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Client Advisory

USEPA Announces Proposed Rule to Designate Two PFAS Compounds as Hazardous Substances Under CERCLA

On August 26, 2022, the United States Environmental Protection Agency (USEPA) announced that it proposed to designate two per- and polyfluoroalkyl substances (PFAS) compounds as “hazardous substances” under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). USEPA’s announcement on the new health advisories can be found [here](#). The proposal applies to perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), including their salts and structural isomers.

According to USEPA, PFOA and PFOS are two of the most widely used PFAS substances and “may present a substantial danger to human health or welfare or the environment.” In addition to PFOA and PFOS, USEPA indicated that it will also consider similar designations for other PFAS compounds.

This proposed rule comes on the heels of USEPA’s proposal in June to lower the levels at which PFOA, PFOS and two other PFAS compounds are considered safe in drinking water. Archer’s prior alert on USEPA’s proposed drinking water standards can be found [here](#).

If the proposed rule is adopted, it would require the reporting of releases of PFOA and PFOS above certain thresholds, and it would also give USEPA discretion to order cleanups of the compounds as well as seek recovery of cleanup costs from potentially responsible parties under CERCLA. Additionally, the designation of PFOA and PFOS as hazardous substances would also allow potentially responsible parties to pursue claims for contribution or cost recovery under CERCLA in connection with investigation and remediation of the compounds.

USEPA is going to publish the Notice of Proposed Rulemaking in the Federal Register in the coming weeks, which will trigger a 60-day public notice and comment period. Once the public notice and comment period closes, USEPA said it will issue an Advance Notice of Proposed Rulemaking to seek public comment on designation other PFAS compounds as hazardous substances under CERCLA.

PFAS are a class of synthetic, man-made chemicals that have been used since the 1940s to make products that are resistant to water, heat, and oil. These products include cookware, carpets, clothing, fabrics for furniture, paper packaging for food, and other materials that are resistant to water, grease, or stains. They are also used in firefighting foams and in a number of industrial processes.

For questions about the proposed rule or forthcoming USEPA action related to PFAS, please contact [David Edelstein](#) at dedelstein@archerlaw.com or 856-354-3125, or [Charles Dennen](#) at cdennen@archerlaw.com or 856-673-3932.

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