

EXPLORING STATE-LEVEL PFAS REGULATIONS

A summary of current state regulations around PFAS, and what they mean.

INTRODUCTION

In 2020, only an approximated 16% of people in the United States had heard of Per- and Poly-fluorinated Substances (PFAS).¹ On the morning of April 10th, 2024, the United States Environmental Protection Agency (EPA) finalized its most significant rule yet pertaining to the chemical subclass and incidentally precipitated a swell in public interest on the matter. Following this event, Google saw unprecedented interest in PFAS as searches of the term surged to levels previously unseen.² More information on this rule, descriptively titled the National Primary Drinking Water Regulation (NPDWR), and other federal regulations can be found [here](#) and [here](#). As more people than ever learn about PFAS, questions surrounding their regulation are being asked with more frequency. In this Trexin Insight Paper (TIP), the 4th in a series on PFAS regulations, we'll examine how regulations work at the state level, some current state regulations, and the future of state regulations.

HOW DO STATE REGULATIONS WORK?

Before we can discuss state-level regulations of PFAS in depth, it is imperative to understand how these regulations are imposed alongside federal regulations. The United States operates in what is referred to as a federalist system. What this means, broadly, is that the federal government and state governments share legal authority. State laws cannot supersede federal laws, but states have the authority to pass laws as they please so long as those laws do not violate federal law.³⁴ Take the NPDWR, as an example. According to this rule, concentrations of Perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) specific PFAS, cannot exceed 4 parts per trillion.⁵ A state could not determine that this law is too restrictive and pass a law requiring a different maximum of 5 parts per trillion. However, a state could decide that this regulation is not sufficient and pass a more restrictive law making the maximum legal concentration 3 parts per trillion within their borders.

WHAT ARE THE CURRENT STATE LAWS REGARDING PFAS?

There are currently around 140 laws in 28 states with the goal of reducing the impact and exposure of PFAS chemicals to humans and the environment with even more laws introduced that have yet to pass.⁶ While many of these laws have the shared aim of reducing exposure to PFAS, their scope and discretion vary significantly. For instance, Florida has at least two laws providing appropriations that assist with the removal of PFAS while California has adopted laws that regulate the use of PFAS chemicals in certain products.⁷⁸⁹¹⁰ Contrastingly, other states like Virginia had passed laws

¹ <https://www.law360.com/productliability/articles/1248388/pfas-and-public-opinion-understanding-the-gender-dividem>

² <https://trends.google.com/trends/explore?date=today%201-m&geo=US&q=PFAS&hl=en-US>

³ https://constitution.congress.gov/browse/essay/intro.7-3/ALDE_00000032/

⁴ <https://constitution.congress.gov/constitution/amendment-10/>

⁵ <https://www.epa.gov/sdwa/and-polyfluoroalkyl-substances-pfas>

⁶ <https://www.saferstates.org/priorities/pfas/#:~:text=Policies%20for%20Addressing%20PFAS,been%20adopted%20in%2028%20states>

⁷ <https://flsenate.gov/Session/Bill/2021/2500>

⁸ <https://flsenate.gov/Session/Bill/2022/5001>

⁹ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1200

¹⁰ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1817

directing their State Board of Health to “adopt regulations establishing maximum contaminant levels (MCLs) in public drinking water systems for... perfluoroalkyl and polyfluoroalkyl substances as the Board deems necessary.”¹¹ The wide range of laws passed to tackle PFAS reflects the variety with which states are choosing to approach their regulations, many of which came before federal laws were enacted.

WHAT IS THE FUTURE OF STATE REGULATIONS?

The adoption of significant federal legislation such as the NPDWR indicates an environment in which states are dedicated to continually addressing impacts of PFAS in a variety of ways. Many of these state laws have a long-term vision for limiting the influence of PFAS that extends beyond the scope of even some current federal actions. For instance, one Minnesota statute states that, “Beginning January 1, 2032, a person may not sell, offer for sale, or distribute for sale in this state any product that contains intentionally added PFAS, unless the commissioner has determined by rule that the use of PFAS in the product is a currently unavoidable use.”¹² The length of regulations such as this effectively demonstrate a prolonged ambition from states to monitor and prevent the impact of PFAS as public concern around the topic grows. As concern and interest mounts among the public, the attention given to PFAS will be unlikely to falter thereby creating a sustained incentive for law makers to ensure the continued passage of new PFAS regulations.¹³¹⁴

CONCLUSION

Governments at both the state and federal level have recently begun to rapidly enact numerous regulations aimed at limiting the impact of PFAS on the environment and human health. While laws from the federal government apply to all states, the laws within each state can differ greatly. This lack of uniformity between states has created a veritable mélange of laws which must all be adhered to. Ensuring your company’s compliance with all new regulations will be essential to avoid penalties, fines, and reputational damages. To learn more about how Trexin can ensure your regulatory compliance, please contact one of our PFAS Advisors [here](#). In the next TIP in this series, we will examine the prospect and potential impacts of PFAS regulations abroad.



This TIP was written by Kenneth Beymer. Kenneth welcomes comments and discussion on this topic and can be reached at kenneth.beymer@trexin.com.

¹¹ <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB1257>

¹² <https://www.revisor.mn.gov/statutes/cite/116.943#stat.116.943.5>

¹³ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10653490/>

¹⁴ <https://www.jmir.org/2022/3/e25614/>