



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA-HQ-OPPT-2024-0507; FRL 12309-01-OCSP]

RIN 2070-AL24

Toxics Release Inventory (TRI); Clarification of Toxic Chemicals Due to Automatic

Additions of Per- and Polyfluoroalkyl Substances Under the National Defense

Authorization Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The National Defense Authorization Act for Fiscal Year 2020 (NDAA) adds certain per- and polyfluoroalkyl substances (PFAS) automatically to the Toxics Release Inventory (TRI) beginning January 1 of the year following specific triggering events. The Environmental Protection Agency (EPA or Agency) is proposing to make conforming edits to the TRI regulation to explicitly include PFAS that are added to the TRI chemical list automatically pursuant to the NDAA in the regulation's definition of "toxic chemical." This edit confirms that the TRI supplier notification provision requires covered suppliers to notify customers receiving a mixture or other trade name product containing a TRI-listed chemical with the first shipment of each calendar year, with such a requirement beginning on January 1 of the applicable year; thus, supplier notifications are required as of January 1 for any NDAA-added PFAS.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2024-0507, online at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be

Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Stephanie Griffin, Data Gathering, Management, and Policy Division (Mailcode 7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 564-1463; email address: griffin.stephanie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be affected by this action if you own or operate a facility or establishment that is required to provide TRI supplier notifications to its customers pursuant to 40 CFR 372.45. To determine whether your facility is affected by this action, you should carefully examine the applicability criteria in 40 CFR part 372, subpart C.

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 document applies to them. Potentially affected entities 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.

If you need help determining applicability, consult the technical contact listed under

FOR FURTHER INFORMATION CONTACT.

B. What action is the Agency taking?

EPA is proposing to make conforming edits to the TRI regulation's definition of "toxic

chemical” to explicitly include the PFAS that are added to the TRI chemical list automatically pursuant to the National Defense Authorization Act for Fiscal Year 2020 (NDAA) section 7321(c). Because the NDAA adds certain PFAS automatically to the TRI beginning January 1 of the year following specific triggering events, such PFAS are effectively TRI-listed chemicals (i.e., “toxic chemicals”) as of the applicable January 1. EPA proposes to amend the Code of Federal Regulations (CFR) to confirm that the TRI chemical list includes all chemicals at 40 CFR 372.65 and any PFAS that have been automatically added pursuant to section 7321(c) of the NDAA.

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

This action is issued under the Emergency Planning and Community Right-to-Know Act (EPCRA) section 313 (42 U.S.C. 11001 et seq.), section 6607 of the Pollution Prevention Act (PPA) (42 U.S.C. 13106), and NDAA section 7321 (Pub. L. 116-92).

D. Why is the Agency taking this action?

EPA is taking this action to align the supplier notification provision with the effective date for addition of a chemical on the EPCRA section 313 list (including those automatically added pursuant to NDAA section 7321). This action is also being taken in response to questions from stakeholders regarding the effective date of supplier notifications for NDAA-added PFAS.

NDAA section 7321(c) adds certain PFAS to the TRI list on January 1 of the year following the EPA activity that caused the addition of the chemical to the TRI list. If an EPA triggering event occurs, the NDAA automatically adds the associated PFAS to TRI as of the following January 1, and EPA then, to align the CFR listing of TRI chemicals with the TRI chemical list as modified by NDAA section 7321(c), issues a final rule codifying the addition of those chemicals to the list at 40 CFR 372.65 each year. Prior to an updated TRI chemical list in the CFR, the regulated community can find information on PFAS added to the TRI reporting list via NDAA section 7321(c) as of January 1 of each year at <https://www.epa.gov/toxics-release-inventory-tri-program/addition-certain-pfas-tri-national-defense-authorization-act>.

Supplier notifications are first required as of the addition of a chemical substance to the TRI list, which includes the January 1 listing date of a PFAS added via NDAA section 7321(c). This is consistent with the longstanding policy of the supplier notification requirement being aligned with the effective date for a chemical on the TRI list. Thus, supplier notifications are first required for a chemical added to the TRI list pursuant to NDAA section 7321(c) beginning in the same year as the effective date for that chemical. Because the automatic additions include PFAS associated with triggering activities through December 31 of each year, there is some time between when the supplier notification requirements are effective on January 1 and when the rule to update the TRI list in the CFR to align with any applicable NDAA section 7321(c) listings is published.

The TRI supplier notification provision requires covered suppliers to initiate notifications for any chemical on the TRI list as of January 1 of that year. The supplier notification provision, which pre-dates the enactment of the NDAA, points to the chemical list codified at 40 CFR 372.65. This action confirms the longstanding supplier notification requirements for TRI-listed chemicals as of their effective dates by clarifying that the supplier notification provision applies not only to chemicals listed at 40 CFR 372.65 but generally to all TRI-listed chemicals. Thus, this action does not add any new requirements, but rather clarifies the timing of the applicability of existing requirements. Additionally, this proposal would further clarify that all TRI regulations apply to chemicals added to the TRI list by NDAA section 7321(c) by defining all such chemicals to be a “toxic chemical” for purposes of TRI regulations.

II. Background

A. What are TRI supplier notifications?

Supplier notifications accompanying mixtures or trade name products containing a TRI chemical provide downstream facilities with information necessary to support potential TRI reporting obligations. Supplier notifications must include a statement that the mixture or trade name product contains a TRI chemical, the chemical name, and Chemical Abstracts Service

Registry Number (CASRN), and the percentage (by weight) of that chemical within the mixture or trade name product.

Notifications must be provided by a facility or establishment that meets all three criteria: (1) Has a NAICS code that corresponds to Standard Industrial Classification [SIC] codes 20-39 (generally, manufacturing); (2) Manufactures (including imports) or processes a TRI chemical; and (3) Sells or otherwise distributes that chemical within a mixture or trade name product to TRI-covered facilities, or others who may in turn distribute such mixture or trade name product to TRI-covered facilities. If a facility meets all three criteria, then a supplier notification is required with at least the first shipment of the calendar year containing that TRI chemical. For chemicals newly added to the TRI list, notifications must be provided starting with the effective year of the chemical on the TRI list.

B. What is NDAA section 7321(c)?

Among other provisions, NDAA section 7321(c) identifies certain regulatory activities that automatically add PFAS or classes of PFAS to the TRI list of reportable chemicals. Specifically, PFAS or classes of PFAS are added to the TRI list of reportable chemicals beginning January 1 of the calendar year 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 the Toxic Substances Control Act (TSCA) section

8(b)(1) (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).

Although the NDAA automatically updates the list of toxic chemicals subject to EPCRA section 313 as of January 1, EPA must also publish a final rule to update the toxic chemical list in the CFR. These final rules and conforming CFR edits have trailed the January 1 effective date.

III. 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 not 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), and was therefore not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

This action does not contain any new information collection burden under the PRA, 44 U.S.C. 3501 et seq. Facilities that are affected by the proposed rule are already required to comply with the supplier notification provisions at 40 CFR 372.45. In addition, OMB has previously approved the information collection activities involving supplier notifications as contained in 40 CFR part 372 under EPA ICR No. 2613.04; OMB Control No. 2070–0212.

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. In making this determination, EPA concludes that the impact of concern for this action is any significant adverse economic impact on small entities and that the Agency is certifying that this action will not have a significant

economic impact on a substantial number of small entities because the action has no net burden on the small entities subject to the action. This proposed rule adds no new reporting requirements, and there would be no net increase in respondent burden and costs. This action would only conform regulatory text for the scope of “toxic chemicals” covered by TRI reporting and supplier notifications already required by respondents. I have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million (in 1995 dollars and adjusted annually for inflation) 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.

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 the 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. Thus, Executive Order 13175 does not apply to this action. 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 (E.O.) 13045.

Since this is not a “covered regulatory action,” E.O. 13045 does not apply. However, the Policy on Children’s Health does apply. Although this action does not concern an environmental health or safety risk, the information obtained from the reporting required by this proposed rule will be used to inform the Agency’s decision-making process regarding chemical substances to which children may be exposed. This information will also assist the Agency and others in determining whether the chemical substances included in this proposed rule present potential risks, allowing the Agency and others to take appropriate action to investigate and mitigate those risks.

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 rulemaking does not involve any technical standards. As such, NTTAA section

12(d), 15 U.S.C. 272, does not apply to this action.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice a part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color) and low-income populations.

EPA believes that this type of action does not concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on communities with environmental justice concerns. This action involves downstream notification requirements that will not affect the level of protection provided to human health or the environment.

Although this action does not concern human health or environmental conditions, EPA may identify and address environmental justice concerns through information collected under TRI. The information obtained through TRI reporting will lead to a better understanding of PFAS releases, which can help inform and tailor future EPA actions regarding PFAS. For example, EPA may identify and address environmental justice concerns as a result of the PFAS information collected under TRI, which is supported by supplier notification requirements that this rule is clarifying. TRI reporting also better informs communities living near facilities that report to TRI, by providing them with information about PFAS releases and waste management practices occurring in their communities. Overall, EPA believes that the information obtained could be used by the public (including people of color, low-income populations, and/or indigenous peoples) to inform their behavior as it relates to potential exposure to PFAS and by government agencies and others to identify potential problems, set priorities, and take

appropriate steps to reduce any potential human health or environmental risks from PFAS.

List of Subjects in 40 CFR Part 372

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

Dated: December 20, 2024.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, for the reasons set forth in the preamble, EPA proposes to amend 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.

2. In § 372.3, the definition of “Toxic chemical” is revised to read as follows:

§ 372.3 Definitions.

* * * * *

Toxic chemical means a chemical or chemical category listed in § 372.65 or a chemical added to the Emergency Planning and Community Right-to-Know Act (EPCRA) section 313 chemical list pursuant to 15 U.S.C. 8921(c)(1).

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