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EPA Considers Expanding List of PFAS Chemicals Regulated Under CERCLA

On April 13, the Environmental Protection Agency (EPA) published an Advance Notice of Proposed Rulemaking (ANPRM) to expand the list of per- and polyfluoroalkyl (PFAS) chemicals currently proposed to be regulated under the Comprehensive Environmental Responsibility, Compensation and Liability Act (CERCLA). EPA uses ANPRMs to obtain public input and data to assist the agency in its deliberations regarding the development of potential future regulations.

In September 2022, EPA proposed a rule to designate perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) as hazardous substances under CERCLA. This designation would give EPA the ability to require responsible parties to remediate PFAS in the environment that may present a substantial danger to the public health or welfare or to the environment. While EPA has not yet published a final rule with regard to the listing of PFOA and PFOS, it seems imminent given that this ANPRM proposes designating as hazardous substances seven additional PFAS chemicals as well as the precursors to PFOA and PFOS. In addition, EPA is considering whether to initiate a future rulemaking that would designate categories of PFAS that share one or more similar characteristics as hazardous substances. The listing of these additional substances likely will create additional challenges and costs for the evaluation and remediation of sites where such substances may have been used.

In March, EPA conducted two "listening sessions" to provide the public with an opportunity to comment on the agency's proposal to develop an enforcement discretion and settlement policy with regard to PFAS cleanup enforcement actions under CERCLA after concerns arose in many sectors regarding how EPA would pursue CERCLA enforcement given the breadth of potentially responsible parties and the ubiquitous nature of PFAS. Given this new development, we expect additional communications from EPA in the coming months.

EPA is taking these actions in accordance with its PFAS Strategic Roadmap, announced in 2021, to address growing concerns over PFAS pollution. The ANPRM is published in the *Federal Register* at 88 Fed. Reg. 22399 (April 13, 2023) and can be accessed [here](#). The ANPRM is open for a 60-day comment period, closing on June 12.

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