



Notice of
Proposed Rulemaking Designating
Perfluorooctanoic Acid (PFOA) and
Perfluorooctanesulfonic (PFOS) Acid
as CERCLA Hazardous Substances

US EPA
Office of Superfund Remediation and Technology Innovation (OSRTI)
September 2022

1

Purpose

- ▶ The purpose of this webinar is to provide information on EPA's Notice of Proposed Rulemaking (NPRM) to designate perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) as Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) hazardous substances.

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2

2

CERCLA Authorizes Listing

- ▶ Comprehensive Environmental Response, Compensation, and Liability Act of 1980, commonly referred to as 'CERCLA' or 'Superfund'.

CERCLA Section 102

- Authorizes the EPA Administrator to revise the substances specified as hazardous under CERCLA Section 102 and designate additional hazardous substances that may present substantial danger to the public health or the environment.
 - Assigns a reportable quantity (RQ) of one pound to each hazardous substance and authorizes EPA to promulgate regulations to revise the statutory RQ. The RQ identifies the quantities of substances that if released require notification and sets forth the notification requirements for releases of these substances
- ▶ There are currently about 800 CERCLA hazardous substances. In addition, there are approximately 1,500 known radionuclides, approximately 760 of which are listed individually.

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3

3

Potential Tribal Interests

The Tribal PFAS Working Group identified designation of per- and polyfluoroalkyl substances (which include PFOA and PFOS) as hazardous substances as one of the "Current Tribal PFAS Science Needs, Issues and Priorities." Tribes and tribal groups have expressed concerns in the past about the proximity of PFOA and PFOS contamination to tribal lands. The reporting requirement of this rule will provide tribes with increased information on releases that impact their lands, people, or resources.

Tribal PFAS Working Group:

http://www7.nau.edu/itep/main/ntwc/docs/Tribal_PFAS_WG_Flyer.pdf

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4

4

EPA's PFAS Strategic Roadmap

- EPA's PFAS Strategic Roadmap, released in October 2021, outlines a bold, strategic, whole-of-EPA strategy to protect public health and the environment from PFAS.
- The Roadmap complements coordinated federal efforts across the Biden-Harris Administration to secure clean air, safe food, and clean drinking water.
- The Roadmap outlines specific actions across EPA's programs to research, restrict, and remediate PFAS, and highlights the principles of science-based decision-making and holding polluters accountable.
- A foundational commitment in the PFAS Roadmap is to issue a proposed rule to designate PFOA and PFOS as CERCLA hazardous substances.

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5

5

Background

- ▶ EPA is proposing to designate PFOA and PFOS including their salts and structural isomers, as hazardous substances because evidence indicates that these chemicals my present substantial danger to the public health and the environment.
- ▶ PFOA and PFOS are persistent and mobile in the environment, and exposure can lead to adverse human health effects, including high cholesterol, increased liver enzymes, thyroid disorders, pregnancy-induced hypertension and preeclampsia and cancer.
- ▶ PFOA and PFOS are common contaminants in the environment because of their release into the environment since the 1940s and their resistance to degradation.
- ▶ PFOA and PFOS are found in many environmental media and in wildlife worldwide.

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6

6

Background Continued

- ▶ These designations would require facilities across the country to report on PFOA and PFOS releases that meet or exceed the reportable quantity assigned to these substances.
- ▶ These designations would also enhance the ability of federal, Tribal Nations, state and local authorities to obtain information regarding the location and extent of releases.
- ▶ The rule will allow Tribes to be notified of releases of PFOA or PFOS that meet or exceed the reportable quantity of one pound or more within a 24-hour period on their land and would provide EPA greater authority to address existing releases of PFOA or PFOS.

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7

7

Sources of PFOA and PFOS

- ▶ Environmental sources can include industrial discharge to soil, air, and water of PFOA and PFOS directly.
- ▶ PFOA and PFOS precursors can be converted to PFOA and PFOS, respectively, by microbes in soil, sludge, and wastewater and through abiotic chemical reactions.
- ▶ PFOA and PFOS that are deposited in a landfill or created by the degradation of their precursors in industrial and consumer waste can discharge via leachates, groundwater pollution/migration and atmospheric releases.
- ▶ The principal worldwide manufactures of PFOA and PFOS and related chemicals phased out their production in the early 2000s although PFOA and PFOS may still be produced by international companies that import treated products to the US.

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8

8

Prevalence of PFOA and PFOS

- ▶ PFOA and PFOS are widely detected in surface water samples collected from various rivers, lakes and streams in the United States.
- ▶ PFOA and PFOS have been detected in surface and subsurface soils.
- ▶ They have been detected in groundwater in monitoring wells, private drinking water wells, and public drinking water systems throughout the country.
- ▶ In addition to being found in groundwater, surface water, soil, sediment and air, they have been found in wild and domestic animals such as fish, shellfish, alligators, deer and avian eggs.

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9

9

Proposal to Protect Communities

Notice of Proposed Rulemaking (NRPM) to designate perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) as CERCLA hazardous substances.

Once finalized, these designations as CERCLA Hazardous Substances would:

- Require facilities across the country to report on PFOA and PFOS releases that meet or exceed the reportable quantity assigned to these substances.
- Enhance the ability of federal, Tribal Nations, state and local authorities to obtain information regarding the location and extent of releases.
- Allow EPA and other agencies to respond to release or threats of releases of PFOA and PFOS as hazardous substances (CERCLA 104(a)(1)(A)) without making a determination of imminent and substantial danger (CERCLA 104(a)(1)(B)).
- Help establish national consistency in the evaluation and cleanup of PFOA and PFOS and encourage better waste management practices.

The rule is designated economically significant.

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10

10

Rulemaking Timeline

Dates	Actions
August 26, 2022	NPRM is posted on EPA's website.
September 6, 2022	NPRM published in the Federal Register.
October 7, 2022	Deadline for tribes to inform EPA if they would like consultation.
August 26 - October 24, 2022	Schedule and perform all requested consultations.
November 7, 2022	Deadline for submission of public comments.
August 2023 (estimated)	Final Rule

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11

11

Public Comment

For more information, please visit:

<https://www.epa.gov/superfund/proposed-designation-perfluorooctanoic-acid-pfoa-and-perfluorooctanesulfonic-acid-pfos>

To submit public comment on the rulemaking, please visit:

<https://www.regulations.gov>

Docket # EPA-HQ-OLEM-2019-0341

The deadline to submit public comment is November 7, 2022.

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12

12

Government-to-government consultation

- ▶ To request government-to-government consultation on this NPRM, please contact:

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(202) 566-0995

- ▶ The deadline to request consultation is October 7, 2022.
- ▶ This consultation process is being conducted in accordance with the EPA Policy on Consultation and Coordination with Indian Tribes (<https://www.epa.gov/tribal/forms/consultationandcoordination-tribes>). EPA does not expect that the memorandum would have tribal implications as specified in Executive Order 13175.

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13

13



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14