

PFAS UPDATE: EPA PROPOSES INCREASED TRI REPORTING REQUIREMENTS

Dec 15, 2022

On December 5, 2022, the U.S. Environmental Protection Agency (“EPA”) proposed a rule that would increase reporting for many per- and polyfluoroalkyl (“PFAS”) substances in the Toxics Release Inventory (“TRI”) under Section 313 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”). The National Defense Authorization Act added 160 PFAS compounds to the TRI list in 2020, and EPA has subsequently added additional PFAS compounds to the list. Companies are required to report if they manufacture, process, or otherwise use 100 pounds or more of any listed PFAS compound.

EPA is now proposing that PFAS compounds on the TRI should be classified as “Chemicals of Special Concern,” which will eliminate: (1) the use of the *de minimis* exemption for manufacturers; (2) the use of the *de minimis* exemption for suppliers; and (3) the use of a specific reporting form (Form A) for the listed PFAS substances.

I. No *De Minimis* Exception For TRI Reporting

Initially companies were not required to consider certain *de minimis* concentrations – specifically less than 1% - of listed PFAS chemicals in mixtures and trade name products when evaluating their overall usage for TRI reporting purposes. However, according to the [Federal Register](#), “[s]ince 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.”

The change is in part driven by the fact that the PFAS TRI data submitted to EPA in [2021](#) and [2022](#) demonstrated that fewer facilities reported PFAS substances than expected.

II. No *De Minimis* Exception for Supplier Notification Requirements

In addition, EPA is proposing to remove the *de minimis* exception for Supplier Notification Requirements for all chemicals of special concern. Broadly speaking, the Supplier Notification Requirements obligate certain industries to provide notice to downstream customers if their products, including mixtures and trade name products, contain chemicals that are subject to TRI reporting requirements. The Supplier Notification Requirements have been subject to the same 1% *de minimis* exception (or 0.1% for carcinogens) for listed chemicals in products.

However, as EPA explains, “[i]f finalized, this proposal would also make the *de minimis* exemption unavailable for purposes of supplier notification requirements to downstream facilities for all chemicals on the list of chemicals of special concern, which also includes certain persistent, bioaccumulative and toxic chemicals like lead, mercury, and dioxins.”

In short, the elimination of the *de minimis* exemption would result in a “[more complete picture](#)” of the releases and waste management qualities of PFAS substances.

III. Public Comment Period

The public comment period lasts until **February 3, 2023**. If interested, your business is encouraged to submit a comment to [the regulations page](#) and reference docket number EPA-HQ-TRI-2022-0270.

EPA provides some [helpful tips](#) in submitting effective comments.

IV. Conclusion

Without a *de minimis* exemption, it is likely that TRI reporting requirements for listed PFAS compounds will increase for companies that use those compounds, and for suppliers whose products contain those chemicals. If your company is subject to TRI reporting obligations generally, understanding whether your company manufactures, processes, or otherwise uses any of the listed PFAS compounds is now essential in order to ensure your ongoing compliance, especially in light of the low reporting threshold for listed PFAS compounds.

For more information on PFAS chemicals, and the regulatory and litigation risks that they pose, please visit our [PFAS webpage](#). If you believe that you may be impacted by the proposed reporting rule, please contact Tom Lee, John Kindschuh, or Emma Cormier at Bryan Cave Leighton Paisner LLP.

RELATED CAPABILITIES

- PFAS
- Environment

MEET THE TEAM



Thomas S. Lee

San Francisco

tom.lee@bclplaw.com

+1 415 675 3447



Emma R. Cormier

St. Louis

emma.cormier@bclplaw.com

+1 314 259 2160



John R. Kindschuh

St. Louis

john.kindschuh@bclplaw.com

+1 314 259 2313

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.