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February 3, 2023

Submitted Via Regulations.gov

U.S. Environmental Protection Agency
Office of Pollution Prevention and Toxics,
1200 Pennsylvania Ave., NW,
Washington DC 20460-0001

RE: Docket ID No. EPA-HQ-TRI-2022-0270; Multistate Comments in Response to U.S. Environmental Protection Agency's ("EPA's") Proposed Rule to Add PFAS as Chemicals of Special Concern for TRI Reporting under EPCRA and the Pollution Prevention Act; 87 Fed. Reg. 74379 (December 5, 2022)

Dear Administrator Regan:

The Attorneys General of the Commonwealths of Pennsylvania and Massachusetts, and of the States of Arizona, Colorado, Connecticut, Hawaii, Illinois, Maine, Maryland, Michigan, New Jersey, New York, North Carolina, Oregon, Rhode Island, Wisconsin and the City of New York and the District of Columbia offer these comments in support of the EPA's proposal to add per- and polyfluoroalkyl substances ("PFAS") to the chemicals on the list of Chemicals of Special Concern under the Emergency Planning and Community Right to Know Act's ("EPCRA's") Toxic Release Inventory ("TRI") program.¹ EPA proposes to have PFAS subject to a lower TRI reporting threshold and to eliminate the availability of regulatory exemptions.

¹ 42 U.S.C. §§ 11001 *et seq.* (1986); 42 U.S.C. §§ 13101 *et seq.* (1990). PFAS were added to the EPCRA's TRI pursuant to the National Defense Authorization Act for Fiscal Year 2020, National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92, § 7321, 133 Stat. 1198, 2277-81 (2019) ("2020 NDAA").

We strongly support the addition of PFAS to the list of Chemicals of Special Concern, a significant designation that will eliminate the use of regulatory exemptions for PFAS TRI reporting. We agree with EPA's conclusion that the elimination of these regulatory exemptions will create a more complete picture of the releases and waste management quantities for the PFAS in our communities. We urge EPA to promptly finalize this proposal. Further, we urge EPA to ensure that all PFAS added to the TRI in the future – no matter the statutory mechanism used – are also listed as Chemicals of Special Concern, without needing to meet additional criteria. Finally, we support EPA's including in this rulemaking an appropriately broad, scientifically sound definition of PFAS to avoid any possible ambiguities in what PFAS are covered by the rule.

Background on PFAS

As described in EPA's notice of proposed rulemaking and its references, a substantial body of scientific evidence shows that PFAS are toxic, persistent, pervasive, and mobile in the environment and that exposure to even the smallest amounts of these chemicals can lead to adverse human health effects.² Unlike other bioaccumulative chemicals, many PFAS are highly soluble and can often migrate easily from soil to groundwater.³ When released into the environment, PFAS can contaminate air, water, and soil, plants, animals, and humans.⁴ Numerous assessments conducted by federal, state and international agencies, academia, and non-profit organizations have recognized the toxicity of PFAS and the harm that can arise from human and environmental exposure.

More than a thousand PFAS chemicals have been manufactured in the U.S. and used in many industrial processes and products. As a result of their widespread use and limited regulation of their manufacture, disposal and release into the environment, PFAS are now pervasive environmental contaminants; once released, the persistent PFAS can migrate distances through air, soils and water. PFAS have been detected in groundwater monitoring wells, private drinking water wells, and public drinking water systems across the country.⁵ PFAS have also been detected in

²87 Fed. Reg. 74379 (December 5, 2022), at 74380; References 2 and 3: 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/ourcurrent-understanding-human-healthand-environmental-risks-pfas>; Agency for Toxic Substances and Disease Registry. Toxicological Profile for Perfluoroalkyls. May 2021. Available from: <https://www.atsdr.cdc.gov/toxprofiles/tp200.pdf>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

surface waters, discharges from landfills and from wastewater treatment systems, agricultural fields, livestock, and wildlife.

Due to these concerns and widespread contamination, our states have expended significant public resources regulating PFAS, addressing contamination in drinking water, and responding to contaminated sites. Many of us have incurred substantial costs for testing public and private water resources, installing water treatment technologies for drinking water, and providing for alternate water supplies, all at the expense of the taxpayers of our states.

Background on EPCRA TRI Reporting

Reporting Requirements

EPCRA, Section 313, 42 U.S.C. § 11023, which established the TRI, requires facilities that manufacture, process, or otherwise use listed toxic chemicals in amounts above reporting thresholds to annually report environmental releases and waste management quantities of such chemicals to EPA. EPA makes this information publicly available on a database.⁶ While TRI reporting is not designed to, nor does it, address whether or to what degree the public is exposed to listed chemicals, TRI data in conjunction with other information offer an important starting point for evaluating the risks posed by such exposure. At the outset, Congress included over 300 toxic chemicals and categories of chemicals to the initial TRI list and set a default threshold that triggers reporting at 25,000 pounds per year for chemicals manufactured, and 10,000 pounds per year for chemicals used at a facility.⁷

EPCRA provides EPA limited authority to allow covered facilities to escape the reporting requirements of TRI-listed chemicals. EPA is authorized to do so by: (1) modifying applicable Standard Industrial Classification Codes where “relevant to the purposes” of the TRI,⁸ and (2) modifying the reporting threshold, but only where the new threshold would ensure “reporting on a substantial majority of total releases of the chemical at all facilities subject to” TRI requirements.⁹

Regulatory Exemptions

⁶ The online TRI tool is accessible here: [TRI Toxics Tracker \(epa.gov\)](https://www.epa.gov/tri-toxics-tracker)

⁷ See EPCRA at §§ 11023(c) and 11023(f)(1).

⁸ See EPCRA at § 11023(b)(1)(B).

⁹ *Id.*, at § 11023(f)(1),(2).

Soon after EPCRA's passage, EPA adopted two regulatory exemptions.¹⁰ First, in 1988, EPA established a de minimis concentration exemption to TRI reporting for certain chemical mixtures. Under the de minimis concentration exemption, when a TRI-listed chemical is part of a chemical mixture and is present in the mixture at a low concentration (defined as less than 1% if it is not a carcinogen and less than 0.1% if it is), the manufacture, processing, or use of that mixture does not count toward the threshold that triggers TRI reporting.¹¹ Accordingly, if such a chemical mixture is released into the environment, it need not be reported to EPA under EPCRA's reporting requirements. The de minimis concentration exemption applies—and therefore limits the information EPA and the public receive—regardless of the total volume of a relevant mixture that is manufactured, processed, or otherwise used and regardless of the total volume of a listed chemical that is released into the environment.

Additionally, the 1988 regulations also included a supplier notification provision pursuant to which TRI-covered facilities that sell or distribute a mixture or trade name product containing a TRI-chemical to a regulated facility (or to a person who will then sell the mixture or trade name product to a regulated facility) must provide notice that the product contains a chemical subject to TRI reporting.¹² However, supplier notification¹³ is not required if the mixture is subject to the de minimis concentration exemption.¹⁴

Second, in 1994, EPA established an “alternate threshold” for reporting available to certain facilities.¹⁵ Under this provision, a covered facility may use an “alternate threshold” of 1,000,000 pounds per year for manufacturing, processing, or otherwise using a chemical—a far higher threshold for reporting than the statutory default reporting thresholds in 42 U.S.C. § 11023(f)(1)—if it certifies that its reportable releases and disposals were a combined 500 pounds or less.¹⁶ If a facility determines it is eligible for the 1,000,000-pound alternate reporting threshold, it

¹⁰ These comments do not address EPA's authority to promulgate these regulatory exemptions.

¹¹ 40 C.F.R. § 372.38(a).

¹² *Id.*, at § 372.45(a), (b).

¹³ EPA's proposal to eliminate the de minimis exemption for Supplier Notification Requirements for all chemicals on the list of Chemicals of Special Concern, and not just for PFAS, is outside the scope of this comment letter. However, the undersigned encourage EPA to finalize this part of the proposal as doing so would serve an important purpose of increasing awareness of the presence of these highly toxic chemicals in our communities.

¹⁴ 40 C.F.R. § 372.45(d)(1).

¹⁵ Alternate Threshold for Facilities with Low Annual Reportable Amounts; Toxic Chemical Release Reporting; Community Right-To-Know, 59 Fed. Reg. 61,488, 61,502 (Nov. 30, 1994) (to be codified at 40 C.F.R. Part 372)

¹⁶ 40 C.F.R. § 372.27(a).

need not submit a toxic chemical release form, but instead can submit a barebones certification.¹⁷ The most significant information that must be included on the toxic chemical release form, such as environmental release information, need not be provided by facilities taking advantage of the alternate threshold.

Chemicals of Special Concern Rule

In 1999, EPA promulgated a rule listing Chemicals of Special Concern with lower TRI reporting threshold because releases of even small quantities of these chemicals can cause harm.¹⁸ Facilities reporting chemicals on the list of Chemicals of Special Concern are unable to claim the regulatory exemptions in order to ensure reporting of a complete picture of releases and waste management quantities for these chemicals. The first chemicals EPA added to the list of Chemicals of Special Concern were those identified as persistent, bioaccumulative and toxic (PBT) which, except for the dioxin and dioxin-like compounds category, have annual reporting thresholds of either 10 or 100 pounds depending on their persistent and bioaccumulative properties.

PFAS Added to the TRI List

The 2020 NDAA includes two provisions that automatically add PFAS to the TRI list. First, section 7312(b) of the that statute adds to the TRI list, effective January 1, 2020, fourteen PFAS chemicals by name and additional PFAS that meet specific criteria – with a reporting threshold significantly lower than the default threshold.¹⁹ Congress further provided that additional PFAS shall be deemed to be included in the TRI – also at the lower reporting threshold – following EPA concluding certain types of assessments for these PFAS.²⁰

On June 22, 2020, EPA updated the TRI list in the Code of Federal Regulations to reflect the 172 non-confidential PFAS added to the TRI by 2020 NDAA section 7321(b).²¹ On June 2, 2021 and on July 18, 2022, EPA again updated the TRI to add additional PFAS to the list.²² (Together, these three rules are

¹⁷ 40 C.F.R. §§ 372.27, 372.95.

¹⁸ 64 Fed. Reg. 58666, 58668 (October 29, 1999), codified at 40 C.F.R. § 372.28.

¹⁹ 15 U.S.C. § 8921(b)

²⁰ *Id.*, at § 8921(c).

²¹ Implementing Statutory Addition of Certain Per and Polyfluoroalkyl Substances; Toxic Chemical Release Reporting, 85 Fed. Reg. 37,354 (June 22, 2020) (to be codified at 40 C.F.R. Part 372)

²² Implementing Statutory Addition of Certain Per- and Polyfluoroalkyl Substances (PFAS) to the Toxics Release Inventory Beginning With Reporting Year 2021, 86 Fed. Reg. 29,698 (June 3,

referenced herein as the “TRI PFAS Rules”.) Additionally, EPA has added other PFAS to the TRI list on an annual basis using the NDAA statutory criteria. PFAS that meet the criteria in section 7321(c) of the 2020 NDAA are deemed added to the TRI on January 1 of the year after the specific criteria are met.²³ To date, section 7312 of the 2020 NDAA has led to the addition of 180 PFAS to the TRI list.²⁴

In the TRI PFAS Rules, EPA significantly limited the information that must be reported about PFAS by allowing facilities to utilize the above-described regulatory exemptions to PFAS TRI reporting. EPA did so by adding PFAS to the general list of toxic chemicals as opposed to the list of Chemicals of Special Concern. In the first year of reporting for the initial 172 listed PFAS on the TRI, EPA only received 89 reports from 38 facilities covering 43 different PFAS.²⁵ Given the widespread use of PFAS in many industrial applications, this is likely a significant undercount of potentially harmful environmental releases. EPA has now concluded that these regulatory exemptions significantly limited the amount of data that EPA received for these chemicals, and the instant proposed rule appropriately seeks to correct this deficiency.²⁶

EPA’s Proposed Action

To correct this error, to address the lack of reporting and in recognition of the demonstrated dangers of PFAS, EPA is proposing to add all PFAS included on the TRI by NDAA sections 7321(b) and (c) to the list of Chemicals of Special Concern. As a result, when this rule is finalized, TRI reporting entities will be unable to avail themselves of the regulatory exemptions that are not applicable to chemicals on the list of Chemicals of Special Concern. It is likely that closing these reporting loopholes for PFAS will result in significant additional reporting of these substances.

Recommendations

The states strongly support EPA’s conclusion that eliminating the availability of regulatory exemptions to PFAS TRI reporting will create a more

2021) (to be codified at 40 C.F.R. Part. 372); Implementing Statutory Additions of Certain Per-and Polyfluoroalkyl Substances to the Toxic Release Inventory Begin with Reporting Years 2021 and 2022. 87 Fed. Reg. 42,651 (July 18, 2022).

²³ See 87 Fed. Reg. 74381 for a list of the § 7321(c) specific criteria.

²⁴ A complete list of the PFAS added to the TRI list can be found at: <https://www.epa.gov/toxics-release-inventorytri-program/list-pfas-added-tri-ndaa>.

²⁵ 87 Fed. Reg. at 74381.

²⁶ PFAS Strategic Roadmap: EPA’s Commitments to Action 2021-2024 (the “EPA PFAS Strategic Roadmap”) (Oct. 2021), https://www.epa.gov/system/files/documents/2021-10/pfasroadmap_final-508.pdf.

complete picture of the releases and waste management quantities for the PFAS in our communities. Adding PFAS to the list of Chemicals of Concern is consistent with the special concerns presented by PFAS and thus aligns these PFAS with other chemicals of special concern. Further, we urge EPA to ensure that all PFAS added to the TRI in the future – no matter the statutory mechanism used – are also listed as Chemicals of Special Concern, without needing to meet additional criteria. Finally, we support EPA’s including in this rulemaking an appropriately broad, scientifically sound definition of PFAS to avoid any possible ambiguities concerning what PFAS are covered by the rule.

A. EPA Should Promptly Finalize the Proposed Rule so TRI Reporting Provides Critical Information that is Currently Unavailable to EPA and the Public.

EPA’s proposal to eliminate the regulatory exemptions to PFAS TRI reporting will help protect human health and the environment from the harms presented by PFAS by providing critical but still lacking information to EPA and to the public.

The scale of PFAS contamination in the United States is staggering. PFAS have already been detected at thousands of sites throughout the United States.²⁷ In a 2016 study, scientists estimated that 16.5 million people across thirty-three states, U.S. territories and native communities, were supplied drinking water with levels of PFAS at or above reporting levels.²⁸ Yet the full scope of PFAS contamination remains unknown. Due to the nature of PFAS and the PFAS contamination discovered thus far, it is critical that the public has access to information regarding possible routes for exposure to these substances, including TRI reporting information. As stated above, PFAS can pose substantial danger to public health and the environment even when released in extremely small quantities. Significantly, in June 2022, EPA released interim health advisory levels (“HALs”) for several PFAS: PFOA (0.004 parts per trillion (“ppt”)); PFOS (0.02 ppt); and a final HAL for GenX chemicals (10 ppt).²⁹ The 2022 interim HALs for PFOA and PFOS supersede the 2016 HALs which were 70 ppt. The 2022 HALs are based

²⁷ Env’t Working Grp., PFAS Contamination in the U.S., https://www.ewg.org/interactive-maps/pfas_contamination/.

²⁸ Xindi C. Hu et al., Detection of Poly- and Perfluoroalkyl Substances (PFASs) in U.S. Drinking Water Linked to Industrial Sites, Military Fire Training Areas, and Wastewater Treatment Plants, 3 *Env’t Sci. & Tech. Letters* 344 (2016); <https://pubs.acs.org/doi/pdf/10.1021/acs.estlett.6b00260>.

²⁹ 87 Fed. Reg. 36848 (June 21, 2022).

upon data and analyses that indicate that the levels at which negative health effects could occur are much lower than previously understood.³⁰

Despite these known hazards, the full scope of PFAS contamination remains unknown for a variety of reasons, including that not all public drinking water systems have been tested for PFAS; many private drinking water wells have not been tested for PFAS; and wastewater treatment plants have largely not been tested for PFAS. Furthermore, there is a lack of analytical methods and reference standards needed to identify and quantify these chemicals in environmental media. PFAS TRI reporting will help to fill this void.³¹ The fact that facilities that manufacture, use, and release PFAS have not had to report their activities—either because there was no TRI PFAS Rule in place or because they could claim regulatory exemptions—is a major reason that the extent and the location of PFAS contamination in our communities remain unknown.

EPA received very little PFAS-TRI data from the first PFAS TRI reporting cycle. In the first year of reporting for the initial 172 listed PFAS on the TRI, EPA only received 89 reports from 38 facilities covering 43 different PFAS.³² EPA concluded that many facilities that are known to manufacture and use PFAS did not report – including facilities controlled by the U.S. Department of Defense. EPA acknowledged that the exemptions significantly limited the amount of data that EPA received in the first year of reporting. According to EPA, 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.³³ Thus, it is necessary and important to foreclose the use of this exemption because allowing the exemptions is impeding EPA’s ability to collect information on amounts of PFAS that significantly exceed the reporting threshold.³⁴

As stated above, EPCRA allows an exemption if it would still result in reporting of a substantial majority of releases. It appears that applying the

³⁰ The final HALs for PFOA and PFOS will likely differ from the interim HALs; the final HALS are expected to remain below the EPA Minimum Reporting Levels for PFOA and PFOS of 4ppt. See USEPA, 2022f. Recent and Planned Actions for PFAS in Drinking Water. Science Advisory Board Public Meeting. PowerPoint presentation. July 20, 2022. Posted at: https://sab.epa.gov/ords/sab/f?p=114:19:11488469483433:::19:P19_ID:975#materials

³¹ Analytical methods and reference standards exist for only a few dozen out of the thousands of PFAS now in existence. We urge EPA to address this void by requiring chemical manufacturers to publicly provide validated reference standards for each PFAS used.

³² 87 Fed. Reg. at 74381.

³³ *Id.* See also <https://www.epa.gov/toxics-release-inventory-tri-program/find-understand-and-use-tri>.

³⁴ 87 Fed. Reg. at 74383.

regulatory exemptions to PFAS TRI reporting resulted in the reporting of an insignificant amount of the total releases of chemicals at all facilities subject to the TRI requirements – in apparent conflict with EPCRA’s statutory requirement.

For the above reasons, we urge EPA to promptly finalize the instant proposal which will likely increase reporting of PFAS thereby providing a more complete picture of PFAS releases and PFAS waste management.

B. PFAS Should Be Added to the List of Chemicals of Special Concern Because PFAS Present Health and Environmental Concerns at Extremely Low Quantities.

Applying these regulatory exemptions to PFAS TRI reporting is inconsistent with the documented public health concerns presented by even extremely small quantities of PFAS. PFAS are very persistent in the environment which allows PFAS to build up over time; thus, even small releases are of concern.³⁵

Scientists have found that the manufacturing and use of products containing even trace amounts of PFAS can result in significant threats to public health and the environment. This is largely attributed to the persistent nature of PFAS. They are resistant to degrading in the environment and more likely to bioaccumulate to dangerous levels in living beings. For example, the State of Minnesota linked high levels of PFAS contamination in fish in a lake to a nearby chrome plating facility that was releasing a small quantity of PFOS from fume suppressants escaping from air vents. (There were also untreated discharges from a wastewater treatment facility.) After an extensive investigation, Minnesota regulators concluded that over time, these extremely low levels of releases built up to concentrations in fish that exceeded the state’s Water Quality Criteria for fish consumption.³⁶

The same analysis EPA used in promulgating the Chemicals of Concern Rule in 1999, and exempting those chemicals from use of TRI’s regulatory exemptions, applies equally here to PFAS. The TRI regulatory exemptions are premised on the

³⁵ See 87 Fed. Reg. 74379 (December 5, 2022), at 74380, References 2 and 3; 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/ourcurrent-understanding-human-healthand-environmental-risks-pfas>; Agency for Toxic Substances and Disease Registry. Toxicological Profile for Perfluoroalkyls. May 2021. Available from: <https://www.atsdr.cdc.gov/toxprofiles/tp200.pdf>.

³⁶ See Minn. Pollution Control Agency, Comments on Addition of Certain Per- and Polyfluoroalkyl Substances: Community Right-to-Know Toxic Chemical Release Reporting, Docket No. EPAHQ-TRI-2019-0375-0057, at 4 (Jan. 30, 2020), <https://www.regulations.gov/comment/EPA-HQTRI-2019-0375-0057>.

idea that low levels in manufacturing, processing, use and/or release of the chemicals eligible for the exemptions will not present a danger to public health and the environment and do not need to be publicly disclosed. Because PFAS raise health and environmental concerns at very low levels, these exemptions are not appropriate for PFAS TRI reporting. The purpose of the Chemicals of Concern Rule – designed to capture information on significantly smaller quantities of releases and waste management associated with these chemicals –applies to PFAS reporting as well.

C. States Have a Strong Interest in the Proposed Rule and Urge EPA to Promptly Finalize it.

Our states rely on TRI data for critical information about the sources of industrial pollution within our borders. Many of our residents live in communities with high levels of PFAS in the environment, but they do not know which PFAS continue to be released from facilities in their communities nor do they know the volume of these releases. Further, the states have been deprived of information important to support their regulatory development and to fulfill their enforcement duties. And the scientific community has been deprived of information about PFAS pollution that would assist it in research.

Removing these regulatory exemptions will correct this underreporting and will allow communities to learn how facilities in their area are managing PFAS chemicals. The data collected will also help support informed decision-making by companies, government agencies, non-government agencies and the public in addressing exposure routes for these highly toxic chemical substances.

D. EPA Should Ensure All PFAS Are Included on the List of Chemicals of Special Concern in the Future.

We urge EPA to ensure that the final rule provides that all PFAS added to the TRI in the future – regardless of which statutory mechanism used – are placed on the Chemicals of Special Concern list. Otherwise, PFAS added to the TRI in the future may be once again subject to the regulatory exemptions – thus undermining the purpose of this proposal.

As described above, the proposed rule adds those PFAS that are placed on the TRI by NDAA sections 7321(b) and (c) to the list of Chemicals of Special Concern. It is unclear whether PFAS added to the TRI by other statutory mechanisms would also be added to the Chemical of Special Concern list. For example, EPCRA Section 11023(d)(2) authorizes the EPA Administrator to add a chemical to the TRI list if

the chemical meets specified criteria.³⁷ The proposal does nothing to ensure that PFAS added thru these other statutory mechanisms are similarly included on the Chemicals of Special Concern list. We urge EPA to ensure that all PFAS added to the TRI are included on the Chemicals of Special Concern list.

E. EPA Should Include in the Final Rule a Broad Definition of PFAS to Reduce any Doubts of What Is Covered by the Rule in Any Future Rulemaking.

Recent federal, state, and international legislation have variously defined PFAS. The 2021 National Defense Authorization Act defines PFAS as “a perfluoroalkyl or polyfluoroalkyl substance with at least one fully fluorinated carbon atom, including the chemical GenX.”³⁸ Vermont recently enacted a statute defining PFAS as “a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.”³⁹ Similarly, the Organization for Economic Cooperation and Development (OECD) employs a very broad definition of PFAS.⁴⁰ It defines PFAS as “fluorinated substances that contain at least one fully fluorinated methyl or methylene carbon atom (without any H/CL/Br/I atom attached to it), *i.e.*, with a few noted exceptions, any chemical with at least a perfluorinated methyl group (-CF₃) or a perfluorinated methylene group (-CF₂-) is a PFAS.”⁴¹ This definition was promulgated by OECD to provide a coherent and consistent definition across compounds that “is easily implementable for distinguishing between PFAS and non-PFAS, also by non-experts.”⁴²

Although EPA does not include a proposed definition of PFAS in the instant proposal, EPA has adopted several definitions of PFAS in various EPA programs. This may create confusion and may have resulted in excluding some PFAS from regulatory programs when in fact such PFAS should be regulated. In comments on prior EPA rulemakings, many state Attorneys General urged EPA to use a

³⁷ 42 U.S.C. § 11023(d)(2).

³⁸ William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, § 335(e)(2) (2021).

³⁹ Vt. Stat. Ann. tit. 18, § 1661(5) (effective July 1, 2022); 2021 Vt. Acts & Resolves 36, § 1.

⁴⁰ EPA has a history with TSCA rulemaking of incorporating OECD rules and codes. For example, in 2020 amendments of the Chemical Data Reporting Rule, EPA changed the requirements for making confidentiality claims and replaced certain processing and use codes with OECD functional use and product and article use codes. *See* 85 Fed. Reg. 20122 (Apr. 9, 2020).

⁴¹ OECD (2021), *Reconciling Terminology of the Universe of Per- and Polyfluoroalkyl Substances: Recommendations and Practical Guidance*, OECD Series on Risk Management, No. 61, OECD Publishing, Paris (OECD PFAS Guidance), at 8, 23.

⁴² *Id.*

definition broad enough to capture the entire universe of PFAS.⁴³ We urge EPA to take the opportunity presented by the development of the instant proposal to address this potential shortfall in the agency's ongoing efforts to address PFAS in our communities.

Conclusion

EPA should promptly finalize its proposal that will require PFAS TRI reporting without currently applicable regulatory exemptions. We expect this will lead to increased reporting of critical information for the public, EPA, and states, and for manufacturers and the scientific community. We also urge EPA to ensure that all future additions of PFAS to the TRI be added to the Chemicals of Special Concern list so these future additions are not subject to regulatory exemptions. Finally, we urge EPA to include a broad definition of PFAS in the final rule to ensure that the rule will apply to all current and future PFAS.

We commend EPA for taking this action to resolve the issues made apparent from the first round of PFAS TRI reporting. Furthermore and more generally, we applaud EPA for identifying future actions needed to protect public health and the environment from these ubiquitous, persistent, and highly toxic chemicals, including those actions called for in its October 2021 EPA PFAS Strategic Roadmap. We look forward to EPA's continued progress in this regard.

Sincerely,

FOR THE COMMONWEALTH OF
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⁴³ September 27, 2021; Comments submitted to Docket ID No. EPA-HQ-OPPT-2020-0549 from The Attorneys General of New Jersey, Commonwealth of Pennsylvania, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Mexico, New York, Oregon, Rhode Island, Virginia, Wisconsin and the City of New York and the District of Columbia.

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