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EPA's PFAS Drinking Water Regulation: Considerations for Congress

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SUMMARY

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EPA's PFAS Drinking Water Regulation: Considerations for Congress

Per- and polyfluoroalkyl substances (PFAS) are a large, diverse group of fluorinated chemicals that have been used in an array of commercial, industrial, and U.S. military applications for decades. Some of the more common applications include nonstick coatings, food wrappers, waterproof materials, and fire suppressants. Detections of PFAS in public water supplies have heightened public and congressional interest in the U.S. Environmental Protection Agency's (EPA's) authorities under the Safe Drinking Water Act (SDWA) to limit PFAS in drinking water. SDWA authorizes EPA to promulgate regulations with enforceable limits for contaminants.

As amended in 1996, SDWA outlines a stepwise process for EPA to follow when establishing drinking water regulations. The evaluation process includes identifying contaminants of potential concern, assessing health risks, collecting occurrence data (and developing reliable analytical methods necessary to do so), and making determinations as to whether or not a regulation is warranted for a contaminant. For EPA to make a determination—a "positive regulatory determination (RD)"—that regulation of a contaminant is warranted, SDWA directs EPA to find (1) the contaminant may have an adverse health effect; (2) the contaminant is known to occur—or there is a substantial likelihood that it will occur—in water systems at a frequency and at levels of public health concern; and (3) in the sole judgment of the EPA Administrator, regulation of the contaminant presents a meaningful opportunity for reducing health risks.

In March 2021, EPA finalized a positive RD for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS). On March 14, 2023, EPA proposed a National Primary Drinking Water Regulation (NPDWR) for PFOA and PFOS. At the same time, the agency proposed a positive RD for perfluorohexane sulfonic acid (PFHxS), perfluorobutane sulfonic acid (PFBS), hexafluoropropylene oxide dimer acid (HFPO-DA) and its ammonium salt (together known as "GenX chemicals"), and perfluorononanoic acid (PFNA) *and* proposed that the NPDWR also include these four PFAS. By taking two steps simultaneously (proposing an RD while also proposing regulation), EPA effectively expedited the SDWA regulatory process for the latter chemicals.

In April 2024, EPA finalized the PFAS National Primary Drinking Water Regulation (PFAS NPDWR), a regulation with enforceable drinking water standards (i.e., maximum contaminant levels [MCLs]) for the following PFAS: perfluorooctanoic acid (PFOA), perfluorooctane sulfonate (PFOS), perfluorohexane sulfonic acid (PFHxS), hexafluoropropylene oxide dimer acid (HFPO-DA) and its ammonium salt (together known as "GenX chemicals"), and perfluorononanoic acid (PFNA). As part of the regulation, EPA also generated a "hazard index" of PFHxS, PFNA, GenX chemicals, and perfluorobutane sulfonic acid (PFBS). A *hazard index* accounts for the potential health effects of mixtures of substances by summing their concentrations relative to their associated health-based value. The hazard index is used as the MCL for the mixture of these substances. EPA set the regulation's effective date for the PFAS MCLs to April 2029.

EPA's 2024 NPDWR establishes MCLs of 4.0 parts per trillion (ppt) for each of PFOA and PFOS. For PFHxS, PFNA, and GenX chemicals, the regulation establishes MCLs of 10 ppt for each substance. For the hazard index, EPA's regulation requires water systems to assess concentrations of PFHxS, PFNA, and GenX chemicals relative to their respective MCLs, to assess the concentration of PFBS relative to its health-based water concentration of 2,000 ppt, and to determine that their average concentration is within the value specified by the hazard index. As such, the regulation does not regulate PFBS individually, but only when combined with at least one other PFAS.

EPA's promulgation of this regulation has garnered congressional and stakeholder attention. In 2024, Congress directed the U.S. Government Accountability Office to review the cost estimates supporting the rule. Three entities filed petitions for review of the PFAS regulation in the U.S. Court of Appeals for the D.C. Circuit. In May 2026, EPA announced proposed regulations to rescind parts of the 2024 PFAS regulation based on procedural grounds and to delay the rule's effective date for an additional two years (i.e., compliance would be required by 2031). These proposals, as well as the ongoing petitions, have created uncertainty for water systems about which elements of the drinking water regulation, if any, they will have to comply with by April 2029.

EPA's PFAS actions raise several considerations. These include those related to SDWA's regulatory development process, EPA's 2026 proposals, and state actions to address PFAS. Congressional considerations may include how to assist systems with compliance or more broadly address EPA's implementation of SDWA's regulatory development process.

Contents

Introduction 1
Safe Drinking Water Act (SDWA) 2
SDWA Regulations 2
SDWA Enforcement 3
SDWA's Regulatory Development Process 4
Regulated Water Systems 4
Evaluating PFAS Under SDWA 6
2023 Preliminary Determination for PFHxS, PFNA, GenX Chemicals, and PFBS 8
2023 Proposed Regulation 10
PFOA and PFOS 10
PFHxS, PFNA, GenX Chemicals, and PFBS Hazard Index 10
Proposed Treatment Technologies and Options 10
2024 Final Determinations for PFHxS, PFNA, and GenX Chemicals 11
2024 PFAS Regulation 11
2026 Proposed Regulations 11
2026 Proposed Rescission of the RD for PFHxS, PFNA, and GenX Chemicals, and Associated Regulation 12
2026 Proposed "National Exemption" 12
Considerations for Congress 14
Compliance with SDWA Regulatory Development Process 15
Rescinding a Final RD 17
Implementing EPA's Proposal for Exemptions 18
When Can an Exemption Be Provided? 18
State Primacy for the PFAS Regulation 18
States' Adoption of PFAS Regulation 19
Petitions for Review 19
Compliance Assistance 20
System Support Considerations 21

Figures

Figure 1. Timeline of Selected Drinking-Water-Related PFAS Actions 8

Contacts

Author Information 22

Introduction

Per- and polyfluoroalkyl substances (PFAS) are a large, diverse group of fluorinated chemicals that have been used in an array of commercial, industrial, and U.S. military applications for decades. Some of the more common applications include nonstick coatings, food wrappers, waterproof materials, and fire suppressants. Detections of PFAS in public water supplies have heightened public and congressional interest in the U.S. Environmental Protection Agency's (EPA's) authorities under the Safe Drinking Water Act (SDWA) to limit PFAS in drinking water. SDWA authorizes EPA to promulgate regulations with enforceable limits for contaminants, including PFAS.

In April 2024, EPA finalized the PFAS National Primary Drinking Water Regulation (PFAS NPDWR), a regulation with enforceable drinking water standards for the following PFAS:

- perfluorooctanoic acid (PFOA),
- perfluorooctane sulfonate (PFOS),
- perfluorohexane sulfonic acid (PFHxS),
- hexafluoropropylene oxide dimer acid (HFPO-DA) and its ammonium salt (together known as "GenX chemicals"), and
- perfluorononanoic acid (PFNA).

As part of the 2024 PFAS regulation, EPA generated a "hazard index" of PFHxS, PFNA, GenX chemicals, and perfluorobutane sulfonic acid (PFBS).[1] A *hazard index* accounts for the potential health effects of mixtures of substances by summing their concentrations relative to their associated health-based value. The hazard index is used as the enforceable standard for the mixture of these substances. The regulation's compliance date for the PFAS drinking water standards is April 2029.

EPA's promulgation of the PFAS NPDWR has garnered congressional and stakeholder attention.[2] Some stakeholders have raised concerns over the sequence of EPA's actions to develop the 2024 PFAS regulation. SDWA outlines a process for EPA to follow while evaluating contaminants for potential regulation and for proposing and finalizing a regulation. Some assert that EPA did not follow SDWA's regulatory development process and question EPA's approach to regulating mixtures of these substances through the hazard index.[3] Three entities filed petitions for review of the 2024 PFAS regulation in the U.S. Court of Appeals for the D.C. Circuit.[4]

[1] U.S. Environmental Protection Agency (EPA), "PFAS National Primary Drinking Water Regulation," 89 *Federal Register* 32532-32757, April 26, 2024.

[2] For example, in the joint explanatory statement accompanying the Consolidated Appropriations Act, 2024, P.L. 118-42, Congress directed the U.S. Government Accountability Office (GAO) to review the cost estimates supporting the rule. GAO published a report stating that "because this issue is the subject of ongoing litigation, our work focused on whether EPA sought and published public comment on various elements of the analysis of costs, as required by SDWA." GAO identified that EPA did seek and published public comment on the cost estimate of the 2024 PFAS regulation. GAO, *Persistent Chemicals: Information on EPA's Analysis of Costs for its PFAS Drinking Water Regulation*, 25-107897, July 30, 2025, https://www.gao.gov/assets/gao-25-107897.pdf.

[3] See, for example, American Water Works Association, "AWWA and AMWA Petition Frequently Asked Questions," June 7, 2024, https://www.awwa.org/AWWA-Articles/awwa-and-amwa-petition-frequently-asked-questions/.

[4] Petition for Review, *American Water Works Association v. EPA*, No. 24-1188 (D.C. Cir. filed June 7, 2024); Petition for Review, *National Association of Manufacturers v. EPA*, No. 24-1191 (D.C. Cir. filed June 10, 2024); Petition for Review, *The Chemours Company v. EPA*, No. 24-1192 (D.C. Cir. filed June 10, 2024).

In May 2026, EPA proposed two regulations: one that would rescind the regulatory determinations (RDs) for PFHxS, PFNA, and GenX chemicals, and parts of the 2024 PFAS regulation; and one that would delay the 2024 PFAS regulation's effective date for two years (i.e., compliance would be required by 2031).[5] These proposals, as well as the ongoing petitions, have created uncertainty for water systems about which elements of the drinking water regulation, if any, they will have to comply with by the April 2029 compliance date.

This report outlines SDWA's regulatory development process and provides an overview of EPA's implementation of these authorities regarding PFAS. The report then provides considerations for Congress regarding EPA's PFAS actions, as well as considerations related to assistance with regulatory compliance.

This report focuses on the regulation and its requirements for water systems.

Safe Drinking Water Act (SDWA)

As amended in 1996, SDWA outlines a stepwise process for EPA to follow when establishing drinking water regulations.[6] The evaluation process includes identifying contaminants of potential concern, assessing health risks, collecting occurrence data (and developing reliable analytical methods necessary to do so), and making determinations as to whether or not a regulation is warranted for a contaminant.

For EPA to make a determination that regulation of a contaminant is warranted, SDWA directs EPA to find (1) the contaminant may have an adverse health effect; (2) the contaminant is known to occur—or there is a substantial likelihood it will occur—in water systems at a frequency and at levels of public health concern; and (3) in the sole judgment of the EPA Administrator, regulation of the contaminant presents a meaningful opportunity for reducing health risks. SDWA directs EPA to seek public comment on a preliminary or proposed positive RD before finalizing the determination.[7] SDWA does not require EPA to finalize an RD within a specific time frame.

SDWA Regulations

SDWA prescribes maximum time frames for EPA to promulgate a regulation once EPA has made a positive RD. EPA is to propose a rule within 24 months of a positive RD and to promulgate a final drinking water regulation within 18 months after the proposal.[8] SDWA also allows EPA to propose a drinking water regulation concurrent with the determination to regulate.[9] Regulations generally take effect three years after promulgation.[10] EPA (or a state in the case of an individual system) may allow up to two additional years if capital improvements are needed.[11]

[5] EPA, "Extending the Compliance Deadline for the PFOA and PFOS Maximum Contaminant Levels," 91 *Federal Register* 29425-29448, May 20, 2026. EPA, "Rescission 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)," 91 *Federal Register* 29413-29425, May 20, 2026.

[6] Safe Drinking Water Act (SDWA) §1412(b); 42 U.S.C. §300g-1(b). For more information about the Safe Drinking Water Act's (SDWA's) regulatory development provisions, see CRS Report R46652, *Regulating Contaminants Under the Safe Drinking Water Act (SDWA)*, by Elena H. Humphreys.

[7] SDWA §1412(b)(1)(B)(ii); 42 U.S.C. §300g-1(b)(1)(B)(ii).

[8] SDWA §1412(b)(1)(E); 42 U.S.C. §300g-1(b)(1)(E).

[9] SDWA §1412(b)(1)(E); 42 U.S.C. §300g-1(b)(1)(E).

[10] SDWA §1412(b)(10); 42 U.S.C. §300g-1(b)(10).

[11] SDWA §1412(b)(10); 42 U.S.C. §300g-1(b)(10).

For each contaminant covered by the regulation, EPA is to establish a maximum contaminant level goal (MCLG) at a level at which no known or anticipated adverse health effects occur and that allows an adequate margin of safety.[12] Regulations also are to include a maximum contaminant level (MCL)—an enforceable limit for a contaminant in public water supplies.[13] SDWA requires EPA to set the MCL as close to the MCLG as feasible.[14] Concurrent with proposing a regulation, SDWA requires EPA to publish and seek public comment on a "health risk reduction and cost analysis" (HRRCA) for each contaminant covered by the proposed regulation.[15] In addition, SDWA requires EPA to make a determination of whether the benefits of the MCL justify, or do not justify, the costs based on the HRRCA when proposing the regulation.[16]

For each drinking water regulation, SDWA requires EPA to identify a list of best available technologies, treatment techniques, and other means that EPA finds feasible for meeting the MCL. SDWA requires EPA to identify treatment technologies that achieve the MCL and are "affordable" for small systems.[17] Each regulation also is to establish monitoring and reporting requirements.

SDWA Enforcement

SDWA authorizes states, territories, and Indian tribes to assume primary oversight and enforcement responsibility (primacy) for public water systems when EPA determines that statutory criteria are met.[18] Currently, 55 of 57 states and territories have SDWA primacy.[19] To assume primacy, a state[20] must adopt regulations at least as stringent as federal requirements, develop adequate procedures for enforcement (including conducting monitoring and inspections), adopt authority for administrative penalties, conduct inventories of water systems, maintain records and compliance data, and make reports as EPA may require.

Among other provisions, SDWA authorizes states to grant public water systems temporary exemptions from standards or treatment techniques if a system cannot comply for other compelling reasons (including costs).[21] An exemption is limited to situations where the exemption

[12] SDWA §1412(b)(4)(A); 42 U.S.C. §300g-1(b)(4)(A).

[13] SDWA §1412(b)(4)(B); 42 U.S.C. §300g-1(b)(4)(B). SDWA authorizes EPA to establish a treatment technique in lieu of a maximum contaminant level (MCL) if an MCL is not feasible.

[14] SDWA §1412(b)(4)(B); 42 U.S.C. §300g-1(b)(4)(B). If the treatment of a contaminant is not feasible—technologically or economically—EPA may establish a treatment technique in lieu of an MCL (SDWA §1412(b)(7)(A); 42 U.S.C. §300g-1(b)(7)(A)). When assessing feasibility, the law directs EPA to consider the best available (and field-demonstrated) treatment technologies, taking cost into consideration (SDWA §1412(b)(4)(D); 42 U.S.C. §300g-1(b)(4)(D)).

[15] SDWA §1412(b)(6)(C); 42 U.S.C. §300g-1(b)(6)(C).

[16] SDWA §1412(b)(4)(C); 42 U.S.C. §300g-1(b)(4)(C).

[17] SDWA §1412(b)(4)(E)(ii); 42 U.S.C. §300g-1(b)(4)(E)(ii). EPA considers treatment for a regulation affordable if the costs do not exceed of 2.5% of median household income.

[18] SDWA §1413; 42 U.S.C. §300g-2. SDWA Section 1401(13)(A) defines *state* to include the states and, for most purposes, "the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the [U.S.] Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands." Section 1401(B) provides that for purposes of Section 1452 (State Revolving Loan Funds), *state* means "each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico." Tribes are defined separately at Section 1401(14).

[19] All states (except Wyoming and the District of Columbia), territories, and Navajo Nation have primacy. EPA oversees water systems in nonprimacy areas and retains oversight of primacy states.

[20] Section 1451 (42 U.S.C. §300j-11) generally authorizes the EPA Administrator to treat Indian tribes as states under SDWA.

[21] SDWA §1416; 42 U.S.C. §300g-5.

would not result in an unreasonable health risk. States can issue exemptions to a qualified system for up to three years beyond the regulation's effective date. This authority is available to EPA for Wyoming and the District of Columbia, which do not have SDWA primacy. Systems serving 3,300 or fewer persons may receive a maximum of three additional two-year extensions for a total exemption duration of nine years.

SDWA's Regulatory Development Process

SDWA's regulatory development provisions support a science-based and risk-driven process to regulate harmful contaminants in drinking water. SDWA outlines a specific process for EPA to follow when evaluating contaminants to achieve an outcome (i.e., the regulation of harmful contaminants). The act requires EPA to be transparent regarding the data the agency uses to determine that the regulation of a contaminant will result in a meaningful health risk reduction for those served by public water systems. Through the HRRCA, EPA is required to build a record to inform the public about the risk a contaminant poses as well as the anticipated costs to regulate it.[22] To this end, the act requires EPA to use the best available peer-reviewed information. It requires EPA to solicit comments from the Science Advisory Board,[23] consult with the National Drinking Water Advisory Council, and provide an opportunity for public comment.[24] These requirements are intended to create a transparent process demonstrating that EPA's drinking water regulations are derived from the best available science and that the regulatory costs are weighed against the health risk reduction benefits.[25] SDWA outlines a procedure for entities to file a petition for review of EPA's actions pertaining to the establishment of a NPDWR within 45 days of promulgation.[26]

Once EPA finalizes a regulation, SDWA provides some degree of certainty for water systems, because the act states that a revision of a drinking water regulation must maintain or provide for greater public health protection.[27] This provision does not, however, specify that EPA may revise an MCL only to be *more* stringent; it *may* be revised to be less stringent *if* new "science" finds that a less stringent standard would be as protective of public health.[28]

Regulated Water Systems

SDWA applies to public water systems. A *public water system* is defined as any water system that provides water to at least 25 individuals or 15 service connections. Roughly 144,000 public water systems operate in the United States.[29]

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[22] U.S. Congress, Senate Environment and Public Works Committee, *Safe Drinking Water Amendments Act of 1995*, report to accompany S. 1316, 104th Cong., 1st sess., November 7, 1995, S.Rept. 104-169. In this report, Congress identifies several goals for its legislation, including that "a public record must be created to educate people about the risks they face from a particular contaminant and the costs to regulate it."

[23] The 1978 Environmental Research, Development, and Demonstration Authorization Act (P.L. 95-477) directed EPA to establish the Science Advisory Board to provide scientific advice to the Administrator (42 U.S.C. §4365).

[24] SDWA §1412(d); 42 U.S.C. §300g-1(d).

[25] S.Rept. 104-169.

[26] SDWA §1448; 42 U.S.C. §300j-7.

[27] SDWA §1412(b)(9); 42 U.S.C. §300g-1(b)(9). This provision specifies that "any revision shall maintain, or provide for greater, protection of the health of persons."

[28] S.Rept. 104-169.

[29] Water system estimates from EPA's Safe Drinking Water Information Systems, Water System Summary report, https://sdwis.epa.gov/ords/sfdw_pub/r/sfdw/sdwis_fed_reports_public/1?clear=1, generated on March 25, 2026. The search parameters were "public water systems."

Of these public water systems, nearly 50,000 are *community water systems*, which serve the same individuals year-round.[30] Roughly 17,000 are *non-transient non-community water systems*, which generally serve the same individuals for more than six months but not year-round, such as systems at schools or factories.[31] Another 77,600 public water systems are *transient non-community water systems*, which generally do not serve the same individuals for more than six months in a year; examples include systems at campgrounds and gas stations that provide water to transitory customers.[32]

The full suite of SDWA regulations applies to community water systems. Most drinking water regulations, including the PFAS regulation, apply to non-transient non-community water systems. The PFAS regulation does not apply to transient non-community water systems; EPA's long-standing policy is to exclude transient systems from drinking water regulations except for those that regulate contaminants that have the potential to cause immediate adverse human health effects resulting from short-term exposure.[33] Transient systems are therefore not a focus of this report.

The source, size, and capacity of water systems vary.[34] For example, some systems may provide their customers with treated water sourced from a well, whereas others may draw from multiple water sources.

The majority of water systems serve a relatively small number of customers. Roughly 80% of community water systems serve 3,300 or fewer individuals.[35] Among non-transient non-community water systems, roughly 99% serve populations of 3,300 or fewer.[36] Water systems that serve 100,000 or more individuals make up less than 1% of the total number of community water systems, but serve roughly 46% of those served by such systems.[37]

The majority (roughly 87%) of systems covered by the PFAS regulation serve fewer than 3,300 people.[38] Systems that serve fewer than 3,300 individuals typically rely on groundwater as the

[30] Community water system estimates from EPA's Safe Drinking Water Information Systems, Water System Summary report, https://sdwis.epa.gov/ords/sfdw_pub/r/sfdw/sdwis_fed_reports_public/1?clear=1, generated on March 25, 2026. The search parameters were "community water systems."

[31] Non-transient non-community water system estimates from EPA's Safe Drinking Water Information Systems, Water System Summary report, https://sdwis.epa.gov/ords/sfdw_pub/r/sfdw/sdwis_fed_reports_public/1?clear=1, generated on March 25, 2026. The search parameters were "non-transient non-community water systems."

[32] EPA, "Information about Public Water Systems," https://www.epa.gov/dwreginfo/information-about-public-water-systems.

[33] See for example, EPA, *Introduction to the Public Water System Supervision Program,* January 2003, http://cfpub.epa.gov/watertrain/pdf/modules/pwss.pdf.

[34] EPA, "Learn About Capacity Development," https://www.epa.gov/dwcapacity/learn-about-capacity-development.

[35] Community water system estimates from EPA's Safe Drinking Water Information Systems, Water System Summary report, https://sdwis.epa.gov/ords/sfdw_pub/r/sfdw/sdwis_fed_reports_public/1?clear=1, generated on March 25, 2026. The search parameters were "community water systems."

[36] Non-transient non-community water system estimates from EPA's Safe Drinking Water Information Systems, Water System Summary report, https://sdwis.epa.gov/ords/sfdw_pub/r/sfdw/sdwis_fed_reports_public/1?clear=1, generated on March 25, 2026. The search parameters were "non-transient non-community water systems."

[37] Water system estimates from EPA's Safe Drinking Water Information Systems, Water System Summary report, https://sdwis.epa.gov/ords/sfdw_pub/r/sfdw/sdwis_fed_reports_public/1?clear=1, generated on March 25, 2026. The search parameters were "community water systems" and "non-transient non-community water systems." Only one non-transient non-community water system serves more than 100,000 individuals.

[38] Water system estimates from EPA's Safe Drinking Water Information Systems, Water System Summary report, https://sdwis.epa.gov/ords/sfdw_pub/r/sfdw/sdwis_fed_reports_public/1?clear=1, generated on March 25, 2026. The search parameters were "community water systems" and "non-transient non-community water systems."

source of their drinking water, whereas larger systems are more likely to use surface water.[39] Groundwater is generally less likely to be contaminated than surface water, but when groundwater is contaminated, its level of contamination may be higher given that it moves as a plume (a segment of groundwater that contains contaminants released from a point source),[40] rather than mixing with other water (e.g., rain) or evaporating through the air.[41]

Water system size also drives another difference among systems: the extent to which systems benefit from economies of scale. Larger systems have a larger base of customers from which to pay for infrastructure upgrades, employ advanced treatment technologies, and monitor for regulatory compliance.

Evaluating PFAS Under SDWA

EPA finalized the PFAS NPDWR on April 26, 2024.[42] The promulgation of this regulation is one step in SDWA's regulatory development process. This section provides an overview of EPA's SDWA actions to develop a PFAS regulation.[43] See **Figure 1** for a timeline of selected EPA actions under SDWA to address PFAS and associated legislation.

Since at least 2009, EPA had been evaluating certain PFAS for potential regulation. SDWA's regulatory process involves identifying contaminants that may warrant regulation on a list called the contaminant candidate list (CCL). EPA develops the CCL and uses it to collect information, such as health effects information, on contaminants that are a priority for regulatory consideration.[44] EPA has published five CCLs since 1998. In 2009, EPA listed PFOA and PFOS on the third CCL.[45] Instead of adding each PFAS separately, the fifth CCL, finalized in 2022, added PFAS as group.[46]

To generate national-level occurrence data for a contaminant, SDWA authorizes EPA to promulgate a rule requiring water systems to monitor for up to 30 unregulated contaminants.[47] All water systems serving more than 10,000 individuals and a nationally representative sample of public water systems serving 10,000 individuals or fewer are required to conduct monitoring.[48]

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[39] S.Rept. 104-169.

[40] EPA, *Evaluating Ground Water Plumes Under the Hazard Ranking System*, Washington, DC, September 1998, https://semspub.epa.gov/work/11/174007.pdf.

[41] S.Rept. 104-169.

[42] EPA, "PFAS National Primary Drinking Water Regulation," 89 *Federal Register* 32532-32757, April 26, 2024.

[43] For more information about EPA's evaluation of PFAS under SDWA before 2021, see CRS Report R45793, *PFAS and Drinking Water: Selected EPA and Congressional Actions*, by Elena H. Humphreys.

[44] EPA, "PFAS National Primary Drinking Water Regulation Rulemaking," 88 *Federal Register* 18638-18754, March 29, 2023.

[45] EPA, "Drinking Water Contaminant Candidate List 3—Final," 74 *Federal Register* 51850, October 8, 2009. For more information on CCL 3, see EPA, "Contaminant Candidate List 3—CCL 3," https://www.epa.gov/ccl/contaminant-candidate-list-3-ccl-3.

[46] EPA, "Drinking Water Contaminant Candidate List 5—Final," 87 *Federal Register* 68060-68085, November 14, 2022.

[47] SDWA §1445(a)(2); 42 U.S.C. §300j-4(a)(2). For more information, see EPA, "Monitoring Unregulated Contaminants in Drinking Water," March 16, 2026, http://water.epa.gov/lawsregs/rulesregs/sdwa/ucmr/.

[48] Section 2021(a) of America's Water Infrastructure Act of 2018 (AWIA) added SDWA Section 1445(j) to expand unregulated contaminant monitoring requirements to include public water systems serving 3,300-10,000 individuals—subject to the availability of appropriations for this purpose and lab capacity. The monitoring requirements entered into effect three years after the enactment date of AWIA (i.e., they were effective October 23, 2021). Section 1445(j) authorized $15.0 million to be appropriated for each year from FY2019 through FY2021 to support the expanded monitoring.

EPA calls this rule the "unregulated contaminant monitoring rule" (UCMR). Using the data it collects through the UCMR, EPA estimates the nationwide frequency and level of occurrence of contaminants, such as PFAS, in water systems. EPA generally selects the list of unregulated contaminants for the UCMR based on the CCLs. In the third UCMR (UCMR 3), EPA required systems to monitor for perfluoroheptanoic acid (PFHpA), PFOA, PFOS, PFBS, PFHxS, and PFNA between 2013 and 2015.[49] Using health effects information and the nationwide occurrence data from UCMR 3, EPA made a preliminary determination to regulate PFOA and PFOS in 2020 and solicited public comment; EPA finalized the positive RD for these contaminants in 2021.[50]

The National Defense Authorization Act for Fiscal Year 2020 (P.L. 116-92), Section 7311, required EPA to add to the fifth UCMR (UCMR 5) all PFAS or categories of PFAS with validated test methods. In 2021, EPA issued UCMR 5, which required water systems to monitor for PFOA, PFOS, GenX chemicals, PFHxS, PFNA, PFBS, and 19 other PFAS, between 2023 and 2025.[51] For UCMR 5, EPA required systems to use analytical methods that had been developed or revised since UCMR 3, and allowed for the detection of PFAS in treated water at levels lower than were achievable under UCMR 3.[52]

As discussed above, SDWA directs EPA to propose a regulation within 24 months of a positive RD. In March 2023, EPA proposed a regulation for PFOA and PFOS; issued preliminary determinations to regulate PFBS, PFHxS, PFNA, and GenX chemicals; and proposed that the regulation for PFOA and PFOS also cover these four PFAS.[53] In April 2024, EPA finalized the positive RD for PFHxS, PFNA, and GenX chemicals, did not finalize the determination to regulate PFBS individually, and finalized the regulation covering PFOA and PFOS.[54] EPA also finalized the regulation for PFHxS, PFNA, and GenX chemicals, and a mixture of these substances and PFBS.[55]

[49] EPA, "Revisions to the Unregulated Contaminant Monitoring Regulation (UCMR 3) for Public Water Systems," 77 *Federal Register* 26072, May 2, 2012.

[50] EPA, "Announcement of Preliminary Regulatory Determinations for Contaminants on the Fourth Drinking Water Contaminant Candidate List," 85 *Federal Register* 14098-14142, March 10, 2020; EPA, "Announcement of Final Regulatory Determinations for Contaminants on the Fourth Drinking Water Contaminant Candidate List," 86 *Federal Register* 12272-12291, March 3, 2021.

[51] EPA, "Revisions to the Unregulated Contaminant Monitoring Rule (UCMR 5) for Public Water Systems and Announcement of Public Meetings," 86 *Federal Register* 73131, December 27, 2021.

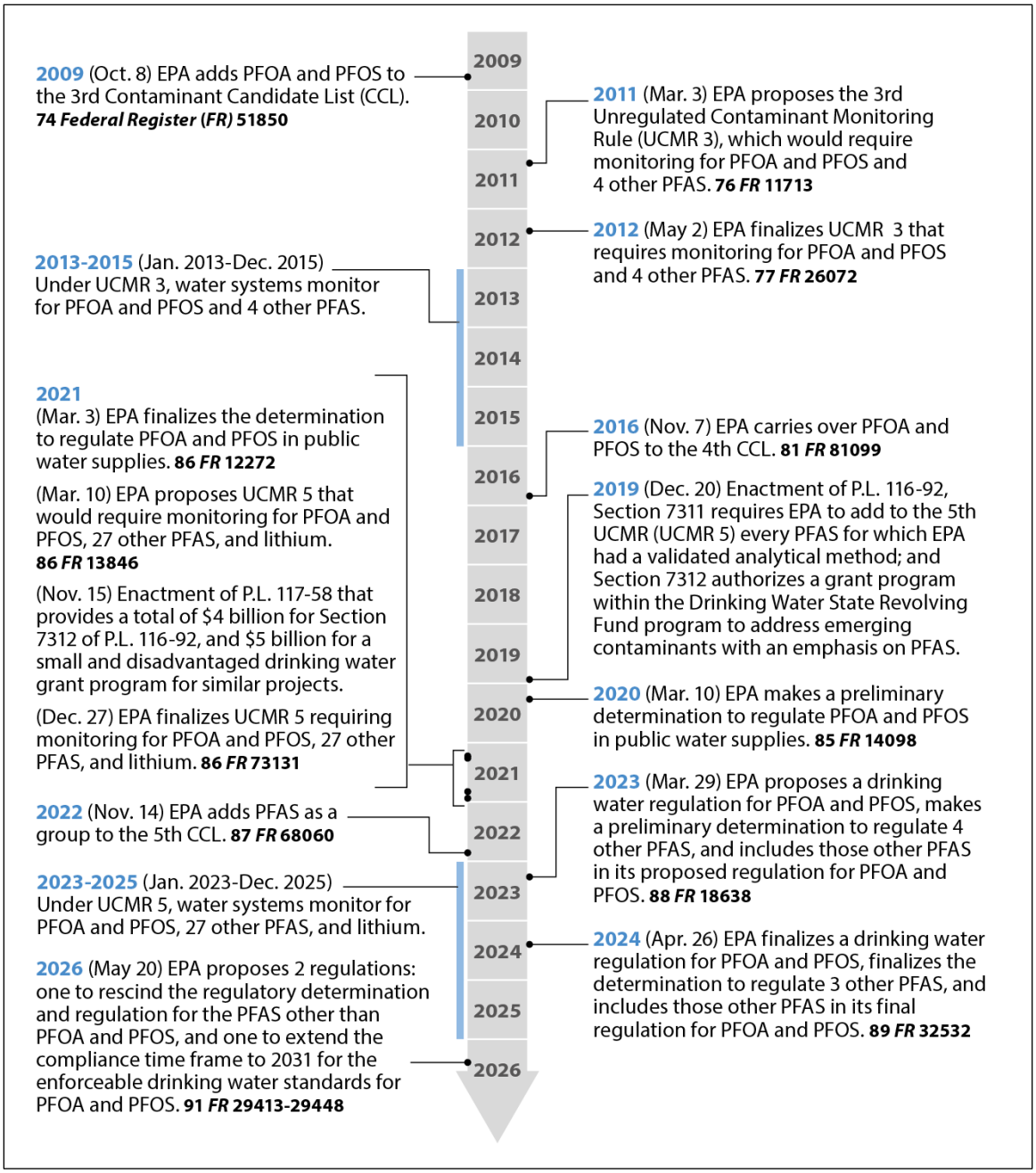
[52] These updated methods allowed for minimum reporting levels for PFOA and PFOS each at 4 parts per trillion (ppt), GenX chemicals at 5 ppt, PFHxS at 3 ppt, PFNA at 4 ppt, and PFBS at 3 ppt.

[53] EPA, "PFAS National Primary Drinking Water Regulation Rulemaking," 88 *Federal Register* 18638-18754, March 29, 2023.

[54] EPA, "PFAS National Primary Drinking Water Regulation," 89 *Federal Register* 32532-32757, April 26, 2024.

[55] EPA, "PFAS National Primary Drinking Water Regulation," 89 *Federal Register* 32532-32757, April 26, 2024.

Figure 1. Timeline of Selected Drinking-Water-Related PFAS Actions



Source: Compiled by CRS from *Federal Register* notices, EPA press releases, and Congress.gov.

2023 Preliminary Determination for PFHxS, PFNA, GenX Chemicals, and PFBS

To propose a positive RD for PFNA, PFHxS, GenX chemicals, and PFBS, EPA had to (1) determine that these chemicals have an adverse health effect; (2) find that they occur—or that there is a substantial likelihood that they occur—in water systems at a frequency and at levels of

concern; and (3) determine that the regulation of these substances presents a meaningful opportunity for health risk reduction.[56]

To characterize the health effects associated with PFHxS and PFNA, EPA relied on a toxicological profile of perfluoroalkyls developed by the Agency for Toxic Substances and Disease Registry (ATSDR).[57] EPA used ATDSR's data to identify associations between PFHxS and thyroid effects and between PFNA and developmental effects.[58] For PFBS and GenX chemicals, EPA used toxicity assessments it developed to identify associations between PFBS and developmental, thyroid, and kidney effects, and between GenX chemicals and liver, kidney, immune system, blood, reproductive, and developmental effects.[59] In addition, EPA stated that the mixture of these PFAS contaminants, given their similar observed health effects, is assumed to act in a "dose additive" manner, meaning that when found together, they should be assumed to act as an aggregate concentration.[60] EPA stated that it used these data to make a preliminary determination that these PFAS meet the first statutory criterion for regulation, which is that they have an adverse health effect.[61]

Regarding occurrence, EPA determined that there is a substantial likelihood that PFBS, PFNA, Gen X chemicals, and PFHxS occur at levels of concern in water systems.[62] To identify occurrence, EPA used data collected from UCMR 3 for PFNA, PFBS, and PFHxS (GenX chemicals were not included in UCMR 3) as well as drinking water quality data from a subset of states that had tested for PFAS (including GenX chemicals).[63] After reviewing the available data, the agency made a preliminary determination that these PFAS met the second statutory criterion of occurring at levels of concern within water systems.

Using both the adverse health effects data and occurrence data, EPA proposed that PFHxS, PFNA, GenX, and PFBS warranted regulation both individually and as a mixture, meaning that the Administrator preliminarily determined that the regulation of these contaminants would present a meaningful opportunity for health risk reduction.[64]

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[56] SDWA §1412(b)(1)(B)(ii); 42 U.S.C. §300g-1(b)(1)(B)(ii).

[57] U.S. Agency for Toxic Substances and Disease Registry, *Toxicological Profile for Perfluoroalkyls*, CS274127-A, May 2021, https://www.atsdr.cdc.gov/ToxProfiles/tp200.pdf.

[58] EPA, "PFAS National Primary Drinking Water Regulation Rulemaking," 88 *Federal Register* 18638-18754, March 29, 2023.

[59] EPA, *Human Health Toxicity Values for Hexafluoropropylene Oxide (HFPO) Dimer Acid and Its Ammonium Salt (CASRN 13252-13-6 and CASRN 62037-80-3), Also Known as "GenX Chemicals,"* 822R-21-010, October 2021, https://www.epa.gov/system/files/documents/2021-10/genx-chemicals-toxicity-assessment_tech-edited_oct-21-508.pdf; EPA, "Technical Fact Sheet: Toxicity Assessment for PFBS," April 2021, https://ofmpub.epa.gov/eims/eimscomm.getfile?p_download_id=542401 (automatic download).

[60] EPA, "PFAS National Primary Drinking Water Regulation Rulemaking," 88 *Federal Register* 18638-18754, March 29, 2023.

[61] EPA, "PFAS National Primary Drinking Water Regulation Rulemaking," 88 *Federal Register* 18638-18754, March 29, 2023.

[62] EPA, "PFAS National Primary Drinking Water Regulation Rulemaking," 88 *Federal Register* 18638-18754, March 29, 2023.

[63] EPA, "PFAS National Primary Drinking Water Regulation Rulemaking," 88 *Federal Register* 18638-18754, March 29, 2023.

[64] EPA, "PFAS National Primary Drinking Water Regulation Rulemaking," 88 *Federal Register* 18638-18754, March 29, 2023.

2023 Proposed Regulation

PFOA and PFOS

For PFOA and PFOS, EPA proposed to set the MCLG (maximum contaminant level goal) at zero. In drinking water regulations, EPA sets the MCLG at zero for microbial contaminants and for other contaminants when EPA (1) has evidence that a contaminant may cause cancer, and (2) cannot determine a dose that is considered "safe." As mentioned above, SDWA generally requires EPA to establish the MCL (maximum contaminant level) as close to the MCLG as feasible.[65] EPA proposed MCLs for PFOA and PFOS each at 4.0 parts per trillion (ppt), which the agency found to be the lowest level that can be reliably measured by existing analytical methods, referred to as the *detection limit*.

PFHxS, PFNA, GenX Chemicals, and PFBS Hazard Index

Instead of setting numerical MCLGs and MCLs for each of the other four PFAS in the agency's proposed regulation, EPA proposed to use a hazard index to evaluate the potential risks of these chemicals in aggregate. This approach involves assessing concentrations of each substance relative to that substance's "health-based water concentration" (HBWC). EPA states that a contaminant's HBWC is derived similarly to the MCLG (i.e., the level at which no adverse health effects are anticipated to occur), combining those relative values together to calculate the hazard index. EPA's proposal included HBWCs for PFHxS at 9.0 ppt; GenX chemicals at 10.0 ppt; PFNA at 10.0 ppt; and PFBS at 2,000 ppt. Water systems would divide the sampled concentrations of each PFAS by its respective HBWC and then sum these relative values to calculate the aggregate hazard index value. EPA proposed an MCLG and MCL for the combination of these four PFAS at a hazard index of 1. As such, EPA's proposal states that a hazard index of 1 would mean that the aggregate concentrations of these four PFAS would be below the levels at which adverse health effects occur.[66] EPA stated that the hazard index is intended to address the combined risk of potential noncancerous health effects associated with these PFAS.

Based on the health effects information for these PFAS (discussed above in "2023 Preliminary Determination for PFHxS, PFNA, GenX Chemicals, and PFBS") and PFOA and PFOS, EPA also issued an HRRCA (health risk reduction and cost analysis) for the proposed regulation, estimating the annualized quantifiable costs and benefits each at $1.5 billion (2022 dollars), and issued a determination that the benefits of the proposed MCLs justified the costs.[67]

Proposed Treatment Technologies and Options

In addition to proposing a schedule for systems to monitor for these PFAS, the regulation noted that conventional, and most advanced, water treatment options are ineffective at removing PFAS from water. To meet the MCLs, EPA identified that the best available treatment technologies are anion exchange, granular activated carbon, reverse osmosis, and nanofiltration. EPA stated that "three technologies [granular activated carbon, anion exchange, and high-pressure membranes] ...

[65] SDWA §1412(b)(4)(B); 42 U.S.C. §300g-1(b)(4)(B).

[66] EPA, "PFAS National Primary Drinking Water Regulation Rulemaking," 88 *Federal Register* 18638-18754, March 29, 2023.

[67] EPA, "PFAS National Primary Drinking Water Regulation Rulemaking," 88 *Federal Register* 18638-18754, March 29, 2023.

have all been demonstrated to be effective in removing all six PFAS."[68] Operation of these technologies would require water systems to dispose of either a stream of waste or treatment residuals generated from the treatment. Nontreatment options available to water systems to achieve compliance include (1) replacing a water source with a new water source that meets the MCLs or (2) buying water that meets the MCLs from another system.

As required by SDWA, EPA's proposal identifies technologies that are "affordable" for small systems. EPA finds that anion exchange and granular activated carbon are affordable for systems that serve 10,000 or fewer individuals. For systems serving more than 3,300 individuals, reverse osmosis and nanofiltration are considered affordable under future circumstances.[69]

2024 Final Determinations for PFHxS, PFNA, and GenX Chemicals

In April 2024, EPA finalized the determination to regulate PFHxS, GenX chemicals, and PFNA individually and as mixture, and to regulate PFBS as mixture. EPA did not finalize the determination to regulate PFBS individually.[70]

2024 PFAS Regulation

EPA's final regulation in 2024 kept the 2023 proposed MCLGs and MCLs for PFOA and PFOS.[71] EPA altered its approach for PFHxS, PFNA, and GenX chemicals. The agency established MCLGs of 10 ppt for each substance and finalized MCLs at the same levels. For the hazard index, EPA's regulation requires water systems to assess concentrations of PFHxS, PFNA, and GenX chemicals relative to their respective MCLs, to assess the concentration of PFBS relative to its health-based water concentration of 2,000 ppt, and to sum two or more of these relative concentrations to determine if the value exceeds the hazard index of 1. As such, the regulation does not regulate PFBS individually, but only when combined with at least one other PFAS.

In addition, EPA's regulation requires water systems to complete initial PFAS monitoring by 2027. Based on the results of the initial monitoring, water systems then have another two years to continue monitoring, notify their customers of the monitoring results, and, if needed, take steps to address PFAS detections above the MCLs or hazard index. These steps could include installing advanced treatment or replacing a contaminated water source. Water systems are required to comply with the MCLs by 2029 and to provide public notification for any MCL or monitoring violation.

2026 Proposed Regulations

In May 2026, EPA proposed two regulations that pertain to the 2024 PFAS RD and regulation. One proposes to rescind the RDs for the three PFAS (PFHxS, PFNA, and GenX chemicals) and to rescind part of the PFAS regulation covering these PFAS and PFBS. The other proposes to delay the compliance with the PFOA and PFOS MCLs for two years (i.e., compliance would be

[68] 88 *Federal Register* 18638, 18686, March 29, 2023.

[69] For systems serving 3,300 individuals or fewer, EPA finds that reverse osmosis or nanofiltration would be affordable when reverse osmosis or nanofiltration point-of-use devices that treat to the MCLs and meet the National Sanitation Foundation (NSF) International/American National Standards Institute certification standard become available.

[70] EPA, "PFAS National Primary Drinking Water Regulation," 89 *Federal Register* 32532-32757, April 26, 2024.

[71] EPA, "PFAS National Primary Drinking Water Regulation," 89 *Federal Register* 32532-32757, April 26, 2024.

required by 2031 rather than 2029) via a "national exemption."[72] EPA is accepting public comment on each proposed regulation until July 20, 2026, and is planning a public hearing on July 7, 2026.[73]

2026 Proposed Rescission of the RD for PFHxS, PFNA, and GenX Chemicals, and Associated Regulation

EPA states that its proposal to rescind the RD and regulation for PFHxS, PFNA, and GenX chemicals is based on the agency using an "unlawful procedure" to support EPA's actions associated with the 2024 PFAS regulation.[74] In the 2026 proposal, EPA argues that SDWA requires EPA to finalize an RD after public comment on the preliminary RD, and, only once an RD is finalized, can EPA propose a regulation.[75] As such, EPA states that the agency erred by proposing an RD and a regulation at the same time in 2023, and now concludes that the soonest that SDWA allows for the agency to propose a regulation is at the same time as a final RD. EPA finds that the proposal to rescind the 2024 RD and the regulation for the other PFAS is solely based on this misinterpretation of the statute.[76] The agency states that its 2026 proposal is not based on a change in the agency's previous findings with regard to these contaminants' health effects, occurrence, or whether their regulation presents a meaningful opportunity for health risk reduction.[77]

EPA's economic analysis for the proposed rescission finds that it would result in cost savings from reduced monitoring and avoided treatment and reporting.[78] EPA estimates that its 2026 proposal would reduce the annualized costs of the 2024 PFAS regulation by $11.6 million (2022 dollars), less than 1% of the total annualized cost of the regulation.[79] With regard to quantified benefits, EPA estimates that the lack of MCLs for these PFAS would result in $6.7 million (2022 dollars) of annualized forgone benefits, less than half-a-percent of the total annualized benefits.[80]

2026 Proposed "National Exemption"

EPA proposed a framework to exempt water systems from the 2029 deadline for compliance with the PFOA and PFOS MCLs prior to a state being granted primacy for the regulation.[81] EPA anticipates that nearly all water systems would be required to make capital improvements to comply with the PFOA and PFOS MCLs. EPA states in its proposal that this national framework

[72] EPA, "Extending the Compliance Deadline for the PFOA and PFOS Maximum Contaminant Levels," 91 *Federal Register* 29425-29448, May 20, 2026. EPA, "Rescission 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)," 91 *Federal Register* 29413-29425, May 20, 2026.

[73] 91 *Federal Register* 29413-29448, May 20, 2026.

[74] 91 *Federal Register* 29413, 29415, May 20, 2026.

[75] 91 *Federal Register* 29413, 29415, May 20, 2026.

[76] 91 *Federal Register* 29413, 29417, May 20, 2026.

[77] 91 *Federal Register* 29413, 29417, May 20, 2026.

[78] 91 *Federal Register* 29413, 29417, May 20, 2026.

[79] 91 *Federal Register* 29413, 29417-29419, May 20, 2026. The 2024 PFAS regulation estimated annualized compliance costs at $1.548 billion (2022 dollars).

[80] 91 *Federal Register* 29413, 29420, May 20, 2026. The 2024 PFAS regulation estimated annualized benefits at $1.549 billion (2022 dollars).

[81] 91 *Federal Register* 29425-29448, May 20, 2026

is intended to "streamline the exemptions process and manage the potentially large number of exemption requests."[82]

EPA proposes an "exemption by rule" process that would require individual systems to request a two-year exemption until April 26, 2031. EPA states that exemptions

- would be granted only due to compelling factors, including costs, preventing the system from complying with the MCLs or developing an alternative source of water supply,
- would be limited to systems in operation at the time of the effective date of the PFOA and PFOS MCLs (i.e., June 25, 2024),
- would be limited to cases where granting the exemption would not result in unreasonable risk to health, and
- would be limited to cases where "management or restructuring changes (or both) cannot reasonably be made that will result in compliance... "[83]

EPA provides several examples of relevant "compelling factors." In addition to financial limitations, EPA identifies uncertainty of procurement as a compelling factor, citing the increased cost of construction materials, "ongoing volatility in global steel markets," and supply chain disruptions that may create delays in procurement.[84] EPA also cites the challenge of hiring and retaining a water system operator as another compelling factor, though this factor is not specific to PFOA or PFOS.

In addition, EPA outlines potential benefits for systems seeking an exemption. EPA identifies that, in the intervening years, additional treatment technology may be developed to treat PFOA and PFOS to the MCLs. Further, EPA states that UCMR 5 results would give systems a better understanding of their PFAS detections. EPA also notes that other EPA actions under different statutory authorities (i.e., the Clean Water Act) may affect source water quality for water systems that rely on surface water.

Regarding what constitutes an "unreasonable risk to health," EPA proposes the threshold of 12 ppt of PFOA or PFOS in public water supplies. EPA's proposal seeks comment on whether risk is not "unreasonable" for systems with concentrations below 12 ppt for both PFOA and PFOS.[85] This level would not replace the 2024 PFAS regulation's MCLs of 4.0 ppt for PFOA and PFOS, but, under EPA's 2026 proposal, would require the system to take other actions while operating under an exemption. Systems with detections above 12 ppt could obtain an exemption if the system took other measures to control these substances in drinking water. EPA lists these measures as "installation, operation, and maintenance of point-of use and/or point-of-entry (POU and/or POE) devices, providing alternative water sources, making water filtration pitchers available, implementing source water controls, providing public education materials on reducing PFAS from various sources including drinking water, and conducting community outreach activities."[86]

EPA proposes that all systems apply for an exemption prior to their state receiving primacy for the PFOA and PFOS MCLs. In the application, EPA proposes that systems provide initial information (e.g., system identification number and most recent PFOA and PFOS sampling

[82] 91 *Federal Register* 29425, 29428, May 20, 2026.

[83] 91 *Federal Register* 29425, 29428, May 20, 2026.

[84] 91 *Federal Register* 29425, 29429, May 20, 2026.

[85] 91 *Federal Register* 29425, 29431, May 20, 2026.

[86] 91 *Federal Register* 29425, 29431, May 20, 2026.

results) and statements that attest there are compelling factors that prevent a system from complying, and the system is taking all steps possible to meet the MCLs. For systems with detections of PFOA and PFOS above 12 ppt, EPA requires the water system submit information on two "control measures" that would be implemented during the years the exemption is provided.[87] Water systems would have 180 days after this proposal is finalized to submit an exemption application.

Considerations for Congress

Discussed above, SDWA's regulatory development process contains steps intended to identify health risks and gather occurrence data to support a regulation using the best available peer-reviewed information. For water systems subject to regulation, the act's process is intended to be transparent both in the data EPA uses to support a regulation and in how EPA establishes the MCLs to account for the health risk reduction benefits and costs. Once EPA finalizes a regulation, SDWA does not allow EPA to revise that regulation to be less protective of public health, often referred to as the *anti-backsliding provision*.[88] Though, as stated above, SDWA does not require that each revision of a regulation includes a more stringent MCL, if science is available that a less stringent MCL would be just as protective. Further, SDWA does not provide EPA with the authority to revise a regulation to be less stringent based on other aspects, such as compliance costs.

Due to the anti-backsliding provision, a final drinking water regulation has broad effects, particularly when water systems are required to make capital improvements to comply. Some may contend that the anti-backsliding provision encourages EPA to take a particularly cautious approach during the rulemaking process. Some may argue this caution is warranted; others may argue any additional time results in a process that is unnecessarily delayed, and that may result in more time for individuals to be exposed to a contaminant in drinking water.

EPA's PFAS actions may be among several financial and regulatory issues faced by water systems. These include water main breaks and other aging infrastructure issues and associated potential contamination, compliance challenges with other regulations (e.g., regulation to control lead and copper), and threats from cyberattacks that could disrupt or contaminate public water supplies. The text box "**Other Actions That May Affect Water Systems**" discusses other PFAS-related considerations for water systems.

Other Actions That May Affect Water Systems

Outside of the Safe Drinking Water Act, water systems may face other requirements based on other federal statutes. In 2024, EPA announced a final rule designating perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).[89] CERCLA imposes liability on certain parties responsible for the presence of hazardous substances at a site. CERCLA establishes financial liability for four categories of *potentially responsible parties*: (1) the current owner or operator of a facility; (2) former owners or operators of a facility at the time hazardous substances were disposed of there; (3) generators and parties that arranged for the transport, disposal, or treatment of hazardous substances; and (4) transporters of hazardous substances to a facility. Water

[87] 91 *Federal Register* 29425, 29434, May 20, 2026.

[88] SDWA §1412(b)(9); 42 U.S.C. §300g-1(b)(9).

[89] For questions on the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) liability, congressional offices may contact Kate Bowers, CRS Supervisory Attorney. For questions on CERCLA, congressional offices may contact Lance Larson, CRS Analyst in Environmental Policy. The rule designation was announced on April 19, 2024, and published on May 8, 2024. EPA, "Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances," 89 *Federal Register* 39124, May 8, 2024.

systems that meet one of the above designations may be considered liable under CERCLA where there has been a release or threatened release of a hazardous substance that causes the incurrence of response (or cleanup) costs.[90]

Also in 2024, EPA issued an enforcement discretion and settlement policy explaining how the agency would exercise its enforcement discretion under CERCLA in matters involving PFAS.[91] EPA identified that community water systems are among the entities against which it generally did not intend to pursue PFAS response actions or costs under CERCLA, subject to some limitations. Given that enforcement policy is subject to the discretion of the agency and does not shield covered entities from all potential liability, water system associations have supported legislation that would exempt water systems from CERCLA liability under certain circumstances.[92]

This section identifies several issues that pertain to EPA's PFAS actions and provides selected trade-offs and considerations. Specifically, the topics covered by this section include

- compliance with SDWA's regulatory development process,
- rescinding a final RD,
- implementing EPA's proposal to provide exemptions,
- states' adoption of a PFAS regulation
- petitions for review, and
- compliance assistance.

Compliance with SDWA Regulatory Development Process

Some have questioned whether EPA's PFAS actions have followed SDWA's regulatory development process.[93] In 2023, EPA performed two steps of SDWA's regulatory development process simultaneously by proposing both an RD for the four PFAS and a regulation that covered those PFAS. (The 2023 proposed regulation also included PFOA and PFOS, which were addressed by a 2021 RD.) In 2026, EPA stated that it acted in error when doing so.[94]

EPA's 2024 approach to expediting SDWA's steps may lead to questions and concerns from policymakers and stakeholders, as Congress established SDWA's regulatory development process and the Biden Administration's actions may not have followed it. In contrast, some may defend EPA's 2024 approach, viewing the consolidated actions as having resulted in the reduction of health risks more quickly,[95] and pointing out that the need for the regulation was not changed because of the additional data from UCMR 5, as discussed in the text box "**Data Availability and Sufficiency**."

[90] The scope of CERCLA liability is detailed in CRS In Focus IF11790, *Liability Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)*, by Kate R. Bowers.

[91] Memorandum from David M. Uhlmann, Assistant Administrator for Enforcement and Compliance Assurance, EPA, to regional administrators, deputy regional administrators, regional counsels, and deputy regional counsels, "PFAS Enforcement Discretion and Settlement Policy Under CERCLA," April 19, 2024, https://www.epa.gov/system/files/documents/2024-04/pfas-enforcement-discretion-settlement-policy-cercla.pdf.

[92] American Water Works Association, "AWWA Extends Support for Bipartisan Introduction of Water Systems PFAS Liability Protection Act," press release, February 12, 2025, https://www.awwa.org/AWWA-Articles/awwa-extends-support-for-bipartisan-introduction-of-water-systems-pfas-liability-protection-act/. See, for example, Water Systems PFAS Liability Protection Act, H.R. 1267 (119th Congress).

[93] Petition for Review, *American Water Works Association v. EPA*, No. 24-1188 (D.C. Cir. filed June 7, 2024).

[94] 91 *Federal Register* 29413, 29415, May 20, 2026.

[95] See for example, Natural Resources Defense Council, "NRDC Seeks to Defend Biden EPA Restrictions on Forever Chemicals in Drinking Water Water Utilities, Chemical Industry Challenging PFAS Rule," press release, July 1, 2024, https://www.nrdc.org/press-releases/nrdc-seeks-defend-biden-epa-restrictions-forever-chemicals-drinking-water-water.

Data Availability and Sufficiency

Determining whether the available data are sufficient to make a regulatory determination often involves judgment and discretion by the EPA Administrator. In the past, some stakeholders have regarded SDWA science-based and risk-driven process as too slow, postponing the risk reduction benefits of limiting contaminants in public water supplies.[96] EPA's 2023 PFAS actions demonstrate how condensing regulatory steps creates a trade-off between developing sufficient data and acting promptly to regulate a contaminant. SDWA's stepwise process allows EPA to consider new information after the agency has proposed an RD. Some may argue this new information could help EPA develop a more effective regulatory approach than would otherwise have occurred. Others may argue that EPA may already have sufficient information to make both an RD and a regulation and additional data would not significantly change the outcome.

An example of the trade-off regarding data availability involves the occurrence data EPA used for PFHxS, PFNA, and GenX chemicals. EPA stated that it acted on the best-available information at the time of occurrence (from UCMR 3 data and data from selected states), instead of waiting for UCMR 5 data. This demonstrates the trade-off between waiting to obtain complete data and acting promptly to regulate these contaminants. For the preliminary RD and the proposed rule, EPA relied upon occurrence data for PFNA, PFHxS, and PFBS from UCMR 3. As discussed above, the method used for UCMR 3 was unable to detect PFAS at the lower levels EPA required for testing under UCMR 5. As such, when detections occurred in UCMR 3, they were at higher levels than the proposed PFAS MCLs.

EPA used a model to estimate occurrence of GenX chemicals, as well as to estimate the occurrence of PFNA, PFHxS, and PFBS at lower levels than were measured in UCMR 3. To do so, EPA relied on finished water data from selected states.[97]

Between the proposed regulation in 2023 and the final regulation in 2024, EPA's estimates of the number of systems that would require treatment increased. EPA published its 2023 cost model for HRRCA that roughly 4,300 systems would need to take steps to comply with the PFAS regulation, based on the model of state data and UCMR 3 results.[98] In the final regulation, EPA updated the HRRCA and increased the estimated number of systems to roughly 5,100. EPA attributed this increase to findings from the portion (i.e., 24%) of UCMR 5 results that had been reported by February 2024.[99]

One question may be whether it would have been feasible for EPA to use more recent UCMR 5 data.[100] Sample collection under UCMR 5 began in January 2023, two months before EPA proposed the RD for the four other PFAS in March 2023. If EPA had followed the same time frame between the preliminary and final RD for PFOA and PFOS, the agency would have had access to occurrence data for the four PFAS (PFNA, PFHxS, PFBS, and GenX) at lower levels. For example, about a year after March 2023, the agency reported that roughly 35% of the UCMR 5 sampling was completed, and EPA reported on the detections of PFAS above the MCLs.[101] While some UCMR 5 data were available, monitoring under UCMR 5 was not complete until the end of 2025.

Another question is whether waiting to obtain UCMR 5 data might have led EPA to make different estimates, and therefore, whether it might have made a difference in EPA's determination to regulate these other PFAS. As of January 2026, EPA reports that UCMR 5 data indicate that roughly 8% of water systems subject to the regulation—about 5,300—would have PFAS detections above the regulation's MCLs.[102] This figure is comparable to EPA's HRRCA estimate of roughly 5,100 systems that would require treatment, though the proportion of smaller and larger systems may have changed. Given this, some stakeholders may question whether waiting for the results of UCMR 5 would have resulted in any meaningful change to EPA's actions. Further, delaying regulatory

[96] In the 117th and 118th Congresses, Members introduced legislation regarding SDWA's regulatory development provisions primarily intended to expedite the regulation of PFAS. See, for example, Senate Committee on Environment and Public Works, "Stakeholder Comment on Draft PFAS Legislation," press release, June 22, 2023.

[97] 88 *Federal Register* 18638, 18675, March 29, 2023.

[98] 88 *Federal Register* 18638, 18701, March 29, 2023.

[99] 89 *Federal Register* 32532, 32533, April 26, 2024.

[100] EPA, "Revisions to the Unregulated Contaminant Monitoring Rule (UCMR 5) for Public Water Systems and Announcement of Public Meetings," 86 *Federal Register* 73131, December 27, 2021.

[101] EPA, *The Fifth Unregulated Contaminant Monitoring Rule (UCMR 5) Data Summary: April 2024*, EPA 815-S-24-007, April 2024, https://web.archive.org/web/20240714211637/https://www.epa.gov/system/files/documents/2023-08/ucmr5-data-summary_0.pdf.

[102] EPA, *The Fifth Unregulated Contaminant Monitoring Rule (UCMR 5) Data Summary: January 2026*, EPA 815-S-24-007, January 2026, https://www.epa.gov/system/files/documents/2023-08/ucmr5-data-summary_0.pdf.

action to wait for better data would seem to also delay the health risk reduction benefits of regulating a contaminant in drinking water.

Amending SDWA to stipulate the order of specific regulatory development steps (e.g., whether EPA is required to propose an RD before it proposes a regulation) and time frames for specific regulatory development steps (e.g., within how many months EPA is required to finalize an RD) might create additional certainty for water systems and the public. In contrast, prescribing the order and time frames for each step may not be warranted for contaminants with sufficient available data other than the complete UCMR data that EPA collects for the regulatory process, could result in the agency delaying a regulation, and could result in harmful contaminants continuing to be in public water supplies for a longer time period. Also, depending on their stringency or cadence, EPA may have difficulty meeting specific statutory time frames, and missed time frames may give rise to legal challenges about whether the regulatory process was properly completed.

As such, one consideration for Congress may involve the relative priority of creating a transparent and certain process, as compared to providing the Administrator more discretion about the timing of the process to regulate contaminants. In its current form, SDWA's key authority is the regulation of harmful contaminants in drinking water and the resulting protection of public health. Prescribing a schedule may inhibit EPA's ability to issue regulations in a timely manner, leading to continued exposure to contaminants in public water supplies. Adding discretion for EPA to determine when to take specific regulatory development steps, based on available data or whether to take two steps at the same time, may increase (or decrease) the speed by which EPA regulates contaminants, and it could lead to more questions if it is unclear what information EPA is using, and what steps it is taking, to support its actions.

Rescinding a Final RD

EPA's 2026 proposal to rescind the 2024 RD raises questions related to the finality of positive RDs. EPA's actions with regard to another drinking water contaminant, perchlorate, demonstrate an earlier example of EPA changing an RD. In 2008, EPA made a preliminary negative determination (a determination not to regulate) for perchlorate, but did not finalize the determination.[103] In 2011, EPA reversed the proposed negative determination and published a final regulatory determination that perchlorate warranted regulation, noting that the agency would begin the process of proposing a drinking water regulation for perchlorate.[104] In 2020, after proposing a perchlorate regulation in 2019,[105] EPA published a "Notice of Final Action" in the *Federal Register*, withdrawing the 2011 positive regulatory determination for perchlorate.[106] In 2023, the U.S. Court of Appeals for the D.C. Circuit vacated EPA's 2020 withdrawal of its regulatory determination.[107] The court determined that SDWA did not provide

[103] EPA, "Drinking Water: Preliminary Regulatory Determination on Perchlorate," 73 *Federal Register* 60262-60282, October 10, 2008.

[104] EPA, "Drinking Water: Regulatory Determination on Perchlorate," 76 *Federal Register* 7762-7767, February 11, 2011.

[105] EPA, "National Primary Drinking Water Regulations: Perchlorate," 84 *Federal Register* 30524-30569, June 26, 2019.

[106] EPA, "Drinking Water: Final Action on Perchlorate," 85 *Federal Register* 43990-44002, July 21, 2020.

[107] *Natural Resources Defense Council (NRDC) v. Michael S. Regan, Administrator, U.S. Environmental Protection Agency*, No. 20-1335 2023 (D.C. Cir.).

EPA with the authority to withdraw a final RD,[108] "despite new and additional data and analyses that changed the scientific underpinnings of the original regulatory determination."[109] As such, EPA is required under SDWA to finalize a drinking water regulation for perchlorate.[110] Given this, one question may involve whether EPA may rescind an RD for procedural reasons rather than a change in the understanding of a contaminant's occurrence or health effects, or whether EPA's 2024 RD finalization would mean that the agency would have to propose and finalize a regulation for PFHxS, GenX chemicals, and PFNA.

Implementing EPA's Proposal for Exemptions

Regarding SDWA's federal-state arrangement, EPA's 2026 proposal to provide a "national framework" for exemptions raises several questions for consideration, including those that pertain to the role of the state and the role of EPA in providing exemptions.

When Can an Exemption Be Provided?

A key question may be at what time an exemption can be provided, whether at the effective date of a regulation, the compliance date for an MCL, or sometime in between (e.g., after states have received primacy for a regulation). EPA's 2026 proposal relies on its interpretation of SDWA Section 1416, which authorizes states to grant public water systems temporary exemptions from drinking water regulations if a system cannot comply for specific reasons, which includes compliance costs.[111] The legislative history of Section 1416 details the conditions under which EPA could grant an exemption. It states that "water systems in States which do not have primary enforcement responsibility may obtain exemptions from EPA in the same manner and under the same conditions as they could from the State, if it had primary enforcement responsibility."[112] This implies that some states have been granted primacy for a regulation.

As such, one question may be whether exemptions can be granted before any state is granted primacy for MCLs that are not enforceable for several more years. Another question is the extent to which EPA providing exemptions via a national framework aligns to SDWA's legislative intent to have the states assess whether to provide an individual system with an exemption on a limited basis. Another consideration pertains to EPA's capacity to evaluate and validate exemption applications from water systems, and how that would compare to state oversight of the same systems.

State Primacy for the PFAS Regulation

Relatedly, in 2025, EPA issued a memorandum to "strongly encourage" states to apply for extensions for primary enforcement of the 2024 PFAS regulation.[113] SDWA regulations allow

[108] *Natural Resources Defense Council (NRDC) v. Michael S. Regan, Administrator, U.S. Environmental Protection Agency*, No. 20-1335 2023 (D.C. Cir.).

[109] EPA, "Perchlorate in Drinking Water," https://www.epa.gov/sdwa/perchlorate-drinking-water.

[110] EPA proposed a regulation for perchlorate in January 2026. See EPA, "National Primary Drinking Water Regulation for Perchlorate," 91 *Federal Register* 398-444, January 6, 2026. EPA proposed that the MCLG for perchlorate be 20 parts per billion (ppb), and took comment on possible MCLs of 20 ppb, 40 ppb, 60 ppb, and 80 ppb.

[111] 42 U.S.C. §300g-5.

[112] H.Rept. 93-1185.

[113] EPA, Primacy Extension Request Documents for the 2024 Control of Per- and Polyfluoroalkyl Substances National Primary Drinking Water Regulation, Washington, D.C., September 30, 2025, https://www.epa.gov/system/files/documents/2025-09/memorandum-for-primacy-extension-request-documents-for-the-2024-pfas-npdwr.pdf.

states to apply for a two-year extension to submit their application for primacy for a regulation.[114] For the 2024 PFAS regulation, if a state did not request an extension by April 27, 2026, then the state is required to submit a primacy application package by that date or not be considered for SDWA primacy. EPA reports that Idaho and Illinois have applied for primacy for the 2024 PFAS regulation, and that 47 states, the territories, and the Navajo Nation applied for an extension.[115] (EPA retains primacy for Wyoming and District of Columbia.) States that did request an extension would have until April 26, 2028, to submit their application for primacy over the 2024 PFAS regulation. EPA states that its proposal to extend the compliance time frame to 2031 is based on the agency retaining primacy for PFOA and PFOS MCLs, which would become enforceable in 2029.[116] One question is whether any of the 47 states, territories, and the Navajo Nation applying for an extension would not submit a primacy application for the PFAS regulation. Another question may be whether a state that gains primacy after EPA provided exemptions for systems operating in that state would continue those EPA-provided exemptions.

States' Adoption of PFAS Regulation

No SDWA provision prohibits states from adopting more stringent drinking water regulations than federal regulations. Some states prohibit the adoption of more stringent standards than those promulgated by EPA. In the SDWA legislative history, Congress stated its intent is "that States and public water systems take the primary responsibility for assuring the safety of the Nation's drinking water supplies."[117] At the time, Congress was "hopeful that State and Federal cooperation will be the rule and that the States will take the lead in adopting standards, reviewing compliance strategies, and where necessary bringing enforcement actions."[118] EPA states that Idaho and Illinois have submitted applications for primacy of the 2024 PFAS regulation.[119] States may move ahead and choose to adopt and implement the 2024 PFAS regulation or more stringent PFAS standards under their own state laws, regardless of EPA's 2026 proposals to change the regulation's scope or compliance time frames.

Petitions for Review

The U.S. Court of Appeals for the D.C. Circuit is reviewing three petitions for review of specific aspects of the 2024 PFAS regulation. Among the contested actions, some views challenge the concept of regulating a mixture of substances through a "hazard index," arguing that this concept is not aligned with the act or not appropriate given the characteristics of specific PFAS.[120] Some arguments pertain to EPA's HRRCA (health risk reduction and cost analysis), stating that, since one HRRCA was issued for the PFAS covered by the regulation, the benefits and costs of regulating each individual substance are obscured.[121] Others may argue that there is precedent for this approach: under other regulations, including the Radionuclides Rule and the Stage 2 Disinfectants and Disinfection Byproducts Rule, EPA developed one HRRCA that considered the

[114] 40 C.F.R. §142.12(b).

[115] Email communication between CRS and EPA, June, 6, 2026.

[116] 91 *Federal Register* 29425-29448, May 20, 2026.

[117] U.S. Congress, House Interstate and Foreign Commerce Committee, *Safe Drinking Water Act*, 93rd Cong., 2nd sess., July 10, 1974, H.Rept. 93-1185.

[118] H.Rept. 93-1185.

[119] Email communication between CRS and EPA, June 6, 2026.

[120] Petition for Review, *American Water Works Association v. EPA*, No. 24-1188 (D.C. Cir. filed June 7, 2024); Petition for Review, *The Chemours Company v. EPA*, No. 24-1192 (D.C. Cir. filed June 10, 2024).

[121] Petition for Review, *National Association of Manufacturers v. EPA*, No. 24-1191 (D.C. Cir. filed June 10, 2024).

costs and benefits of the regulation's MCLs.[122] These questions before the court are beyond the scope of this report. One option for policymakers is to wait for the U.S. Court of Appeals for the D.C. Circuit to determine the outcome of the petitions to review EPA's 2024 PFAS regulation. The court's decision may provide more clarity for EPA's implementation of SDWA's regulatory development provisions going forward.

Compliance Assistance

Some Members of Congress may be interested in assisting systems with treatment projects needed for compliance with the regulation's MCLs. For the 2024 PFAS regulation, the HRRCA estimates that water systems that need treatment technology to comply with the MCLs will have to invest—in aggregate—$14.4 billion (in 2022 dollars) in 2029 for such capital improvements.[123] EPA's 2026 proposal to rescind the MCLs for PFHxS, PFBS, and PFNA, and the hazard index for these substances and PFBS, estimates that these costs would not significantly change as PFOA and PFOS would still be regulated.[124] Based on EPA's estimate that 5,139 systems would need to take steps to comply, the average per system investment equates to about $2.8 million.[125] EPA's HRRCA further estimates that the ongoing operations and maintenance of the treatment technology would be $1.2 billion (in 2022 dollars) in aggregate per year.[126] This would not be included in the $625 billion estimated by EPA for infrastructure needs that systems are expected to face between 2023 and 2043.[127] The Congressional Budget Office (CBO) estimates that 96% of public spending on this type of infrastructure comes from state and local sources,[128] meaning that some communities may face budgetary and affordability challenges as water systems cover the costs of such projects. Typically, these costs are spread across the system's customer base as water rates, which may have to be increased to support such investments.[129]

The Infrastructure Investment and Jobs Act (IIJA; P.L. 117-58) provided significant increases in appropriations for the primary federal program that supports this type of infrastructure, the Drinking Water State Revolving Fund (DWSRF).[130] IIJA provided an average of $3.14 billion per fiscal year for FY2022 through FY2026 to the DWSRF that could be used for projects, such as

[122] EPA, "National Primary Drinking Water Regulations: Stage 2 Disinfectants and Disinfection Byproducts Rule; National Primary and Secondary Drinking Water Regulations: Approval of Analytical Methods for Chemical Contaminants," 68 *Federal Register* 49548-49681, August 18, 2003. EPA, "Preliminary Health Risk Reduction and Cost Analysis for the Revised National Primary Drinking Water Regulation for Radionuclides," January 2000, https://www.epa.gov/sites/default/files/2015-09/documents/2009_04_16_radionuclides_regulation_radionuclides_rulemaking_prelimaryhrcca.pdf.

[123] 89 *Federal Register* 32532, 32639, April 26, 2024.

[124] 91 *Federal Register* 29413, 29417-29419, May 20, 2026.

[125] Individual systems' installation and maintenance costs are likely to vary significantly based on systems' location, size, and other factors. For more information about water systems' costs and affordability, see CRS Report R48271, *Paying for Drinking Water: Background and Issues for Congress*, by Elena H. Humphreys.

[126] EPA, *Economic Analysis for the Final Per- and Polyfluoroalkyl Substances National Primary Drinking Water Regulation Appendices*, EPA-815-R-24-002, April 2024, https://www.epa.gov/system/files/documents/2024-04/pfas-npdwr_final-rule_ea_appendices.pdf.

[127] EPA, *7th Drinking Water Infrastructure Needs Survey and Assessment*, April 2023, https://www.epa.gov/system/files/documents/2023-04/Final_FAQ_DWINSA_4.4.23.v1.pdf.

[128] Congressional Budget Office, *Public Spending on Transportation and Water Infrastructure, 1956 to 2023*, February 2025, https://www.cbo.gov/system/files/2025-02/60874-InfrastructureSpending.pdf.

[129] For more information about water rates, see CRS Report R48271, *Paying for Drinking Water: Background and Issues for Congress*, by Elena H. Humphreys.

[130] For more information about the Infrastructure Investment and Jobs Act (IIJA; P.L. 117-58), see CRS Report R46892, *Infrastructure Investment and Jobs Act (IIJA): Drinking Water and Wastewater Infrastructure*, by Elena H. Humphreys and Jonathan L. Ramseur.

those to install treatment technology that would address PFAS. Further, IIJA dedicated DWSRF appropriations specifically for grants to address emerging contaminants, with an emphasis on PFAS. At the time of enactment, these IIJA appropriations represented almost a threefold increase in prior years' average annual appropriations for the DWSRF.

An implementation consideration for policymakers involves the types of systems that may require treatment to comply with the regulation. UCMR 5 results indicate that a higher proportion of larger water systems may have detections of PFOA and PFOS above the MCL:

- 12% of water systems serving more than 10,000 individuals had detections of PFOA above the MCL, whereas 4.4% of sampled systems serving 3,300 or fewer individuals had PFOA detections above the MCL, and
- 11% of systems serving more than 10,000 individuals had detections of PFOS above the MCL, whereas 6.0% of sampled systems serving 3,300 or fewer individuals had PFOS detections above the MCL.

When larger systems need to install treatment technology to comply with the regulation's MCLs, the capital improvements and associated compliance costs would be spread across a larger customer base. Spreading costs over a larger number of customers typically would result in less of a burden for each individual customer as compared to a system with a very small customer base.[131]

System Support Considerations

Congress may consider oversight options regarding the extent to which systems have already received assistance funding via the IIJA or found other financing to address infrastructure upgrade needs. In addition, capital improvement projects require time to commence and complete; thus, systems may already be in the process of securing financing for needed projects. If systems have already secured funding for the needed infrastructure, providing additional appropriations specifically for such projects may lead to unused funding or funding advanced treatment projects for systems that do not need it for regulatory compliance. Understanding the extent to which systems that need to install treatment to comply with the regulation have accessed federal assistance may be a first step in determining whether additional funds would assist systems with such projects.

Another consideration regards the framework for providing funds. Congress could provide support in several different ways: through broad funding programs, such as the DWSRF, or by limiting project eligibility for funding programs to PFAS compliance. Providing appropriations for a more general set of water infrastructure projects may result in fewer dollars going to support projects needed specifically for PFAS compliance. Given that an estimated $625 billion is needed for water infrastructure projects between 2023 and 2043, systems may seek assistance for other high-priority projects unrelated to PFAS. Funding provided for projects needed to comply with the regulation would help offset systems' specific costs due to this regulation, but, depending on budgetary conditions, may come at the expense of resources to assist systems with compliance with other drinking water regulations.

[131] CRS Report R48271, *Paying for Drinking Water: Background and Issues for Congress*, by Elena H. Humphreys, contains additional information about water system costs.

In addition, as CBO estimated, federal support makes up about 4% of total public spending for this type of infrastructure; some may question the incremental impact of more federal funding when the majority of public spending comes from state and local sources. As discussed above, UCMR 5 data indicate that a higher proportion of larger systems may have to take steps to comply with the MCLs, and that such systems benefit from economies of scale. Others may question whether the balance between federal and state and local spending is appropriate. If Congress decides to maintain the current ratio of spending between levels of governments, policymakers could further tailor federal support to communities facing the greatest affordability concerns as a result of the PFAS regulation.

Congress may also consider the balance between technical assistance and financial assistance. Some systems, particularly smaller ones, may face challenges accessing federal assistance. On the one hand, given the varying technical capacity of water systems, providing additional financial assistance through federal programs may be less cost-effective than increasing technical assistance to smaller water systems through other SDWA authorities. On the other hand, given the occurrence data from UCMR 5, a greater percentage of larger water systems appear to have detected PFAS above the regulation's MCLs. As such, increasing technical assistance for smaller systems may not be as impactful to larger water systems that may have sufficient technical capacity.

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