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Comparing the PFAS Actions of the Trump and Biden Administrations: More Similar Than Expected?

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Special to the Legal

Amid recent deregulatory announcements, the Trump administration has made it clear that per- and poly-fluoroalkyl substances (collectively, PFAS) will continue to be a regulatory priority for the Environmental Protection Agency (EPA). On April 28, 2025, EPA Administrator Lee Zeldin made a broad announcement outlining the agency's regulatory intentions with respect to PFAS. At first glance, many of the stated regulatory initiatives mirror, compliment, or refine those pursued by the Biden administration, with some important changes.

PFAS were a top priority for the Biden administration, as demonstrated by several key regulatory actions undertaken in accordance with the "PFAS strategic roadmap" during the Biden presidency. In April 2024, the Biden EPA finalized drinking water standards under the Clean Water Act, 33 U.S.C. Section 1251 et seq., for five individual PFAS. Those standards include maximum contaminant levels (MCLs) of 4.0 nanograms per liter (ng/L) for PFOA and PFOS, and 10 ng/L for PFHxS, PFNA, and HFPO-DA. The Biden EPA also finalized a hazard index (HI) of 1 (unitless) as the MCL for any mixture containing two or more of PFHxS, PFNA, HFPO-DA, and PFBS, to account for the increased noncarcinogenic risks associated with additive effects of the mixtures. See 89 Fed. Reg.



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32532 (April 26, 2024). If the running annual average hazard index is greater than the MCL of 1, it is a violation of the Hazard Index MCL. The rule requires either quarterly or biannual sampling for large and small public water systems by April 10, 2027, and a requirement to notify the EPA of MCL violations by April 10, 2029. The Biden EPA estimated that 6% to 10% of the 66,000 public drinking water systems subject to the rule would need to undertake remedial measures to achieve compliance.

In addition, the Biden EPA designated PFOS and PFOA and their salts and isomers as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. Section 9601 et seq., without flexibility or exemptions applicable to water treatment

systems that passively receive PFAS-contaminated wastewater. See 89 Fed. Reg. 39124 (May 8, 2024).

The Biden EPA also finalized reporting and recordkeeping requirements under Section 8(a)(7) of the Toxic Substances Control Act (TSCA), 15 U.S.C. Section 2601 et seq., to require any entities that have manufactured (including imported) PFAS in any year since 2011 to electronically report information regarding PFAS uses, production volumes, disposal, exposures, and hazards. The deadline to begin reporting was originally set for November 2024 but was pushed back to July 2025 due to budgetary restraints. Further, between 2020 and 2024, the Biden EPA added 205 PFAS to the toxic release inventory (TRI) reporting requirements and also eliminated de minimis thresholds for these chemicals, thereby requiring facilities manufacturing, processing, or otherwise using these listed chemicals to report quantities of these PFAS that were released into the environment or managed as waste and to make supplier notifications to downstream customers of the presence of these PFAS in products and materials.

Moreover, in January 2025, the Biden EPA posted two other test methods (OTMs) to measure PFAS in air emissions: OTM-45—Measurement of Selected Per- and Polyfluorinated Alkyl Substances from Stationary Sources; and OTM 50—Sampling and Analysis of Volatile Fluorinated Compounds from Stationary Sources Using Passivated Stainless-Steel Canisters.

While Zeldin's April 28 announcement lacked some detail, his announced initiatives appear to generally align with the Biden EPA's actions, albeit with some key distinguishing features. Zeldin announced three guidelines that the EPA will pursue in regulating PFAS: strengthening the science, fulfilling statutory obligations and enhancing communication, and building partnerships. Within those three guidelines, Zeldin's initiatives included, among others, the following priorities that are aimed in part to advance the agency's work on PFAS while reducing burdens on small businesses, public entities and passive receivers:

- Designate an agency lead for PFAS to better align and manage PFAS efforts across agency programs;
- Provide more frequent updates to the PFAS destruction and disposal guidance—changing from every three years to annually;
- Enforce Clean Water Act and TSCA limitations on PFAS use and release to prevent further contamination;
- Develop effluent limitations guidelines (ELGs) for PFAS manufacturers and metal finishers and evaluate other ELGs necessary for reduction of PFAS discharges;
- Implement TSCA Section 8(a)(7) to smartly collect necessary information, as Congress envisioned and consistent with TSCA, without overburdening small businesses and article importers;
- Add PFAS to the TRI in line with Congressional direction from the 2020 National Defense Authorization Act;
- Launch additional efforts on air-related PFAS information collection and measurement techniques related to air emissions;
- Work with states to assess risks from PFAS contamination and the development of analytical and risk assessment tools; and
- Work with Congress and industry to establish a clear liability framework that operations on polluter pays and protects passive receivers.

Notwithstanding the similarities in overall objectives for addressing PFAS, the Trump EPA has demonstrated an intent to regulate PFAS without following precisely in the footsteps of the Biden EPA. Indeed, on May 14, 2025, the EPA announced its intent to rescind the Biden-era MCLs applicable to PFHxS, PFNA, and HFPO-DA as well as the HI for PFAS mixtures, which would require a new rulemaking with notice-and-comment procedures. Despite these potential rollbacks, the Trump EPA intends to retain the MCLs applicable to PFOA and PFOS, albeit with an extended compliance deadline from 2029 to 2031—consistent with the first Trump administration's PFAS action plan. Zeldin stated that the extension would provide water system managers with additional time to “identify affordable treatment technologies and make sure they are on a sustainable path to compliance.” The EPA voiced its intent to support the Department of Justice in defending the PFOA and PFOS MCLs, which have been the subject to judicial challenges following their promulgation in 2024. Further, the EPA will launch the new PFAS OUTreach Initiative (PFAS OUT) to connect with every public water utility known to need capital improvements to address PFAS in their systems and share resources, tools, funding, and technical assistance to help utilities meet the federal drinking water standards. The EPA also emphasized that drinking water systems are “passive receivers of PFOA and PFOS” and that reducing PFAS concentrations in the water the systems treat will “substantially reduce the cost burden” for both the treatment systems and the communities they serve. In this respect, the EPA intends to implement a “polluter pays” framework that will likely include ELGs for PFAS manufacturers, which may be aimed at easing the burden on passive receivers that is not otherwise addressed in the Biden-era PFAS hazardous substance designations under CERCLA.

To further the agency's intent to implement TSCA Section 8(a)(7)'s reporting and recordkeeping requirements with the

burdens on small businesses and article importers in mind, the Trump EPA issued an interim final rule extending the data submission period until Oct. 13, 2026, with an alternate end date for small manufacturers reporting exclusively as article importers of April 13, 2027. See 90 Fed. Reg. 20236 (May 13, 2025).

While Zeldin stated that the agency intends to list additional PFAS to the TRI, the extent and timeline in which the listings will occur is not yet clear. It is also unclear whether the Trump EPA will further examine OTMs 45 and 50 for the purpose of measuring PFAS in air emissions so as to qualify them as alternative test methods for use in future regulations. Regardless, while regulated entities should not expect the path forward to be in full lockstep with that of the Biden administration, the EPA's April 28 announcement includes a host of additional initiatives to address PFAS under statutory frameworks (including the Resource Conservation and Recovery Act), through enforcement initiatives, revised or new risk assessment procedures, and in conjunction with state agencies. If anything is certain, it is that PFAS initiatives will continue and may be an exception from this administration's otherwise aggressive deregulatory agenda.

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