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Insights

STATE-BY-STATE REGULATION OF PFAS SUBSTANCES IN DRINKING WATER

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This blog was originally published in June 2021. Visit our up-to-date blog on PFAS drinking water standards: state-by-state regulations >

In the absence of an enforceable federal per- and polyfluoroalkyl substances ("PFAS") drinking water standard, many states have embarked on the process of regulating PFAS compounds in drinking water. The result is a patchwork of regulations and standards of varying stringency which presents significant operational and compliance challenges to impacted industries. This client alert surveys the maximum contaminant levels ("MCLs"), as well as guidance and notification levels, for PFAS compounds – typically perfluorooctane sufonic acid ("PFOS") and perflurooctanic acid ("PFOA") – in drinking water that have been enacted or proposed at the state level.

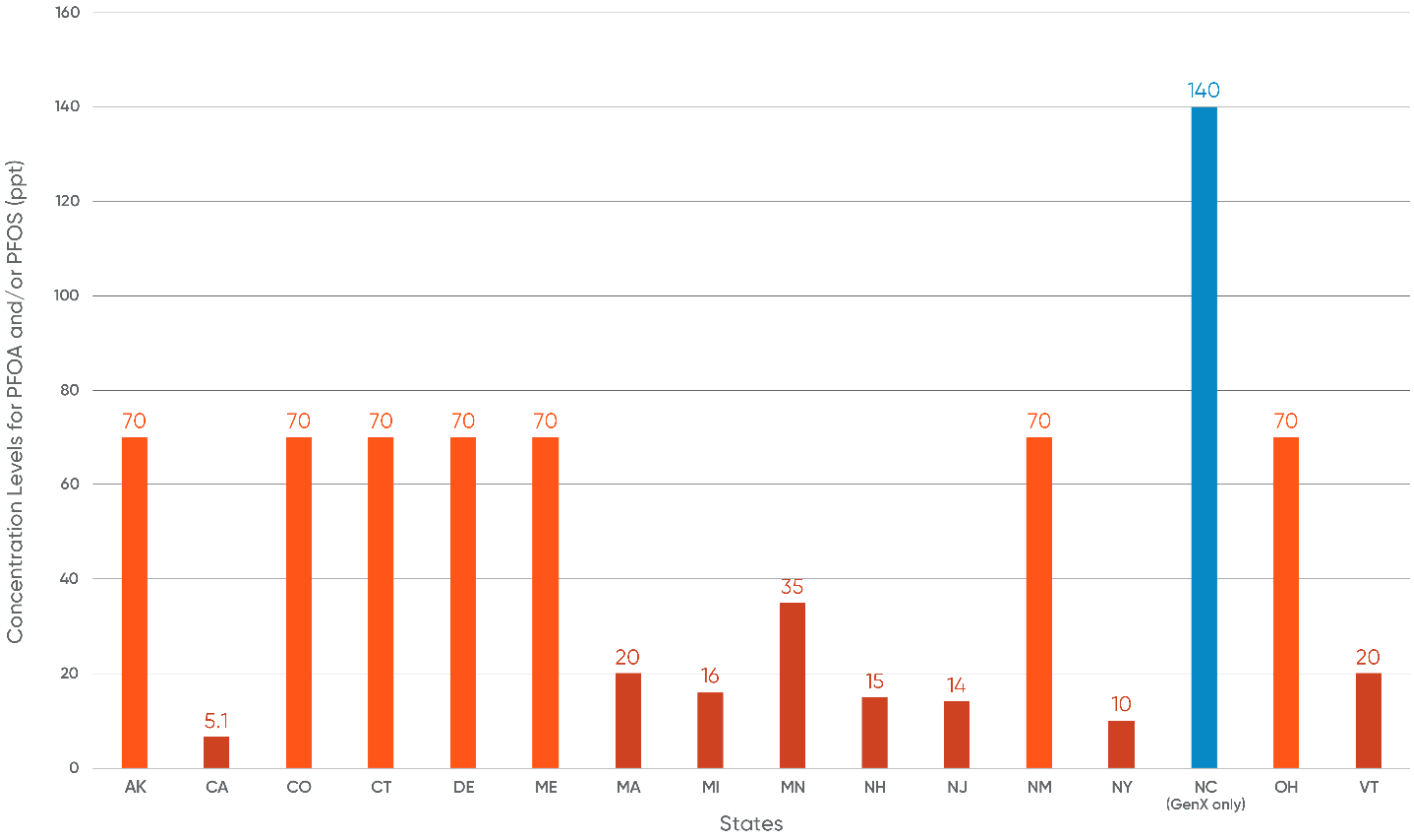
1. Federal Health Recommendations and Advisory

The United States Environmental Protection Agency ("EPA") has issued a Lifetime Drinking Water Health Advisory Level of 70 ppt for PFOS and PFOA. EPA's Health Advisory is non-enforceable and non-regulatory, but is intended to provide technical information to state agencies and other public health officials on health effects, analytical methodologies, and treatment technologies associated with drinking water PFAS contamination. Several states have adopted the EPA's recommended 70 ppt PFAS concentration limitation for drinking water.

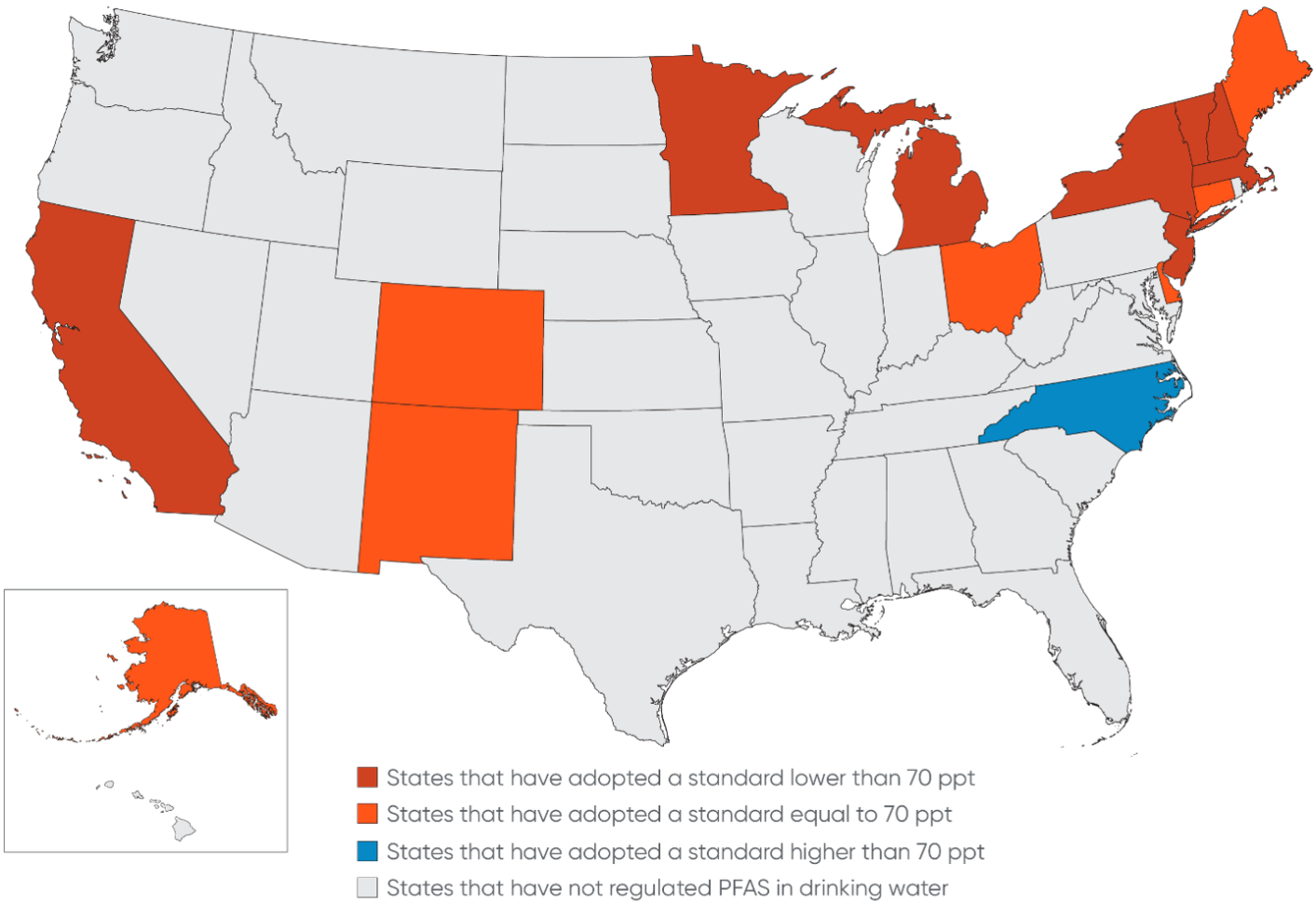
2. State Regulations

President Biden's Environmental Justice Plan includes a commitment to set "enforceable limits for PFAS in the Safe Drinking Water Act," presumably for PFOA and PFOS, so the entire country may soon be subject to enforceable MCLs for at least those two PFAS compounds. However, until such federal action occurs (and potentially afterwards to the extent that states continue to enact more stringent standards), the regulatory landscape for PFAS compounds in drinking water will consist of an array of widely-varying state-promulgated standards and regulations. For example, one of the smallest allowable concentrations is currently 5.1 ppt (California; PFOA only), and one of the largest

values is currently 400,000 ppt (Michigan; PFHxA only). The chart below illustrates the significance of the discrepancies between the regulatory levels for PFOA and/or PFOS.



The map and chart is current as of June 8, 2021. Some states, including Rhode Island and Washington, have proposed drinking water regulations for PFAS, and Virginia has approved a committee to recommend MCLs for PFAS compounds in drinking water, so further regulation in those jurisdictions may be forthcoming. These proposals underscore that the guidance and requirements surrounding the PFAS drinking water regulations are developing quickly.



The information is current as of June 8, 2021

Participating States	Concentration Level	Type of Regulation	Adoption Status
California	5.1 ppt	PFOA (Notification)	Regulation and Related Information
Michigan	6 ppt	PFNA (MCL)	Regulation and Related Information
California	6.5 ppt	PFOS (Notification)	Regulation and Related Information
Michigan	8 ppt	PFOA (MCL)	Regulation and Related Information

New York	10 ppt	PFOA and PFAS (MCL)	Regulation and Related Information
New Hampshire	11 ppt	PFNA (MCL)	Regulation and Related Information
New Hampshire	12 ppt	PFOA (MCL)	Regulation and Related Information
New Jersey	13 ppt	PFNA and PFOS (MCL)	Regulation and Related Information
New Jersey	14 ppt	PFOA (MCL)	Regulation and Related Information
Minnesota	15 ppt	PFOS (Guidance)	Health Advisory
New Hampshire	15 ppt	PFOS (MCL)	Regulation and Related Information
Michigan	16 ppt	PFOS (MCL)	Regulation and Related Information
New Hampshire	18 ppt	PFHxS (MCL)	Regulation and Related Information
Massachusetts	20 ppt (Stated in the regulation as 20 ng/L)	6 PFAS Substances combined – PFOA, PFOS, PFHxS, PFNA, PFHpA, and PFDA (MCL)	Regulation and Related Information

Vermont	20 ppt (Stated in the regulation as 0.000020 mg/L)	5 PFAS substances combined: PFHpA, PFHxS, PFNA, PFOS and PFOA (MCL)	Regulation and Related Information
Ohio	21 ppt	PFNA (Guidance)	Statewide PFAS Action Plan and Related Information
Minnesota	35 ppt	PFOA (Guidance)	Health Advisory
Minnesota	47 ppt	PFHxS (Guidance)	Health Advisory
Michigan	51 ppt	PFHxS (MCL)	Regulation and Related Information
Connecticut	70 ppt	5 PFAS substances combined: PFHpA, PFHxS, PFNA, PFOS, and PFOA (Notification)	Health Advisory
Alaska, Colorado, Delaware, Maine, New Mexico, and Ohio	70 ppt	Follow the EPA Standard: PFOS and PFOA combined (Notification and Guidance)	Alaska: Action Level Colorado: Health Advisory Level Delaware: Guidance Policy Maine: Maximum Exposure Guideline New Mexico: Toxic Pollutant Standard Ohio: Statewide PFAS Action Level

Ohio	140 ppt	PFHxS (Guidance)	Statewide PFAS Action Plan and Related Information
North Carolina	140 ppt	GenX (Guidance)	Health Advisory
Michigan	370 ppt	HFPO-DA (MCL)	Regulation and Related Information
Michigan	420 ppt	PFBS (MCL)	Regulation and Related Information
California	500 ppt (stated in the regulation as .5 ppb)	PFBS (Notification)	Regulation and Related Information
Ohio	700 ppt	Gen X (Guidance)	Statewide PFAS Action Plan and Related Information
Minnesota	2,000 ppt	PFBS (Guidance)	Health Advisory
Minnesota	7,000 ppt	PFBA (Guidance)	Health Advisory
Ohio	140,000 ppt	PBFS (Guidance)	Statewide PFAS Action Plan and Related Information
Michigan	400,000 ppt	PFHxA (MCL)	Regulation and Related Information

No regulations:

Alabama, Arizona, Arkansas, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming

Key:

Notification	A corporate representative must inform the appropriate state official that a drinking water concentration in a water source owned or operated by the corporation (public well, supply tank, etc.) is above the limit.
Guidance	The state establishes recommended concentration limits for one or more PFAS compounds, but no notification or other action is required if concentrations exceed the recommended limits.
MCL	MCLs set the maximum amount of a PFAS compound that can be present in drinking water. Treatment facilities that supply drinking water must ensure that they meet these limits by treating and filtering the drinking water, and by limiting the upstream discharge of PFAS compounds through permits.

3. How Do These Limits Impact Businesses?

MCLs set the maximum concentration of a given contaminant that can be present in drinking water. Publicly owned treatment works ("POTWs") and drinking water systems are ultimately responsible for meeting the applicable MCLs and are required to ensure that drinking water distributed to the public meets these limits. In order to do that, POTWs and state agencies often include discharge limits in the permits of upstream dischargers to the POTW or other drinking water system to ensure that the effluent the treatment facility receives can be adequately filtered and treated to comply with the MCLs.

Businesses that currently or historically have used PFAS compounds, or have reason to believe that they may be present in their process wastewater effluent, should evaluate: (1) whether their wastewater discharges, following treatment by the POTW or other treatment facility, are eventually released to sources that are used for drinking water; (2) whether their discharge contains any of the PFAS compounds that are regulated in their jurisdiction; and (3) whether they are likely to be subject to a permit condition limiting the allowable concentration of PFAS compounds in their wastewater discharges. Having this information will allow businesses to determine whether they need to modify their operations to reduce or eliminate PFAS from their waste stream to achieve compliance with an existing standard, or in anticipation of likely future permit conditions.

4. Conclusion

The regulation of PFAS chemicals in drinking water is expected to increase over the next several years as additional research is conducted on potential health impacts, and as regulators at both the federal and state levels develop a deeper understanding of the prevalence of PFAS chemicals in drinking water and the efficacy of different MCLs.

For more information on PFAS chemicals, and the regulatory and liability risks that they pose, please visit our PFAS webpage. If you have a question about how to manage PFAS risk in any jurisdiction, contact Tom Lee, John Kindschuh, or any other member of our PFAS team at Bryan Cave Leighton Paisner LLP.

RELATED PRACTICE AREAS

- Environment
- PFAS Team

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