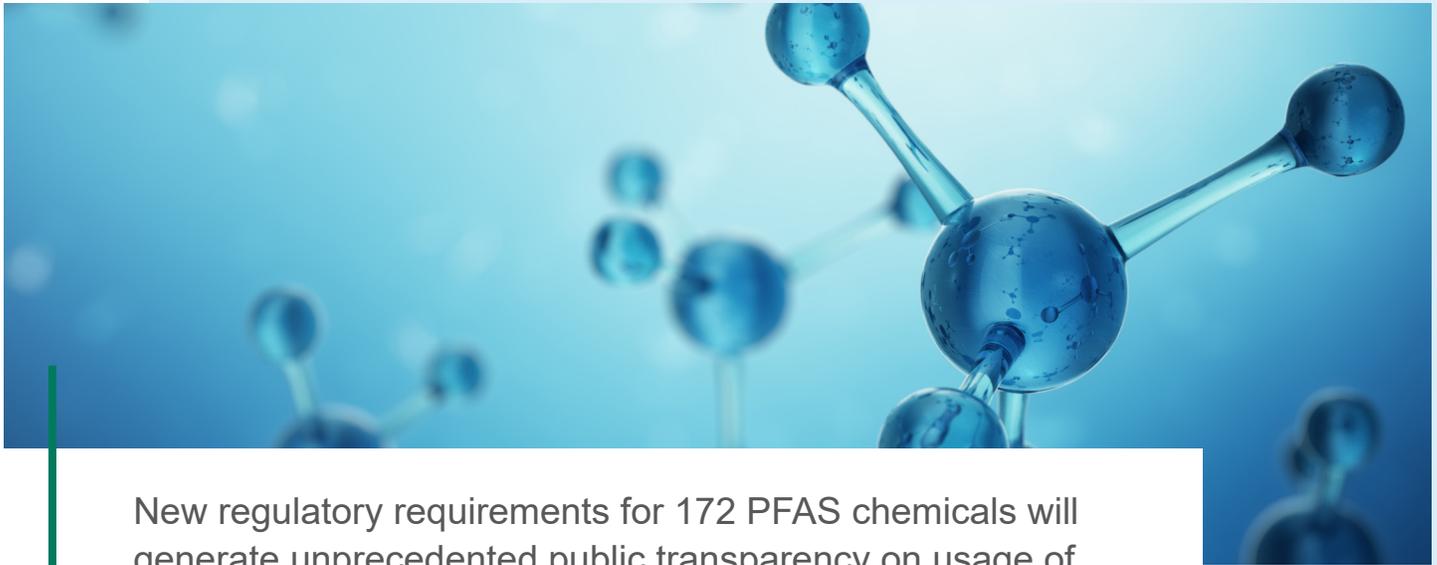


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PFAS hiding in plain sight: Act now



New regulatory requirements for 172 PFAS chemicals will generate unprecedented public transparency on usage of these chemicals, triggering a cascading effect that escalates risks to businesses across numerous sectors. Many companies will learn about and publicly disclose for the first time the extent of their PFAS usage in 2020 across their value chain.

From daily news to Hollywood movies, stories about per- and polyfluoroalkyl substances (PFAS) in drinking water and environmental samples have captured public attention and spurred regulators into action. Now politicians and regulators have turned their attention to PFAS in products and manufacturing operations, posing compliance and business risks to companies that make products ranging from chemicals to computers. Data collection efforts for 2020 must commence immediately to position your company to meet PFAS reporting deadlines in the US in 2021.

A carefully crafted and well-executed compliance strategy that is integrated with your global product compliance programs, enterprise risk management and stakeholder engagement is critical to minimizing your company's risks and exposure.

This Alert is intended to inform readers of potential compliance obligations. It does not constitute consulting advice.

What are PFAS?

PFAS include more than 4,000 man-made fluorinated compounds with varying physical and chemical properties.

Fully fluorinated PFAS tend to resist thermal, chemical, and biological degradation because the fluorine-carbon bond is one of the strongest chemical bonds in nature. While this characteristic can make PFAS very useful in many industrial applications, their persistence in the environment has earned PFAS chemicals the moniker “forever chemicals” and has led to both public concern and new regulations.

The challenge to industry

New regulations under the Emergency Planning and Community Right-to-Know Act (EPCRA) Supplier Notification Requirements and Toxic Release Inventory (TRI) Reporting Program require companies to report 2020 data on the presence of 172 PFAS compounds in their raw materials and products to their customers and associated environmental releases and waste management activities to the US EPA. The resulting TRI PFAS dataset will be broadly available in the public

domain, leaving companies exposed to risks such as product liability lawsuits, environmental contamination liabilities, product deselection and reputational damage.

Compliance will be problematic for many companies:

- Compliance deadlines are tight. A company that knows its product contains one of the 172 newly regulated PFAS chemicals must notify its customers immediately, subsequently triggering further customer notification requirements down the supply chain. That information **must be compiled and evaluated by TRI regulated industries to meet Reporting Year 2020 TRI reporting obligations by July 1, 2021.**
- Demonstrating due diligence in PFAS information gathering will be critical for TRI regulated industries; however, collecting PFAS information will be particularly challenging for those far down the supply chain. Although a wide array of products contain PFAS, the presence of PFAS in a purchased product may have been historically masked as confidential business information, obscured by a general description such as “fluorosurfactant” or been excluded from disclosure entirely.

If you operate in one of these TRI regulated industries (NAICS code)

- Mining (212)
- Utilities (221)
- Manufacturing (31-33)
- All Other Miscellaneous Manufacturing (1119, 1133, 2111, 4883, 5417, 8114)
- Merchant Wholesalers, Non-durable Goods (424)
- Wholesale Electronic Markets and Agents Brokers (425)
- Publishing (511, 512, 519)
- Hazardous Waste (562)
- Federal Facilities

Then you may need to:

- Perform a due diligence review of supplier information for presence of regulated PFAS
- Determine if your facilities use or manufacture regulated PFAS
- Notify customers of regulated PFAS in products and update Safety Data Sheets
- Report PFAS releases under TRI annually
- Track ongoing addition of PFAS chemicals to the TRI regulated list
- Plan and manage potential business risk from customer deselection or public outcry
- Consider potential need for product reformulation
- Assess potential obligations relative to product recycling at end of life

- The business consequences of reporting may be substantial. Many customers may look for alternatives and deselect products that contain PFAS. TRI reporting of PFAS releases, once published, may well incite public outcry.
- The PFAS EPCRA disclosure and TRI reporting requirements will continue to evolve, as Congress charged the US EPA with continuing to evaluate additional PFAS chemicals for regulation. For the next few years, companies will face ever-changing requirements for PFAS reporting.

These compliance challenges have solutions.

Companies should immediately begin their PFAS due diligence, illustrated in the graphic below. These efforts may involve full supply chain engagement, evaluation of potential exemptions and preparation of justification documentation, development or expansion of existing material disclosure programs or processes, and augmentation of existing Product Stewardship/Compliance programs.

Immediate actions must also be put into broader context. Prudent companies will anticipate the ongoing need for action after this initial reporting period: building systems for changing reporting requirements and anticipating the business consequences of reactions by customers or the public.

Move rapidly from planning to effective action.



To read more

ERM's work helping clients to effectively manage the business risks from emerging contaminants such as PFAS, please see:
<https://www.erm.com/>
<http://www.dupont.com>

Upcoming PFAS webinar

If you are interested in joining our PFAS webinar, please [register here](#) to receive updates.

ERM can help

Our multidisciplinary teams can help you to quickly plan for and manage these disruptive new requirements and the business risks they present.

ERM's experienced TRI Reporting Program team has decades of experience across the TRI regulated industry sectors. In addition to preparing complex TRI reports and refining/developing efficient TRI Reporting Programs for client portfolios, ERM helps organizations quantify and control potential operational risk with their TRI Programs, strategize action plans for assessing program compliance gaps and, if needed, resolve identified violations with penalty mitigation under the US EPA's Audit Policy options.

Some companies will uncover weaknesses in their supplier data management systems during their compliance efforts with the new EPCRA and TRI requirements. Our Digital Services team works with companies to compile and manage supplier information in full material disclosure programs, thus providing a reliable basis for assuring compliance.

Our Product Stewardship team tracks global regulatory requirements on products and can work with you to systematically identify and address compliance needs to minimize your business risks and maintain market access.

As revelations about the use and emissions of PFAS emerge, public awareness and outrage have the potential to increase significantly. ERM's Strategic Communications and Stakeholder Engagement team uses sophisticated social data monitoring technology paired with human analysis to determine who is reacting to an environmental issue, what they are saying, and why they are saying it. We use this information to co-develop programs with our clients that effectively engage stakeholders with integrity, transparency and authenticity.

For more information about EPCRA and TRI requirements on PFAS, please contact:

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