

Update: EPA Finalizes Rule to Eliminate TRI Reporting Exemption for PFAS

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As forecast in our [December 2022 client alert](#), the Environmental Protection Agency (EPA) has issued a pre-publication version of its [final rule](#) that eliminates the use of the *de minimis* exemption for reporting of per- and polyfluoroalkyl substances (PFAS) to the Toxics Release Inventory (TRI).

The Emergency Planning Community Right-to-Know Act (EPCRA) requires facilities that manufacture, process, or otherwise use TRI listed chemicals to report their environmental release and other waste management quantities of TRI chemicals annually. For chemicals that are not “of special concern,” there is a reporting exemption that allows facilities to avoid reporting if they handle *de minimis* quantities of a TRI listed chemical.

Recognizing that PFAS are used in small concentrations in many products, the *de minimis* exemption had allowed facilities to avoid reporting on most TRI-listed PFAS, if PFAS made up 1% or less of a product (the *de minimis* threshold for PFOA was 0.1%).

The final rule reclassifies all current and future PFAS substances listed on the TRI as chemicals of special concern (currently, there are 189 PFAS substances listed on the TRI), thereby eliminating the *de minimis* reporting exemption for PFAS chemicals. This policy change highlights the EPA’s recently energized attention to PFAS-related rulemaking, including sweeping PFAS reporting

requirements under TSCA, an advance notice of proposed rulemaking regarding classification of PFAS as hazardous under CERCLA, and proposed national drinking water standards for six PFAS.

The final rule also removes a notification exemption that allowed suppliers to refrain from providing notice of a chemical of special concern to downstream facilities when a product contained less than 1% of that chemical. The purpose of removing the exemption is to ensure purchasers are aware of the presence of PFAS and other chemicals of special concern (in any amount) in the mixtures and products they purchase. The new TRI requirements will apply starting with the 2024 reporting year (reports due July 1, 2025).

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National Law Review, Volume XIII, Number 298

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