EPA Proposes Adding PFAS to List of "Chemicals of Special Concern" and to Eliminating *De Minimus* Exemptions for Reporting

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On December 5, 2022, the Environmental Protection Agency (EPA) announced a proposed rule that would affect industries required to report the use of per- and poly-fluoroalkyl substances (PFAS) to the Toxics Release Inventory (TRI). If the rule goes into effect, PFAS will be added to the EPA's list of "chemicals of special concern." Consequently, PFAS would no longer be eligible for the *de minimus* exemption, which currently allows facilities to avoid reporting if minimal concentrations of PFAS were used in mixtures or products (typically, less than one percent).

Notably, the EPA is also proposing to eliminate the *de minimis* exemption for Supplier Notification Requirements for *all* substances on the list of chemicals of special concern. If the rule is finalized, purchasers must be informed when mixtures and trade name products contain even minimal amounts of PFAS or other chemicals of special concern. The EPA's list of chemicals of special concern also includes bioaccumulative toxic chemicals such as lead, mercury, and dioxins. While the rule does not extend to consumer goods such as cosmetics, cookware, and other household items that contain PFAS, manufacturers can expect that these changes will lead to increased public awareness—and criticism—about the use of PFAS.

Reporting PFAS Use to the Toxics Release Inventory

PFAS, or "forever chemicals," are synthetic organic compounds used as waterproofing or nonstick agents in many household and industrial products. Starting in 2021, some PFAS were first required to be reported to TRI. When the EPA found that fewer facilities reported PFAS than expected in 2021 and 2022, they learned that some facilities had relied on the *de minimus* exception and had not reported to TRI.

Certain facilities that manufacture, process, or use certain toxic chemicals on the TRI must report environmental releases or other waste management quantities of those chemicals. The TRI, established in 1986 by the Emergency Planning and Community Right-to-Know Act (EPCRA), tracks the industrial management of certain toxic chemicals. It makes that information available to the public in order to create an incentive for companies to improve environmental performance. The EPA says that elimination of the *de minimis* exemption would result in a more complete picture of the releases and other waste management quantities for these chemicals.

TRI's Supplier Notification Requirements for "Chemicals of Special Concern"

The EPA's proposed rule would also eliminate the use of the *de minimus* exemption from the TRI's Supplier Notification Requirements at 40 CFR 372.45(d)(1). If the rule is finalized, suppliers would be required to inform purchasers when mixtures and trade name products contain PFAS or other chemicals of special concern. Consequently, manufacturers and suppliers can expect to face greater scrutiny from the EPA—and the public—for using PFAS even in *de minimus* amounts.

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