

waterbody segment with water quality standards that do not include the uses specified in section 101(a)(2) of the Act every 3 years to determine if any new information has become available. If such new information indicates that the uses specified in section 101(a)(2) of the Act are attainable, the State shall revise its standards accordingly. Procedures States establish for identifying and reviewing water bodies for review should be incorporated into their Continuing Planning Process. In addition, if a State does not adopt new or revised criteria for parameters for which EPA has published new or updated CWA section 304(a) criteria recommendations, then the State shall provide an explanation when it submits the results of its triennial review to the Regional Administrator consistent with CWA section 303(c)(1) and the requirements of paragraph (c) of this section.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 372

[EPA-HQ-TRI-2022-0270; FRL-8741-03-OCSPP]

RIN 2070-AK97

### 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

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to add per- and polyfluoroalkyl substances (PFAS) subject to reporting under the Emergency Planning and Community Right-to-Know Act (EPCRA) and the Pollution Prevention Act (PPA) pursuant to the National Defense Authorization Act for Fiscal Year 2020 (NDAA) to the list of Lower Thresholds for Chemicals of Special Concern (chemicals of special concern). These PFAS already have a lower reporting threshold of 100 pounds. The addition of these PFAS to the list of chemicals of special concern will cause such PFAS to be subject to the same reporting requirements as other chemicals of special concern (*i.e.*, it would eliminate the use of the *de minimis* exemption

and the option to use Form A and would limit the use of range reporting for PFAS). Removing the availability of these burden-reduction reporting options will result in a more complete picture of the releases and waste management quantities for these PFAS. In addition, EPA is proposing to remove the availability of the *de minimis* exemption for purposes of the Supplier Notification Requirements for all chemicals on the list of chemicals of special concern. This change will help ensure that purchasers of mixtures and trade name products containing such chemicals are informed of their presence in mixtures and products they purchase.

**DATES:** Comments must be received on or before February 3, 2023.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-TRI-2022-0270, using the Federal eRulemaking Portal at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** For technical information contact: Daniel R. Ruedy, Data Gathering and Analysis Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 564-7974; email: [ruedy.daniel@epa.gov](mailto:ruedy.daniel@epa.gov).

For general information contact: The Emergency Planning and Community Right-to-Know Hotline; telephone numbers: toll free at (800) 424-9346 (select menu option 3) or (703) 348-5070 in the Washington, DC Area and International; or go to <https://www.epa.gov/home/epa-hotlines>.

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or otherwise use listed PFAS or any chemicals listed under 40 CFR 372.28. The following list of North American Industry Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this action applies to them. Potentially affected entities may include:

- Facilities included in the following NAICS manufacturing codes (corresponding to Standard Industrial Classification (SIC) codes 20 through 39): 311\*, 312\*, 313\*, 314\*, 315\*, 316, 321, 322, 323\*, 324, 325\*, 326\*, 327, 331, 332, 333, 334\*, 335\*, 336, 337\*, 339\*, 11998\*, 211130\*, 212324\*, 212325\*, 212393\*, 212399\*, 488390\*, 511110, 511120, 511130, 511140\*, 511191, 511199, 512230\*, 512250\*, 519130\*, 541713\*, 541715\* or 811490\*.

\*Exceptions and/or limitations exist for these NAICS codes.

- Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 211130 (corresponds to SIC code SIC 1321, Natural Gas Liquids and SIC 2819, Industrial Inorganic Chemicals, Not Elsewhere Classified); or 212111, 212112, 212113 (corresponds to SIC code 12, Coal Mining (except 1241)); or 212221, 212222, 212230, 212299 (corresponds to SIC code 10, Metal Mining (except 1011, 1081, and 1094)); or 221111, 221112, 221113, 221118, 221121, 221122, 221330 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (corresponds to SIC codes 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (limited to facilities previously classified in SIC code 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 424710 (corresponds to SIC code 5171, Petroleum Bulk Terminals and Plants); or 562112 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC code 7389, Business Services, NEC)); or 562211, 562212, 562213, 562219, 562920 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*) (corresponds to SIC code 4953, Refuse Systems).

- Federal facilities.

A more detailed description of the types of facilities covered by the NAICS codes subject to reporting under EPCRA section 313 can be found at: <https://www.epa.gov/toxics-release-inventory-tri-program/tri-covered-industry-sectors>. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372, subpart B of title 40 of the Code of Federal Regulations. Federal facilities are required to report under Executive Order 14008 (<https://www.govinfo.gov/content/pkg/FR-2021-02-01/pdf/2021-02177.pdf>), as explained in the Council on Environmental Quality's 2021 memorandum to Chief Sustainability

Officers ([http://www.epa.gov/sites/default/files/2021-04/documents/final\\_ceq\\_memo\\_on\\_tri\\_april\\_2021.pdf](http://www.epa.gov/sites/default/files/2021-04/documents/final_ceq_memo_on_tri_april_2021.pdf)). If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### B. What action is the Agency taking?

EPA is proposing to add all PFAS included on the Toxics Release Inventory (TRI) pursuant to sections 7321(b) and 7321(c) of the 2020 NDAA to the list of chemicals of special concern (40 CFR 372.28). (EPA maintains a list of PFAS added to the TRI list pursuant to the NDAA: <https://www.epa.gov/toxics-release-inventory-tri-program/list-pfas-added-tri-ndaa>.) The addition of these PFAS to the list of chemicals of special concern will align reporting requirements for these PFAS with other chemicals of special concern. This will likely result in additional Form R reports being filed for these PFAS due to the removal of the availability of the *de minimis* exemption and the option to use Form A. It will also limit the use of range reporting, which will capture more specific information for PFAS added pursuant to sections 7321(b) and 7321(c) of the NDAA.

In addition, EPA is proposing to remove the availability of the *de minimis* exemption under the Supplier Notification Requirements (40 CFR 372.45) for facilities that manufacture or process any chemicals included on the list of chemicals of special concern.

#### C. What is the Agency's authority for this action?

This action is issued under EPCRA sections 313, 42 U.S.C. 11023 and 328, 42 U.S.C. 11048. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986.

#### D. Why is the Agency taking this action?

EPA is taking this action to increase the data collected for PFAS. Removing the availability of certain burden-reduction reporting options will result in a more complete picture of the releases and waste management quantities for PFAS. This proposed change would increase the number of TRI reports on listed PFAS and the amount of information provided on such reports, resulting in more information on the waste management of these chemicals available to the Agency, as well as to the public. In addition, this action will increase data collected for all chemicals of special concern by eliminating the *de minimis*

exemption for purposes of the Supplier Notification Requirements for all chemicals on the list of chemicals of special concern. The elimination of this exemption from Supplier Notification Requirements will ensure that purchasers of mixtures and trade name products containing such chemicals are informed of their presence in mixtures and products they purchase.

#### E. What are the estimated incremental impacts of this action?

EPA prepared an economic analysis for this action entitled, "Economic Analysis for the Proposed Changes to Reporting Requirements for Per- and Polyfluoroalkyl Substances and to Supplier Notifications Requirements for Chemicals of Special Concern; Community Right-to-Know Toxic Chemical Release Reporting," which presents an analysis of the costs of the proposed reporting changes for PFAS and other chemicals of special concern (Ref. 1). EPA estimates that this action would result in an additional 605 to 1,997 Form R reports being filed annually. EPA estimates that the costs of this action will be approximately \$3,064,271 and \$10,114,734 in the first year of reporting and approximately \$1,459,215 and \$4,816,518 in the subsequent years. In addition, EPA has determined that, of the 467 to 1,313 small businesses affected by this action, none are estimated to incur annualized cost impacts of more than 1% of revenues. Thus, this action is not expected to have a significant adverse economic impact on a substantial number of small entities.

#### F. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI*. Do not submit CBI information to EPA through <https://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When preparing and submitting your comments, see the commenting tips at

<https://www.epa.gov/dockets/commenting-epa-dockets#tips>

## II. Background Information

### A. What is EPCRA section 313?

EPCRA section 313, 42 U.S.C. 11023 (also known as the Toxics Release Inventory (TRI)), requires certain facilities that manufacture, process, or otherwise use listed toxic chemicals in amounts above reporting threshold levels to report their environmental releases and other waste management quantities of such chemicals annually. These facilities must also report pollution prevention and recycling data for such chemicals, pursuant to PPA section 6607, 42 U.S.C. 13106. Note that TRI does not cover all chemicals, facilities, or types of pollution (see <https://www.epa.gov/toxics-release-inventory-tri-program/what-toxics-release-inventory> for information on which chemicals and facilities are regulated under TRI).

TRI provides information about releases of toxic chemicals from covered facilities throughout the United States; however, TRI data do not reveal whether or to what degree the public is exposed to listed chemicals. TRI data can, in conjunction with other information, be used as a starting point in evaluating such exposures and the risks posed by such exposures. The determination of potential risk to human health and/or the environment depends upon many factors, including the toxicity of the chemical, the fate of the chemical in the environment, and the amount and duration of human or other exposure to the chemical.

For more information on TRI, visit the TRI website at [www.epa.gov/tri](http://www.epa.gov/tri). Additionally, via this website, EPA provides a *Factors to Consider When Using Toxics Release Inventory Data* document ([https://www.epa.gov/system/files/documents/2022-02/factorstoconsider\\_approved-by-opa\\_1.25.22-copy.pdf](https://www.epa.gov/system/files/documents/2022-02/factorstoconsider_approved-by-opa_1.25.22-copy.pdf)), which helps explain some of the uses, as well as limitations, of data TRI collects.

### B. What are PFAS?

PFAS are synthetic organic compounds that do not occur naturally in the environment. PFAS contain an alkyl carbon chain on which the hydrogen atoms have been partially or completely replaced by fluorine atoms. In general, the strong carbon-fluorine bonds of PFAS make them resistant to degradation and thus highly persistent in the environment (Refs. 2 and 3). Some of these chemicals have been used for decades in a wide variety of consumer and industrial products (Refs.

2 and 3). Some PFAS have been detected in wildlife indicating that at least some PFAS have the ability to bioaccumulate (Ref. 3). Because of the widespread use of PFAS in commerce and their tendency to persist in the environment, most people in the United States have been exposed to PFAS (Refs. 2, 4 and 5). Some PFAS can accumulate in humans and remain in the human body for long periods of time (e.g., months to years) (Refs. 2 and 3), as a result, several PFAS have been detected in human blood serum (Refs. 2, 3, 4, and 5).

### C. What PFAS have been added to the TRI list?

On December 20, 2019, the NDAA was signed into law (Pub. L. 116–92, <https://www.congress.gov/public-laws/116th-congress>). The NDAA included two provisions that automatically add PFAS to the TRI list. First, section 7321(b) of the NDAA added to the TRI list, effective January 1, 2020, 14 chemicals by name and/or Chemical Abstracts Service Registry Number (CASRN) and additional PFAS that meet specific criteria. On June 22, 2020 (85 FR 37354) (FRL–10008–09), EPA updated the TRI list in the CFR to reflect the 172 non-CBI PFAS added to TRI by section 7321(b).

Additional PFAS are added to the TRI list on an annual basis by the NDAA. Specifically, PFAS that meet the criteria in section 7321(c) of the NDAA are deemed added to the TRI list on January 1 of the year after specific criteria are met. Through this provision, the NDAA will continue to add PFAS to the TRI list over time as additional PFAS meet the criteria outlined in 7321(c). The criteria of section 7321(c) require the addition to the TRI list of certain PFAS after any one of the following dates:

- Final Toxicity Value. The date on which the Administrator finalizes a toxicity value for the PFAS or class of PFAS;
- Significant New Use Rule. The date on which the Administrator makes a covered determination for the PFAS or class of PFAS;
- Addition to Existing Significant New Use Rule. The date on which the PFAS or class of PFAS is added to a list of substances covered by a covered determination;
- Addition as an Active Chemical Substance. The date on which the PFAS or class of PFAS to which a covered determination applies is:

—Added to the list published under section 8(b)(1) of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 *et seq.*) and designated as an active

chemical substance under TSCA section 8(b)(5)(A); or

—Designated as an active chemical substance under TSCA section 8(b)(5)(B) on the list published under TSCA section 8(b)(1).

EPA updates the TRI list in the CFR to reflect the PFAS added to TRI by section 7321(c) of the NDAA. The first update rule identifying PFAS that met the 7321(c) criteria during 2020 was published on June 3, 2021 (86 FR 29698) (FRL–10022–25).

To date, section 7321 of the NDAA has added a total of 180 PFAS to the TRI list (<https://www.epa.gov/tri/PFAS>). A complete list of the PFAS added to the TRI list can be found at: <https://www.epa.gov/toxics-release-inventory-tri-program/list-pfas-added-tri-ndaa>. In addition, the NDAA established a manufacture, processing, or otherwise use reporting threshold of 100 pounds for each of the PFAS added to the TRI list by sections 7321(b) and 7321(c) of the NDAA. In the first year of reporting for the initial 172 listed PFAS, EPA only received 89 reports from 38 facilities covering 43 different PFAS.

### III. What changes is EPA proposing to make to the TRI reporting requirements?

#### A. Designating PFAS Automatically Added to the TRI List by the 2020 NDAA as Chemicals of Special Concern

EPA is proposing to add all PFAS included on the TRI list pursuant to sections 7321(b) and 7321(c) of the NDAA (see 40 CFR 372.65(d) and (e)) to the list of chemicals of special concern at 40 CFR 372.28. EPA first created the list of chemicals of special concern to increase the utility of TRI data by ensuring that the data collected and shared through TRI are relevant and topical (64 FR 58666, 58668 October 29, 1999 (FRL–6389–11)). EPA lowered the reporting thresholds for chemicals of special concern because even small quantities of releases of these chemicals can be of concern. The first chemicals that were added to the list of chemicals of special concern were those identified as persistent, bioaccumulative and toxic (PBT) chemicals which, except for the dioxin and dioxin-like compounds category, have reporting thresholds of either 10 or 100 pounds depending on their persistent and bioaccumulative properties (64 FR 58666, October 29, 1999 (FRL–6389–11)). Chemicals of special concern are also excluded from the *de minimis* exemption, may not be reported on Form A (Alternate Threshold Certification Statement), and have limits on the use of range reporting.

The *de minimis* exemption allows facilities to disregard small concentrations of TRI chemicals not classified as chemicals of special concern in mixtures or other trade name products when making threshold determinations and release and other waste management calculations. The *de minimis* exemption does not apply to the manufacture of a TRI chemical except if that chemical is manufactured as an impurity and remains in the product distributed in commerce, or if the chemical is imported below the appropriate *de minimis* level. The *de minimis* exemption does not apply to a byproduct manufactured coincidentally as a result of manufacturing, processing, otherwise use, or any waste management activities.

The Form A provides facilities that otherwise meet TRI-reporting thresholds the option of certifying on a simplified reporting form provided that they do not exceed 500 pounds for the total annual reportable amount (subsequently in this document) for that chemical, and that their amounts manufactured, processed, or otherwise used do not exceed 1 million pounds. All chemicals of special concern (except certain instances of reporting lead in stainless steel, brass, or bronze alloys) are excluded from Form A eligibility. Form A does not include any information on releases or other waste management. Nor does it include source reduction information or any other chemical-specific information other than the identity of the chemical.

For certain data elements (Part II, Sections 5, 6.1, and 6.2 of Form R), for chemicals not classified as chemicals of special concern, the reportable quantity may be reported either as an estimate or by using the range codes that have been developed. Currently, TRI reporting provides three reporting ranges: 1–10 pounds, 11–499 pounds, and 500–999 pounds.

The availability of these burden reduction tools is inconsistent with a concern for small quantities of the chemicals and the expanded reporting that was sought for chemicals with lower reporting thresholds. In the preamble to the 1999 rule, EPA outlined the reasons for promulgating the *de minimis* exemption (e.g., that facilities had limited access to information and that low concentrations would not contribute to the activity threshold) and determined that those rationales did not apply to chemicals of special concern. *Id.* at 58670. Among the reasons provided, EPA explained that 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. *Id.* EPA also determined that facilities reporting on chemicals of special concern could not avail themselves of Form A reporting because the information provided on Form As is “insufficient for conducting analyses” on chemicals of special concern and would be “virtually useless for communities interested in assessing risk from releases and other waste management” of such chemicals (*i.e.*, the Form A does not include estimated release and other waste management quantities). *Id.* Lastly, EPA eliminated range reporting for chemicals of special concern because the use of ranges could misrepresent data accuracy for PBT chemicals because the low or the high-end range numbers may not really be that close to the estimated value. *Id.* For the full discussion, see *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* (Proposed rule January 5, 1999, 64 FR 688 (FRL–6032–3) and Final rule October 29, 1999, 64 FR 58666, (FRL–6389–11)).

EPA is proposing to determine that PFAS added to EPCRA section 313 by sections 7321(b) and 7321(c) of the NDAA should be categorized as chemicals of special concern and added to the list in 40 CFR 372.28. The NDAA set a 100-pound reporting threshold for PFAS added by sections 7321(b) and 7321(c), which indicates a concern for small quantities of such PFAS. EPA is therefore proposing to determine that the availability of certain burden reduction tools (*i.e.*, *de minimis* levels, Form A, and range reporting) are not justified for these chemicals as the availability of these tools is inconsistent with a concern for small quantities.

Further, due to the strength of the carbon-fluorine bonds, many PFAS can be very persistent in the environment (Refs. 2, 3, and 6). Persistence in the environment allows PFAS concentrations to build up over time; thus, even small releases can be of concern. As with PBT chemicals, permitting reporting facilities to continue to rely on the burden reduction tools (*de minimis* levels, Form A, and range reporting) would eliminate reporting on potentially significant quantities of the listed PFAS. As explained in more detail below, EPA’s rationale for eliminating these burden reduction tools for PBT chemicals (January 5, 1999, 64 FR 714–716) applies equally well to PFAS.

The *de minimis* exemption allows facilities to disregard concentrations of

TRI listed chemicals below 1% (0.1% for carcinogens) in mixtures or other trade name products they import, process, or otherwise use in making threshold calculations and release and other waste management determinations. Since the *de minimis* level is based on relative concentration rather than a specific amount, the application of this exemption to PFAS listed under sections 7321(b) and 7321(c) could allow significant quantities of such PFAS to be excluded from TRI reporting by facilities. For example, if a facility imports, processes, or otherwise uses 100,000 pounds of a mixture or trade name product that contains 0.5% of a listed PFAS, then 500 pounds (or five times the reporting threshold) would be disregarded. This exclusion is inconsistent with a concern for small quantities of PFAS. Many PFAS are used in products below the established *de minimis* levels (Refs. 4 and 7), and the continued availability of the exemption for PFAS would permit facilities to discount those uses when determining whether an applicable threshold has been met to trigger reporting.

The Form A provides certain covered facilities the option of submitting a substantially shorter form with a reduced reporting burden (Ref. 8). For example, the Form A does not require facilities to report any information on releases (*e.g.*, releases through fugitive or non-point air emissions, discharges to streams or water bodies) or waste management quantities. Facilities can qualify to file a Form A if the total annual reportable amount for the listed chemical does not exceed 500 pounds, and the amounts manufactured, processed, or otherwise used do not exceed 1 million pounds. The reportable amounts include amounts released at the facility (including disposed of within the facility), treated at the facility (as represented by amounts destroyed or converted by treatment processes), recovered at the facility as a result of recycling operations, combusted for the purpose of energy recovery at the facility, and amounts transferred from the facility to off-site locations for the purpose of recycling, energy recovery, treatment, and/or disposal. This means that facilities that are required to report data on PFAS and also qualify to file a Form A will not be providing specific quantity data on up to 500 pounds of a listed PFAS (five times the reporting threshold). For reporting year 2020, approximately 10% of the reporting forms submitted for the listed PFAS were Form As (*i.e.*, reporting for TRI reflects 93 active reporting forms of

which 84 were Form Rs and 9 were Form As).

While the Form A does provide some general information on the quantities of the chemical that the facility manages as waste, this information may be insufficient for conducting analyses on PFAS and may be less meaningful for communities interested in assessing risk from releases of PFAS. The threshold category for amounts managed as waste does not include quantities released to the environment as a result of remedial actions or catastrophic events not associated with production processes (section 8.8 of Form R). Thus, the waste threshold category in Form A does not include all releases. Given that even small quantities of PFAS may result in elevated concentrations in the environment, EPA believes it would be inappropriate to allow a reporting option that would exclude information on some releases. Thus, removing the availability of the use of Form A for PFAS is consistent with a concern for understanding small quantities of PFAS.

For TRI-listed chemicals, other than chemicals of special concern, releases and off-site transfers for further waste management of less than 1,000 pounds can be reported using ranges or as a whole number. The reporting ranges are: 1–10 pounds; 11–499 pounds; and 500–999 pounds. For larger releases and offsite transfers for further waste management of the toxic chemical, the facility must report the whole number. Use of ranges could reduce data accuracy because the low or the high-end range numbers may not be that close to the estimated value, even taking into account inherent data errors (*i.e.*, errors in measurements and developing estimates). For PFAS, it is important to have accurate data regarding the amount released even when the quantities are relatively small, since concern may be tied to even small quantities of a substance. This issue was apparent for PFAS for reporting year 2020 since much of the data reported was for less than 1,000 pounds.

EPA anticipates that the elimination of these burden reduction tools will increase the amount and quality of data collected for PFAS and is consistent with the concern for small quantities of PFAS (Ref. 1).

#### *B. Elimination of the Supplier Notification Requirement De Minimis Exemption for Chemicals of Special Concern*

EPA is also proposing to eliminate the use of the *de minimis* exemption under the Supplier Notification Requirements at 40 CFR 372.45(d)(1) for all substances on the list of chemicals of special

concern. EPA extended the *de minimis* exemption to the supplier notification requirement in its initial TRI reporting rule (February 16, 1988, 53 FR 4500) (FRL-3298-2). The revised text would read as follows:

If a mixture or trade name product contains no toxic chemical in excess of the applicable *de minimis* concentration as specified in 40 CFR 372.38(a) except for chemicals listed under 40 CFR 372.28 which are excluded from the *de minimis* exemption.

The *de minimis* exemption to the Supplier Notification Requirements allows suppliers to not provide notifications for mixtures or trade name products containing the listed toxic chemicals if the chemicals are present at concentrations below 1% of the mixture (0.1% for carcinogens). The *de minimis* exemption is not a small quantity exemption, it is a small concentration exemption. Therefore, it is possible that significant quantities of chemicals of special concern can be overlooked by reporting facilities if suppliers can use the *de minimis* exemption. For example, if a mixture or trade name product contains 0.9% of a listed PFAS and 100,000 pounds of the product is purchased, the supplier need not provide notification and the purchaser could be unaware of and not account for 900 pounds of PFAS. The impact of this exemption for the PBT chemicals with 10-pound reporting thresholds is even greater. Using the same 100,000-pound example, if mercury were present at 0.9% then that same 900 pounds would be 90 times the mercury reporting threshold.

It is also possible that quantities of chemicals of special concern would be included in supplier notifications by reporting facilities if suppliers cannot use the *de minimis* exemption. For example, if a mixture or trade name product contains 0.9% of a listed PFAS and 1,000 pounds of the product is purchased, the supplier would need to provide notification for 9 pounds of PFAS. This would also impact PBT chemicals with 10-pound reporting thresholds. Using the same 1,000-pound example, if mercury was present at 0.9% then that same 9 pounds would be below the mercury reporting threshold. However, such quantities may become reportable, in aggregate, if a reporting entity receives multiple shipments (including from multiple suppliers) of a given product in a year and performs a threshold activity in excess of the TRI reporting threshold. Further, TRI supplier notification regulations do not require a person to consider the total quantity of the chemical being supplied but rather require the person to consider

the concentration of the chemical in the product or mixture. Including a consideration of quantity rather than concentration shipped would complicate as well as reduce the ability of supplier notifications to inform downstream recipients of products and mixtures containing a TRI-listed chemical.

EPA considered whether to include a small quantity exemption in lieu of a *de minimis* exemption for supplier notification. However, EPA is concerned that such an exemption would not provide adequate information to facilities receiving multiple shipments over the course of a year to address TRI reporting requirements that may apply to them, based on the total aggregated quantity received. Without such information on the TRI-listed chemical, the receiving facility may not have sufficient data to inform potential TRI reporting obligations.

Many PFAS are used in products below the established *de minimis* levels (Refs. 4 and 7) which results in users of those products not knowing they are receiving a product that contains a TRI reportable PFAS. PFAS reports received for the TRI 2020 reporting year were mostly from manufacturers and waste disposal facilities which suggests that the *de minimis* exemption may have been used by most users and processors (<https://www.epa.gov/toxics-release-inventory-tri-program/find-understand-and-use-tri>). EPA has concluded that it is important and necessary to eliminate the supplier notification *de minimis* exemption for PFAS added to the TRI list pursuant to sections 7321(b) and 7321(c) of the NDAA because if that exemption were to remain in place the Agency may fail to collect information on amounts of PFAS that significantly exceed the reporting threshold.

In addition, eliminating the use of the *de minimis* exemption for supplier notification purposes for all other chemicals of special concern will ensure that potentially significant quantities of such chemicals do not get overlooked by reporting facilities. The PBT chemicals and chemical categories that are classified as chemicals of special concern, and thus would also be impacted by this change, are as follows:

- Aldrin (CASRN: 309-00-2);
- Benzo[g,h,i]perylene (CASRN: 191-24-2);
- Chlordane (CASRN: 57-74-9);
- Dioxin and dioxin-like compounds category (manufacturing; and the processing or otherwise use of dioxin and dioxin-like compounds category if the dioxin and dioxin-like compounds are present as contaminants in a chemical and if they were created

during the manufacturing of that chemical) (TRI Category Code: N150);

- Heptachlor (CASRN: 76-44-8);
  - Hexabromocyclododecane category (TRI Category Code: N270);
  - Hexachlorobenzene (CASRN: 118-74-1);
  - Isodrin (CASRN: 465-73-6);
  - Lead (this lower threshold does not apply to lead when it is contained in stainless steel, brass or bronze alloy) (CASRN: 7439-92-1);
  - Lead compounds category (TRI Category Code: N420);
  - Mercury (CASRN: 7439-97-6);
  - Mercury compounds category (TRI Category Code: N458);
  - Methoxychlor (CASRN: 72-43-5);
  - Octachlorostyrene (CASRN: 29082-74-4);
  - Pendimethalin (CASRN: 40487-42-1);
  - Pentachlorobenzene (CASRN: 608-93-5);
  - Polychlorinated biphenyls (CASRN: 1336-36-3);
  - Polycyclic aromatic compounds category (PACs) (TRI Category Code: N590);
  - Tetrabromobisphenol A (CASRN: 79-94-7);
  - Toxaphene (CASRN: 8001-35-2);
- and
- Trifluralin (CASRN: 1582-09-8).

When EPA established the chemical of special concern list, it decided to not remove the *de minimis* exemption eligibility from supplier notification requirements, indicating that the Agency believed that there was sufficient information available on PBT chemicals by suppliers. See 64 FR 688 (at 715), January 5, 1999 (FRL-6032-3) and 64 FR 58666 (at 58732), October 29, 1999 (FRL-6389-11). However, EPA has determined that there are situations where this information is not available. For example, the agency has found that there is significant variability in the concentration of PACs in fuels, yet the presence and concentration of PACs in fuel oil is often not provided in supplier notifications or SDSs. Additionally, EPA is aware of metal mixtures and products containing low concentrations of lead (not contained in stainless steel, brass or bronze alloys) whose supplier notifications and SDSs do not state there is lead present in the mixture or product. Further, it is unclear whether downstream purchasers would be made aware of PBT chemicals contained in many products without notification of the presence of such chemicals.

In situations where such information is already available, supplier notifications may already be addressed (e.g., if such information is already included on an SDS) or the anticipated

burden of a supplier to provide such information would be minimal (*i.e.*, if the information is redundant then the burden to provide such known information should be trivial). However, as noted above, the quantity information EPA proposes to require for *de minimis* concentrations below the concentration threshold may not be provided in SDSs. OSHA maintains a 1 percent concentration threshold for reporting the presence and concentration of most hazardous chemicals on SDSs. (29 CFR part 1910, subpart Z.) For chronic hazards (with Carcinogenicity, Germ Cell Mutagenicity, and Reproductive Toxicity), OSHA has established a 0.1 percent concentration threshold for reporting the presence and concentration of chemicals on SDSs (29 CFR part 1910, subpart Z.) EPA notes that there may be other reasons for a chemical's exclusion from an SDS, including that a chemical's hazard may not be covered by OSHA, or a chemical may be in an article that is not covered by SDS requirements. EPA believes that any potential increase in new supplier reporting is minimal, particularly regarding non-PFAS chemicals of special concern, but seeks comments on whether new supplier notifications will need to be developed under this proposal, and on any associated impacts.

In the 1999 proposal to establish a chemical of special concern list, EPA also reasoned that entities subject to TRI supplier notification requirements could retain use of the *de minimis* exemption for PBTs because “[m]any of the chemicals identified as persistent and bioaccumulative in today’s action are not imported, processed, or otherwise used but are manufactured as byproducts.” (64 FR 715; January 5, 1999). However, the Agency has since learned that several PBT chemicals are not manufactured as byproducts, and those chemicals are known to be processed for distribution to customers. For example, in Reporting Year 2021, the Agency received 55 Form Rs for tetrabromobisphenol A (TBBPA). None of those forms indicated that TBBPA had been manufactured as a byproduct. However, some forms indicated the TBBPA is processed, including as an article component. Similarly, for Reporting Year 2021, the Agency received 76 Form Rs on polychlorinated biphenyls (PCBs); 64 of those forms did not indicate those PCBs had been manufactured as byproducts, though some forms indicated the PCBs had been processed, including as an article component. Because many PBT chemicals are not manufactured as

byproducts and may exist in relatively lower concentrations within products or mixtures, the Agency’s initial rationale to allow suppliers to exempt concentrations of PBT chemicals below *de minimis* from supplier notification requirements warrants reconsideration. Therefore, EPA is reassessing this exemption and modifying it appropriately to provide TRI facilities with additional information related to quantities of chemicals of special concern that may contribute to their reporting thresholds. EPA has concluded that it is important and necessary to eliminate the supplier notification *de minimis* exemption for all chemicals of special concern because if that exemption were to remain in place the Agency may fail to collect information on amounts of such chemicals that significantly exceed the reporting threshold.

This proposed action reflects EPA’s current understanding of chemical activities involving all chemicals of special concern (*i.e.*, both PBTs and PFAS.)

Further, as explained above, EPA’s understanding is that downstream purchasers of products may lack information on the presence of PFAS in such products. EPA considered limiting the *de minimis* exception to just PFAS, but creating a patchwork reporting scheme where the *de minimis* exemption is available for supplier notification purposes for certain chemicals of special concern but not other chemicals of special concern, or pursuant to some other unique TRI reporting designation, would create an unnecessary patchwork of reporting requirements that would unnecessarily complicate supplier notification and TRI reporting requirements. EPA requests comment on the proposal to remove the *de minimis* eligibility from the supplier notification for all chemicals of special concern and seeks specific information related to the burden and benefits of this proposed change.

### *C. Impact of the Proposed Listing of Certain PFAS to the Chemical of Special Concern List*

The proposed regulatory text would add PFAS currently on TRI pursuant to 7321(b) and 7321(c) of the NDAA to the list of chemicals of special concern. Additionally, the proposed regulatory text would provide that all PFAS added to TRI pursuant to sections 7321(b) and 7321(c), regardless of the date of their addition, will be included on the chemicals of special concern list. Thus, as PFAS continue to be added to TRI pursuant to sections 7321(b) and

7321(c), they will also be added to the list of chemicals of special concern as of the date they are added to the TRI. This includes substances that meet the criteria pursuant to 7321(b) and 7321(c) but are claimed confidential, and the Agency must follow the process outlined in section 7321(e) of the NDAA to address the claim of confidentiality.

As with PFAS currently on the TRI list, future PFAS added to the TRI list under 7321(b) and 7321(c) will have a 100-pound reporting threshold, per sections 7321(b)(2)(A) and 7321(c)(2)(B). Congress’ use of this low reporting threshold demonstrates a concern for even relatively small quantities of these PFAS. Therefore, EPA has concluded that it is appropriate for all PFAS added to the TRI list under these provisions to be added to the chemicals of special concern list upon listing. If these PFAS were not added to the chemicals of special concern list at the time of their addition to the TRI list, there would be a delay in the reporting requirements while EPA conducts a rulemaking simply to add them to the chemicals of special concern list. This would result in differences in how previously listed PFAS and newly listed PFAS are treated even though they were automatically listed with the same reporting thresholds. EPA is proposing regulatory text that would add those PFAS added pursuant to 7321(b) and 7321(c) to the chemicals of special concern list upon their addition to the TRI list. EPA requests comment on whether the addition of these PFAS to the chemicals of special concern list should occur upon addition to the TRI list and on the proposed regulatory text.

EPA is not proposing a definition of PFAS as part of this rulemaking. This rulemaking only concerns chemical substances added to the TRI by sections 7321(b) and 7321(c) of the NDAA, neither of which require EPA to provide a definition of PFAS. Section 7321(b) added by name and/or CASRN specific PFAS to the TRI list and sections 7321(b) and (c) identify EPA activities involving PFAS that would cause a PFAS to be added to the TRI list. The activities described by sections 7321(b) and (c) indicate whether they pertain to a PFAS, and thus a separate determination of whether or not the covered activity involves a PFAS is not necessary. EPA is therefore not proposing a definition of PFAS for purposes of this rulemaking, and issues relating to the definition of PFAS are outside the scope of this rulemaking. EPA requests comment on EPA’s interpretation that a definition is unnecessary to this rulemaking. EPA will consider the need for a PFAS

definition for a purpose other than the NDAA section 7321(b) and (c) listings, should the need for such a definition arise.

#### *D. Alternative Mechanisms for PFAS To Be Added to the Chemicals of Special Concern List*

PFAS may be added to TRI via methods other than NDAA sections 7321(b) and (c) and this proposal does not address whether PFAS added through such alternative methods should be listed as chemicals of special concern. For example, any PFAS added via section 7321(d)(3) of the NDAA would not be impacted by the regulatory text proposed here. Unlike sections 7321(b) and 7321(c) of the NDAA, Congress did not establish a reporting threshold of 100 pounds for substances added via section 7321(d)(3) of the NDAA. EPA will consider whether it is appropriate to identify these substances as chemicals of special concern when it takes action to add such substances under section 7321(d)(3) of the NDAA.

#### IV. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not itself physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

- USEPA. Economic Analysis for the Proposed Changes to TRI Reporting for PFAS. Prepared by Abt Associates for: Data Collection Branch, Data Gathering and Analysis Division, Office of Pollution Prevention and Toxics, Office of Chemical Safety and Pollution Prevention. November 2022.
- USEPA. Our Current Understanding of the Human Health and Environmental Risks of PFAS. U.S. Environmental Protection Agency, Washington, DC. Available from: <https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas>.
- ATSDR. Agency for Toxic Substances and Disease Registry. Toxicological Profile for Perfluoroalkyls. May 2021. Available from: <https://www.atsdr.cdc.gov/toxprofiles/tp200.pdf>.
- ATSDR. Agency for Toxic Substances and Disease Registry. Per- and Polyfluoroalkyl Substances (PFAS) and Your Health. PFAS in the U.S. Population. Available from: <https://www.atsdr.cdc.gov/pfas/health-effects/us-population.html>.
- Department of Health and Human Services, Centers for Disease Control and
- National Institute of Environmental Health Sciences. Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS). Available from <https://www.niehs.nih.gov/health/topics/agents/pfc/index.cfm>.
- Kotthoff, et al. 2015. Perfluoroalkyl and polyfluoroalkyl substances in consumer products. *Environmental Science and Pollution Research* 22:14546–14559.
- USEPA. Toxics Release Inventory Form A. Available at: [https://ordspub.epa.gov/ords/guideme\\_ext/guideme\\_ext/guideme/file/ry\\_2021\\_form\\_a.pdf](https://ordspub.epa.gov/ords/guideme_ext/guideme_ext/guideme/file/ry_2021_form_a.pdf).
- USEPA. Supporting Statement for an Information Collection Request (ICR). Under the Paperwork Reduction Act (PRA); Rule-Related Amendment; Changes to Reporting Requirements for Per- and Polyfluoroalkyl Substances; Community Right-to-Know Toxic Chemical Release Reporting, Proposed Rule (RIN 2070–AK97). EPA ICR No.2724.01; OMB Control No. 2070-[new]. November 2022.

#### V. Statutory and Executive Orders Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders#influence>.

##### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Any changes made in response to OMB recommendations have been documented in the docket. EPA prepared an economic analysis of the potential costs and benefits associated with this action. This analysis (Ref. 1) is available in the docket and summarized in Unit I.E.

##### *B. Paperwork Reduction Act (PRA)*

The new information collection activities in this proposed rule have been submitted for approval to OMB under the PRA, 44 U.S.C. 3501 *et seq*. The information Collection Request (ICR) document that EPA prepared is assigned EPA ICR No. 2724.01 (Ref. 9). You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

Currently, the facilities subject to the reporting requirements under EPCRA section 313 and PPA section 6607 may

use either EPA Toxic Chemicals Release Inventory Form R (EPA Form 1B9350–1), or EPA Toxic Chemicals Release Inventory Form A (EPA Form 1B9350–2). The Form R must be completed if a facility manufactures, processes, or otherwise uses any listed chemical above threshold quantities and meets certain other criteria. For the Form A, EPA established an alternative threshold for facilities with low annual reportable amounts of a listed toxic chemical. A facility that meets the appropriate reporting thresholds, but estimates that the total annual reportable amount of the chemical does not exceed 500 pounds per year, can take advantage of an alternative manufacture, process, or otherwise use threshold of 1 million pounds per year of the chemical, provided that certain conditions are met, and submit the Form A instead of the Form R. In addition, respondents may designate the specific chemical identity of a substance as a trade secret pursuant to EPCRA section 322 (42 U.S.C. 11042) and 40 CFR part 350. OMB has approved the reporting and recordkeeping requirements related to Forms A and R, supplier notification, and petitions under OMB Control number 2070–0212 (EPA ICR No. 2613.04) and those related to trade secret designations under OMB Control 2050–0078 (EPA ICR No. 1428). As such, this ICR is intended to amend the existing ICR to include the following additional details:

- Respondents/affected entities:** Facilities covered under EPCRA section 313 that manufacture, process or otherwise use listed PFAS (See Unit I.A.).
- Respondent's obligation to respond:** Mandatory (EPCRA section 313).
- Estimated number of respondents:** 605 to 1,997.
- Frequency of response:** Annual.
- Total estimated burden:** 45,363 and 149,737 burden hours in the first year and approximately 21,602 and 71,303 burden hours in the steady state. Burden is defined at 5 CFR 1320.3(b).
- Total estimated cost:** Approximately \$3,064,271 and \$10,114,734 in the first year of reporting and approximately \$1,459,215 and \$4,816,518 in the steady state.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods

for minimizing respondent burden to the EPA using the docket identified at the beginning of this proposed rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than January 4, 2023. EPA will respond to any ICR-related comments in the final rule.

### C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* The small entities subject to the requirements of this action are primarily classified within the manufacturing and waste management industry sectors. The Agency has determined that of the 605 to 1,997 entities estimated to be impacted by this action, 467 to 1,313 are small businesses; no small governments or small organizations are expected to be affected by this action. The average cost per small firm is \$2,714 (at a 3% discount rate) or \$2,765 (at a 7% discount rate). The total cost for small entities is \$1,267,363–\$3,563,272 (at a 3% discount rate) or \$1,291,213–\$3,630,327 (at a 7% discount rate). All small businesses affected by this action are estimated to incur annualized cost impacts of less than 1%. Even under a worst-case scenario comparing compliance costs to average revenue of firms with between 10 (smallest number required to report) and 14 employees instead of comparing compliance costs to the weighted average revenue of small firms, there are still no costs that exceed the 1% impact threshold. Thus, this action is not expected to have a significant adverse economic impact on a substantial number of small entities. A more detailed analysis of the impacts on small entities is provided in EPA's economic analysis (Ref. 1).

### D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action is not subject to the requirements of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small

governments. EPA did not identify any small governments that would be impacted by this action. EPA's economic analysis indicates that the total cost of this action is estimated to be from \$3,064,271 and \$10,114,734 in the first year of reporting and from \$1,459,215 and \$4,816,518 in subsequent reporting years (Ref. 1).

### E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

### F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities. Thus, Executive Order 13175 does not apply to this action.

### G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern any environmental health risks or safety risks.

### H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a "significant energy action" as specified in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy and has not otherwise been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

### I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards. As such, NTTAA section 12(d), 15 U.S.C. 272 *note*, does not apply to this action.

### J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color) and low-income populations.

The EPA believes that this type of action does not directly concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on people of color, low-income populations and/or indigenous peoples. This regulatory action makes changes to the reporting requirements for PFAS that will result in more information being collected and provided to the public; it does not have any direct impact on human health or the environment. This action does not address any human health or environmental risks and does not affect the level of protection provided to human health or the environment. This action makes changes to the reporting requirements for PFAS which will provide more information on releases and waste management of PFAS. By requiring reporting of this additional information, EPA would be providing communities across the U.S. (including minority populations and low-income populations) with access to data which they may use to seek lower exposures and consequently reductions in chemical risks for themselves and their children. This information can also be used by government agencies and others to identify potential problems, set priorities, and take appropriate steps to reduce any potential risks to human health and the environment. Therefore, the informational benefits of the action will have a positive impact on the human health and environmental impacts of minority populations, low-income populations, and indigenous peoples.

**List of Subjects in 40 CFR Part 372**

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: November 22, 2022.

**Michal Freedhoff,**

*Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

Therefore, for the reasons stated in the preamble, it is proposed that 40 CFR chapter I be amended as follows:

**PART 372—TOXIC CHEMICAL RELEASE REPORTING: COMMUNITY RIGHT-TO-KNOW**

■ 1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

**§ 372.22 [Amended]**

■ 2. In § 372.22, amend paragraph (c) by revising the text “§ 372.25, § 372.27, § 372.28, or § 372.29” to read “§§ 372.25, 372.27, or 372.28”.

**§ 372.25 [Amended]**

■ 3. Amend § 372.25 by:  
 ■ a. Revising in the introductory text paragraph, the text “Except as provided in § 372.27, § 372.28, and § 372.29” to read “Except as provided in §§ 372.27 and 372.28”; and

■ b. Revising in paragraphs (f), (g), and (h), the text “§ 372.27, § 372.28, or § 372.29” to read “§§ 372.27 or 372.28”.

■ 4. Amending in § 372.28, the table in paragraph (a)(1) by:

- a. Revising the column heading “Reporting threshold” to read “Reporting threshold (in pounds)”; and
- b. Adding in alphabetical order an entry for “Per- and polyfluoroalkyl substances.”

The additions and revisions read as follows:

**§ 372.28 Lower thresholds for chemicals of special concern.**

- \* \* \* \* \*
- (a) \* \* \*
- (1) \* \* \*

TABLE 1 TO PARAGRAPH (a)(1)

Chemical name	CAS No.	Reporting threshold (in pounds)
* * * * *	* * * * *	* * * * *
Per- and polyfluoroalkyl substances (Individually listed per- and polyfluoroalkyl substances added by 15 U.S.C. 8921(b)(1) and (c)(1). (EPA periodically updates the lists of covered chemicals at §372.65(d) and (e) to reflect chemicals that have been added by 15 U.S.C. 8921).	see §372.65(d) and (e) .....	100
* * * * *	* * * * *	* * * * *

**§ 372.29 [Removed]**

■ 5. Remove § 372.29.

**§ 372.30 [Amended]**

■ 6. Amend § 372.30 by:

■ a. Revising in paragraph (a) the text “in § 372.25, § 372.27, § 372.28, or § 372.29 at” to read “in §§ 372.25, 372.27, or 372.28 at”.

■ b. Revising in paragraphs (b)(1), the introductory text of (b)(3), and in paragraphs (b)(3)(i) and (b)(3)(iv), revise the reference “§ 372.25, § 372.27, § 372.28, or § 372.29” to read “§§ 372.25, 372.27, or 372.28”.

**§ 372.38 [Amended]**

■ 7. Amend § 372.38 by:

■ a. Removing in paragraph (a)(2), the text “except for purposes of § 372.45(d)(1)”; and

■ b. Revising in paragraphs (b), (c), (d), (f), (g) and (h), the text “§ 372.25, § 372.27, § 372.28, or § 372.29” to read “§§ 372.25, 372.27, or 372.28”.

■ 8. In § 372.45 revise paragraph (d)(1) to read as follows:

**§ 372.45 Notification about toxic chemicals.**

\* \* \* \* \*

(d) \* \* \* (1) If a mixture or trade name product contains no toxic chemical in excess of the applicable *de minimis* concentration as specified in

§ 372.38(a), except for chemicals listed in § 372.28(a) that are excluded from the *de minimis* exemption.

\* \* \* \* \*

[FR Doc. 2022–26022 Filed 12–2–22; 8:45 am]

**BILLING CODE 6560–50–P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 665**

[Docket No. 221129–0252]

RIN 0648–BL35

**Pacific Island Fisheries; 2022–2025 Annual Catch Limits and Accountability Measures for Main Hawaiian Islands Deepwater Shrimp and Precious Coral Fisheries**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to implement annual catch limits (ACL) and accountability measures (AM) for main

Hawaiian Islands (MHI) deepwater shrimp and precious coral for each fishing year in the time period between 2022 and 2025. As a post-season AM, if NMFS determines that the most recent three-year average total catch exceeded an ACL in a fishing year, we would reduce the ACL for the following fishing year by the amount of the overage. This proposed rule supports the long-term sustainability of MHI deepwater shrimp and precious coral.

**DATES:** NMFS must receive comments by January 4, 2023.

**ADDRESSES:** You may submit comments on the proposed rule, identified by NOAA–NMFS–2022–0113, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2022–0113 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Send written comments to Sarah Malloy, Acting Regional Administrator, NMFS Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

*Instructions:* Comments sent by any other method, to any other address or