An Overview of Regulatory Updates to the Toxics Release Inventory (TRI)

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Agenda

- TRI (EPCRA 313) regulatory mechanisms
  - Rulemakings
  - Petitions
  - Discretionary authority
- Recent regulatory updates
  - Chemical list
  - Per- and polyfluoroalkyl substances (PFAS)
  - Industry sectors
  - Other reporting requirements
- Data impacts of recent actions
- Upcoming/potential actions

TRI Regulatory Mechanisms

- Rulemakings
  - Modify chemical list, industry sectors, other reporting requirements (e.g., definition of “parent company”)
- EPCRA chemical petitions
  - Add or delete chemicals from EPCRA Section 313 coverage
- Administrator’s discretionary authority
  - Extend reporting requirements to specific facilities
- Administrative Procedure Act (APA) petitions
  - Interested parties have the right to petition federal agencies for the issuance, amendment, or repeal of a rule

Rulemakings

- Once a law has passed, EPA may need to promulgate regulations to implement the law
- The specific steps for developing a regulation may vary depending on circumstances and rule scope, but in general...
  1. EPA conducts research and determines a potential need for a regulation (e.g., to improve the TRI dataset, or to implement statutory requirements)
  2. EPA proposes the regulation and solicits public feedback
  3. After public comments are received, EPA determines whether & how to revise the proposed regulation at all, then issues a final rule
  - In addition to public comments on a proposal, EPA may also receive and incorporate feedback from the Office of Management and Budget and other executive branch agencies during proposed or final rule development

EPCRA Chemical Petitions

- EPCRA section 313(e) allows for the general public and governors to petition EPA to add or delete TRI chemicals
  - Any person may petition for chemical list revisions based on EPCRA 313 chemical list human health criteria (acute or chronic human health effects)
  - Governors [or Tribal chairpersons] may petition for chemical list revisions based on any of the EPCRA 313 criteria: acute human health, chronic human health, or environmental effects
- EPA must respond within 180 days of EPCRA 313(e) petition
  - Initiate rulemaking to add/delete chemical
    - For Governor/Tribal chairperson petition to add a chemical, the chemical will be added to the list within 180 days of petition receipt, unless a rulemaking is initiated or EPA publishes explanation as to why the chemical should not be added
  - Publish explanation as to why the petition does not meet EPCRA listing criteria
- Example of EPCRA 313(e) petition: Toxics Use Reduction Institute (TURI) to add 25 chemicals
  - EPA ultimately promulgated a rule to add 12 of the 25 (finalized in 2022)
    - Of the other 13 chemicals: 3 were separately added to TRI, 9 did not have sufficient data to support an EPCRA listing, and 1 was not likely to meet reporting thresholds

EPCRA Discretionary Authority

- EPCRA 313(b)(2) authorizes EPA to extend TRI reporting requirements to specific facilities, due to:
  - Chemical toxicity
  - Proximity to other facilities releasing that chemical, or to population centers
  - History of releases of a chemical at a facility
  - Other factors the Administrator deems appropriate
- Not a rulemaking
- Example of 313(b)(2) determination: extending reporting requirements to 29 contract sterilization facilities using ethylene oxide (2021)

Recent TRI Regulatory Updates

Chemical List

Since the last TRI conference (2016), the following chemicals have been added to the TRI list by rulemaking:

- Diisononyl phthalate (DINP) category (effective reporting year 2024)
- TURI chemicals (12 chemicals) (2023)
- Nonylphenol ethoxylates (NPEs) category (13 specific chemicals) (2019)
- Hexabromocyclododecane (HBCD) category (2 specific chemicals) (2017)
- 1-Bromopropane (2016)

Per- and polyfluoroalkyl substances (PFAS)

- National Defense Authorization Act for Fiscal Year 2020 (NDAA) added PFAS to TRI list
  - Immediate additions of 172 PFAS effective for reporting year 2020
  - Framework to add PFAS annually based on NDAA-defined triggering activities (+17 PFAS since 2020) (e.g., EPA finalizing a toxicity value)
  - Reviewing hazard literature for additional PFAS to list pursuant to TRI chemical listing criteria (rule under development)
  - PFAS were listed with a lowered reporting threshold of 100 lbs

Industry Sectors and Reporting

- Reporting requirements were extended to all **natural gas processing facilities** by a 2021 final rule, starting with reporting year 2022
- The EPA Administrator extended ethylene oxide reporting requirements to 29 **contract sterilization facilities** (and ethylene glycol reporting to 16 of those facilities) under the EPCRA section 313(b)(2) discretionary authority through a 2021 determination, with ongoing reporting effective 2022

Other Reporting Requirements

- Parent Company Definition Rule
  - Codified the definition of "parent company" for TRI reporting, effective reporting year 2022
  - Requires the reporting of a foreign parent company when applicable (new data element), effective for 2023
- NAICS Codes Updated for 2017 and 2022
- Correction to Toxics Release Inventory (TRI) Reporting Requirements
  - Updated identifiers, formulas, and names for certain TRI-listed chemicals. Updated text that identifies to which chemicals the 0.1 percent de minimis concentration applies.
- Information collection request (ICR) renewals

How EPA Uses TRI Data

- Assessing chemical management, release, and pollution prevention trends within and across industries, geographic regions, by chemical, and over time
- Supporting EPA's TSCA program to assess existing chemicals, such as:
  - Data on conditions of use to support prioritization screenings and risk assessment
  - Identifying potential manufacturers or processors to provide section 4 test data
- Complementing other EPA reporting datasets (e.g., Chemical Data Reporting, National Emissions Inventory) – mutually improving data quality reviews
- Providing exposure data for other risk screening/assessment efforts (e.g., drinking water, wastewater, air emissions standards) and for advancing environmental justice in other actions
- Identifying opportunities for EPA’s Pollution Prevention (P2) grants to provide source reduction assistance to communities

Some Impacts of Recent Actions

- Chemical activities now reported from additional sectors/facilities:
  - For 2022, EPA received 1,152 forms from 230 natural gas processing facilities*
  - For 2022, EPA received ethylene oxide release data from 26 contract sterilization facilities, representing over 6 million lb of production-related EtO waste*
- Release/waste data for additional chemicals now reported:
  - PFAS: For 2022, 189 PFAS were reportable. EPA received 132 forms for 44 discrete PFAS from 50 facilities, representing ~1.15 million lb of production-related waste*
    - EPA anticipates additional PFAS reporting if the rule for PFAS as chemicals of special concern is finalized as proposed
  - DINP: data that will be reported to EPA beginning with RY2024 can help support ongoing EPA or other agencies' assessments and necessary risk management efforts

**reporting statistics as of October 2023*

Upcoming and Potential TRI Regulatory Actions

Upcoming Actions

- Proposed in December 2022: Changes to Reporting Requirements for Per- and Polyfluoroalkyl Substances and to Supplier Notifications for Chemicals of Special Concern
  - Would classify all PFAS as Chemicals of Special Concern (i.e., remove *de minimis* exemption)
  - Would eliminate the *de minimis* exemption for purposes of supplier notification requirements for all Chemicals of Special Concern
- In development: Addition of Certain Per- and Polyfluoroalkyl Substances
  - Would add PFAS to TRI based on their hazard meeting EPCRA listing criteria, including PFAS specifically identified by FY2020 NDAA

Under Consideration

- Petition from the Energy Justice Network and PEER to Add Waste Incinerators to the TRI Program (April 2023)
  - Large and Small Municipal Waste Combustors
  - Hospital, Medical, and Infectious Waste Incinerators
  - Sewage Sludge Incineration Units
  - Commercial and Industrial Solid Waste Incineration Units
  - Other Solid Waste Incinerators
  - Pyrolysis and Gasification Units