

## PFAS Update: Comment Deadline Approaches for EPA Proposal to Change the Scope of PFAS Reporting Regulations Under TSCA

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### Overview

On December 29, 2025, the comment period closes for the proposed rule announced by the U.S. Environmental Protection Agency (EPA) on November 10, 2025 (November 2025 Proposed Rule), aimed at changing the scope of the October 2023 PFAS Data Reporting Rule under Section 8(a)(7) of the Toxic Substances Control Act (TSCA), analyzed in our prior [Alert](#). The 2023 rule established a one-time, nationwide back-reporting obligation for manufacturers of PFAS from 2011 to 2022, with no *de minimis* thresholds and only narrow exceptions. The November 2025 Proposed Rule proposes several changes from the final 2023 rule, and most significantly:

- The revised rule would retain the core reporting obligation, as required by the National Defense Authorization Act for Fiscal Year 2020 (NDAA), but would introduce several exemptions that did not appear in the October 2023 Final Rule: (1) 0.1% *de minimis* for PFAS in mixtures or articles, meaning mixtures or articles with PFAS below a 0.1% concentration by weight would not need to report; (2) PFAS in imported articles; (3) PFAS manufactured as byproducts; (4) PFAS present as unintentional impurities; (5) PFAS produced and contained during manufacturing as nonisolated intermediates; and (6) PFAS manufactured in small quantities solely for research and development.
- The revised rule would shorten and shift the reporting submission period. The submission period will begin 60 days after the effective date of the final rule, but instead of six months, the submission window is three months.

EPA frames the proposal as an effort to align the November 2025 Proposed Rule with directives under TSCA Section 8(a)(5) to avoid unnecessary or duplicative reporting, minimize burdens on small manufacturers and focus obligations on entities likely to have relevant information. Public comments on the proposed rule are due by December 29, 2025. According to the Spring 2025 Unified Agenda released by the Office of Information and Regulatory Affairs and the Office of Management and Budget, EPA expects to issue a final rule in or around June 2026.

## Background on Requirements in the October 2023 Final Rule and Extensions

The NDAA amended TSCA Section 8(a)(7) to require the EPA to promulgate a rule requiring each person who manufactures or imports a PFAS for commercial purposes in any year from January 1, 2011, to 2022 to gather and submit certain information, including chemical identity, uses, production volumes, by-products, exposure, disposal, and all existing environmental and health effects information. PFAS is defined as including at least one of three structures:

- $R-(CF_2)-CF(R')R''$ , where both the  $CF_2$  and  $CF$  moieties are saturated carbons;
- $R-CF_2OCF_2-R'$ , where  $R$  and  $R'$  can either be  $F$ ,  $O$  or saturated carbons; and
- $CF_3C(CF_3)R'-R''$ , where  $R'$  and  $R''$  can either be  $F$  or saturated carbons.

This definition is distinguishable from definitions used by other entities. The Organisation for Economic Co-operation and Development (OECD) definition, used by the European Union, defines PFAS as fluorinated substances that contain at least one fully fluorinated methyl or methylene carbon atom, inclusive of any chemical with at least a perfluorinated methyl group ( $CF_3$ ) or a perfluorinated methylene group ( $CF_2$ ). Within the U.S., almost half the states have adopted a definition of PFAS to chemicals containing at least one fully fluorinated carbon atom. EPA's definition of PFAS still does not include substances with a single fluorinated carbon (i.e., trifluoromethyl groups) and does not line up with OECD's definition. In the October 2023 Final Rule, EPA explained its rationale for rejecting the OECD definition by stating, "Many chemical substances covered by the OECD definition are unlike the structures of the PFAS of concern (i.e., PFOA, PFOS, GenX), which have more fluorinated carbons and are more likely to be present in the environment." Further, EPA rejected including substances with one fluorinated carbon because these substances do not share the same environmental or human health impacts as PFOS, PFOA or GenX. Industry stakeholders have noted the value of more chemical-specific rules, arguing that not all compounds

have the same toxicity and should not be regulated the same way, especially considering their critical uses.

At the time of the October 2023 Final Rule, EPA did not adopt any general reporting exemptions. Instead, small manufacturers reporting exclusively as article importers were subject to a 12-month submission period with a reporting deadline of November 10, 2025. Since promulgating the October 2023 Final Rule on October 11, 2023, the agency has extended the reporting deadline twice. The first extension, attributed to budget shortfalls in developing a timely reporting tool, was issued on September 5, 2024, when EPA moved the start of the data submission period from November 12, 2024, to July 11, 2025. Industry groups, such as the American Chemistry Council, agreed with the delay and noted that EPA must assure stakeholders that its systems are functional and will not compromise business information. EPA did not receive any adverse comments against the initial eight-month extension.

## Industry Feedback

Subsequently, EPA published an interim final rule on May 13, 2025, moving the start of the data submission period from July 11, 2025, to April 13, 2026, once again citing constraints in the timely development of reporting software, and announcing its intent to revise and reopen the rule for public comment. In addition to supporting delays in the reporting deadline, industry and manufacturing groups have urged EPA and Congress to significantly cut the lookback period for which companies are required to report. In a 2025 comment letter, the National Association of Manufacturers (NAM) urged EPA to consider a shorter lookback period, citing the complexity and extensiveness of modern supply chains. In another 2025 comment letter, the Complex Products Manufacturers Coalition (CPMC) similarly emphasized the complexity of supply chains, noting that, to determine the presence of a single chemical in their supply chains, manufacturers would be required to assess their supplier networks and request detailed information from other manufacturers and distributors. Such an effort, according to the CPMC, would be substantial and time consuming.

Both the NAM and CPMC comment letters further urged EPA to consider establishing *de minimis* level exemptions consistent with other TSCA reporting rules, suggesting a level of 0.1% because PFAS present at less than 0.1% is considered untraceable in the supply chain. Additionally, a 2025 petition letter authored by a coalition of chemical companies expressed concern over the lack of exemptions in the October 2023 Final Rule, arguing that EPA can and should apply exemptions for by-products, impurities, articles, research and development, and a *de minimis* threshold.

# The November 2025 Proposed Rule

Incorporating comments received during the last extension of the submission period, EPA characterizes the November 2025 Proposed Rule as striking a balance between maintaining required reporting on PFAS and maximizing regulatory value by exempting activities where manufacturers are less likely to know or reasonably ascertain the relevant information, eliminating duplicative or unnecessary information, minimizing the cost of compliance, and applying reporting obligations to persons with relevant information.

Under the November 2025 Proposed Rule, EPA does not propose to change the information that it will require to be provided. EPA plans to leave intact the structural definition of PFAS and the 2011-2022 lookback period, and the agency is not proposing to narrow the list of reportable chemical substances. While there is stakeholder interest in limiting the reporting period, the NDAA was precise in directing EPA to promulgate a rule requiring any person who, since 2011, manufactured PFAS to report the required information. However, EPA does seek to soften the impact of the PFAS reporting obligation and strike greater regulatory balance under the November 2025 Proposed Rule.

First, EPA seeks to amend the submission period so that the reporting window would start two months after the effective date of the final rule and remain open for three months. The November 2025 Proposed Rule is anticipated to be finalized in or around June 2026, with the reporting window to open in mid-2026, pending timeliness of the final rule and potential legal challenges.

Second, EPA also proposes to clarify how manufacturers should submit information on PFAS environmental and health effects through a standardized format known as the OECD harmonized template (OHT).

Finally, and most notably, EPA established several categories of exemptions from reporting obligations.

## Proposed Exemptions

Stakeholders have urged EPA to consider exemptions to the PFAS reporting rule, and the November 2025 Proposed Rule proposes several such exemptions. In particular, the November 2025 Proposed Rule would expand certain categories for which

reporting is not required, so that those otherwise subject to the rule would not have to report in the following circumstances:

### *The De Minimis Exemption*

PFAS in a mixture or article at concentrations below 0.1% would be exempt from reporting, regardless of total production volume of the product. According to EPA, this threshold is justified based on the retrospective lookback period and contemporaneous labeling and notification practices, noting that companies are unlikely to have known about PFAS below 0.1% and that such reporting may yield minimal value relative to the burden. EPA, however, is requesting comment on whether a higher 1.0% *de minimis* level or another threshold would be more appropriate.

### *Imported Articles*

Import of PFAS as part of an article (or finished good) would be exempt. "Article" is defined as a manufactured item formed to a specific shape or design, with end-use function(s) dependent upon its shape or design during end use, and with either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose and that result from a chemical reaction that occurs upon end use of other chemical substances. Fluids and particles are not considered articles regardless of shape or design. The imported articles exemption was favored by industry groups in light of the limited value and high cost of acquiring the information.

EPA is also proposing to eliminate the separate extended, six-month deadline for small article importers given that they would likely now be exempt under the November 2025 Proposed Rule.

In the November 2025 Proposed Rule, EPA is interpreting its directive under the NDAA to exclude articles because the language of the act suggests that Congress chose to specifically target PFAS manufacturers. Consequently, EPA is requesting comment on whether the National Defense Authorization Act is best read as excluding articles from the scope of reporting.

### *By-products, Impurities and Nonisolated Intermediates*

EPA proposes to exempt PFAS manufactured as certain byproducts, impurities and non-isolated intermediates.

“By-product” is defined to mean a chemical substance produced without a separate commercial intent during the manufacture, processing, use, or disposal of another chemical substance(s) or mixture(s). The proposed byproduct exemption would apply only to the byproduct, not the component substances extracted from a byproduct when those substances are reportable PFAS.

An “impurity” is defined to mean a chemical substance unintentionally present with another chemical substance. According to EPA, impurities have no distinct commercial purpose apart from the vehicle in which they are contained. EPA notes that the manufacturing of PFAS as impurities would only derive from the import of materials with PFAS as impurities, and as such not provide EPA with relevant information.

“Non-isolated intermediates” is defined to mean substances manufactured and consumed within a closed system in production. According to EPA, such substances remain confined within the system and are not expected to be released in the environment. As a result, EPA has determined that reporting for these intermediaries is unnecessary.

### *Research & Development Quantities*

Reporting would not be required where a person manufactures (including imports) PFAS solely in small quantities for research and development. The proposed exemption has no threshold limit. Based on stakeholder input, EPA points to burdens associated with tracking thousands of small-quantity R&D substances where there would be minimal information regarding PFAS exposures and quantities in commerce, particularly for small entities.

## Scope of Environmental and Health Effects Information Subject to Reporting

The October 2023 Final Rule requires the submission of exposure-related information and all existing information concerning the environmental and health effects of covered chemical substances. “All existing information concerning environmental and health effects” is defined to include any information of any effect of a chemical substance or mixture on health or the environment, or both. According to EPA, this term is intended to be interpreted broadly.

Exposure-related information is to be reported using the OHT format. In the November 2025 Proposed Rule, EPA proposes a regulatory change to confirm that OHTs are required for unpublished study reports on the environmental and health effects of the reportable PFAS, except for exposure information provided in the fielded data elements throughout the reporting application. EPA is also seeking public comment on template- or format-related requirements for environmental and health effect and exposure information and the associated burden.

## Criticism of Exemptions

Some environmental groups have argued that the exemptions of the November 2025 Proposed Rule are not permitted by statutory requirements. Others assert that, by removing reporting requirements for imported articles and low-concentration mixtures, EPA may lose visibility with respect to certain pathways through which PFAS enters the environment, undermining the purpose of better understanding potential exposures and risks associated with PFAS use and presence.

## Timing Considerations and Next Steps

Public comments on the November 2025 Proposed Rule will be due 45 days after publication in the Federal Register, ending on December 29, 2025.

If the rule is finalized as proposed, EPA would amend its regulations so that the data submission period would begin two months after the effective date of the final revision and remain open for three months, with a likely mid-2026 start date. The lookback period (2011-2022) and the obligation to submit data for each year in which PFAS were manufactured is not subject to change under the November 2025 Proposed Rule. We will continue to monitor evolving compliance requirements and legal challenges, and our *Alert* authors or a member of Kirkland's PFAS Task Force can assist with additional guidance.

*Natalie Lara also contributed to this Alert.*

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## Related Services

### Practices

- Environmental

## Suggested Reading

- 30 October 2025 Kirkland Alert PFAS Update: Scrapping Prior Broader Proposal, EU Publishes Updated Narrower Proposal to Restrict the Manufacture, Use and Marketing of PFAS Chemicals
- 25 August 2025 Kirkland Alert U.S. Environmental Protection Agency Proposes to Alter Framework for Regulating Many Sources of Air Emissions
- 25 July 2025 Kirkland Alert The “One Big Beautiful Bill Act” is Signed Into Law by President Trump: Key Changes to Environmental Programs

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