

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 372**

[EPA-HQ-TRI-2022-0270; FRL-8741-04-OCSPP]

RIN 2070-AK97

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**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is adding 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). These PFAS already have a lower reporting activity threshold of 100 pounds. The addition of these PFAS to the list of chemicals of special concern means such PFAS are subject to the same reporting requirements as other chemicals of special concern (*i.e.*, it eliminates the use of the *de minimis* exemption and the option to use Form A and would limit the use of range reporting for PFAS). 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. EPA is removing 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. This will help ensure that purchasers of mixtures and trade name products containing such chemicals are informed of their presence in mixtures and products they purchase to better inform any TRI reporting obligations.

DATES: This final rule is effective November 30, 2023 and shall apply for the reporting year beginning January 1, 2024 (reports due July 1, 2025).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-TRI-2022-0270, is available online at <https://www.regulations.gov> or in person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket) in the

Environmental Protection Agency Docket Center (EPA/DC). All documents in the docket are listed on <https://www.regulations.gov>. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Additional instructions on visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Daniel R. Ruedy, Data Gathering and Analysis Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 564-7974; email: ruedy.daniel@epa.gov.

For general information contact: The Emergency Planning and Community Right-to-Know Hotline; telephone numbers: toll free at (800) 424-9346 (select menu option 3) or (703) 348-5070 in the Washington, DC Area and International; or go to <https://www.epa.gov/home/epa-hotlines>.

SUPPLEMENTARY INFORMATION:**I. General Information***A. Does this action apply to me?*

You may be potentially affected by this action if you manufacture, process, or otherwise use listed PFAS or any chemicals listed under 40 CFR 372.28. The following list of North American Industry Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this action applies to them. Potentially affected entities may include:

- Facilities included in the following NAICS manufacturing codes (corresponding to Standard Industrial Classification (SIC) codes 20 through 39): 311 *, 312 *, 313 *, 314 *, 315 *, 316, 321, 322, 323 *, 324, 325 *, 326 *, 327 *, 331, 332, 333, 334 *, 335 *, 336, 337 *, 339 *, 111998 *, 113310, 211130 *, 212323 *, 212390 *, 488390 *, 512230 *, 512250 *, 5131 *, 516210 *, 519290 *, 541713 *, 541715 * or 811490 *.

* Exceptions and/or limitations exist for these NAICS codes.

- Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 211130 * (corresponds to SIC code 1321, Natural Gas Liquids, and SIC 2819, Industrial Inorganic Chemicals, Not Elsewhere Classified); or 212114,

212115, 212220, 212230, 212290 *; or 2211 *, 221210 *, 221330 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (corresponds to SIC codes 4911, 4931, and 4939, Electric Utilities); or 424690, 424710 (corresponds to SIC code 5171, Petroleum Bulk Terminals and Plants); 425120 (limited to facilities previously classified in SIC code 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 562112 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC code 7389, Business Services, NEC)); or 562211 *, 562212 *, 562213 *, 562219 *, 562920 * (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*) (corresponds to SIC code 4953, Refuse Systems). * Exceptions and/or limitations exist for these NAICS codes.

- Federal facilities.
- Facilities that the EPA Administrator has specifically required to report to TRI pursuant to a determination under EPCRA section 313(b)(2).

A more detailed description of the types of facilities covered by the NAICS codes subject to reporting under EPCRA section 313 can be found at: <https://www.epa.gov/toxics-release-inventory-tri-program/tri-covered-industry-sectors>.

To determine whether your facility is affected by this action, you should carefully examine the applicability criteria in part 372, subpart B of title 40 of the Code of Federal Regulations. Federal facilities are required to report under Section 6(a)-(b) of Executive Order 14096 (88 FR 25251 April 21, 2023), Revitalizing Our Nation's Commitment to Environmental Justice for All. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What action is the Agency taking?

EPA is adding all PFAS included on the Toxics Release Inventory (TRI) pursuant to sections 7321(b) and 7321(c) of the 2020 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 at: <https://www.epa.gov/toxics-release-inventory-tri-program/list-pfas-added-tri-ndaa>. The addition of PFAS added to TRI pursuant to sections 7321(b) and (c) of the NDAA to the list of chemicals of special concern aligns reporting requirements for these PFAS with other chemicals of special concern. EPA anticipates this will result in

additional Form R reports being filed for these PFAS due to the removal of the *de minimis* exemption and the option to use Form A. It also limits 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.

In addition, EPA is removing 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.

This action does not make any changes to the article exemption.

C. What is the Agency's authority for this action?

This action is issued under EPCRA sections 313, 42 U.S.C. 11023 and 328, 42 U.S.C. 11048. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986.

D. Why is the Agency taking this action?

EPA is taking this action to increase the data collected for PFAS. Removing the availability of certain burden-reduction reporting options will result in a more complete picture of the releases and waste management quantities for PFAS. This will increase the number of TRI reports on listed PFAS and the amount of information provided on such reports, resulting in more information on the waste management of these chemicals available to the Agency, as well as to the public. EPA expects this information will be a benefit to the public, including communities with environmental justice concerns and public water utilities, as well as inform future Agency actions, including under the Clean Water Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Toxic Substances Control Act. In addition, this action will increase data collected for all chemicals of special concern by eliminating the *de minimis* exemption for purposes of the Supplier Notification Requirements for all chemicals on the list of chemicals of special concern. The elimination of this exemption from Supplier Notification Requirements ensures that purchasers of mixtures and trade name products containing such chemicals are informed of their presence in mixtures and products they purchase.

E. What are the estimated incremental impacts of this action?

EPA prepared an updated economic analysis for this action entitled, "Economic Analysis for the Changes to Reporting Requirements for Per- and Polyfluoroalkyl Substances and to Supplier Notification Requirements for Chemicals of Special Concern; Community Right-to-Know Toxic Chemical Release Reporting," which presents an analysis of the costs of the reporting changes for PFAS and other chemicals of special concern based on updated 2022 wage rates and an increase in supplier notification burden estimates (Ref. 1). EPA estimates that this action will result in an additional 623 to 2,015 Form R reports being filed annually. EPA estimates that the costs of this action will be approximately \$3,318,492 and \$10,733,149 in the first year of reporting and approximately \$1,580,214 and \$5,111,044 in the subsequent years. In addition, EPA has determined that, of the 486 to 1,333 small businesses affected by this action, none are estimated to incur annualized cost impacts of more than 1% of revenues. Thus, this action is not expected to have a significant adverse economic impact on a substantial number of small entities.

Removing the availability of certain burden-reduction reporting options will result in a more complete picture of the releases and waste management quantities for PFAS. This will increase the number of TRI reports on listed PFAS and the amount of information provided on such reports, resulting in more information on the waste management of these chemicals available to the Agency, as well as to the public.

II. Background Information

A. What is EPCRA section 313?

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 activity 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.

TRI provides information about releases of toxic chemicals from covered facilities throughout the United States; however, TRI data do not reveal whether or to what degree the public is exposed to listed chemicals. TRI data

can, in conjunction with other information, be used as a starting point in evaluating such exposures and the risks posed by such exposures. The determination of potential risk to human health and/or the environment depends upon many factors, including the toxicity of the chemical, the fate of the chemical in the environment, and the amount and duration of human or other exposure to the chemical.

For more information on TRI, visit the TRI website at <https://www.epa.gov/tri>. Note that TRI does not cover all chemicals, facilities, or types of pollution (see <https://www.epa.gov/toxics-release-inventory-tri-program/what-toxics-release-inventory> for information on which chemicals and facilities are regulated under TRI). Additionally, via this website, EPA provides a guidance document entitled "Factors to Consider When Using Toxics Release Inventory Data" available at: https://www.epa.gov/system/files/documents/2022-02/factorstoconsider_approved-by-opa_1.25.22-copy.pdf, which helps explain some of the uses, as well as limitations, of data TRI collects.

B. What are PFAS?

PFAS are synthetic organic compounds that do not occur naturally in the environment. PFAS contain an alkyl carbon chain on which the hydrogen atoms have been partially or completely replaced by fluorine atoms. Definitions of what constitutes "PFAS" differ amongst scientific and regulatory bodies. However, in general, the strong carbon-fluorine bonds of PFAS make them resistant to degradation and thus highly persistent in the environment (Refs. 2 and 3). Some of these chemicals have been used for decades in a wide variety of consumer and industrial products (Refs. 2 and 3). Some PFAS have been detected in wildlife indicating that at least some PFAS have the ability to bioaccumulate (Ref. 3). Because of the widespread use of PFAS in commerce and their tendency to persist in the environment, most people in the United States have been exposed to PFAS (Refs. 2, 4 and 5). Some PFAS can accumulate in humans and remain in the human body for long periods of time (*e.g.*, months to years) (Refs. 2 and 3), as a result, several PFAS have been detected in human blood serum (Refs. 2, 3, 4, and 5).

C. What PFAS have been added to the TRI list?

On December 20, 2019, the NDAA was signed into law (Pub. L. 116–92, <https://www.congress.gov/public-laws/116th-congress>). The NDAA included

two provisions that automatically add PFAS to the TRI list. First, section 7321(b) of the NDAA added to the TRI list, effective January 1, 2020, 14 chemicals by name and/or Chemical Abstracts Service Registry Number (CASRN) and additional PFAS that meet specific criteria. On June 22, 2020 (85 FR 37354 (FRL-10008-09)), EPA updated the TRI list in the CFR to reflect the 172 non-CBI PFAS added to TRI by section 7321(b) of the NDAA.

Additional PFAS are added to the TRI list on an annual basis by the NDAA. 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). The criteria of section 7321(c) require the addition to the TRI list of certain PFAS after any one of the following dates:

- *Final Toxicity Value.* The date on which the Administrator finalizes a toxicity value for the PFAS or class of PFAS;
- *Significant New Use Rule.* The date on which the Administrator 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) (15 U.S.C. 2601 *et seq.*) 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).

EPA updates the TRI list in the CFR to reflect the PFAS added to TRI by section 7321(c) of the NDAA. The first update rule identifying PFAS that met the 7321(c) criteria during 2020 was published on June 3, 2021 (86 FR 29698 (FRL-10022-25)).

To date, section 7321 of the NDAA has added a total of 189 PFAS to the TRI list at: <https://www.epa.gov/tri/PFAS>. A complete list of the PFAS added to the TRI list can be found at: <https://www.epa.gov/toxics-release-inventory-tri-program/list-pfas-added-tri-ndaa>. In addition, the NDAA established a manufacture, processing, or otherwise use reporting threshold of 100 pounds

for each of the PFAS added to the TRI list by sections 7321(b) and 7321(c) of the NDAA. In the first year of reporting for the initial 172 listed PFAS, EPA only received 89 reports from 38 facilities covering 43 different PFAS. Similar levels of PFAS reporting were observed in the subsequent year: with 176 PFAS on the TRI list in RY2021, only 42 facilities reported submitted a total of 87 reports covering 43 different PFAS.

III. Summary of Public Comments on Proposed Rule

Upon publication of the proposed rule on December 5, 2022, EPA provided a 60-day comment period (87 FR 74379 (FRL-8714-03-OCSP)). EPA received 36 comments on the proposed rule. EPA received comments from citizens, industry groups, non-governmental organizations, and state governments. The majority of comments on the proposed rule addressed EPA's burden estimates, with the majority stating EPA underestimated the burden of listing PFAS as chemicals of special concern and removing the supplier notification *de minimis* exemption would impose. Several commenters requested EPA lower the activity thresholds for PFAS. Many of the commenters stated that EPA has not demonstrated PFAS meet the criteria to be classified as chemicals of special concern. Many of the commenters stated that eliminating the regulatory exemptions for PFAS will create a more complete picture of PFAS in communities and the environment. After considering the public comments, EPA updated the economic analysis to incorporate 2022 wage rates, include a summary of small entity analysis, and increase the supplier notification burden estimates. Further edits to the analysis were not required because EPA has made no substantive changes as compared with what had been proposed. Summaries of the comments and EPA's responses to the comments appear in the Response to Comment document (Ref. 6) which is in the docket for this rulemaking.

IV. What changes is EPA making to the TRI reporting requirements?

A. Designating PFAS Automatically Added to the TRI List by the 2020 NDAA as Chemicals of Special Concern

EPA is adding all PFAS included on the TRI list pursuant to sections 7321(b) and 7321(c) of the NDAA (see 40 CFR 372.65(d) and (e)) to the list of chemicals of special concern at 40 CFR 372.28. 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 (Ref. 7). EPA lowered the reporting thresholds for chemicals of special concern because even small quantities of releases 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 (Ref. 7). Chemicals of special concern are also excluded from the *de minimis* exemption, may not be reported on Form A (Alternate Threshold Certification Statement), and have limits on the use of range reporting.

The *de minimis* exemption allows facilities to not consider 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. The *de minimis* exemption does not apply to the manufacture of a TRI chemical except if that chemical is manufactured as an impurity and remains in the product distributed in commerce, or if the chemical is imported below the appropriate *de minimis* level. The *de minimis* exemption does not apply to a byproduct manufactured coincidentally as a result of manufacturing, processing, otherwise use, or any waste management activities.

The Form A provides facilities that otherwise meet TRI-reporting thresholds the option of certifying on a simplified reporting form provided that they do not exceed 500 pounds for the total annual reportable amount (described subsequently in this document) for that chemical and that their amounts manufactured, processed, or otherwise used do not exceed 1 million pounds. All chemicals of special concern (except certain instances of reporting lead in stainless steel, brass, or bronze alloys) are excluded from Form A eligibility. 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 identity of the chemical.

For certain data elements (Part II, Sections 5, 6.1, and 6.2 of Form R), for chemicals not classified as chemicals of special concern, the reportable quantity may be reported either as an estimate or by using the range codes that have been developed. Currently, TRI reporting provides three reporting ranges: 1–10

pounds, 11–499 pounds, and 500–999 pounds.

The availability of these burden reduction tools is inconsistent with a concern for small quantities of the chemicals and the expanded reporting that was sought for chemicals with lower reporting thresholds. In the preamble to the 1999 final rule (Ref 7), EPA outlined the reasons for promulgating the *de minimis* exemption (e.g., that facilities had limited access to information and that low concentrations would not contribute to the activity threshold) and determined that those rationales did not apply to chemicals of special concern. *Id.* at 58670. Among the reasons provided, EPA explained that even minimal releases of persistent bioaccumulative toxic chemicals may result in significant adverse effects and can reasonably be expected to significantly contribute to exceeding the proposed lower threshold. *Id.* EPA also determined that facilities reporting on chemicals of special concern could not avail themselves of Form A reporting because the information provided on Form A is “insufficient for conducting analyses” on chemicals of special concern and would be “virtually useless for communities interested in assessing risk from releases and other waste management” of such chemicals (*i.e.*, the Form A does not include estimated release and other waste management quantities). *Id.* Lastly, EPA eliminated range reporting for chemicals of special concern because the use of ranges could misrepresent data accuracy for PBT chemicals because the low or the high-end range numbers may not really be that close to the estimated value. *Id.* For the full discussion, see *Persistent Bioaccumulative Toxic (PBT) Chemicals; Lowering of Reporting Thresholds for Certain PBT Chemicals; Addition of Certain PBT Chemicals; Community Right-to-Know Toxic Chemical Reporting* (Refs. 7 and 8)

EPA has determined that PFAS added to EPCRA section 313 by sections 7321(b) and 7321(c) of the 2020 NDAA should be categorized as chemicals of special concern and added to the list in 40 CFR 372.28. The NDAA set a 100-pound annual reporting threshold for PFAS added by sections 7321(b) and 7321(c), which indicates a concern for small quantities of such PFAS. EPA has therefore determined that the availability of certain burden reduction tools (*i.e.*, *de minimis* levels, Form A, and range reporting) is not justified for these chemicals as the availability of these tools is inconsistent with a concern for small quantities.

Further, due to the strength of the carbon-fluorine bonds, many PFAS can

be very persistent in the environment (Refs. 2, 3, and 9). Persistence in the environment allows PFAS concentrations to build up over time; thus, even small releases can be of concern. As with PBT chemicals, permitting reporting facilities to continue to rely on the burden reduction tools (*de minimis* levels, Form A, and range reporting) would eliminate reporting on potentially significant quantities of the listed PFAS. As explained in more detail in Unit IV., EPA’s rationale for eliminating these burden reduction tools for PBT chemicals (Refs. 7 and 8) applies equally well to PFAS.

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 otherwise use in making threshold calculations and release and other waste management (including disposal to land and other types of waste management (*i.e.*, energy recovery, recycling, treatment)) determinations. Since the *de minimis* level is based on relative concentration rather than a specific amount, the application of this exemption to PFAS listed under sections 7321(b) and 7321(c) could allow significant quantities of such PFAS to be excluded from TRI reporting by facilities. For example, if a facility imports, processes, or otherwise uses 100,000 pounds of a mixture or trade name product that contains 0.5% of a listed PFAS, then 500 pounds (or five times the reporting threshold) would be disregarded. This exclusion is inconsistent with a concern for small quantities of PFAS. Many PFAS are used in products below the established *de minimis* levels (Refs. 4 and 10), and the continued availability of the exemption for PFAS would permit facilities to discount those uses when determining whether an applicable threshold has been met to trigger reporting.

The Form A provides certain covered facilities the option of submitting a substantially shorter form with a reduced reporting burden (Ref. 11). For example, the Form A does not require facilities to report any information on releases (e.g., releases through fugitive or non-point air emissions, discharges to streams or water bodies) or waste management quantities. Facilities can qualify to file a Form A if the total annual reportable amount for the listed chemical does not exceed 500 pounds, and the amounts manufactured, processed, or otherwise used do not exceed 1 million pounds. The annual reportable amount is equal to the

combined total quantities released at the facility (including disposed of within the facility), treated at the facility (as represented by amounts destroyed or converted by treatment processes), recovered at the facility as a result of recycling operations, combusted for the purpose of energy recovery at the facility, and amounts transferred from the facility to off-site locations for the purpose of recycling, energy recovery, treatment, and/or disposal. This means that facilities that are required to report data on PFAS and also qualify to file a Form A will not be providing specific quantity data on up to 500 pounds of a listed PFAS (five times the reporting threshold). For reporting year 2020, approximately 10% of the reporting forms submitted for the listed PFAS were Forms A (*i.e.*, reporting for TRI reflects 93 active reporting forms of which 84 were Forms R and 9 were Forms A). This trend continued with reporting year 2021, in which 9 of the total 87 reporting forms for PFAS were Form A.

While the Form A does provide some general information on the quantities of the chemical that the facility manages as waste, this information may be insufficient for conducting analyses on PFAS and may be less meaningful for communities interested in assessing risk from releases of PFAS. The threshold category for amounts managed as waste does not include quantities released to the environment as a result of remedial actions or catastrophic events not associated with production processes (section 8.8 of Form R). Thus, the waste threshold category in Form A does not include all releases. 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, removing the availability of the use of Form A for PFAS is consistent with a concern for understanding small quantities of PFAS.

For TRI-listed chemicals, other than chemicals of special concern, releases and off-site transfers for further waste management of less than 1,000 pounds can be reported using ranges or as a whole number. The reporting ranges are: 1–10 pounds; 11–499 pounds; and 500–999 pounds. For larger releases and off-site transfers for further waste management of the toxic chemical, the facility must report the whole number. 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 taking into account inherent data errors (*i.e.*, errors in measurements and developing

estimates). For PFAS, it is important to have accurate data regarding the amount released even when the quantities are relatively small, since concern may be tied to even small quantities of a substance. This issue was apparent for PFAS for reporting years 2020 and 2021 since much of the data reported was for less than 1,000 pounds.

EPA anticipates that the elimination of these burden reduction tools will increase the amount and quality of data collected for PFAS and is consistent with the concern for small quantities of PFAS (Ref. 1).

B. Elimination of the Supplier Notification Requirement De Minimis Exemption for Chemicals of Special Concern

EPA is also eliminating the use of the *de minimis* exemption under the Supplier Notification Requirements at 40 CFR 372.45(d)(1) for all substances on the list of chemicals of special concern. EPA extended the *de minimis* exemption to the supplier notification requirement in its initial TRI reporting rule (53 FR 4500, February 16, 1988 (FRL-3298-2)). The revised text reads as follows:

If a mixture or trade name product contains no toxic chemical in excess of the applicable *de minimis* concentration as specified in 40 CFR 372.38(a) except for chemicals listed under 40 CFR 372.28 which are excluded from the *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; it is 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. The impact of this exemption for the PBT chemicals with 10-pound reporting thresholds is even greater. Using the same 100,000-pound example, if mercury were present at 0.9% then that same 900 pounds would be 90 times the mercury reporting threshold.

It is also possible that quantities of chemicals of special concern would be included in supplier notifications by

reporting facilities if suppliers cannot use the *de minimis* exemption. For example, if a mixture or trade name product contains 0.9% of a listed PFAS and 1,000 pounds of the product is purchased, the supplier would need to provide notification for 9 pounds of PFAS. This would also impact PBT chemicals with 10-pound reporting thresholds. Using the same 1,000-pound example, if mercury was present at 0.9% then that same 9 pounds would be below the mercury reporting threshold. However, such quantities may become reportable, in aggregate, if a reporting entity receives multiple shipments (including from multiple suppliers) of a given product in a year and performs a threshold activity in excess of the TRI reporting threshold. Further, TRI supplier notification regulations do not require a person to consider the total quantity of the chemical being supplied but rather require the person to consider the concentration of the chemical in the product or mixture. Including a consideration of quantity rather than concentration shipped would complicate as well as reduce the ability of supplier notifications to inform downstream recipients of products and mixtures containing a TRI-listed chemical.

EPA considered whether to include a small quantity exemption in lieu of a *de minimis* exemption for supplier notification. However, EPA is concerned that such an exemption would not provide adequate information to facilities receiving multiple shipments over the course of a year to address TRI reporting requirements that may apply to them, based on the total aggregated quantity received. Without such information on the TRI-listed chemical, the receiving facility may not have sufficient data to inform potential TRI reporting obligations.

Many PFAS are used in products below the established *de minimis* levels (Refs. 4 and 10) which results in users of those products not knowing they are receiving a product that contains a TRI-reportable PFAS. PFAS reports received for the TRI 2020 and 2021 reporting years were mostly from manufacturers and waste disposal facilities which suggests that the *de minimis* exemption may have been used by most users and processors see <https://www.epa.gov/toxics-release-inventory-tri-program/find-understand-and-use-tri>. 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. The PBT chemicals and chemical categories that are classified as chemicals of special concern, and are thus also impacted by this change, are as follows:

- Aldrin (CASRN: 309-00-2);
- Benzol[g,h,i]perylene (CASRN: 191-24-2);
- Chlordane (CASRN: 57-74-9);
- Dioxin and dioxin-like compounds category (manufacturing; and the processing or otherwise use of dioxin and dioxin-like compounds category if the dioxin and dioxin-like compounds are present as contaminants in a chemical and if they were created during the manufacturing of that chemical) (TRI Category Code: N150);
- Heptachlor (CASRN: 76-44-8);
- Hexabromocyclododecane category (TRI Category Code: N270);
- Hexachlorobenzene (CASRN: 118-74-1);
- Isodrin (CASRN: 465-73-6);
- Lead (this lower threshold does not apply to lead when it is contained in stainless steel, brass or bronze alloy; (CASRN: 7439-92-1);
- Lead compounds category (TRI Category Code: N420);
- Mercury (CASRN: 7439-97-6);
- Mercury compounds category (TRI Category Code: N458);
- Methoxychlor (CASRN: 72-43-5);
- Octachlorostyrene (CASRN: 29082-74-4);
- Pendimethalin (CASRN: 40487-42-1);
- Pentachlorobenzene (CASRN: 608-93-5);
- Polychlorinated biphenyls (CASRN: 1336-36-3);
- Polycyclic aromatic compounds category (PACs) (TRI Category Code: N590);
- Tetrabromobisphenol A (CASRN: 79-94-7);
- Toxaphene (CASRN: 8001-35-2); and
- Trifluralin (CASRN: 1582-09-8).

When EPA established the chemicals of special concern list, it decided to not remove the *de minimis* exemption eligibility from supplier notification requirements, indicating that the Agency believed that there was sufficient information available on PBT chemicals by suppliers. (Refs. 7 and 8). However, EPA has determined that there are situations where this

information is not available. For example, the Agency has found that there is significant variability in the concentration of PACs in fuels, yet the presence and concentration of PACs in fuel oil is often not provided in supplier notifications or SDSs. Additionally, EPA is aware of metal mixtures and products containing low concentrations of lead (not contained in stainless steel, brass or bronze alloys) whose supplier notifications and SDSs do not state there is lead present in the mixture or product. Further, it is unclear whether downstream purchasers would be made aware of PBT chemicals contained in many products without notification of the presence of such chemicals.

In situations where such information is already available, supplier notifications may already be addressed (e.g., if such information is already included on an SDS) or the burden of a supplier to provide such information is minimal (i.e., if the information is redundant then the burden to provide such known information should be trivial). However, as noted in Unit IV., the quantity information EPA is requiring for *de minimis* concentrations below the concentration threshold may not be provided in SDSs. OSHA maintains a 1% concentration threshold for reporting the presence and concentration of most hazardous chemicals on SDSs (29 CFR part 1910, subpart Z). For chronic hazards (with Carcinogenicity, Germ Cell Mutagenicity, and Reproductive Toxicity), OSHA has established a 0.1% concentration threshold for reporting the presence and concentration of chemicals on SDSs (29 CFR part 1910, subpart Z). EPA notes that there may be other reasons for a chemical's exclusion from an SDS (e.g., a chemical may be in an article that is not covered by SDS requirements but is subject to TRI supplier notification requirements). As described in section 4.3 of the EA (Ref. 1) for this final rule, EPA believes that any potential increase in new supplier reporting is minimal, particularly regarding non-PFAS chemicals of special concern.

In the 1999 proposal to establish a chemical of special concern list, EPA also reasoned that entities subject to TRI supplier notification requirements could retain use of the *de minimis* exemption for PBTs because “[m]any of the chemicals identified as persistent and bioaccumulative in today's action are not imported, processed, or otherwise used but are manufactured as byproducts” (Ref. 8). However, the Agency has since learned that several PBT chemicals are not manufactured as byproducts, and those chemicals are

known to be processed for distribution to customers. For example, in Reporting Year 2021, the Agency received 55 Forms R for tetrabromobisphenol A (TBBPA). None of those forms indicated that TBBPA had been manufactured as a byproduct. However, some forms indicated the TBBPA is processed, including as an article component. Similarly, for Reporting Year 2021, the Agency received 76 Forms R on polychlorinated biphenyls (PCBs); 64 of those forms did not indicate those PCBs had been manufactured as byproducts, though some forms indicated the PCBs had been processed, including as an article component. Because many PBT chemicals are not manufactured as byproducts and may exist in relatively lower concentrations within products or mixtures, the Agency's initial rationale to allow suppliers to exempt concentrations of PBT chemicals below *de minimis* from supplier notification requirements warrants reconsideration. Therefore, EPA has reassessed this exemption and modified it appropriately to provide TRI facilities that receive products or mixtures containing chemicals of special concern with additional information related to quantities of chemicals of special concern that may contribute to their reporting thresholds. EPA created the *de minimis* exemption pursuant to the authority provided in EPCRA section 328 (42 U.S.C. 11048) and is adjusting the scope of the exemption under that same authority. EPCRA section 328 provides that EPA has authority to promulgate regulations as may be necessary to carry out this chapter. EPA has concluded that it is important and necessary to eliminate the supplier notification *de minimis* exemption for all chemicals of special concern because if that exemption were to remain in place the Agency may fail to collect information on amounts of such chemicals that significantly exceed the reporting threshold.

This action reflects EPA's current understanding of chemical activities involving all chemicals of special concern (i.e., both PBTs and PFAS).

C. Impact of Listing Certain PFAS on the Chemicals of Special Concern List

This action revises the regulatory text 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 regulatory text, as revised by this action, 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. Thus, as PFAS continue to be added to

TRI pursuant to sections 7321(b) and 7321(c), they will also be added to the list of chemicals of special concern as of the date they are added to the TRI. It is likely that some of the substances meeting the criteria in 7321(b) and 7321(c) will be subject to confidential business information claims. For substances subject to such claims, the Agency must follow the process outlined in section 7321(e) of the NDAA.

As with PFAS currently on the TRI list, future PFAS added to the TRI list under 7321(b) and 7321(c) will have a 100-pound reporting threshold, per sections 7321(b)(2)(A) and 7321(c)(2)(B). Congress' use of this low reporting threshold demonstrates a concern for even relatively small quantities of these PFAS. Therefore, EPA has concluded that it is appropriate for all PFAS added to the TRI list under these provisions to be added to the chemicals of special concern list upon listing. If these PFAS were not added to the chemicals of special concern list at the time of their addition to the TRI list, there would be a delay in the reporting requirements while EPA conducts a rulemaking simply to add them to the chemicals of special concern list. This would result in differences in how previously listed PFAS and newly listed PFAS are treated even though they were automatically listed with the same reporting thresholds. The chemicals of special concern designation is a regulatory construct and here, EPA has determined it is appropriate to designate all PFAS added to TRI pursuant to 7321(b) and 7321(c) as chemicals of special concern due to Congress' use of the 100-pound reporting threshold, indicating a concern for even relatively small quantities of PFAS, and PFAS' persistence in the environment and growing evidence showing potential adverse human health effects (Refs. 2, 3, and 9). Further, this regulatory change will provide additional data that will help the Agency to better understand the extent of potential impacts caused by these PFAS. Given that the NDAA set a 100-pound reporting threshold for all PFAS added pursuant to sections 7321(b) and 7321(c), EPA has determined that additional rulemakings to designate these chemicals as chemicals of special concern are unnecessary because the rationale for any future rulemakings would remain the same and would result in a delay of reporting requirements. EPA has finalized regulatory text that adds those PFAS added pursuant to 7321(b) and 7321(c) to the chemicals of special

concern list upon their addition to the TRI list.

EPA has decided not to provide a structural definition (e.g., OECD) of PFAS as part of this action, because doing so is outside the scope of this rulemaking. This rulemaking only concerns chemical substances added to the TRI by sections 7321(b) and 7321(c) of the NDAA, neither of which require EPA to provide a definition of PFAS. Section 7321(b) added by name and/or CASRN specific PFAS to the TRI list and sections 7321(b) and (c) identify EPA activities involving PFAS that would cause a PFAS to be added to the TRI list. The activities described by sections 7321(b) and (c) indicate whether they pertain to a PFAS, and thus a separate determination of whether or not the covered activity involves a PFAS is not necessary. EPA is therefore not providing a definition of PFAS for purposes of this rulemaking, and issues relating to the definition of PFAS are outside the scope of this rulemaking. EPA will consider the need for a PFAS definition for a purpose other than the NDAA section 7321(b) and (c) listings, should the need for such a definition arise. As indicated in the proposal for this rulemaking, EPA acknowledges there is another rulemaking underway to list PFAS additions for NDAA 7321(d), and the Agency expects that rulemaking to clarify the status of those listed PFAS as chemicals of special concern.

V. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not itself physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. USEPA. Economic Analysis for the Changes to TRI Reporting for PFAS. October 2023.
2. USEPA. Our Current Understanding of the Human Health and Environmental Risks of PFAS. U.S. Environmental Protection Agency, Washington, DC. <https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas>.
3. ATSDR. Agency for Toxic Substances and Disease Registry. Toxicological Profile for Perfluoroalkyls. May 2021. <https://www.atsdr.cdc.gov/toxprofiles/tp200.pdf>.
4. ATSDR. Agency for Toxic Substances and Disease Registry. Per- and

Polyfluoroalkyl Substances (PFAS) and Your Health. PFAS in the U.S. Population. <https://www.atsdr.cdc.gov/pfas/health-effects/us-population.html>.

5. Centers for Disease Control and Prevention, U.S. Department of Health and Human Services. National Report on Human Exposure to Environmental Chemicals. Updated March 2022. Accessed [insert date]. <https://www.cdc.gov/exposurereport/>.
6. USEPA. Response to Comment document. October 2023.
7. USEPA. Final Rule: Persistent Bioaccumulative Toxic (PBT) Chemicals; Lowering of Reporting Thresholds for Certain PBT Chemicals; Addition of Certain PBT Chemicals; Community Right-to-Know Toxic Chemical Reporting. **Federal Register**. 64 FR 58666, October 29, 1999 (FRL-6389-11).
8. USEPA. Proposed Rule: Persistent Bioaccumulative Toxic (PBT) Chemicals; Lowering of Reporting Thresholds for Certain PBT Chemicals; Addition of Certain PBT Chemicals; Community Right-to-Know Toxic Chemical Reporting. **Federal Register**. 64 FR 688, January 5, 1999 (FRL-6389-11).
9. National Institute of Environmental Health Sciences. Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS). <https://www.niehs.nih.gov/health/topics/agents/pfc/index.cfm>.
10. Kotthoff, et al. 2015. Perfluoroalkyl and polyfluoroalkyl substances in consumer products. *Environmental Science and Pollution Research* 22:14546-14559.
11. USEPA. Toxics Release Inventory Form A. https://ordspub.epa.gov/ords/guideme_ext/guideme_ext/guideme/file/ry_2021_form_a.pdf.
12. USEPA. Supporting Statement for an Information Collection Request (ICR) "Rule-Related Amendment; Changes to Reporting Requirements for Per- and Polyfluoroalkyl Substances; Community Right-to-Know Toxic Chemical Release Reporting; Final Rule (RIN 2070-AK97)." EPA ICR No.2724.02; OMB Control No. 2070-0225. July 2023.

VI. Statutory and Executive Orders Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is a "significant regulatory action" as defined in Executive Order 12866 (58 FR 51735, October 4, 1993), as amended by Executive Order 14094 (88 FR 21879, April 11, 2023). Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for Executive Order 12866 review. Documentation of any changes made in response to the Executive Order 12866 review is available in the docket.

EPA prepared an economic analysis of the potential impacts associated with this action. This analysis, "Economic Analysis for the Changes to TRI Reporting for PFAS" (Ref. 1) is also available in the docket and summarized in Unit E.1.

B. Paperwork Reduction Act (PRA)

The information collection activities in this rule will be submitted to OMB for approval under the PRA, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document that EPA prepared has been assigned EPA ICR No. 2724.02 and the OMB Control No. 2070-0225. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here (Ref. 12). The information collection requirements are not enforceable until OMB approves them.

Currently, the facilities subject to the reporting requirements under EPCRA section 313 and PPA section 6607 may use either EPA Toxic Chemicals Release Inventory Form R (EPA Form 1B9350-1), or EPA Toxic Chemicals Release Inventory Form A (EPA Form 1B9350-2). The Form R must be completed if a facility manufactures, processes, or otherwise uses any listed chemical above threshold quantities and meets certain other criteria. For the Form A, EPA established an alternative threshold for facilities with low annual reportable amounts of a listed toxic chemical. A facility that meets the appropriate reporting thresholds, but estimates that the total annual reportable amount of the chemical does not exceed 500 pounds per year, can take advantage of an alternative manufacture, process, or otherwise use threshold of 1 million pounds per year of the chemical, provided that certain conditions are met, and submit the Form A instead of the Form R. In addition, respondents may designate the specific chemical identity of a substance as a trade secret pursuant to EPCRA section 322 (42 U.S.C. 11042) and 40 CFR part 350. OMB has approved the reporting and recordkeeping requirements related to Forms A and R, supplier notification, and petitions under OMB Control number 2070-0212 (EPA ICR No. 2613.04) and those related to trade secret designations under OMB Control 2050-0078 (EPA ICR No. 1428.12). As such, this ICR is intended to amend the existing ICR to include the following additional details:

- *Respondents/affected entities:* Facilities covered under EPCRA section 313 that manufacture, process or otherwise use listed PFAS (See Unit I.A.).

• *Respondent's obligation to respond:* Mandatory (EPCRA section 313).

• *Frequency of response:* Annual.

• *Total estimated number of respondents:* 623 to 2,015.

• *Total estimated burden:* 43,843 and 111,768 burden hours in the first year and approximately 22,244 and 71,946 burden hours in the steady state. Burden is defined at 5 CFR 1320.3(b).

• *Total estimated cost:*

Approximately \$3,318,492 and \$10,733,149 in the first year of reporting and approximately \$1,580,214 and \$5,111,044 in the steady state (per year) includes \$0 annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

C. *Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* The small entities subject to the requirements of this action are primarily classified within the manufacturing and waste management industry sectors. The Agency has determined that of the 623 to 2,015 entities estimated to be impacted by this action, 486 to 1,333 are small businesses; no small governments or small organizations are expected to be affected by this action. The average cost per small firm is \$7,413 (at a 3% discount rate) or \$7,520 (at a 7% discount rate). All small businesses affected by this action are estimated to incur annualized cost impacts of less than 1%. Even under a worst-case scenario comparing compliance costs to average revenue of firms with between 10 (smallest number required to report) and 14 employees instead of comparing compliance costs to the weighted average revenue of small firms, there are still no costs that exceed the 1% impact threshold. Thus, this action is not expected to have a significant adverse economic impact on a substantial number of small entities. A more detailed analysis of the impacts on small entities is provided in EPA's economic analysis (Ref. 1).

D. *Unfunded Mandates Reform Act (UMRA)*

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. EPA did not identify any small governments that would be impacted by this action. EPA's economic analysis indicates that the total cost of this action is estimated to be from \$3,318,492 and \$10,733,149 in the first year of reporting and from \$1,580,214 and \$5,111,044 in subsequent reporting years (Ref. 1).

E. *Executive Order 13132: Federalism*

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it will not have substantial direct effects on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000) because it will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. It does not have substantial direct effects on tribal government because this action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities. Thus, Executive Order 13175 does not apply to this action.

G. *Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to regulatory actions considered significant under section 3(f)(1) of Executive Order 12866 and that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of Executive Order 13045.

Although this action does not concern an environmental health or safety risk, the data collected as a result of this

action will provide information about releases to the environment that could be used to inform the public on potential exposures to toxic chemical releases, pursuant to the right-to-know principles. EPA also believes that the information obtained as a result of this action could be used by government agencies, researchers, and others to identify potential problems, set priorities, and take appropriate steps to reduce any potential exposures and related human health or environmental risks identified as a result of increased knowledge of exposures to PFAS.

H. *Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy and has not otherwise been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

I. *National Technology Transfer and Advancement Act (NTTAA)*

This action does not involve technical standards under the NTTAA section 12(d), 15 U.S.C. 272.

J. *Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and; Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All*

EPA finds that it is not practicable to perform an environmental justice analysis because it lacks data on the exact locations of every exposure source. EPA was unable to perform an environmental justice analysis because it lacks data on the exact location of every exposure source based on reporting activity. The purpose of this action is to require reporting activity.

However, this regulatory action makes changes to the reporting requirements for PFAS that will result in more information being collected and provided to better evaluate exposures and the risks posed by such exposures. The determination of potential risk to human health and/or the environment depends upon many factors, including the toxicity of the chemical, the fate of the chemical in the environment, and the amount and duration of human or other exposure to the chemical. This action does not directly address human health or environmental risks. However,

the action will increase the level of information available to assess environmental protection for all affected populations without having any disproportionate and adverse human health or environmental effects on any population, including any community with environmental justice concerns. Specifically, changes to the reporting requirements for PFAS will provide more information on releases and waste management of PFAS. By requiring reporting of this additional information, EPA will be providing communities across the U.S. (including communities with environmental justice concerns) with access to data which they may use to seek lower exposures and consequently reductions in chemical risks for themselves and their children. This information can also be used by government agencies and others to identify potential problems, set priorities, and take appropriate steps to reduce any potential risks to human health and the environment. Therefore, informational benefits, of the action, including behavioral changes such as consumers avoiding specific products, may have positive impact on the human health and environmental impacts on all

communities, including communities with environmental justice concerns.

K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.*, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: October 18, 2023.

Michal Freedhoff,
Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 372—TOXIC CHEMICAL RELEASE REPORTING: COMMUNITY RIGHT-TO-KNOW

■ 1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

§ 372.22 [Amended]

■ 2. Amend § 372.22(c) by removing “§ 372.25, § 372.27, § 372.28, or § 372.29” and adding in its place “§§ 372.25, 372.27, or 372.28”.

§ 372.25 [Amended]

■ 3. Amend § 372.25 by:
 ■ a. In the introductory text, remove “Except as provided in § 372.27, § 372.28, and § 372.29” and add in its place “Except as provided in §§ 372.27 and 372.28”; and
 ■ b. In paragraphs (f), (g), and (h), remove “§ 372.27, § 372.28, or § 372.29” and add in its place “§§ 372.27 or 372.28”.

■ 4. In § 372.28, amend table 1 to paragraph (a)(1) by adding the entry “Per- and polyfluoroalkyl substances” alphabetically to read as follows:

§ 372.28 Lower thresholds for chemicals of special concern.

* * * * *

(a) * * *

(1) * * *

TABLE 1 TO PARAGRAPH (a)(1)

Chemical name	CAS No.	Reporting threshold (in pounds)
* * * * *	* * * * *	* * * * *
Per- and polyfluoroalkyl substances (Individually listed per- and polyfluoroalkyl substances added by 15 U.S.C. 8921(b)(1) and (c)(1)). (EPA periodically updates the lists of covered chemicals at § 372.65(d) and (e) to reflect chemicals that have been added by 15 U.S.C. 8921).	see § 372.65(d) and (e)	100
* * * * *	* * * * *	* * * * *

§ 372.29 [Removed]

■ 5. Remove § 372.29.

§ 372.30 [Amended]

■ 6. Amend § 372.30 by:
 ■ a. In paragraph (a), remove “in § 372.25, § 372.27, § 372.28, or § 372.29 at” and add in its place “in §§ 372.25, 372.27, or 372.28 at”; and
 ■ b. In paragraphs (b)(1), (b)(3) introductory text, (b)(3)(i), and (b)(3)(iv), remove “§ 372.25, § 372.27, § 372.28, or § 372.29” and add in its place “§§ 372.25, 372.27, or 372.28”.

§ 372.38 [Amended]

■ 7. Amend § 372.38 by:
 ■ a. In paragraph (a)(2), remove “except for purposes of § 372.45(d)(1)” and
 ■ b. In paragraphs (b), (c), (d), (f), (g) and (h), remove “§ 372.25, § 372.27, § 372.28, or § 372.29” and add in its place “§§ 372.25, 372.27, or 372.28”.
 ■ 8. Amend § 372.45, by revising paragraph (d)(1) to read as follows:

§ 372.45 Notification about toxic chemicals.

* * * * *

(d) * * *

(1) If a mixture or trade name product contains no toxic chemical in excess of the applicable *de minimis* concentration as specified in § 372.38(a), except for chemicals listed in § 372.28(a), which are excluded from the *de minimis* exemption.

* * * * *

[FR Doc. 2023–23413 Filed 10–30–23; 8:45 am]

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