



Proposed Changes to PFAS Reporting and Supplier Notifications under EPCRA

On December 5, 2022, the U.S. Environmental Protection Agency (EPA) published a proposed rule titled “[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](#)” (the “Proposal”) at 87 *Fed. Reg.* 74379-74387. The Proposal would amend the Emergency Planning and Community Right-to-Know Act (EPCRA) reporting requirements in 40 C.F.R. 372 to: (i) add per- and polyfluoroalkyl substances (PFAS) subject to reporting under EPCRA to the list of Lower Thresholds for Chemicals of Special Concern (the “List”) in 40 C.F.R. 372.28; and (ii) eliminate the *de minimis* exemption for all chemicals on the List under the Supplier Notification Requirements in 40 C.F.R. 372.45.

PFAS Reporting

PFAS subject to EPCRA reporting requirements already have a lower reporting threshold (100 pounds). By adding PFAS to the List, facilities are precluded from using the *de minimis* exemption at 40 C.F.R. 372.38(a), which would otherwise allow a facility to exclude PFAS found in chemical mixtures at concentrations less than one percent in determining whether the applicable reporting threshold has been met. Also, inclusion on the List prevents facilities from using the more simplistic, streamlined Form A for reporting. EPA believes these amendments will increase the data collected for PFAS and will result in a better understanding of PFAS waste management and release quantities.

Supplier Notifications

Generally, 40 C.F.R. 372.45 requires a chemical supplier to provide notification to certain facilities or persons (usually through Safety Data Sheets) of its products containing EPCRA 40 C.F.R. Part 372 toxic chemicals. 40 C.F.R. 372.45(d)(1) provides a *de minimis* exemption from this requirement. However, the Proposal would eliminate the *de minimis* exemption from the Supplier Notification Requirements for all chemicals on the List. The EPA expects this amendment will ensure that purchasers of products containing any chemicals found on the List will be better informed of the presence of those chemicals and their resultant reporting responsibilities under EPCRA, as well as other environmental programs.

If finalized as proposed, these amendments will increase the reporting burden for the regulated community. The public comment deadline is February 3, 2023. Written comments can be submitted using the Federal e-rulemaking portal (www.regulations.gov).

If you have any questions about the Proposal or submission of comments to the EPA, please contact Timothy S. Bytner at (412) 394-6504 or tbytner@babstcalland.com, or Colleen Grace Donofrio at (856) 256-2495 or cdonofrio@babstcalland.com.

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