

Recent Executive Action May Impact PFAS Regulation

WRITTEN BY

[Brooks M. Smith](#) | [Melissa Horne](#) | [Todd C. Fracassi](#) | [Chelsey Noble](#)

The regulation of per- and polyfluoroalkyl substances (PFAS), or “forever chemicals,” was a focal point for the Biden administration. In April 2024, the administration, through the U.S. Environmental Protection Agency (EPA), issued two key PFAS rules. The first set nationwide drinking water standards, or maximum contaminant levels (MCLs), for six types of PFAS, and the second designated PFOA and PFOS, and their salts and structural isomers, as “hazardous substances” under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Both rules are currently being challenged in court, although no judicial stays were requested or are in place.

EPA also proposed other key PFAS regulations in 2024. Under the Resource Conservation and Recovery Act (RCRA), EPA proposed to add nine PFAS, including their salts and structural isomers, to the list of “hazardous constituents” in Appendix VIII of 40 C.F.R. Part 261, requiring their consideration in facility assessments and potential corrective actions. Another proposed rule sought to clarify that emerging contaminants, including PFAS, can be managed under RCRA’s Corrective Action Program. EPA also proposed a Clean Water Act (CWA) rule regulating PFAS discharges from certain facilities. This rule primarily targets industries such as manufacturers and formulators of Organic Chemicals, Plastics, and Synthetic Fibers, which are likely to discharge PFAS into wastewater.

On January 20, 2025, the Trump administration issued a [memorandum](#), as is common for incoming administrations, ordering executive agencies not to “propose or issue any rule in any manner” until the current administration has reviewed and approved the rule. Accordingly, the two pending RCRA PFAS-related proposals and the proposed CWA discharge limits are effectively on ice unless the new administration decides to pursue them.

It is highly unlikely the proposed PFAS regulations under RCRA and the CWA will be finalized as proposed, and at the very least, they will be materially delayed. However, since the [PFAS Action Plan](#) was initiated during the first Trump administration, it remains to be seen whether the administration will continue to focus on PFAS in its second term, despite its deregulatory agenda.

As the administration assesses which PFAS regulations align with its goals, it may not only scrutinize pending proposals, but may also reexamine EPA’s final regulations establishing PFAS MCLs and designating PFOA and PFOS as “hazardous substances” under CERCLA. In fact, it remains to be seen whether DOJ will continue to defend the lawsuits challenging these rules or seek to have them delayed/remanded for further administrative reconsideration. Should the administration decide to revise or reverse these regulations, EPA will have to engage in notice and comment rulemaking justifying its change of direction (and EPA should expect that its actions will be immediately challenged). Revisions to the PFAS MCLs would have significant implications for public water supply

systems nationwide and the trickle-down effect would be substantial, given state reliance on the MCLs in state level regulations, including those governing wastewater discharges and remediation.

Another final PFAS-related regulation that could be impacted by the change in administration is the October 2023 TSCA PFAS reporting rule, which requires submittal of a one-time report from companies that manufactured or imported certain PFAS between January 1, 2011, and December 31, 2022. The final rule established a six-month reporting period beginning on November 12, 2024, but EPA issued a direct final rule in September 2024 delaying the start of the reporting period to July 11, 2025, explaining that its software was not yet ready to accommodate the expected volume of reporting. The new administration could push this reporting deadline even further out if it wants time to assess possible revisions to the rule, presumably also through a direct final rule based on the same reasons identified by the prior administration.

Up until 2024, states were generally left to regulate PFAS on their own, with little guidance or direction from the federal government. If the new administration decides not to pursue or significantly delays additional PFAS regulation, or even rolls back existing regulations, states could find themselves again left to chart their own paths. States that have been at the forefront of PFAS regulation, including California, Connecticut, Maine, New Hampshire, Michigan, New Jersey, and New York, to name a few, can be expected to continue to push forward with PFAS regulation, but other states that have not been active to date may also move to begin regulating PFAS in the face of growing public concern if faced with a lack of federal direction. At the very least, we may see more states attempting to assess the scope of PFAS contamination in their jurisdictions through the collection of PFAS data via state remediation or wastewater discharge programs. As long as the federal regulatory landscape remains in flux, states will continue advancing their own PFAS regulations, leading to an ever-growing patchwork of standards and requirements across the U.S.

RELATED INDUSTRIES + PRACTICES

- [Environmental + Natural Resources](#)
- [PFAS + Emerging Contaminants](#)