

PUBLICATION

A Focus on Public Water Systems: The Much-Anticipated Regulation of PFAS in Drinking Water Has Begun

Authors: Elizabeth Haskins, Noelle E. Wooten

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In 2021, the U.S. Environmental Protection Agency (EPA) introduced the "PFAS Strategic Roadmap," which established a "whole agency" approach to addressing per- and polyfluoroalkyl substances (PFAS). As part of its strategy, on April 10, 2024, EPA issued the final National Primary Drinking Water Regulation (NPDWR) (the PFAS Drinking Water Rule). The PFAS Drinking Water Rule set legally enforceable drinking water levels, called Maximum Contaminant Levels (MCLs), for six PFAS. Five of the six PFAS are regulated individually with specific MCLs: PFOA, PFOS, PFNA, PFHxS, and HFPO-DA. In addition, EPA set a Hazard Index level for four PFAS mixtures of two or more of PFHxS, PFNA, HFPO-DA, and PFBS.

Chemical	Maximum Contaminant Level Goal (MCLG)*	Maximum Contaminant Level (MCL)†
PFOA	0	4.0 parts per trillion (ppt)
PFOS	0	4.0 ppt
PFNA	10 ppt	10 ppt
PFHxS	10 ppt	10 ppt
HFPO-DA (GenX chemicals)	10 ppt	10 ppt
Mixture of two or more: PFNA, PFHxS, HFPO-DA, and PFBS	Hazard Index‡ of 1	Hazard Index of 1

*MCLGs are non-enforceable public health goals.

†MCLs are enforceable standards. They are the highest level of a contaminant that is allowed in drinking water.

‡The Hazard Index is made up of a sum of fractions, which compares the level of each PFAS measured in the water to that compounds health-based water concentration. EPA is developing an online calculator to assist water systems in determining their Hazard Index result, and more information can be found in the EPAs [Hazard Index Fact Sheet](#).

What Does the PFAS Drinking Water Rule Mean for the Regulated Community?

The PFAS Drinking Water Rule places several, staged requirements on the over 66,000 public water systems in the 56 states and territories. In general, the Safe Drinking Water Act (under which the PFAS Drinking Water Rule was developed) provides for a three-year timeframe for compliance with new rules. Due to the potential for significant required capital improvements for water systems to comply with the new MCLs, EPA is exercising its authority under the Act to extend formal compliance to five years. However, some of the three-year deadlines remain applicable. The requirements for public water systems under the PFAS Drinking Water Rule include:

- By 2027 (three years from the date of publication of the rule in the *Federal Register*):
 - Complete initial required monitoring under the PFAS Drinking Water Rule ([varies according to the size and type of system](#); composite samples may not be used);
 - Plan for and begin ongoing compliance monitoring, and begin issuing public notification for any monitoring or testing procedure violations; and
 - Begin providing the public with information on the levels of PFAS in drinking water (community water systems must include their PFAS monitoring results in their Consumer Confidence Reports).
- By 2029 (five years from the date of publication):
 - Implement solutions to reduce PFAS in drinking water to levels below the MCLs or Hazard Index; and
 - Begin notifications to the public of any violations of the MCLs for PFAS in drinking water (community water systems must include MCL violations and required health effects language in their Consumer Confidence Reports).

Within two years, states are required to adopt policies and procedures and apply for approval (known as primacy) if they want to oversee implementation of the PFAS Drinking Water Rule. State requirements must be no less stringent than the regulations promulgated by EPA. Primacy agencies can allow systems to use previously collected monitoring data to satisfy some or all initial monitoring requirements if the sampling was conducted using EPA Methods 533 or 537.1 as part of UCMR 5 or other state-level or other appropriate monitoring campaigns.

Primacy agencies may reduce a water system's ongoing compliance monitoring requirements from quarterly to once every three years if initial monitoring results are below one-half of the MCLs for all regulated PFAS. Public water systems may also be able to seek a general variance or exemption from the MCL requirements under special conditions, but the EPA has noted that small system variances are not available for the PFAS MCLs as the EPA believes there are affordable small system compliance technologies for these contaminants.

The EPA has not mandated that water systems use specific treatment technologies, but it has published an [evaluation of best available technologies](#) (including granular activated carbon, PFAS-selective ion exchange, and reverse osmosis or nanofiltration technologies) and a [fact sheet on treatment options](#).

Is Funding Available?

Funding is available for small or disadvantaged communities through state-run grant programs. In conjunction with the issuance of the PFAS Drinking Water Rule, EPA announced an additional nearly \$1 billion in funding through President Biden's Bipartisan Infrastructure Law (BIL) to address emerging contaminants. BIL funding can be used for initial PFAS testing and treatment at both public water systems and for homes served by privately owned wells. EPA will award funds to states based on an allocation formula that includes factors such

as "population, number of water systems, and data related to emerging contaminants." States will be required to use the funding to award grants to eligible projects in small or disadvantaged communities, as described/defined in section 1459A of the Safe Drinking Water Act (SDWA). In addition, in March 2024, the FY 2024 Consolidated Appropriations Act was amended to include "owners of drinking water wells that are not public water systems or connected to a public water system" as eligible beneficiaries of FY24 funds awarded to the states under the SWDA.

Water systems may also apply for low-interest loans through their states Drinking Water State Revolving Loan Fund (DWSRF). The BIL provided an additional nearly \$12 billion in funding for the DWSRF in addition to annual funding of the DWSRF through Congress.

Is the EPA Providing any Additional Information About the New Rule?

The EPA is holding three informational webinars that may be of interest to you. You must [pre-register to attend](#). Recordings and presentation materials will be made available after each webinar.

- April 16, 2024, (2:00 – 3:00 p.m. ET): General Overview of PFAS NDPWR for Communities
- April 23, 2024, (2:00 – 3:00 p.m. ET): Drinking Water Utilities and Professionals Technical Overview of PFAS NPDWR
- April 30, 2024, (2:00 – 3:30 p.m. ET): Small Drinking Water Systems Webinar Series on Final PFAS NPDWR and PFAS Drinking Water Treatment

If you have any questions regarding this new rule, please reach out to [Elizabeth Haskins](#), [Ashley Meredith Strittmatter](#), [Noelle E. Wooten](#), or a member of [Baker Donelson's Environmental Group](#).