

**Comments of the
Semiconductor Industry Association (SIA)
on the
Proposed Changes to Reporting Requirements:
Per- and Polyfluoroalkyl Substances and to Supplier Notifications for Chemicals of
Special Concern; Community Right-to-Know Toxic Chemical Release Reporting**

87 Fed. Reg. 74379 (December 5, 2022)
Docket EPA-HQ-TRI-2022-0270

February 3, 2023

The Semiconductor Industry Association (SIA) submits these comments in response to the U.S. Environmental Protection Agency's (EPA's or the Agency's) proposed Changes to Reporting Requirements: Per- and Polyfluoroalkyl Substances and to Supplier Notifications for Chemicals of Special Concern; Community Right-to-Know Toxic Chemical Release Reporting.

SIA is the trade association representing leading U.S. companies engaged in the research, design, and manufacture of semiconductors. Semiconductors are the fundamental enabling technology of modern electronics that has transformed virtually all aspects of our economy, ranging from information technology, telecommunications, health care, transportation, energy, and national defense. The US is the global leader in the semiconductor industry, and continued US leadership in semiconductor technology is essential to America's continued global economic leadership. More information about SIA and the semiconductor industry is available at www.semiconductors.org.

The True Economic Impact of the Proposal Must be Understood

SIA understands and appreciates EPA's goal of obtaining a more complete picture of the releases and waste management activities for PFAS. SIA also recognizes that the removal of the de minimis exemption for supplier notification requirements helps to ensure that purchasers of mixtures and trade name products containing such chemicals are informed of their presence in mixtures and products they purchase. SIA is concerned, however, that EPA has failed to properly account for the economic impact these actions will have on affected entities.

The de minimis exemption for reporters reduces the burdens on facilities (such as users of formulations and chemical products) that release TRI listed substances in small concentrations. Such substances often are received in mixtures or other trade name products in small proportions; this makes reaching very specific determinations on small quantity release and other waste management calculations extremely challenging. 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). In light of EPA's recent experience with reassessing the economic burdens associated with the proposed TSCA Section 8(a)(7) rule for PFAS, the Agency must ensure that its economic assessment carefully and realistically evaluates the number of entities that will be subject to the greater notification and reporting burdens this TRI-related proposal will impose on all businesses, including not just small business. For example, suppliers will need to either update Safety Data Sheets (SDS) or find some other mechanism to communicate the Chemical of Special Concern (COSC) content to customers. Downstream users of mixtures and chemical products will likewise need to track PFAS releases, including if PFAS are present in very small concentrations in materials they acquire for use. This proposal, if finalized without changes, will impose technological as well as recordkeeping and compliance burdens on entities that are not the makers of such chemical

products and mixtures. EPA must be sure that it has properly assessed such impacts and has more critically determined whether the benefit of receiving this additional information is worth the increased costs to the regulated community.

A Phased-In Approach is Prudent

A phased-in approach is necessary for implementing the proposed requirements in this rule. TRI reporters could not reasonably report TRI COSC on the same timeline as suppliers would be required to provide notification to the downstream users of the presence of the COSC. To accurately report on COSC, that are present under current de minimis concentrations, downstream users need to receive supplier notifications for all mixtures and chemical products in scope, make a threshold determination, and then, if at or above the applicable reporting threshold, determine associated releases. This will take a substantial amount of time for the following reasons:

- The affected suppliers will need time to ensure that they have all the information needed to make the notification, and that revised Safety Data Sheets or other communication methods can be timely prepared.
- The affected suppliers then need time to make the required notifications.
- Downstream users utilize many different chemicals from a variety of suppliers in their supply chain. Therefore, time is required to obtain all applicable supplier notifications, update records with the new information, and update TRI threshold determinations.
- If TRI reporting is required as a result of the updated information received from suppliers, engineering calculations will need to be developed to fully understand the mass balance and associated releases of the COSC. In the case of PFAS, analytical methods do not exist for the majority of the TRI listed PFAS requiring TRI reporters to develop methods to calculate this information.

An appropriate phased-in approach would be 12 months from the publication of the final rule for suppliers to provide supplier notifications for the COSC. The de minimis exemption for COSC would then be removed in the following applicable reporting year (i.e., 24 months from the publication of the final rule).

Limited Availability of approved PFAS Test Methods

Additionally, reporting under Subpart 313 requires a Basis of Estimate designation from one of the following: continuous monitoring, periodic or random monitoring, mass balance, published emission factors, site-specific emission factors, or estimates based on engineering calculations. As many individual PFAS chemicals do not have a US EPA approved testing methodology for all potential media (air, wastewater, waste), demonstrating compliance with PFAS requirements will be difficult and will require substantial engineering calculations. To fulfill EPA's goal to "have accurate data regarding the amount released even though the quantities are relatively small, since concern may be tied to even small quantities," the industry requires time to build accurate release estimates.

De minimis reporting will be Inconsistent with other Requirements

Currently, the Occupational Safety and Health Administration (OSHA) cut-off/concentration limit for reporting the presence/concentration of most hazardous chemicals is 1.0%.¹ The TRI de minimis threshold should remain consistent with the OSHA SDS cut-off/concentration limit for data consistency and accuracy. Removing the TRI de minimis threshold for certain chemicals would result in potential overreporting in cases where suppliers choose to simply report a one-sided range (e.g., “<1.0%”) to avoid underrepresenting the presence/concentration of hazardous chemicals. Different sources of chemical concentrations (SDS and potentially other types of supplier notifications), especially during any transition/phase in period is also likely to cause misrepresentations and data quality concerns amongst the various programs that rely on SDS data (chemical review/purchasing, Tier II reporting, air emissions inventories, etc.).

The Applicability of Any New Requirements Must Be Clear

EPA should make clear any revisions to the TRI/PFAS reporting requirements impose obligations only prospectively, and that there is no obligation for any entity to revisit or update its past reports (or determinations not to report) when those actions were in conformance with the rules at the time of prior reporting obligations. Accordingly, in the event EPA elects to finalize the proposed requirements, the Agency should make clear the date after which the new obligations will apply. Particularly for suppliers, the affected entities will need time to ensure that they have all the information needed to make the notification, and that revised Safety Data Sheets or other communication methods can be timely prepared. Reporters will likewise need time to become familiar with the new requirements and begin to track releases of substances - particularly substances which could be in very small amounts.

All PFAS Chemicals Should not be listed as Chemicals of Special Concern

To add a chemical substance to the TRI, the substance must meet one of the criteria in Section 313(d) of the Emergency Planning and Community Right-to-Know Act (EPCRA). While Congress has mandated the addition of a certain well-known substance to the TRI requirements for which certain concerns for environmental or health effects are widely acknowledged (e.g., PFOS and PFOA), not all of the substances Congress has deemed to be listed meet the COSC criteria. Many PFAS have no documented evidence of health and environmental concerns. Additionally, there are no complete toxicological profiles completed for all PFAS substances identified and EPA has not presented any information sufficient to show that it intends to group all PFAS on the NDAA. SIA believes EPA does not justify how all the proposed PFAS substances rise to the category of COSC. The current TRI COSC list contains chemicals that are all persistent, bioaccumulative, and toxic (PBT), and include well-studied chemicals such as lead, mercury, and dioxins. Each of the chemicals on the COSC list has been subject to multiple risk assessments and there is evidence of high potential for human or environmental risk. PFAS chemicals added to the TRI should not be automatically designated as COSC solely because they meet the criteria in the NDAA.

SIA suggests that EPA analyze each substance Congress has added to the TRI to determine if the risk-based data supports the designation of COSC. A PFAS chemical should be included as a COSC when a robust risk assessment indicates that the PFAS chemical shares a toxicological profile similar to the other substances in the COSC list. The addition of poorly understood PFAS

¹ US Department of Labor, Occupational Safety and Health Administration: Standard 1910.1200 App D (<https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1200AppD>).

chemicals in the same category as mercury or lead will likely confuse the public and a loss of the importance of the COSC list.

The De minimis exemption proposal should be Separate from the COSC PFAS proposal

If EPA would not consider a phased-in approach and decides to move forward with the elimination of the de minimis exemption for TRI reporting and from supplier notification concurrently, SIA requests that these two actions have separate rulemaking processes. An individual rulemaking to remove the de minimis exemption in the supplier notification should logically precede any changes in the TRI reporting rules. It is important to note that the proposed changes to the supplier notification will likely apply to a larger population that not only includes TRI reporters. For instance, the supplier notification requirements will also include a broader section of businesses such as those with ten or fewer employees. This portion of the proposal should therefore be managed in a separate rulemaking that will adequately provide notice and an opportunity for affected suppliers to comment on the impact of the proposed changes.

Accordingly, SIA recommends that the proposed changes must be harmonized substantively, and in terms of timing: if reporting is required for all quantities of PFAS, supplier notification must be required for all quantities of PFAS as well.

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SIA thanks the Agency for the opportunity to comment and reiterates our willingness to meet with EPA staff to discuss our comments and concerns.