

Publications

USEPA Seeks Input on Designating More PFAS as CERCLA Hazardous Substances

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On April 13, 2023, USEPA issued an [Advanced Notice of Proposed Rulemaking](#) (ANPRM) that seeks public input on whether to designate additional PFAS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Industry participants, including members of the oil and gas industry, should closely review the following list of PFAS under consideration for future regulation to determine if their business may be impacted:

1. Seven PFAS, besides PFOA and PFOS*, and their salts and structural isomers, or some subsets thereof, which include:
 1. Perfluorobutanesulfonic acid (PFBS), CASRN 375-73-5
 2. Perfluorohexanesulfonic acid (PFHxS), CASRN 355-46-4
 3. Perfluorononanoic acid (PFNA), CASRN 375-95-1
 4. Hexafluoropropylene oxide dimer acid (HFPO-DA), CASRN 13252-13-6 (sometimes called GenX)
 5. Perfluorobutanoic acid (PFBA) CASRN 375-22-4
 6. Perfluorohexanoic acid (PFHxA) CASRN 307-24-4
 7. Perfluorodecanoic acid (PFDA) CASRN 335-76-2;
2. Precursors to PFOA, PFOS, and other PFAS listed above; and
3. Categories of PFAS that share one or more similar characteristics, such as chemical structure.

*USEPA already issued a [Proposed Rule](#) in September 2022 that would designate PFOS and PFOA as CERCLA hazardous substances—USEPA is currently reviewing comments on that proposed rule.

Designation as a CERCLA hazardous substance would mean reporting obligations for releases of the designated PFAS that meet or exceed reportable quantities, and that any party potentially responsible for a release of the designated PFAS at a site could be subjected to CERCLA clean up liability. The ANPRM states that USEPA is separately developing a CERCLA PFAS enforcement discretion policy—USEPA has previously indicated that this policy will focus enforcement efforts on

PFAS manufacturers and other industries whose actions result in the release of significant amounts of PFAS into the environment.

The ANPRM does not impose any regulatory obligations. If USEPA decides to move forward with designating additional PFAS as CERCLA hazardous substances, USEPA will publish a proposed rule and seek public comment.

Comments on the ANPRM are due June 12, 2023.

If you have questions or concerns about this ANPRM, or if you would like assistance preparing comments, please contact Greg Russell, Rick Schuster, Brooke Zentmeyer and Kristin Watt, or your Vorys attorney.