

EPA's Proposal to Remove Drinking Water Standards for Four PFAS Could Slow Future SDWA Rulemakings

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June 23, 2026

On May 20, 2026, EPA proposed to rescind several components of its 2024 rule that limited the amount of per- and polyfluoroalkyl substances (PFAS) in public drinking water systems.¹

In 2024, EPA issued Safe Drinking Water Act (SDWA) regulations for six PFAS: perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS), perfluorohexane sulfonic acid (PFHxS), perfluorononanoic acid (PFNA), hexafluoropropylene oxide dimer acid (HFPO-DA), and perfluorobutane sulfonic acid (PFBS).² In that rulemaking, EPA found that exposure to these PFAS could cause adverse health effects, including liver damage, low birth weights, and increased risks of certain cancers.³ The 2024 rule sets: (1) maximum contaminant levels (MCLs) of 4 parts per trillion (ppt) for PFOA and PFOS; (2) MCLs of 10ppt for PFNA, PFHxS, and HFPO-DA; and (3) a flexible hazard-index MCL for certain PFAS mixtures, including PFBS.⁴ EPA projected that, if fully implemented, its 2024 rule would result in “29,858 fewer illnesses and 9,614 fewer deaths” over the following decades.⁵

EPA now proposes to rescind both its determinations to regulate and its drinking water standards for four of the six PFAS regulated by the 2024 rule: PFHxS, PFNA, HFPO-DA, and PFBS.⁶ Based on a revised interpretation of SDWA section 1412(b)(1)(E), EPA asserts that the 2024 rulemaking used an unlawful procedure to regulate these four PFAS.

This quick take compares EPA's 2024 and 2026 interpretations of SDWA section 1412(b)(1)(E), describes potential legal and practical implications of EPA's proposal, and highlights legal risks EPA may face if it finalizes the proposal.

EPA's Conflicting Interpretations of the SDWA

Under the SDWA, EPA may “make a determination to regulate a contaminant” if it finds that the contaminant: (1) may adversely affect health, (2) is known (or substantially likely) to occur in public water systems at levels of public health concern, and (3) presents a meaningful opportunity for health-risk reduction through regulation.⁷ Once EPA makes that determination, it must propose a maximum contaminant level goal (MCLG) and national primary drinking water regulations (NPDWRs) for that contaminant within 24 months.⁸

¹ 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 Fed. Reg. 29413, 29413-14 (May 20, 2026) [hereinafter 2026 Proposed Rule].

² PFAS National Primary Drinking Water Regulation, 89 Fed. Reg. 32532, 32532 (April 26, 2024) [hereinafter 2024 Rule].

³ *Id.* at 32536-37.

⁴ *Id.* at 32532-33.

⁵ *Id.* at 32533.

⁶ 2026 Proposed Rule, *supra* note 1, at 29414.

⁷ See SDWA §§ 1412(b)(1)(B)(ii)(III) (cross referencing subclause (II)), 1412(b)(1)(A) (outlining the three subdeterminations EPA must make to finalize a determination to regulate).

⁸ *Id.* § 1412(b)(1)(E).

NPDWRs typically include maximum contaminant levels (MCLs): the “maximum permissible level” of a contaminant in water delivered to users.⁹ This quick take refers to MCLGs and NPDWRs collectively as “drinking water standards.”

For efficiency, SDWA section 1412(b)(1)(E) allows EPA to publish proposed drinking water standards “concurrent with the *determination to regulate*” a contaminant (emphasis added). EPA’s 2026 proposal hinges on a dispute about what “determination to regulate” means in this provision, and consequently, how many rounds of public comment are required to set drinking water standards.

In its 2024 rulemaking, EPA asserted that “determination to regulate” refers to a preliminary determination.¹⁰ Under that reading, section 1412(b)(1)(E) allows EPA to propose drinking water standards alongside the *preliminary* determination to regulate. EPA can then finalize both the determination to regulate and the drinking water standards after a single public comment period. EPA explained this approach aligns with Congress’s goal of “accelerat[ing] . . . EPA action under [the] SDWA.”¹¹ Consistent with that interpretation, EPA published proposed drinking water standards and determinations to regulate for PFHxS, PFNA, HFPO-DA, and PFBS together on March 9, 2023.¹² It then finalized both on April 26, 2024, after one round of public comments.¹³

In its 2026 proposed rule, EPA now asserts that the 2024 rulemaking misread section 1412(b)(1)(E) because “determination to regulate” refers only to the *final* determination.¹⁴ Under EPA’s 2026 reading, the agency must complete two sequential public comment periods before it can finalize drinking water standards for a contaminant. First, EPA must propose a determination to regulate and take comments. Only after this can the agency publish its proposed drinking water standards concurrently with the final determination to regulate. EPA states that the agency must then take a second round of public comments on the proposed drinking water standards before finalizing them. EPA argues this “sequential process” reflects Congress’s goal of affording the public and regulated entities “multiple rounds of opportunity to inform [a SDWA rule’s] analysis and contents.”¹⁵

Consistent with its revised interpretation of SDWA section 1412(b)(1)(E), EPA’s 2026 proposal asserts that the 2024 rulemaking used an “unlawful procedure” to issue drinking water standards for PFHxS, PFNA, HFPO-DA, and PFBS.¹⁶ EPA, therefore, proposes rescinding both the determinations to regulate and drinking water standards for those four PFAS.¹⁷ By contrast, EPA does not propose rescinding the drinking water standards for PFOA

⁹ *Id.* § 1401 (1), (3).

¹⁰ 2024 Rule, *supra* note 2, at 32537 (“The [SDWA] also authorizes the EPA to issue a proposed rule concurrent with a preliminary determination to regulate.”).

¹¹ *Id.* at 32541.

¹² See PFAS National Primary Drinking Water Regulation Rulemaking, 88 Fed. Reg. 18638 (March 29, 2023).

¹³ 2024 Rule, *supra* note 2, at 32532.

¹⁴ 2026 Proposed Rule, *supra* note 1, at 29416 (“EPA concludes that the best reading of the precise term ‘determination to regulate’ *only* refers to the final determination.”) (emphasis in original).

¹⁵ *Id.* at 29415, 29417.

¹⁶ *Id.* at 29415.

¹⁷ *Id.* at 29414.

and PFOS because EPA proposed and finalized the determinations to regulate those PFAS in earlier, separate rulemakings.¹⁸

Implications of EPA’s Proposed Rule

EPA’s 2026 proposal, if finalized, would affect both the SDWA rulemaking process for future contaminants and near-term compliance and treatment decisions for the four PFAS at issue.

i. Additional steps will be needed to issue drinking water regulations

If finalized and upheld by courts, EPA’s new interpretation of section 1412(b)(1)(E) could slow future SDWA rulemakings by adding an additional, sequential notice-and-comment step and by creating a second potential judicial-review window. The SDWA requires that both determinations to regulate and proposed drinking water standards undergo public comment periods before being finalized.¹⁹ Additionally, once finalized, both determinations to regulate and drinking water standards are subject to judicial review.²⁰

Under the 2024 interpretation of section 1412(b)(1)(E), EPA could effectively combine these steps – proposing the determinations to regulate and the drinking water standards together—then finalizing both after a single comment period, followed by a single (combined) judicial-review period (see figure 1).

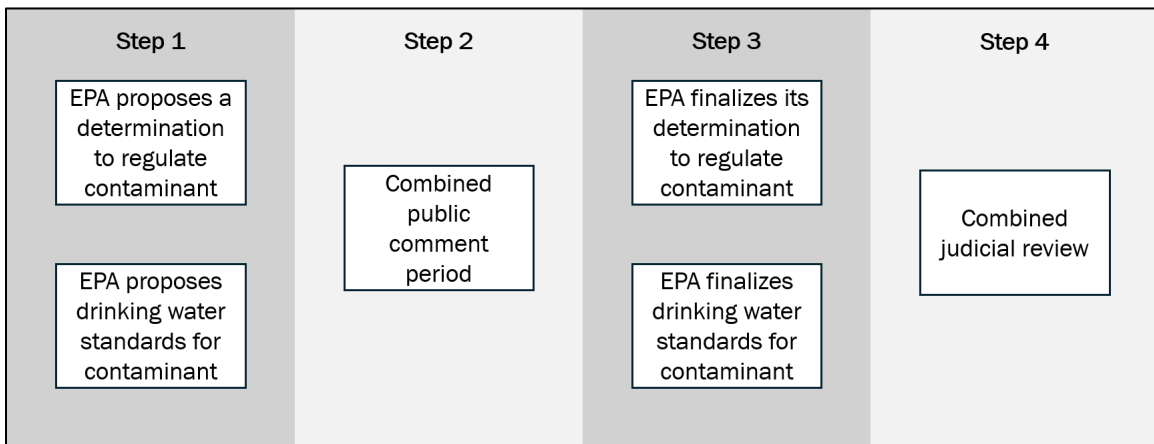


Figure 1: 2024 rule’s process for issuing drinking water standards

By contrast, EPA’s 2026 interpretation of SDWA section 1412(b)(1)(E) would stagger the determination to regulate and drinking water standard rulemakings, requiring two public comment periods and creating two separate, potential judicial-review windows (see figure 2).

¹⁸ See *id.* at 29415-16 (explaining the procedural history of EPA’s PFAS regulation under the SDWA).

¹⁹ See SDWA § 1412(b)(1)(B)(iii) (requiring a public comment period for each proposed determination to regulate); *id.* §§ 1412(a)(3), (b)(1)(A), (d) (requiring SDWA regulations, such as MCLGs and NPDWRs, be issued through notice and comment rulemaking).

²⁰ *Id.* § 1412(b)(1)(B)(ii)(IV) (providing judicial review of final determinations to regulate); *id.* § 1448 (providing judicial review for the establishment of NPDWRs and MCLGs).

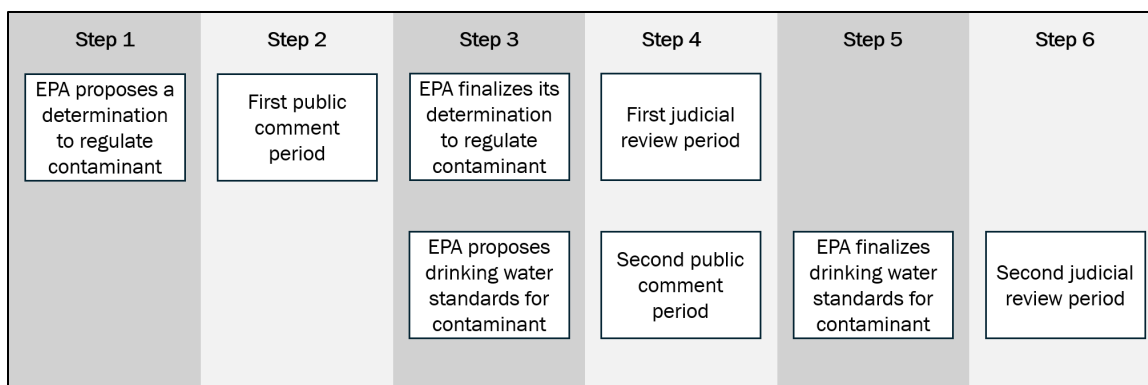


Figure 2: 2026 proposal's process for issuing drinking water standards

EPA's 2026 proposed rule asserts that requiring sequential comment periods in this fashion benefits the public by ensuring the agency proceeds "in a transparent and scientifically sound manner."²¹ This is a change from EPA's former position. In the 2024 rule, EPA argued that a single combined comment period could yield more informed comments by "provid[ing] commenters with much more information to evaluate the preliminary regulatory determinations" than they would have if EPA proposed drinking water standards later in a separate rulemaking.²² Further, EPA's 2024 rule stated that "it [was] not clear what further benefit would be provided by two separate public comment periods."²³

Because notice-and-comment rulemaking can take months, and judicial review can delay implementation of rules for months or even years, EPA's proposed interpretation of section 1412(b)(1)(E) — if finalized and upheld — could materially slow the issuance and effective date of future drinking water regulations.²⁴

ii. *Unclear financial impacts and impacts on PFAS levels in drinking water*

The overall costs and foregone benefits of EPA's proposal are uncertain. EPA estimates its proposed rule will yield quantifiable cost savings of \$11.6 million/year (primarily from reduced water treatment and monitoring) and quantifiable foregone benefits of \$6.7 million/year (primarily from increased adverse health effects).²⁵ However, given the limited occurrence data that EPA has for PFNA, HFPO-DA, and PFBS, the agency's estimates reflect only the effects of rescinding standards for PFHxS, and do not capture the cost savings or adverse health effects of deregulating the other three PFAS.²⁶ EPA also does not estimate how the rescission may affect future concentration trends — *i.e.*, whether levels of PFHxS, PFNA, HFPO-DA, and PFBS would decline less (or remain higher) than they would under the 2024 compliance regime.

²¹ 2026 Proposed Rule, *supra* note 1, at 29417.

²² 2024 Rule, *supra* note 2, at 32542.

²³ *Id.*

²⁴ See REGULATION ROUNDUP, *What Is a Notice-and-Comment Rulemaking? The Federal Regulatory Process Explained* (March 2, 2026), <https://perma.cc/FS65-GJBV>.

²⁵ 2026 Proposed Rule, *supra* note 1, at 29419-20.

²⁶ *Id.*

Legal Risks in EPA's Proposal

If finalized as proposed, EPA's rule may face legal risks.

i. The correct interpretation of SDWA section 1412(b)(1)(E)

Challengers are likely to argue that EPA's new interpretation of "determination to regulate" in SDWA section 1412(b)(1)(E) is not the "best reading" of the statute.²⁷ To support that position, challengers may reuse the same textual and structural analysis of section 1412 that EPA published in its 2024 rule to support its earlier interpretation of the provision.²⁸ Similarly, challengers may argue, as EPA did in its 2024 rule, that allowing concurrent publication of the proposed determinations to regulate and drinking water standards best advances Congress's goal in enacting section 1412(b)(1)(E).

ii. Failure to consider rescinding only the drinking water standards

Challengers may also argue that even if EPA's 2026 interpretation of section 1412(b)(1)(E) is correct, EPA did not adequately consider a narrower remedy: rescinding only the drinking water standards for the four PFAS while leaving the determinations to regulate in place.

The Supreme Court has held that when agencies rescind prior policies based on perceived illegality, they must consider reasonable, narrower alternatives that would address the legal concerns while preserving lawful components.²⁹ In *Department of Homeland Security v. Regents of the University of California*, DHS attempted to terminate its entire Deferred Action for Childhood Arrivals (DACA) program after litigation suggested one component (benefits eligibility) of the program might be unlawful.³⁰ DHS did not consider rescinding only that component while retaining another core component of the DACA program (forbearance).³¹ The Court held that DHS's failure to consider that narrower option was arbitrary and capricious and remanded for reconsideration.³²

Challengers may raise similar arguments against EPA's proposed rescission if it is finalized in its present form. Although EPA's 2026 proposed rule summarily concludes that "the unlawful promulgation [of the 2024 rule] . . . affects not just the [drinking water standards] but also the simultaneously issued regulatory determinations," the agency's statutory analysis of SDWA section 1412(b)(1)(E)—the core of its legal reasoning — may support only a narrower conclusion: that the earliest EPA can propose its drinking water standards is with the final determination to regulate.³³ Challengers may argue this legal analysis necessitates

²⁷ See *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024) (holding that under the Administrative Procedure Act, courts must determine the "single, best meaning" of ambiguous statutory provisions).

²⁸ See 2024 Rule, *supra* note 2, at 32540-42.

²⁹ See *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 26-30 (2020).

³⁰ *Id.* at 10-13.

³¹ *Id.* at 26-28, 35-36.

³² *Id.*

³³ See 2026 Proposed Rule, *supra* note 1, at 29417 ("the soonest the EPA may publish a proposed regulation is with the final regulatory determination, not with the preliminary regulatory determination"); *id.* ("The EPA now concludes that the best reading of SDWA section 1412(b)(1)(E) is, in adherence to the plain language of the statute, that the soonest the EPA may publish a proposed regulation is with the final regulatory determination, not with the preliminary regulatory determination."); *id.* ("The EPA erred by issuing an MCLG and promulgating

only that the final drinking water standards were unlawfully promulgated, but not the determinations to regulate. As such, challengers may argue that EPA's proposed rule fails to adequately consider leaving the four determinations to regulate in place while curing any defects associated with the drinking water standards.

Next Steps

EPA will accept [public comments](#) on the proposed rule until July 20, 2026. EELP will monitor the docket and track implementation and litigation on our [Regulatory Tracker](#).

an NPDWR without first completing the regulatory determination as a necessary prerequisite to rulemaking.”); *id.* at 29416 (“the Act specifically requires two sequential public comment periods before an NPDWR may be finalized).