

## Alert | Environmental



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### **PFAS in Drinking Water: EPA Proposes Historic New Regulation**

On March 14, 2023, the U.S. Environmental Protection Agency (EPA) issued a proposed **National Primary Drinking Water Regulation (NPDWR)** which, if finalized, would set enforceable limits, known as Maximum Contaminant Levels (MCLs), for six Per- and Polyfluoroalkyl Substances (PFAS). The announcement marks the first time the EPA has proposed to establish a new MCL under the Safe Drinking Water Act in 25 years.

The proposal is part of EPA's multi-year **PFAS Strategic Roadmap** for addressing this class of synthetic chemicals. PFAS have been in use since the 1940s, are found in hundreds of widely used products, and do not readily degrade in the environment, a characteristic that has earned them the description, "forever chemicals." The six PFAS the EPA's proposed rule addresses are the most studied of the thousands of PFAS in the class.

The proposed rule would set 4 ppt (parts per trillion) as the MCL for perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), the two PFAS that have received the most public attention. Both PFOS and PFOA have been voluntarily phased out of production in the United States, but they continue to be found in drinking water supplies. If finalized, the 4 ppt MCL would be the lowest the EPA has ever set for any drinking water contaminant, except dioxin (with a .03 ppt MCL). (For comparison's sake, while a standard of 1 part per billion has been described as detecting a packet of sugar dissolved in an Olympic-

sized swimming pool, a standard of 1 ppt – a limit 1,000 times lower – would be akin to finding a single grain of sugar dissolved in Olympic pool.)

The proposed rule also contains the EPA’s preliminary determination to regulate four additional PFAS chemicals: perfluorohexane sulfonic acid (PFHxS); hexafluoropropylene oxide dimer acid (HFPO-DA) and its ammonium salt (also known as GenX chemicals); and perfluorononanoic acid (PFNA), and perfluorobutane sulfonic acid (PFBS) and combinations of these chemicals. The MCL for these chemicals would be based on a calculation called a “hazard index,” which accounts for mixtures of contaminants.

Under the rule, drinking water systems would be required to periodically monitor and publish results for the PFAS chemicals at issue. Notably, the proposal calls for water utilities to conduct the monitoring through use of a laboratory method with a practical quantitation limit (PQL) of 4 ppt, which the EPA states is the lowest PFAS level that the majority of labs can reliably measure. Notably, the EPA specifically calls for comments on the propriety of setting the MCL at the PQL.

The EPA will host public hearings on the proposal and take comments from the public up to 60 days following publication of the proposed rule in the Federal Register. Given the public interest in PFAS and the wide range of health effects allegedly associated with PFAS exposure, a large volume of comments is expected. The additional costs of PFAS treatment and monitoring are certain to be significant concerns for drinking water providers and rate payers. [Click here for links to register for the public hearings and to provide comments on the proposed rule \(once the comment period opens\).](#)

The EPA expects to finalize the rule later in 2023, an ambitious timeframe in light of the significant public interest in PFAS. The EPA would begin compliance and enforcement activities three years after the rule is promulgated. However, the final rule almost certainly will trigger a wave of litigation that may delay its implementation.

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