



# Department of the Interior Seeking Comments on NRDAR Type A Rule

01.23.2023 | By [Brian Ferrasci-O'Malley](#), [Reed W. Neuman](#)

On January 19, 2023, the Department of the Interior (“Interior”) issued a 60-day advance notice of a proposed rulemaking (ANPRM) that would revise and update the regulations for conducting certain natural resource damage assessments and restoration activities (NRDAR). 88 Fed. Reg. 3373 (Jan. 19, 2023). Interior performs damage assessments and restoration activities in response to releases of hazardous substances that injure natural resources. The ANPRM explains that Interior is proposing to revise its standard procedures for simplified assessments that require minimal field observations (also known as the “Type A Rule”). Interior last revised the Type A Rule in November 1997 and is now asking for specific, detailed suggestions for how best to improve this manner of assessing and resolving NRDAR claims. Comments are due by March 20, 2023.

Currently, the Type A Rule is applicable only to smaller NRDAR claims involving hazardous substance releases to either coastal and marine environments or the Great Lakes. In the ANPRM, Interior proposes to “re-formulate” the Type A Rule to provide a more flexible structure that would apply to a much broader number of NRDAR claims and allow for easier negotiated settlements between potentially responsible parties (PRPs) and Interior and the other natural resource trustees (e.g., states, tribes).

Revising the Type A Rule has the potential to significantly reduce the time and expense involved in the NRDAR process for PRPs and trustees alike. In the ANPRM, Interior is specifically seeking input from the public and affected parties on whether the revised Type A Rule should include caps on “reasonable assessment costs,” as well as whether there should be a time limit on how long the Type A process should take.

The ANPRM is a good opportunity to modernize Interior’s NRDAR practice. Given the age of the current Type A Rule and the broad scope of potential changes that Interior is contemplating in the ANPRM,

commenters face a tight timeline to meet the March 20, 2023 deadline.