

March 24, 2025

Elissa Reaves, Ph.D.

Director

Office of Pollution Prevention and Toxics Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: Proposed Rule: Toxics Release Inventory (TRI); Clarification of Toxic Chemicals Due to Automatic Additions of Per- and Polyfluoroalkyl Substances Under the National Defense Authorization Act; 90 Fed. Reg. 5795 (Jan. 17, 2025), EPA-HQOPPT-2024-0507)

Dear Dr. Reaves:

The undersigned organizations are pleased to provide comments in response to the Environmental Protection Agency's (EPA) proposed clarifications to automatic additions of per- and polyfluoroalkyl substances (PFAS) to the TRI ("Proposed Rule" or "Proposal"). There are several important practical, legal, and technical challenges presented by the proposal.

This Proposed Rule, in addition to the October 8, 2024 proposed rule, Addition of Certain PFAS to the Toxics Release Inventory TRI ("October 8 Proposal"¹), represents a substantial proposed departure from evidence-based rulemaking and established policy under the TRI program. EPA indicated that the issues presented in this proposed rule are for "clarification." However, the agency has not yet finalized the precursor elements of the proposed changes to the TRI program set forth in the October 8 Proposal, and therefore, it is premature to issue any clarifications to those changes unless and until a decision is made on whether and, if so, to finalize the previous changes. In response to the Proposed Rule, we call your attention to comments submitted by the U.S. Chamber of Commerce and our coalition in response to the October 8 Proposal that highlight that proposed rule's significant divergence from existing policy, guidance, and practice of the TRI program when interpreting and implementing the 2020 National Defense Authorization Act (NDAA).² We also associate ourselves with comments submitted by the American Chemistry Council on the proposed rule.³

¹ 89 Fed. Reg. 81776 (October 8, 2024).

² Comments of the U.S. Chamber of Commerce to proposed Addition of Certain Per- and Polyfluoroalkyl Substances (PFAS) to the Toxics Release Inventory (TRI); Proposed Rule, 89 Fed. Reg. 81,776 (Oct. 8, 2024), submitted December 9, 2024.

³ Comments of the American Chemistry Council to Proposed Rule: Toxics Release Inventory (TRI); Clarification of Toxic Chemicals Due to Automatic Additions of Per- and Polyfluoroalkyl Substances Under the National Defense Authorization Act, January 17, 2025.

The following are priority issues for your consideration:

- The NDAA does not authorize an automatic listing of the proposed PFAS in perpetuity, nor does it authorize a sweeping designation of all PFAS listed on the TRI as “Chemicals of Special Concern.”⁴
- Even if automatic listings were allowed, the chemistries still must meet the rigorous scientific review required under the Emergency Planning and Community Right to Know Act (EPCRA). The regulated community has significant questions and concerns about EPA’s proposed interpretation of the final toxicity values, the proposed changes to the definition of “toxic chemical,” and how they will result in listings. The scientific evaluations that EPA relies upon to make determinations regarding a TRI listing for a chemical must meet basic requirements to be scientifically robust, to be considered reliable, and to sufficiently support a finding that the EPCRA standard for listing chemicals under TRI has been met for each such chemical.
- There is no legal or scientific basis for equating additions of PFAS to the TRI to the requirements of the list of “Chemicals of Special Concern” and should not trigger supplier notifications. Listing all PFAS automatically in both lists would lead to miscommunication and misunderstanding regarding the real risk of PFAS chemistries. In addition, the implementation of notifications in the same year of any final TRI listing would be impractical and contrary to longstanding EPA guidance.⁵

We would be pleased to engage with EPA on the issues addressed in the proposed TRI clarification rule. We believe that an appropriately regulatory “right sizing” approach to these issues, which avoids imposing unnecessary costs on the private sector, is required and supported by the mandates and policies of the President’s important Executive Orders, including Executive Order 14192 of January 31, 2025, 90 Fed. Reg. 9065 (Feb. 6, 2025) (“Unleashing Prosperity Through Deregulation”).

Sincerely,

Alliance for Automotive Innovation
Alliance for Chemical Distribution
American Chemistry Council

⁴ Comments of the U.S. Chamber of Commerce on Environmental Protection Agency Proposed Rule: Changes to Reporting Requirements for Per- and Polyfluoroalkyl Substances and to Supplier Notifications for Chemicals of Special Concern; Community Right-to-Know Toxic Chemical Release Reporting, 87 Fed. Reg. 74379 (Dec. 5, 2022) (submitted Feb. 3, 2023).

⁵ U.S. EPA, EPCRA Section 313 Questions and Answers 2019 Consolidated Document, EPA 745-B-19-001 (Apr. 2019) provides, in response to Question 151 (p. 61), that “[the Agency believes that the purpose of EPCRA Section 313(d)(4) is to provide covered facilities with adequate time to incorporate newly listed chemicals into their data collection processes.” In response to Question 876 (p. 354), the Agency’s document explains that “For a chemical added on or after January 1 and before December 1 of any reporting year, supplier notifications are to be provided with the first shipment of the chemical in the following reporting year and every year thereafter.” These questions and responses are essentially identical to question 151 and question 717 in the 1998 version of this guidance. See U.S. EPA, EPCRA Section 313 Questions and Answers Revised 1998 Version, EPA 745-B98-004, pages 127-28, 231.

American Fuel & Petrochemical Manufacturers
American Petroleum Institute
Fuel Cell & Hydrogen Energy Association
National Asphalt Pavement Association
National Council of Textile Organizations
National Mining Association
PRINTING United Alliance
U.S. Chamber of Commerce