

ALERT

# Fewer than 30 Days to Comment on Proposed TSCA PFAS Reporting Rule Exemptions

December 11, 2025

A December 29, 2025, deadline is fast approaching to submit comments on the U.S. Environmental Protection Agency's (EPA) proposed rule to reduce Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) reporting requirements. The proposal (90 Fed. Reg. 50923), published November 13, would amend the PFAS Data Reporting and Recordkeeping Rule under the Toxic Substances Control Act (TSCA) to add several exemptions to streamline reporting and improve the quality of information EPA expects to receive. The current rule can be found at 40 C.F.R. Part 705. The proposed rule includes exemptions for:

- Imported articles that contain PFAS chemicals;
- PFAS manufactured (including imported) in mixtures or products at concentrations of 0.1% or lower;
- Certain PFAS byproducts, impurities, and non-isolated intermediates; and
- Research and development (R&D) PFAS chemicals.

This proposed rule would remove or reduce PFAS reporting obligations for many companies, both large and small. EPA also proposes to amend the data submission period to begin 60 days after the effective date of the proposed rule and run for three months. In addition, EPA is proposing modifications to certain function and use category descriptions in response to feedback from industry. EPA has noted that the proposed changes are intended to align with Administrator Zeldin's April 2025 announcement to "[i]mplement [TSCA] section 8(a)7 to smartly collect necessary information, as Congress envisioned and consistent with TSCA, without overburdening

## Authors

Martha E. Marrapese  
Partner  
202.719.7156  
mmarrapese@wiley.law

Sara Beth Watson  
Of Counsel  
202.719.7071  
swatson@wiley.law

Sarah E. Amick  
Special Counsel  
202.719.3465  
samick@wiley.law

## Practice Areas

Environment & Product Regulation  
Toxic Substances Control Act (TSCA)

small businesses and article importers."

### **1. Imported articles**

EPA is proposing to eliminate reporting for importers of articles (defined at 40 C.F.R. § 704.3). TSCA Section 8 (a)(5)(C) directs EPA, to the extent feasible, to apply Section 8(a) reporting obligations only to those persons likely to have relevant information. In the proposed rule, EPA explains that importers of articles are not likely to have relevant information for the "lookback period" of 2011-2022 because safety data sheets (SDSs) and notifications under the European Union's Registration, Evaluation, Authorization, and Restriction of Chemicals (REACH) Regulation did not generally require information on PFAS to be disclosed for articles during that period. EPA also puts forward a legal argument for comment in the proposed rule that requiring reporting for imported articles does not align with the wording of TSCA 8(a)(7) that refers to "each person who has manufactured a chemical substance" that is a PFAS.

### **2. < 0.1% *de minimis* level**

The *de minimis* exemption EPA is proposing applies to products that contain a concentration of a reportable PFAS of less than 0.1%. As the basis for this change, EPA acknowledges that there were few international labeling or notification requirements for concentrations of PFAS below 0.1% during the 2011-2022 "lookback period." Because suppliers were not obligated to disclose *de minimis* levels of PFAS, there is a low likelihood that companies will have known or reasonably ascertainable information about the existence of such PFAS concentrations. EPA also explains that in some scenarios, more than one of the proposed exemptions may provide the same regulatory relief from reporting. For example, an importer of an article that contains low levels of PFAS would be exempt from reporting by virtue of both the imported article and this *de minimis* exemption.

### **3. R&D chemicals, impurities, non-isolated intermediates, and byproducts**

To the extent feasible, the remaining exemptions EPA is proposing would narrow reporting to only those PFAS that are manufactured for an immediate commercial advantage. EPA's proposal to exempt reportable PFAS when the use is solely for R&D would eliminate the need to file a "short form" report as currently called for by the rule. This exemption would apply to reportable PFAS manufactured or imported solely for analysis of chemical or physical characteristics, performance, or production characteristics, in neat form or as part of a mixture or article. Consistent with the R&D exemption for new chemicals, there is no volume restriction other than that the R&D quantity must be no greater than reasonably necessary for the R&D activity.

The proposed rule also includes exemptions for impurities, non-isolated intermediates, and byproducts that meet the definitions for these terms at 40 C.F.R. § 704.3. EPA has historically exempted these types of chemicals from reporting under TSCA Sections 5 and 8. However, EPA is proposing an unusual limitation on the exemption for byproducts in this rule. The proposed rule states that byproducts will remain subject to reporting for the uses that are exempt from Section 5 premanufacture notification under § 720.30(g). EPA asserts that these uses have a commercial purpose and information on their composition and quantities should be known or reasonably ascertainable.

#### 4. Areas for comment

The proposed exemptions are the major aspect of this rulemaking. If finalized, only domestic manufacturers and importers of PFAS – alone or as part of a mixture above the *de minimis* level – will have to report for uses that are regulated by TSCA. Other key aspects of the rule remain unchanged:

- EPA is unable to change the “lookback period” for reporting. Congress specifically included this time frame in the National Defense Authorization Act for Fiscal Year 2020 (NDAA 2020). Therefore, a report for each year PFAS was manufactured or imported between 2011 and 2022 will still be required.
- Companies subject to reporting will still have to report information that is known or reasonably ascertainable on downstream processing and use, as EPA is not proposing to change the information requirements in the rule.
- EPA has not proposed to change the definition of PFAS subject to reporting, which includes approximately 1,400 individual chemicals. EPA is asking for public comment on whether it should limit the scope of reporting to only those PFAS that have a Chemical Abstracts Service Registry Number (CASRN). The proposed rule also provides companies with an opportunity to comment on the changes EPA previously made to the structural definition for PFAS in 2023 that significantly expanded the number of PFAS subject to reporting, including certain refrigerants.
- The treatment of articles under this rule has been a source of confusion in the regulated community. EPA should be asked to clarify how the rule applies to PFAS in domestic articles.

With respect to the proposed exemptions, it will be essential for EPA to hear from companies that will receive regulatory relief by having imported articles exempted from this rule. Additionally, comments in support of, and which explain, the need for the proposed *de minimis* level should be considered, in recognition that others may urge EPA to eliminate this exemption. Requiring reporting for byproducts that are burned as fuel or disposed of as waste appears to contradict both EPA’s effort to simplify the rule and the exemption that EPA plans to retain for imported waste streams.

Like any proposed rule, the final rule will be informed by the comments received. Convincing EPA of the need to provide these exemptions has been a difficult, multi-year effort. EPA did not propose any meaningful reporting exemptions or thresholds originally, or in response to a report from a Small Business Advocacy Review (SBAR) Panel recommending that exemptions be included to mitigate the small business impacts of the rule. We expect there will be opponents of these changes who argue that the parts of Section 8(a) which direct EPA to issue narrowly tailored reporting rules should not be applied to reporting PFAS in Subsection 8 (a)(7). It will be important to support EPA’s authority to propose these exemptions as the best reading of the statute.

Companies that still need to report should consider whether there is a need to ask EPA to leave the current six-month period for reporting in place. In addition, it is vital for EPA to hear from the regulated community on the importance of taking the time that is necessary to ensure that the CDX reporting platform is fully updated and capable of ensuring that confidential business information (CBI) is protected before reporting begins. The

initial rule was issued by the 2023 deadline set by Congress, while the reporting period itself has no mandated start date and has been repeatedly postponed. See 89 Fed. Reg. 72336 and 90 Fed. Reg. 20236. Finally, this proposed rule will not be finalized before the current April 2026 start date for reporting. EPA is expected to make an announcement in the future that reporting will not begin until after this proposed rule is final.

Please do not hesitate to reach out to Wiley to discuss these changes and your strategy for providing comments on the proposed rule.