

# U.S. EPA Adopts Expanded Definition of PFAS on Its Drinking Water Contaminants List

## Publications

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On November 2, 2022, U.S. EPA released the pre-publication version of the fifth contaminant candidate list (CCL 5) containing 66 chemicals, 12 microbes, and three chemical groups (per- and polyfluoroalkyl substances (PFAS), cyanotoxins, and disinfection byproducts). Under the Safe Drinking Water Act (SDWA), every five years, U.S. EPA is obligated to publish a list of unregulated contaminants and contaminant groups that are known or anticipated to occur in public water systems and that may require regulation. Once on the CCL, U.S. EPA will compile and evaluate additional data and then proceed to make regulatory determinations for those contaminants that U.S. EPA determines present the greatest public health concerns. A regulatory determination is a formal decision by U.S. EPA that is the first step in developing a national primary drinking water regulation for a specific contaminant. For example, U.S. EPA recently made regulatory determinations for perfluorooctanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA) and is in the process of working on developing drinking water standards for these contaminants.

With respect to the PFAS chemical group included in CCL 5, U.S. EPA defined PFAS as a class of chemicals with the chemical structure  $R-(CF_2)-C(F)(R'),R$  where the  $CF_2$  and the  $CF$  moieties are saturated carbons and none of the  $R$  groups can be hydrogen. The definition triggered opposition from both industry and environmental groups. Industry groups opposed the class approach, noting that not all PFAS pose the same risks and that adopting a class approach can lead to the regulation of useful and necessary products. Environmental group, on the other hand, sought a broader definition that would include any compound containing at least one fully fluorinated methyl or methylene carbon atom.

U.S. EPA specifically acknowledged that this definition as limited to the CCL 5 and should not be reviewed as representing U.S. EPA's definition of PFAS for all regulatory programs. However, U.S. EPA does seem more sympathetic to the concerns raised by the environmental groups as evidenced by the following excerpt from the pre-publication notice:

EPA is also aware there may be emerging contaminants such as fluorinated organic substances that may be used in or are a result of the PFAS manufacturing process (e.g., starting materials, intermediates, processing aids, by-products and/or degradates) that do not meet the structural

definition. Those emerging PFAS contaminants or contaminant groups may be known to occur or are anticipated to occur in public water systems, and which may require regulation. If emerging PFAS contaminants or contaminant groups are identified, EPA may consider moving directly to the regulatory determination process or consider listing those contaminants for future CCL cycles. EPA will continue to be proactive in considering evolving occurrence and health effects data of these emerging contaminants.

We will continue to track U.S. EPA's ongoing efforts to regulate PFAS in the various environmental media and provide timely updates on the Corporate Environmental Lawyer blog.

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