

EPA Positioned To Release Proposed Rule Designating PFOA and PFOS as Hazardous Substances Under CERCLA

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An important step in the US Environmental Protection Agency's (EPA) Strategic Roadmap for Per- and Polyfluoroalkyl Substances (PFAS) was completed on August 12 when the Office of Management and Budget (OMB) announced the completion of its review of an EPA proposal to designate two PFAS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

EPA first signaled its intent to designate perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) with [an advance notice of public rulemaking published in January 2021](#), prior to the [Strategic Roadmap](#) released later that year. The completion of the OMB review means that EPA will soon be positioned to officially and publicly release the proposed rule. However, OMB's review of the proposal identified it as "economically significant," a designation different than that posited by EPA and which will require EPA to complete a regulatory impact analysis (RIA). An RIA is required by Executive Order with respect to regulatory actions expected to result in an economic impact of \$100 million or more. Once published in the *Federal Register*, the public will have the opportunity to comment on the rule. Under the Biden Administration's Unified Agenda, a final rule is expected to be issued in August 2023.

The designation of PFOA and PFOS as hazardous substances under CERCLA will have significant implications for a broad range of industry members with respect to both potential reporting requirements and potential remedial liabilities.

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