

EPA SETS FIRST FEDERAL PFAS DRINKING WATER STANDARDS

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On April 10, 2024, the U.S. Environmental Protection Agency (“EPA”) issued its first-ever regulatory drinking water limits on per-and polyfluoroalkyl substances (“PFAS”), or “forever chemicals,” under the federal Safe Drinking Water Act (“SDWA”). By requiring purveyors of public drinking water to reduce PFAS concentrations, EPA hopes to decrease PFAS exposure for approximately 100 million people.

Background on PFAS

PFAS have been widely used since the 1940s in industry and consumer products, such as nonstick cookware, stain resistant clothing, firefighting foam, and cleaning and personal care products. Exposure to PFAS can occur through various channels, including through drinking water or food contaminated with these chemicals, direct contact with PFAS-containing products, or occupational exposure in certain industries.

Over the past few years, PFAS and their impacts on human health and the environment have come under both rigorous scientific and public scrutiny due to their potential for adverse health impacts.

Standards Under the Rule, Implementation, and Funding

The new rule imposes monitoring, notification, and remediation requirements on public water purveyors nationwide to reduce PFAS exposure. EPA estimates that between about 6-10% of the 66,000 public drinking water systems subject to the rule may have to take action to comply with the standards, and that compliance will cost approximately \$1.5 billion annually.

All public water systems have three years to complete initial monitoring for these chemicals and must inform the public of PFAS levels measured in their drinking water. Where PFAS are found at levels that exceed the standards, water systems have five years to bring the levels into compliance. EPA announced that it will be working closely with state co-regulators in supporting water systems and local officials to implement the rule.

The chart below outlines the specific regulatory limits under the new rule:

Chemical	Maximum Contaminant Level	Maximum Contaminant Level Goal (“MCLG”) (nonenforced)
	(“MCL”) (enforceable)	
PFOA	4 parts per trillion (“ppt”)	0

PFOS	4 ppt	0
PFNA	10 ppt	10 ppt
PFHxS	10 ppt	10 ppt
HFPO-DA	10 ppt	10 ppt
Mixture of two or more:		
PFHxS, PFNA, HFPO-DA, and PFBS	Hazard Index of 1	Hazard Index of 1

There may be federal funding available for public water systems, particularly for small, disadvantaged, and rural communities. The Bipartisan Infrastructure Law (“BIL”) dedicates \$9 billion for investment in communities with drinking water impacted by PFAS and other emerging contaminants, and \$1 billion of these funds can be used to support private well owners. An additional \$12 billion in BIL funding is accessible for general improvements to drinking water systems. The financing programs administering this funding fall under President Biden’s [Justice40 Initiative](#). This initiative aims to ensure that 40% of the benefits from specific federal investments are directed towards disadvantaged communities that have historically suffered from underinvestment and excessive pollution.

The Rule’s Impact on State Regulation of PFAS

Until now, EPA left the imposition of PFAS standards to states, and only about half of states currently regulate PFAS in some manner. With this new federal regulation in place, states that do not already have PFAS drinking water standards consistent with EPA’s proposal will have to establish regulations that are at least as stringent as the federal rule.

California has implemented a comprehensive set of PFAS regulations to manage these chemicals’ exposure and impact on public health and the environment. For example, in the drinking water arena, the California State Water Resources Control Board has established notification and response levels for PFAS in drinking water and conducts comprehensive PFAS monitoring in groundwater through its Groundwater Ambient Monitoring and Assessment Program.

California has not yet established enforceable MCLs for PFAS, but EPA’s new rule will require the state to do so. Other PFAS regulations in California include: (a) incorporation of specific PFAS chemicals into the Proposition 65 list to warn consumers of their presence in products, and (b) prohibition of the distribution and sale of PFAS-contaminated food packaging and juvenile products, among others.

Implications of the Rule Moving Forward

The evolving science on PFAS health impacts, EPA’s risk assessment analysis, and the rule’s anticipated costs make it subject to opposition and legal challenges.

Critics of the new rule assert that its estimated health benefits will be much lower than EPA has projected, while the costs will be much higher. They also contend that the rule could increase the cost of water for consumers, especially in smaller communities and among

low-income facilities, unless additional resources are allocated.

Private and public entities identified as potential sources of PFAS contamination should anticipate that the new standards will heighten regulatory oversight and public scrutiny and increase the likelihood of legal actions.-

EPA acknowledged in the final rule its duty to routinely update these standards to reflect advances in the detection of PFAS at lower levels and to improve the treatment of PFAS.

The lawyers at Bick Law LLP will be monitoring the developments surrounding EPA's new PFAS regulation.-

A follow-up blog post will discuss EPA's new PFAS rule under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), which the agency issued on Friday, April 19, 2024.