AmericanCoatings ASSOCIATION℠

February 18, 2025

Stephanie Griffin
Data Gathering, Management, and Policy Division
Office of Chemical Safety and Pollution Prevention
1200 Pennsylvania Ave. NW,
Washington, DC 20460–0001

Re: EPA Docket No. EPA-HQ-OPPT-2024-0507
Clarification of Toxic Chemicals Due to Automatic Additions of Per- and Polyfluoroalkyl Substances Under the National Defense Authorization Act

Dear Mrs. Griffin:

The American Coatings Association ("ACA")[1] appreciates the opportunity to comment on proposed changes to redefine *toxic chemical*, as used in regulations implementing the TRI (Toxics Release Inventory) program. EPA explains that the change would clarify notification requirements for chemicals added to the TRI pursuant to the NDAA (National Defense Authorization Act) of Fiscal Year 2020. We are committed to working with EPA to help ensure an accurate understanding of risk of PFAS chemistries while providing communities and all actors in the supply chain with adequate notification.

The Association's membership represents 90% of the paint and coatings industry, including downstream users (or processors) of chemicals, 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.

I. Introduction

In January 2025, EPA published a proposed rule to amend the definition of "toxic chemical" at 40 CFR 372.3 so that any chemical listed pursuant to EPA's authority under the NDAA (National Defense Authorization Act) FY 2020 would be a *toxic chemical* under the regulation. As a result, companies

[1] 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.

placing such chemicals on the market, including in mixtures, must notify buyers. The notification requirement would be triggered as of January 1 following the effective date of EPA's listing. For example, if EPA publishes notification adding chemicals to the TRI list effective October 1, 2024, suppliers must notify downstream TRI facilities as of January 1, 2025. The notification requirement would apply regardless of whether the CFR list of toxic chemicals at 40 CFR § 372.65 has been updated.

EPA's current proposal of January 2025 builds on a prior proposal published on October 8, 2024 (EPA Docket No. EPA-HQ-OPPT-2023-0538) where EPA explains authority to list PFAS chemicals as *chemicals of special concern* under a triggering event identified by the NDAA. EPA proposes that the NDAA and EPCRA authorize it to list PFAS chemistries as *chemicals of special concern* without a complete assessment of whether a PFAS chemical causes a human health or environmental impact, as required under EPCRA. ACA addressed EPA's interpretation of its listing authority in its prior comment, attached hereto, since the current notification assumes legitimacy of this listing process. This prior comment is also referenced in explanations below. EPA has not yet finalized the October 8, 2024 proposal.

When both EPA proposals are read together, EPA would be authorized to list PFAS chemicals, and possibly other types of chemicals, as *chemicals of special concern*, without a toxicity assessment, triggering a downstream notification requirement with no *de minimis* cut-off for notification. Suppliers would be required to notify any amount in mixtures or substances, effective January 1 after the effective date of listing.

II. EPA's proposal does not provide adequate notice for downstream industries to update notifications.

EPA's proposal to establish a January 1 compliance date for downstream notification presents significant compliance challenges for downstream user industries in complex supply chains. The paint and coatings industry, for example, manufactures a variety of both end-use industrial, commercial and consumer products as well as products that would be further formulated prior to end-use in TRI facilities. The listing of chemistries as *chemicals of special concern* with no *de minimis* present two significant compliance challenges: 1) updating notification potentially within a short time frame, across multiple levels in the supply chain; and 2) identifying *de minimis* amounts.

If EPA were to adopt final PFAS TRI listings in October, November or December of the year, companies at levels of the supply chain would be required to provide downstream notification by the following January 1. This is an unusually short time-period for updates. OSHA provides at least 90 days for updates to hazard communication after a change in classification. The paint and coating industry often relies on notification from upstream suppliers, especially for *de minimis* amounts that are not typically disclosed on an SDS (safety data sheet). Inevitably, the paint and coatings industry would not have an adequate timeframe to update notifications for any listing in the Fall prior to the January compliance deadline. Downstream industries from the paint and coatings industry, would not begin their updates until receiving notification from their suppliers, further delaying compliance.

III. Removal of a de minimis level for notification presents significant compliance challenges.

As noted in ACA's prior comment (see comment filed in EPA Docket No. EPA-HQ-OPPT-2023-0538, December 2024, attached hereto), removal of the *de minimis* exemption presents a significant compliance challenge at all levels of the supply chain, compounded by the proposed January 1

compliance date. 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 adequate test methods and acceptable variance for measurements.

ACA is also concerned that removal of a *de minimis* level is not necessary for protection of public health and the environment. In effect, compliance challenges industry faces do not advance a broader social benefit. In its prior related proposal, EPA explained that *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."[2] Assuming bioaccumulation or toxicity based on persistence alone is not supported by standard scientific practice and knowledge. 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*.[3]

IV. The proposed change in definition does not provide adequate notification of chemicals included as toxic chemicals.

In addition to compliance challenges related to notifications, the proposed change in definition does not clearly identify those chemicals subject to the notification requirement. Industry relies on clarity in regulations to assure compliance and equity in compliance obligations across competitors. Here, EPA is proposing to add a vague reference to chemicals subject to the notification requirement, referenced as:

> *. . . 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).*

The purpose of this phrase is to reference those chemicals that EPA has adopted as TRI *chemicals of special concern* but are not yet listed in the official list at 40 CFR §372.65. ACA emphasizes the importance of maintaining the list at §372.65 as the official list to provide clarity in compliance obligations, without referencing other lists not included in the CFR. This may require extending the notification time so EPA can update the official CFR list accordingly.

EPA should also note that the proposed change to definition of *toxic chemical* assumes EPA is authorized to pursue a method of identifying toxic chemicals without a toxicity assessment required under EPCRA. EPA is not addressing the issues it raised in its prior notification. Instead, it is proposing a change in the definition of *toxic chemical*, to encompass chemicals that it may not have authority to list as toxic under EPCRA.

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[2] *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).

[3] *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).

As noted in ACA's prior comment, ACA recommends reviewing all PFAS chemistries on a case-by-case basis against EPCRA Section 313(d)(2) listing criteria. EPA should then undertake further analysis to evaluate whether listing as a *chemical of special concern* is warranted. This approach would ensure EPA's process is within procedures established in EPCRA and the NDAA 2020. ACA is attaching hereto its prior comment addressing this issue.

V. Conclusion

ACA is concerned that listing PFAS chemicals as *chemicals of special concern* with no *de minimis* reporting threshold is beyond scope contemplated in EPCRA and the NDAA 2020[4]. Removal of the *de minimis* exemption presents significant compliance challenges, with companies adopting varying limits of quantitation, to the extent quantifying amounts is even possible. ACA recommends not listing 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. If listing is supported, EPA should list the chemicals such that the *de minimis* requirements would remain in effect. ACA also cautions against listing categories of PFAS and their salts, when not directly supported by toxicity analysis. ACA also further recommends that all listing be specified by CAS number, including salts and acids.

ACA recognizes the need for clarity regarding notification requirements and a compliance date. ACA recommends that issues regarding notification can be addressed without changing the definition of toxic chemical. ACA recommends maintaining the list at 40 CFR §372.65 as the official list, while allowing at least 90 days from listing to update downstream notification.

Respectfully submitted,

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

December 9, 2024

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-OPPT-2023-0538
Addition of Certain Per- and Polyfluoroalkyl Substances (PFAS) to the Toxics Release Inventory (TRI)

Dear Assistant Administrator Freedhof:

The American Coatings Association ("ACA")[1] 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 PFAS chemicals as *chemicals of special concern* with no *de minimis* reporting threshold is beyond scope contemplated in EPCRA and the NDAA 2020[2]. Removal of the *de minimis* exemption present significant compliance challenges, with companies adopting varying limits of quantitation, to the extent quantifying amounts is even possible. ACA recommends not listing

[1] 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.
[2] National Defense Authorization Act of 2020, Sections 7321(b) and (c), S. 1790, Pub. Law 116-92, 116th Congress (2019), available at: https://www.congress.gov/bill/116th-congress/senate-bill/1790#:~:text=S.,Congress.gov%20%7C%20Library%20of%20Congress

the 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. If listing is supported, EPA should list the chemicals such that the *de minimis* requirements would remain in effect. ACA also cautions against listing categories of PFAS and their salts, when not directly supported by toxicity analysis. ACA also further recommends that all listing be specified by CAS number, including salts and acids.

ACA and its members respectfully submit the following comment:

I. ACA recommends further review of scientific literature to establish toxicity.

ACA appreciates EPA's thoughtful analysis of its authority under EPCRA and the NDAA 2020, addressing concerns that ACA had raised in a prior related comment period for listing PFAS chemistries in the TRI (*See* 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*). Under the expanded statutory analysis of the current proposal, EPA explains that exposure analysis is not required prior to TRI listing when EPA can reasonably anticipate a chemical can cause adverse *chronic* human health effects or environmental effects at low concentrations, citing EPCRA 313(d)(2)(B) & (C). EPA further explains that EPCRA 313(d)(2)(A) distinguishes TRI listing of a chemical for *acute* health effects. In EPA's view, EPCRA 313(d)(2) requires exposure analysis prior to listing a chemical for acute effects, but not for chronic effects.

Although EPCRA may be silent on the extent of exposure analysis required to list a chemical for chronic effects, the statute clearly requires EPA to consider whether a chemical *causes* an acute or chronic effect. This element of causation is critical to listing a chemical in the TRI. The statute contains identical language related to causation in both Sections 313(d)(2)(A), dealing with acute effects, Section 313(d)(2)(B) dealing with chronic effects and Section 313(d)(2)(C) dealing with environmental effects. By establishing causation as a critical listing element, the language of EPCRA 313(d)(2) clearly does not authorize listing based on hazard considerations alone.

ACA remains concerned that EPA databases such as ECOTOX, EPA HAWC and IRIS do not adequately reflect the current state of science. As such, these are not reliable mechanisms of establishing toxicity for a TRI listing. EPCRA Section 313(d)(2) requires listings be based on current science:

> A determination under this paragraph shall be based on generally accepted scientific principles or laboratory tests, or appropriately designed and conducted epidemiological or other population studies, available to the Administrator.

Comments submitted by NAM (National Association of Manufacturers) detail data deficiencies for individual PFAS chemistries and PFAS groupings proposed for listing. ACA supports the comments submitted by NAM and refers to those for further details regarding toxicity data of individual listings.

ACA is concerned that over-reliance on data generated from the IRIS evaluation process may lead to misleading and inaccurate hazard characterizations and exposure values. ACA recognizes that EPA may use IRIS evaluations as a general screening tool for TRI listing, but warns against relying heavily on IRIS

evaluations as establishing toxicity for listing. At a minimum, EPA must thoroughly evaluate the IRIS assessment against other available evaluations that meet EPCRA's standards for scientific information.[3]

ACA also encourages EPA to continue improvements to IRIS as mandated in the *Consolidated Appropriations Act of 2012*.[4] Congress requires EPA to incorporate recommendations of the NRC (National Resources Council) in its assessment of IRIS review of formaldehyde, and subsequent reports on technical progress. EPA has since amended evaluation methods used in IRIS based on NRC's assessment related to the IRIS formaldehyde evaluation. Since then, NRC has continued to assess scientific, technical and process changes implemented by EPA.[5] NRC has identified deficiencies in the IRIS process that bias findings towards over-classification of hazards and inaccurate exposure values. NRC notes IRIS evaluations are inconsistent.

NRC has made suggestions towards improving EPA's approach to evidence identification, including establishing standard protocols, developing a template to describe the search approach, and using a database to capture study information and relevant quantitative data, amongst other suggestions. ACA supports this process of improvement, and encourages EPA to work closely with NRC to implement its suggestions. Improvement of IRIS is vital to enhancing the accuracy of EPA pre-prioritization, prioritization and risk evaluation processes.

II. Reliance of local communities emphasizes the importance of scientific accuracy in IRIS listing.

As noted above, EPCRA's emphasis on causation requires EPA to conduct detailed literature review of the current state of the science to clearly establish chemical exposure as a cause of a chronic health effect. This may not necessarily rise to the level of detailed, case-specific, exposure assessment. But it does require accurate and detailed analysis of existing literature related to the chemical. In contrast, EPA states that EPCRA does not require exposure considerations when listing a chemical for chronic effects due to the statutory language, when read with the underlying purpose of EPCRA. EPA explains:

> EPCRA section 313 charges EPA with collecting and disseminating information on releases among other waste management data, so that communities can estimate local exposure and local risks; risks which can be significantly different than those which would be assessed using generic exposure considerations.

ACA is concerned that inaccuracies in data related to TRI-listed PFAS chemicals will mislead state and local communities who are not equipped to conduct detailed exposure assessments. These communities rely on accuracy in the TRI listing process. The data requirements of EPCRA are not solely intended to enable further evaluation. Rather, they are intended to serve as an accurate information source and foundation for further regulation, guidance, standards, etc.

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[3] EPCRA Section 313(d)(2) requires, "A determination under this paragraph shall be based on generally accepted scientific principles or laboratory tests, or appropriately designed and conducted epidemiological or other population studies, available to the Administrator."

[4] *Consolidated Appropriations Act of 2012* (Public Law 112-74) ("EPA shall incorporate, as appropriate, based on chemical-specific datasets and biological effects, the recommendations…of the National Research Council's Review of the Environmental Protection Agency's Draft IRIS Assessment of Formaldehyde into the IRIS process.")

[5] For analysis of deficiencies with IRIS see: National Resources Council, *Review of EPA's Integrated Risk Information System (IRIS) Process* (2014), available online at: https://www.nap.edu/read/18764/chapter/3

EPA explains at 40 CFR 372.1:

> The information collected under this part is intended to inform the general public and the communities surrounding covered facilities about releases of toxic chemicals, to assist research, to aid in the development of regulations, guidelines, and standards, and for other purposes. (40 CFR Part 372.1).

Accuracy in establishing toxicity prior to listing on the TRI serves a critical function since state and local governments refer to the TRI listing when considering further regulatory controls.

III. Removal of the *de minimis* levels presents significant compliance challenges.

Removal of the *de minimis* exemption 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.

ACA is also concerned that removal of the de minimis level is not necessary for protection of public health and the environment. In effect, the compliance challenges that industry faces do not advance a broader social benefit. EPA has explained that 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."[6] 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*.[7]

IV. 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 proposed PFAS chemicals and groups results in duplicative reporting requirements with the PFAS Reporting Rule. ACA recommends gathering information for PFAS chemicals under the PFAS Reporting Rule as a preliminary data gathering exercise. If information indicates that any of the proposed PFAS 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 procedures established in EPCRA and the NDAA 2020. TSCA Section 8(a)(7) PFAS reports are due in January 2026 for most manufacturers, with an extension for small businesses ending in July 2026.

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[6] *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).

[7] *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).

V. Conclusion

For the foregoing reasons, ACA encourages EPA to conduct further analysis and implement the following recommendations:

- Conduct a literature review related to proposed PFAS to establish toxicity of individual PFAS and proposed PFAS groupings.
- Evaluate groups of PFAS for toxicity and list by CAS RN, if justified, rather than a generalized group description.
- Use data collected under the TSCA 8(a)(7) PFAS reporting rule as a data source to evaluate toxicity of proposed PFAS and PFAS groups.
- Implement a *de minimis* exemption for listed PFAS, should EPA proceed, while implementing the de minimis exemption only for certain chemicals, if justified by further analysis indicating toxicity at levels below the *de minimis* thresholds.

Respectfully submitted,

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