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EPA and California Move to Further Regulate PFAS Chemicals

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Federal and state agencies are moving forward with additional regulations addressing chemicals known as Per- and Polyfluoroalkyl Substances (PFAS). EPA is proposing to add over 100 PFAS chemicals to the Toxics Release Inventory (TRI) reporting obligations. Importantly, the proposal would restrict the ability of affected facilities to use the TRI's 'de minimis' exemption, thereby requiring the reporting of even small amounts of PFAS releases. On the state level, California is increasing regulatory control over PFAS to protect children and limit exposures from clothing and food packaging.

EPA's Proposed Rule

Today, Oct. 8, 2024, EPA proposed in the *Federal Register* a major expansion to reporting PFAS releases under the TRI. Significantly, the [proposed rule](#) will designate the new PFAS additions as "chemicals of special concern" -- a designation the agency previously applied to other PFAS listed on the TRI that prevents the *de minimis* exemption from applying to the chemicals. EPA's proposed rule would add 16 individual PFAS and 15 PFAS categories representing more than 100 individual PFAS chemicals to the TRI.

The TRI is part of the Emergency Planning and Community Right-to-Know Act (EPCRA) which was expanded under the National Defense Authorization Act for Fiscal Year 2020 (NDAA). Manufacturing, mining, and electric power generation operations are covered by EPCRA. The TRI generally requires regulated entities to report annual levels of toxic chemicals released and managed through recycling efforts, energy recovery, and treatment.

Comments on the proposed rule must be received by EPA on or before December 9, 2024.

Rationale for the Proposed Rule

EPA is proposing the TRI additions based on the toxicity of the chemicals. Data gathered by EPA shows that the PFAS have adverse effects on human health and the environment, including: (1) cancer; (2) damage to the liver and kidneys; and (3) damage to reproductive and developmental systems.

Chemicals of Special Concern

Designating the new PFAS additions as "chemicals of special concern" would prevent facilities from using the *de minimis* exemption. This exemption normally allows facilities to disregard small concentrations of chemicals in mixtures or trade name products when reporting releases. Environmentalists have long advocated for the "chemical of special concern" designation and the elimination of the *de minimis* exemption for PFAS. They argue that allowing for the exemption significantly limits the amount of PFAS reported to the TRI. The "chemicals of special concern" designation will likely be contested by the regulated community as industry generally favors the *de minimis* exemption. Industry currently subject to TRI reporting argue that eliminating the exemption would impose unnecessary compliance burdens, particularly for small businesses, without providing significant benefits. Industry also argues that the EPA's data is not scientifically sound.

Reporting Threshold

The proposed rule would set a reporting threshold of 100 pounds for the manufacture, processing, and use of all listed PFAS. All PFAS in each category would cumulatively count

towards the 100-pound threshold for that category. This would significantly increase the TRI reporting burden for affected facilities.

Automatic Addition of PFAS to the TRI

The NDAA includes a framework for automatically adding PFAS to the TRI list in response to specific EPA activities, such as when the agency finalizes a toxicity value for a PFAS. The EPA is proposing a list of EPA toxicity values that would automatically trigger the addition of the associated PFAS to the TRI list.

California's Action

On Sept. 29, 2024, California Governor Gavin Newsom signed into law [Assembly Bill 347](#), which adds registration, certification, and enforcement provisions to California's existing restrictions on PFAS in juvenile products, textile articles, and food packaging.

Registration and Certification

By July 1, 2029, manufacturers of products covered under the law must register with the California Department of Toxic Substances (DTSC) and provide: (1) the name and description of the covered product; (2) the applicable registration fee; and (3) a statement of compliance certifying that each covered product complies with the applicable PFAS restriction.

Enforcement

The DTSC has the authority to enforce California's PFAS restrictions for covered products. The law establishes civil penalties of at least \$10,000 for violations. The DTSC can also develop its own enforcement mechanisms on a case-by-case basis.

Highlights of AB 347

The new law provides clarity to industries struggling to comply with California's existing PFAS restrictions. The law also implicitly acknowledges that previous PFAS laws were neither enforceable nor practical. The law addresses these issues by appointing the DTSC as the lead agency for enforcement and tasking them with identifying approved PFAS testing methods.

Implications and Expectations

PFAS are highly persistent in the environment due to the strength of their carbon-fluorine bonds. This persistence allows PFAS to accumulate over time, making even small releases a concern. Due to this high persistence and environmental accumulation, PFAS will be the subject of ongoing regulation for years.

Because of the physical and chemical qualities of these PFAS substances, both state and federal regulators are taking unprecedented steps to understand the scope of PFAS in the economy, the extent of PFAS contamination across all media, and how best to identify and destroy the most toxic forms.

Since there is no single definition of PFAS, different regulators may use different definitions of what constitutes a regulated PFAS. EPA uses a categorical approach for regulating some PFAS. These categories are based on structural similarities and shared toxicological properties. California does not follow this approach.

Various adverse health outcomes linked to PFAS exposure include immune system effects, thyroid effects, liver effects, and developmental effects. Regulators are using various

environmental statutes to address these complex health outcomes, and therefore PFAS release reporting and regulatory requirements will likely continue to expand.

For More Information

Van Ness Feldman’s environmental attorneys have extensive compliance and litigation experience, as well as technical knowledge – both on the government enforcement side and in private practice – with the Toxic Substances Control Act (TSCA) and related federal and state regulations affecting chemical manufacturers, importers, processors. For additional insights or specific inquiries regarding EPA’s or California’s regulatory and statutory requirements and implications, please contact [Dana Stotsky](#), [Britt Speyer Fleming](#), or [A.J. Singletary](#). Learn more at [VNF.com](#).

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