

# US EPA Proposes PFAS Hazardous Substances Designation

Article By:

Nicole E. Bothwell

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In a landmark action, US EPA recently [proposed](#) to designate two of the most widely used per- and polyfluoroalkyl substances (PFAS) as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as “Superfund.” If finalized, this rule would require entities to report releases of those PFAS substances and would authorize US EPA to order cleanups by potentially responsible parties. Given the potential for widespread liability for such parties if the rule is finalized, it is likely to trigger significant debate from supporters and challengers alike.

The proposed rule would designate perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), including their salts and structural isomers, as hazardous substances under CERCLA. Although CERCLA has been enacted since 1980, this is the first time US EPA has proposed adding new substances to the hazardous substances list. To propose designation as a hazardous substance, the Agency must determine that the substance may present substantial danger to public health or welfare or the environment when released. In the proposed rule, US EPA noted the widespread detection of PFOA and PFOS in the environment and cited the health and safety assessments for the substances that have been undertaken by numerous federal, state, and international governmental entities. Based on the adverse health effects identified in these studies, US EPA found a hazardous substance designation for PFOA and PFOS appropriate. Notably, the Agency interpreted CERCLA to preclude it from taking cost into account in making this designation.

If the rule is finalized such that PFOA and PFOS are added to the list of hazardous substances under CERCLA, the most direct effect would be that parties will be required to report releases of one pound or more of those substances. However, the indirect effects of the rule would likely be much more extensive and could include the ability for US EPA or state agencies to recover cleanup costs from potentially responsible parties and the ability for those agencies to respond to releases without making the “imminent and substantial danger” finding that is currently required.

Due to the persistent nature of PFAS, which are often termed “forever chemicals,” the pool of potentially responsible parties who could be held responsible for cleanup costs is extremely large. US EPA has [said](#) that it is focused on holding responsible those who have manufactured and released “significant amounts” of PFOA and PFOS into the environment, and noted that it plans further outreach and engagement to hear from impacted communities during the consideration of the proposed rule. Further, US EPA plans to consider designating other PFAS compounds as hazardous substances following this rulemaking.

It is likely that the proposal will result in robust comment from many perspectives. The rule stands to set significant CERCLA precedent as well as open the door to significant remediation efforts.

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