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U.S. Environmental Protection Agency Proposal to Designate PFOA/PFOS as CERCLA Hazardous Substances: Airlines for America Trade Association Comments

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The Airlines for America (“A4A”) submitted comments to the United States Environmental Protection Agency (“EPA”) addressing its proposal to designate two of the per- and polyfluoroalkyl substances (“PFAS”) as Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) hazardous substances. See EPA-HQ-OLEM-2019-0341; FRL-7204-02-OLEM.

EPA is proposing to designate Perfluorooctanoic Acid (“PFOA”) and Perfluorooctanesulfonic Acid (“PFOS”) (including their salts and structural isomers) as hazardous substances.

A4A describes itself as the trade association for the leading United States passenger and cargo airlines.

Members include:

- Alaska Airlines, Inc.
- America Airlines Group, Inc.
- Atlas Air
- Delta Airlines
- Federal Express Corporation
- Hawaiian Airlines, Inc.
- JetBlue Airways Corp.
- Southwest Airlines Co.
- United Airlines Holdings, Inc.
- United Parcel Service Co.

PFAS are a group of man-made chemicals that have been used in various industrial applications and consumer products for a number of years. Properties of these chemicals include resistance to heat, water, and oil. They have been described as persistent in the environment and resist degradation. Potential human exposure to PFAS include pathways through drinking water, air, or food.

A key use of PFAS has been its use in Aqueous Film Forming Foam (“AFFF”) in firefighting – which includes the use in airports.

Designation of PFAS as a hazardous substance would trigger certain corresponding CERCLA requirements such as:

- Application of the potentially responsible liability categories (i.e., current owner or operator, former owner or operator [in certain circumstances], transporter (in certain circumstances), and generators).
- Hazardous substance release reporting requirements (if reportable quantities are released)

The A4A comments ask that EPA either withdraw the proposed rule or hold it in abeyance, arguing that it is:

. . . premature and could potentially have enormous and unquantifiable consequences for the aviation industry as well as many other industries that use Aqueous Film Forming Foam (“AFFF”), which contains PFAS, for safety reasons.

The trade association asks that EPA abstain from finalizing the rule until the Federal Aviation Administration (“FAA”) and the Department of Defense identify and approve a technically feasible and reliable PFAS-free alternative to AFFF.

In the alternative, if the proposed rule is finalized, A4A requests that EPA exercise its enforcement discretion with regard to the aviation industry until an alternative is approved and the federal agency has completed a sufficient cost analysis.

In addition to the previous arguments/concerns, A4A also argues:

- The aviation industry’s limited use of AFFF together with appropriate containment does not necessitate increased regulation under Section 102(a) of CERCLA.
- The proposed rule will have unintended consequences for aviation fire protection efforts.
- The proposed rule’s use of CERCLA Section 102(a) to remedy PFOA and PFOS contamination is misplaced:
- EPA has not adequately quantified the cost associated with the proposed rule as required by the Administrative Procedure Act
- When applied to the aviation industry, it is unclear that EPA has the authority to apply CERCLA Section 102(a) to mitigate PFOA and PFOS releases of contamination
- EPA is required to coordinate with the FAA in applying the proposed rule to aviation operations and did not do so here

A copy of the A4A comments can be downloaded [here](#).