

USEPA Announces Final PFAS Drinking Water Rule, Extends Compliance Timeline

Related Attorneys

Kristin L. Watt

Nina I. Webb-Lawton

Brooke N. Zentmeyer

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On Wednesday, April 10, 2024, the United States Environmental Protection Agency (USEPA) announced that it will publish a final PFAS National Primary Drinking Water Regulation (PFAS Drinking Water Rule) that will set legally enforceable limits for six PFAS in drinking water, including **4 parts per trillion** (ppt) limits for PFOS and PFOA. Public Water Systems (PWSs) will have three years to comply with the Rule's initial monitoring requirements. The Final PFAS Drinking Water Rule also extends the compliance timeline USEPA initially proposed for the Rule's enforceable limits by two years—under the final Rule, a PWS has **five years** to comply with the Rule's enforceable limits.

The final Rule will establish:

1. Maximum Contaminant Levels (MCLs) of 4 ppt and Maximum Contaminant Goal Levels (MCGLs) of 0 ppt for PFOS and PFOA;
2. MCLs and MCGLs of 10 ppt for PFHxS, PFNA, and HFPO-DA (a.k.a. GenX Chemicals);
3. A Hazard Index for any mixture of two or more of PFHxS, HFPO-DA, PFNA, and PFBS;
4. Monitoring and public notification requirements for all PWSs; and
5. Reporting requirements for PWSs that are "community water systems."

MCLs and MCGLs for PFOS and PFOA

MCGLs are non-enforceable and health-based. MCLs, on the other hand, are legally enforceable drinking water limits.

The MCGLs for PFOS and PFOA are zero. The MCLs for PFOS and PFOA are **4 ppt**. This is significant because 4 ppt is the lowest concentration at which a laboratory can reliably measure PFOA and PFOS.

MCLs and MCGLs for PFHxS, PFNA and HFPO-DA

A key change USEPA made between the proposed and final PFAS Drinking Water Rule was to add individual MCLs and MCGLs for PFHxS, PFNA, and HFPO-DA. The final PFAS Drinking Water Rule sets individual MCLs and MCGLs of **10 ppt** for PFHxS, PFNA, and HFPO-DA.

Hazard Index for PFHxS, HFPO-DA, PFNA, and PFBS

The final Rule also establishes a Hazard Index for mixtures of **two** or more of PFHxS, HFPO-DA, PFNA, and PFBS. This is another key change from the proposed version of the rule, which would have established a Hazard Index for mixtures of **one** or more of the four PFAS such that the Hazard Index could be exceeded even when just one of the four PFAS is present.

The final Rule also sets an enforceable Hazard Index MCL of 1 (unitless), and a non-enforceable Hazard Index MCGL of 1 (unitless). The Hazard Index will be calculated according to a USEPA-provided formula.

PWS Monitoring Requirements

Initial Monitoring

The Rule requires all PWSs to complete initial monitoring within three years after the Rule's effective date. Monitoring frequency will be either biannually or quarterly based on the size of the PWS.

PWSs that have previously collected monitoring data using approved EPA Methods 533 or 537.1 can potentially satisfy the initial monitoring requirements with this previous data. (Whether this prior monitoring can satisfy the initial monitoring requirements will be determined by states that become authorized to implement this rule. See The Role of States, below.)

Compliance Monitoring

Three years following the Rule's effective date, all PWSs must begin conducting quarterly compliance monitoring. PWSs will be eligible for reductions in compliance monitoring frequency if their monitoring results are below "trigger levels." The final Rule sets the trigger levels as one-half of the MCLs (i.e., PFOA and PFOS at 2.0 ppt each, PFHxS, PFNA, and HFPO-DA at 5 ppt each, and Hazard Index at 0.5).

PWS Notification and Reporting Requirements

Public Notification

Beginning three years from the Rule's effective date, a PWS must provide public notification of monitoring and testing procedure violations within one year after the PWS learns of the violation.

Beginning five years after the Rule's effective date, a PWS must provide notification of an MCL violation within 30 days after the system learns of the violation.

Water Quality Reports

PWSs that are "community water systems" are required to provide annual Water Quality Reports (a.k.a. Consumer Confidence Reports) to their customers. Beginning with 2027 reports, these community water systems must report measured levels of PFOA, PFOS, PFHxS, HFPO-DA, PFNA, and PFBS, and the Hazard

Index for the mixtures of two or more of PFHxS, HFPO-DA, PFNA, and PFBS.

When Must Public Water Systems Comply?

Under the final Rule, PWSs must comply with the initial monitoring and related reporting and notification requirements within **three years** after the Rule's effective date.

For compliance with the enforceable MCLs, the final PFAS Drinking Water Rule extends the three-year compliance timeline that USEPA initially proposed by two years. Under the final version of the Rule, a PWS must comply with the MCLs within **five years** after the Rule's effective date and provide public notification to consumers if the MCLs are violated.

The Role of States

The vast majority of states, including Ohio, have primary enforcement authority for their PWSs. In order to keep this authority, states will be required to develop state regulations that are no less strict than the final Rule within two years of the Rule's effective date.

The final Rule will be effective 60 days after publication in the Federal Register. You can read the pre-publication version of the Final PFAS Drinking Water Rule [here](#).

If you have any questions about the final PFAS Drinking Water Rule, reach out to Kristin Watt, Nina Webb-Lawton, Brooke Zentmeyer, or your Vorys attorney.