

Alert | Environmental



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PFAS Update: EPA Begins Process of Developing Drinking Water Limits for PFOS and PFOA

On Feb. 20, 2020, roughly one year after announcing its comprehensive [per- and polyfluoroalkyl substances \(PFAS\) action plan](#), the Environmental Protection Agency (EPA) issued a preliminary [regulatory determination](#) under the Safe Drinking Water Act (SDWA) for the two most-studied of the chemicals, perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA). This is the initial step in the process of promulgating a National Primary Drinking Water Regulation and imposing an enforceable “maximum contaminant level” (MCL) for the substances – just two of the more than 7,000 so-called “forever chemicals” that are under intense scrutiny from lawmakers and the public. EPA set [nonbinding health advisories](#) of 70 parts per trillion for the two chemicals in 2016, and issued [interim recommendations](#) for cleanup of ground water contaminated with PFOA and PFOS in December 2019, but Congress and states continue to pressure EPA to develop enforceable drinking water standards for PFOS and PFOA. Meanwhile, states with impacted drinking water supplies are not waiting for EPA; a number have promulgated their own standards, including Vermont and New Jersey, both of which adopted levels much lower than EPA’s recommendations.

On March 10, 2020, the [Preliminary Regulatory Determinations for Contaminants on the Fourth Drinking Water Contaminant Candidate List](#) were published in the *Federal Register*; pursuant to EPA’s 60-day public comment period, comments must be received on or before May 11, 2020. EPA will consider public input in deciding whether to move forward with promulgating enforceable MCLs. EPA is required by the SDWA to consider three criteria when deciding if a federal standard is needed: (1) if the substances have adverse health effects; (2) if the substances are found in public water systems with a frequency at

levels of concern; and (3) if there is a meaningful opportunity for reducing the health risk through a national drinking water standard.

If a final determination is made that a federal drinking water standard is warranted, EPA must conduct the underlying scientific work to support the standard, and propose and finalize the actual mandatory limit, which will once again go through the rulemaking process. Accordingly, final enforceable limits will not be in place for at least five years, and probably longer. If adopted, the standards will likely place the burden of compliance and treatment on public water systems, meaning hikes in water bills for the general public.

EPA sent the draft regulatory determination to the White House Office of Management and Budget on Dec. 3, 2019, where it was under review for over two months. House Democrats passed language in January 2020 as part of a [larger PFAS package](#) that would require EPA to promulgate drinking water standards.

EPA also determined that it will not regulate the following six chemicals in drinking water: 1,1-dichloroethane, acetochlor, methyl bromide, metolachlor, nitrobenzene, and RDX. The agency has not issued a final drinking water limit for a new chemical since 1996.

Import Limits. On March 3, 2020, EPA published a [proposed Toxic Substances Control Act \(TSCA\) rule](#) in the *Federal Register* that would subject imports of articles containing any of 21 long-chain PFAS as part of a surface coating (including PFOA) to TSCA's significant new use reporting provisions. The proposed significant new use rule (SNUR) would require affected importers to notify EPA at least 90 days before commencing import into the United States. The notice would trigger EPA's evaluation of the proposed significant new use, and imports would be prohibited until EPA completes the review, publishes its determination on the notice, and takes any other actions required by TSCA. This proposed rule would modify one portion of a proposed SNUR published in the *Federal Register* in 2015 but never finalized. *See* 80 Fed. Reg. 2885 (Jan. 21, 2015). Significantly, in the recently enacted 2020 National Defense Authorization Act, Congress directed EPA to finalize the 2015 proposed SNUR not later than June 22, 2020. This supplemental action is necessary to conform the 2015 rulemaking to [TSCA amendments enacted in 2016](#). Comments are due April 17, 2020.

Authors

This GT Alert was prepared by **Steven G. Barringer** and **Katie P. Reed** [~]. Questions about this information can be directed to:

- [Steven G. Barringer](#) | +1 202.331.3108 | barringers@gtlaw.com
- [Katie P. Reed](#) [~] | +1 202.530.8564 | reedkatie@gtlaw.com
- Or your [Greenberg Traurig attorney](#)

[~] Not admitted to the practice of law.

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