

EPA Proposes Rule to Eliminate De Minimis PFAS Reporting Exemption

The U.S. Environmental Protection Agency (EPA) announced a [proposed rule](#) in December 2022 that, if issued, would eliminate a regulatory exception that exempts facilities from reporting the use of *de minimis* amounts of PFAS (per- and polyfluoroalkyl substances) and other "chemicals of special concern" subject to Toxic Release Inventory (TRI) reporting. Under the Emergency Planning and Community Right-to-Know Act, certain facilities that manufacture, process or otherwise use TRI-listed chemicals must annually report releases, and suppliers of TRI substances must notify customers that those products are subject to TRI reporting.

Under the current rule, PFAS have a reporting threshold of 100 pounds. However, if PFAS are added to the list of "chemicals of special concern," facilities will no longer be permitted to rely on the *de minimis* exemption to bypass reporting requirements. The rule would enhance PFAS reporting requirements by requiring facilities to report on PFAS releases regardless of their concentration in products. Those PFAS currently on the TRI list can be found on the [EPA's website](#).

The EPA has stated that removing the *de minimis* exemption will allow the EPA to better understand the amount of PFAS being released into the environment and will assist with ensuring that purchasers of mixtures and trade name products containing PFAS are informed of their presence in the products they purchase.

The EPA recognizes that certain downstream facilities, including certain purchasers of products, may not have access to information concerning the presence of PFAS in the products they purchase. For that reason, the EPA considered limiting the *de minimis* exemption to just PFAS, but in the proposed rule, it expressed concern that making the exemption available for some chemicals but not others would have the effect of unnecessarily complicating supplier notification and reporting requirements. In light of this concern, the EPA is specifically requesting comment on the proposal to remove the *de minimis* eligibility for all chemicals of special concern, including PFAS, and is seeking detailed information about the burden and benefits of this proposed change.

Comments to the proposed rule may be submitted using the [Federal eRulemaking Portal](#), using docket identification number EPA-HQ-TRI-2022-0270, and must be received on or before February 3, 2023.

POSTED:

Jan 10, 2023

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In the meantime, facility owners and suppliers using TRI-listed chemicals should review their reporting guidelines and prepare to report on PFAS releases regardless of concentration.

For questions regarding the proposed rule or PFAS regulation generally, please contact Guy Temple, Danielle Marocchi or any member of Reinhart's Product Liability and Safety Team.

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