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## EPA Moves Forward with PFAS Action Plan, Seeks Public Comment on Adding PFAS Chemicals to the Toxics Release Inventory

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Recently, EPA released an advanced notice of proposed rulemaking that solicits public input as EPA considers whether to propose adding certain per- and polyfluoroalkyl substances (PFAS) to the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and section 6607 of the Pollution Prevention Act (PPA). These requirements are more commonly known as the Toxics Release Inventory (TRI), which calls for covered facilities to submit annual data for each listed chemical—in excess of statutory thresholds—that is released to the environment, or managed through recycling, recovery, and treatment. According to the advance notice, EPA will also consider whether to reduce the established reporting threshold for any listed PFAS due to concerns regarding environmental persistence and bioaccumulation.

As a first step towards adding certain PFAS chemicals to the TRI, EPA is issuing this notice to gather information and provide an early opportunity for stakeholder involvement. In general, the advance notice signals EPA's recognition that certain PFAS may cause: (1) cancer or other chronic human health effects; (2) significant adverse acute human health effects; or (3) significant adverse environmental effects. In particular, EPA seeks public comment regarding which, if any, of the approximately 600 PFAS chemicals currently active in U.S. commerce should be considered for listing. Moreover, EPA seeks public comment regarding how to list PFAS, *i.e.*, as individual chemicals, as a category, or as multiple categories. The form of listing greatly affects reporting and compliance, because TRI reports for chemicals listed as a category must include combined data for all members of the category. While a categorical listing would reduce the burden on covered facilities to track and report data for each individual PFAS, it could also trigger the

reporting threshold for more facilities depending upon which chemicals are included in the listed category and which chemicals are manufactured or used by the facility.

Finally, EPA seeks public comment on the appropriate reporting thresholds for certain PFAS given their persistence and bioaccumulation potential, as well as any additional data to inform the Agency's evaluation and determination of the human health or environmental effects of these substances.

This information-gathering effort represents EPA's most recent activity to advance its PFAS Action Plan, initiated in February 2019. EPA chief Andrew Wheeler referred to the advance notice as a "major step," and stated that the Agency is working "aggressively" to follow its Action Plan and develop regulations around drinking water, cleanup, and monitoring of PFAS. EPA's request for additional health and safety data reflects the Agency's continued emphasis on toxicological study at this stage of federal policy development, and immediately follows the Agency's announcement on November 22, 2019, of new research funding to the tune of \$4.8 million to attract research proposals focused on the impacts of PFAS on water quality and human exposures in rural communities and agricultural operations across the U.S.

As of today, the advance notice is open for public review in the Federal Register and marks the opening of a 60-day comment period. Comments may be submitted on the Regulations.gov website, to docket number EPA-HQ-TRI-2019-0375.

Michael Best remains committed to tracking federal and state regulatory activity related to PFAS. To learn more about EPA's PFAS Action Plan or what this advance notice could mean for your business, please contact your Michael Best attorney.

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