

DOECCA Fall Conference | August 7, 2025

# Deregulation and FAR Rewrite

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# A BRIEF HISTORY OF U.S. GOVERNMENT PROCUREMENT AND THE FAR

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# Revolutionary War: Foundations of Procurement Reform

- Origins trace back to the Revolutionary War
- Ad hoc purchasing, often corrupt or inefficient
- Need for transparency and accountability emerged early



Source: <https://www.pexels.com/>

# Civil War: Wartime Scandals and Congressional Oversight



Source: [Grant Cavalry Statue - Cyanotype](#) - Free Stock Photo by Nicolas Raymond on Stockvault.net

- Massive spending exposed weaknesses in contracting
- Fraudulent contracts, unfulfilled deliveries, price gouging
- Congressional investigations led to push for procurement reform



# World Wars I & II: Birth of Formal Procurement Systems

- WWI: Emergency contracting and War Industries Board
- WWII: Scale and urgency led to increased regulation
- Foundations of Armed Services Procurement Regulation (ASPR)
- 1974: Office of Federal Procurement Policy (OFPP) created to unify government-wide regulations.
  - By 1979, 877 different sets of procurement regulations existed across 19 agencies.
- 1980 OFPP established the FAR system.
- 1984: First FAR goes into effect.



Source: <https://www.pexels.com/>

# CICA, FASA, & FARA: Modern Competitive Procurement



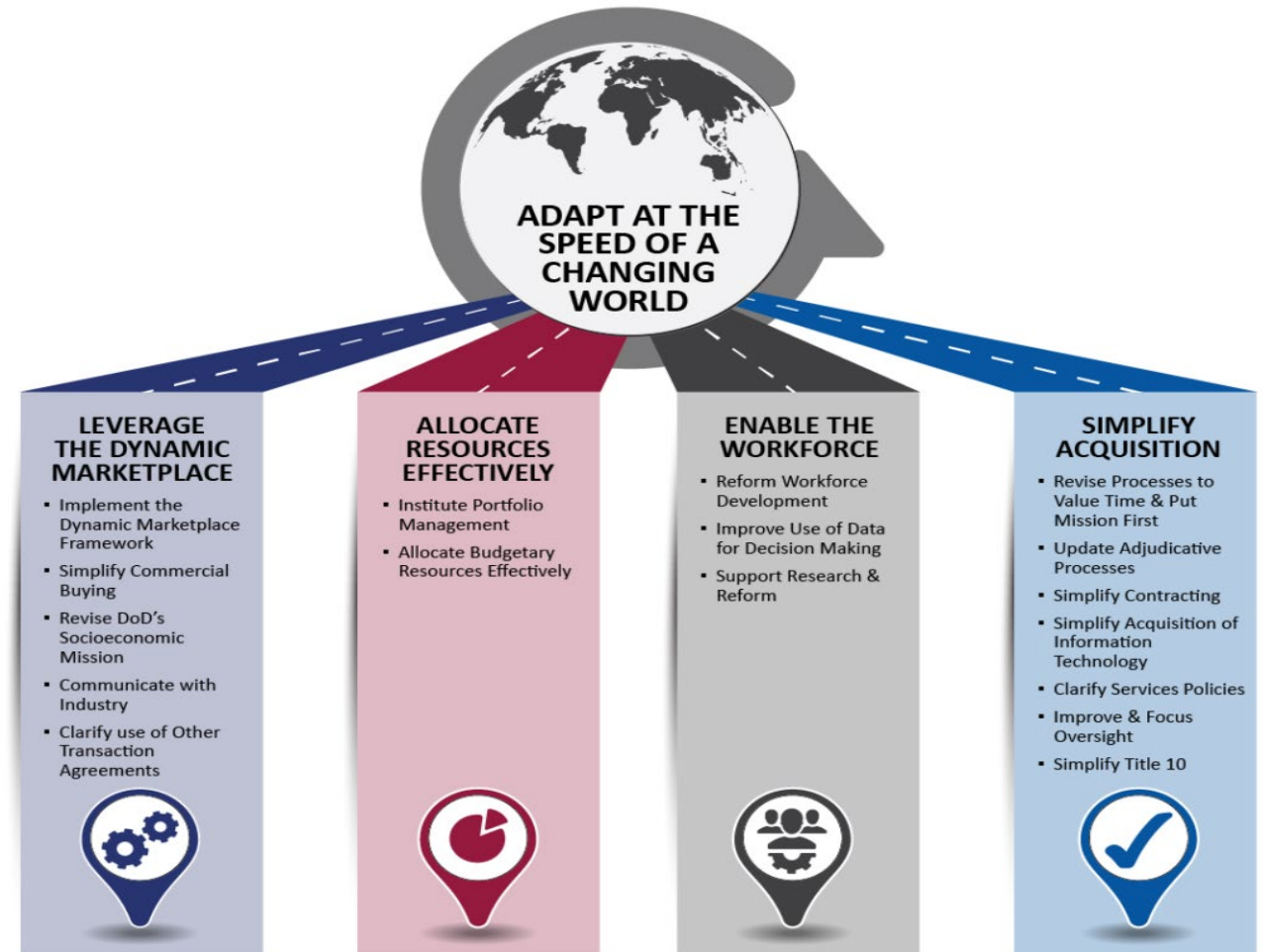
Source: <https://www.pexels.com/>

- 1984: Competition in Contracting Act (CICA) – promoted full and open competition
- 1994: Federal Acquisition Streamlining Act (FASA) – encouraged commercial item acquisition
- 1996: Federal Acquisition Reform Act (FARA)
- Each aimed to simplify, standardize, and open access.

# Section 809 Panel: A Modern Reform Blueprint

- Established by FY 2016 National Defense Authorization Act
- Recommended Dynamic Marketplace Framework for DoD
- Proposed eliminating outdated statutes and improving acquisition agility

## THE SECTION 809 PANEL'S ROADMAP TO SUCCESS Recommendations to Revolutionize How DoD Conducts Business



Source: Defense Technical Information Center (DTIC), *Section 809 Panel*, Accessed at <https://discover.dtic.mil/section-809-panel/> on July 17, 2025.



▸ PRESIDENTIAL ACTIONS

# RESTORING COMMON SENSE TO FEDERAL PROCUREMENT

Executive Orders | April 15, 2025

## The “Revolutionary FAR Overhaul”: What to Know

EO 14271-Ensuring Commercial, Cost-Effective Solutions in Federal Contracts

EO 14275-Restoring Common Sense to Federal Procurement

# Executive Order 14271 “Ensuring Commercial, Cost-Effective Solutions in Federal Contracts”

- Shift federal procurement to “suitable or superior” commercial solutions instead of “custom products and services”
- Claims agencies spent too much procuring custom goods and services and evading FASA preference for commercial goods and services.

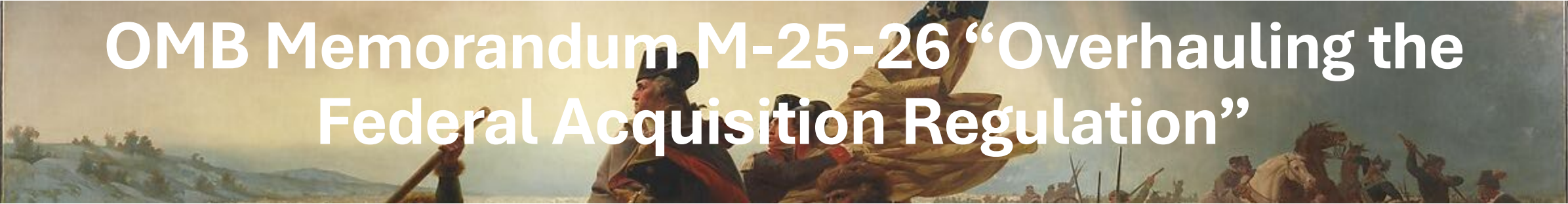


Source: <https://www.focusresourcesinc.com/eo-14271-commercial-solutions-in-federal-procurement/>

# Executive Order 14275 “Restoring Common Sense to Federal Procurement”

- **Policy Objectives**
  - Create agile, effective, and efficient procurement
  - Remove “unnecessary” acquisition rules at all levels
  - Improve access to federal contracting, especially for small and new businesses
- Remove FAR provisions not required by statute or deemed “otherwise necessary”
- Calls for action to be taken within 180 days (October 12, 2025).





# OMB Memorandum M-25-26 “Overhauling the Federal Acquisition Regulation”

- Published May 2, 2025 in response to EO 14275.
- Outlines the “Revolutionary FAR Overhaul” (RFO): Revamp the FAR into the “Strategic Acquisition Guide” (SAG)
- Two-Phase Plan:
  - 1) FAR Council issues class deviation model guidance during the Notice & Comment Phase, and agencies will follow with individual or class deviations within 30 days of each published RFO FAR section.
  - 2) Formal rulemaking is issued subject to Notice and Comment Rulemaking procedures (41 U.S.C. § 1707) to formally change the FAR into the SAG.
- Language deemed “helpful non-regulatory content” retained in “FAR Companion Guides”



# Launch of the RFO Website

## Revolutionary FAR Overhaul

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### Restoring Common Sense to Federal Procurement

Under the President's Executive Order, Restoring Common Sense to Federal Procurement, the Federal government is undertaking the first-ever comprehensive overhaul of the FAR.

Led by the Office of Federal Procurement Policy (OFPP) and the Federal Acquisition Regulatory Council (FAR Council), this initiative will return the FAR to its statutory roots, rewritten in plain language, and remove most non-statutory rules. In addition, non-regulatory buying guides will provide practical strategies grounded in common sense while remaining outside the FAR.

***The goal is clear: faster acquisitions, greater competition, and better results.***

### FAR Streamlining & Deregulation

The FAR Council is issuing model deviation guidance to kickstart FAR streamlining. The guidance, which will be released on a rolling basis by FAR part, will be adopted by agencies until the FAR is formally revised through rulemaking.

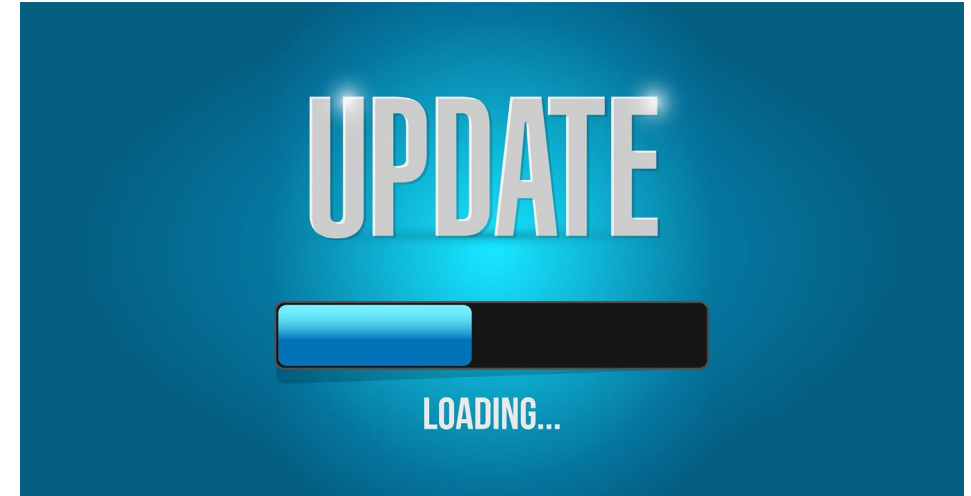
- **Revised Streamlined FAR Parts and Agency Deviations**

Source: [Revolutionary FAR Overhaul](#) | [Acquisition.GOV](#)

- [Acquisition.gov/far-overhaul](#)
- Live as of May 6, 2025
- Central hub for deviations, guides, and feedback

# Current Updated FAR Parts

- Part 1 – Federal Acquisition Regulations System
- Part 6 – Competition Requirements
- Part 10 – Market Research
- Part 11 – Describing Agency Needs
- **Part 18 – Emergency Acquisitions**
- Part 29 – Taxes
- **Part 31 – Contract Cost Principles and Procedures**
- Part 34 – Major System Acquisition
- **Part 35 – Research and Development Contracting**
- **Part 36 – Construction and Architect-Engineer Contracts**
- **Part 39 – Acquisition of Information and Communication Technology**
- Part 43 – Contract Modifications
- Part 52 – Solicitation Provisions and Contract Clauses
  - Changes made as other updated FAR Parts are released
- **Red = DOE has not adopted; No DOE Deviation yet.**



# Notable RFO Sections

- **Part 6 – Competition Requirements**
  - Removes some non-statutory sole source justification requirements. Promotes “fusion procurements” (multiple tasks under one solicitation, but potential to award to different vendors). Could allow more vendors to participate in “fusion procurements.”
- **Part 31 – Contract Cost Principles and Procedures**
  - No major changes required to existing compliant accounting systems. Some definitions removed.
- **Part 34 – Major System Acquisition**
  - Streamlines Earned Value Management System (EVMS) (contractor plan to monitor project scope/schedule/cost and identify risks) and Integrated Baseline Review (IBR) (agency procedures to assess EVMS) requirements. Now different agencies can consider different IBR factors in assessing proposed EVMS.
- **Part 36 – Construction & Architect Engineer Contracts**
  - Timing clarifications added, “12 percent rule” (% of work done by prime) removed, some evaluation requirements and supplemental sealed bidding procedures removed
- **Part 39 – Acquisition of Information and Communication Technology**
  - Increases education/experience requirement for proposed contact personnel and emphasizes “modular contracting” for acquiring major IT systems.
- **Part 43 – Contract Modifications**
  - Only modest revisions. Expands scope to Task and Delivery Order modifications.

# How Does This Differ from Prior Attempts?

- CICA, FASA, and FARA aimed to modernize, not rewrite (Full and open competition, increase reliance on commercial off-the-shelf technology, simplify acquisition procedures, alter procurement strategy from lowest bid to best value).
- **In contrast, RFO uses Two-Track Strategy for Reform:**
- **Track 1: Model deviation text rulemaking**
  - “...issuance or use of a policy, procedure, solicitation provision, contract clause, method, or practice of conducting acquisition actions of any kind at any stage of the acquisition process that is inconsistent with the FAR.” FAR 1.401(a).
  - **Deviations previously used sparingly generally for temporary agency actions – now broadly deployed to bypass lengthy Notice and Comment process**
- **Track 2: Non-regulatory “FAR Companion Guides” & innovation tools**



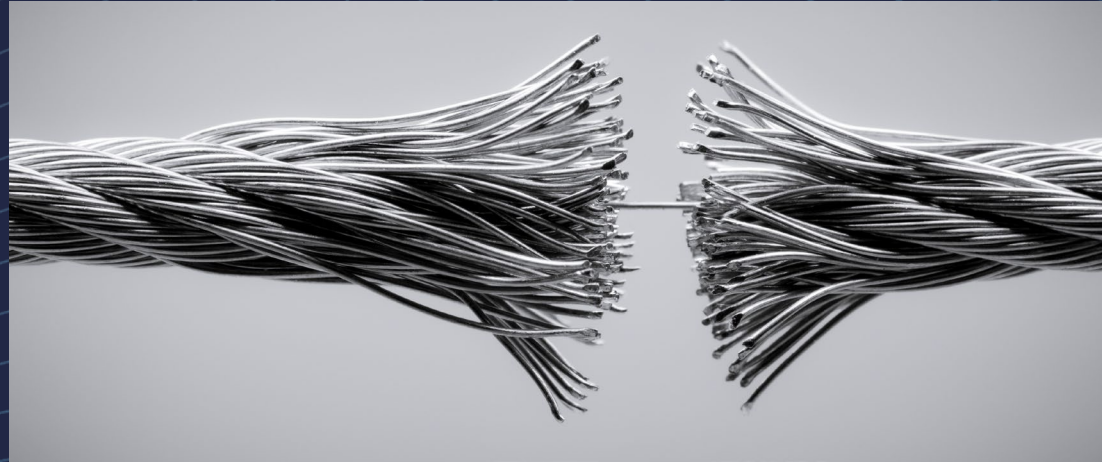
Source: <https://www.akelaconsultants.com/post/far-reform-sbir-sttr-grants>

# Is Your Site Ready for the Revolutionary FAR Overhaul?



- Current contract language will govern until FAR revisions are incorporated via Notice and Comment process
- How comfortable are you with:
  - Your Prime Contract Modification Process?
  - How your lab, facility, or site will incorporate relevant agency directives (DOE Orders/NNSA Supplemental Directives)?
  - The Stakeholder Buy-In Process?

***Unsure? Ask me about the Kansas City Oversight Model...***



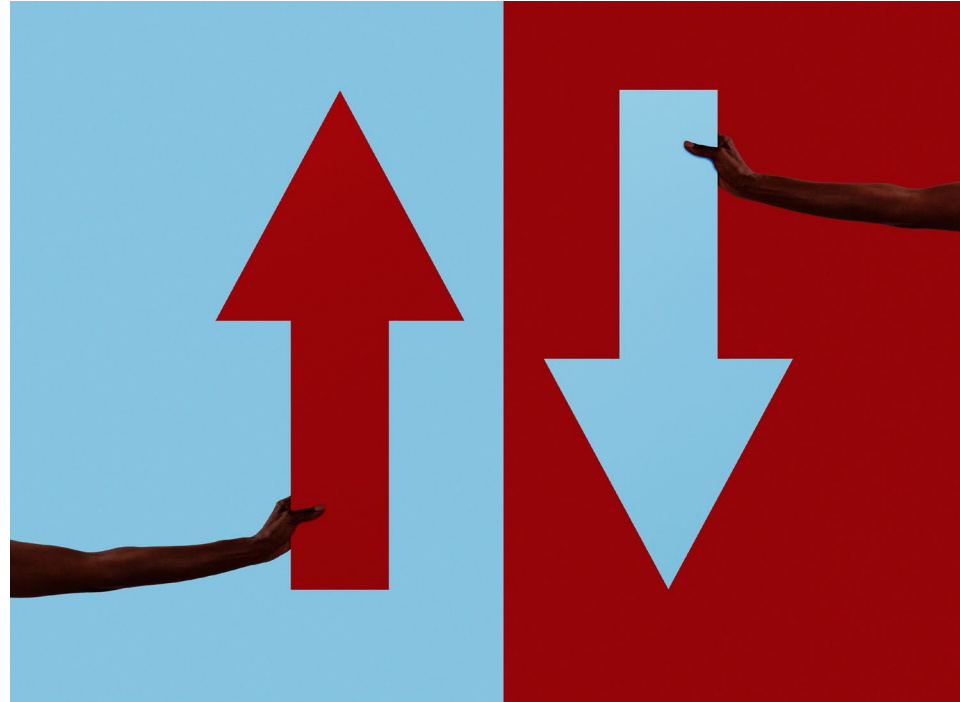
# Environmental Deregulation

Sarah Peterman Bell, Partner



# Introduction to Environmental Deregulation

- Shrinking Federal Oversight
- Increasing State Action



# Case Study: PFAS

- **What are PFAS?**
  - Per- and polyfluoroalkyl substances
    - <https://www.niehs.nih.gov/health/topics/agents/pfc>
  - “Forever chemicals” – since the 1940s.
  - Health effects?
    - <https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas>

# PFAS and the SDWA, NPDWRs / MCLs

- **Safe Water Drinking Act (42 U.S.C. § 300(f))**
  - Background
    - EPA > National Primary Drinking Water Regulations (NPDWRs) > Maximum Contaminant Levels (MCLs)
    - 42 U.S.C. § 300(f)(1)(C)



# PFAS and the SDWA, NPDWRs / MCLs

- **Biden Administration**
  - April 2024: EPA announced new MCLs for 6 PFAS chemicals
- **PFOA, PFOS, PFHxS, PFNA, HFPO-DA**
  - And PFAS mixtures using a Hazard Index MCL

Compound	Final MCLG	Final MCL (enforceable levels) <sup>1</sup>
PFOA	Zero	4.0 parts per trillion (ppt) (also expressed as ng/L)
PFOS	Zero	4.0 ppt
PFHxS	10 ppt	10 ppt
PFNA	10 ppt	10 ppt
HFPO-DA (commonly known as GenX Chemicals)	10 ppt	10 ppt
Mixtures containing two or more of PFHxS, PFNA, HFPO-DA, and PFBS	1 (unitless) Hazard Index	1 (unitless) Hazard Index

# PFAS and the SDWA, NPDWRs / MCLs

- **Trump Administration**

- May 14, 2025: MCLs remain in place for PFOA and PFOS
- Intention to rescind others
  - <https://www.epa.gov/newsreleases/epa-announces-it-will-keep-maximum-contaminant-levels-pfoa-pfos>

Compound	Final MCLG	Final MCL (enforceable levels) <sup>1</sup>
PFOA	Zero	4.0 parts per trillion (ppt) (also expressed as ng/L)
PFOS	Zero	4.0 ppt
PFHxS	10 ppt	10 ppt
PFNA	10 ppt	10 ppt
HFPO-DA (commonly known as GenX Chemicals)	10 ppt	10 ppt
Mixtures containing two or more of PFHxS, PFNA, HFPO-DA, and PFBS	1 (unitless) Hazard Index	1 (unitless) Hazard Index

# PFAS and TSCA

- **Toxic Substances Control Act (TSCA) (15 U.S.C. § 2601)**
- > EPA “authority to require reporting, record-keeping and testing requirements, and restrictions relating to chemical substances and/or mixtures.”
  - <https://www.epa.gov/laws-regulations/summary-toxic-substances-control-act>
- **Biden Administration**
  - Section 8(a)(7): one-time reporting, manufacturing or importing, 2011 - 2022. 15 U.S.C. § 2607(a)(7); <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/tsca-section-8a7-reporting-and-recordkeeping>.
  - July 2025 compliance
- **Trump Administration**
  - May 2025: EPA interim rule extended reporting deadlines to October 2026.
    - Likely further amendments?
    - 40 CFR 705, 90 FR 20236

# PFAS and RCRA

- **Resource Conservation and Recovery Act (RCRA)**
- **“Cradle to grave” – generation, transportation, treatment, storage, and disposal of hazardous waste**
- **Biden Administration**
  - February 2024: EPA proposed adding 9 PFAS to Hazardous List
  - <https://www.epa.gov/hw/proposal-list-nine-and-polyfluoroalkyl-compounds-resource-conservation-and-recovery-act>
- **Trump Administration**
  - Indefinite hold
  - “Regulatory Freeze Pending Review” memorandum on January 20, 2025.
  - <https://www.whitehouse.gov/presidential-actions/2025/01/regulatory-freeze-pending-review/>



# PFAS and CERCLA (PFOA and PFOS)

- **The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund)**
  - 42 U.S.C. § 9601
- **Biden Administration**
  - April 2024: PFOA and PFOS designated as “hazardous substances”
  - 40 CFR 302
  - <https://www.epa.gov/superfund/designation-perfluorooctanoic-acid-pfoa-and-perfluorooctanesulfonic-acid-pfos-cercla#rule-history>
  - See also Passive Receivers Memo
    - <https://www.epa.gov/system/files/documents/2024-04/pfas-enforcement-discretion-settlement-policy-cercla.pdf>
- **Trump Administration**
  - ????

# States Respond to Deregulation

- **State Regulation of PFAS**
  - 30 states have adopted PFAS regulations
  - Consumer Goods
  - Drinking Water
    - Eleven states (ME, MA, MI, NH, NJ, NY, PA, RI, VT, WA, and WI) have MCLs for PFAS in drinking water.
  - <https://doh.wa.gov/community-and-environment/contaminants/pfas/consumer-products>

Class-based PFAS bans in key sectors with implementation dates

	All Products	Artificial Turf	Apparel	Carpets / Rugs	Cleaning Products	Cookware	Dental Floss	Fabric Treatments	Firefighting Foam	Food Packaging	Incontinence Products	Juvenile Products	Menstrual Products	Personal Care Products	Pesticides	Ski Wax	Textile Articles	Turnout Gear
Alaska									<a href="#">2025</a>									
California			<a href="#">★ 2025</a>	<a href="#">2021**</a>				<a href="#">2022**</a>	<a href="#">2022</a>	<a href="#">2023</a>		<a href="#">2023</a>	<a href="#">2029</a>	<a href="#">2025</a>			<a href="#">★ 2025</a>	
Colorado		<a href="#">2026</a>	<a href="#">2028</a>	<a href="#">2024</a>	<a href="#">2026</a>	<a href="#">2026</a>	<a href="#">2026</a>	<a href="#">2024</a>	<a href="#">2023</a>	<a href="#">2024</a>		<a href="#">2024</a>	<a href="#">2026</a>	<a href="#">★ 2025</a>		<a href="#">2026</a>	<a href="#">2028</a>	
Connecticut			<a href="#">2028</a>	<a href="#">2028</a>	<a href="#">2028</a>	<a href="#">2028</a>	<a href="#">2028</a>	<a href="#">2028</a>	<a href="#">2021</a>	<a href="#">2023</a>		<a href="#">2028</a>	<a href="#">2028</a>	<a href="#">2028</a>		<a href="#">2028</a>	<a href="#">2028</a>	<a href="#">★ 2028</a>
Hawaii									<a href="#">2024</a>	<a href="#">2024</a>								
Illinois									<a href="#">2025</a>									
Maine	<a href="#">2032</a>	<a href="#">★ 2029</a>	<a href="#">2029</a>	<a href="#">2023</a>	<a href="#">2026</a>	<a href="#">2026</a>	<a href="#">2026</a>	<a href="#">2023</a>	<a href="#">2022</a>	<a href="#">2022</a>		<a href="#">2026</a>	<a href="#">2026</a>	<a href="#">2026</a>	<a href="#">★ 2030</a>	<a href="#">2026</a>	<a href="#">2026</a>	
Maryland				<a href="#">2024</a>					<a href="#">2024</a>	<a href="#">2024</a>				<a href="#">2025*</a>				
Massachusetts																		<a href="#">2027</a>
Minnesota	<a href="#">2032</a>			<a href="#">2025</a>	<a href="#">★ 2025</a>	<a href="#">★ 2025</a>	<a href="#">★ 2025</a>	<a href="#">2025</a>	<a href="#">2024</a>	<a href="#">2024</a>		<a href="#">2025</a>	<a href="#">★ 2025</a>	<a href="#">2025</a>		<a href="#">2025</a>	<a href="#">2025</a>	
New Hampshire									<a href="#">2020</a>									
New Jersey									<a href="#">2026</a>									
New York			<a href="#">2025</a>	<a href="#">2024</a>					<a href="#">2020</a>	<a href="#">2022</a>								
Oregon										<a href="#">2025</a>		<a href="#">2023**</a>		<a href="#">2027</a>				
Rhode Island		<a href="#">2029</a>	<a href="#">2027</a>	<a href="#">2027</a>		<a href="#">2027</a>		<a href="#">2027</a>	<a href="#">2025</a>	<a href="#">2025</a>		<a href="#">2027</a>	<a href="#">2027</a>	<a href="#">2027</a>		<a href="#">2027</a>	<a href="#">2027</a>	<a href="#">2027</a>
Vermont		<a href="#">2026</a>	<a href="#">2028</a>	<a href="#">★ 2023</a>		<a href="#">2026</a>		<a href="#">★ 2023</a>	<a href="#">2023</a>	<a href="#">2023</a>	<a href="#">★ 2026</a>	<a href="#">2026</a>	<a href="#">2026</a>	<a href="#">2026</a>		<a href="#">★ 2023</a>	<a href="#">2026</a>	
Washington	<a href="#">★ 2023**</a>			<a href="#">2023</a>				<a href="#">2023</a>	<a href="#">★ 2020</a>	<a href="#">★ 2022</a>				<a href="#">2025</a>			<a href="#">2023</a>	
<b>Totals</b>	<b>3</b>	<b>4</b>	<b>7</b>	<b>10</b>	<b>4</b>	<b>6</b>	<b>4</b>	<b>8</b>	<b>15</b>	<b>12</b>	<b>1</b>	<b>8</b>	<b>7</b>	<b>10</b>	<b>1</b>	<b>6</b>	<b>8</b>	<b>3</b>

<https://www.saferstates.org/resource/state-action-on-pfas/>

# States Respond to Deregulation

- **State AG PFAS Lawsuits**

- [https://stateimpactcenter.org/ag-work/ag-actions?issue\[0\]=2780](https://stateimpactcenter.org/ag-work/ag-actions?issue[0]=2780)
- May 2025: NJ settlement with 3M ~ \$450 million PFAS contamination.  
<https://dep.nj.gov/3m/>
  - See Amended Complaint at 5-9, *New Jersey Dept. of Environmental Protection v. E.I. Du Pont De Nemours and Co., et. al*, No. 1:19-cv-14766 (D.N.J. 2019).
- June 2025: Michigan AG settlement re PFAS
  - Consent Decree, *State of Michigan v. Domtar Industries, Inc.*, No. 22-002604-NZ (31st Cir. Ct. Mich. June 20, 2025), <https://www.michigan.gov/ag/-/media/Project/Websites/AG/releases/2025/June/Domtar-Consent-Decree.pdf?rev=e3bf53db0f7341c08c9fe6533fe18d95&hash=F6A071B01DC50A262CD6065E57194DDA>

# Don't Forget . . .

- **Environmental Protection Agency**

- On March 12, Administrator Zeldin announced “31 Historic Actions” – plans to deregulate within the EPA (<https://www.epa.gov/newsreleases/epa-launches-biggest-deregulatory-action-us-history>):
  - Power Plants
  - GHG Reporting
  - Endangerment Finding re GHG emissions
  - PM National Ambient Air Quality Standards (PM 2.5 NAAQS)
  - “Good Neighbor Plan”
- Action?
  - *But* see Endangerment finding
- EPA Reduction in Force – 22.94%

# Don't Forget



- **Department of Energy**

- May 16 deregulatory proposals:  
<https://www.energy.gov/articles/energy-department-slashes-47-burdensome-and-costly-regulations-delivering-first-milestone>
- “47 deregulatory actions”:
  - Energy Conservation Standards
  - Energy Supply and Environmental Coordination Act of 1974
- State AG Action?
- Patchwork concerns?

# Thank You



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