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## [Chippfas] EPA Updates PFAS TRI Reporting Requirements

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Mon, Dec 4, 2023 at 3:34 PM

To: David Sonnenfeld <dasonnenfeld@hotmail.com>, jjheath1946@gmail.com

David, Joe: This looks to me--a newbie to PFAS regs--like a significant change in reporting requirements for industries that use PFAS. The link is in the original email.

-Don

On October 2023, the U.S. Environmental Protection Agency (EPA) **published** a final rule in the *Federal Register* modifying reporting requirements for per- and polyfluoroalkyl substances (PFAS) in the Toxics Release Inventory (TRI) under Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). (See 88 *Fed. Reg.* 74,360 (October 31, 2023).) Specifically, EPA proposed that PFAS compounds on the TRI should be classified as “chemicals of special concern.” Such classification would eliminate the availability of the *de minimis* exemption to TRI reporting (also known as Section 313 reporting) for both manufacturers and suppliers. It would also require the use of a specific reporting form for the listed PFAS substances (a Form A instead of a Form R).

This rule builds upon prior congressional and agency actions that have resulted in the addition of 189 PFAS compounds to the TRI list since the 2020 National Defense Authorization Act. Whereas, to date, PFAS have been added to the TRI via rulemakings that have identified the relevant chemicals with specificity, the newly finalized rule creates a mechanism for the automatic addition of PFAS based on EPA actions taken pursuant to the Toxic Substances Control Act. Specifically, PFAS will now be automatically added to the TRI on January 1 of the calendar year following the year in which any of the following EPA triggering events occurs with respect to the pertinent chemical(s):

- The finalization of a toxicity value;
- The promulgation of a new significant new use rule (SNUR);
- A determination that an existing SNUR applies to the PFAS; and

- For PFAS already on the TSCA Chemical Substance Inventory, a change from “inactive” to “active” status.

The elimination of the *de minimis* exemption is likely to present the greatest challenge to covered businesses. Previously, companies subject to TRI reporting were not required to submit reports if the concentration of PFAS in a commercial product was less than the applicable *de minimis* concentrations, i.e., less than 1% (0.1% for carcinogens). EPA reasoned that the elimination of this exemption is necessary in light of the surprisingly low number of PFAS-related submissions made for the 2021 and 2022 reporting cycles. The underwhelming number of reports highlighted how PFAS may be present in relatively small amounts in mixtures or commercial products that are used in such large volumes as to make the overall quantity of PFAS at issue significant and, therefore, worthy of governmental notification.

Additionally, EPA has eliminated the *de minimis* exception for Supplier Notification Requirements for all chemicals of special concern, which include PFAS covered under TRI reporting. The Supplier Notification Requirements generally require specific industries to provide notice to customers downstream if their products include chemicals subject to TRI reporting. Previously, this requirement was subject to the same *de minimis* exemption applicable to manufacturers. EPA has stated that removing the *de minimis* exemption for chemicals of special concern would help ensure that reporting facilities are provided with sufficient information. This change would go beyond PFAS and also apply to (other) persistent, bioaccumulative and toxic (PBT) chemicals, which include mercury, mercury compounds, lead and lead compounds. (EPA has identified certain PFAS, such as PFOA and PFOS as PBT. However, the preamble to the rule refers to PFAS and PBT chemicals somewhat differently.)

Notably, the final rule preserves the TRI article exemption, limiting compliance obligations for manufacturers of parts and finished products. This contrasts with the [recently finalized PFAS reporting rules under TSCA](#), which, controversially, did not include an article exemption.

In sum, the final rule increases the burden on entities subject to TRI reporting. This burden will likely continue to expand as the list of PFAS under TRI reporting

obligations continues to grow. Companies with a nexus to PFAS will be required to evaluate their operations for possible connections to PFAS. The amendments to the EPCRA regulations are just one of several recent federal regulations that drive at this point.

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**We are faced not with two separate crises, one environmental and the other social, but rather with one complex crisis which is both social and environmental. Strategies for a solution demand an integrated approach to combating poverty, restoring dignity to the excluded, and at the same time protecting nature. - Pope Francis, *Laudato Si'***

----- Forwarded message -----

From: **Tsmith--- via Chippfas** <[chippfas@lists.cpeo.org](mailto:chippfas@lists.cpeo.org)>

Date: Thu, Nov 30, 2023 at 10:39 AM

Subject: [Chippfas] EPA Updates PFAS TRI Reporting Requirements

To: <[chippfas@lists.cpeo.org](mailto:chippfas@lists.cpeo.org)>

<https://www.jdsupra.com/legalnews/epa-updates-pfas-tri-reporting-4892760/>

Ted Smith  
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