

U.S. EPA Embraces Prior Administration's PFAS Drinking Water Proposals

Publications

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On February 22, 2021, U.S. EPA announced that it was moving forward with implementation of several regulatory proposals issued in the waning days of the Trump Administration. First, U.S. EPA announced that it was finalizing its regulatory determination under the Safe Drinking Water Act (SDWA) for perfluorooctanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA). A regulatory determination is the first regulatory step in setting a maximum contaminant level (MCL) for these contaminants. The final regulatory determination, signed by Acting EPA Administrator Jane Nishida, reached the same conclusions as had been reached by former EPA Administrator Andrew Wheeler—(1) that these contaminants may have an adverse effect on the human health; (2) that the contaminants are known to be present in public water systems at a sufficient frequency and at levels that pose public health concerns; and (3) that regulation of these contaminants presents a meaningful opportunity to reduce health risks. Interestingly, U.S. EPA's regulatory determination specifically acknowledges that its 2016 Lifetime Health Advisory Levels of 70 parts per trillion for both PFOA and PFOS continue to represent the best available peer reviewed scientific assessment for these chemicals, notwithstanding that many comments were submitted encouraging U.S. EPA to update and revise its 2016 Lifetime Health Advisory Levels. It is likely to take about four years to promulgate a final MCL for PFOS and PFOA.

U.S. EPA also reissued its proposed Fifth Unregulated Contaminant Monitoring Rule (UCMR5). The reissued USMR5 is identical to the draft that was issued on January 14, 2021 at the tail end of the Trump Administration but was temporarily put on hold when the Biden Administration took office. The proposed UCMR5 would require community water systems serving 3,300 people or more to monitor for a group of 30 chemicals (29 of which are PFAS substances) between 2023 and 2025. The monitoring is intended to provide U.S. EPA with data on the national occurrence of these chemicals in drinking water that at least in part will guide U.S. EPA in promulgating regulatory determinations for other PFAS substances. U. S. EPA will accept public comment on the draft UCMR5 for a period of 60 days following publication in the Federal Register.

We will continue to provide updates on U.S. EPA's efforts to regulate PFAS substances in the *Corporate Environmental Lawyer*.

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