

## Proposed Toxic Release Inventory Changes Would Impact Reporting of PFAS and Supplier Notification Requirements



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### AUTHORS

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On December 5, 2022, the U.S. Environmental Protection Agency (EPA) [proposed](#) to modify Toxic Release Inventory reporting to increase reporting for listed per- and polyfluoroalkyl substances (PFAS) by identifying them as Chemicals of Special Concern. EPA also proposed to expand supplier notification requirements for all Chemicals of Special Concern.

### Background

The Toxic Release Inventory is an annual report by manufacturers and certain other businesses that describes the use and management of listed chemicals. As we [reported](#), in January 2020, Congress expanded the list of chemicals that require reporting under the Toxic Release Inventory program to include certain PFAS in the PFAS Act of 2019 which was part of the National Defense Authorization Act for Fiscal Year 2020. The list of PFAS chemicals has increased to approximately 180 compounds for reporting year 2023.

### What is changing?

First, EPA is proposing to reclassify all currently listed PFAS as Chemicals of Special Concern. EPA is also proposing that any PFAS listed in the future as a result of the PFAS Act of 2019, will be automatically considered Chemicals of Special Concern. All chemicals EPA previously listed as Chemicals of Special Concern are listed because they are persistent, bioaccumulative, and toxic. Under the proposed rule, EPA would include all listed PFAS as Chemicals of Special Concern without determining that each one is persistent, bioaccumulative, and toxic. These actions would have the following impacts:

- ◆ **Effectively eliminate the use of the de minimis exemption for listed PFAS compounds.** Under the current rules, companies are not required to include in the Toxic Release Inventory any chemical in a mixture with a concentration below 1% (the “de minimis exemption”). By reclassifying listed PFAS chemicals as Chemicals of Special Concern, EPA will eliminate the use of the de minimis exemption.
- ◆ **Eliminate the use of Form A reporting for listed PFAS compounds.** Under the current rules, companies that handle relatively small amounts of a chemical may file a simplified report (“Form A”). By reclassifying listed PFAS chemicals as Chemicals of Special Concern, EPA will eliminate the use of Form A for listed PFAS compounds.
- ◆ **Reduce range reporting.** Under the current rules, a company reports the amount of PFAS handled or treated at a location using ranges (e.g., 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.** While Chemicals of Special Concern have lower thresholds for determining if a Toxic Release Inventory report is required, Congress previously set a lower threshold for PFAS chemicals of 100 pounds.

Second, EPA is proposing to change the rules relating to supplier notifications. Under current rules, suppliers do not need to provide information on any chemical, including Chemicals of Special Concern, in a mixture with a concentration below 1%, because of the de minimis exemption discussed above. EPA proposes eliminating the de minimis exemption from supplier notifications for all Chemicals of Special Concern. This elimination will increase reporting for all Chemicals of Special Concern. In addition, suppliers will need to provide information beyond what they currently include in Safety Data Sheets under Occupational Safety and Health Act rules.

## Why is EPA proposing this change?

EPA stated that it is proposing this rule because there is a “concern for small quantities of such PFAS” and therefore, the “availability of certain burden reduction tools ... are not justified for these chemicals.” EPA also states that the revised rule, if promulgated, “will increase the amount and quality of data collected for PFAS.”

## What is the deadline for comments?

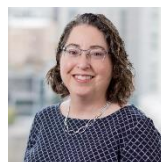
Toxic Release Inventory reporters and their suppliers, as well as any other interested party, may comment on this proposal on or before February 3, 2023.

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