

The P*i*OGA Press

May 2024 • Issue 169

U.S. Environmental Protection Agency Finalizes National Primary Drinking Water Regulations for Certain PFAS Chemicals

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On April 10, 2024, the U.S. Environmental Protection Agency (EPA) finalized the National Primary Drinking Water Regulation (NPDWR) Rule¹ regulating six per- and polyfluoroalkyl substances (PFAS) under the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.* This final rule establishes the first-ever nationally enforceable drinking water standards for PFAS. The final rule establishes Maximum Contaminant Level Goals (MCLGs) and Maximum Contaminant Levels (MCLs) for perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS), perfluorononanoic acid (PFNA), hexafluoropropylene oxide dimer acid and its ammonium salt (HFPO-DA, commonly known as GenX chemicals), and perfluorohexane sulfonic acid (PFHxS). The final rule also establishes a Hazard Index MCLG and MCL for mixtures containing two or more of PFNA, HFPO-DA, PFHxS, and perfluorobutane sulfonic acid (PFBS).

For PFOA and PFOS, the final rule sets MCLGs – non-enforceable health-based goals that represent the maximum concentration of a contaminant in drinking water at which there is no known or anticipated negative effect on a person’s health – at 0 parts per trillion (ppt). The MCLs, which are legally enforceable, are set at 4.0 ppt for PFOA and PFOS. The MCLs represent the maximum concentrations allowed in drinking

water that can be delivered to users of a public water system and are informed by factors such as available treatment technologies and cost. As a change from the proposed rule, the final rule sets MCLGs and MCLs for PFNA, PFHxS, and HFPO-DA at 10 ppt.

For mixtures of two or more of PFNA, PFHxS, HFPO-DA, and PFBS, the final rule establishes a Hazard Index due to the chemicals’ likely co-occurrence. The Hazard Index is calculated by dividing the concentration of each of the four PFAS compounds by its Health-Based Water Concentration (HBWC; 10 ppt for PFNA, 10 ppt for HFPO-DA (GenX), 9 ppt for PFHxS, and 2000 ppt for PFBS) and then adding the results together. A total value greater than 1.0 is an exceedance of the proposed Hazard Index MCL. For a more detailed explanation of the Hazard Index calculation, see EPA’s Fact Sheet for Understanding the Hazard Index, available here.

The final rule regulates community water systems (CWSs) and non-transient non-community water systems (NTNCWSs), collectively public water systems. A CWS is defined as “a public water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents” and a NTNCWS is “a public water system that is not a [CWS] and that regularly serves at least 25 of the same persons over 6 months per year.” 40 C.F.R. § 141.2.

Under the final rule, public water systems have three years (by 2027) to complete initial monitoring of each of the six PFAS, followed by ongoing compliance monitoring. The public

¹ https://www.epa.gov/system/files/documents/2024-04/pfas-npdwr_prepubfederalregisternotice_4.8.24.pdf

must be provided with information on the levels of these PFAS in their drinking water beginning in 2027. Public water systems have five years (by 2029) to implement solutions to reduce PFAS if monitoring shows levels exceeding the MCLs. After those five years, public water systems that have PFAS in drinking water violating one of the MCLs must take action to reduce PFAS levels and provide notice to the public of the violation.

In the final rule, EPA identifies granular activated carbon, anion exchange resins, reverse osmosis, and nanofiltration as the best available technologies for PFAS removal in drinking water. According to EPA, PFAS tend to co-occur, and these four treatment technologies have been documented to co-remove other forms of PFAS, along with the six PFAS being regulated. More information on the final rule can be found on EPA's webpage, available here.

The final rule supersedes any state-specific MCLs, if those MCLs are less stringent than EPA's. For example, Pennsylvania adopted MCLs for PFOA (14 ppt) and PFOS (18 ppt) in January 2023. To retain primacy over the drinking water program, states must regulate PFAS no less stringently than EPA. Under the final rule, states with primacy will have up to two years after the date of rule promulgation to develop regulations that are at least as strict as the federal MCLs. Pennsylvania's regulations already incorporate the federal drinking water standards by reference but given Pennsylvania's earlier action to regulate PFAS in drinking water, it is likely there will be a regulatory amendment to remove Pennsylvania's earlier standards. 25 Pa. Code § 109.202. The regulations incorporated by reference are effective on the date established by the federal regulations; therefore, regulated entities in Pennsylvania should assume that the federal standards are effective upon the dates listed in the final rule.

The final rule is the latest action under President Biden's plan to combat PFAS pollution and EPA's 2021 PFAS Strategic Roadmap (available here), under which EPA is taking a "whole-of-agency approach" to address PFAS throughout its lifecycle. The final rule is expected to be published in the *Federal Register* in the near future. Additional rulemaking proposals include the designation of certain PFAS as hazardous and information gathering obligations to be imposed on certain wastewater systems.

EPA also announced nearly \$1 billion in newly

available funding through the Infrastructure and Investment Jobs Act (IIJA) to help states and territories implement PFAS testing and treatment at public water systems and to help owners of private wells to address PFAS contamination. This funding is a part of the \$9 billion included in the IIJA to invest in drinking water systems impacted by PFAS and other emerging contaminants.

Babst Calland's PFAS Work Group, including environmental, public sector, and litigation attorneys, continue to track PFAS technical and legal developments and are available to assist you with PFAS-related matters. For more information on this and other remediation matters, please contact **Jean M. Mosites** at (412) 394-6468 or **jmosites@babstcalland.com**, **Mackenzie M. Moyer** at (412) 394-6578 or **mmoyer@babstcalland.com**, or any of our other attorneys in this practice.

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