issued a pre-publication of the Advance Notice of Proposed Rulemaking (ANPRM) on November 25, 2019, and as with any agency rulemaking action, the EPA is soliciting public comments and information. Public input is a required component of the formal rulemaking process under the Administrative Procedures Act, and is intended to assist the agency in determining the appropriateness of its approach. It allows industry and other stakeholders an opportunity to raise concerns or issues with the proposed rule and potentially effect the final version that is to be promulgated by the EPA. The pre-publication of the ANPRM is only a notification – the comment period is not open until publication in the *Federal Register*. The intent is to give the public notice of its intent to proceed, and will allow regulated parties an opportunity to prepare to comment on the rule upon formal publication. Once it is published, the ANPRM webpage linked above will be updated with the officially published notice at www.regulations.gov where users may enter the docket number for this proposed rule (EPA-HQ-TRI-2019-0375) in the search bar.

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Among the chief goals of the commenting period will be exploring which PFAS chemicals should potentially be added to the list. Part of that question involves determining which PFAS are currently active in commerce, which have sufficient toxicity information available to meet the listing criteria and whether listing any particular PFAS chemical will actually result in additional TRI reporting by regulated entities. The EPA is also considering whether to list the chemicals individually, or by particular classes of PFAS, such as Perfluorooctanoic acid (PFOA) or perfluorooctane sulfonate (PFOS).

If any PFAS are added to the TRI, the resulting question is what thresholds will trigger the reporting requirement. The EPA may establish lower thresholds than the usual statutory thresholds (25,000 pounds for manufacturing or processing, and 10,000 pounds for otherwise using the listed chemicals) as a protective measure in response to these chemicals' potential to bioaccumulate and persist in the environment.

We will continue to monitor the status of this approach, as well as all Action Plan initiatives, as things continue to proceed.

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