



October 6, 2022

Mr. Dominic Mancini
Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Re: ICR Reference No: 202209-2050-001; Designation of Perfluorooctanoic acid and perfluorooctanesulfonic acid as CERCLA hazardous substances (proposed rule)

Dear Mr. Mancini:

The American Chemistry Council (ACC) appreciates the opportunity to comment on the proposed Information Collection Request (ICR) related to the designation of perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) and their salts and structural isomers as hazardous substances under section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). ACC and its members are committed to compliance with all applicable regulations.

The Environmental Protection Agency (EPA) has proposed to designate PFOA and PFOS as hazardous substances.¹ Such designation would, among other impacts, require the owner or operator of any facility that identifies a release into the environment of one pound or more of these substances, including their associated salts and precursor substances, within a 24-hour period to report the release immediately to the National Response Center under section 103 of CERCLA and to the state and local officials under section 304 of the Emergency Planning and Community Right-to Know Act (EPCRA). As an initial matter, and as will be further discussed in ACC's forthcoming comments on the Proposed Rule, EPA's proposal to designate PFOA and PFOS – the manufacture and use of which has been largely phased out in the United States since the early 2000s – as hazardous substances under CERCLA will result in significant impacts beyond reporting that the Agency has not fully evaluated.

In the Proposed Rule and supporting statement for the ICR, EPA requests comment on three areas, including the accuracy of the Agency's provided burden estimates for a one-pound reportable quantity requirement.² The ACC respectfully submits that EPA has not adequately

¹ 87 Fed. Reg. 54,416 (Sept. 6, 2022). ("Proposed Rule")

² Proposed Rule at 54,440; ICR Supporting Statement at 14.



justified its estimated burdens, for two reasons. First, EPA failed to explain adequately its reliance on ammonia and ammonium compounds as a proxy for estimating the potential number of PFOA and PFOS reportable releases. Second, EPA failed to provide an estimate of the burden for several important burden categories, thereby potentially underestimating the total burden and cost on regulated entities.

EPA did not justify its reliance on ammonia and ammonium release notifications as a proxy for PFOA and PFOS reportable releases

EPA acknowledges the “precise number of reportable releases of PFOA and PFOS *is not known*” and “requests comment on the *assumption* that ammonia or ammonium releases provide a reasonable upper bound for PFOA and PFOS releases.”³ EPA ostensibly justifies using ammonia and ammonium compounds because they “accounted for the largest number of releases in 2020, 660 in total.”⁴ However, EPA does not attempt to explain how the scientific characteristics, frequency of use, or the associated reportable quantity thresholds make ammonia and ammonium compounds an appropriate proxy for PFOA and or PFOS. Without having insight into EPA’s rationale and scientific justification for its reliance on ammonia and ammonium compounds, the public cannot meaningfully comment on EPA’s estimated burdens that flow from this assumption. ACC therefore respectfully submits that EPA provide a “rational connection between the facts found and the choice made”⁵ and explain why it believes ammonia and ammonium compounds are an appropriate proxy for estimating the number of reportable PFOA and PFOS releases.

EPA fails to quantify several burden categories thereby underestimating the total estimated burden and total estimated cost

EPA fails to quantify several burden categories, rendering flawed its estimates for total burden and total cost. The Proposed Rule and Supporting Statement mistakenly only account for a single burden—the burden of completing an initial telephone notification and written report. EPA states that -

Based on the high-end estimate of 660 annual respondents, EPA estimates that the proposed rule will result in 6,415 hours of annual respondent labor burden corresponding to approximately \$366,000 in labor costs. EPA also

³ EPA. Economic assessment of the potential costs and other impacts of the proposed rulemaking to designate perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) as hazardous substances (August 2022). EPA-HQ-OLEM-2019-0341-0035, at 8 (emphasis added).

⁴ Economic Assessment, at 8.

⁵ *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (citation omitted).



estimates that the information collection requirements will result in about \$3,600 in operations and maintenance costs (postage and long-distance phone call costs).”⁶

However, as discussed below, EPA erroneously assumes significant burden categories will have “zero” or “negligible” associated costs. EPA therefore should reassess both the total estimated burden and total estimated cost associated with this ICR.

Under the Paperwork Reduction Act (PRA), EPA must ensure that each information collection informs the person receiving the collection of information of “an estimate, to the extent practicable, of the burden of the collection.”⁷ In addition, prior to submission to OMB, EPA must certify that the ICR “reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency[.]”⁸ The PRA defines “burden” as the “time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal agency, including the resources expended for—

- Reviewing instructions;
- Acquiring, installing, and utilizing technology and systems
- Adjusting the existing ways to comply with any previously applicable instructions and requirements;
- Searching data sources;
- Completing and reviewing the collection of information; and
- Transmitting, or otherwise disclosing the information.”⁹

First, EPA estimates detection and measurement costs to be “zero or negligible” because “affected facilities are likely to incur such costs in the baseline to comply with reporting requirements related to the Toxic Release Inventory.”¹⁰ The Toxic Release Inventory (TRI) requires facilities to “report annually how much of each chemical is released to the environment *and/or managed through recycling, energy recovery and treatment.*”¹¹ The CERCLA release reporting contemplated in the Proposed Rule differs materially from the “release” reporting contemplated by the TRI program. For example, as EPA acknowledges in the Proposed Rule, the TRI reporting triggers and thresholds are distinct from those in the

⁶ ICR Supporting Statement, at 13.

⁷ 44 U.S.C. 3506(c)(1)(B)(iii)(III).

⁸ 44 U.S.C. 3506 (c)(3)(C).

⁹ 44 USC § 3502(2).

¹⁰ Economic Assessment, at 40.

¹¹ What is the Toxics Release Inventory?, available at: <https://www.epa.gov/toxics-release-inventory-tri-program/what-toxics-release-inventory> (emphasis added).



proposed action. Pursuant to TRI reporting requirements, facilities in regulated industry sectors must report annually on “releases and *other waste management*” of listed chemicals “that they *manufacture, process, or otherwise use* above certain threshold quantities (100 pounds for PFOA and PFOS).”¹² Further, even if EPA were correct that such costs will be incurred due to TRI reporting, the PRA nevertheless requires EPA to quantify this burden and the associated costs.

Second, EPA estimates that the cost associated with training staff to detect and monitor potential PFOA/PFOS releases is “zero or negligible.” According to EPA: “If an entity is handling these chemicals and there is a PFOA/PFOS release at its site, *we assume* that it has the capability to assess spilled quantities and that its staff are sufficiently trained for this purpose.”¹³ EPA should not simply assume this burden away. Compliance with EPA’s proposed action, which OMB itself has determined is a “significant regulatory action,” will indeed require detection and monitoring training for two compounds that previously were not subject to CERCLA release reporting requirements, and with which an entity may not have prior experience. ACC member companies take seriously compliance, including by providing training to ensure their personnel understand and comply with newly-promulgated regulations. Accordingly, EPA is incorrect to simply assume that the release reporting requirement will not require additional analysis and training by facility employees. EPA cannot just ignore the associated detection and monitoring training costs.

Third, EPA erroneously estimates that rule familiarization costs are “zero” because “[f]acilities should already be familiar with baseline requirements associated with reporting releases of non-PFOA/PFOS hazardous substances.”¹⁴ EPA’s assumption that *zero* time will be needed to read, understand, and implement procedures to comply with EPA’s action is unrealistic.¹⁵ Any new regulation, let alone one that is a “significant regulatory action,” as OMB has determined the regulation at issue is, requires the rule familiarization that EPA discounts here.

In summary, EPA has not fully characterized or analyzed the full scope of costs associated with this Proposed Rule. The Agency must develop a more complete estimate of the

¹² Proposed Rule, at 54,419 (emphasis added).

¹³ Economic Assessment, at 7 (emphasis added).

¹⁴ Economic Assessment, at 8.

¹⁵ EPA itself has released several detailed guidance documents regarding compliance with CERCLA reporting requirements and has conducted numerous webinars concerning its regulatory actions regarding PFAS. See e.g., EPA, *Reporting Requirements for Continuous Releases of Hazardous Substances - A Guide for Facilities on Compliance*, https://www.epa.gov/sites/default/files/2015-11/documents/reporting_requirements_for_continuous_releases_of_hazardous_substances_part_1.pdf



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costs in order to adequately identify the burdens and fully comply with the Paperwork Reduction Act.

Sincerely,

Steve Risotto

Stephen P. Risotto
Senior Director

