

EPA Seeks Comments on Potential Designation of Additional PFAS as CERCLA Hazardous Substances

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On April 13, 2023, the U.S. Environmental Protection Agency (EPA) [published in the federal register](#) an Advanced Notice of Proposed Rulemaking (ANPRM) seeking public input to inform its decision whether to designate additional per- and polyfluoroalkyl substances (PFAS) as hazardous substances under Section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The ANPRM is not a proposed rule, but it may be the first step in the potential designation of the listed substances and the potential designation of categories of PFAS as hazardous substances. The designation of additional PFAS was a stated goal of EPA's October 2021 [Strategic Roadmap](#).

This ANPRM follows EPA's September 6, 2022 [proposed rule designating PFOA and PFOS as hazardous substances](#), which is expected to be finalized in the coming months. The designation of PFOA and PFOS as hazardous substances would be the first time in EPA's history that a substance is designated as hazardous under Section 102(a) of CERCLA. Today's ANPRM reiterates EPA's position that it need not consider cost when designating a substance as hazardous under Section 102(a) of CERCLA, a position first made in the still-pending proposed rule designating PFOA and PFOS as hazardous substances.

Which PFAS may EPA Regulate?

The ANPRM seeks public input regarding the possible designation as hazardous substances of:

1. Seven PFAS besides Perfluorooctanoic acid (PFOA) and Perfluorooctane sulfonic acid (PFOS):
 - Perfluorobutanesulfonic acid (PFBS), CASRN 37573-5

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- Perfluorohexanesulfonic acid (PFHxS), CASRN 35546-4
 - Perfluorononanoic acid (PFNA), CASRN 37595-1
 - Hexafluoropropylene oxide dimer acid (HFPODA), CASRN 13252-13-6 (known as GenX)
 - Perfluorobutanoic acid (PFBA) CASRN 37522-4
 - Perfluorohexanoic acid (PFHxA) CASRN 30724-4
 - Perfluorodecanoic acid (PFDA) CASRN 33576-2

2. Precursors to PFOA, PFOS, and the listed PFAS; and/or

3. Categories of PFAS.

What Information is EPA Seeking?

EPA makes twelve specific requests for information to supplement its own data on the human health effects, mobility, persistence, and prevalence of these substances. The requests are divided into three categories.

- First, EPA seeks additional scientific literature or data on the seven listed PFAS, whether any other PFAS should be designated, and information on the potential direct and indirect costs and benefits of designating these substances.
- Second, EPA is seeking scientific literature or data related to the environmental degradation of precursors to PFOA, PFOS, or the seven listed PFAS, as well as potential cost and benefit information associated with the designation of these precursors.
- Third, EPA seeks information and comments on whether it should designate PFAS as hazardous substances using a categorical approach.

When are Comments Due?

Comments are due on June 12, 2023, with comments on the information collection provisions (Paperwork Reduction Act) due on May 15, 2023.

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