



# AmericanCoatings

ASSOCIATION<sup>SM</sup>

February 3, 2023

Michal Freedhoff  
Assistant Administrator  
Office of Chemical Safety and Pollution Prevention.  
1200 Pennsylvania Ave. NW,  
Washington, DC 20460-0001

Re: EPA Docket No. EPA-HQ-TRI-2022-0270  
*Changes to Reporting Requirements for PFAS and to Supplier Notifications for Chemicals of Special Concern; Community Right-to-Know Toxic Chemical Release Reporting*

Dear Assistant Administrator Freedhof:

The American Coatings Association (“ACA”)<sup>1</sup> appreciates the opportunity to comment on proposed changes to PFAS reporting in the TRI and supplier notification requirements. We are committed to working with EPA to help ensure an accurate understanding of risk of PFAS chemicals.

The Association’s membership represents 90% of the paint and coatings industry, including downstream users (or processors) of chemicals, who sometimes import small amounts of raw materials, raw materials suppliers, as well as chemical manufacturers. ACA appreciates EPA’s willingness to interact with stakeholders during this process. We are optimistic that through continued involvement with the public and stakeholder community, EPA will successfully implement a strong, risk-based approach to managing risk posed by PFAS chemicals.

ACA is concerned that listing the specified 189 PFAS chemicals as *chemicals of special concern* with no *de minimis* reporting threshold is beyond scope contemplated in EPCRA and authorization for listing in the NDAA 2020<sup>2</sup>. Removal of the *de minimis* exemption is not justified by statutory authority and further leads to a vague reporting requirement, with companies adopting varying limits of quantitation, to the

---

<sup>1</sup> ACA is a voluntary, non-profit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory and judicial issues, and provides forums for the advancement and promotion of the industry through educational and professional development services. ACA’s membership represents over 90 percent of the total domestic production of paints and coatings in the country.

<sup>2</sup> National Defense Authorization Act of 2020, Sections 7321(b) and (c), S. 1790, Pub. Law 116-92, 116<sup>th</sup> Congress (2019), available at: <https://www.congress.gov/bill/116th-congress/senate-bill/1790#:~:text=S.,Congress.gov%20%7C%20Library%20of%20Congress>

extent quantifying amounts is even possible. ACA recommends not listing the 189 PFAS chemicals as *chemicals of special concern* at this time, pending further analysis of the listing criteria in EPCRA § 313(d)(2) for each chemical.

ACA and its members respectfully submit the following comments:

**I. Listing specified PFAS as *chemicals of special concern* and lowering or eliminating reporting thresholds is not authorized by EPCRA or the NDAA 2020**

EPCRA specifies criteria for addition of chemicals to the TRI reporting list, while authorizing the administrator to lower thresholds, provided the lower threshold ensures continued reporting of a “substantial majority of total releases.”<sup>3</sup> Here, Congress authorized listing of 189 PFAS chemicals for general TRI reporting at a threshold of 100 pounds in the NDAA 2020<sup>4</sup>. Congress authorized listing without analysis of human health and environmental impact factors found in EPCRA Section 313(d)(2). Since authority for listing specified PFAS is from the NDAA and not through the procedural requirements of EPCRA, EPA is limited to thresholds specified by Congress in the NDAA, namely at 100 pounds. EPA must adhere to either all limits and listing requirements of EPCRA or those parameters established in the NDAA for listing specified PFAS.

Within a five years from enactment, NDAA 2020 requires EPA to evaluate whether revision of thresholds are warranted for PFAS chemicals specified at Section 7321(b) and (c), being the 189 PFAS chemicals at issue here.<sup>5</sup> If warranted, NDAA 2020 authorizes lowering reporting threshold pursuant to Section 313(f)(2) of EPCRA, triggering the impact analysis of EPCRA 313(d)(2). EPCRA 313(f)(2) establishes EPA’s authority to lower reporting thresholds, but that authority is predicated on a finding that chemicals are listed based on toxicity, as described in EPCRA 313(d)(2). EPCRA 313(f)(2) refers to *toxic* chemicals as follows:

The Administrator may establish a threshold amount for a *toxic* chemical different from the amount established by paragraph (1). Such revised threshold shall obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to the requirements of this section. The amounts established under this paragraph may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(EPCRA Section 313(f)(2), italics added)

In the current proposal, EPA has not undertaken an analysis of EPCRA 313(d)(2) factors to warrant reduction of the authorized reporting threshold.

These statutory requirements are based on important policy considerations. The public uses TRI listings to identify location of *toxic* chemicals and facilities handling such chemicals. The assumption of toxicity of TRI-listed chemicals is emphasized throughout EPA’s public facing, online literature related to the TRI.<sup>6</sup> Similarly, EPCRA’s implementing regulations consistently refer to TRI-listed chemicals as “toxic

---

<sup>3</sup> EPCRA 313(f)(2), 42 USC 11023(f)(2)

<sup>4</sup> NDAA 2020, Sections 7321(b) and (c).

<sup>5</sup> NDAA 2020, Sections 7321(b) and (c).

<sup>6</sup> On its [TRI website](#), EPA explains, “The Toxics Release Inventory (TRI) is a resource for learning about toxic chemical releases and pollution prevention activities reported by industrial and federal facilities. TRI data support

chemicals.” TRI listings are an important resource for communities located near facilities, tribes, the media and the public at large. EPA has a responsibility not to mislead these communities by erroneously listing *chemicals of special concern* that have not undergone analysis of EPCRA’s 313 (d)(2) toxicity or human health impact factors, when congress did not specifically authorize such listing in the NDAA.

EPCRA’s human health and environmental impact factors do not authorize listing for any individual factor of persistence, bioaccumulation or toxicity. That is, listing must be based on a combination of factors as described in EPCRA 313(d)(2). PFAS chemicals, though generally thought of as persistent, have wide variability of bioaccumulation properties and toxicity. Bioaccumulation and toxicity can be impacted by a variety of environmental factors including geochemical factors, organism behavior, organism type and soil conditions. To list the 189 PFAS chemicals at issue as *chemicals of special concern* EPA must analyze each PFAS chemical against the criteria of EPCRA 313(d)(2).

## **II. Removal of the *de minimis* levels is not authorized by EPCRA or the NDAA 2020**

As noted above, EPA is limited to requiring reporting at the threshold authorized by Congress in the NDAA 2020. Additionally, removal of the *de minimis* reporting threshold is not justified since EPA has not assessed human health or environmental impact. EPA also has not adequately considered the significant compliance challenge presented by removing a *de minimis* threshold. EPA explains chemicals of special concern do not have a *de minimis* amount for reporting since, “even minimal releases of persistent bioaccumulative chemicals may result in significant adverse effects and can reasonably be expected to significantly contribute to exceeding the proposed lower threshold.”<sup>7</sup> As EPA describes in its proposal, “PFAS can be very persistent in the environment,” but EPA cannot assume bioaccumulation or toxicity based on persistence alone. EPA cannot assume that *de minimis* amounts of all listed PFAS could result in significant adverse effects, requiring their reporting. Further discussion of the necessity of EPA’s review of *de minimis* levels and potential adverse effects is included in the 1999 rule first listing specific PBT chemicals as *chemicals of special concern*.<sup>8</sup>

Removal of the *de minimis* exemption also presents a significant compliance challenge at all levels of the supply chain. As EPA is aware, the supply chain works through several layers of transactions with modifications of a mixture potentially occurring at varying stages. Supplier notification requirements will not be limited to one layer of the supply chain. The lack of a *de minimis* is a source of confusion when identifying an adequate test methods and acceptable variance for measurements.

## **III. Listing specified PFAS as *chemicals of special concern* unnecessarily creates a supplemental reporting requirement in conjunction with the PFAS Reporting Rule**

Requiring TRI reporting for the 189 PFAS chemicals at issue results in duplicative reporting requirements with the PFAS Reporting Rule currently being finalized. ACA recommends gathering information for PFAS

---

informed decision-making by communities, government agencies, companies, and others. Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) created the TRI.”

<sup>7</sup> *EPA Proposed Changes to Reporting Requirements for PFAS Substances and Supplier Notifications for Chemicals of Special Concern, Community Right-to-Know Toxic Chemical Release Reporting*, 87 Fed. Reg. 74379, 74381 (December 5, 2022).

<sup>8</sup> *Persistent Bioaccumulative Toxic (PBT) Chemicals; Lowering of Reporting Thresholds for Certain PBT Chemicals; Addition of Certain PBT Chemicals; Community Right-to-Know Toxic Chemical Reporting*, 64 Fed. Reg. 58666 (Oct. 29, 1999).

chemicals under the PFAS Reporting Rule as a preliminary data gathering exercise. If information indicates that any of 189 PFAS chemicals would meet the Section 313(d)(2) listing criteria, EPA should undertake further analysis to evaluate whether listing as a *chemical of special concern* is warranted. This approach would ensure EPA's process is within the important procedural limitations established in EPCRA and the NDAA 2020.

#### **IV. Conclusion**

For the foregoing reasons, ACA encourages EPA not to list the 189 specified chemicals specified in the NDAA 2020, Sections 7321(b) and (c), as *chemicals of special concern*, pending receipt of information under the PFAS Reporting Rule and subsequent analysis of these 189 chemicals against criteria in EPCRA Section 313(d)(2) for assessing impact to human health or the environment.

Respectfully submitted,

Riaz Zaman  
Sr. Counsel, Government Affairs  
American Coatings Association  
901 New York Ave., Ste. 300  
Washington, D.C. 20001  
rzaman@paint.org  
202-719-3715