

Insights

PFAS UPDATE: AUGUST 2022 STATE-BY-STATE PFAS DRINKING WATER STANDARDS

Aug 31, 2022

This insight was originally published in August 2022. [Visit our up-to-date blog on PFAS drinking water standards: state-by-state regulations >](#)

In the absence of an enforceable federal drinking water standard for per- and polyfluoroalkyl substances (“PFAS”), many states have started regulating PFAS compounds in drinking water. The result is a patchwork of regulations and standards of varying levels, 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 sulfonic acid (“PFOS”) and perfluorooctanoic acid (“PFOA”) – in drinking water across the United States.

I. Federal Health Advisory Levels

On [June 15, 2022](#), the United States Environmental Protection Agency (“EPA”) issued health advisories (“HAs”) for four PFAS substances in drinking water. The values are as follows:

PFAS Substance	Concentration
PFOA (Perfluorooctanoic acid)	0.004 ppt
PFOS (Perfluorooctane sulfonic acid)	0.02 ppt
Gen X Chemicals (HFPO-DA)	10 ppt
PFBS (Perfluorobutane sulfonate)	2,000 ppt

The newly issued HAs for PFOA and PFOS supersede and dramatically reduce EPA’s 2016 [Drinking Water Health Advisory Level of 70 ppt for PFOS and PFOA](#).

EPA's HAs are non-enforceable, but are intended to provide technical information to state agencies and other public health officials regarding health effects, analytical methodologies, and treatment technologies associated with drinking water PFAS contamination. In fact, both the [Chemours Company](#) and the [American Chemistry Council](#) recently filed lawsuits against EPA to challenge these HAs.

Certain industry groups and states, such as Georgia, have stated that the HAs are “[significantly below](#)” the current levels of detection. The Cambridge Water Department in Massachusetts further clarifies how the HAs are at “microscopic” levels: “[These new health advisories are also below current reliable detection abilities of scientific equipment \(Scientists can currently detect PFAS compounds down to 2 parts per trillion\).](#)” Although the HAs are non-enforceable, there is significant concern from public agencies and private industries about how to appropriately react to the HAs given the perceived impossibility of testing at these levels.

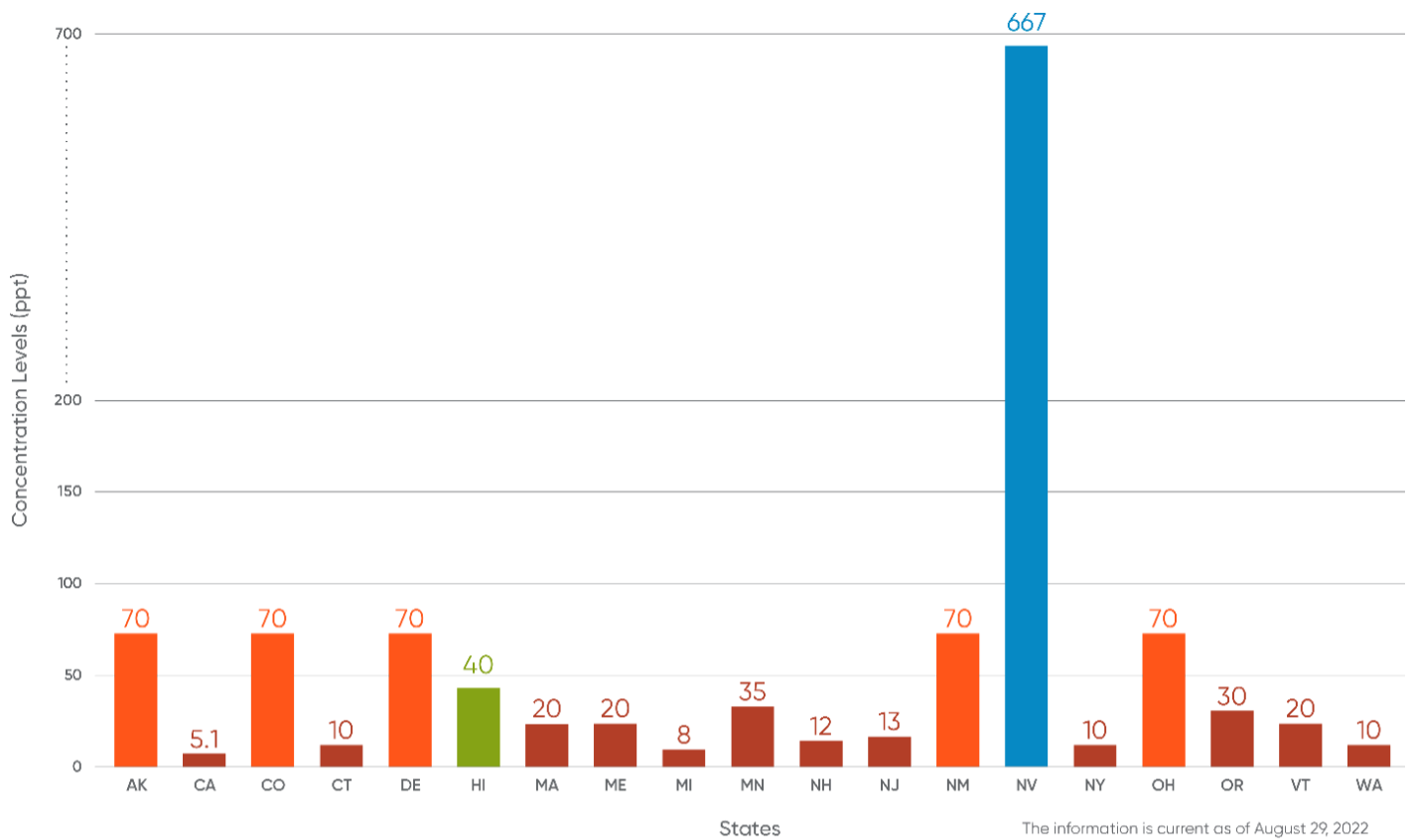
Many have suggested that values this low effectively equates to a statement that any level of PFOA or PFOS in drinking water may cause health effects, which raises significant testing, treatment, and permitting considerations. For example, the State of New York asserted that to comply with an enforceable MCL of .004 for PFOA “[would cost \\$1.5 billion statewide for upgrades and a further \\$78 million per year for operation and maintenance.](#)”

For additional information, please refer to [BCLP’s Client Alert](#) regarding the new HA levels.

According to the [PFAS Strategic Roadmap](#), EPA expects to issue proposed drinking water limits, or MCLs, for PFOA and PFOS in the fall of 2023. A national drinking water limit will require the entire country to evaluate the concentration of these two compounds in drinking water, and to implement treatment systems and permit limits to achieve the MCLs.

II. State Regulations

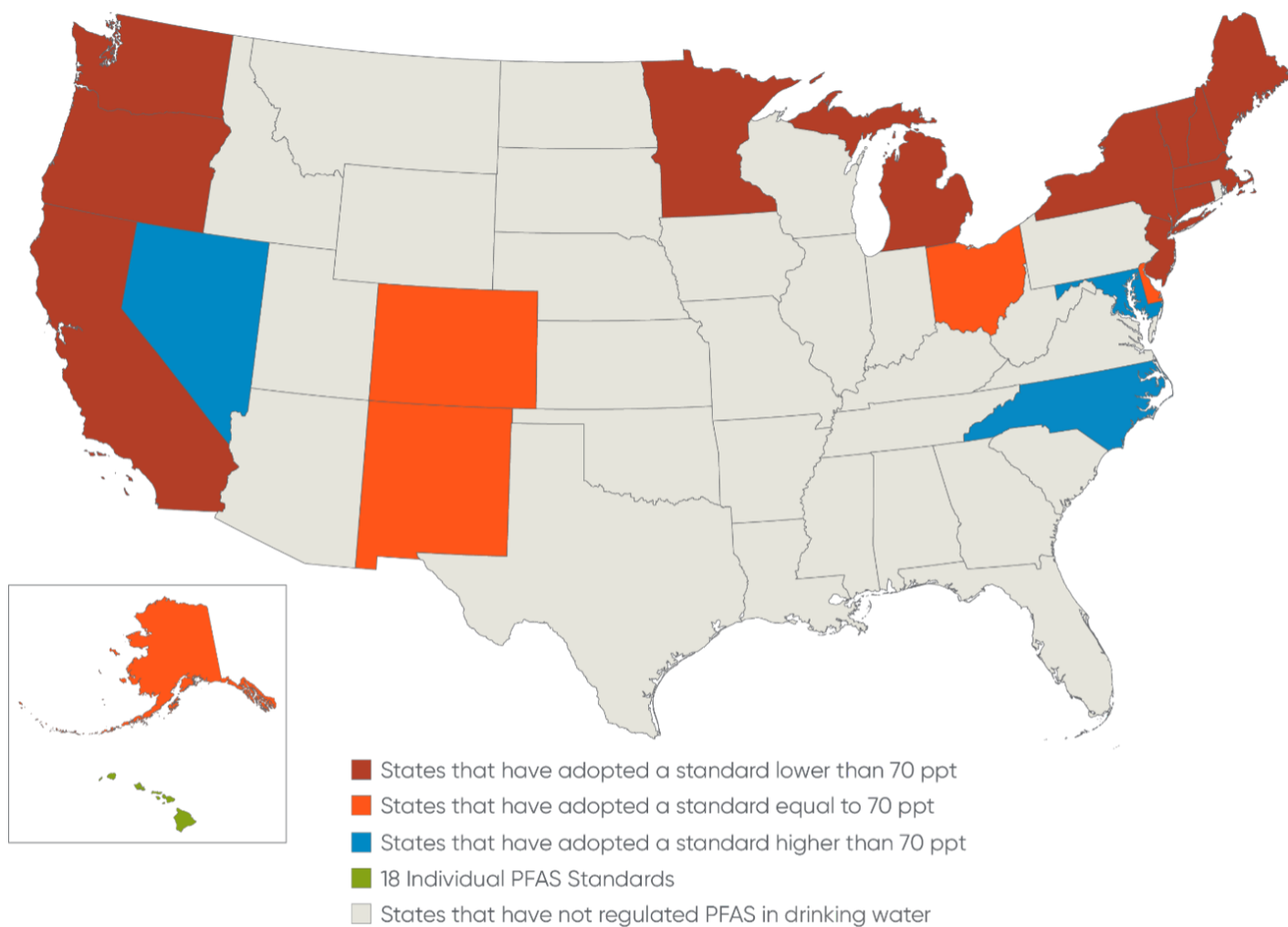
Until the federal government enacts MCLs for PFOA and PFOS, the regulatory landscape for PFAS compounds in drinking water consists of an array of widely-varying state-promulgated standards and regulations. For example, concentrations range from 5.1 ppt (California; PFOA only), and 667,000 ppt (Nevada; PFBS only), depending on the PFAS compound, the nature of the regulation, and the state’s view on levels which may result in health effects. For further detail, the chart below illustrates the significance of the discrepancies between the regulatory levels, only for PFOA and/or PFOS.



The map and chart is current as of August 29, 2022.

Delaware, Maine, and Rhode Island have enacted legislation to establish MCLs for PFAS compounds for drinking water, so implementing regulations in those jurisdictions may be forthcoming. Moreover, Wisconsin is currently involved in an administrative process to formally establish drinking water standards. Additionally, numerous states, including Iowa, Kentucky, North Carolina, Ohio, Pennsylvania, South Carolina, and West Virginia, have proposed, but not yet promulgated, drinking water regulations for PFAS, although Pennsylvania appears to be close to doing so. These actions underscore that state-driven guidance and requirements surrounding the PFAS drinking water regulations are developing quickly throughout the country.

PFAS DRINKING WATER REGULATIONS



The information is current as of August 29, 2022

Participating States	Concentration Level	Chemical(s) and Type of Regulation	Regulatory Information
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
Washington	9 ppt	PFNA (Notification)	Rules and Related Information
Connecticut	10 ppt	PFOS (Notification)	Action Level
Washington	10 ppt	PFOA (Notification)	Rules 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
Connecticut	12 ppt	PFNA (Notification)	Action Level
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

Washington	15 ppt	PFOS (Notification)	Rules and Related Information
Connecticut	16 ppt	PFOA (Notification)	Action Level
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 0.000002 mg/L)	5 PFAS substances combined: PFOA, PFOS, PFHpA, PFHxS, and PFNA (MCL)	Regulation and Related Information
Maine	20 ppt (Stated in the Interim Drinking Water Standard as 20 ng/L)	6 PFAS substances combined: PFOA, PFOS, PFHxS, PFNA, PFHpA, and PFDA (Notification)	Interim Drinking Water Standard and Related Information
Rhode Island	20 ppt	6 PFAS substances combined: PFOA, PFOS, PFHxS, PFNA, PFHpA, and PFDA (Notification)	Interim Drinking Water Standard and Related Information
Ohio	21 ppt	PFNA (Guidance)	Statewide PFAS Action Plan and Related Information

Oregon	30 ppt	4 PFAS substances combined: PFOS, PFOA PFHxS, and PFNA (Guidance)	Health Advisory and Related Information
Minnesota	35 ppt	PFOA (Guidance)	Health Advisory
Hawaii	40 ppt, etc. ^[1] (Stated by the Hawaii Department of Health in µg/L)	PFOA and PFOS; 16 other PFAS substances (Advisory)	Environmental Action Levels (Table D-3a)
Minnesota	47 ppt	PFHxS (Guidance)	Health Advisory
Connecticut	49 ppt	PFHxS (Notification)	Action Level
Michigan	51 ppt	PFHxS (MCL)	Regulation and Related Information
Washington	65 ppt	PFHxS (Notification)	Rules and Related Information
Colorado	70 ppt (Stated in the regulation as 70 ng/L)	3 PFAS substances combined: PFOS, PFOA, and PFNA (Guidance)	Translation Level and Related Information
Alaska, Delaware, New Mexico, and Ohio	70 ppt	Adopted the EPA Standard: PFOS and PFOA combined (Notification and Guidance)	Alaska: Action Level Delaware: Notification Policy New Mexico: Toxic Pollutant Standard Ohio: Statewide PFAS Action Level

Ohio	140 ppt	PFHxS (Guidance)	Statewide PFAS Action Plan and Related Information
Maryland	140 ppt	PFHxS (Guidance)	Health Advisory
North Carolina	140 ppt	GenX or HFPO-DA (Guidance)	Health Advisory
Washington	345 ppt	PFBS (Notification)	Rules and Related Information
Michigan	370 ppt	Gen X or HFPO-DA (MCL)	Regulation and Related Information
Michigan	420 ppt	PFBS (MCL)	Regulation and Related Information
California	500 ppt (Stated in the regulation as 0.5 ppb)	PFBS (Notification)	Regulation and Related Information
Nevada	667 ppt (stated in the regulation as .667 µg/L)	PFOA and PFOS (Guidance)	Basic Comparison Levels
Colorado	700 ppt (Stated in the regulation as 700 ng/L)	PFHxS (Guidance)	Translation Level and Related Information
Ohio	700 ppt	Gen X or HFPO-DA (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	PFBS (Guidance)	Statewide PFAS Action Plan and Related Information
Colorado	400,000 ppt (Stated in the regulation as 400,000 ng/L)	PFBS (Guidance)	Translation Level and Related Information
Michigan	400,000 ppt	PFHxA (MCL)	Regulation and Related Information
Nevada	667,000 ppt (stated in the regulation as 667 µg/L)	PFBS (Guidance)	Basic Comparison Levels

No PFAS drinking water regulations (as of the date of publication):

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

Key:

Notification	A corporate representative may have to inform an 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. A water supply system also may have to inform its customers if there are any samples that exceed the PFAS values.
Guidance	The state establishes recommended concentration limits for one or more PFAS substances, but no notification or other action is required if concentrations exceed the recommended limits.
MCL	MCLs establish the maximum amount of a PFAS compound that can be present in drinking water. Treatment facilities that supply drinking water must

ensure that these limits are met by treating and filtering the drinking water, and also by limiting the discharge of PFAS compounds through permits.

III. 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 systems 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 the following considerations:

- Whether their wastewater discharges, following treatment by the POTW or other treatment facilities, are eventually released to sources that are used for drinking water;
- Whether their discharge contains any of the PFAS compounds that are regulated in their jurisdiction; and
- Whether they are likely to be subject to permit conditions limiting the allowable concentration of PFAS compounds in their wastewater discharges.

Acquiring 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.

IV. Conclusion

The regulation of PFAS substances in drinking water will continue 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 compounds in drinking water and the efficacy of different MCLs. In furtherance of this conclusion, a [American Chemical Society report](#) asserted in February of 2022 that PFAS substances were detected in 60% of drinking water public supply wells.

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, Emma Cormier, or any other member of our PFAS team at Bryan Cave Leighton Paisner LLP.

1. Hawaii has 16 additional regulations, including the following: PFDA (.004 µg/L); PFNA (.0044 µg/L); PFunDA (.01 µg/L); PFDoDA and PFTrDA (.013 µg/L); PFHxS (.019 µg/L); PFHpS and PFDS (.02 µg/L); PFOSA (.024 µg/L); PFHpA (.04 µg/L); PFTeDA (.13 µg/L); HFPO-DA (.16 µg/L); PFBS (.6 µg/L); PFPeA (.8 µg/L); PFHxA (4.0 µg/L); and PFBA (7.6 µg/L).

RELATED PRACTICE AREAS

- PFAS Team
- Environment

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