

Setting the Stage: PFAS 101 and The Current Regulatory Landscape

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USWAG PFAS Workshop
May 21, 2025

Agenda

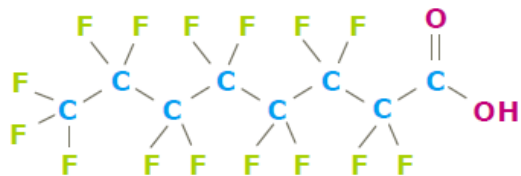
- ▶ PFAS 101
- ▶ The Evolution of PFAS Regulation
- ▶ Major PFAS Rules Under Biden EPA
 - TSCA § 8(a)(7) PFAS Reporting Rule
 - Safe Drinking Water Act - National Primary Drinking Water Regulation
 - CERCLA PFOA/PFOS Hazardous Substance Listing
- ▶ What's Next? ... Compliance Considerations Under Trump 2.0

PFAS 101

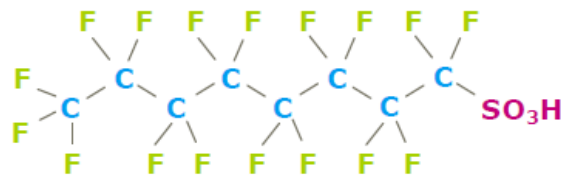


What Are PFAS?

- ▶ PFAS are a category of man-made fluorinated chemicals
- ▶ Invented in 1940s and used in broad range of industrial and consumer applications
- ▶ PFAS manufactured and used for following properties:
 - Superior heat and stain resistance
 - Oil- and water-repellant properties
 - Exceptionally stable, non-reactive
 - Resistant to degradation
- ▶ PFOA and PFOS two of the oldest, most widely used, and best understood PFAS
 - Efforts targeting phase-out of PFOS began in early 2000s



PFOA – perfluorooctanoic acid



PFOS – perfluorooctanesulfonic acid

Where Are PFAS Found?



PFAS Sources in the Environment

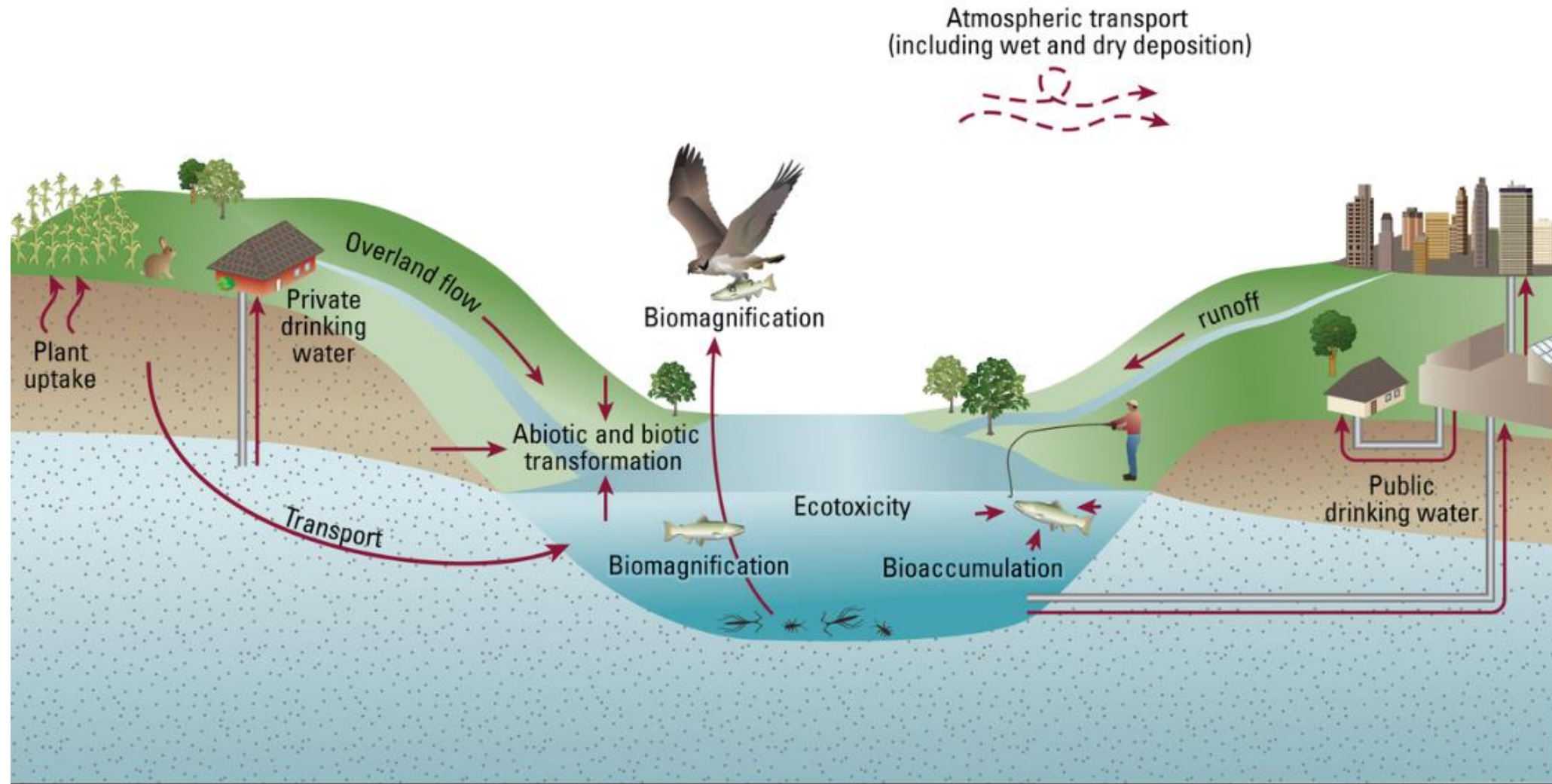
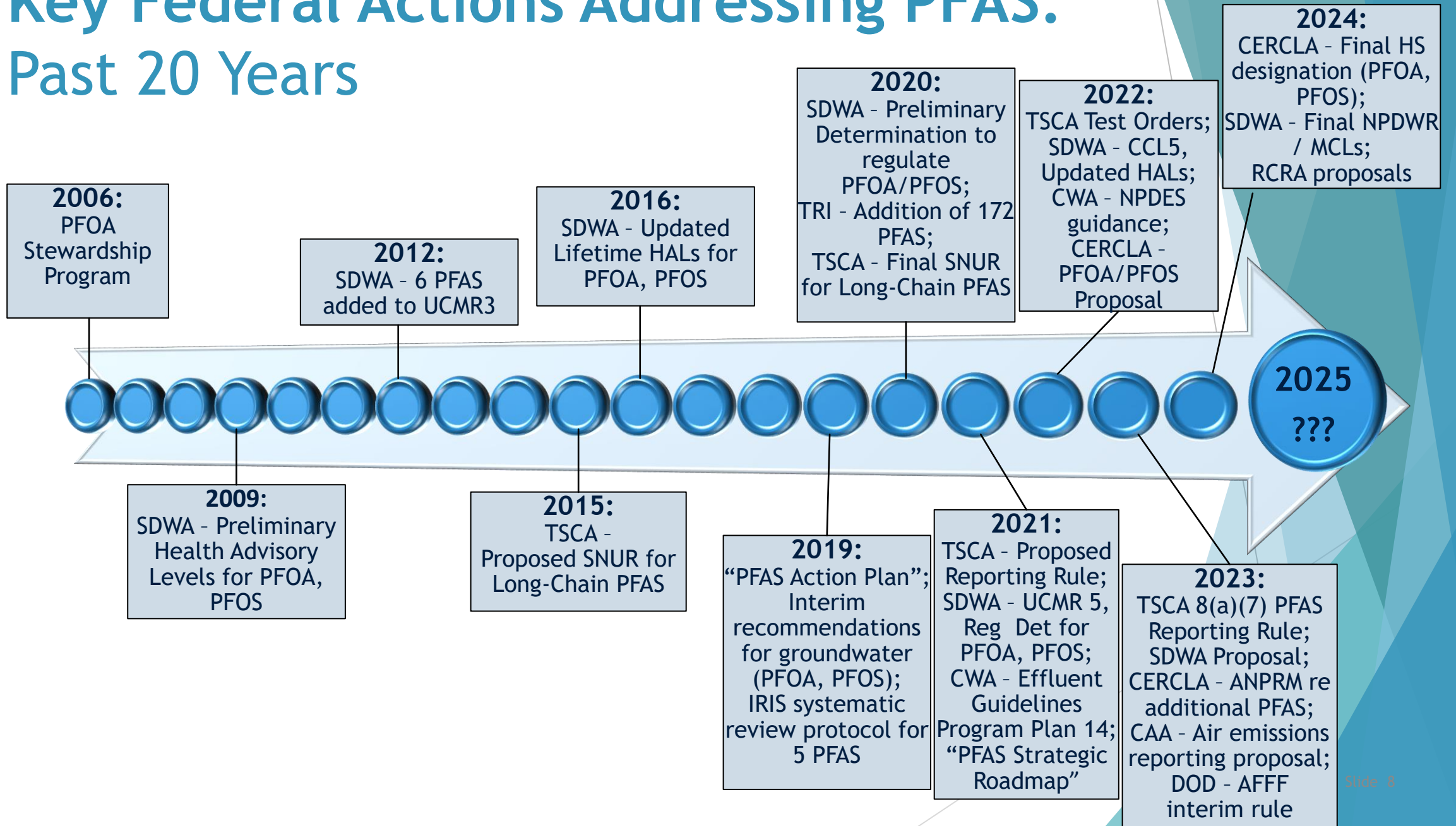


Image courtesy of United States Geological Survey,
<https://www.usgs.gov/media/images/and-polyfluoroalkyl-substances-movement-through-environment>

The Evolution of Federal PFAS Regulation

Key Federal Actions Addressing PFAS: Past 20 Years



Major Biden-Era PFAS Rules

TSCA § 8(a)(7) PFAS Reporting Rule: Timeline

- ▶ **December 2019:** NDAA FY2020 amends TSCA § 8 to require EPA to (by Jan. 1, 2023) promulgate a rule to require “each person who has manufactured” a PFAS “in any year since 2011” to submit data “for each year since 2011”
- ▶ **June 2021:** EPA proposes TSCA § 8(a)(7) PFAS reporting rule
- ▶ **November 2022:** Notice of data availability and request for public comment on proposed PFAS reporting rule
- ▶ **October 2023:** EPA issues final TSCA § 8(a)(7) PFAS reporting rule
 - Reporting window originally set to open November 2024
- ▶ **September 2024:** Biden EPA issues direct final rule pushing back reporting window by 8 months (scheduled to open July 2025)
- ▶ **April 28, 2025:** EPA says it will “implement section 8(a)(7) to **smartly collect necessary information**, as Congress envisioned and consistent with TSCA, without overburdening small businesses and article importers.”
- ▶ **May 2, 2025:** Coalition of chemical companies files TSCA § 21 petition asking EPA to propose amending PFAS reporting rule
- ▶ **May 12, 2025:** Trump EPA issues interim final rule pushing back reporting window by 9 months (currently scheduled to open April 2026)

From TSCA Section 21 Petition:

Among other things, the Petition asks EPA to propose exempting article importers, explaining:

Requiring every company that imports the same type of article to make the same kind of investigation, make the same kind of report and provide EPA with the same information is highly duplicative and very costly.

Indeed, for many products, EPA may already know that the type of article often contains a PFAS.

EPA is required to avoid wasteful and duplicative reporting to the extent feasible. EPA also is required to focus reporting on persons likely to have responsive information.

TSCA PFAS Reporting Rule: The Basics (... As Of Now)

▶ **WHO must report:**

- Anyone who made PFAS (including incidental manufacture as byproduct/impurity) domestically, or imported PFAS / PFAS-containing mixtures / PFAS-containing articles, between January 1, 2011 - December 31, 2022

▶ **WHAT must be reported:**

- Report chemical- and site-specific use and exposure data
- The rule establishes a structural definition for PFAS (cross-referencing 40 CFR 705.3), also applies to mixtures containing PFAS
- Data must be reported on a site-specific and chemical-specific level

▶ **WHEN is reporting due:**

- Currently, reporting window set to open April 13, 2026 and (for most entities) closes October 13, 2026
- EPA expected to solicit comment on reporting timeline (and potentially other issues)

▶ **WHERE/HOW to report data:**

- EPA is still developing the online data collection platform

▶ **WHY is EPA requiring this?**

- NDAA FY2020 amended TSCA to require EPA to collect data - so, rule expected to stay
- ... EPA recently stated it plans to “smartly” implement the rule to collect “necessary” information, avoid overburdening small manufacturers and article importers

Safe Drinking Water Act: National Primary Drinking Water Regulation

- ▶ **April 2024:** First-ever NPDWR for PFAS issued under Biden EPA
 - Underlying regulatory determination for PFOA, PFOS was element of Trump-era PFAS Action Plan (2019)
 - EPA took unconventional step with final regulatory determination for other PFAS - concurrent regulatory determination / proposed NPDWR
- ▶ **May 14, 2025:** Announcement from Trump/Zeldin EPA
 - EPA “Will Keep Maximum Contaminant Levels for PFOA, PFOS”
 - Delaying compliance date for PFOA, PFOS MCLs
 - Will propose extending compliance date to 2031
 - Proposal slated for Fall 2025, final rule slated for Spring 2026
 - MCLs for PFHxS, PFNA, GenX chemicals, and mixtures containing two or more of PFHxS, PFNA, GenX chemicals, and PFBS:
 - EPA announced “intent to rescind [existing MCLs for these chemicals] and reconsider the regulatory determinations for PFHxS, PFNA, GenX, and the Hazard Index mixture of these three plus PFBS to ensure that the determinations and any resulting drinking water regulation follow the legal process laid out in the Safe Drinking Water Act”
 - Unclear to what extent EPA plans to allow notice and comment on changes

CERCLA:

Listing of PFOA/PFOS as Hazardous Substances

- ▶ Final rule published April 2024
- ▶ First time EPA exercising authority under CERCLA §102(a) to designate hazardous substances based on “substantial danger” to the public health or welfare of the environment
- ▶ EPA considers “direct” costs in proposal, response to comments
- ▶ Major “indirect” (but clearly foreseeable) impacts include
 - Reopeners
 - Complications, delays for real estate transactions
 - Chilling effect on reuse/redevelopment of brownfields/industrial properties
 - Uncertainty regarding landowner liability protections, continuing obligations
 - Litigation impacts: Broad new universe of PRPs; uncertainty regarding allocation/contribution from other PRPs
- ▶ Legal challenges pending in U.S. Court of Appeals for D.C. Circuit
 - Following inauguration, government requested stay of proceedings
 - Government was expected to file motion to govern future proceedings in April
 - Instead, sought and was granted additional 30-day extension



What's Next?

... And How Do
I Plan for
Compliance??

What to Keep in Mind

... As You Ride the Regulatory Rollercoaster

- ▶ When considering compliance strategies, legal exposure, remember: There's more to think about than federal regulation!
 - Some states already ramping up “counter” regulation
 - Enviro groups, other NGOs likely to ramp up efforts
- ▶ Be smart about your data generation and management.
 - If proactively sampling: What is the goal? What will you do with the information? Who will have access to the data?
- ▶ A lot is happening at ASTM!
 - Consider getting involved on PFAS-relevant standards
- ▶ USWAG members: Utilize available resources!
 - Discuss operational challenges with similarly situated members
 - Member counseling, member updates on regulatory developments
- ▶ Remember: The regulatory pendulum can swing - sometimes wildly.
 - Regulatory rollbacks now could be reversed in the future

Thank you!

Questions?

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