

WHO PFAS Draft Guide Will Impact U.S.

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In a significant development related to PFAS, the World Health Organization (WHO) on September 29, 2022 issued a draft “PFOS and PFOA in Drinking-Water” [Background Document](#), which will inform the WHO’s recommendations for drinking water guidelines. The WHO PFAS results and recommendations are significantly higher than the EPA’s original guidance level of 70 parts per trillion (ppt) and several magnitudes higher than the EPA’s recently issued Health Advisories for certain PFAS. The WHO’s recommendations will have significant impacts on current and future legal challenges to the EPA’s efforts to enact enforceable drinking water levels in the United States.

WHO PFAS Recommendations

The WHO’s draft recommendations for drinking water enforceable limits addressed both PFOA and PFOS, similar to the EPA’s primary focus on the same issue in the United States. The Provisional Guidance Levels (pGVs), though, are significantly higher than anything that the EPA has in place for guidance levels, Health Advisories, or contemplated future enforceable drinking water levels. The pGVs proposed are 0.1 micrograms/liter (ug/L) or 100 ppt individually for PFOA and PFOS and a combined pGV of 0.5 ug/L or 500 ppt for total combined PFAS. The combined PFAS pGV takes into account that roughly 30 PFAS types are currently reliably measurable.

The WHO’s pGVs are intended to act as guideposts for countries and water suppliers in assessing necessary PFAS regulatory or remediation activity. Because the WHO is a global agency, it took into account the fact that many countries do not have the technological means to test and remediate PFAS (even PFOA and PFOS) to the same degree as the United States. The WHO also felt that there is still significant uncertainty and lack of consensus on whether PFAS, and PFOA and PFOS specifically, can be linked to adverse health effects, a conclusion that is in direct contradiction to the EPA, at least with respect to PFOA and PFOS.

Comments to the WHO’s draft document are being accepted through November 11, 2022.

EPA’s Drinking Water Actions

We [previously detailed](#) how, on June 15, 2022, the EPA issued Health Advisories (HAs) for five specific PFAS, PFOA (interim), PFOS (interim), PFBS (final) and GenX (final). While not enforceable levels for PFAS in drinking water, the EPA’s PFAS Health Advisories are nevertheless incredibly

significant for a variety of reasons, including influence on future federal and state drinking water limits, as well as potential impacts on future PFAS litigation.

The levels set by the EPA's PFAS Health Advisories were as follows:

PFOA	.004 ppt
PFOS	.02 ppt
GenX	10 ppt
PFBS	2,000 ppt

Since the HAs were published, the EPA has faced several lawsuits challenging the HAs. The lawsuits generally allege that the HAs should be struck down and are not valid, as they were created “arbitrarily and capriciously.” In support, the moving parties say that the HAs were created in an improper manner because (1) they incorporated toxicity assumptions that deviate from the EPA’s own standard methods; and (2) EPA incorporated grossly incorrect and overstated exposure assumptions?in essence, EPA used the wrong chemical when making its exposure assumptions, thereby resulting in a significantly less tolerant health advisory for [PFAS] than is warranted by the data. In addition, the parties argue that the EPA failed to go through the necessary public comment period before issuing its final GenX HA, and that in creating the GenX HA, the EPA exceeded its authority under the Safe Drinking Water Act.

WHO PFAS Impacts On EPA Efforts and Litigation

It is very unlikely that the WHO PFAS findings and recommendations will change the focus of the EPA or the speed at which the agency is seeking to regulate. The WHO report will, however, have an impact on existing and future litigation challenging EPA regulatory actions focused on PFAS. The arguments will say that the WHO had available to it the same science that the EPA did, yet the WHO reached a completely different position. The arguments will likely say that the EPA is acting by ignoring the science and putting politics over the merits of scientific endeavor. The EPA will surely counter with arguments focusing on the fact that the WHO’s purpose in putting forth its report was not to create the most aggressive PFAS recommendations possible, but ones with which countries spanning the entire globe, regardless of economic prosperity, can manageably begin their own enforcement and regulatory processes.

Nevertheless, whether the arguments of the EPA are found to be meritorious in litigation or not, the WHO report will certainly provide ammunition to parties looking to challenge EPA action.

Conclusion

Now more than ever, the EPA is clearly on a path to regulate PFAS contamination in the country’s water, land and air. The EPA has also for the first time publicly stated when they expect such regulations to be enacted. These regulations will require states to act, as well (and some states may still enact stronger regulations than the EPA). Both the federal and the state level regulations will impact businesses and industries of many kinds, even if their contribution to drinking water contamination issues may seem on the surface to be de minimus. In states that already have PFAS drinking water standards enacted, businesses and property owners have already seen local environmental agencies scrutinize possible sources of PFAS pollution much more closely than ever before, which has resulted in unexpected costs. Beyond drinking water, though, the EPA PFAS Roadmap shows the EPA’s desire to take regulatory action well beyond just drinking water, and companies absolutely must begin preparing now for regulatory actions that will have significant

financial impacts down the road.

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National Law Review, Volume XII, Number 279

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