



# CURRENT REGULATION OF PFAS

PERRIN MASS TORT CONFERENCE

JUNE 24, 2021

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## WHAT ARE PFAS?

- PERFLUOROALKYL and POLYFLUOROALKYL ACID substances (PFAS) are a group of chemicals that include PERFLUOROOCTANOIC ACID and PERFLUOROOCTANE SULFONATE (PFOA and PFOS).
- PFOA and PFOS are the most thoroughly produced and studied.
- PFOA and PFOS are used for their ability to repel oil and water, are difficult to breakdown.
- States and Federal Agencies are investigating and beginning to regulate exposure to PFAS.

## WHERE ARE THEY USED AND FOUND?

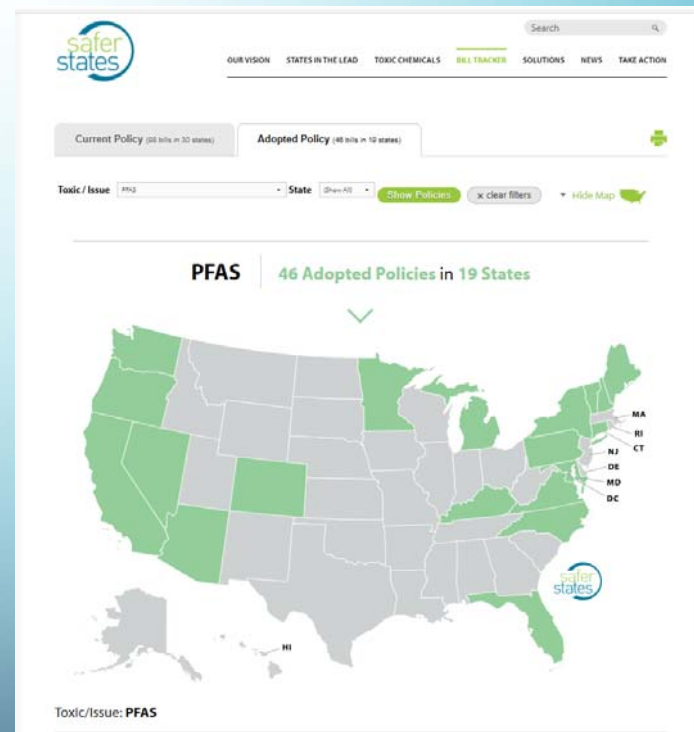
- **PFAS can be found in**
  - **Workplace:** Production facilities using PFAS include electronics manufacturing and oil recovery.
  - **Household Products:** Stain and water repellent fabrics, nonstick products including Teflon, polishes, waxes, paints, cleaning products and fire fighting foam
  - **Food and Personal Products:** Food packaged in PFAS containing material, processing equipment used PFAS or food grown in PFAS contaminated soil or water and items like cosmetics and other personal use products.
  - **Drinking Water & Groundwater:** Contamination from a nearby entity using PFAS such as manufacturer, landfill, wastewater treatment plant, airport, or firefighter training facility.
  - **Living Organisms:** Fish, Animals and Humans.

# STATES ARE AT THE FOREFRONT

- [Safer States :: Bill Tracker](#)

- Filter for PFAS

- Current Policy 98 bills in 30 States
- Adopted Policy 46 bills in 19 States



# ENVIRONMENTAL PROTECTION AGENCY (EPA)

- In April 2021, EPA Administrator Regan announced the creation of a “EPA Council on PFAS,” with the goal to reduce potential risks from exposure and/or consumption.
- EPA has also proposed the Fifth Unregulated Contaminant Monitoring Rule (UCMR5) to collect data on the presence of PFAS in drinking water.

# SUMMARY OF FEDERAL POLICIES

## PFAS LAWS AND REGULATIONS | PER- AND POLYFLUOROALKYL SUBSTANCES (PFAS) | US EPA

### PFAS Laws and Regulations

There are a variety of laws and regulations to protect public health and the environment. The following list relates to PFAS in the environment.

#### Safe Drinking Water Act

The [Safe Drinking Water Act \(SDWA\)](#) protects public drinking water supplies across the United States. Under the SDWA, EPA has regulated more than 90 drinking water contaminants. EPA has the authority to set enforceable Maximum Contaminant Levels (MCLs) for specific chemicals and can require monitoring of public water supplies. The SDWA only applies to public water systems in the United States and does not apply to domestic drinking water wells.

There are currently no MCLs established for PFAS chemicals. EPA initiated the steps to evaluate the need for an MCL for PFOA and PFOS under the [regulatory determination process](#). However, EPA has issued a [health advisory for PFOA and PFOS](#). Health advisories describe non-regulatory concentrations of drinking water contaminants at or below which adverse health effects are not anticipated to occur over specific exposure durations. They serve as informal technical guidance to assist federal, state and local officials, and water system managers by providing information on the health effects of and methods to sample and treat PFOA and PFOS in drinking water. In addition, EPA is developing and updating toxicity values for two additional PFAS, GenX and PFBS. EPA anticipates providing these toxicity assessments for public comment Summer 2018.

Under the [Third Unregulated Contaminant Monitoring Rule \(UCMR3\)](#), EPA collected data for chemicals that are suspected contaminants in drinking water but do not have health-based standards set under the SDWA. In the UCMR3, there were six PFAS included for monitoring including:

- perfluorooctanesulfonic acid (PFOS)
- perfluorooctanoic acid (PFOA)
- perfluorononanoic acid (PFNA)
- perfluorohexanesulfonic acid (PFHxS)
- perfluorheptanoic acid (PFHpA)
- perfluorobutanesulfonic acid (PFBS)

### Toxic Substances Control Act (TSCA)

On June 22, 2016, the [Frank B. Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act](#) significantly amended the Toxic Substances Control Act (TSCA). EPA has issued three new rules to provide a framework for the implementation of the amended law. The three framework rules outline EPA's path forward for prioritizing, evaluating and regulating chemicals and include a [requirement for industry reporting of chemicals](#) manufactured (including imported) or processed in the U.S. over the past 10 years. This reporting will be used to identify which chemical substances are active in U.S. commerce and will help inform the prioritization of chemicals for risk evaluation.

To date, 330 non-Confidential Business Information (CBI) PFAS chemicals have been reported to EPA and are listed in the [public interim report](#). In addition, there are 148 CBI PFAS substances reported. After the reporting period ends in 2018, EPA anticipates having identified the universe of active PFAS chemicals in U.S. commerce.

EPA reviews new chemicals before they are allowed to commercialize. Since 2006, EPA has reviewed 294 new PFAS chemicals and has regulated 191 through a combination of orders and Significant New Use Rules (SNURs).

Additionally, on January 21, 2015 EPA proposed a Significant New Use Rule (SNUR) to require manufacturers (including importers) and processors of perfluorooctanoic acid (PFOA) and related chemicals (including as part of articles), to notify EPA at least 90 days before starting or resuming new uses of these chemicals in any products. The notification required by SNURs obligates EPA to assess risks that may be associated with the significant new use, and, if appropriate, regulate the proposed activity before it occurs. EPA is currently developing a re-proposal for this SNUR which will also comply with the requirements of the Lautenberg Act regarding articles.

PFAS chemical substances may be considered for prioritization in the future. The Lautenberg Act amendments require EPA undertake a 9-12 month prioritization process to designate a chemical or category of chemical substances as High-Priority for which risk evaluation must immediately commence or Low-Priority for which risk evaluation is not warranted at this time. For High-Priority chemicals, EPA must evaluate a chemical's safety based on the health and environmental risks it poses without consideration of costs or other non-risk factors followed by EPA action to address any unreasonable risks.

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### Comprehensive Environmental Response, Compensation and Liability Act

The 1980 Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund, provides the federal government with authority to address a release or threatened environmental releases in some circumstances. PFAS, including PFOA and PFOS, are not listed as CERCLA hazardous substances, but in some circumstances could be responded to as CERCLA pollutants or contaminants. EPA is beginning the necessary steps to propose designating PFOA and PFOS as "hazardous substances" through one of the available statutory mechanisms, including potentially CERCLA Section 102.

CERCLA does not contain any chemical-specific cleanup standards. In general, CERCLA requires that response actions under the Superfund program protect public health and the environment, and normally comply with federal laws and regulations that constitute "applicable or relevant and appropriate requirements (ARARs)." The lead agency identifies potential ARARs and to be considered values (TRCVs) based in part on the timely identification of potential ARARs by states. Risk-based goals are calculated and used to determine cleanup levels when chemical-specific ARARs are not available or are determined not to be sufficiently protective. EPA is developing groundwater cleanup recommendations for PFOA and PFOS at contaminated sites and anticipates completing this task by Fall 2018.

CERCLA requires that remedies also be protective of the environment. Risk-based cleanup goals that are protective of the environment are site specific and depend on the identification of the protected ecological receptors.

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### Clean Air Act

The [Clean Air Act](#) requires us to regulate toxic air pollutants, also known as air toxics, from large industrial facilities in two phases. The first phase is "technology-based," where we develop standards for controlling the emissions of air toxics from [sources in an industry group](#) (see [source category](#)). These technology standards are based on emissions levels that are already being achieved by the best-controlled and lower-emitting sources in an industry.

The second phase must occur within eight years of setting the technology standards. In the second phase, we must assess the remaining health risks from each industrial source category to determine whether the standards protect public health with an ample margin of safety, and protect against adverse environmental effects.

In addition, every eight years after setting the technology standards, we must review and revise the standards if necessary, to account for improvements in air pollution controls. As a result of these assessments, we may require phase-outs of the use of specific chemicals like PFAS, if effective and feasible alternatives exist.

[Learn more about what is being done to reduce emissions of hazardous air pollutants](#)

## DEPARTMENT OF AGRICULTURE (USDA)

- The USDA is researching the potential impact PFAS have on agriculture.
- Projects include:
  - Evaluation of Blood and Tissue PFAS levels in Unintentionally Contaminated Dairy Animals and;
  - Bio-products and Bio-polymers found in Agricultural Feed Stock
- Since July 2020, the USDA has also been working with the manufacturers using PFAS in coatings in fast food wrappers, to-go and pizza boxes to phase out their use of these substances in “food contact” situations.
  - <https://www.fda.gov/food/chemical-contaminants-food/and-polyfluoroalkyl-substances-pfas>

# NATIONAL SCIENCE FOUNDATION (NSF)

- In May 2019, the NSF International Joint Committee, which maintains the American standards for residential drinking water treatment devices updated their standards to include test methods and other means for reducing PFAS in drinking water.
  - [https://www.nsf.gov/news/news\\_summ.jsp?cntn\\_id=242238](https://www.nsf.gov/news/news_summ.jsp?cntn_id=242238)
- Under the new standard, a device must reduce the concentration of the PFAS in water to below 70 parts per trillion - the advisory level set by the EPA.



## UNITED STATES DEPARTMENT OF DEFENSE (DoD)

- Historically, the DoD used/released PFAS into water and/or air through the use of aqueous film forming foam (AFFF) which contained PFOS and sometimes PFOAS.
- DoD is currently investigating some sites with known or suspected discharge of PFAS.
- DoD is taking steps to eliminate the use of AFFF's in maintenance, testing and training on DoD installations world wide. DoD is also seeking AFFF alternatives.
  - <https://www.defense.gov/Explore/Spotlight/pfas/>

# CENTER FOR DISEASE CONTROL (CDC)

- The CDC's Division of Laboratory Sciences (DLS) operates the National Biomonitoring Program (NBP) to gauge exposure to potentially toxic chemicals that could cause environmental and/or public health issues.
- PFAS are currently being monitored in/by the NBP.
- The Biomonitoring data for PFAS will be available to assist in assessing PFAS exposure health effects/risks.
  - [https://www.cdc.gov/biomonitoring/PFAS\\_FactSheet.html](https://www.cdc.gov/biomonitoring/PFAS_FactSheet.html)

## AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY (ATSDR)

- In conjunction with CDC, the ATSDR is conducting exposure assessments in communities near current or former military bases that are known to have had PFAS in their drinking water.
- The ATSDR has also conducted health studies relating to the relationship between PFAS' exposure and health risks.
  - <https://www.atsdr.cdc.gov/pfas/activities/index.html>