

## EPA Finalizes National Primary Drinking Water Regulation for Six PFAS



# Client Alert

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On April 10, 2024, the U.S. Environmental Protection Agency (EPA) released the final version of its long-awaited [National Primary Drinking Water Regulation](#) (Regulation) for six classes of per- and polyfluoroalkyl substances (PFAS). The Regulation will become effective 60 days after its publication in the Federal Register.

PFAS are a class of synthetic chemicals that have been used since the 1940s in a wide variety of consumer, commercial, and industrial products such as non-stick cookware, firefighting foam, and cleaning products, due to their resistance to heat and degradation and ability to repel water, oil, and grease. The chemical makeup of PFAS allows them to bioaccumulate in the environment, humans, and animals. Recent studies posit that exposure to PFAS may be linked to a variety of adverse health effects, including immune system effects, decreased kidney function, and increased risk of certain types of cancer.

Finding that such health risks required EPA to regulate exposure to PFAS under the Safe Drinking Water Act (SDWA), the Regulation establishes maximum contaminant levels (MCLs), which are legally enforceable limits on the

amount of the listed PFAS compounds that are permitted in public water systems (PWS). The SDWA defines a PWS as a system that supplies water for human consumption that “has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least 60 days out of the year.”

## Maximum Contaminant Levels

The Regulation implements MCLs for five individual PFAS compounds and certain PFAS mixtures:

- Perfluorooctanoic acid (PFOA) – 4.0 parts per trillion.
- Perfluorooctane sulfonic acid (PFOS) – 4.0 parts per trillion.
- Perfluorononanoic acid (PFNA) – 10.0 parts per trillion.
- Perfluorohexanesulfonic acid (PFHxS) – 10.0 parts per trillion.
- Hexafluoropropylene oxide dimer acid (HFPO-DA) (known as “GenX Chemicals”) – 10.0 parts per trillion.
- Mixtures containing two or more of PFNA, PFxS, HFPO-DA, and perfluorobutanesulfonic acid (PFBS) – Hazard Index of 1.

The Hazard Index – a metric EPA frequently uses to understand health risks in chemical mixtures – is a sum of fractions of the level of each PFAS measured in the water to the health-based water concentration. This is the first time a Hazard Index has been used as an MCL.

The Regulation also set a non-enforceable goal of zero for PFOA and PFOS based on the finding that no amount of exposure to the two compounds is safe.

## Implementation of National Primary Drinking Water Regulation

The Regulation requires PWS to complete initial monitoring within three years of the Regulation becoming effective (2027). Based on system size and water source, PWS must conduct initial monitoring either twice or quarterly during a 12-month period. To reduce costs, the Regulation permits PWS to use previously collected data to satisfy initial monitoring requirements.

After initial monitoring, PWS must add the levels of regulated PFAS to their Annual Water Quality Reports to customers and inform customers if the PFAS levels exceed the MCLs.

Within five years of the effective date of the Regulation (2029), PWS with drinking water levels exceeding the MCLs must take appropriate action to reduce the levels of PFAS in their drinking water. However, The Regulation does not prescribe a method for PWS to lower PFAS levels. In certain cases, if PFAS levels exceed the MCLs, PWS may need to obtain new or additional sources of water or install and maintain treatment technologies.

Several states, including New York, New Jersey, Maine, and Pennsylvania, have regulated PFAS levels in PWS for several years. The Regulation, however, sets standards that are more stringent and regulates more PFAS compounds than those currently in place in both New York and Maine. As such, even PWS in already-regulated states will be required to monitor for lower levels of PFAS.

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