

July 16, 2026

Jennifer McLain
Director
Office of Ground Water and Drinking Water
Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460

SUBMITTED ELECTRONIALLY

RE: Comments on Recission of Regulatory Determinations and Removal of Related Provisions for Four PFAS Substances (PFHxS, PFNA, HFPO-DA (GenX), and the Mixture of These Three PFAS Plus PFBS) ([Docket ID: EPA-HQ-OW-2025-0654](#))

Dear Dr. McLain,

The Association of Metropolitan Water Agencies (AMWA) and the American Water Works Association (AWWA) (Associations) appreciate the U.S. Environmental Protection Agency's (EPA) efforts to rescind the agency's regulatory determinations and related regulatory provisions for perfluorohexanesulfonic acid (PFHxS), perfluorononanoic acid (PFNA), hexafluoropropylene oxide dimer acid (HFPO-DA), and the mixture of these three PFAS plus perfluorobutanesulfonic acid (PFBS).

The associations strongly support the protection of public health and the use of a sound scientific process in the development of regulations. Adhering to the Safe Drinking Water Act (SDWA) process is essential to the development of sound drinking water standards. The associations support the EPA's proposal to rescind its regulatory determinations and related regulatory provisions for PFHxS, PFNA, HFPO-DA, and the mixture of these PFAS and PFBS. We agree that EPA erred procedurally in proposing regulatory determinations for these contaminants concurrent with issuing proposed regulations for these same contaminants. On June 7, 2024, the associations filed a petition for judicial review of the per- and polyfluoroalkyl substances (PFAS) national drinking water regulations (NPDWR) in the U.S. Court of Appeals for the District of Columbia Circuit to review EPA's PFAS NPDWR.¹ The petition raises the same legal infirmity that the associations had raised in comment on the proposed rule and the agency now seeks to address in this proposal, namely that under the Safe Drinking Water Act (SDWA) EPA may propose a regulation concurrently with a final determination to regulate but **not** concurrently with a proposed regulatory determination.

¹ Petition for Review. AWWA et al. v USEPA, Case No. 24-1188, U.S. Court of Appeals for the District of Columbia Circuit. June 07, 2024.

The associations also maintained in their respective comments on the 2023 proposed NPDWR and in the judicial review petition, that EPA's determination to regulate these contaminants and decision to regulate them using the Hazard Index (HI) framework were not supported by the available data.

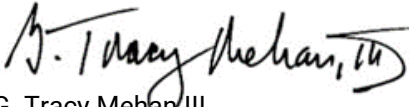
The associations appreciate the opportunity to provide comments on EPA's proposed rule and the specific areas for public comment identified in the preamble. The following responses address each of EPA's questions and draw substantially from the legal and technical arguments presented in the associations' opening brief currently before the court, which sets forth the basis for our position on the statutory interpretation, regulatory determinations, and associated analyses underlying this proposal.

We hope that these comments will assist EPA in finalizing this rule as expeditiously as possible by leveraging science and the best possible reading of the Agency's authorities under the SDWA. If you have any questions regarding this correspondence, please contact either of the associations at your convenience.

Best Regards,
ON BEHALF OF AMWA


Dan Hartnett
Interim Chief Executive Officer
Association of Metropolitan Water Agencies

ON BEHALF OF AWWA


G. Tracy Mehan III
Executive Director – Government Affairs
American Water Works Association

Attachment (1)

cc: Jessica Kramer, EPA/OW
Peggy Browne, EPA/OW
Eric Burneson, EPA/OW/OGWDW/SRMD
Christina Wadlington, EPA/OW/OGWDW/SRMD
Ryan Albert, EPA/OWOGWDW/SRMD/RRB
Nicole Shao, EPA/OW/OGWDW/SRMD/RRB

Who is AMWA

The Association of Metropolitan Water Agencies (AMWA) has been the unified and definitive voice for the nation's largest publicly owned drinking water systems for 45 years. AMWA's membership serves more than 160 million people with safe drinking water.

Who is AWWA

The American Water Works Association (AWWA) is an international, nonprofit, scientific and educational society dedicated to providing total water solutions assuring the effective management of water. Founded in 1881, the Association is the largest organization of water supply professionals in the world. Our membership includes more than 4,500 systems that supply roughly 80 percent of the nation's drinking water and treat almost half of the nation's wastewater. Our 50,000-plus total membership represents the full spectrum of the water community: public water and wastewater systems, environmental advocates, scientists, academicians, and others who hold a genuine interest in water, our most important resource. AWWA unites the diverse water community to advance public health, safety, the economy, and the environment.

COMMENTS
PREPARED BY THE
ASSOCIATION OF METROPOLITAN WATER AGENCIES (AMWA) AND THE AMERICAN WATER
WORKS ASSOCIATION (AWWA)
ON
RECISSION OF REGULATORY DETERMINATIONS AND REMOVAL OF RELATED PROVISIONS
FOR FOUR PFAS SUBSTANCES (PFHXS, PFNA, HFPO-DA (GENX), AND THE MIXTURE OF
THESE THREE PFAS PLUS PFBS)

(Docket ID: [EPA-HQ-OW-2025-0654](#), May 20, 2026, 91 [Federal Register](#) 29413)

The associations strongly support the protection of public health and the use of a sound scientific process in the development of regulations. Adhering to the Safe Drinking Water Act (SDWA) process is essential to the development of sound and lawful drinking water standards.

The U.S. Environmental Protection Agency's (EPA) May 20, 2026, [Federal Register](#) notice poses four specific requests for comment, to which the following comments respond. AWWA and AMWA (the Associations) observed that the decision to regulate four per- and polyfluoroalkyl substances (PFAS) using the Hazard Index (HI) framework was not supported by the available data in comments submitted on the proposed PFAS national drinking water regulations (NPDWR) and the on-going petition for judicial review of the PFAS NPDWR in the U.S. Court of Appeals for the District of Columbia Circuit.^{2, 3, 4}

The associations appreciate EPA proposing to rescind the agency's regulatory determinations and related regulatory provisions for perfluorohexanesulfonic acid (PFHxS), perfluorononanoic acid (PFNA), hexafluoropropylene oxide dimer acid (HFPO-DA), and the mixture of these three PFAS plus perfluorobutanesulfonic acid (PFBS). This action demonstrates appropriate adherence to the SDWA. The proposed rescission does not run afoul of the SDWA's anti-backsliding provision because the actions correct regulatory determinations that were not made in accordance with the statutory framework established by Congress. Where the underlying regulatory determinations are legally deficient, the resulting maximum contaminant levels (MCLs) and maximum contaminant level goals (MCLGs), and associated requirements are likewise not legally valid.

First, rescinding positive regulatory determinations that result from an improper statutory process is both appropriate and necessary. Regulatory determinations that do not satisfy the requirements of SDWA §1412(b)(1)(E) are invalid, and any MCLs, MCLGs, and related regulatory provisions likewise lack a valid legal foundation. EPA's proposal appropriately recognizes that the Agency must adhere to the procedural and substantive requirements of the SDWA before imposing enforceable drinking water standards.

Second, the most recent Unregulated Contaminant Monitoring Rule (UCMR) data further support EPA's proposed action by demonstrating that rescinding the regulatory determinations and associated regulatory provisions for perfluorohexanesulfonic acid (PFHxS), perfluorononanoic acid (PFNA), hexafluoropropylene oxide dimer acid (HFPO-DA), and the mixture of these three PFAS plus perfluorobutanesulfonic acid (PFBS) – otherwise known as the Hazard Index (HI) PFAS – would have a limited effect on overall public health. UCMR5 collects data from more than 10,000 public water systems (PWS).⁵ Of the PWSs reporting data to-date, 11.5% will exceed one or more of the PFAS rule MCLs, but

² AMWA, Comments on Proposed PFAS NPDWR, EPA-HQ-OW-2022-0114-1738.

³ AWWA, Comments on Proposed PFAS NPDWR, EPA-HQ-OW-2022-0114-1759.

⁴ Petition for Review. AWWA et al. v USEPA, Case No. 24-1188, U.S. Court of Appeals for the District of Columbia Circuit. June 07, 2024.

⁵ Corona Environmental Consulting, UCMR5 PFAS Analysis Update, Latest from EPA's January 2026 Data Release (11th Data Release). May 15, 2026.

only six PWSs will only exceed the HI MCL. In other words, the number of public water systems that will install treatment or abandon water sources due to the HI MCL, by itself, are very few. These data demonstrate that the proposed rescission will not substantially impact risk reduction attributable to the PFAS rule while ensuring EPA's actions remain consistent with the requirements of SDWA.

EPA Requests for Comment

In the Federal Register notice EPA requested comments on four specific questions. The Associations appreciate the opportunity to provide input on each of these issues and offer the following responses for the Agency's consideration.

Legal interpretation of "determination to regulate" as used in SDWA §1412(b)(1)(E)

The Associations agree that the prior EPA's interpretation and application of the SDWA's regulatory determination provisions are inconsistent with the statute's text, structure, and required analytical framework. In particular, the Associations' final opening brief demonstrates that the Agency's approach to "determinations to regulate" departs from the stepwise evaluation required under SDWA §1412(b)(1)(E).⁶ Additional detail supporting these arguments is provided in the Associations' legal brief submitted in the ongoing judicial review.

The current EPA proposal correctly characterizes the best reading of SDWA §1412(b)(1)(E) to mean that the soonest the EPA may propose a primary drinking water standard is concurrently with the final regulatory determination. By extension, publication of a proposed regulation concurrently with the preliminary regulatory determination is not consistent with the statute.

SDWA Section 1412(b)(1)(E) is reproduced below, broken out into its four key clauses:

- [1] *"For each contaminant that the Administrator determines to regulate under subparagraph (B),⁴ the Administrator shall publish [MCLGs] and promulgate, by rule, national primary drinking water regulations under this subsection."*
- [2] *"The Administrator shall propose the [MCLG] and national primary drinking water regulation for a contaminant not later than 24 months after the determination to regulate under subparagraph (B), and"*
- [3] *"may publish such proposed regulation concurrent with the determination to regulate."*
- [4] *"The Administrator shall publish a [MCLG] and promulgate a national primary drinking water regulation within 18 months after the proposal thereof"⁷*

Clause 1 provides that EPA "shall publish" a proposed regulation for contaminants that "the Administrator determines to regulate." The phrase "determines to regulate" must mean the final Determination to Regulate. Looking to well understood definitions of the word "determination" the word itself means "a final decision by a court or administrative agency."

1. Webster's New International Dictionary 616 (3d ed. 1971) ("determination" means "the settling and ending of a controversy" or "the act of deciding definitely and firmly"; "determine" means to "fix conclusively")

⁶ Final Opening Brief of Petitioners Am. Water Works Ass'n & Ass'n of Metro. Water Agencies, *Am. Water Works Ass'n v. U.S. EPA*, Nos. 24-1188, 24-1191, 24-1192 (D.C. Cir. Mar. 6, 2026).

⁷ SDWA §1412(b)(1)(E).

2. Webster's New College Dictionary 308 (2d ed. 1995) ("determine" means to "end or decide by final . . . action").

The Determination to Regulate is the only Agency decision that is "final" or fixed. By contrast, a Preliminary Determination is non-final and can be withdrawn. Because the phrase "determines to regulate" in Clause 1 means the Determination to Regulate, and because Clause 1 provides that a proposed regulation shall be published only for those contaminants EPA has "determine[d] to regulate," it follows that a proposed regulation cannot be issued before making a final Determination to Regulate.

The associations are not the only entities that view this as the plain English reading of the statute.

1. Congressional Research Service in reviewing the SDWA regulatory process notes, citing the statute, that

*"Before making a final determination, EPA is required to provide notice and opportunity for public comment on the preliminary RD. If EPA makes a determination to regulate a contaminant, the agency then begins to develop a drinking water regulation."*⁸

2. EPA itself has read the SDWA to mean that EPA would take public comment on proposed regulatory determinations and then subsequently take comment on a proposed rule. This stepwise process is reflected in EPA presentations on the SDWA regulatory process.⁹

In addition to a plain English reading of the SDWA §1412(b)(1)(A) the SDWA anticipates that the:

1. Process of contaminant identification and selection for risk management SDWA §1412(b)) occurs in stages to allow (1) information to accrue and (2) decision-making to focus on contaminants that pose the greatest public health concern.
2. Standard development will be based on the best available science (SDWA §1412(b)(3)(A)) including the basis for regulatory determinations (i.e., each step of the regulatory process should be grounded in a sound understanding of contaminant occurrence, adverse health effects, and opportunity for health risk reduction.).

This framework clearly anticipates and benefits from when public comments inform each step in the regulatory process. The current PFAS NPDWR illustrates the ills of not having followed the appropriate SDWA process. As EPA promulgated the NPDWR without employing the best available science and the most recent occurrence data.

Rescission of the regulatory determinations for PFHxS, PFNA, HFPO-DA and the Index PFAS

EPA has appropriately found that the regulatory determinations for PFHxS, PFNA, HFPO-DA and the HI PFAS were developed through a legally flawed process and should therefore be withdrawn. First, as described above, the regulatory determination is a standalone, statutorily required decision that must be completed through the prescribed sequence before any further regulatory action can be taken. That determination must reflect a completed application of the statutory criteria and cannot be advanced in a manner that is contemporaneous with or effectively subsumed into later stages of rulemaking. Where the regulatory determination itself does not reflect completion of that required decision-making sequence, it fails to satisfy section 1412(b)(1) as an independent agency action. Because the final regulations for the

⁸ Congressional Research Service. Regulating Contaminants Under the Safe Drinking Water Act (SDWA). R46652. September 10, 2024.

⁹ EPA. Discuss Potential Approaches to the Sixth Unregulated Contaminant Monitoring Rule (UCMR 6) [slide 12 of 419]. EPA 815-A-24-001. April 17-18, 2024.

HI PFAS were the result of a flawed process that did not adhere to the requirements of §1412(b)(1)(A), they should be nullified.¹⁰

As EPA noted in the Federal Register notice the D.C. Circuit did not address the EPA's interpretation of paragraph (b)(1)(E) in *NRDC v. Regan*.¹¹ The DC Circuit Court of Appeals ruling is however a very important and relevant decision. First the court determined that positive regulatory determinations once finalized can only be reversed after the subsequent rule is finalized. This underscores the importance of notice and comment with respect to the proposed regulatory determination occurring prior to the subsequent rulemaking. Second, the decision illustrates how courts read the text of the statute as written.

We have confirmation from the most recent Unregulated Contaminant Monitoring Rule (UCMR) data that this rulemaking will not change the public health benefits EPA anticipated under the PFAS Rule. UCMR5 data demonstrate that the number of PWSs that will install treatment or abandon water sources due to the HI PFAS are few. UCMR5 collects data from more than 10,000 PWSs.¹² Of the PWSs reporting data to-date, 11.5% will exceed one or more of the PFAS rule MCLs, but only six PWSs will only exceed the HI MCL. The proposed rescissions will not substantially impact risk reduction attributable to the PFAS NPDWR. This is not surprising given that the data underpinning potential benefit from control of the HI PFAS was so sparse as to defy attempts at quantification in the PFAS NPDWR economic analysis.¹³

Additionally, the Association's brief also notes further problems with EPA's attempt to regulate a group of PFAS via a Hazard Index. Unlike a typical NPDWR at a prescribed "level," defined in SDWA §1401(3) as "the maximum permissible level of a contaminant in water which is delivered to any user of a public water system," the HI is the sum of four different ratios (called "hazard quotients") and depends on the relative occurrence of four different contaminants in a sample of drinking water. A sum of those calculations greater than 1 (unitless) constitutes an exceedance of the Level. The hazard-index equation bears no resemblance to the concentration-based levels that EPA had always previously used under the SDWA. It is therefore appropriate that EPA rescind this flawed regulation and consider any future proposed NPDWRs for the HI PFAS in a manner consistent with the requirements of SDWA.

The rescission of associated MCLGs, MCLs and related regulatory provisions from 40 CFR part 141.

As with the regulatory determinations EPA is proposing to rescind, EPA has appropriately found that the MCLs for PFHxS, PFNA, HFPO-DA and the HI PFAS result from a legally-flawed process and should therefore be withdrawn. Where the statutory sequence for making a valid regulatory determination is not satisfied, any resulting national primary drinking water standards is itself legally void and therefore should be withdrawn to ensure compliance with the Act's required decision-making framework.

The EPA's economic analysis ... including additional costs, cost savings, benefits, and forgone health benefits of the action

¹⁰ *Cf. Chrysler Corp. v. Brown*, 441 U.S. 281, 301, 303 (1979) (explaining that for substantive agency action to have the "force and effect of law," it "must conform with any procedural requirements imposed by Congress"). The principle is also the logical extension of the Supreme Court's recent decision in *Collins v. Yellen*, wherein the Court explained that an "unconstitutional [statutory] provision is never really part of the body of governing law (because the Constitution automatically displaces any conflicting statutory provision from the moment of the provision's enactment)." 594 U.S. 220, 259 (2021). In much the same way, an "unconstitutional" regulation (i.e., one plainly not promulgated according to statutory constraints) is void *ab initio*.

¹¹ *NRDC v. Regan*. 67 F.4th 397 (D.C. Cir. 2023).

¹² Corona Environmental Consulting, UCMR5 PFAS Analysis Update, Latest from EPA's January 2026 Data Release (11th Data Release). May 15, 2026.

¹³ 89 Federal Register 32672.

EPA describes its duties in rescinding legally flawed MCLs concluding that they do not include SDWA's requirement to prepare a health risk reduction and cost analysis (HRRCA). This interpretation is consistent with the structure of the SDWA, which ties the HRRCA requirement to the establishment of valid, substantively supported national primary drinking water regulations rather than to actions that correct or withdraw regulations lacking a proper legal foundation. Accordingly, where EPA determines that an MCL was not validly promulgated in the first instance, it follows that the procedural requirements associated with developing a compliant regulation, including the HRRCA, are not triggered in the context of rescission.

Conclusions

The Associations strongly support the protection of public health and the use of a sound scientific process in the development of regulations. EPA failed to adhere to the SDWA regulatory process in developing the PFAS NPDWR and those legal errors should be addressed. The associations urge EPA to finalize this rulemaking rescinding its positive regulatory determinations and related regulatory provisions for PFHxS, PFNA, HFPO-DA, and the mixture of these PFAS and PFBS, and to do so quickly.