

EPA's Spring Unified Regulatory Agenda – Upcoming PFAS-Related Actions

Released June 2022

Regulatory Update

The US Environmental Protection Agency (EPA) recently released its [Spring 2022 Unified Agenda of Regulatory and Deregulatory Actions](#) detailing its upcoming rulemakings, including actions related to per- and polyfluoroalkyl substances (PFAS). As reflected by [EPA's release](#) of drinking water health advisories for certain PFAS on June 15, federal agencies are initiating PFAS-related regulatory actions that will pose new compliance challenges with [far-reaching implications](#) for a broad spectrum of the regulated community and affected stakeholders. The Spring Unified Agenda includes the following PFAS-related regulatory actions of interest:

US Department of Defense (DoD) – Defense Acquisition Regulatory Council (DARC)

- [Proposed rule to restrict certain items containing PFOS or PFOA](#): The DoD is proposing to amend its Federal Acquisition Regulation to implement section 333 of the National Defense Authorization Act (NDAA) for Fiscal Year 2021. Section 333 of the NDAA prohibits DoD from procuring any covered item that contains perfluorooctane sulfonate (PFOS) or perfluorooctanoic acid (PFOA). Covered items include: (1) nonstick cookware or cooking utensils for use in galleys or dining facilities; and (2) upholstered furniture, carpets, and rugs that have been treated with stain-resistant coatings. DoD intends to publish a Notice of Proposed Rulemaking (NPRM) in July 2022.

EPA – Office of Water (OW)

- [Proposed rule to regulate PFOA and PFOS in drinking water](#): EPA previously published a [Regulatory Determination](#) to regulate PFOA and PFOS in drinking water. Under the Safe Drinking Water Act (SDWA), following publication of the Regulatory Determination, EPA must propose a maximum contaminant level goal (MCLG) and a national primary drinking water regulation (NPDWR) not later than 24 months after determination and promulgate a NPDWR within 18 months after the proposal. EPA intends to develop a proposed NPDWR for PFOA and PFOS and will continue to consider other PFAS as part of a key commitment in its [PFAS Strategic Roadmap: EPA's Commitments to Action 2021-2024 \(PFAS Strategic Roadmap\)](#). This proposed action follows EPA's final action in December of last year to adopt the [fifth Unregulated Contaminant Rule \(UCMR5\)](#) providing for public water systems to collect drinking water occurrence data for 29 PFAS and EPA's release of interim Health Advisories for PFOA and PFOS. The implications of the health advisories are discussed in [this Hunton Andrews Kurth blog](#). EPA intends to publish an NPRM to regulate PFOA and PFOS in drinking water in December 2022 and plans to finalize this rule in December 2023.

EPA – Office of Land and Emergency Management (OLEM)

- [Proposed rule to designate PFOA and PFOS as CERCLA hazardous substances](#): EPA's proposed action to designate PFOA and PFOS as hazardous substances is one the most anticipated actions set forth in the PFAS Strategic Roadmap with potentially vast implications for federal, state, and local authorities, private parties, and sites across the country. As [previously reported](#) by Hunton Andrews Kurth, EPA submitted a proposed rule for review to the White House Office of Management and Budget (OMB) in January of this year. While the proposed rule was expected in June 2022, it remains pending. EPA plans to finalize this rule in August 2023.
- [Pre-rule on PFAS-related designations as CERCLA hazardous substances](#): EPA is considering an Advance Notice of Proposed Rulemaking (ANPRM) to seek public input on further PFAS-related designations under CERCLA. For example, the Agency may request input regarding the potential hazardous substance designation of precursors to PFOA and PFOS; hazardous substance designation of additional PFAS; and designation, or designations of classes or sub-classes, of PFAS as hazardous substances. EPA intends to publish the ANPRM in November 2022.

- [Final rule on PFAS reporting and recordkeeping under Section 8\(a\)\(7\) of TSCA](#): EPA published a [proposed rule](#) addressing reporting and recordkeeping requirements for PFAS under Section 8(a)(7) of TSCA in June 2021. Under the proposed rule, persons that have manufactured or imported certain PFAS and PFAS-containing articles in any year since January 1, 2011 would be subject to the reporting and recordkeeping requirements. While noting the likelihood of international trade and investment effects, EPA expects that the rule would enable EPA to better characterize the sources and quantities of PFAS in the United States. Hunton Andrews Kurth has [previously commented](#) on the expansive nature of EPA’s proposed rule. EPA plans to finalize this rule in December 2022.
- [Final rule to add certain PFAS to the Toxic Release Inventory \(TRI\) for reporting year 2022 as mandated by the NDAA](#): Section 7321 of the NDAA provides a framework for PFAS to be added automatically to the TRI list – a list of chemicals reportable under Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) – on January 1 of the year following certain EPA actions. In December 2021, EPA announced the statutory addition of the PFAS chemicals covered by the NDAA to the list of chemical substances subject to reporting for the TRI. This regulatory action amends the EPCRA regulations in 40 C.F.R. part 372 to reflect this statutory addition. A final rule was expected in June 2022 but has not been released yet.
- [Proposed rule to change reporting requirement for PFAS and community right-to-know toxic chemical release reporting](#): EPA is developing a proposal, under Section 313 of EPCRA and Section 6607 of the Pollution Prevention Act (PPA), to add PFAS to the List of Lower Thresholds for Chemicals of Special Concern (Chemicals of Special Concern). The addition of the PFAS to this list will eliminate the use of the *de minimis* exemption, eliminate the option to use Form A, and limit the use of range reporting. In addition, EPA is proposing to eliminate the use of the *de minimis* exemption under the Supplier Notification Requirements for facilities that manufacture or process all chemicals included on the Chemicals of Special Concern list. The elimination of the *de minimis* exemption for supplier notification purposes is intended to help facilities to identify potential sources of PFAS and other Chemicals of Special Concern, which EPA believes will result in a more complete picture of the releases and waste management quantities for these chemicals. Without a *de minimis* exemption, it is likely that TRI reporting burdens will increase, and more companies, including companies that have not typically been required to report, will be subject to new reporting requirements. EPA intends to publish an NPRM in September 2022 and plans to finalize this rule in November 2023.
- [Proposed rule to add certain PFAS to the Toxics Release Inventory](#): EPA is developing a rulemaking to add certain PFAS to the TRI list in direct response to a statutory mandate under Section 7321(d) of the NDAA for Fiscal Year 2020. As described above, EPA is required to evaluate whether certain specific PFAS meet the EPCRA Section 313 listing criteria by December 2021 and is required to add any PFAS that EPA determines meet the listing criteria by December 2023. EPA intends to publish an NPRM in February 2023 and plans to finalize this rule in November 2023.
- [Proposed inactive inventory PFAS Significant New Use Rule](#): EPA is developing a significant new use rule (SNUR) under Section 5(a)(2) of TSCA for certain uses of PFAS designated as “inactive” on the TSCA Inventory. Persons subject to the Inactive Inventory PFAS SNUR would be required to notify EPA at least 90 days in advance of commencing manufacture (including import) or processing for any use that EPA has determined is a significant new use. The required notifications would initiate EPA’s evaluation of the intended use. EPA intends to publish an NPRM in September 2022 and plans to finalize this rule in June 2023.

The following items have been added to EPA’s “long-term” action list:

- [Amendments to CWA Effluent Limitations Guidelines \(ELGs\)](#) for the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) point source category to address PFAS discharges from facilities manufacturing PFAS. NPRM expected September 2023.
- [Amendments to Metal Finishing ELGs](#) to address PFAS discharges in chromium electroplating wastewater. NPRM expected August 2024.
- [Listing of PFOA, PFAS, PFBS, and GenX as RCRA Hazardous Constituents](#): EPA is evaluating the existing toxicity and health effects data on four PFAS constituents to determine if they should be listed as RCRA Hazardous Constituents in response

to petitions from the Governor of New Mexico, Public Employees for Environmental Responsibility, and Berkeley School of Law on behalf of five other organizations. NRPM expected August 2023.

Hunton Andrews Kurth LLP's environmental team has the legal knowledge and scientific background required to address [PFAS](#)-related regulatory and compliance challenges. Our natural resource and chemical attorneys work together with our firm's in-house scientist and policy advisors to create comprehensive strategies for our clients nationwide.

Please contact our team regarding PFAS-related questions:



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