



EPA Proposes to Expand TRI Reporting Requirements for PFAS and Other Chemicals of Special Concern

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EPA is proposing to add per- and polyfluoroalkyl substances (?PFAS?) subject to reporting under the Emergency Planning and Community Right-to-Know Act (?EPCRA?) and the Pollution Prevention Act (?PPA?) pursuant to the National Defense Authorization Act for Fiscal Year 2020 (?NDAA?) to the list of Lower Thresholds for Chemicals of Special Concern (?chemicals of special concern?). EPA is also proposing to eliminate the de minimis exemption (as hereafter defined) from supplier notifications for all chemicals of special concern, not just PFAS. EPA published the proposed regulation on December 5, 2022 and is accepting public comment through February 3, 2023.

EPCRA section 313, 42 U.S.C. § 11023 (also known as the Toxics Release Inventory (?TRI?)), requires certain facilities that manufacture, process, or otherwise use listed toxic chemicals in amounts above reporting threshold levels to report their environmental releases and other waste management quantities of such chemicals annually. These facilities must also report pollution prevention and recycling data for such chemicals, pursuant to PPA section 6607, 42 U.S.C. § 13106. The NDAA expanded the list of chemicals that require reporting under the TRI to include certain PFAS, and the list of PFAS chemicals subject to reporting has increased to approximately 180 compounds for reporting year 2023.

EPA first created the list of chemicals of special concern to increase the utility of TRI data by ensuring that the data collected and shared through TRI are relevant and topical (64 Fed. Reg. 58666, 58668 October 29, 1999). EPA lowered the reporting thresholds for chemicals of special concern because releases of even small quantities of these chemicals can be of concern. The first chemicals that were added to the list of chemicals of special concern were those identified as persistent, bioaccumulative and toxic (?PBT?) chemicals which, except for the dioxin and dioxin-like compounds category, have reporting thresholds of either 10 or 100 pounds depending on their persistent and bioaccumulative properties (64 Fed. Reg. 58666, October 29, 1999). Chemicals of special concern are also excluded from the de minimis exemption, may not be reported on Form A (as hereafter defined) Alternate Threshold Certification Statement), and have limits on the use of range reporting. The de minimis

exemption allows facilities to disregard small concentrations of TRI chemicals not classified as chemicals of special concern in mixtures or other trade name products when making threshold determinations and release and other waste management calculations.

EPA is proposing to add all PFAS included on the TRI pursuant to sections 7321(b) and 7321(c) of the NDAA to the list of chemicals of special concern (40 CFR § 372.28). EPA maintains a list of PFAS added to the TRI list pursuant to the NDAA. The addition of these PFAS to the list of chemicals of special concern will align reporting requirements for these PFAS with other chemicals of special concern. This will likely result in additional Form R reports being filed for these PFAS due to the removal of the availability of the de minimis exemption and of the option to use Form A. Under the current rules, companies are not required to include in the TRI any chemical in a mixture with a concentration below one percent (the "de minimis exemption") and companies that handle relatively small amounts of a chemical may file a simplified report (Alternate Threshold Certification Statement) ("Form A"). By reclassifying listed PFAS chemicals as chemicals of special concern, the de minimis exemption and the use of Form A for listed PFAS compounds will no longer be available.

The proposed rule will also limit the use of range reporting, which will capture more specific information for PFAS added pursuant to sections 7321(b) and 7321(c) of the NDAA. Under the current regulations, a company reports the amount of PFAS handled or treated at a location using ranges for smaller quantities (i.e., 1-10 pounds, 11-499 pounds, or 500-999 pounds). By reclassifying listed PFAS as chemicals of special concern, EPA will eliminate the use of ranges, and companies will need to report to the level of precision supported by the available data. Thresholds for reporting listed PFAS chemicals will not change, however. While chemicals of special concern have lower thresholds for determining if a TRI report is required, PFAS chemicals have a statutory threshold of 100 pounds.

In addition, EPA is proposing to remove the availability of the de minimis exemption under the Supplier Notification Requirements (40 CFR § 372.45) for facilities that manufacture or process any chemicals included on the list of chemicals of special concern. Currently, suppliers do not need to provide information on any chemical, including chemicals of special concern, in a mixture with a concentration below one percent, because of the de minimis exemption discussed above. This elimination will increase reporting for all chemicals of special concern, not just PFAS. In addition, suppliers will need to provide information beyond what they currently include in Safety Data Sheets under Occupational Safety and Health Act requirements.

EPA believes removing the availability of these burden-reduction reporting options will result in a more complete picture of the releases and waste management quantities for these PFAS. In addition, the proposal to remove the availability of the de minimis exemption for purposes of the Supplier Notification Requirements for all chemicals on the list of chemicals of special concern is to help ensure that purchasers of mixtures and trade name products containing such chemicals are informed of their presence in mixtures and products they purchase.

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