

Comments of:
Earthjustice | Natural Resources Defense Council | Southern Environmental Law Center

July 20, 2026

Via Regulations.gov

Assistant Administrator Jessica Kramer
Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: 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), Docket No. EPA-HQ-OW-2025-0654

Dear Assistant Administrator Kramer:

Earthjustice, the Natural Resources Defense Council, and the Southern Environmental Law Center submit these comments strongly opposing EPA's proposed rule¹ to rescind the regulatory determinations and related provisions for the following three per- and polyfluoroalkyl substances ("PFAS"): perfluorohexane sulfonic acid ("PFHxS"), perfluorononanoic acid ("PFNA"), and hexafluoropropylene oxide dimer acid and its ammonium salt ("GenX" or "HFPO-DA"), as well as the mixture of those three PFAS plus perfluorobutane sulfonic acid ("PFBS"). (The proposed rule will be referred to herein as the "Proposed Rescission Rule" and the four relevant PFAS will be referred to collectively as the "Index PFAS.")

The Proposed Rescission Rule is illegal, unnecessary, and will cause significant harm to millions of people across the country. EPA lacks authority to promulgate the Proposed Rescission Rule because the Safe Drinking Water Act prohibits EPA from rescinding regulatory determinations, maximum contaminant level goals, and maximum contaminant levels. The Proposed Rescission Rule is also illegal because EPA's sole basis for the rule rests on an erroneous legal interpretation of the Act's procedural requirements. And the Proposed Rescission Rule is unlawful under the Administrative Procedure Act because EPA's justifications for it are arbitrary, capricious, biased, and incomplete. The drinking water standards for the Index PFAS provide essential health protections for millions of Americans, and the only legal and prudent course for EPA is to withdraw and abandon this reckless, unlawful proposal.

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 (May 20, 2026).

* * * * *

At least as early as 1998, nearly 30 years ago, EPA became aware that certain PFAS were building up in Americans' blood, posing potential human health concerns.² Decades of research, study, and evaluation followed, confirming that this class of chemicals is toxic at extraordinarily low levels,³ persistent and widespread throughout our environment,⁴ and contaminating the drinking water relied on by enormous swaths of our population.⁵

So it was widely celebrated when, in April 2024, EPA finalized a rule under the Safe Drinking Water Act, the PFAS National Primary Drinking Water Regulation (the "2024 Rule"), that limits the amount of six of the most common PFAS in public drinking water supplies—the Index PFAS, perfluorooctanoic acid ("PFOA"), and perfluorooctane sulfonic acid ("PFOS").⁶ While many harmful PFAS were not addressed, the regulation nevertheless was a historic and monumental step forward towards protecting public health. If fully implemented, EPA's 2024 Rule promises to reduce PFAS exposure in drinking water for approximately 30 percent of the entire population in the United States.⁷

² Letter from Dr. Charles Reich, 3M Center, to U.S. Env't Protection Agency (May 15, 1998), https://static.ewg.org/reports/2020/pfas-epa-timeline/1998_3M-Alerts-EPA.pdf; Scott Faber, *For 20-Plus Years, EPA Has Failed to Regulate Forever Chemicals*, Env't Working Grp. (Jan. 9, 2020), <https://www.ewg.org/research/20-plus-years-epa-has-failed-regulate-forever-chemicals>.

³ See Carol F. Kwiatkowski et al., *Scientific Basis for Managing PFAS as a Chemical Class*, 7 Env't Sci. & Tech. Letters 532, 532–43 (2020), <https://pubs.acs.org/doi/10.1021/acs.estlett.0c00255>.

⁴ Annie Sneed, *Forever Chemicals Are Widespread in U.S. Drinking Water*, Sci. Am. (Jan. 22, 2021), <https://www.scientificamerican.com/article/forever-chemicals-are-widespread-in-u-s-drinking-water/>; Antonia M. Calafat et al., *Polyfluoroalkyl Chemicals in the U.S. Population: Data from the National Health and Nutrition Examination Survey (NHANES) 2003–2004 and Comparisons with NHANES 1999–2000*, 115 Env't Health Persp. 1596 (2007), <https://stacks.cdc.gov/view/cdc/3901>.

⁵ Kelly L. Smalling et al., *Per- and Polyfluoroalkyl Substances (PFAS) in United States Tapwater: Comparison of Underserved Private-Well and Public-Supply Exposures and Associated Health Implications*, 178 Env't Int'l 108033 (2023), <https://www.sciencedirect.com/science/article/pii/S0160412023003069?via%3Dihub>; David Q. Andrews and Olga V. Naidenko, *Population-Wide Exposure to Per- and Polyfluoroalkyl Substances from Drinking Water in the United States*, 7 Env't. Sci. & Tech. Letters 931 (2020), <https://doi.org/10.1021/acs.estlett.0c00713>.

⁶ PFAS National Primary Drinking Water Regulation, 89 Fed. Reg. 32532 (Apr. 26, 2024) (codified at 40 C.F.R. pts. 141 & 142). All documents included in the docket and administrative record for the 2024 Rule are properly part of the docket and record for EPA's pending proposal to substantially modify that rule by rescinding all its provisions pertaining to the Index PFAS.

⁷ EPA, *Per- and Polyfluoroalkyl Substances (PFAS): Final PFAS National Primary Drinking Water Regulation*,

Now, in an about-face, EPA proposes to throw out the regulations for the Index PFAS, including the drinking water standards, associated regulatory determinations, and drinking water goals, for the Index PFAS⁸—undermining decades of research and contrary to EPA’s stated “urgency to reduce PFAS concentrations in drinking water.”⁹ The agency contends that the sole basis for its rescission is a procedural error in the way the Index PFAS standards were promulgated.

But the Safe Drinking Water Act (the “Act”) prohibits finalization of the Proposed Rescission Rule. The United States Court of Appeals for the District of Columbia (“D.C. Circuit”) has held (and EPA has acknowledged elsewhere) that EPA lacks authority to withdraw a regulatory determination, and the Act contains an “anti-backsliding” provision that prohibits the agency from weakening drinking water protections like it proposes to do here. The Proposed Rescission Rule is also unnecessary because the D.C. Circuit will soon decide whether there was a procedural error in the 2024 Rule and, even if there was, whether EPA’s 2024 drinking water regulations for the Index PFAS should still stand. Thus, it is unreasonable for EPA to preemptively propose or finalize a rescission of these protections. But even if EPA decides to go ahead anyway and take action because of the alleged procedural errors, it should have considered proposing, and should change course and propose, options other than wholesale rescission such as correcting the alleged errors and re-proposing the relevant provisions.

EPA’s reliance on an alleged procedural flaw to completely rescind all protections from the Index PFAS is an affront to the millions of Americans now confronting a future of indefinite exposure to PFHxS, GenX, PFNA, and PFBS in the water that they drink, cook family dinners with, and even use in their babies’ bottles. On top of this, EPA simultaneously seeks to delay compliance with its standards for PFOA and PFOS¹⁰—the only two PFAS national drinking water standards that would remain—which will further prolong and increase the burden faced by residents who rely on drinking water contaminated with toxic PFAS chemicals.

I. Background

A. The Safe Drinking Water Act Was Enacted to Protect the Public.

“The Safe Drinking Water Act ... was enacted to ensure that public water supply systems meet minimum national standards for the protection of public health.”¹¹ To prevent drinking

<https://www.epa.gov/sdwa/and-polyfluoroalkyl-substances-pfas> (last updated May 18, 2026) (“EPA expects that over many years the final rule will prevent PFAS exposure in drinking water for approximately 100 million people.”).

⁸ 91 Fed. Reg. at 29413.

⁹ 89 Fed. Reg. at 32563.

¹⁰ Extending the Compliance Deadline for the PFOA and PFOS Maximum Contaminant Levels, 91 Fed. Reg. 29425 (May 20, 2026).

¹¹ *Nat’l Wildlife Fed’n v. EPA*, 980 F.2d 765, 768 (D.C. Cir. 1992).

water contamination, the Act requires EPA to establish National Primary Drinking Water Regulations that specify the “maximum levels for contaminants that may have an adverse effect on the health of consumers.”¹²

EPA’s obligation to issue a National Primary Drinking Water Regulation (“NPDWR”) is triggered by the Administrator’s regulatory determination that: (1) a contaminant “may have an adverse effect on the health of persons,” (2) “the contaminant is known to occur or there is a substantial likelihood that the contaminant will occur in public water systems with a frequency and at levels of public health concern,” and (3) “regulation of such contaminant presents a meaningful opportunity for health risk reduction for persons served by public water systems.”¹³ EPA’s regulatory determinations, and other science-based decisions under the Safe Drinking Water Act “shall use ... the best available, peer-reviewed science and supporting studies.”¹⁴

A NPDWR must contain either a “maximum contaminant level” or a “treatment technique.”¹⁵ A maximum contaminant level (“drinking water standard” or “standard”) is “the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.”¹⁶ A maximum contaminant level must be set “as close ... as is feasible” to the “level at which no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety,” also known as the maximum contaminant level goal (“goal”).¹⁷ The analysis of feasibility “tak[es] cost into consideration,”¹⁸ but it does not prioritize those considerations over public health protection or require EPA to find that the benefits of a maximum contaminant level outweigh the costs.¹⁹ In doing so, the Safe Drinking Water Act prioritizes safety and comprehensive regulation, and then allows water systems to individually pursue variance or exemption from drinking water standards if they can demonstrate that they face unusual or compelling technical or economic barriers to compliance.²⁰

¹² *Id.* (citing 42 U.S.C. § 300g-1).

¹³ 42 U.S.C. § 300g-1(b)(1)(A).

¹⁴ *Id.* § 300g-1(b)(3)(A)(i); *see also id.* § 300g-1(b)(1)(B)(ii)(II).

¹⁵ *Id.* § 300f(1)(C).

¹⁶ *Id.* § 300f(3).

¹⁷ *Id.* § 300g-1(b)(4)(A).

¹⁸ *Id.* § 300g-1(b)(4)(D).

¹⁹ *See* S. Rep. No. 104-169 at 33 (Nov. 7, 1995) (“The Administrator is not precluded from ... set[ting] a maximum contaminant level as close to the maximum contaminant level goal as feasible, even if the Administrator determines that the benefits of the MCL at this level do not justify the costs.”); *see also* 42 U.S.C. § 300g-1(b)(3)(C)(i) (requiring EPA to consider “nonquantifiable health risk reduction benefits” when establishing MCLs); *City of Portland, Oregon v. EPA*, 507 F.3d 706, 712 (D.C. Cir. 2007).

²⁰ *See* 42 U.S.C. §§ 300g-4, 300g-5.

B. EPA Promulgated Drinking Water Standards for the Index PFAS Because These Chemicals Pose Serious Risks to Public Health.

Research consistently confirms that PFAS pose a significant threat to human health at extremely low concentrations. EPA finalized the Index PFAS drinking water standards based on an extensive compilation of research documenting the individual health impacts of drinking water contaminated with PFHxS, GenX, and PFNA, as well as mixtures of these three chemicals and PFBS.

This did not happen overnight. Over two decades of study, EPA and the broader scientific community developed their understanding of the Index PFAS's threat to human health. Across multiple administrations, EPA steadily moved toward regulation of these substances. EPA's formal action on the Index PFAS began in 2008, when it produced methodologies for measuring the occurrence of PFHxS, PFNA, and PFBS in drinking water supplies.²¹ This methodology paved the way for EPA to implement monitoring of PFHxS, PFNA, and PFBS in May 2012 under the Safe Drinking Water Act's framework for monitoring unregulated contaminants.²² Later, EPA also added GenX to the list of contaminants to be monitored.²³ After further years of study, the agency introduced measurement methods for GenX and published draft toxicity assessments for GenX and PFBS in November 2018.²⁴ EPA formally revised the PFBS toxicity assessment and published an updated version in April 2021, followed by a final toxicity assessment for GenX in October 2021.²⁵ Adding to this comprehensive study, EPA issued

²¹ See B. Boutin, P. Grimmet & J. A. Shoemaker, EPA, *Determination of Selected Perfluorinated Alkyl Acids in Drinking Water by Solid Phase Extraction and Liquid Chromatography/Tandem Mass Spectrometry (LC/MS/MS)* (2008),

https://cfpub.epa.gov/si/si_public_record_report.cfm?LAB=NERL&dirEntryID=198984.

²² See Revisions to the Unregulated Contaminant Monitoring Regulation (UCMR 3) for Public Water Systems, 77 Fed. Reg. 26072 (May 2, 2012).

²³ See Revisions to the Unregulated Contaminant Monitoring Rule (UCMR 5) for Public Water Systems and Announcement of Public Meetings, 86 Fed. Reg. 73131 (Dec. 27, 2021); see also *Fifth Unregulated Contaminant Monitoring Rule*, EPA, <https://www.epa.gov/dwucmr/fifth-unregulated-contaminant-monitoring-rule> (last updated Mar. 11, 2026).

²⁴ See J.A. Shoemaker & Dan R. Tettenhorst, EPA, *Method 537.1: Determination of Selected Per- and Polyfluorinated Alkyl Substances in Drinking Water by Solid Phase Extraction and Liquid Chromatography/Tandem Mass Spectrometry (LC/MS/MS)* (Nov. 2018), https://cfpub.epa.gov/si/si_public_record_report.cfm?dirEntryId=343042&Lab=NERL&simpleSearch=0&showCriteria=2&searchAll=Determination+of+Selected+Per-+and+Polyfluorinated+Alkyl+Substances+&TIMSType=&dateBeginPublishedPresented=11%2F02%2F2016; see also Request for Public Review and Comment: Draft Human Health Toxicity Assessments for Hexafluoropropylene Oxide Dimer Acid and Its Ammonium Salt (GenX Chemicals) and for Perfluorobutane Sulfonic Acid (PFBS) and Related Compound Potassium Perfluorobutane Sulfonate, 83 Fed. Reg. 58768 (Nov. 21, 2018).

²⁵ See U.S. EPA. Human Health Toxicity Values for Perfluorobutane Sulfonic Acid and Related Compound Potassium Perfluorobutane Sulfonate. U.S. Environmental Protection Agency,

Unregulated Contaminant Monitoring Rule 5 (“UCMR 5”) in December 2021.²⁶ This rule directed the collection of samples testing for 29 different PFAS, including all six PFAS for which EPA promulgated drinking water standards.²⁷

Fifteen years into this process, EPA determined it had enough information, and was in fact required, to set drinking water standards for the Index PFAS to protect human health and safety. In March 2023, EPA issued its preliminary determination to regulate PFHxS, GenX, PFNA, and PFBS and proposed drinking water standards for the chemicals.²⁸ EPA then held a public comment period, during which the agency received approximately 120,000 comments.²⁹ The agency also solicited public comments in multiple other forums. For example: the agency held a public hearing on the proposal;³⁰ did two additional virtual public meetings to solicit input from communities on the development of the standards;³¹ held meetings of the Science Advisory Board at which it accepted public comments from industry and others;³² and invited small entities, specifically public water systems serving 10,000 or fewer people, to participate as Small Entity Representatives for a Small Business Advocacy Review Panel (“SBAR”) that focused on the Agency’s efforts to develop proposed PFAS standards.³³ The agency also separately

Washington, DC, EPA/600/R-20/345F, 2021; *see also* U.S. EPA. Human Health Toxicity Values for Hexafluoropropylene Oxide (HFPO) Dimer Acid and Its Ammonium Salt. U.S. Environmental Protection Agency, Washington, DC, EPA 822R21010, 2021.

²⁶ *See* 86 Fed. Reg. at 73131.

²⁷ *Id.*

²⁸ PFAS National Primary Drinking Water Regulation Rulemaking, 88 Fed. Reg. 18638 (Mar. 29, 2023).

²⁹ EPA, *Final PFAS National Primary Drinking Water Regulation*, 5 (last visited July 16, 2026), <https://www.epa.gov/system/files/documents/2024-04/general-overview-webinar-presentation-final-pfas-ndpwr.pdf>.

³⁰ The hearing on the proposal was held on May 4, 2023, *see* 88 Fed. Reg. at 18638, and garnered extensive comment from industry and water utility representatives as well as the public. *See* EPA, *Public Hearing: Proposed PFAS National Primary Drinking Water Regulation* (YouTube, May 23, 2023), <https://www.youtube.com/watch?v=WznQyNWGDdBu>; EPA, Per- and polyfluoroalkyl substances (PFAS): Perfluorooctanoic acid (PFOA) and Perfluorooctane sulfonic acid (PFOS) National Primary Drinking Water Regulation Rulemaking, Docket No. EPA-HQ-OW-2022-0114, <https://www.regulations.gov/docket/EPA-HQ-OW-2022-0114>.

³¹ *See* Notice of Public Meeting: Environmental Justice Considerations for the Development of the Proposed Per- and Polyfluoroalkyl Substances (PFAS) National Primary Drinking Water Regulation (NPDWR), 87 Fed. Reg. 7412 (Feb. 9, 2022).

³² EPA Science Advisory Board, *Analyses to Support EPA's National Primary Drinking Water Rulemaking for PFAS*, https://sab.epa.gov/ords/sab/f?p=114:18:31389248712411:::18:P18_ID:2601#meeting (last visited July 16, 2026).

³³ EPA, *SBAR Panel: PFAS National Primary Drinking Water Regulation: Key Dates and Documents for this SBAR Panel*, <https://www.epa.gov/reg-flex/sbar-panel-pfas-national-primary-drinking-water-regulation> (last updated June 2, 2026).

consulted with water utilities, others in industry, and other stakeholders in 2022 and 2023, including at multiple meetings of the National Drinking Water Advisory Council (which includes many water utility representatives),³⁴ as well as meetings with State and Local Government Officials, Tribal Officials, and others.³⁵ Over the course of nearly a year, EPA reviewed, considered, and responded to the public’s comments. After the agency’s thorough analysis, EPA concluded that the Index PFAS regulatory determinations, goals, and standards (collectively, “Index PFAS Provisions”) are consistent with, and required by, the Safe Drinking Water Act. EPA effectuated this conclusion with a final rule promulgated in April 2024.³⁶

EPA premised its final drinking water standards for the Index PFAS on an array of health effects caused by exposure to these contaminants:³⁷

- **PFHxS:** Causes adverse health effects on the liver, thyroid, and fetal and infant development.³⁸
- **PFNA:** Causes adverse health effects on the liver, development, reproduction, and immune function.³⁹
- **GenX:** Causes liver and kidney toxicity, immune, hematological, reproductive, and developmental effects, and is a potential carcinogen.⁴⁰

³⁴ See EPA, *National Drinking Water Advisory Council Public Meeting Summary*, Apr. 19, 2022, https://www.epa.gov/system/files/documents/2024-02/ndwac-meeting-summary-april-2019_1.pdf; Aug. 8, 2023, https://www.epa.gov/system/files/documents/2024-02/ndwac-meeting-summary-august-2023_0.pdf; Jan. 31, 2024, https://www.epa.gov/system/files/documents/2024-06/ndwac-meeting-summary-january-2024-508_1.pdf.

³⁵ EPA, *Proposed PFAS National Primary Drinking Water Regulation: PFAS NPDWR Consultations and Stakeholder Engagements*, <https://www.epa.gov/sdwa/proposed-pfas-national-primary-drinking-water-regulation> (last updated Apr. 27, 2026).

³⁶ 89 Fed. Reg. at 32532 (Apr. 26, 2024).

³⁷ Since EPA promulgated its 2024 drinking water standards for the Index PFAS research has continued to demonstrate that these chemicals are toxic and dangerous to human health. See discussion *infra* Section IV.F.2.

³⁸ Agency for Toxic Substances and Disease Registry (“ATSDR”), Toxicological Profile for Perfluoroalkyls, Chapter 2: Health Effects at 182 (liver), 264 (thyroid), 464 (development) (2021), <https://www.atsdr.cdc.gov/ToxProfiles/tp200-c2.pdf>.

³⁹ *Id.* at 182 (liver), 464 (development), 359, 389 (reproduction), 294, 324 (immune).

⁴⁰ 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”* at xi-xii (Oct. 2021), https://www.epa.gov/system/files/documents/2021-10/genx-chemicals-toxicity-assessment_tech-edited_oct-21-508.pdf.

- **PFBS:** Causes adverse health effects on the thyroid, kidneys, and development.⁴¹

EPA also considered the health effects caused by drinking water contaminated with multiple Index PFAS. PFHxS, PFNA, GenX, and PFBS all disrupt signaling of multiple biological pathways “resulting in a shared set of adverse effects ... on thyroid hormone levels, lipid synthesis and metabolism, development, and immune and liver function.”⁴² Given their common adverse effects, EPA established a drinking water standard, called a hazard index, based on the health impact of exposure to mixtures of the Index PFAS. Hazard indices are commonly used to measure and regulate risks from exposure to multiple contaminants that cause similar adverse health effects.⁴³

EPA’s hazard index PFAS drinking water standard is well supported by scientific evidence showing that exposures to mixtures of these PFAS pose greater risks than exposures to individual PFAS in isolation.⁴⁴ In 2024, the agency explained that “even if the individual chemicals are each present at levels considered ‘safe,’ the mixture may cause significant adverse health effects.”⁴⁵ EPA has continued to acknowledge that “[w]hen PFAS are found in a mixture,

⁴¹ EPA, *Human Health Toxicity Values for Perfluorobutane Sulfonic Acid (CASRN 375–73–5) and Related Compound Potassium Perfluorobutane Sulfonate (CASRN 29420–49–3)* at 2 (Apr. 2021), <https://assessments.epa.gov/risk/document/&deid=350888>.

⁴² 89 Fed. Reg. at 32545.

⁴³ See EPA, *Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures* (Aug. 2000), https://ordspub.epa.gov/ords/eims/eimscomm.getfile?p_download_id=4486.

⁴⁴ 89 Fed. Reg. at 32550–51; EPA, *Framework for Estimating Noncancer Health Risks Associated with Mixtures of Per- and Polyfluoroalkyl Substances (PFAS)* (Apr. 2024), https://www.epa.gov/system/files/documents/2024-04/final-pfas-mix-framework-3.25.24_final-508.pdf; EPA, *Advances in Dose Addition for Chemical Mixtures: A White Paper* (Dec. 2023), https://ordspub.epa.gov/ords/eims/eimscomm.getfile?p_download_id=548169; Justin M. Conley et al., *Developmental Toxicity of Nafion Byproduct 2 (NBP2) in the Sprague-Dawley Rat with Comparisons to Hexafluoropropylene Oxide-Dimer Acid (HFPO-DA or GenX) and Perfluorooctane Sulfonate (PFOS)*, 160 *Env’t Int’l* 107056 (2022), <https://www.sciencedirect.com/science/article/pii/S0160412021006814>; Justin M. Conley et al., *Cumulative Maternal and Neonatal Effects of Combined Exposure to a Mixture of Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonic Acid (PFOS) During Pregnancy in the Sprague-Dawley Rat*, 170 *Env’t Int’l* 107631 (2022), <https://www.sciencedirect.com/science/article/pii/S016041202200558X>; National Academies of Sciences, Engineering, and Medicine (NASEM), *Guidance on PFAS Exposure, Testing, and Clinical Follow-Up* (2022), <https://www.nationalacademies.org/read/26156/chapter/1>.

⁴⁵ 89 Fed. Reg. at 32532; accord EPA, *Final PFAS National Primary Drinking Water Regulation*, *Env’t Prot. Agency*, 5 (last visited July 16, 2026), <https://www.epa.gov/system/files/documents/2024-04/general-overview-webinar-presentation-final-pfas-ndpwr.pdf>.

the effect of the mixture is *greater* than the effect of any individual PFAS alone.”⁴⁶ Setting individual drinking water standards for the Index PFAS, therefore, would not fully protect people who have combinations of Index PFAS in their drinking water. EPA’s approach in setting both individual and mixture-based drinking water standards for the Index PFAS was necessary to comprehensively address the serious harm that these chemicals pose to public health. Indeed, EPA went so far as stating that “[a]vailable evidence suggests that dose addition should be considered as the *default model*.”⁴⁷

In addition to considering the toxicity of these chemicals, EPA demonstrated that the Index PFAS are widely present in public drinking water. The agency found from nationwide monitoring data that “there is a substantial likelihood that PFHxS, PFNA, and [GenX] will individually occur and combinations of these three PFAS and PFBS will co-occur in mixtures ... with a frequency and at levels of public health concern,”⁴⁸ and the chemicals were found in “a range of geographically diverse states.”⁴⁹ The agency also explained that national data showed “a sustained upward trend” in the occurrence of these chemicals at a frequency and levels of public health concern, due to improved monitoring and analytical methods.⁵⁰

In 2024, the American Chemistry Council, National Association of Manufacturers, The Chemours Company FC, LLC, the American Water Works Association (“AWWA”), and the Association of Metropolitan Water Agencies challenged the 2024 Rule.⁵¹ Soon thereafter, EPA vehemently defended the standards, including those for the Index PFAS, arguing that they are a culmination of “a coordinated years-long research and regulatory process across multiple administrations” that “establishes enforceable standards ... estimated to prevent thousands of deaths and reduce tens of thousands of serious PFAS-attributable illnesses.”⁵²

⁴⁶ EPA Office of Water, *2024 Final National Primary Drinking Water Regulation for PFAS: Overview of Health Science and Review Process (PART II)*, at 13 (March 27, 2025) obtained via FOIA case number 25-EPA-07215 (emphasis added).

⁴⁷ *Id.* at 17 (emphasis added).

⁴⁸ 89 Fed. Reg. at 32552; *see also id.* at 32561.

⁴⁹ *Id.* at 32561; *see also id.* at 32553, 32582.

⁵⁰ 88 Fed. Reg. at 18650.

⁵¹ *See* Petition for Review, Doc. No. 2058535, *Am. Water Works Ass’n v. EPA*, No. 24–1188 (D.C. Cir. June 7, 2024); Petition for Review, Doc. No. 2058848, *Nat’l Assoc. of Manuf. and Am. Chem. Council v. EPA*, No. 24-1191 (D.C. Cir. June 10, 2024); Petition for Review, Doc. No. 2059361, *The Chemours Co. FC, LLC v. EPA, et al.* No. 24-1192, (D.C. Cir. June 10, 2024); Clerk’s Consolidation Order, Doc. No. 2058852, *Am. Water Works Ass’n v. EPA*, No. 24-1188 (June 10, 2024); Clerk’s Consolidation Order, Doc. No. 2059369, *Am. Water Works Ass’n v. EPA*, No. 24-1188 (June 10, 2024).

⁵² Respondents’ Proof Brief 2, Doc. No. 2091318, *AWWA v. EPA*, No. 24-1188 (D.C. Cir. Dec. 23, 2024).

C. EPA Decided to Rescind Its Drinking Water Standards Without a Sound Scientific or Legal Basis After a Change in Administration.

The fundamental science remains unchanged—and if anything, the need for these standards has only grown stronger. Recent studies continue to confirm that the Index PFAS are toxic to human health, and that they are in fact more toxic than previously understood.⁵³ But EPA has now reversed course and moved to rescind the Index PFAS Provisions. This action is not only unlawful under the Safe Drinking Water Act and the Administrative Procedure Act, but it also reflects a disregard of the agency’s own scientific findings and its previous conclusion that the Index PFAS were legally promulgated.

EPA’s change in position occurred only after a change in presidential administration. In May 2025, EPA announced its intent to rescind the Index PFAS Provisions,⁵⁴ and in September 2025, the Department of Justice abandoned its defense of the Index PFAS Provisions.⁵⁵ In a stark reversal, EPA claimed the 2024 Rule was unlawfully issued—that the lack of *two periods* of notice and comment render the rule legally invalid⁵⁶ (even though this administration has not hesitated to move forward with other administrative rulemakings without notice and comment).⁵⁷

⁵³ See discussion *infra* Section IV.F.2; see e.g., EPA, IRIS Toxicological Review of Perfluorohexanesulfonic Acid (PFHxS, CASRM 335-46-4) and Related Salts (Jan. 2025), <https://iris.epa.gov/document/&deid=363894> (stating that PFHxS is linked to thyroid and developmental immune effects in humans, and that PFHxS might also cause decreased birth weight, neurodevelopmental effects, and decreased liver function); EPA, IRIS Toxicological Review of Perfluorononanoic Acid (PFNA) and Related Salts (Public Comment and External Review Draft) (Mar. 2024), at xx–xxi, <https://perma.cc/S6KK-EBVV> (concluding that PFNA exposure “demonstrates” developmental effects and indicates liver and reproductive effects as likely); Fan et al., *Embryonic exposure to GenX Causes Reproductive Toxicity by Disrupting the Formation of the Blood-Testis Barrier in Mouse Offspring* (Aug. 2025), <https://www.sciencedirect.com/science/article/abs/pii/S0300483X25001180> (findings indicated that embryonic exposure to GenX caused reproductive toxicity); Julia Happel et al., *PFBS Disrupts Lipid Metabolism and Mitochondrial Function in Human Trophoblast Cells*, 518 *Toxicology* 154269 (Dec. 2025), <https://www.sciencedirect.com/science/article/abs/pii/S0300483X25002288> (linking PFBS with pregnancy complications).

⁵⁴ EPA, *EPA Announces It Will Keep Maximum Contaminant Levels for PFOA, PFOS* (May 14, 2025), <https://www.epa.gov/newsreleases/epa-announces-it-will-keep-maximum-contaminant-levels-pfoa-pfos> (last updated May 15, 2025).

⁵⁵ See Respondents’ Motion for Partial Vacatur 8, Doc. No. 2134523, *Am. Water Works Ass’n v. EPA*, No. 24-1188 (D.C. Cir. Sept. 11, 2025).

⁵⁶ *Id.* at 8, 10.

⁵⁷ E.g., Exec. Office of Pres., *Maintaining Acceptable Water Pressure in Showerheads*, Exec. Order No. 14264, 90 Fed. Reg. 15619 (Apr. 9, 2025) (stating “[n]otice and comment is unnecessary because I am ordering the repeal.”)

Eight months later, EPA published the Proposed Rescission Rule to rescind the regulatory determinations, drinking water goals, and drinking water standards for the Index PFAS.⁵⁸

D. Rescission of Drinking Water Protections for the Index PFAS Will Harm Millions of People and They Will Not Be Protected by the PFOA and PFOS Drinking Water Standards.

Rescission of the drinking water protections for the Index PFAS will harm millions of Americans across the country. Even as the agency proposes to eliminate the standards, EPA has not abandoned its conclusion that these chemicals are harmful,⁵⁹ admitting that its proposed rule “is not based on any reassessment of the substantive findings included in its regulatory determinations or associated NPDWR provisions, including any information about health risks associated with PFAS.”⁶⁰

In promulgating the Index PFAS standards, EPA determined that there is widespread occurrence of these PFAS throughout the country.⁶¹ Recent nationwide monitoring data confirms this. Data released from UCMR 5 in 2026 shows that water systems serving at least 15 million people reported levels of the Index PFAS higher than the 2024 standards in at least one sample.⁶² And since the UCMR 5 data reporting is not yet complete, these numbers are only going to increase.

⁵⁸ See generally 91 Fed. Reg. 29413.

⁵⁹ 91 Fed. Reg. at 29417; 89 Fed. Reg. at 32532, 32544–45; EPA, Maximum Contaminant Level Goals (MCLGs) for Three Individual Per- and Polyfluoroalkyl Substances (PFAS) and a Mixture of Four PFAS. 815–R–24–004, https://www.epa.gov/system/files/documents/2024-04/pfas-hi-mclg_final508.pdf, at 2-1 to 2-13.

⁶⁰ 91 Fed. Reg. at 29417.

⁶¹ 89 Fed. Reg. at 32553, 32561, 32582.

⁶² Libbie Weimer, *Analysis of UCMR5 data to identify populations potentially impacted by rollbacks of PFAS regulations*, Southern Environmental Law Center (July 2026) (attached to these comments). The Southern Environmental Law Center’s Senior Geospatial Analyst, Libbie Weimer, developed this statistic from EPA’s national PFAS data collected for public water systems under UCMR 5. *Fifth Unregulated Contaminant Monitoring Rule Data Finder*, U.S. Env’t Prot. Agency (Jan. 15, 2026), <https://www.epa.gov/dwucmr/occurrence-data-unregulated-contaminant-monitoring-rule#5> (analysis based upon the maximum sampling result for each public water system across all monitoring of that system, without distinguishing between individual water sources to a public water system). Characteristics of each public water system monitored, including population served and type of system were collected from EPA’s Enforcement and Compliance History Online (“ECHO”) Drinking Water Systems API. *ECHO: Facility Search – Drinking Water Systems*, U.S. Env’t Prot. Agency, <https://echo.epa.gov/tools/web-services/facility-search-drinking-water/> (queried March 20, 2026). Hereinafter, statistics developed by the Southern Environmental Law Center’s Libbie Weimer from EPA’s UCMR 5 data, supplemented with information from EPA’s ECHO tool, are cited as “Weimer, SELC 2026 UCMR 5 Data Analysis.”

The cumulative impact of EPA’s proposed rescission of the Index PFAS standards, when considered together with the agency’s proposed delay of the PFOA and PFOS standards, is anticipated to be even more significant than EPA has contemplated. Many individuals that will be harmed by EPA abandoning its Index PFAS drinking water standards will be further burdened by the agency delaying drinking water standards for PFOA and PFOS. Approximately 63 percent of systems that have at least one Index PFAS present also contain PFOA or PFOS, meaning that people are typically exposed to a mixture of PFAS rather than one chemical at a time.⁶³ This matters because individuals who consume water containing PFAS mixtures are at higher risk of adverse health effects than if they were exposed to a single PFAS at a time.⁶⁴

That the Index PFAS tend to occur in mixtures with PFOA or PFOS does not mean, however, that the PFOA and PFOS drinking water standards—if and when they are eventually implemented—will protect against exposures to the Index PFAS.⁶⁵ At the outset, some public water systems are independently impacted by the Index PFAS alone⁶⁶ and will forego installing treatment for PFAS altogether as a result of rescinding the Index PFAS drinking water standards.

Moreover, even those systems that are subject to the drinking water standards for PFOA and PFOS cannot be counted on to install treatment that removes other types of PFAS. EPA admits that “[o]nly designing a treatment system for PFOA and PFOS removal, rather than for the other PFAS which may be present in varying concentrations, may not be as effective for the other PFAS or adequately public health protective.”⁶⁷ In other words, treatment designed for PFOA and PFOS may not effectively work for the Index PFAS.

Rescinding the Index PFAS standards means that water systems may install treatment systems that are designed only for PFOA or PFOS (if they install treatment at all), and these treatment systems may allow the Index PFAS to pass through and flow into the tap water of

⁶³ Weimer, SELC 2026 UCMR 5 Data Analysis, *supra* note 62; 88 Fed. Reg. at 18675.

⁶⁴ 474788 Fed. Reg. at 18639; EPA Office of Water, 2024 Final National Primary Drinking Water Regulation for PFAS: Overview of Health Science and Review Process (PART II), at 13 (March 27, 2025) obtained via FOIA case number 25-EPA-07215.

⁶⁵ See EPA Off. of Water, *Responses to Public Comments on Per- and Polyfluoroalkyl Substances (PFAS) National Primary Drinking Water Regulation Rulemaking*: 3-4 (Apr. 2024) (hereinafter “Responses to Public Comments on PFAS Rulemaking”), https://www.epa.gov/system/files/documents/2024-04/pfas-comment-response-document_final-508_v2.pdf (“The EPA disagrees that regulation of only PFOA and PFOS will fully protect against PFHxS or PFNA drinking water exposure, as well as exposure to HFPO-DA and PFBS.”).

⁶⁶ 89 Fed. Reg. at 32600.

⁶⁷ See Responses to Public Comments on PFAS Rulemaking, *supra* note 65, at 3-4 to 3-5. https://www.epa.gov/system/files/documents/2024-04/pfas-comment-response-document_final-508_v2.pdf

millions of Americans.⁶⁸ Treatment systems work best when they are designed for the water's specific mixture of contaminants.⁶⁹ This is especially true for mixtures of PFAS, where the removal efficiency of certain treatment systems varies with the length of the chemical's "carbon chain."⁷⁰ For some of the most common PFAS treatment technologies such as granular activated carbon ("GAC"), PFAS with shorter chains (such as many of the Index PFAS) tend to be more difficult to remove than PFAS with longer chains (such as PFOS and PFOA).⁷¹ Accordingly, water systems that install GAC or anion exchange designed to remove PFOS or PFOA, which have eight carbon chains, will not necessarily remove the shorter chain Index PFAS (PFHxS (six-carbon chain), PFBS (four-carbon chain), and GenX (six-carbon chain)).⁷² The PFOA and PFOS drinking standards alone, therefore, will not be enough to protect communities.

We have already seen examples of PFAS disasters across the country, including those caused by Index PFAS like GenX. In 2017, more than 500,000 North Carolinians in the Cape Fear River Basin awoke to the news that the upstream Chemours (formerly, DuPont) Fayetteville Works facility had been dumping GenX and other PFAS into their drinking water supply for decades.⁷³ It was revealed that the company had been releasing GenX as a by-product into the state's waters since the 1980s, and in 2009, transitioned to intentionally manufacturing the chemical as it phased out its production of PFOA.⁷⁴ Levels of GenX in the drinking water source

⁶⁸ See *id.* at 3-4.

⁶⁹ See *id.* at 10-69.

⁷⁰ *Id.* PFAS are often categorized by the length of their "carbon chain," which refers to the number of carbon atoms linked together within the molecule. In simple terms, the carbon chain is the molecular backbone of a PFAS compound, and PFAS with shorter or longer carbon chains can behave differently in the environment and in treatment systems.

⁷¹ See *Technologies and Costs for Removing Per- and Polyfluoroalkyl Substances (PFAS) from Drinking Water*, U.S. Env't Prot. Agency: Off. of Water 14-15 & 34-36 (Mar. 2024), https://www.epa.gov/system/files/documents/2024-04/2024-pfas-tech-cost_final-508.pdf; Responses to Public Comments on PFAS Rulemaking, *supra* note 65, at 10-69 https://www.epa.gov/system/files/documents/2024-04/pfas-comment-response-document_final-508_v2.pdf; Uthradevi Kannan et al., *Short-chain PFAS: A global challenge - Environmental fate, health risks, and promising removal technologies*, <https://www.sciencedirect.com/science/article/pii/S2211715625009841> ("Most available PFAS treatment methods, including activated carbon, ion exchange resins ... were primarily developed for long-chain PFAS. Their effectiveness against short-chain PFAS is restricted due to smaller molecular size and reduced sorption affinity of these substances.").

⁷² *Id.*

⁷³ Vaughn Hagerty, *Toxin Taints CFPWA Drinking Water*, StarNews (June 8, 2017, at 10:38 ET), <https://www.starnewsonline.com/story/news/environment/2017/06/07/toxin-taints-cfpwa-drinking-water/20684831007/>; see also Cape Fear Pub. Util. Auth., *Emerging Contaminants*, <https://www.cfpua.org/761/Emerging-Compounds> (last visited July 16, 2026).

⁷⁴ N.C. Dep't of Env't Quality, *E.I DuPont De Nemours & Co., Inc. NPDES Permit No. 00021230*, at 5 (Jun. 25, 1986) <https://edocs.deq.nc.gov/WaterResources/DocView.aspx?id=611983&dbid=0&repo=WaterResou>

for Wilmington, North Carolina, reached 4,500 parts per trillion (“ppt”)⁷⁵—450 times the level that EPA has deemed protective of human health. To this day, North Carolina families are continuing to suffer from Chemours’ chemical contamination.

The GenX contamination crisis in North Carolina demonstrates why EPA must maintain strong, health-protective standards for emerging PFAS: once contamination occurs, communities are left exposed while utilities must undertake costly and complex retrofits to existing treatment systems. A patchwork regulatory approach that addresses some PFAS while excluding others (as EPA is doing now) risks repeating this cycle, delaying public health protections, and increasing the difficulty of responding to contamination after it has already reached drinking water supplies.

E. Harm Due to the Rescission of the Index PFAS Standards Will Likely Worsen and Persist Well into the Future.

The Index PFAS are becoming more and more prevalent in the environment and in drinking water sources. Because PFOA and PFOS have been widely scrutinized, domestic industry has largely phased out production of these chemicals.⁷⁶ Instead of stopping the use or production of PFAS, however, industry has shifted to producing and using other, also toxic, forms of shorter-chain PFAS, including PFBS and GenX.⁷⁷ As a result, these chemicals are already widely present in tap water,⁷⁸ and will increase with continued use and production by industry.

rces&searchid=627d7915-27f4-4e8b-beb3-ec53cd75941b&cr=1. (Documenting formation of HFPO as “an intermediate for manufacture of other fluorocarbon chemicals at this site.”); see also N.C. Dep’t of Env’t Quality, *GenX Frequently Asked Questions*, at 1, https://files.nc.gov/ncdeq/GenX/SAB/FAQ_updated_021518.pdf (last visited Jul. 16, 2026). (Stating that “Chemours’ facility in Fayetteville began producing GenX commercially in 2009 as a replacement for PFOA.”)

⁷⁵ Lan Cheng et al., Historical Blood Serum Samples from Wilmington, North Carolina: The Importance of Ultrashort-Chain Per- and Polyfluoroalkyl Substances, 59 *Env’t Sci. & Techs.* 23125, 23126 (2025), https://pubs.acs.org/doi/pdf/10.1021/acs.est.5c08146?ref=article_openPDF.
<https://genxstudy.ncsu.edu/wp-content/uploads/sites/149/2025/10/Historic-Samples-Publication.pdf>.

⁷⁶ See 89 Fed. Reg. at 32536. Note that PFOA and PFOS remain a continuing concern despite reductions in their direct manufacture and use. Ongoing releases from sources such as landfills, waste incineration, and legacy firefighting foam stockpiles can contribute to environmental contamination, while other PFAS may degrade into PFOA and PFOS over time.

⁷⁷ See 89 Fed. Reg. at 32536; Respondents’ Final Brief at 10, *Am. Water Works Ass’n et al. v. EPA et al.*, No. 24-1188 (D.C. Cir. filed Mar. 6, 2026).

⁷⁸ Uthradevi Kannan et al., Short-chain PFAS: A global challenge - Environmental fate, health risks, and promising removal technologies, at 5, 20 *Results in Chemistry* 103000 (2026).

The boom of the artificial intelligence industry is accelerating the widespread contamination of drinking water sources with shorter-chain PFAS. Semiconductors, which are the backbone of the industry,⁷⁹ are manufactured using a diverse array of PFAS chemicals.⁸⁰ As domestic semiconductor manufacturing capacity is projected to *triple* in the United States by 2032,⁸¹ demand for these chemicals is expected to surge accordingly.

This growth carries significant consequences. The PFAS used and produced by semiconductor plants end up in the waste streams of these facilities and are not removed by their standard treatment processes.⁸² As a result, inadequately treated wastewater from semiconductor plants contains “a complex mixture of chemically diverse PFAS,” dominated by shorter-chain PFAS like GenX and PFBS.⁸³ Once discharged, these mixtures enter nearby waterways, where they spread through the environment and contaminate drinking water sources. If the Index PFAS standards are rescinded, these increasingly prevalent contaminants will persist in drinking water supplies, risking future drinking water crisis like those caused by Chemours in North Carolina.

II. The Proposed Rescission Rule Violates the Safe Drinking Water Act.

As set forth above, the Index PFAS Provisions are required under the Safe Drinking Water Act and their rescission will harm millions of people. But there is another reason EPA should not finalize the Proposed Rescission Rule—because it is illegal under the Act. As discussed further below, the Act prohibits rescission of the regulatory determinations as established in *NRDC v. Regan*, 67 F.4th 397 (D.C. Cir. 2023). And the Act’s anti-backsliding provision prohibits rescission of the Index PFAS goals and standards.

Adoption of the Proposed Rescission Rule is also completely unnecessary because the D.C. Circuit is already evaluating EPA’s newly adopted position that the Index PFAS Provisions were unlawfully promulgated and should be vacated. The parties have fully briefed those issues, and they are appropriately before that court. *See Am. Water Works Ass’n et al. v. EPA et al.*, No. 24-1188 (D.C. Cir.).

⁷⁹ Semiconductor Industry Ass’n, *State of the U.S. Semiconductor Industry* 25 (2025), <https://www.semiconductors.org/wp-content/uploads/2025/07/SIA-State-of-the-Industry-Report-2025.pdf>.

⁸⁰ Devashish Gokhale et al., Challenges and Opportunities in PFAS Waste Management for Semiconductor Manufacturing, 60 *Env’t Sci. & Tech.* 2259, 2259–60 (2026) (hereinafter “Gokhale, Semiconductor Manufacturing”), <https://pubs.acs.org/doi/pdf/10.1021/acs.est.5c10109>.

⁸¹ *See id.* at 2259.

⁸² *Id.* at 2264.

⁸³ *Id.* at 2261, 2264; *see also* Lenny Siegel, *PFAS: “Essential” for Semiconductor Production*, Ctr. for Pub. Env’t Oversight (June 12, 2024), <https://cpeo.org/pubs/PFAS-Essential.pdf>.

A. EPA Identifies No Error in Its Promulgation of the Index PFAS Regulatory Determinations, and the Safe Drinking Water Act Prohibits EPA from Rescinding Them.

EPA contends that it violated the procedure required by the Safe Drinking Water Act by proposing the Index PFAS goals and standards prematurely and failing to hold a second, separate public comment period focused on the goals and standards after finalizing the Index PFAS regulatory determinations. 91 Fed. Reg. at 29416. EPA adds a conclusory assertion that this purported procedural error “affects not just the [goals and standards in the] NPDWR but also the simultaneously issued regulatory determinations.” *Id.* But EPA has not identified any procedural error in the Index PFAS regulatory determinations, and the regulatory determinations are severable from the goals and standards. Any purported procedural error in the goals and standards would not affect the regulatory determinations. Because EPA has not identified any procedural error in the regulatory determinations and explicitly disavows any other non-procedural basis for the Proposed Rescission Rule, EPA has no legal basis at all for rescinding the Index PFAS regulatory determinations. Moreover, the Safe Drinking Water Act prohibits EPA from rescinding the regulatory determinations. As a result, the Index PFAS regulatory determinations are valid and if, for the sake of argument, EPA is correct that the goals and standards must be repromulgated, then EPA has now missed its deadline to propose goals and standards for the Index PFAS.

1. EPA has not identified any procedural error in its promulgation of the Index PFAS determinations to regulate.

EPA states that the Proposed Rescission Rule “is solely based on its conclusion” that “EPA erred by issuing an MCLG and promulgating an NPDWR without first completing the regulatory determination.” *Id.* at 29417. Even if EPA were correct that it has identified a procedural error affecting the Index PFAS goals and standards (although as discussed in Section III, *infra*, there is no such procedural error at all), EPA’s sole basis for the Proposed Rescission Rule has no bearing on the Index PFAS regulatory determinations.

EPA’s regulatory process for the 2024 Rule did not violate any procedural requirement that applies to the Index PFAS determinations to regulate. EPA properly gave “notice of the preliminary determination[s]” with a 60-day “opportunity for public comment,” considered and responded to comments, and then made “determinations of whether or not to regulate” the Index PFAS. 42 U.S.C. § 300g-1(b)(1)(B)(ii)(I); *see generally* 88 Fed. Reg. 18638 (Mar. 29, 2023) (proposed rule); 89 Fed. Reg. 32532 (final rule). Subparagraph 300g-1(b)(1)(E) addresses the timing only for proposed and final goals and standards; it does not place any timing restrictions on preliminary or final determinations to regulate. *See* 42 U.S.C. § 300g-1(b)(1)(E).

The Proposed Rescission Rule does not identify any procedural error in EPA’s proposal and finalization of the Index PFAS regulatory determinations, nor could it. The Act does not

require EPA to provide a second public comment period for regulatory determinations. And nothing in the Act prohibits EPA from announcing proposed goals and standards alongside proposed determinations to regulate, even if, for the sake of argument, EPA is correct that it must then publish and seek comment on proposed goals and standards after finalizing determinations to regulate. Providing EPA's proposed goals and standards simultaneously with the proposed determinations to regulate simply gives the public more information earlier about what EPA is considering, which is a benefit to interested parties.

Furthermore, the Index PFAS regulatory determinations are independent of and severable from the Index PFAS goals and standards. The regulatory determinations can, and do, stand on their own, regardless of what goals and standards EPA sets for the Index PFAS. *See* 89 Fed. Reg. at 32731–32 (stating that each standard and goal is independent and severable).⁸⁴ So, even if EPA's newfound position is correct that there was a procedural error in the promulgation of the goals and standards for the Index PFAS, that alleged procedural error has no bearing on the regulatory determinations.

Having identified no procedural error in the Index PFAS determinations to regulate, EPA lacks any basis to rescind the Index PFAS determinations to regulate.

2. *Pursuant to NRDC v. Regan, EPA cannot rescind the determinations to regulate.*

Contrary to EPA's argument, 91 Fed. Reg. at 29417–18, the D.C. Circuit's decision in *NRDC v. Regan*, 67 F.4th 397 (D.C. Cir. 2023), is controlling here as to EPA's proposal to rescind its determinations to regulate the Index PFAS, and the Safe Drinking Water Act bars EPA from rescinding the regulatory determinations. In that case, EPA attempted to withdraw its determination to regulate perchlorate and instead issued a determination not to regulate. *Id.* at 401. After carefully considering EPA's authority under the Act, the Court concluded unequivocally that “[b]ecause the Safe Drinking Water Act requires that the agency ‘shall’ regulate after making a regulatory determination, EPA lacks authority to withdraw that determination.” *Id.* at 404. So too here.

The Proposed Rescission Rule attempts to distinguish *NRDC v. Regan* on the basis that EPA sought to withdraw the perchlorate determination to regulate based on a reassessment of scientific information, whereas here EPA alleges that it committed a procedural violation. 91 Fed. Reg. at 29417–18. But, if anything, EPA has even *less* basis here to rescind the Index PFAS regulatory determinations than it had in *NRDC v. Regan*. As discussed above, EPA has not

⁸⁴ *See also* Respondents' Final Br. 22, Doc. No. 2162593, *AWWA v. EPA*, No. 24-1188 & consolidated cases (D.C. Cir. Filed Mar. 6, 2026) (explaining that the 2024 Rule's “provisions for each contaminant are severable, as are EPA's actions at each step of the regulatory process for each contaminant”).

identified any procedural problem in the process it used to propose and finalize the Index PFAS regulatory determinations. And the Proposed Rescission Rule “is not based on any reassessment of the substantive findings included in [EPA’s] regulatory determinations.” *Id.* at 29417. There is no legally relevant distinction between the 2024 Rule and the perchlorate regulatory determination at issue in *NRDC v. Regan*. The D.C. Circuit’s holding in *NRDC v. Regan* governs here and “EPA lacks authority to withdraw” the Index PFAS determinations to regulate. 67 F.4th at 404.

3. *Assuming arguendo that EPA is correct that the Index PFAS goals and standards are procedurally invalid, then EPA’s proposed Index PFAS goals and standards are overdue in violation of the Safe Drinking Water Act and EPA should be proposing goals and standards, not rescinding them.*

As discussed above, EPA has not identified any basis to rescind the Index PFAS regulatory determinations, and the Index PFAS regulatory determinations are valid and in effect. If, for the sake of argument, EPA is correct that the Index PFAS goals and standards are procedurally invalid, then EPA’s proposed goals and standards for Index PFAS are now overdue. By EPA’s own logic, the proposed Index PFAS goals and standards were due by April 26, 2026, which is “not later than 24 months” after the final determinations to regulate the Index PFAS on April 26, 2024. 42 U.S.C. § 300g-1(b)(1)(E); *see* 89 Fed. Reg. 32532.

Thus, even if EPA is correct that it followed an improper procedure when it promulgated the Index PFAS goals and standards, the Proposed Rescission Rule is the wrong way to correct that purported error. EPA still has a mandatory duty to propose goals and standards for the Index PFAS, has now missed its statutory deadline to do so, and as noted earlier, EPA has not reassessed or questioned the science supporting its Index PFAS regulatory determinations, goals, or standards. Given that, if EPA genuinely believes its own procedural arguments and statutory interpretation, it should abandon its illegal and misguided Proposed Rescission Rule. Instead, EPA should propose goals and standards for the Index PFAS as expeditiously as possible.

B. The Anti-Backsliding Provision of the Safe Drinking Water Act Prohibits the Rescission of the Remainder of the Index PFAS Provisions.

The Safe Drinking Water Act’s anti-backsliding provision bars EPA from weakening drinking water goals and standards and, here, this provision prohibits rescission of the Index PFAS goals and standards. The Act provides that:

The Administrator shall, not less often than every 6 years, review and revise, as appropriate, each national primary drinking water regulation promulgated under this subchapter. Any revision of a national primary drinking water regulation shall be promulgated in accordance with this section, except that each revision shall maintain, or provide for greater, protection of the health of persons.

42 U.S.C. § 300g-1(b)(9). The second sentence of that paragraph is known as the Act’s “anti-backsliding” provision. And that provision bars EPA from taking the action proposed in this rule—rescinding the national primary drinking water regulations pertaining to the Index PFAS.

As the D.C. Circuit stated, and EPA acknowledged in the Proposed Rescission Rule, the anti-backsliding provision means that “[r]evised regulations may increase but not decrease protections.” *Arizona v. EPA*, 77 F.4th 1126, 1127 (D.C. Cir. 2023); 91 Fed. Reg. at 29418 (quoting *Arizona*, 77 F.4th at 1127); *see also City of Waukesha v. EPA*, 320 F.3d 228, 240 (D.C. Cir. 2003); *NRDC v. Regan*, 67 F.4th at 409 (Pan, J., concurring) (describing provision as putting “limitation[s] on the EPA’s ability to revisit and alter drinking-water regulations”).

Despite these clear commands, EPA has proposed decreasing the protections from the Index PFAS regulations to the largest extent possible—eliminating them entirely. EPA contends both that the anti-backsliding provision does not apply here and that even if it did, the provision does not prohibit the proposed rule. EPA’s interpretation of the provision is not the best reading of the statute. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024). The agency’s contentions not only conflict with the text of the provision and applicable case law, but they also would carve holes in the anti-backsliding provision large enough to gut it and defeat its intended purpose.

1. The Act’s anti-backsliding provision applies to the Proposed Rule to rescind the Index PFAS regulations.

In the Proposed Rescission Rule, EPA contends that the anti-backsliding provision does not apply here. More specifically, EPA says the provision:

applies to a ‘revision’ of a lawfully promulgated NPDWR made after a ‘review’ of that NPDWR. Section 1412(b)(9) of the SDWA does not govern the rescission of unlawfully promulgated NPDWRs.

91 Fed. Reg. at 29418 (quotations in original). EPA’s statement is ambiguous as to the basis for its conclusion that the anti-backsliding provision is inapplicable to the Proposed Rescission Rule. EPA appears to rely on one or more of the following contentions:

- a) The anti-backsliding provision is inapplicable because it is triggered only when revisions are made after a review of NPDWRs required by the Act, and EPA’s actions here were not taken after such a review;
- b) The anti-backsliding provision’s prohibition applies to “revisions,” and its proposal to “rescind” NPDWRs does not qualify as a revision under the Act; and/or
- c) The anti-backsliding provision applies to only lawfully promulgated NPDWRs, and the relevant NPDWRs were unlawfully promulgated.

But for the reasons set forth below, none of those contentions comprise the best reading of the anti-backsliding provision. *See Loper Bright*, 603 U.S. at 400.

a. The anti-backsliding provision applies to revisions EPA makes to NPDWRs regardless of time, circumstance, or reason.

EPA appears to argue that the anti-backsliding provision is triggered only when EPA revises NPDWRs after conducting a specific review that the Act requires the agency to take at least every six years—and that the Proposed Rescission Rule was not introduced after such a review. The review requirement is also set forth in paragraph (b)(9), immediately preceding the anti-backsliding provision. 42 U.S.C. § 300g-1(b)(9). But EPA’s contention is contrary to the statutory text and case law, and would inject a gaping loophole into the anti-backsliding provision, as discussed below. In any event, even if EPA’s interpretation were correct, the anti-backsliding provision is applicable here.

As a textual matter, the two sentences of paragraph (b)(9) are not linked in substance or text. The first imposes a procedural requirement for EPA to review and possibly revise NPDWRs. The second, the anti-backsliding provision, imposes a substantive requirement that EPA may not weaken its NPDWRs. The anti-backsliding provision also does not refer back to the previous sentence. Instead, it applies to “any” revision. And “the word ‘any’ has an expansive meaning.” *United States v. Gonzales*, 520 U.S. 1, 5 (1997).

If Congress had wanted the anti-backsliding provision to apply only to revisions made during specific reviews contemplated by the first sentence of paragraph (b)(9), it could have and would have constructed the anti-backsliding provision to cross-reference the first sentence and read something like: “A revision of a national primary drinking water regulation *made pursuant to such review* ...” instead of the enacted “*Any* revision of a national primary drinking water regulation” Indeed, Congress cross-referenced other sections of the statute in many places, *see, e.g.*, 42 U.S.C. § 300g-1(b)(1)(A)–(E), but did not do so in paragraph (b)(9).

Nor can the anti-backsliding provision be read to apply to only a subset of revisions made after a review required by the Act because to do so would gut the provision. EPA could evade the prohibition altogether by claiming that any weakening or rescission of an NPDWR was not proposed or finalized after a review required by the Act. Congress cannot have intended such an easily circumvented limitation.

Even assuming for the sake of argument that the anti-backsliding provision is applicable only to those revisions made after a review contemplated in the first sentence of paragraph (b)(9), the provision is applicable here. There are no limiting factors in the text of that sentence and thus it encompasses revisions made after any and all types of reviews, including the one EPA undertook here. EPA states that it “reconsider[ed] the Agency’s rulemaking record,” “concluded that the Agency promulgated an unlawful drinking water standard,” and, as a result,

proposed to rescind the Index PFAS Provisions through the Proposed Rescission Rule. 91 Fed. Reg. at 29416–17. In other words, EPA published the proposed rule after conducting a “review.” *See, e.g., Review*, Black’s Law Dictionary (12th ed. 2024) (defining “review” as “consideration, inspection, or reexamination of a subject or thing”); *Review*, Merriam-Webster’s Collegiate Dictionary (10th ed. 1994) (defining review as “to examine or study again”). The sentence also applies to reviews taken at any time, including when EPA undertook the one here. EPA is required to review NPDWRs “not less often than every 6 years”—meaning that EPA can review such regulations at any time, but no more than six years can elapse between reviews. 42 U.S.C. § 300g-1(b)(9); *see also* 91 Fed. Reg. at 29415 (noting that promulgation of NPDWR “triggers the Agency’s ongoing obligation” to review and revise each NPDWR “not less than every six years”).

b. The proposed rescissions are revisions under the Act.

To the extent that EPA contends that the anti-backsliding provision does not apply to the ultimate backsliding—rescission—because a rescission is not a “revision,” that is not the best reading of the statute. *See Loper Bright*, 603 U.S. at 400. Because the Act does not define “revision,” one must look at the word’s “ordinary meaning at the time Congress adopted” the Act. *Sec’y of Lab., Mine Safety & Health Admin. v. KC Transp., Inc.*, 173 F.4th 294, 311 (D.C. Cir. 2026) (*quoting Niz-Chavez v. Garland*, 593 U.S. 155, 160 (2021)). And dictionary definitions of “revision” at the time the anti-backsliding provision was added to the Act show that “revision,” as used in the provision, encompasses “rescission.” For example, at the time of the provision’s adoption, Black’s Law Dictionary defined “revise” as “to review and re-examine for correction” or “to go over a thing for the purpose of amending.” *Revise*, Black’s Law Dictionary (6th ed. 1990). It in turn also defined “amend” as “to change for the better by removing defects or fault.” *Amend*, Black’s Law Dictionary (6th ed. 1990) (emphasis added). Similarly, Merriam-Webster’s Collegiate Dictionary at that time defined “revise” as “to look over again in order to correct” or “to make a[n] ... amended ... version of.” *Revise*, Merriam-Webster’s Collegiate Dictionary (10th ed. 1994) (emphasis added).

EPA contends that it is proposing to rescind the Index PFAS Provisions because it “reconsider[ed]” their promulgation and determined they are “unlawful[.]” 91 Fed. Reg. at 29416. In other words, it “re-examine[d]” the regulations “for correction,” *Revise*, Black’s Law Dictionary, and is proposing “to change [the regulations] for the better,” in its view, rescinding them so as to “remov[e] defects or fault,” that it now claims the 2024 Rule suffers from, *Amend*, Black’s Law Dictionary (emphasis added). Accordingly, the act of rescinding drinking water regulations falls squarely within the definition of a revision. Thus, the constraints the anti-backsliding provision places on EPA’s “revis[ions]” apply to rescissions, including those in the proposed rule. 42 U.S.C. § 300g-1(b)(9).

This conclusion is supported by caselaw. The court in *NRDC v. Abraham* made clear that an anti-backsliding provision that applied to “new or amended” energy conservation standards, 42 U.S.C. § 6295(o), “constrain[ed] [the agency’s] ability to weaken a standard in a newly initiated rulemaking proceeding *to amend or rescind* a standard.” 355 F.3d 179, 203 (2d Cir. 2004) (emphasis added).

EPA’s interpretation would also be absurd. As noted earlier, the D.C. Circuit has explained, and EPA has acknowledged, that the anti-backsliding provision means that a “[r]evised regulation may increase but not decrease protections.” *Arizona*, 77 F.4th at 1127; 91 Fed. Reg. at 29418. And rescission is the most extreme way to “decrease protections.” To read the anti-backsliding provision to prohibit a slight decrease in protection but permit the wholesale elimination of protections “would render these terms—and Congress’s design—meaningless.” *Nat’l TPS All. v. Noem*, 150 F.4th 1000, 1009 (9th Cir. 2025).

c. There is no exception to the anti-backsliding provision for allegedly unlawfully promulgated NPDWRs.

With respect to the third possible contention, EPA would be reading an exception into the anti-backsliding provision for promulgated regulations that EPA concludes, upon subsequent reflection, were unlawfully promulgated. To begin with, the Index PFAS Provisions were properly promulgated. *See infra* Section III. In any event, no such exception exists and EPA does not have inherent or implicit authority to read one in. “Any inherent reconsideration authority does not apply in cases where Congress has spoken.” *NRDC v. Regan*, 67 F.4th at 401 (cleaned up). Indeed, “[t]o read into the statute another course of action”—one that would limit the application of the anti-backsliding provision to only those regulations EPA continues to deem lawfully promulgated—“would be to contravene the statute’s clear language and structure and nullify textually applicable provisions meant to limit EPA’s discretion.” *Id.* at 402 (cleaned up).

Such a reading is also untenable because it would gut the anti-backsliding provision. EPA could rescind any drinking water regulation at any time simply by asserting that it was unlawfully promulgated. “A statute should ordinarily be read to effectuate its purposes rather than frustrate them.” *See United States v. Barnes*, 295 F.3d 1354, 1364 (D.C. Cir. 2002) (quotation omitted). “Regardless of how serious the problem an administrative agency seeks to address ... it may not exercise its authority in a manner that is inconsistent with the administrative structure that Congress enacted into law.” *Ragsdale v. Wolverine World Wide, Inc.*, 535 U.S. 81, 91 (2002) (quotation omitted).

EPA attempts to analogize its position to a court vacating an unlawful NPDWR, an event that does not trigger the anti-backsliding provision. 91 Fed. Reg. at 29418. This analogy is nonsensical and inapposite. The anti-backsliding provision restricts *EPA’s* revisions to NPDWRs. It does not restrict judicial review or remedial actions courts can take pursuant to such review. Indeed, EPA recently acknowledged that it is subject to limitations in amending

NPDWRs that courts are not. In its motion for partial vacatur in *AWWA v. EPA*, EPA urged the D.C. Circuit to vacate the Index PFAS Provisions because the agency, unlike the Court, was constrained by both the anti-backsliding provision and by the court’s decision in *NRDC v. Regan* that “EPA lacks authority to withdraw [a regulatory] determination.” 67 F.4th at 404.⁸⁵

Because courts maintain the ability to invalidate and vacate unlawfully promulgated standards, reading an exception into the anti-backsliding provision for regulations EPA alleges were unlawfully promulgated is neither needed nor proper. Indeed, as mentioned earlier, the D.C. Circuit is currently assessing the very sequencing issue that EPA asserts as the basis for the Proposed Rescission Rule.

2. *The anti-backsliding provision prohibits the proposed rescissions.*

EPA next contends that even if the Proposed Rescission Rule “trigger[s] SDWA section 1412(b)(9) requirements,” the proposal is valid because it “maintains ... protection of the health of persons” as required by the anti-backsliding provision. 91 Fed. Reg. at 29418. As the D.C. Circuit has stated, and EPA has acknowledged, to meet this requirement, the proposed rule must “maintain the level of protection that the initial M.C.L. *actually provides*.” *Waukesha*, 320 F.3d at 242 (emphasis added). The only way a rescission of a drinking water standard could maintain the level of protection of the initial standard is if the initial standard provided no protection. But EPA determined that the Index PFAS standards would provide significant protection to millions of people, *see supra* Section I.B, and, as discussed earlier, the rescission of the Index PFAS regulations under the proposed rule would present great risk of harm to millions of people, *see supra* Sections I.D & E. For EPA to argue that rescinding the health-protective drinking water regulations maintains the protection of health provided by those regulations defies common sense and is more than insulting to the millions of people who drink water contaminated with any of the Index PFAS above the current drinking water standards.

In order to justify its decision to put millions of people in harm’s way, EPA contends that the statute does not “prescribe” how EPA should assess whether a revision maintains health protections and that it is “appropriate” for EPA to determine whether the revised NPDWR “maintains human health protection compared to what actually exists at the time the EPA makes its revision (*i.e.*, the level of protection the current MCL *actually provides*).” 91 Fed. Reg. at 29418. Under EPA’s reasoning, the point of comparison is not the level of protection the promulgated drinking water standard *provides*, but rather what drinking water standard must be *complied with* at the moment in time EPA when publishes its rescission. Thus, according to EPA,

⁸⁵ See Respondents’ Motion for Partial Vacatur 20–21, Dkt. No. 2134523, *Am. Water Works Ass’n et al. v. EPA et al.*, No. 24-1188 (D.C. Cir. filed Sept. 11, 2025).

a rescission does not violate the anti-backsliding provision if it is promulgated before the compliance date for the initial drinking water standard.

This contention—which would permit EPA to rescind or weaken drinking water standards up to five years after they were promulgated, *see* 42 U.S.C. § 300g-1(b)(10)—has no merit. First, contrary to EPA’s assertion, it is not “appropriate” for EPA to make the determination of the operative date of the anti-backsliding provision. *See, e.g., Am. Civil Liberties Union v. FCC*, 823 F.2d 1554, 1567 n. 32 (D.C. Cir. 1987) (noting that it “seems highly unlikely that a responsible Congress would implicitly delegate to an agency the power to define the scope of its own power”). Second, EPA’s rewrite—“what *actually exists at the time the EPA makes its revision*,” 91 Fed. Reg. at 29418 (emphasis added)—is not, as EPA contends, equivalent to the “straightforward instruction” to maintain what the current drinking water standard “*actually provides*.” *Id.* (citing *Waukesha*, 320 F.3d at 257). Indeed, the “actually provides” language in *Waukesha* did not concern a discussion of when the anti-backsliding provision kicked in. Rather, it was invoked to contrast a reasonable textual reading of the anti-backsliding to a nontextual reading—similar to what EPA does here—that was proposed and rejected. *Waukesha*, 320 F.3d at 242, 257. Third, EPA’s interpretation is not the best reading of the provision. *See Loper Bright*, 603 U.S. at 400-01. For the same reasons EPA is not legally permitted to read “lawfully promulgated” into the anti-backsliding provision, *see supra* Section II.B.1.c, it cannot read “what actually exists at the time the EPA makes its revision” into the provision. EPA’s interpretation of the anti-backsliding provision is particularly unpersuasive because EPA itself uses a different baseline for its economic analysis of the Proposed Rescission Rule. On the very same page of the preamble, EPA states correctly in its Economic Analysis discussion that “the baseline for this proposed rule ... includes PFOA and PFOS MCLs of 4.0 ppt each; PFHxS, PFNA, and HFPO-DA MCLs of 10 ppt each; and an HI of 1 (unitless).” 91 Fed. Reg. at 29418. That baseline conforms with EPA’s own economic analysis guidelines,⁸⁶ and there is no logical reason why the baseline for assessing anti-backsliding would be different than assessing forgone benefits and cost savings.

Indeed, a federal court of appeals case directly confirms that anti-backsliding limitations are operative once regulations are published. In *NRDC v. Abraham*, assessing the anti-backsliding provision of the Energy Policy and Conservation Act (“EPCA”), the Second Circuit held that “*publication* of final rules ... is used as the relevant act for purposes of circumscribing [the agency’s] discretion to conduct rulemakings.” 355 F.3d at 195. So too here. Like in *Abraham*, “publication must be read as the triggering event for the operation of” the Safe

⁸⁶ EPA, *Guidelines for Preparing Economic Analyses* (3d ed., Dec. 2024), EPA-240-R-24-001 https://www.epa.gov/system/files/documents/2024-12/guidelines-for-preparing-economic-analyses_final_508-compliant_compressed.pdf, (last visited July 15, 2026) at Ch. 5.2.1.

Drinking Water Act’s anti-backsliding provision, “regardless of the fact that [regulated entities] have a number of years to bring themselves into compliance.” *Id.* at 196.

And, just like the court explained in *Abraham*, having a compliance date trigger applicability of the anti-backsliding provision is nonsensical because, antithetical to the provision, doing so would allow EPA to weaken any new drinking water standard for three to five years after promulgation and would create incessant uncertainty for water systems. As the court wrote, “[i]t is inconceivable that Congress intended to allow such unfettered agency discretion to amend standards,” which “would completely undermine any sense of certainty” for regulated entities and “effectively render” the applicable “‘anti-backsliding’ mechanism inoperative, or a nullity, in these circumstances.” *Abraham*, 355 F.3d at 197. This reasoning is equally applicable here.

Furthermore, EPA’s position here is in conflict with the position it took just a few years ago. In *Regan*, EPA acknowledged that the Act’s “anti-backsliding provisions ... apply only once a maximum contaminant level goal and national primary drinking water standards have been finalized” and issued. EPA’s Final Response Br. 28, *NRDC v. EPA*, No. 20-1335 (D.C. Cir.), 2022 WL 17486240. This unexplained change further undermines EPA’s unsupported and unreasonable contention that the anti-backsliding provision does not apply until the date upon which compliance is required—three to five years after drinking water standards have been published. *See Loper Bright*, 603 U.S. at 385–88.

Finally, EPA’s unsuccessful attempt to demonstrate the Proposed Rescission Rule’s compliance with section 1412(b)(9)’s anti-backsliding provision ignores the agency’s broader problem that a revision of an NPDWR under section 1412(b)(9) “shall be promulgated in accordance with this section,” 42 U.S.C. § 300g-1(b)(9), and must also satisfy section 1412’s substantive and procedural requirements, such as presentation of “comprehensive, informative, and understandable” public health effects information. *Id.* § 300g-1(b)(3)(B), (b)(9). Even if EPA were correct about the proper baseline for anti-backsliding purposes (which it is not), EPA cannot, and makes no attempt to, demonstrate that its Proposed Rescission Rule is being promulgated in accordance with section 1412, as required by paragraph (b)(9). *See, e.g., infra* Sections IV.F, IV.J (discussing missing analyses of health effects and forgone public health benefits).

III. EPA’s Justification for the Proposed Rescission Rule Fails as a Matter of Law Because EPA’s Process for Promulgating the Index PFAS Provisions Was Permissible Under the Act.

EPA’s sole basis for the Proposed Rescission Rule is wrong as a matter of law. EPA asserts that its new statutory interpretation of the Safe Drinking Water Act requires a “stepwise,” “seriatim approach to regulation” that requires the agency to wait to publish a proposed goal and

standard for a contaminant until it publishes a final determination to regulate that contaminant. 91 Fed. Reg. at 29416–18. But EPA’s new interpretation of the statute is not the best reading.

The best reading of the Safe Drinking Water Act in subparagraph (b)(1)(E) of section 1412, 42 U.S.C. § 300g-1,⁸⁷ is that it permits EPA to propose and finalize drinking water goals and standards in parallel with the proposed and final regulatory determinations, rather than waiting for final regulatory determinations. Two compelling readings of the statute lead to this result, whereas EPA’s newfound interpretation in the Proposed Rescission Rule is not the best reading of these provisions and flunks multiple common canons of statutory interpretation.

A. As EPA Previously Argued, the Second Use of the Phrase “Determination to Regulate” in 42 U.S.C. § 300g-1(b)(1)(E) Refers to EPA’s Preliminary Determination to Regulate.

As EPA argued in the 2024 Rule and in its D.C. Circuit Court brief defending the 2024 Rule, EPA may “issue a preliminary regulatory determination concurrent with a proposed NPDWR.” 89 Fed. Reg. at 32540–42; Respondents’ Final Brief 28-35, Doc. No. 2162593, *AWWA v. EPA*, No. 24-1188 (D.C. Cir., Mar. 6, 2026).⁸⁸ This reading fits the Act’s text and structure and gives effect to Congress’s intent to ensure timely regulation of a contaminant where EPA has evidence that the contaminant warrants regulation.

In this interpretation, the phrase “concurrent with the determination to regulate” in subparagraph 300g-1(b)(1)(E) refers to EPA’s preliminary determination. Although this phrase does not explicitly use the words “preliminary determination,” Congress generally used the term “determination to regulate” or simply “determination” in subparagraph 300g-1(b)(1)(B) without explicitly distinguishing between preliminary and final—even where the text indisputably refers to a preliminary determination. For example, EPA still agrees that clause 300g-1(b)(1)(B)(iii), which requires EPA to seek public comment on “the determination for a contaminant,” uses the term “determination” to refer to a preliminary determination to regulate. 91 Fed. Reg. at 29417.

To the extent that Congress was inconsistent and imprecise in its terminology, the meaning of “determination” in any particular part of the Act should be inferred from the surrounding context. The relevant context of subparagraph 300g-1(b)(1)(E) supports reading the Act to permit EPA to propose a contaminant’s goal and standard concurrently with the preliminary determination. Although this reading results in “determination” taking a different

⁸⁷ In referring to the text of subunits of the statute, these comments use the terminology recommended by the U.S. House of Representatives Office of Legislative Counsel. See Office of Leg. Counsel, Quick Guide to Legislative Drafting 2 (June 10, 2026), https://legcounsel.house.gov/sites/evo-subsites/legcounsel-evo.house.gov/files/evo-media-document/quick_guide_6-10-26.pdf.

⁸⁸ This section is largely adapted from EPA’s legal brief and articulates arguments that EPA itself made to the court before EPA reversed course and changed its interpretation of the Act.

meaning in the first clause (addressing the latest point at which EPA may propose the goal and standard) and second clause (addressing the earliest point at which EPA may propose them) of this sentence, that result comports with the Act’s structure and goals.

The rest of the text in the second clause of this sentence indicates Congress intended to allow EPA to align the proposed goal and standard with the public comment process on a preliminary determination. The Act’s use of the term “publish” is informative: it identifies the specific action (publication) that EPA may take “concurrent[ly]” for both the regulatory determination and standard-setting processes. The only other place in the Act where Congress refers to publication of a regulatory determination is in clause 300g-1(b)(1)(B)(iii), where it undisputedly and clearly refers to publication of a preliminary regulatory determination for public comment. No provision of the Act refers to publication of a final regulatory determination. Thus, the Act should be read to mean that Congress intended that EPA may “publish” its proposed regulation at the same time that it “publish[es]” a preliminary determination to regulate.

In addition, this interpretation gives the second clause of the second sentence in subparagraph 300g-1(b)(1)(E) independent meaning. Reading this provision to allow publication of a proposed goal and standard alongside only a final regulatory determination would render it superfluous, because there is nothing else in the Act or administrative law generally that would otherwise preclude EPA from doing so. Nothing in subparagraph 300g-1(b)(1)(E)’s deadline provisions implies such a limitation. The Act’s requirement for EPA to propose regulations “not later than 24 months after” a final regulatory determination simply establishes when EPA’s deadline begins to run; it does not suggest, imply, or require that EPA may only propose them after that deadline is triggered. 42 U.S.C. § 300g-1(b)(1)(E). If Congress had wanted to create an exclusive window defining the start and end date for EPA’s proposal of a goal and standard, it would have specified that EPA must do so “within” 24 months, as it did for other deadlines in the next sentence of this same subparagraph and elsewhere in the Act. *See* 42 U.S.C. § 300g-1(b)(1)(E) (requiring EPA to promulgate a final goal and standard “within 18 months after the proposal thereof”); *id.* § 300j-7(a) (requiring petitions for review to be filed “within the 45-day period beginning on the date of the promulgation of the regulation”).

The D.C. Circuit’s decision in *NRDC v. Regan*, 67 F.4th 397 (D.C. Cir. 2023), is not to the contrary. The court addressed only what obligations are triggered after EPA makes a final determination to regulate a contaminant, holding that EPA must promulgate a goal and standard after making a final determination to regulate. *Id.* at 399, 404. The court did not address, and had no need or occasion to address, at what point EPA may *first* propose the goal and standard for a contaminant. By contrast, this exact question is before the Court in *AWWA v. EPA*, No. 24-1188 (D.C. Cir.), which is fully briefed and will be argued on September 18, 2026. To avoid wasting its time and resources, especially when the agency is prohibited by statute from rescinding the

Index PFAS Provisions, *see supra* Section II, EPA should pause all work on this Proposed Rescission Rule until the Court has determined the meaning of 42 U.S.C. § 300g-1(b)(1)(E).

Furthermore, reading subparagraph 300g-1(b)(1)(E) to allow publication of proposed goals and standards with proposed determinations to regulate would reflect Congress’s goal of accelerating the regulatory process for contaminants that present meaningful public health risks, which is the evident purpose of its allowance for “concurrent” processes. The Act’s 1996 amendments eliminated a previous requirement that EPA regulate 25 additional contaminants every three years, replacing it with the current regulatory determination process. This change reflected Congress’s desire for EPA to expeditiously address contaminants that truly warrant regulation, without becoming bogged down in arbitrary quotas and procedural requirements. Moreover, Congress included an explicit provision allowing EPA to initiate regulatory determinations whenever necessary for any contaminant outside of the five-year cycle for its candidate contaminant list, recognizing that EPA may need to act expeditiously to address public health concerns between its periodically scheduled reviews. 42 U.S.C. § 300g-1(b)(1)(B)(ii)(III). Interpreting the Act to allow EPA to move forward in a “concurrent” manner on both a regulatory determination and a proposed regulation where appropriate would effectuate Congress’s intent. EPA’s new, alternative reading transforms this provision into a limit rather than an authorization and unnecessarily delays efforts to address public health threats in drinking water, with no apparent benefit.

B. Alternatively, the Phrase “Determination to Regulate” Refers to the Process That Encompasses Both Preliminary and Final Determinations to Regulate.

In the alternative, the phrase “determination to regulate” should be read to refer to the process that includes both preliminary and final determinations to regulate. This interpretation also allows “concurrent processing of a preliminary determination with a proposed rule,” such that EPA may “issue a preliminary determination to regulate a contaminant and a proposed [goal and standard] addressing that contaminant concurrently and request public comment at the same time.” 89 Fed. Reg. at 32538. This reading of 42 U.S.C. § 300g-1 gives the phrase “determination to regulate” a consistent meaning throughout paragraph 300g-1(b)(1) and gives effect to material variations in Congress’s word choices.

Courts use “traditional tools of statutory construction” to find a statute’s “single, best meaning.” *Loper Bright*, 603 U.S. at 400, 403. “Generally, identical words used in different parts of the same statute are presumed to have the same meaning.” *Roberts v. United States*, 572 U.S. 639, 643 (2014) (citation modified). Relatedly, “when Congress ‘employs different words, it usually means different things.’” *Cook v. Trump*, 804 F. Supp. 3d 14, 27 (D.D.C. 2025) (quoting *Ortiz v. Sec’y of Def.*, 41 F.3d 738, 740 (D.C. Cir. 1994)).

Section 300g-1 uses the precise phrase “determination to regulate” six times and statutory interpretation canons favor reading this provision such that each use of this phrase consistently

refers to the determination to regulate process, encompassing both the preliminary and final determinations to regulate (or not regulate).

1. *Clause 300g-1(b)(1)(B)(ii).*

“Determination to regulate” first appears as the heading of clause 300g-1(b)(1)(B)(ii). This clause sets forth a process requiring EPA to make “the preliminary determination” for at least five candidate contaminants every five years and, after “opportunity for public comment,” make final “determinations of whether or not to regulate.” 42 U.S.C. § 300g-1(b)(1)(B)(ii)(I). It also specifies the criteria and evidence on which these decisions must be based and establishes a process for determining to regulate contaminants that are not on EPA’s candidate list. *Id.* § 300g-1(b)(1)(B)(ii)(II)-(III); *see infra* (detailed discussions of these provisions). The content of clause 300g-1(b)(1)(B)(ii) shows that “determination to regulate” in the clause’s heading refers to this entire process and is the closest thing to a statutory definition of “determination to regulate.” *See INS v. Nat’l Ctr. for Immigrants’ Rights*, 502 U.S. 183, 189 (1991) (“[T]he title of a statute or section can aid in resolving an ambiguity in the legislation’s text.”).

2. *Subclause 300g-1(b)(1)(B)(ii)(II).*

The second use of “determination to regulate” says, “A determination to regulate a contaminant shall be based on findings that the criteria of clauses (i), (ii), and (iii) of subparagraph (A) are satisfied.” 42 U.S.C. § 300g-1(b)(1)(B)(ii)(II). It would be illogical, and there is no textual basis, to conclude that Congress intended for these criteria to apply only to final determinations. Instead, this use of “determination to regulate” refers to the entire process and establishes that both preliminary and final determinations shall be based on the specified criteria.

3. *Subclause 300g-1(b)(1)(B)(ii)(III).*

The third and fourth uses of “determination to regulate” appear in the provision stating that EPA “may make a *determination to regulate* a contaminant that does not appear on a list under clause (i) if the *determination to regulate* is made pursuant to subclause (II).” *Id.* § 300g-1(b)(1)(B)(ii)(III) (emphasis added). This provision gives EPA discretion to regulate a contaminant that is not on the list of candidate contaminants established by clause 300g-1(b)(1)(B)(i), provided the Act’s criteria for regulation are satisfied. However, Congress clarified in clause 300g-1(b)(1)(B)(iii) that, whether or not a contaminant is on the candidate list, “[e]ach document setting forth the determination for a contaminant under clause (ii) shall be available for public comment at such time as the determination is published.” EPA agrees that, by requiring public comment, “the context” of clause 300g-1(b)(1)(B)(iii) “makes clear that it refers to a preliminary determination.” 91 Fed. Reg. at 29417. Thus, this provision ensures that any “[d]etermination to regulate” under clause 300g-1(b)(1)(B)(ii) must include both a preliminary determination with opportunity for comment and a final determination. Taken in this context, the

two uses of “determination to regulate” in subclause 300g-1(b)(1)(B)(ii)(III) should be interpreted to mean that EPA may undertake the determination to regulate process, including both a preliminary and final determination, for any contaminant not on the candidate list.

4. *Subparagraph 300g-1(b)(1)(E).*

These four uses of “determination to regulate” inform the interpretation of the fifth and sixth uses, which appear in the second sentence of subparagraph 300g-1(b)(1)(E), the provision that establishes the procedures EPA follows when promulgating goals and standards. In relevant part, the first and second sentences of that provision read in full:

For each contaminant that the Administrator determines to regulate under subparagraph (B), the Administrator shall publish maximum contaminant level goals and promulgate, by rule, national primary drinking water regulations under this subsection. The Administrator shall propose the maximum contaminant level goal and national primary drinking water regulation for a contaminant not later than 24 months after the *determination to regulate* under subparagraph (B), and may publish such proposed regulation concurrent with the *determination to regulate*.

Id. § 300g-1(b)(1)(E) (emphases added). In the second sentence, “determination to regulate under subparagraph (B)” refers to clause 300g-1(b)(1)(B)(ii), which is the portion of subparagraph (B) that Congress labeled “determination to regulate.” As discussed above, clause 300g-1(b)(1)(B)(ii) establishes the full process, including preliminary and final determinations, so the cross-reference in the second sentence of subparagraph 300g-1(b)(1)(E) means the entire process. And, to maintain consistent meaning, the second use of “determination to regulate” in subparagraph 300g-1(b)(1)(E) likewise should be interpreted to mean the entire process described in clause 300g-1(b)(1)(B)(ii).

A close reading of subparagraph 300g-1(b)(1)(E) confirms this interpretation. The first sentence of subparagraph 300g-1(b)(1)(E) establishes that EPA’s duty to set a goal and standard attaches only when EPA completes the process under clause 300g-1(b)(1)(B)(ii) and affirmatively “determines to regulate” a contaminant (a phrasing describing a specific action that is distinct from the broader phrase “determination to regulate”).

The second sentence of subparagraph 300g-1(b)(1)(E) addresses the timing for proposed goals and standards. The first clause of the sentence, that EPA must propose a goal and standard “not later than 24 months after the determination to regulate under subparagraph (B),” *id.* § 300g-1(b)(1)(E), “provides an enforceable 24-month deadline” and “identifies when [the Act’s] deadline begins to run.” 89 Fed. Reg. at 32541. But the first clause of the sentence does not address or limit how early EPA can propose a goal and standard. Instead, the second clause of the sentence clarifies that EPA “may publish such proposed regulation concurrent with the determination to regulate,” *id.* § 300g-1(b)(1)(E), and is the clause that is central to the rationale

underlying the Proposed Rescission Rule. For two key reasons, this clause should be interpreted to mean that EPA may publish and seek comment on a proposed goal and standard concurrent with the determination to regulate process.

First, this interpretation is consistent. As discussed above, all other five uses of “determination to regulate” in section 300g-1 should be interpreted to refer to the process established in clause 300g-1(b)(1)(B)(ii). For consistency, the sixth use of this phrase should be “presumed to have the same meaning.” *Roberts*, 572 U.S. at 643 (citation modified). Thus, the full meaning of the second sentence of subparagraph 300g-1(b)(1)(E) is that EPA may publish the proposed goal and standard as early as when it publishes the preliminary determination (the first step in the regulatory determination process) and no more than 24 months after the final determination (the last step in the regulatory determination process).

Second, this interpretation gives effect to Congressional word choices, specifically the uses of “simultaneous” and “concurrent.” Congress used the terms “simultaneous” or “simultaneously” five times in section 300g-1 but used “concurrent with” only once, in subparagraph 300g-1(b)(1)(E). *See* 42 U.S.C. § 300g-1(a), (a)(3), (b)(8), (b)(13)(F) (requiring EPA to propose, publish, or promulgate various actions simultaneously).⁸⁹ Courts “presume differences in language like this convey differences in meaning.” *Wisc. Cent. Ltd v. United States*, 585 U.S. 274, 279 (2018) (citation modified). While both “simultaneous” and “concurrent” can mean “occurring at the same time,” only “concurrent” has an additional meaning of “running parallel.” *Compare Simultaneous*, Merriam-Webster Dictionary, <http://merriam-webster.com/dictionary/simultaneous> (last visited July 16, 2026) (“existing or occurring at the same time: exactly coincident”), *with Concurrent*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/concurrent> (last visited July 16, 2026) (“operating or occurring at the same time” or “running parallel” or “acting in conjunction”); *see also EMC Corp. v. Hewlett-Packard Co.*, No. 00-cv-40188-NMG, 2003 WL 25782750, at *19 (D. Mass. Sept. 12, 2003) (“The term ‘concurrent’ is defined as ‘running parallel’ and ‘occurring, arising, or operating at the same time often in relationship, conjunction, association, or cooperation.’” (quoting *Webster’s Third International Dictionary* 472 (1981))). To give independent meaning to the unique use of “concurrent with” in subparagraph 300g-1(b)(1)(E), it should be interpreted that Congress meant “running parallel with.” Thus, “concurrent with” indicates that subparagraph 300g-1(b)(1)(E) allows the goal- and standard-setting process to run in parallel with the regulatory determination process, not just that EPA may publish two discrete actions at the same time.

⁸⁹ Congress also used “simultaneous” or “simultaneously” in other sections of the Act. 42 U.S.C. §§ 300h-2, 300j-6, 300j-7, 300j-19b. “Concurrent with” appears only in subparagraph 300g-1(b)(1)(E).

C. EPA’s New Interpretation of Subparagraph 300g-1(b)(1)(E) in the Proposed Rescission Rule Is Not the Best Reading of the Act.

In the 2024 Rule and its merits brief in the D.C. Circuit challenge to the 2024 Rule, EPA previously defended the procedure it followed while promulgating the 2024 Rule as permitted by the best reading of the Act. EPA’s newfound argument to the contrary, based on its new conclusion that “determination to regulate” in subparagraph 300g-1(b)(1)(E) consistently means “final determination to regulate,” is not the best reading for several reasons. *Contra* 91 Fed. Reg. at 29416–17. First, interpreting “determination to regulate” to mean “final determination” does not work in all six uses of “determination to regulate.” For example, reading “determination to regulate” to mean “final determination” in the heading of clause 300g-1(b)(1)(B)(ii) does not make sense because the following subclause explicitly addresses both the preliminary and final determinations and clause 300g-1(b)(1)(B)(iii) requires all determinations under clause (b)(1)(B)(ii) to include a preliminary determination “available for public comment.” Similarly, reading subclause 300g-1(b)(1)(B)(ii)(II) to refer only to the final determination ignores that the criteria provided by Congress apply equally to preliminary determinations. EPA’s interpretation is like arguing that, in a contract that includes a multi-step dispute resolution process under the heading “Dispute Resolution,” subsequent references to “Dispute Resolution” refer only to the final resolution that results from the dispute resolution process, rather than to the entire process.

Second, EPA’s interpretation does not even attempt to give meaning to Congress’s unique use of “concurrent with” in subparagraph 300g-1(b)(1)(E). Its interpretation assumes that Congress was sloppy and that “concurrent with” has the same meaning as “simultaneously with.” A reading of the statute that ascribes different meanings to these different terms is a better reading than EPA’s interpretation.

Third, as discussed above, EPA’s interpretation would render the clause “and may publish such proposed regulation concurrent with the determination to regulate” to be surplusage—a disfavored statutory interpretation—because nothing in the Act otherwise prevents EPA from publishing proposed goals and standards at the same time it promulgates final determinations to regulate. *See, e.g., Solar Energy Industries Ass’n v. FERC*, 154 F.4th 863, 868 (D.C. Cir. 2025) (courts “generally avoid a reading that renders some words altogether redundant” (cleaned up)). EPA argues that the Act’s language is meant to “ma[ke] clear that [Congress] wanted the EPA to act within a certain window.” 91 Fed. Reg. at 29417. But that argument does not clarify the meaning of subparagraph 300g-1(b)(1)(E) and, as presented by EPA, is circular because it depends on EPA’s conclusion that Congress intended to create an exclusive 24-month window. Interpreting the Act to mean “concurrent with the determination to regulate process” or “concurrent with the preliminary determination to regulate” equally specifies the earliest time when EPA can propose a goal and standard and equally establishes a fixed window within which EPA must act. Even if EPA is correct that Congress meant to create

a fixed window for EPA’s proposed goals and standards, that principle does not resolve the statutory interpretation question at issue here.

In sum, EPA’s new statutory interpretation is not the “single, best meaning” of subparagraph 300g-1(b)(1)(E), and, having reversed its position on this issue, the unpersuasive interpretation in the Proposed Rescission Rule deserves no special weight or consideration from the courts. *See Loper Bright*, 603 U.S. at 394, 400. Moreover, EPA has not identified any intervening change in law or judicial decision that justifies its new statutory interpretation or its decision to reverse its position on this issue now compared to the 2024 Rule.

IV. The Proposed Rescission Rule Is Arbitrary and Capricious.

In addition to being substantively unlawful, the proposed Rescission Rule is a textbook example of arbitrary and capricious agency action under the Administrative Procedure Act (“APA”). The Rescission Rule violates numerous tenets of reasoned decisionmaking. As explained below, EPA violated the APA by: (1) seeking to sidestep the APA by simply declaring that the Index PFAS Provisions are illegal; (2) failing to consider alternatives to rescinding the Index PFAS Provisions; (3) relying on legal precedent that undermines, rather than supports its proposed action; (4) foreclosing meaningful comment on issues central to the rulemaking and the Safe Drinking Water Act; (5) failing to consider public health risks, including health information and occurrence data for the Index PFAS; (6) ignoring the reliance interests of utilities, states, and communities; (7) failing to address how rescission would undermine source control, cleanup, and accountability; (8) disregarding the cumulative impacts of rescinding the Index PFAS standards while simultaneously delaying compliance with the PFOA and PFOS standards, and (9) relying on an arbitrary and biased economic analysis.

Congress enacted the APA to ensure stability and rationality in agency action. The Act requires courts to “hold unlawful and set aside agency action, findings, and conclusions found to be ... arbitrary [and] capricious.” 5 U.S.C. § 706(2)(A). Agency action is “arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Motor Vehicle Mfrs. Ass’n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Courts “must ensure that the agency has examined the relevant data and articulated a satisfactory explanation for its action,” *Def’s of Wildlife v. U.S. Dep’t of Interior*, 931 F. 3d 339, 345 (4th Cir. 2019) (internal quotation omitted), “including a rational connection between the facts found and the choice made.” *Dep’t of Commerce v. New York*, 588 U.S. 752, 773 (2019) (quoting *State Farm*, 463 U.S. at 43). At bottom, the APA demands “reasoned decisionmaking” from federal agencies. *State Farm*, 463 U.S. at 52.

Under the Administrative Procedure Act, policy change

cannot be solely a matter of political winds and currents. The Administrative Procedure Act requires that the pivot from one administration's priorities to those of the next be accomplished with at least some fidelity to law and legal process. Otherwise, government becomes a matter of the whim and caprice of the bureaucracy.

N.C. Growers' Ass'n, Inc. v. United Farm Workers, 702 F.3d 755, 772 (4th Cir. 2012) (Wilkinson, J., concurring). Where, as here, an agency is not writing on a "blank slate" but is "changing [its] position," the agency must "provide a more detailed justification than what would suffice for a new policy" if, "for example, ... its prior policy has engendered serious reliance interests that must be taken into account." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). When changing policy, agencies must "assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns." *Dep't of Homeland Sec. v. Regents of Univ. of Cal.*, 591 U.S. 1, 33 (2020). "[W]hen an agency rescinds a prior policy its reasoned analysis must [also] consider the alternatives that are within the ambit of the existing policy." *Id.* at 30 (citation and quotations omitted). An agency must give "good reasons for the new policy," *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016) (citation and quotations omitted), including "a reasoned explanation ... for disregarding facts and circumstances that underlay or were engendered by the prior policy." *Fox*, 556 U.S. at 516.

A. EPA Cannot Avoid Its Responsibilities Under the APA by Simply Declaring That the Index PFAS Provisions Are Unlawful.

As a threshold matter, EPA cannot evade the APA's requirements by declaring that the Index PFAS Provisions violate the Safe Drinking Water Act.⁹⁰ First, nothing in the Safe Drinking Water Act requires EPA to go back and reassess whether it followed the correct procedure or to correct a rule if there was a procedural error—and the agency does not contend otherwise.

Second, even if EPA were correct that there was a procedural error (or that it needs to reassess such error), an agency's new and self-declared finding of illegality does not relieve the agency of its obligation to comply with the APA when taking discretionary action to rectify such an asserted legal error. As the Supreme Court has made clear, an agency's view that a previous administration's rule is unlawful does not justify repealing the policy without considering "important aspect[s] of the problem," such as "serious reliance interests that must be taken into

⁹⁰ See, e.g., 91 Fed. Reg. at 29417, 29421 (restricting public comment and issues considered during rulemaking to EPA's self-declared finding of illegality, without considering other important aspects of the problem).

account” and “weigh[ed] against competing policy concerns.”⁹¹ An agency must “appreciate the full scope of [its] discretion” and weigh the “important policy choices” that discretion entails.⁹² EPA cannot sidestep its obligations under the APA by pretending that its hands are tied by the Safe Drinking Water Act.

B. The Proposed Rescission Rule Arbitrarily Relies on Precedent That Undermines the Proposed Action.

The Proposed Rescission Rule is also arbitrary and capricious because EPA relies on “clearly distinguishable precedent,” *Int’l Longshore & Warehouse Union v. N.L.R.B.*, 971 F.3d 356, 360 (D.C. Cir. 2020) (citation and quotations omitted)—namely, the Supreme Court’s 2024 opinion in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369.⁹³ *Loper Bright* is not merely distinguishable; it undermines the very premise of EPA’s proposed action in the Proposed Rescission Rule.

Loper Bright reaffirmed that “it is emphatically the province and duty of the judicial department to say what the law is.” 603 U.S. at 385 (quoting *Marbury v. Madison*, 1 Cranch 137, 177 (1803)). The Court expressly held that “the reviewing court—not the agency whose action it reviews—is to decide all relevant questions of law and interpret statutory provisions,” including determining the “best reading of the statute.” *Id.* at 398, 400 (emphasis added, citation and quotations omitted).

Yet, citing *Loper Bright* without elaborating, EPA announces its own “best” reading of the Safe Drinking Water Act—one that would purportedly render the Index PFAS Provisions procedurally unlawful. 91 Fed. Reg. at 29416. But the agency is not the entity that decides the best reading. It is particularly arbitrary here for EPA to propose rescinding the Index PFAS Provisions on the basis of the agency’s newfound “best reading” because the issue of the best reading is currently before the D.C. Circuit. Rather than allowing federal courts to exercise their Article III authority to determine the best reading of the Safe Drinking Water Act, EPA is attempting to seize that power for itself, unilaterally determining that the Index PFAS Provisions under review are illegal and providing its own relief for that alleged illegality. EPA’s attempted usurpation is particularly unwarranted here given that the D.C. Circuit previously opined that EPA’s procedural illegality contention was “not so clear as to warrant summary action,” even by a court.⁹⁴ In removing these legal questions from “the province and duty of the judicial department,” *Loper Bright*, 603 U.S. at 385 (citation and quotations omitted), the Proposed Rescission Rule flips *Loper Bright* on its head. Separate and aside from EPA’s authority (or lack

⁹¹ *Dep’t of Homeland Sec.*, 591 U.S. at 24–33 (citation and quotations omitted).

⁹² *Dep’t of Homeland Sec.*, 591 U.S. at 25–26.

⁹³ 91 Fed. Reg. at 29416.

⁹⁴ Order, Doc. No. 2155270, *AWWA v. EPA*, No. 24-1188 (D.C. Cir. Jan. 21, 2026) (denying EPA’s motion to vacate the Index PFAS Provisions).

thereof) to rescind the Index PFAS standards, it is arbitrary and capricious to justify that action through reliance on *Loper Bright*.

C. EPA Arbitrarily and Irrationally Fails to Consider Harmless Error Principles.

Even assuming for the sake of argument that EPA is correct about the Safe Drinking Water Act’s procedural requirements, the Proposed Rescission Rule is arbitrary and capricious because EPA irrationally failed to consider that its entire basis for the rule—that EPA allegedly committed a procedural error while proposing and finalizing the Index PFAS goals and standards—describes, at most, a harmless error. EPA “entirely fail[s] to consider an important aspect of the problem,” *State Farm*, 463 U.S. at 43, by ignoring harmless error principles. EPA has repeatedly relied on the harmless error principle in prior rulemakings to support maintaining rules despite acknowledged procedural defects that it determined were not prejudicial.⁹⁵ The Proposed Rescission Rule is not the result of reasoned decision-making where EPA fails to consider or discuss in any way whether its purported procedural error was prejudicial and, if so, how that affects what actions, if any, EPA should take.

Even assuming *arguendo* that EPA committed procedural error, which it did not, that error was harmless because the public had an ample opportunity to comment on the determinations to regulate, goals, and standards. EPA provided a 60-day comment period on the proposed PFAS NPDWR. 88 Fed. Reg. at 18638 (requiring comments by May 30, 2023). And, with respect to the goals and standards, as EPA explained in the final 2024 Rule, concurrently publishing the proposed regulatory determinations, goals, and standards provided stakeholders with *more* information earlier in the process, promoting public engagement rather than defeating it. 89 Fed. Reg. at 32542.

The preamble to the Proposed Rescission Rule conspicuously does not claim or document that anyone was harmed in any way by the lack of a second comment period for the Index PFAS

⁹⁵ See, e.g., Approval and Promulgation of Air Quality Implementation Plans; New Hampshire, 89 Fed. Reg. 88139, 881343–44 (Nov. 7, 2024) (dismissing procedural “oversight” because any error “would be harmless”); Chlorpyrifos, 87 Fed. Reg. 11222, 11258–59 (Feb. 28, 2022) (dismissing “technical issues” with publication as “harmless error” because it had “no legal consequence”); Control of Air Pollution From Aircraft and Aircraft Engines, 49 Fed. Reg. 31873, 31874 (Aug. 9, 1984) (“EPA’s failure to consider GAMA’s comments was a harmless error”); Air Plan Approval; Pennsylvania, 86 Fed. Reg. 8697, 8698 (Feb. 9, 2021) (“The correct total is 10.90 tons/day... EPA believes this to be a harmless error.”); Air Plan Approval; West Virginia, 86 Fed. Reg. 12265, 12269 n.9 (Mar. 3, 2021) (“The inclusion of the slightly higher but incorrect figure in the NPRM is a harmless error.”); Flutriafol, 80 Fed. Reg. 71947, 71948 (Nov. 18, 2015) (“[A] harmless error was made in the notice.”); Redesignation of the Phoenix-Mesa Nonattainment Area, 79 Fed. Reg. 16734, 16746 (Mar. 26, 2014) (“[T]he failure to include PCAQCD in the plan’s discussion ... [is] harmless error.”).

goals and standards. To the extent that EPA intends to imply that the public or particular stakeholders were harmed because they supposedly were entitled to separate, sequential comment opportunities on proposed regulatory determinations and on proposed goals and standards, EPA has not explained or justified that implication nor identified any actual prejudice to anyone.

Even looking beyond EPA's justifications in the Proposed Rescission Rule, EPA and other parties have failed to show elsewhere any prejudice from the procedure EPA used to develop and promulgate the 2024 Rule. First, in the *AWWA v. EPA* litigation, EPA has argued that the public was harmed because the preliminary and final determinations to regulate the Index PFAS were "markedly different" and the public did not have the benefit of the final determinations when commenting on the proposed goals and standards. Respondents' Motion for Partial Vacatur at 18, Doc. No. 2134523, No. 24-1188 (D.C. Cir. Sep. 11, 2025). To the extent EPA intends to rely prospectively upon that rationale for the Proposed Rescission Rule, it contains inaccuracies and does not show any prejudice to the public. The only difference between the proposed and final determinations is that EPA published proposed regulatory determinations for four of the Index PFAS individually, along with a determination to regulate them as a mixture, and then promulgated final regulatory determinations for only three of them individually (declining to regulate PFBS individually for now) and for all four as a mixture as it had proposed. Thus, stakeholders had the opportunity to comment on all regulatory determinations, goals, and standards that EPA ultimately finalized. Notably, in its arguments to the D.C. Circuit, EPA has asserted only that its procedural error "infected the Goals and Standards" for the Index PFAS and has not argued that the regulatory procedure for the 2024 Rule harmed any stakeholders with respect to the determinations to regulate. *Id.* at 19. So even if EPA were to now rely on its assertions in that litigation, it still has not alleged any harm with respect to the regulatory determinations.

Second, in the *AWWA v. EPA* litigation, industry parties have attempted to argue that they were prejudiced by EPA's regulatory procedure for the 2024 Rule because additional contaminant occurrence data became available between the proposed rule and the final rule. As an initial matter, there will *always* be more data available over time and this red-herring rationale would justify never-ending regulatory processes. The Act requires EPA to make determinations to regulate "based on the best *available* public health information," 42 U.S.C. § 300g-1(b)(1)(B)(ii)(II) (emphasis added), and to use "the best *available*, peer-reviewed science and supporting studies" when making other science-based decisions, such as setting goals and standards, *id.* § 300g-1(b)(3)(A)(i) (emphasis added). The Act does not require or allow EPA to perpetually defer regulation while awaiting new data. In addition, the occurrence data are irrelevant to setting purely health-based goals. *See* 42 U.S.C. § 300g-1(b)(4)(A) ("Each maximum contaminant level goal established under this subsection shall be set at the level at which no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety."). And, even for setting standards that are as close to the goals as

feasible, *id.* § 300g-1(b)(4)(B), occurrence data serve only a limited purpose in assessing benefits and costs of a proposed standard, *see id.* § 300g-1(b)(3)(C), (b)(4)(C), (b)(6)(A) (providing that EPA may promulgate a standard as close to the goal as feasible even if the health risk reduction benefits do not justify the costs). Given the limited role of occurrence data, there was no prejudice to any stakeholder from EPA’s use of occurrence data in the rulemaking process that culminated in the 2024 Rule.

Given that the harmlessness of any procedural error has already been briefed in the *AWWA v. EPA* litigation regarding the validity of the 2024 Rule, EPA’s failure to consider harmless error principles in the Proposed Rescission Rule is particularly arbitrary. EPA clearly has notice from the litigation that any procedural error is at least arguably harmless, yet EPA fails to address harmless error concepts at all in the Proposed Rescission Rule. And, since these issues will soon be decided by the Court, it would be irrational for EPA to continue to pursue this rulemaking before the Court has ruled on the very issues EPA contends underlie the proposed rule.

In all, EPA irrationally, arbitrarily, and capriciously fails to consider whether its purported procedural error was prejudicial, fails to identify any prejudice from the rulemaking procedures that led to the 2024 Rule, fails to acknowledge that any procedural error was harmless, and fails to consider the implications of the sole basis for the Proposed Rescission Rule resting on, at most, a harmless error.

D. EPA Arbitrarily Fails to Consider Alternatives to Rescinding the Index PFAS Provisions.

The Proposed Rescission Rule is arbitrary and capricious because EPA fails to consider any alternatives to complete rescission of the Index PFAS Provisions. To satisfy the APA’s mandate for reasoned decision-making, EPA “is required to consider responsible alternatives to its chosen policy and to give a reasoned explanation for its rejection of such alternatives.” *Spirit Airlines, Inc. v. Dep’t of Transp.*, 997 F.3d 1247, 1255 (D.C. Cir. 2021) (quotation omitted); *see also State Farm*, 463 U.S. at 50–51 (holding that agency arbitrarily rescinded motor vehicle safety standard without considering the alternative of maintaining the standard through use of a different technology). “This principle goes to the heart of reasoned decisionmaking.” *Spirit Airlines*, 997 F.3d at 1255.

This requirement applies with equal force where, as here, an agency rescinds a prior action based on its determination that the prior action is unlawful. *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30 (2020). This is so because, even if the agency’s new determination of illegality is correct—which is not the case here—“deciding how best to address a finding of illegality moving forward can involve important policy choices” that the agency must rationally consider before rescinding its purportedly unlawful action. *Id.* at 25; *see also Louisiana v. Dep’t of Energy*, 90 F.4th 461, 476 (5th Cir. 2024) (holding that “even when an

agency determines that its previous decision was illegal, it *still* must go on to consider alternatives to simply revoking the prior action”). Thus, “in rescinding a prior action, an agency cannot simply brand it illegal and move on.” *Louisiana*, 90 F.4th at 475. Instead, the agency “must consider the alternatives that are within the ambit of the existing policy” and rationally explain its choice among them. *Regents*, 591 U.S. at 30 (cleaned up).

Even assuming for the sake of argument that EPA followed an unlawful procedure in promulgating the Index PFAS Provisions, which is not the case, EPA’s failure to consider obvious, reasonable alternatives to wholesale rescission of those provisions renders the Proposed Rescission Rule arbitrary and capricious. There are multiple alternatives that EPA must rationally consider:

First, EPA arbitrarily fails to consider the option of taking no action respecting the Index PFAS Provisions given that the D.C. Circuit Court of Appeals is poised to determine the legality of the procedure EPA followed in promulgating them. That issue is fully briefed before the Court in litigation challenging the 2024 Rule that will be argued in less than two months.⁹⁶ And it is the Court, not EPA, that has the ultimate authority to resolve that disputed question of statutory interpretation. *Loper Bright*, 630 U.S. at 412. Furthermore, as explained above, the Safe Drinking Water Act forbids EPA’s administratively rescinding the Index PFAS Provisions, and EPA’s asserted desire “to correct its own mistake” in promulgating those provisions does not justify circumventing those statutory limits on the agency’s authority. *New Jersey v. EPA*, 517 F.3d 574, 583 (D.C. Cir. 2008) (rejecting EPA’s argument that it should not have to wait for a court to vacate a rule the agency deemed invalid).

Second, EPA arbitrarily fails to consider the option of retaining the Index PFAS Provisions despite its contention that there was a procedural error in their promulgation because any such error was harmless, *see supra* Section IV.C, a course it has followed many times before. The principle of harmless error provides that agency rules should be preserved despite errors in their promulgation “[i]f the agency’s mistake did not affect the outcome” or prejudice interested parties. *PDK Lab’ys Inc. v. U.S. Drug Enf’t Agency*, 362 F.3d 786, 799 (D.C. Cir. 2004); *see also City of Waukesha v. EPA*, 320 F.3d 228, 246 (D.C. Cir. 2003) (affirming that the APA requires a showing of prejudice to justify relief from agency procedural violations). EPA has repeatedly relied on the harmless error principle in prior rulemakings to support maintaining rules despite acknowledged procedural defects that it determined were not prejudicial.⁹⁷ Its

⁹⁶ *See, e.g.*, Final Opening Br. of Pet’rs Am. Water Works Ass’n et al. 18–33, *AWWA v. EPA*, No. 24-1188 & consolidated cases (D.C. Cir. Filed Mar. 6, 2026); Respondents’ Final Br. 28–37, *AWWA v. EPA*, No. 24-1188 & consolidated cases (D.C. Cir. Filed Mar. 6, 2026); Final Br. of Respondent-Intervenors 10–12, *AWWA v. EPA*, No. 24-1188 & consolidated cases (D.C. Cir. Filed Mar. 6, 2026); *see also* Order, *AWWA v. EPA*, No. 24-1188 & consolidated cases (D.C. Cir. June 29, 2026) (scheduling oral argument for September 18, 2026).

⁹⁷ *See, supra* note 95.

failure to consider that option here is particularly arbitrary both because the agency did not assert in the proposed rule that anyone suffered harm from the alleged procedural error and because EPA is a party to the pending lawsuit noted above in which the harmless error principle was raised.

Third, EPA arbitrarily fails to consider the option of retaining its regulatory determinations for the Index PFAS because, as explained above, EPA has not identified any error in their promulgation. It is arbitrary for the agency to rely on an alleged legal error “that applie[s] to only part of a [rule] as sufficient to rescind the entire [rule].” *Regents*, 591 U.S. at 5. Even assuming for the sake of argument that it would be rational for EPA to rescind the Index PFAS drinking water standards due to a procedural error in their promulgation, it would still be irrational to rescind the regulatory determinations because the regulatory determinations are severable from those standards and EPA is not withdrawing any of the analysis or conclusions that support the regulatory determinations.⁹⁸

Fourth, even assuming arguendo that EPA is correct that a prejudicial procedural error renders the maximum contaminant level goals and drinking water standards for the Index PFAS invalid, EPA acted arbitrarily by not considering the option of re-proposing those goals and standards now. This would provide the additional round of public comment that EPA claims was fatally absent in the goals’ and standards’ original promulgation and thereby cure any alleged procedural error. Similarly, even if EPA were correct that the claimed procedural error renders the regulatory determinations for the Index PFAS invalid as well, EPA must consider the option of re-proposing those determinations now, which likewise would allow EPA to cure the supposed error in their promulgation. This is particularly arbitrary because EPA is not “reassess[ing] ... the substantive findings included in [EPA’s] regulatory determinations or associated NPDWR provisions” for the Index PFAS, 97 Fed. Reg. at 29417, and EPA has asserted that protecting the public from harm from PFAS is one of the agency’s top two priorities.⁹⁹ Re-proposing the provisions now would ensure that these highly toxic and widespread drinking water contaminants are regulated,¹⁰⁰ whereas EPA’s proposed approach provides no such assurance. If EPA’s sincere motivation for the Proposed Rescission Rule is to ensure that these chemicals are regulated under the proper procedures, EPA should simply re-

⁹⁸ See 2024 Rule, 89 Fed. Reg. at 32731–32 (discussing severability of 2024 Rule provisions); Respondents’ Final Br. 22, *AWWA v. EPA*, No. 24-1188 & consolidated cases (D.C. Cir. Filed Mar. 6, 2026) (explaining that the 2024 Rule’s “provisions for each contaminant are severable, as are EPA’s actions at each step of the regulatory process for each contaminant”).

⁹⁹ EPA, *FY 2027 EPA Budget in Brief* 4 (2026), https://www.epa.gov/system/files/documents/2026-04/00_fy-2027-bib_combined_final.pdf (last visited July 15, 2026).

¹⁰⁰ See 42 U.S.C. § 300g-1(b)(1)(E) (requiring EPA to propose a maximum contaminant level goal and drinking water standard no later than 24 months after determination to regulate and to promulgate a final goal and standard within 18 months of their proposal).

propose the maximum contaminant level goals and standards—or, at minimum, the regulatory determinations—now.

In sum, EPA’s failure to consider multiple obvious, reasonable alternatives to wholesale rescission of the Index PFAS Provisions renders the Proposed Rescission Rule arbitrary and capricious.

E. EPA Unlawfully Seeks to Restrict Comments in a Clear Attempt to Shield Its Actions from Public Scrutiny.

EPA improperly seeks to limit public comment to only the esoteric procedural question of whether the Index PFAS Provisions were promulgated in the right sequence.¹⁰¹ It asserts it will not consider comments on “important aspect[s] of the problem,” *State Farm*, 463 U.S. 43—namely, the substance, merits, and scientific basis of the Index PFAS standards; the harms to the public from losing protections against toxic PFAS in drinking water; and the “serious reliance interests” engendered by those protections. *Fox*, 556 U.S. at 515. In the preamble, EPA not only states that it is not seeking comment on those important aspects of its proposed actions, but also asserts that submitting comments on them is improper:

The EPA’s proposal is solely based on its conclusion that the Agency legally erred for the reasons described in this notice of proposed rulemaking and is seeking comment on those reasons. The EPA’s proposal is not based on any reassessment of the substantive findings included in its regulatory determinations or associated NPDWR provisions. As a result, *the EPA is not seeking comment on its substantive findings supporting either its regulatory determinations or its associated NPDWR provisions, including any information about health risks associated with PFAS, cost of regulation, or occurrence information.*¹⁰²

Leaving no doubt, EPA underscores:

*Any comments not limited to the basis of the EPA’s proposal or specific regulatory edits associated with removing requirements related to PFHxS, PFNA, HFPO–DA and the Index PFAS from the Code of Federal Regulations are considered beyond the scope of this rulemaking.*¹⁰³

¹⁰¹ 91 Fed. Reg. at 29417.

¹⁰² *Id.* (emphasis added).

¹⁰³ *Id.* at 29421 (emphasis added).

Notably, these are all factors discussed in EPA’s Economic Analysis Memorandum that it uses to try to help justify the proposed rule.¹⁰⁴ As discussed more in Section IV.J below, EPA presents a skewed assessment of these factors yet prohibits the public from commenting on those issues. This double standard is arbitrary and violates the APA.

Federal courts routinely vacate regulatory changes because agencies have done precisely what EPA does in the Proposed Rescission Rule: restrict public comments to the agency’s selected basis for the policy change (here, the purported procedural violations) without considering the full “substance or merits” of the prior rules or the new regime post-rescission. *E.g., N.C. Growers’ Ass’n, Inc. v. United Farm Workers*, 702 F.3d 755, 769–70 (4th Cir. 2012); *S.C. Coastal Conservation League v. Pruitt*, 318 F. Supp. 3d 959, 963–67 (D.S.C. 2018). The elimination of the Index PFAS Provisions will affect the health of millions of Americans—thus, those issues are not, contrary to EPA’s assertions, “beyond the scope of this rulemaking.”¹⁰⁵ EPA’s refusal to consider or solicit comments on the substance or merits of the Index PFAS Provisions or the Proposed Rescission Rule (including, but not limited to, scientific data on the harms caused by the Index PFAS and occurrence data on the frequency with which they appear in public water systems) violates the APA. EPA does this by: (i) “fail[ing] to consider [] important aspect[s] of the problem,” *N.C. Growers’ Ass’n*, 702 F.3d at 769–70 (citation and quotations omitted), and (ii) depriving the public of a “meaningful opportunity” to comment, *S.C. Coastal Conservation League*, 318 F. Supp. 3d at 963–67 (citing 5 U.S.C. § 553). This hasty, ill-considered effort to dismantle drinking water protections without considering the substance, merits, or impacts not only violates the APA, it endangers the public.

F. EPA Arbitrarily Failed to Consider the Full Public Health Risks of Rescinding These Standards.

The Safe Drinking Water Act reflects a central mandate: to protect public health through rigorous, enforceable standards governing the safety and quality of the nation’s drinking water.¹⁰⁶ EPA does not merely overlook relevant considerations—it disregards the core statutory question: whether rescinding these standards advances or undermines the Act’s public health objective. That is, without a doubt, an “important aspect of the problem.” *State Farm*, 463 U.S. 43.

¹⁰⁴ EPA, Overview of Costs and Benefits for the Rescission of Regulatory Determinations and Removal of Related Provisions for Four PFAS Substances, at 1-2 (May 2026), Rulemaking Record EPA-HQ-OW-2025-0654 (hereinafter, “Economic Analysis Memorandum”).

¹⁰⁵ 91 Fed. Reg. at 29421.

¹⁰⁶ *See Nat’l Wildlife Fed’n v. EPA*, 980 F.2d at 768; Pub. L. 104-182, § 3, Aug. 6, 1996, 110 Stat. 1614, *codified as a note to* 42 U.S.C. § 300f (“The Congress finds that ... safe drinking water is essential to the protection of public health[.]”).

EPA’s own prior findings underscore the arbitrariness of this reversal. In establishing the Index PFAS Provisions, EPA determined that the statutory criteria for regulation were satisfied: (1) the Index PFAS may have adverse effects on human health; (2) these contaminants are known, or substantially likely, to occur in public water systems with a frequency and at levels of concern; and (3) regulating them presents a meaningful opportunity to reduce health risks. *See* 42 U.S.C. § 300g-1(b)(1)(A). Those findings rested on an extensive record, including peer-reviewed health studies and extensive occurrence data evaluating the frequency and concentration of the Index PFAS—both individually and as mixtures—in drinking water systems nationwide. Indeed, EPA does not second-guess any of those findings in the Proposed Rescission Rule.

But this does not mean EPA can rationally ignore this evidence—nor the more recent evidence bolstering the necessity for the Index PFAS standards. As noted above, EPA’s discretionary re-reading of the Safe Drinking Water Act to render the Index PFAS Provisions unlawful does not constitute “a reasoned explanation ... for disregarding facts and circumstances that underlay or were engendered by the prior policy.” *Fox*, 556 U.S. at 516. That failure to confront its own prior findings or provide a reasoned explanation for ignoring them is the hallmark of arbitrary decisionmaking.

EPA’s omission is even more glaring given the significant new evidence developed since the standards were promulgated—evidence confirming that the Index PFAS harm human health and are likely to occur in public water systems at levels and frequencies that raise public-health concerns. EPA entirely ignores that evidence.

1. EPA fails to consider new occurrence data showing the prevalence of Index PFAS.

EPA did not consider updated UCMR 5 and state data showing the Index PFAS are widespread, persistent, and often exceed regulatory limits. Data released from UCMR 5 in 2026 shows that water systems serving 15 million people reported levels of the Index PFAS higher than the 2024 standards in at least one sample.¹⁰⁷ And even that figure materially understates the scope of the problem. UCMR 5 is not comprehensive: it systematically underrepresents small systems and cannot capture future evolving contamination trends, including increasing concentrations of Index PFAS in the environment.¹⁰⁸ Since 2024, states including North Carolina, South Carolina, Virginia, Tennessee, New York, New Jersey, California, Michigan, Wisconsin, and Vermont have also generated substantial additional occurrence data confirming the widespread presence of these contaminants.¹⁰⁹ EPA failed to consider or analyze updated

¹⁰⁷ Weimer, SELC 2026 UCMR 5 Data Analysis, *supra* note 62.

¹⁰⁸ *Cf. supra* Section I.E (discussing the increasing use of PFAS in semiconductor manufacturing).

¹⁰⁹ *See PFAS Dashboard Map*, N.C. Dep’t of Env’t Quality Div. of Water Res.: Groundwater Res. Branch (July 1,

UCMR 5 results or new state-level data demonstrating the prevalence, persistence, and regulatory exceedances of these compounds.

2026), <https://www.arcgis.com/home/item.html?id=a4954028df1e445b92c967056b7e8fcb#overview> (providing PFAS sampling data from 2019 through 2026, including Index PFAS chemicals); *Ambient Surface Water PFAS Monitoring*, S.C. Dep't of Env't Servs., <https://gis.des.sc.gov/pfas/> (last visited July 9, 2026) (displaying PFAS sampling data for the state and offering downloadable data for surface water PFAS concentrations spanning from early 2024 through March 2026 as part of the state's "Long-term Monitoring Project"); *Statewide PFAS Sampling Dashboard*, Va. Dep't of Env't Quality, <https://www.deq.virginia.gov/news-info/shortcuts/topics-of-interest/per-and-polyfluoroalkyl-substances-pfas> (last visited July 9, 2026) (presenting an embedded map and data dashboard detailing PFAS sampling information from 2021 through 2026 for surface water, fish tissue, and sediment); *TDEC's Per- and Polyfluoroalkyl Substances (PFAS) Sampling Effort*, Tenn. Dep't of Env't & Conservation (Jan. 9, 2026), <https://experience.arcgis.com/experience/0e7d9916f6b94f92b0cc9c07d30abe69> (showing PFAS testing results for source water supplying public drinking water systems and providing a link to the data); *PFAS & 1,4-Dioxane Information Portal*, N.Y. State Dep't of Env't Conservation: Div. of Water, <https://experience.arcgis.com/experience/2a5c1a31514c4965882917e74ec31c1f/page/Data-Tables/> (last visited July 9, 2026) (selecting "Ambient Water Chemistry Results" shows PFAS surface water data up to September of 2024); *NJ Private Well Testing Act Data Summary: PFAS*, N.J. Dep't of Env't Prot., https://experience.arcgis.com/experience/12f2a0a9e4754a8c8eb9c6e7cf04020c/page/PFAS#data_s=id%3AdataSource_26-Private_Well_Testing_Act_Summary_Results_Within_2_mile_Grids_for_New_Jersey_8523%3A885 (last visited July 9, 2026) (providing data on PFNA in private wells up to December 2024); *GeoTracker PFAS Map*, Cal. State Water Res. Control Bd., https://geotracker.waterboards.ca.gov/map/pfas_map (last visited July 9, 2026) (offering plentiful data on PFAS chemicals, including the Index PFAS, up through June 2026); *PFAS Surface Water Sampling*, Mich. Dep't of Env't, Great Lakes, & Energy: Water Res. Div. (June 26, 2026, at 9:02 EDT), https://gis-egle.hub.arcgis.com/datasets/391cca4f364845829abcd5a92093c631_0/explore?location=44.809768%2C-86.388492%2C6 (displaying PFAS sampling data from November 2021 through June 2026); *Drinking Water System Portal: Find Contaminants in Public Water Supplies*, Wis. Dep't of Nat. Res., <https://apps.dnr.wi.gov/dwsportalpub/ContamResult/Search> (last visited July 9, 2026) (providing a tool to locate data on contaminants in drinking water, including the Index PFAS chemicals); *Drinking Water Database Search*, Vt. Dep't of Env't Conservation: Drinking Water & Groundwater Prot. Div., <https://anrweb.vt.gov/DEC/DWGWP/SearchWS.aspx> (last visited July 9, 2026) (providing a tool to look up contaminant concentrations by water system that includes data for Index PFAS chemicals).

2. *EPA fails to consider new health data documenting the serious harms caused by the Index PFAS.*

A growing body of peer-reviewed literature continues to document serious adverse health effects associated with Index PFAS exposure. In proposing to rescind the Index PFAS Provisions, EPA failed to adequately consider evidence of harm already established in the 2024 Rule, as well as the approximately six to eight additional years of evidence that has been published since the literature searches supporting the health reference levels were conducted.¹¹⁰ This is arbitrary and capricious. Further, as a result of this omission, EPA substantially understates the forgone benefits associated with the rescission rule.

In promulgating the 2024 Rule, EPA already provided clear evidence that exposure to: PFHxS is associated with liver, thyroid, and developmental effects; PFNA is associated with developmental, reproductive, immune, and liver effects; GenX is associated with liver, kidney, immune, hematological, reproductive, and developmental effects; and PFBS is associated with developmental, thyroid, and kidney effects. EPA also concluded that there was “Suggestive Evidence of Carcinogenic Potential” for GenX.¹¹¹ Finally, EPA concluded that exposure to per- and polyfluoroalkyl acids, a subclass of PFAS that includes PFOA, PFOS, and the Index PFAS, can “disrupt signaling of multiple biological pathways, resulting in a shared set of adverse effects, including effects on thyroid hormone levels, lipid synthesis and metabolism, development, and immune and liver function.”¹¹²

Since the time EPA finalized the PFAS drinking water regulations, there have been hundreds of additional studies performed that not only support EPA’s findings in the 2024 Rule, but suggest greater harm associated with exposure to the Index PFAS.

¹¹⁰ The health reference levels for PFHxS and PFNA were based on the minimal risk levels developed in ATSDR’s 2021 Toxicological Profile for Perfluoroalkyls, which included studies up to September 2018. The health reference level for GenX was based on EPA’s toxicity assessment that was finalized in October 2021 and covered literature published through March 2020; the health reference level for PFBS was based on EPA’s toxicity assessment that was finalized in April 2021 and covered literature published through May 15, 2020.

¹¹¹ 89 Fed. Reg. at 32544.

¹¹² *Id.* at 32545.

- a. *EPA does not consider additional evidence of harm associated with PFHxS exposure that shows greater toxicity and additional health effects.*

New evidence not considered in the development of the PFHxS drinking water standard suggests that the risk appears at lower levels than originally thought and that there are additional risks that were not originally described, in particular immunotoxicity.

The 2024 drinking water regulation for PFHxS was derived from a minimum risk level (“MRL”; i.e. a reference dose [“RfD”]) based on animal data evaluated in the ATSDR’s 2021 Toxicological Profile for Perfluoroalkyls (2×10^{-5} mg/kg/day).¹¹³ At the time, EPA was in the process of conducting an updated toxicological review, but it was still draft and not yet finalized. EPA’s updated toxicological review for PFHxS was finalized and published in January 2025 and contained at least 380 studies¹¹⁴ not included in ATSDR’s Toxicological Profile. Those studies reflect the increased understanding of the harms associated with PFHxS exposure. For example, EPA added immunotoxicity as a major health effect associated with exposure, which was also determined to be the most sensitive endpoint for PFHxS.¹¹⁵

In the 2025 toxicological review, EPA based the reference dose on epidemiological data that found increased exposure to PFHxS is associated with decreased serum anti-diphtheria and anti-tetanus antibody concentrations (a marker of immune function) in children.¹¹⁶ Though some of the epidemiological findings available at the time were discussed in the ATSDR document, they were not considered for MRL derivation by ATSDR, as ATSDR relied only on animal data for their calculations. In contrast, EPA calculated points of departure for four immune related endpoints from four epidemiological studies and concluded that the “evidence indicates” PFHxS is likely to cause adverse immune effects in humans on the basis of the evidence presented in human studies. Two of the studies that EPA relied on, Budtz-Jørgensen and Grandjean, 2018¹¹⁷

¹¹³ ATSDR, *Toxicological Profile for Perfluoroalkyls* (2021), <https://www.atsdr.cdc.gov/toxprofiles/tp200.pdf>.

¹¹⁴ We have provided, as an attachment to these comments, a list of references published starting in 2018 that are available in US EPA, *IRIS Toxicological Review of Perfluorohexanesulfonic Acid (PFHxS, CASRN 335-46-4) and Related Salts*, Final EPA/635/R-25/012Fa (2025), <https://iris.epa.gov/document/&deid=363894> that were likely not available in ATSDR, *Toxicological Profile for Perfluoroalkyls* (2021), <https://www.atsdr.cdc.gov/toxprofiles/tp200.pdf>.

¹¹⁵ US EPA, *IRIS Toxicological Review of Perfluorohexanesulfonic Acid (PFHxS, CASRN 335-46-4) and Related Salts*, Final EPA/635/R-25/012Fa (2025), <https://iris.epa.gov/document/&deid=363894>.

¹¹⁶ *Id.*

¹¹⁷ Esben Budtz-Jørgensen and Philippe Grandjean, *Application of Benchmark Analysis for Mixed Contaminant Exposures: Mutual Adjustment of Perfluoroalkylate Substances Associated with Immunotoxicity*, *PLOS ONE* 13, no. 10 (2018): e0205388, <https://doi.org/10.1371/journal.pone.0205388>.

and Grandjean, 2017,¹¹⁸ were not included in the ATSDR profile because they were made available after the literature searching cut-off date. Additionally, new research on decreased serum antibody concentrations in response to vaccines was included in EPA's analysis and added support to EPA's conclusion, including studies by Timmermann et al. in 2020 and 2021.¹¹⁹ Further, EPA also reviewed other new studies related to immune system function or development, including a toxicological study by The National Toxicology Program,¹²⁰ and

¹¹⁸ Philippe Grandjean et al., "Estimated Exposures to Perfluorinated Compounds in Infancy Predict Attenuated Vaccine Antibody Concentrations at Age 5-Years," *Journal of Immunotoxicology* 14, no. 1 (2017): 188–95, <https://doi.org/10.1080/1547691X.2017.1360968>.

¹¹⁹ Clara Amalie Gade Timmermann et al., "Serum Perfluoroalkyl Substances, Vaccine Responses, and Morbidity in a Cohort of Guinea-Bissau Children," *Environmental Health Perspectives* 128, no. 8 (2020): 87002, <https://doi.org/10.1289/ehp6517>; Clara Amalie Gade Timmermann et al., "Concentrations of Tetanus and Diphtheria Antibodies in Vaccinated Greenlandic Children Aged 7–12 Years Exposed to Marine Pollutants, a Cross Sectional Study," *Environmental Research* 203 (January 2022): 111712, <https://doi.org/10.1016/j.envres.2021.111712>.

¹²⁰ National Toxicology Program, "28-Day Evaluation of the Toxicity (C06100) of Perfluorohexane Sulfonate Potassium Salt (PFHKSlt) (3871-99-6) on Harlan Sprague-Dawley Rats Exposed via Gavage," April 2018, 002-03267-0002-0000–0002, <https://doi.org/10.22427/NTP-DATA-002-03267-0002-0000-2>.

epidemiological research on infectious diseases¹²¹ and hypersensitivity.¹²² Ultimately, EPA calculated a reference dose for immune effects associated with PFHxS exposure of 4×10^{-10}

¹²¹ Catherine M. Bulka et al., “Associations of Exposure to Perfluoroalkyl Substances Individually and in Mixtures with Persistent Infections: Recent Findings from NHANES 1999–2016,” *Environmental Pollution* 275 (April 2021): 116619, <https://doi.org/10.1016/j.envpol.2021.116619>; Louise Dalsager et al., “Exposure to Perfluoroalkyl Substances during Fetal Life and Hospitalization for Infectious Disease in Childhood: A Study among 1,503 Children from the Odense Child Cohort,” *Environment International* 149 (April 2021): 106395, <https://doi.org/10.1016/j.envint.2021.106395>; Philippe Grandjean et al., “Severity of COVID-19 at Elevated Exposure to Perfluorinated Alkylates,” *PLOS ONE* 15, no. 12 (2020): e0244815, <https://doi.org/10.1371/journal.pone.0244815>; A. Impinen et al., “Maternal Levels of Perfluoroalkyl Substances (PFASs) during Pregnancy and Childhood Allergy and Asthma Related Outcomes and Infections in the Norwegian Mother and Child (MoBa) Cohort,” *Environment International* 124 (March 2019): 462–72, <https://doi.org/10.1016/j.envint.2018.12.041>; H. E. Kvale et al., “Perfluoroalkyl Substances, Airways Infections, Allergy and Asthma Related Health Outcomes - Implications of Gender, Exposure Period and Study Design,” *Environment International* 134 (January 2020): 105259, <https://doi.org/10.1016/j.envint.2019.105259>; Cyntia B. Manzano-Salgado et al., “Prenatal Exposure to Perfluoroalkyl Substances, Immune-Related Outcomes, and Lung Function in Children from a Spanish Birth Cohort Study,” *International Journal of Hygiene and Environmental Health* 222, no. 6 (2019): 945–54, <https://doi.org/10.1016/j.ijheh.2019.06.005>; Zixia Wang et al., “Association between Maternal Serum Concentration of Perfluoroalkyl Substances (PFASs) at Delivery and Acute Infectious Diseases in Infancy,” *Chemosphere* 289 (February 2022): 133235, <https://doi.org/10.1016/j.chemosphere.2021.133235>; Xiao-Wen Zeng et al., “Prenatal Exposure to Perfluoroalkyl Substances Is Associated with Lower Hand, Foot and Mouth Disease Viruses Antibody Response in Infancy: Findings from the Guangzhou Birth Cohort Study,” *Science of The Total Environment* 663 (May 2019): 60–67, <https://doi.org/10.1016/j.scitotenv.2019.01.325>.

¹²² Iben Have Beck et al., “Association between Prenatal Exposure to Perfluoroalkyl Substances and Asthma in 5-Year-Old Children in the Odense Child Cohort,” *Environmental Health* 18, no. 1 (2019): 97, <https://doi.org/10.1186/s12940-019-0541-z>; Qian Chen et al., “Prenatal Exposure to Perfluoroalkyl and Polyfluoroalkyl Substances and Childhood Atopic Dermatitis: A Prospective Birth Cohort Study,” *Environmental Health* 17, no. 1 (2018): 8, <https://doi.org/10.1186/s12940-018-0352-7>; A. Impinen et al., “Maternal PFASs and Childhood Allergy and Asthma” (March 2019), <https://doi.org/10.1016/j.envint.2018.12.041>; Medina S. Jackson-Browne et al., “PFAS (per- and Polyfluoroalkyl Substances) and Asthma in Young Children: NHANES 2013-2014,” *International Journal of Hygiene and Environmental Health* 229 (August 2020): 113565, <https://doi.org/10.1016/j.ijheh.2020.113565>; H. E. Kvale et al., “Perfluoroalkyl Substances, Airways Infections, Allergy and Asthma Related Health Outcomes” (January 2020), <https://doi.org/10.1016/j.envint.2019.105259>; Cyntia B. Manzano-Salgado et al., “Prenatal Exposure to Perfluoroalkyl Substances, Immune-Related Outcomes, and Lung Function” (2019) <https://doi.org/10.1016/j.ijheh.2019.06.005>; Clara Amalie Gade Timmermann et al., “Association between Perfluoroalkyl Substance Exposure and Asthma and Allergic Disease in Children as Modified by MMR Vaccination,” *Journal of Immunotoxicology* 14, no. 1 (2017): 39–49, <https://doi.org/10.1080/1547691X.2016.1254306>.

mg/kg/day, which is approximately 5 orders of magnitude lower than ATSDR's MRL. This demonstrates the need to incorporate more recently published research demonstrating the harms of PFHxS exposure when evaluating forgone benefits from rescinding the individual PFHxS standard and the Hazard Index standard. Importantly, a maximum contaminant level goal based on the reference dose most recently calculated by EPA would be far below EPA's minimum reporting limit, which would necessitate strengthening the drinking water standard for PFHxS to what is technologically feasible (3 ppt if based on EPA's minimum reporting level),¹²³ rather than rescinding the individual standard and Hazard Index standard.

Beyond immunotoxicity, there is also new evidence demonstrating that other health endpoints are more sensitive to PFHxS exposure than previously cataloged. ATSDR based the MRL on an animal study from 2009 demonstrating thyroid toxicity.¹²⁴ Using more recently published research, EPA also concluded that the "evidence indicates" PFHxS is likely to cause adverse thyroid effects in humans based on evidence of decreased thyroid hormone levels, abnormal histopathology results, and changes in organ weight in experimental animals.¹²⁵ EPA calculated points of departure for four thyroid related endpoints from four animal studies, three of which were published after ATSDR's analysis,¹²⁶ EPA then calculated lifetime candidate values from two of these studies, one of which, Ramhøj et al (2018),¹²⁷ resulted in a RfD of 2×10^{-7} , which is two orders of magnitude stricter than ATSDR's MRL. A maximum contaminant

¹²³ Revisions to the Unregulated Contaminant Monitoring Rule (UCMR 5) for Public Water Systems and Announcement of Public Meetings, 86 Fed. Reg. 73131, 73131–56 (Dec 27, 2021) (codified at 40 C.F.R. pt. 141), <https://www.govinfo.gov/content/pkg/FR-2021-12-27/pdf/2021-27858.pdf>.

¹²⁴ John L. Butenhoff et al., "Evaluation of Potential Reproductive and Developmental Toxicity of Potassium Perfluorohexanesulfonate in Sprague Dawley Rats," *Reproductive Toxicology* (Elmsford, N.Y.) 27, nos. 3–4 (2009): 331–41, <https://doi.org/10.1016/j.reprotox.2009.01.004>.

¹²⁵ US EPA, *IRIS Toxicological Review of Perfluorohexanesulfonic Acid (PFHxS, CASRN 335-46-4) and Related Salts*, Final EPA/635/R-25/012Fa (2025), <https://iris.epa.gov/document/&deid=363894>.

¹²⁶ National Toxicology Program (NTP), "28-Day Evaluation of the Toxicity(C06100) of Perfluorohexane Sulfonate Potassium Salt (PFHxSKslt) (3871-99-6) on Harlan Sprague-Dawley Rats Exposed via Gavage," April 2018, 002-03267-0002-0000–0002, <https://doi.org/10.22427/NTP-DATA-002-03267-0002-0000-2>; Louise Ramhøj et al., "Perfluorohexane Sulfonate (PFHxS) and a Mixture of Endocrine Disruptors Reduce Thyroxine Levels and Cause Antiandrogenic Effects in Rats," *Toxicological Sciences* 163, no. 2 (2018): 579–91, <https://doi.org/10.1093/toxsci/kfy055>; Louise Ramhøj et al., "Evaluating Thyroid Hormone Disruption: Investigations of Long-Term Neurodevelopmental Effects in Rats after Perinatal Exposure to Perfluorohexane Sulfonate (PFHxS)," *Scientific Reports* 10, no. 1 (2020): 2672, <https://doi.org/10.1038/s41598-020-59354-z>.

¹²⁷ Louise Ramhøj et al., "Perfluorohexane Sulfonate and a Mixture Reduce Thyroxine Levels and Cause Antiandrogenic Effects," (2018), <https://doi.org/10.1093/toxsci/kfy055>.

level goal based on this reference dose would also be far below EPA's minimum reporting limit. Additional studies were also noted in support of developmental¹²⁸ and liver¹²⁹ effects.

b. *EPA does not consider additional evidence of harm associated with PFNA exposure that shows greater toxicity.*

New evidence not considered in the development of the PFNA drinking water standard suggests that the risk appears at lower levels than originally thought and adds further support to previously identified risks.

The 2024 drinking water regulation for PFNA was derived from a minimum risk level ("MRL"; i.e. a reference dose ["RfD"]) based on animal data evaluated in the ATSDR's 2021 Toxicological Profile for Perfluoroalkyls (3×10^{-6} mg/kg/day). At the time, EPA was in the process of conducting its own toxicological review. EPA's draft toxicological review of PFNA, made available March 2024, contains at least 338 studies not included in ATSDR's toxicity profile, reflecting an increased understanding of the harms associated with PFNA exposure.¹³⁰

In the draft toxicological review, EPA calculated a reference dose based on epidemiological data, finding the "evidence demonstrates" increased exposure to PFNA is associated with developmental effects in humans. "Evidence demonstrates" is the highest evidence integration summary judgment EPA can make to support a health effect conclusion.¹³¹ The EPA calculated a RfD for PFNA of 7×10^{-9} mg/kg/day based on decreased birth weights in

¹²⁸ Germaine M. Buck Louis et al., "Endocrine Disruptors and Neonatal Anthropometry, NICHD Fetal Growth Studies - Singletons," *Environment International* 119 (October 2018): 515–26, <https://doi.org/10.1016/j.envint.2018.07.024>; Cyntia B. Manzano-Salgado et al., "Prenatal Exposure to Perfluoroalkyl Substances and Cardiometabolic Risk in Children from the Spanish INMA Birth Cohort Study," *Environmental Health Perspectives* 125, no. 9 (2017): 097018, <http://dx.doi.org/10.1016/j.ijheh.2019.06.005>; Jessica Shoaff et al., "Prenatal Exposure to Perfluoroalkyl Substances: Infant Birth Weight and Early Life Growth," *Environmental Epidemiology (Philadelphia, Pa.)* 2, no. 2 (2018): e010, <https://doi.org/10.1097/EE9.0000000000000010>.

¹²⁹ Ok-Jin Kim et al., "Exposure to Serum Perfluoroalkyl Substances and Biomarkers of Liver Function: The Korean National Environmental Health Survey 2015–2017," *Chemosphere* 322 (May 2023): 138208, <https://doi.org/10.1016/j.chemosphere.2023.138208>.

¹³⁰ We have provided, as an attachment to these comments, a list of references published starting in 2018 that are available in US EPA, *IRIS Toxicological Review of Perfluorononanoic Acid (PFNA) and Related Salts CASRN 375-95-1*, External Review Draft EPA/635/R-24/031a (2024), https://ordspub.epa.gov/ords/eims/eimscomm.getfile?p_download_id=548669, that were likely not available in ATSDR, *Toxicological Profile for Perfluoroalkyls* (2021), <https://www.atsdr.cdc.gov/toxprofiles/tp200.pdf>

¹³¹ US EPA, *ORD Staff Handbook for Developing IRIS Assessments* (2022), Reports & Assessments EPA 600/R-22/268 (2022), <https://iris.epa.gov/Document/&deid=356370#downloads>.

humans, which is approximately 3 orders of magnitude lower than ATSDR's MRL, thus demonstrating the need to incorporate more recently published research demonstrating the harms of PFNA exposure when evaluating forgone benefits from rescinding the individual PFNA standard and the Hazard Index standard. Importantly, a maximum contaminant level goal based on the reference dose most recently calculated by EPA would be far below EPA's minimum reporting limit, which would necessitate strengthening the drinking water standard for PFNA to what is technologically feasible (4 ppt, if based on EPA's minimum reporting level),¹³² rather than rescinding the individual standard and Hazard Index standard.

In reaching its conclusion in the draft toxicological review, EPA evaluated 27 epidemiological studies evaluating the effects of PFNA exposure on birth weight; 23 of these studies were not included in ATSDR's document, many because they were published after 2018 when the literature review was last conducted by ATSDR).¹³³

¹³² Revisions to the Unregulated Contaminant Monitoring Rule (UCMR 5) for Public Water Systems and Announcement of Public Meetings, 86 Fed. Reg. 8 73131, 73131–56 (Dec. 27, 2021).<https://www.govinfo.gov/content/pkg/FR-2021-12-27/pdf/2021-27858.pdf>

¹³³ Germaine M. Buck Louis et al., “Endocrine Disruptors and Neonatal Anthropometry (October 2018), <https://doi.org/10.1016/j.envint.2018.07.024>; Che-Jung Chang et al., “Per- and Polyfluoroalkyl Substance (PFAS) Exposure, Maternal Metabolomic Perturbation, and Fetal Growth in African American Women: A Meet-in-the-Middle Approach,” *Environment International* 158 (January 2022): 106964, <https://doi.org/10.1016/j.envint.2021.106964>; Lin Chen et al., “Prenatal Exposure to Perfluoroalkyl and Polyfluoroalkyl Substances and Birth Outcomes: A Longitudinal Cohort with Repeated Measurements,” *Chemosphere* 267 (March 2021): 128899, <https://doi.org/10.1016/j.chemosphere.2020.128899>; Stephanie M. Eick et al., “Associations between Prenatal Maternal Exposure to Per- and Polyfluoroalkyl Substances (PFAS) and Polybrominated Diphenyl Ethers (PBDEs) and Birth Outcomes among Pregnant Women in San Francisco,” *Environmental Health* 19, no. 1 (2020): 100, <https://doi.org/10.1186/s12940-020-00654-2>; Ke Gao et al., “Prenatal Exposure to Per- and Polyfluoroalkyl Substances (PFASs) and Association between the Placental Transfer Efficiencies and Dissociation Constant of Serum Proteins-PFAS Complexes,” *Environmental Science & Technology* 53, no. 11 (2019): 6529–38, <https://doi.org/10.1021/acs.est.9b00715>; Hannah Gardener et al., “PFAS Concentration during Pregnancy in Relation to Cardiometabolic Health and Birth Outcomes,” *Environmental Research* 192 (January 2021): 110287, <https://doi.org/10.1016/j.envres.2020.110287>; Rachel S. Gross et al., “Persistent Organic Pollutants Exposure in Newborn Dried Blood Spots and Infant Weight Status: A Case-Control Study of Low-Income Hispanic Mother-Infant Pairs,” *Environmental Pollution* 267 (December 2020): 115427, <https://doi.org/10.1016/j.envpol.2020.115427>; Irina Gyllenhammar et al., “Perfluoroalkyl Acid Levels in First-Time Mothers in Relation to Offspring Weight Gain and Growth,” *Environment International* 111 (February 2018): 191–99, <https://doi.org/10.1016/j.envint.2017.12.002>; Samantha M. Hall et al., “Concentrations of Per- and Polyfluoroalkyl Substances (PFAS) in Human Placental Tissues and Associations with Birth Outcomes,” *Chemosphere* 295 (May 2022): 133873, <https://doi.org/10.1016/j.chemosphere.2022.133873>; Marie Harthøj Hjermitsev et al., “Persistent

Beyond developmental effects, there is also new evidence supporting stronger associations between exposure to PFNA and other health endpoints. For example, EPA also determined that “evidence indicates” PFNA exposure is likely to cause liver and male reproductive effects in humans. Both of EPA’s calculated RfD for these effects were based on studies produced after ATSDR’s analysis and both are more sensitive than ATSDR’s MRL.

Organic Pollutants in Greenlandic Pregnant Women and Indices of Foetal Growth: The ACCEPT Study,” *Science of The Total Environment* 698 (January 2020): 134118, <https://doi.org/10.1016/j.scitotenv.2019.134118>; Ikuko Kashino et al., “Prenatal Exposure to 11 Perfluoroalkyl Substances and Fetal Growth: A Large-Scale, Prospective Birth Cohort Study,” *Environment International* 136 (March 2020): 105355, <https://doi.org/10.1016/j.envint.2019.105355>; Eun Jin Kwon et al., “Prenatal Exposure to Perfluorinated Compounds Affects Birth Weight Through GSTM1 Polymorphism,” *Journal of Occupational and Environmental Medicine* 58, no. 6 (2016): e198-205, <https://doi.org/10.1097/JOM.0000000000000739>; Dan Luo et al., “Associations of Prenatal Exposure to Per- and Polyfluoroalkyl Substances with the Neonatal Birth Size and Hormones in the Growth Hormone/Insulin-Like Growth Factor Axis,” *Environmental Science & Technology* 55, no. 17 (2021): 11859–73, <https://doi.org/10.1021/acs.est.1c02670>; Ryo Maekawa et al., “Evidence of Exposure to Chemicals and Heavy Metals during Pregnancy in Japanese Women,” *Reproductive Medicine and Biology* 16, no. 4 (2017): 337–48, <https://doi.org/10.1002/rmb2.12049>; Kristin J. Marks et al., “Maternal Serum Concentrations of Perfluoroalkyl Substances and Birth Size in British Boys,” *International Journal of Hygiene and Environmental Health* 222, no. 5 (2019): 889–95, <https://doi.org/10.1016/j.ijheh.2019.03.008>; Qi Meng et al., “Prenatal Exposure to Perfluoroalkyl Substances and Birth Outcomes; An Updated Analysis from the Danish National Birth Cohort,” *International Journal of Environmental Research and Public Health* 15, no. 9 (2018): 1832, <https://doi.org/10.3390/ijerph15091832>; Jessica Shoaff et al., “Prenatal Exposure to Perfluoroalkyl Substances” (2018), <https://doi.org/10.1097/EE9.0000000000000010>; Damaskini Valvi et al., “Gestational Diabetes and Offspring Birth Size at Elevated Environmental Pollutant Exposures,” *Environment International* 107 (October 2017): 205–15, <https://doi.org/10.1016/j.envint.2017.07.016>; Sverre Wikström et al., “Maternal Serum Levels of Perfluoroalkyl Substances in Early Pregnancy and Offspring Birth Weight,” *Pediatric Research* 87, no. 6 (2020): 1093–99, <https://doi.org/10.1038/s41390-019-0720-1>; Clare E. Workman et al., “Associations between Concentrations of Perfluoroalkyl Substances in Human Plasma and Maternal, Infant, and Home Characteristics in Winnipeg, Canada,” *Environmental Pollution* 249 (June 2019): 758–66, <https://doi.org/10.1016/j.envpol.2019.03.054>; Christina Xiao et al., “Associations of Exposure to Perfluoroalkyl Substances With Thyroid Hormone Concentrations and Birth Size,” *The Journal of Clinical Endocrinology & Metabolism* 105, no. 3 (2020): 735–45, <https://doi.org/10.1210/clinem/dgz147>; Chenye Xu et al., “Prenatal Exposure to Chlorinated Polyfluoroalkyl Ether Sulfonic Acids and Perfluoroalkyl Acids: Potential Role of Maternal Determinants and Associations with Birth Outcomes,” *Journal of Hazardous Materials* 380 (December 2019): 120867, <https://doi.org/10.1016/j.jhazmat.2019.120867>; Qian Yao et al., “Associations of Paternal and Maternal Per- and Polyfluoroalkyl Substances Exposure with Cord Serum Reproductive Hormones, Placental Steroidogenic Enzyme and Birth Weight,” *Chemosphere* 285 (December 2021): 131521, <https://doi.org/10.1016/j.chemosphere.2021.131521>.

EPA's lifetime RfD for male reproductive effects¹³⁴ is 2×10^{-6} mg/kg/day and 6×10^{-9} mg/kg/day for adverse liver effects.¹³⁵ EPA also concluded that evidence suggests exposure to PFNA may cause immune, thyroid, neurodevelopmental, and cardiometabolic effects.¹³⁶

c. EPA does not consider additional evidence of harm associated with GenX exposure.

New evidence not considered in the development of the GenX drinking water standard adds further support to previously identified risks and raises concerns about additional health impacts.

The 2024 drinking water regulation for GenX was derived from a RfD based on animal data calculated by EPA in 2021 (3×10^{-6} mg/kg/day).¹³⁷ In the 2021 Human Health Toxicity document, EPA noted that studies report toxicity of multiple organ systems following GenX exposure and that “overall, the available toxicity studies demonstrate that the liver is particularly sensitive” to GenX.¹³⁸ The critical effect chosen for determining the RfD was a constellation of liver lesions observed in mice, which included “cytoplasmic alteration, hepatocellular single-cell and focal necrosis, and hepatocellular apoptosis.”¹³⁹ The literature review supporting this conclusion was last updated in March 2020, and since this time new studies have been published that highlight additional concerns associated with exposure to GenX.

Since then, additional studies supporting impacts on the liver have been published, which are summarized in a recent review.¹⁴⁰ Yoo et al. (2023) found significant increases in liver

¹³⁴ National Toxicology Program, 28-day evaluation of the toxicity (C04049) of perfluorononanoic acid (PFNA) (375-95-1) on Harlan Sprague-Dawley rats exposed via gavage (2018), <http://dx.doi.org/10.22427/NTP-DATA-002-02655-0003-0000-3>.

¹³⁵ Ok-Jin Kim et al., “Exposure to Serum Perfluoroalkyl Substances and Biomarkers of Liver Function,” (May 2023), <https://doi.org/10.1016/j.chemosphere.2023.138208>.

¹³⁶ US EPA, *IRIS Toxicological Review of Perfluorononanoic Acid (PFNA) and Related Salts CASRN 375-95-1*, External Review Draft EPA/635/R-24/031a (2024), https://ordspub.epa.gov/ords/eims/eimscomm.getfile?p_download_id=548669.

¹³⁷ US 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,”* Final nos. 822R-21-010 (2021), https://www.epa.gov/system/files/documents/2021-10/genx-chemicals-toxicity-assessment_tech-edited_oct-21-508.pdf.

¹³⁸ *Id.*

¹³⁹ *Id.* at xii.

¹⁴⁰ Junzheng Peng et al., “Perfluoroalkyl and Polyfluoroalkyl Substances Exposure and Liver Disease: A Review,” *Toxicology* 525 (September 2026): 154509, <https://doi.org/10.1016/j.tox.2026.154509>; Hee Joon Yoo et al., “Perfluorooctanoic Acid (PFOA) and Hexafluoropropylene Oxide-Dimer Acid (GenX): Hepatic Stress and Bile Acid Metabolism with Different Pathways,” *Ecotoxicology and Environmental Safety* 259 (July 2023): 115001, <https://doi.org/10.1016/j.ecoenv.2023.115001>; Megan E. Solan and Ramon Lavado, “Effects of

enzymes, alanine aminotransferase, aspartate aminotransferase, and alkaline phosphatase, in mice exposed to GenX over 90 days.¹⁴¹

Beyond liver toxicity concerns, new research also raises additional concerns that GenX exposure is associated with other health impacts, including effects on the immune and neural systems, kidney and thyroid function, and development.¹⁴²

Short-Chain per- and Polyfluoroalkyl Substances (PFAS) on Human Cytochrome P450 (CYP450) Enzymes and Human Hepatocytes: An *in Vitro* Study,” *Current Research in Toxicology* 5 (July 2023): 100116, <https://doi.org/10.1016/j.crtox.2023.100116>; Ruijia Zhang et al., “Non-Targeted Metabolomics of Multiple Human Cells Revealing Differential Toxic Effects of Perfluorooctanoic Acid,” *Journal of Hazardous Materials* 409 (May 2021): 125017, <https://doi.org/10.1016/j.jhazmat.2020.125017>; Hua Guo et al., “Exposure to GenX and Its Novel Analogs Disrupts Hepatic Bile Acid Metabolism in Male Mice,” *Environmental Science & Technology* 56, no. 10 (2022): 6133–43, <https://doi.org/10.1021/acs.est.1c02471>; Weiqiang Sun et al., “Exposure to PFOA and Its Novel Analogs Disrupts Lipid Metabolism in Zebrafish,” *Ecotoxicology and Environmental Safety* 259 (July 2023): 115020, <https://doi.org/10.1016/j.ecoenv.2023.115020>; Dakota R. Robarts et al., “GenX Induces Fibroinflammatory Gene Expression in Primary Human Hepatocytes,” *Toxicology* 477 (July 2022): 153259, <https://doi.org/10.1016/j.tox.2022.153259>; Guojun Wan et al., “GenX Caused Liver Injury and Potential Hepatocellular Carcinoma of Mice via Drinking Water Even at Environmental Concentration,” *Environmental Pollution* 346 (April 2024): 123574, <https://doi.org/10.1016/j.envpol.2024.123574>.

¹⁴¹ Hee Joon Yoo et al., “Perfluorooctanoic Acid (PFOA) and Hexafluoropropylene Oxide-Dimer Acid (GenX): Hepatic Stress and Bile Acid Metabolism with Different Pathways,” *Ecotoxicology and Environmental Safety* 259 (July 2023): 115001, <https://doi.org/10.1016/j.ecoenv.2023.115001>.

¹⁴² Wenshan Shi et al., “GenX Disturbs the Indicators of Hepatic Lipid Metabolism Even at Environmental Concentration in Drinking Water via PPAR α Signaling Pathways,” *Chemical Research in Toxicology* 37, no. 1 (2024): 98–108, <https://doi.org/10.1021/acs.chemrestox.3c00342>; Shaza Gaballah et al., “Evaluation of Developmental Toxicity, Developmental Neurotoxicity, and Tissue Dose in Zebrafish Exposed to GenX and Other PFAS,” *Environmental Health Perspectives* 128, no. 4 (2020): 47005, <https://doi.org/10.1289/EHP5843>; Justin M. Conley et al., “Hexafluoropropylene Oxide-Dimer Acid (HFPO-DA or GenX) Alters Maternal and Fetal Glucose and Lipid Metabolism and Produces Neonatal Mortality, Low Birthweight, and Hepatomegaly in the Sprague-Dawley Rat,” *Environment International* 146 (January 2021): 106204, <https://doi.org/10.1016/j.envint.2020.106204>; Francesca Coperchini et al., “Adverse Effects of *in Vitro* GenX Exposure on Rat Thyroid Cell Viability, DNA Integrity and Thyroid-Related Genes Expression,” *Environmental Pollution* (Barking, Essex : 1987) 264 (September 2020): 114778, <https://doi.org/10.1016/j.envpol.2020.114778>; Emma Ivantsova et al., “Evidence for Neurotoxicity and Oxidative Stress in Zebrafish Embryos/Larvae Treated with HFPO-DA Ammonium Salt (GenX),” *Environmental Toxicology and Pharmacology* 104 (November 2023): 104315, <https://doi.org/10.1016/j.etap.2023.104315>.

d. *EPA does not consider additional evidence of harm associated with PFBS exposure.*

New evidence not considered in the development of the PFBS health-based water concentration adds further support to previously identified risks and raises concerns about additional health impacts, in particular gestational diabetes mellitus.

The health-based water concentration for PFBS in the 2024 drinking water regulations was derived from a RfD based on animal data calculated by EPA in 2021 (3×10^{-4} mg/kg/day).¹⁴³ In the 2021 Human Health Toxicity document, EPA noted that “the hazards of potential concern include thyroid, developmental, and kidney effects” for PFBS and ultimately “perturbation of thyroid hormone levels (e.g., T₄) was used as the critical effect for deriving a subchronic and chronic RfD.”¹⁴⁴ The literature review supporting this conclusion was last updated on May 15, 2020, and since this time new studies have been published that highlight additional concerns associated with exposure to PFBS.

At the time of EPA’s analysis of PFBS, the agency stated that its “ability to draw conclusions about associations [from epidemiological data] is limited due to the small number of human studies per outcome. Of the examined health outcomes, only asthma and serum cholesterol levels in humans were found to exhibit a statistically significant positive association with PFBS exposure.”¹⁴⁵ Since this time, however, several teams have investigated the epidemiological impacts of PFBS exposure on female reproduction, pregnancy, and birth outcomes.¹⁴⁶ In particular, two meta-analyses have determined that exposure to PFBS is

¹⁴³ US EPA, *Human Health Toxicity Values for Perfluorobutane Sulfonic Acid (CASRN 375-73-5) and Related Compound Potassium Perfluorobutane Sulfonate (CASRN 29420-49-3)*, Final (2021), <https://assessments.epa.gov/risk/document/&deid=350888>.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 2.

¹⁴⁶ Namya Mellouk et al., “Effects of Perfluorobutane Sulfonate (PFBS) on Female Reproduction, Pregnancy, and Birth Outcomes,” *Obstetrical & Gynecological Survey* 80, no. 10 (2025): 657–72, <https://doi.org/10.1097/OGX.0000000000001440>; Bevin E. Blake and Suzanne E. Fenton, “Early Life Exposure to Per- and Polyfluoroalkyl Substances (PFAS) and Latent Health Outcomes: A Review Including the Placenta as a Target Tissue and Possible Driver of Peri- and Postnatal Effects,” *Toxicology* 443 (October 2020): 152565, <https://doi.org/10.1016/j.tox.2020.152565>; Dongying Wang et al., “Correlation of Perfluoroalkyl and Polyfluoroalkyl Substance Levels during Pregnancy with Gestational Diabetes Mellitus: A Systematic Review and Meta-Analysis,” *BMC Pregnancy and Childbirth* 25, no. 1 (2025): 448, <https://doi.org/10.1186/s12884-025-07551-x>; Liya Pang et al., “Association between Prenatal Perfluorinated Compounds Exposure and Risk of Pregnancy Complications: A Meta-Analysis,” *Ecotoxicology and Environmental Safety* 272 (March 2024): 116017, <https://doi.org/10.1016/j.ecoenv.2024.116017>; Abigail Erinc et al., “Considering Environmental

associated with an increased odds ratio (OR=1.4) of gestational diabetes mellitus.¹⁴⁷ Wang et al. used a dose-response analysis to determine that for each 1 ng/ml increase in PFBS exposure, the risk of gestational diabetes mellitus increased by 11.7 percent. Several of the studies supporting these meta-analyses were published after EPA conducted its literature review.¹⁴⁸ Pang et al., (2024) also concluded that exposure to PFBS is associated with an increased risk of hypertensive disorders of pregnancy (OR = 1.27, 95 percent CI: 1.14–1.41, P < 0.001).¹⁴⁹ New mechanistic studies also lend support to findings of PFBS disrupting reproduction and pregnancy.¹⁵⁰

Exposures to Per- and Polyfluoroalkyl Substances (PFAS) as Risk Factors for Hypertensive Disorders of Pregnancy,” *Environmental Research* 197 (June 2021): 111113, <https://doi.org/10.1016/j.envres.2021.111113>.

¹⁴⁷ Dongying Wang et al., “Correlation of Perfluoroalkyl and Polyfluoroalkyl Substance Levels during Pregnancy with Gestational Diabetes Mellitus,” (2025), <https://doi.org/10.1186/s12884-025-07551-x>; Liya Pang et al., “Association between Prenatal Perfluorinated Compounds Exposure and Risk of Pregnancy Complications: A Meta-Analysis,” *Ecotoxicology and Environmental Safety* 272 (March 2024): 116017, <https://doi.org/10.1016/j.ecoenv.2024.116017>.

¹⁴⁸ Guoqi Yu et al., “Environmental Exposure to Perfluoroalkyl Substances in Early Pregnancy, Maternal Glucose Homeostasis and the Risk of Gestational Diabetes: A Prospective Cohort Study,” *Environment International* 156 (November 2021): 106621, <https://doi.org/10.1016/j.envint.2021.106621>; Huangfang Xu et al., “Exposure to Elevated Per- and Polyfluoroalkyl Substances in Early Pregnancy Is Related to Increased Risk of Gestational Diabetes Mellitus: A Nested Case-Control Study in Shanghai, China,” *Environment International* 143 (October 2020): 105952, <https://doi.org/10.1016/j.envint.2020.105952>; Lu Zang et al., “Exposure to Per- and Polyfluoroalkyl Substances in Early Pregnancy, Risk of Gestational Diabetes Mellitus, Potential Pathways, and Influencing Factors in Pregnant Women: A Nested Case-Control Study,” *Environmental Pollution* 326 (June 2023): 121504, <https://doi.org/10.1016/j.envpol.2023.121504>; Yingying Zhang et al., “Human Serum Poly- and Perfluoroalkyl Substance Concentrations and Their Associations with Gestational Diabetes Mellitus,” *Environmental Pollution* 317 (January 2023): 120833, <https://doi.org/10.1016/j.envpol.2022.120833>; Xin Liu et al., “Structure-Based Investigation on the Association between Perfluoroalkyl Acids Exposure and Both Gestational Diabetes Mellitus and Glucose Homeostasis in Pregnant Women,” *Environment International* 127 (June 2019): 85–93, <https://doi.org/10.1016/j.envint.2019.03.035>.

¹⁴⁹ Liya Pang et al., “Prenatal Perfluorinated Compounds and Pregnancy Complications,” (March 2024), <https://doi.org/10.1016/j.ecoenv.2024.116017>; Rong Huang et al., “Prenatal Exposure to Perfluoroalkyl and Polyfluoroalkyl Substances and the Risk of Hypertensive Disorders of Pregnancy,” *Environmental Health: A Global Access Science Source* 18, no. 1 (2019): 5, <https://doi.org/10.1186/s12940-018-0445-3>; Xiaona Huo et al., “Perfluoroalkyl Substances in Early Pregnancy and Risk of Hypertensive Disorders of Pregnancy: A Prospective Cohort Study,” *Environment International* 138 (May 2020): 105656, <https://doi.org/10.1016/j.envint.2020.105656>.

¹⁵⁰ Angela Pham et al., “Exposure to Perfluorobutane Sulfonate and Perfluorooctane sulfonic Acid Disrupts the Production of Angiogenesis Factors and Stress Responses in Human Placental Syncytiotrophoblast,” *Reproductive Toxicology* 98 (December 2020): 269–77, <https://doi.org/10.1016/j.reprotox.2020.10.013>.

Beyond reproductive concerns, new research also raises additional concerns that PFBS exposure is associated with other health impacts, including effects on the liver and the immune and neural systems.¹⁵¹

3. *EPA fails to consider additional forgone health effects of the proposed rule.*

Recent research further shows that PFAS treatment often reduces other harmful contaminants as well, including trihalomethanes and haloacetic acids.¹⁵² EPA does not engage with this emerging science—which further demonstrates that the Proposed Rescission Rule would deprive communities not only of PFAS protections, but of cleaner drinking water more broadly.

EPA therefore ignores the record that justified the 2024 Rule, disregards substantial new evidence, and offers no reasoned explanation why it fails to consider the significant public health impacts of rescinding these standards. That is arbitrary, capricious, and contrary to the APA and to the Safe Drinking Water Act’s mandate for EPA to base its decisions under section 1412 upon the “best available, peer reviewed science and supporting studies.” 42 U.S.C. § 300g-1(b)(3)(A)(i).

G. EPA Unlawfully Fails to Consider Reliance Interests of Utilities, States, and Communities.

The Proposed Rescission Rule further violates the Administrative Procedure Act because EPA changed its position but failed to consider the reliance interests of communities, utilities,

¹⁵¹ Pietro Martano et al., “Visceral, Neural, and Immunotoxicity of Per- and Polyfluoroalkyl Substances: A Mini Review,” *Toxics* 13, no. 8 (2025): 658, <https://doi.org/10.3390/toxics13080658>; Melissa M. Heintz et al., “Evaluation of Transcriptomic Responses in Livers of Mice Exposed to the Short-Chain PFAS Compound HFPO-DA,” *Frontiers in Toxicology* 4 (2022): 937168, <https://doi.org/10.3389/ftox.2022.937168>; Shaza Gaballah et al., “Evaluation of Developmental Toxicity, Developmental Neurotoxicity, and Tissue Dose in Zebrafish Exposed to GenX and Other PFAS,” *Environmental Health Perspectives* 128, no. 4 (2020): 47005, <https://www.proquest.com/docview/2407527640?pq-origsite=primo&sourcetype=Scholarly%20Journals> <https://doi.org/10.1289/EHP5843>; Qitao Tan et al., “Maternal PFBS Exposure during Gestation and Lactation Results in Cognitive Impairment in Rat Offspring,” *Environmental Pollutants and Bioavailability* 37, no. 1 (2025): 2475955, <https://doi.org/10.1080/26395940.2025.2475955>.

¹⁵² Sydney S. Evans et al., PFAS Treatment as an Opportunity for Broader Drinking Water Improvements: Evidence from U.S. Water Systems, 5 *Env’t Sci. & Tech Water* 5447, 5447 (2025) (hereinafter “Evans, PFAS Treatment as an Opportunity”), <https://pubs.acs.org/doi/10.1021/acsestwater.5c00519>.

and states that have already begun planning, investing, and regulating based on the Index PFAS standards. That failure is arbitrary and capricious.

Under the Administrative Procedure Act a position “change that does not take account of legitimate reliance ... may be ‘arbitrary, capricious [or] an abuse of discretion.’” *Smiley v. Citibank (S. Dakota), N.A.*, 517 U.S. 735, 742 (1996). An agency changing policies must therefore “assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns.” *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 33 (2020). Especially relevant here, where nothing in the agency’s rescission proposal “foreclosed or even addressed the options of retaining [the current policy] or accommodating particular reliance interests,” the policy rescission is arbitrary and capricious. *Id.* The agency is free to “conclude that reliance interests in benefits that it views as unlawful are entitled to no or diminished weight,” but considering the alleged reliance interests and whether they are reasonable is “the agency’s job.” *Id.* at 32.

1. EPA fails to consider the impacts of rescission on water systems.

Public drinking water systems, whom EPA purports will benefit from rescission,¹⁵³ have multiple serious reliance interests at stake in consistent implementation of the Index PFAS standards. Rescission would undermine investments already made by public water systems by eliminating the regulatory requirements those investments were intended to meet and disrupting ongoing compliance efforts that rely on soon-to-expire funding.¹⁵⁴

Water systems made investment decisions in reliance upon time-sensitive regulatory compliance expectations that cannot be undone if the Index PFAS Provisions are rescinded. The 2024 Rule has a compliance deadline of 2029 and was supported in part by Infrastructure Investment and Jobs Act funding that is set to expire at the end of the 2026 fiscal year.¹⁵⁵ These conditions created an urgency for investment in new infrastructure. Indeed, as of 2024, the U.S. Government Accountability Office had estimated that 23 percent of public water systems already

¹⁵³ 91 Fed. Reg. at 29415 (“The EPA estimates that this proposed action would result in a reduction of previously expected national compliance costs and would relieve regulated entities, particularly PWSs, of specific monitoring, treatment, and reporting obligations related specifically to these drinking water contaminants.”).

¹⁵⁴ EPA Office of Water, *Final PFAS National Primary Drinking Water Regulation*, at 16 (February 2025) obtained via FOIA case number 25-EPA-07215 (EPA internally acknowledging that as of February 2025 “[s]ignificant federal funding is available to support addressing emerging contaminants, including specific funds available for small systems.”).

¹⁵⁵ North Carolina Drinking Water State Revolving Fund and Bipartisan Infrastructure Law DWSRF General Supplemental Funds (Base DWSRF and BIL DWSRF-GS) Intended Use Plan: Fiscal Year 2024, N.C. Dep’t of Env’t Quality: Div. of Water Infrastructure 3 (2024), <https://www.deq.nc.gov/water-infrastructure/iup-fy2024-dwsrf-base-and-bil-general-supplemental-sept-2024/open>.

had partially or fully implemented PFAS treatment.¹⁵⁶ As one example, Anaheim Public Utilities in California undertook a \$150 million project to meet the drinking water standards.¹⁵⁷ These are significant investments that cannot easily be undone and cannot be undone *at all* if utilities wish to protect communities from toxic Index PFAS after EPA abandons its role. These projects require multiple stages of research, preparation, procurement, and procedural approvals all spread over many years. Not to mention the public messaging required to justify treatment costs ultimately borne by ratepayers. Drinking water regulations provide a public basis for making investments, but when the regulatory basis for the investment is removed, utilities lose credibility. Public water systems cannot simply adjust their planning or investment once they have committed to an approach in a good faith effort to comply with federal regulation.

Not only does the Proposed Rescission Rule undermine the regulatory basis for investments already made in reliance on the drinking water standards, it also disrupts investment planning that is ongoing. First, the uncertainty around the new rule creates indecision at the precise moment when the more than \$9 billion in federal funding available for PFAS treatment infrastructure needs to be allocated. This funding expires at the end of fiscal year 2026, which ends on September 30, 2026. Water systems do not know the regulatory environment they need to prepare for at the very moment when they must finalize access to funds. And the uncertainty the agency has created by stating it might reimpose the Index PFAS standards after resolving the alleged promulgation error creates even more concern for planning because compliance might be required when supporting funds are long gone.¹⁵⁸ In fact, the Trump Administration has requested an approximately 86 percent cut to Drinking Water State Revolving Fund (“Revolving

¹⁵⁶ U.S. Gov’t Accountability Office, *Persistent Chemicals: Additional EPA Actions Could Help Public Water Systems Address PFAS in Drinking Water*, at 16 (2024) (“GAO 2024”), EPA-HQ-OW-2025-1742-0047.

¹⁵⁷ American Society of Civil Engineers, *Anaheim, California, treatment plants remove PFAS from drinking water* (Jan. 1, 2026), <https://www.asce.org/publications-and-news/civil-engineering-source/civil-engineering-magazine/issues/magazine-issue/article/2026/01/anaheim-california-treatment-plants-remove-pfas-from-drinking-water>.

¹⁵⁸ See EPA, *Proposed Rule to Rescind Regulatory Determinations and Regulations for PFHxS, PFNA, HFPO-DA, and Hazard Index Mixtures*, (Jul. 8, 2026), <https://www.epa.gov/sdwa/proposed-pfas-rescission-rule> (stating “[o]nce the EPA has taken final action to correct the unlawful process by rescinding the current regulations for PFHxS, PFNA, HFPO-DA, and Hazard Index mixtures of these three PFAS plus PFBS, the agency will take steps to follow through on its commitment to evaluate additional PFAS in drinking water for future regulation. While the EPA cannot pre-determine the outcome, it is possible that the result could be more stringent requirements.”); see also U.S. Environmental Protection Agency (@EPAgov), YouTube (May 19, 2026) <https://www.youtube.com/watch?v=uZYzQEsZlaw> (EPA Administrator Lee Zeldin stating at 11:09, “[t]hey might warrant strict standards, possibly even stricter than what was previously regulated.”).

Fund”) obligations in fiscal year 2027.¹⁵⁹ This creates a nightmare scenario for public water systems who simply wish to comply with the law and have faith that their investment planning will not be undermined by an arbitrary change in the law.

In addition to disrupting the quantity of funding available, changes to federal drinking water standards will complicate water systems’ application process for funding that remains. This imposes administrative costs and makes planning more difficult. Many states explicitly align funding allocation policies with federal drinking water standards. Both the eligibility criteria for Revolving Fund financial assistance and the priority ranking system for proposals explicitly serve and give greater weight to projects aimed at complying with National Primary Drinking Water Standards.¹⁶⁰ For example, South Carolina’s Revolving Fund has a project questionnaire asking applicants to “describe in specific detail how the project will protect/improve public health or achieve/maintain compliance with drinking water standards.”¹⁶¹ Virginia’s guidance notes that “VDH [Virginia Department of Health] may provide assistance for expenditures ... of a type or category which the VDH has determined will facilitate compliance with national primary drinking water regulations applicable to the waterworks under the Safe Drinking Water Act or otherwise significantly further the health protection objectives of this title.”¹⁶² In Tennessee, Revolving Fund loans may only be granted to water systems that are going to “use the funds only for expenditures that will facilitate compliance with the [Safe Drinking Water] [A]ct and the state act or otherwise significantly further the public health protection objectives of those acts.”¹⁶³ Alabama’s administrative code notes that projects eligible for the Revolving Fund are those “needed to achieve or maintain compliance with requirements,

¹⁵⁹ EPA, *FY 2027 EPA Budget in Brief* 87, https://www.epa.gov/system/files/documents/2026-04/00_fy-2027-bib_combined_final.pdf (last visited July 15, 2026).

¹⁶⁰ The SDWA has a section governing the “use of funds” for state revolving loan funds. 42 U.S.C. § 300j-12(a)(2). It explains that the federal funding from the DWSRF “may be used by a public water system *only* for expenditures ... of a type or category which the Administrator has determined, through guidance, will *facilitate compliance with national primary drinking water regulations* ... under section 300g-1 of this title or otherwise significantly further the health protection objectives of this subchapter.” 42 U.S.C. § 300j-12(a)(2)(B) (emphasis added).

¹⁶¹ SC Department of Environmental Services South Carolina State Revolving Fund, *DWSRF Project Questionnaire* (2025), available at: <https://des.sc.gov/sites/des/files/Library/D-3463.pdf>.

¹⁶² Virginia Department of Health, *VDH Drinking Water Funding Procedural Guidance Package #1: Eligibility of Expenses* (July 1, 2026) available at: <https://www.vdh.virginia.gov/content/uploads/sites/14/PG-1-Eligibility-of-Expenses.pdf>.

¹⁶³ Tenn. Code Ann. § 68-221-1206 (2024).

and/or meet public health objectives of the [Safe Drinking Water Act].”¹⁶⁴ North Carolina¹⁶⁵ and Georgia’s¹⁶⁶ regulations note that federal law determines project eligibility for loans or grants from the Revolving Fund. The proposed rescission fragments the funding landscape, making vital funds even more difficult to reach.

Despite having the rug pulled out from under them, some utilities that have acted in reliance on the Index PFAS standards may wish to finish what they started or maintain their treatment upgrades so as not to expose their customers to known toxic chemicals. Utilities may fear civil liability for ceasing efforts to reduce Index PFAS in drinking water given that EPA does not (and rationally cannot) dispute its prior findings on the chemicals’ grave health impacts. EPA says nothing about whether utilities continuing to reduce Index PFAS will receive federal funding or reimbursement—or instead be left without any federal support.

Even more, EPA’s suggestion that it may later promulgate drinking water standards for the Index PFAS—without identifying the likely levels—creates significant uncertainty for utilities and risks substantial compliance costs. The uncertainty and risk is needless because EPA does not question the science or limits on the Index PFAS promulgated by the last administration. Although the standards were properly promulgated, EPA could, at most, simply re-notice the drinking water standards to cure the alleged procedural errors while mitigating the risk and uncertainty for utilities.

By contrast, public water systems would instead face significant regulatory whiplash under the Proposed Rescission Rule. For instance, water systems may first install treatment technologies designed to comply with the PFOA and PFOS standards. If EPA later promulgates standards for the Index PFAS, those utilities may find that their existing treatment systems cannot adequately remove those compounds. As discussed in section I.D. above, treatment designed for long-chain PFAS like PFOA and PFOS may not effectively control short-chain PFAS (e.g., GenX, PFBS), which break through filters more quickly. Requiring utilities to first install treatment for PFOA and PFOS and then retrofit or even replace that infrastructure to meet future PFAS standards would impose substantial and unnecessary costs. This piecemeal approach to regulation is inefficient and will ultimately increase compliance costs, which EPA fails to consider.

¹⁶⁴ AL Admin Code R. 335-11-2-.03. After this blanket eligibility statement, Alabama lists some examples of the types of projects that could be included: “rehabilitate or develop sources to replace an existing contaminated source; install or upgrade treatment facilities if, in the Department’s opinion, the project is the most economical and would improve the quality of drinking water to comply with primary or secondary standards,” among others. *See* AL Admin Code R. 335-11-2-.03(1) for the longer list.

¹⁶⁵ N.C. Gen. Stat. § 159G-32 (2024).

¹⁶⁶ Ga. Code Ann. § 50-23-5(b)(30) (2025).

Finally, nationwide implementation of Index PFAS standards created a uniform regulatory environment in which economies of scale would have reduced costs across numerous public water systems. These cost savings will likely be lost in the absence of a uniform compliance mandate, given that some states are acting to promulgate their own drinking water standards for the Index PFAS.¹⁶⁷

The proposed rule delivers these costs and administrative headaches to public water utilities without considering them. Beyond leading to bad policy, the agency's failure to consider these costs and forgone benefits created by rescission of the Index PFAS drinking water standards is arbitrary and capricious.

2. *EPA fails to consider impacts to states and Tribes.*

EPA also fails to consider the major impacts of the Rescission Rule on states and Tribes. In changing course, EPA ignores the “serious reliance interests” of states on the existing PFAS standards, *Fox*, 556 U.S. at 515, and “entirely fail[s] to consider [this] important aspect of the problem,” *State Farm*, 463 U.S. at 43.

States have likely invested significant resources to ensure that their water systems timely meet the Index PFAS Provisions. States assist localities in meeting federal drinking water standards in numerous ways, including by providing low-interest loans and other forms of

¹⁶⁷ Compare Ga. Env't Prot. Div.: Watershed Prot. Branch, *Notice of Stakeholder Meeting regarding Draft Proposed Updates to the Rules for Safe Drinking Water, Chapter 391-3-5, Relating to National Primary Drinking Water Regulations for PFOA and PFOS* (Nov. 10, 2025), <https://epd.georgia.gov/document/document/notice-stakeholder-meetingchapter-391-3-pfas111025pdf/download> (citing to EPA's announcement that it will keep standards only for PFOA and PFOS to justify regulating only PFOA and PFOS), and Tenn. Dep't of Env't Conservation: Pol'y & Plan., *PFAS*, <https://www.tn.gov/environment/policy/pfas.html> (last visited July 16, 2026) (showing Tennessee has no state-level standards of its own and relies entirely on EPA for enforceable standards), and Va. Code § 62.1-44.34:29 (defining the commonwealth's PFAS drinking water standards as those that are “established by the EPA as a national primary drinking water regulation”), with Mass. Dep't of Env't Prot., *Massachusetts PFAS Drinking Water Standard (MCL)*, <https://www.mass.gov/lists/massachusetts-pfas-drinking-water-standard-mcl> (last visited July 16, 2026) (referring to Massachusetts' 2020 maximum contaminant level of 20 ppt for the sum of PFOS, PFOA, PFHxS, PFNA, PFHpA, and PFDA), and Mass. Dep't of Env't Prot., *EPA Maximum Contaminant Levels (MCLs) for PFAS*, <https://www.mass.gov/info-details/epa-maximum-contaminant-levels-mcls-for-pfas> (last visited July 16, 2026) (outlining Massachusetts' accepted request for a Primacy Extension to give the agency until April 26, 2028 to promulgate new state PFAS regulations “at least as stringent as the EPA MCLs”), and Mich. PFAS Action Response Team, *Maximum Contaminant Levels (MCLs)*, <https://www.michigan.gov/pfasresponse/drinking-water/mcl> (last visited July 16, 2026) (listing the state's drinking water standards), and Mich. Admin. Code r. 325.10604g (2020) (setting drinking water standards for GenX, PFBS, PFHxS, PFHxA, PFNA, PFOS, and PFOA).

financial and technical assistance to utilities seeking to upgrade and improve their treatment systems; entering into contracts to engineer and build new treatment systems; commissioning studies; and amending state-enforced drinking water regulations in states with primacy—which may be difficult, impossible, or harmful to unwind. In the Proposed Rescission Rule, EPA does not mention—much less document or quantify—the time, efforts, or resources states have already expended in reliance on the Index PFAS drinking water standards, or the impacts on states of having those standards rescinded. EPA does not acknowledge or evaluate the investments states have already made to implement and support compliance with the Index PFAS drinking water standards. EPA does not acknowledge or counsel states on how they should proceed after taking preparatory actions only to have EPA pull the rug out from underneath states and their citizens. For example, where state-funded water system upgrades to comply with the Index PFAS standards have been contracted, planned, or partially or fully built, what should states do now that those standards are being rescinded? Where states have taken action in anticipation of seeking primacy (for instance, if they have already amended, or begun amending, state law to include the Index PFAS standards), should states retain those revisions—or scrap them and risk harming their own citizens? EPA does not say.

States also rely on the federal PFAS standards to protect the health of their citizens. Rescission of these standards may expose states’ citizens to more toxic PFAS, which could lead to more cases of cancer or other illnesses, deaths, hospitalizations, and increased health care costs. States may shoulder a portion of these costs, whether through Medicaid contributions, state employee health plans, public hospitals and clinics, or programs for low-income or disabled residents. As a result of the Proposed Rescission Rule, states may also need to spend more time and resources educating citizens on the health risks of the Index PFAS, assisting residents with polluted water to obtain treatment, or implementing health advisories or epidemiological monitoring. EPA does not acknowledge or address the potential health-related costs to states.

Nor does EPA consider whether states have the expertise, resources, or political capital to develop and implement their own PFAS standards post-rescission, or the costs to states of doing so. Many states may not have such resources and rely heavily on EPA to promulgate protective drinking water standards.¹⁶⁸ Others have explicitly relied on EPA’s announcement that it intends to rescind the Index PFAS standards as a reason to forgo adopting state-level protections for those chemicals. For instance, Georgia’s Environmental Protection Division

¹⁶⁸ Sarah Grace Hughes, *Processes & Considerations for Setting State PFAS Standards*, Env’t Council of the States 9-10 (2024), <https://www.ecos.org/wp-content/uploads/2024/06/2024-ECOS-PFAS-Standards-Paper-Update.pdf> (“Barriers [for states to effectively regulate individual PFAS] include a lack of one or more of the following: technical expertise needed for toxicity interpretation and standard development, numerical data and established limits for PFAS in various environmental media, labs certified to test for PFAS in the state, cost-benefit analyses (especially to smaller systems), interdependence of programs, legislative support, legal authority, and funding.”).

proposed to incorporate only EPA’s NPDWR for PFOA and PFOS, referencing EPA’s proposed rollbacks to justify that decision.¹⁶⁹ Further, some states have laws precluding or substantially impeding the adoption of rules and regulations more stringent than federal law.¹⁷⁰ EPA does not acknowledge this or consider the effects of rescission on states whose laws restrict agencies from adopting standards more stringent than federal requirements. For such states, rescission may eliminate a regulatory benchmark upon which state drinking-water protections depend. EPA nowhere acknowledges these legal constraints or evaluates whether affected states possess authority to replace the rescinded standards with state-specific requirements.

At bottom, EPA ignores the substantial financial, regulatory, administrative, and public-health interests of states, despite the central role that states play in implementing the Safe Drinking Water Act. Because EPA failed to meaningfully consider these reliance interests and other important aspects of the problem, the Proposed Rescission Rule is arbitrary and capricious under *Fox* and *State Farm*.

¹⁶⁹ See Ga. Env’t Prot. Div.: Watershed Prot. Branch, *Notice of Stakeholder Meeting Regarding Draft Proposed Updates to the Rules for Safe Drinking Water, Chapter 391-3-5, Relating to National Primary Drinking Water Regulations for PFOA and PFOS* at 1 (Nov. 10, 2025), <https://epd.georgia.gov/document/document/notice-stakeholder-meetingchapter-391-3-pfas111025pdf/download> (“On May 14, 2025, EPA announced its intention to keep the current NPDWR for [PFOA and PFOS]. ... EPD has prepared draft proposed rule updates to incorporate the NPDWR for PFOA and PFOS into the Rules for Safe Drinking Water.”).

¹⁷⁰ For example, an Alabama law significantly hinders agencies from adopting “criteria or limitations that are more stringent” than federal law or regulations, thus limiting environmental protection standards. See Ala. Code § 41-22-5.3(b) (2026). The law also prohibits agencies from establishing numeric criteria, or amending existing ones, “if there is no federal law or regulation establishing a standard regarding the same or a substantially similar topic” unless “the standard established by the rule is based on the best available science and the weight of scientific evidence.” *Id.* § 41-22-5.3(c). The science must prove a “direct causal link” between the substance at or above the numeric limit and harm to humans. *Id.* § 41-22-5.3(d)(1). Tennessee has a similar law that prevents agencies from adopting environment-related rules and numeric limitations for substances unless those rules are adopted according to the “best available science” and that science “causally linked” to “human health” harms. See Tenn. Code § 4-5-232(a) (2025). The Tennessee law applies to agency rules “more stringent than any applicable federal regulat[ion]” or those rules “adopted in the absence of a federal regulat[ion].” *Id.* § 4-5-232(c). Alabama and Tennessee would therefore have an extremely difficult time filling the regulatory gap caused by EPA’s Proposed Rescission Rule. Furthermore, North Carolina law bars state agencies tasked with implementing and enforcing “environmental laws” from protecting the “environmental or natural resources” with “a more restrictive standard, limitation, or requirement” than the federal government, unless certain extremely narrow exceptions apply, such as a “serious and unforeseen threat to the public health, safety, or welfare.” See N.C. Gen. Stat. § 150B-19.3(a).

3. *EPA fails to consider communities' reliance on the Index PFAS Provisions.*

EPA failed to consider the reliance interests of communities across the country. Although the deadlines for initial reporting and compliance in the 2024 PFAS drinking water standards have not yet arrived, the rule created concrete expectations that those protections were coming on a defined schedule. Once EPA finalized enforceable standards for six PFAS and announced those protections, communities could reasonably expect that they would soon receive more information about PFAS in their drinking water and, if necessary, benefit from future treatment requirements by April 2029. Public reporting shows that PFAS pollution drives concrete life decisions, affecting where families live,¹⁷¹ and where children can safely attend school.¹⁷² Economic research likewise shows that publicized PFAS contamination significantly depresses property values and can drive residential sorting.¹⁷³ The PFAS drinking water standards were

¹⁷¹ See Michael Phillis & Helen Wieffering, *A Crisis Emerges Across the US as 'Forever Chemicals' Quietly Contaminate Drinking Water Wells*, AP News (Feb. 2, 2026), <https://apnews.com/article/pfas-wells-contamination-forever-chemicals-water-b132294aca85d569926dbf47c0d02355> (highlighting how residents of Stella, Wisconsin are effectively trapped in their homes because the presence of PFAS makes properties hard to sell).

¹⁷² See, e.g., Emmett Gartner, *Schools Across Maine Confront Unique Challenges in Ridding Their Water of 'Forever Chemicals'*, Maine Monitor (July 21, 2024), <https://themainemonitor.org/pfas-maine-schools/> (describing how PFAS contamination at Raymond Elementary School in Maine caused the school to switch to bottled water, affecting students and school operations); Mal Meyer, *Years After Discovering Elevated PFAS Levels, Maine Schools Still Working to Address It*, WGME (Nov. 21, 2024), <https://wgme.com/news/local/maine-schools-pfas-forever-chemicals-drinking-water-testing-cdc-remediation-radon-raymond> (discussing the PFAS contamination at Raymond Elementary School and how two years of water samples show thirty-one schools in Maine have PFAS levels above the state maximum); Katrina Liu, *Out of Concern for PFAS, Chilmark School Moves to Bottled Water*, Vineyard Gazette (Oct. 21, 2025), <https://vineyardgazette.com/news/2025/10/21/out-concern-pfas-chilmark-school-moves-bottled-water> (conveying Chilmark School shut off fountains, blocked student access to the school's drinking water, and switched to bottled water while pursuing a filtration system because of concerns with rising PFAS concentrations in the well); Alasdair McNinch, *Taking on the 'Forever Chemical' Threat in North Carolina School Water Supplies*, Facing South (Mar. 15, 2023), <https://www.facingsouth.org/2023/03/taking-forever-chemical-threat-north-carolina-school-water-supplies> (reporting Belville Elementary School in Leland, North Carolina had installed a reverse-osmosis filtration unit for school drinking water and how Emily Donovan said she was “terrified for my children” after learning about PFAS contamination in the family's water supply).

¹⁷³ See generally Michelle M. Marcus & Rosie Mueller, *Unregulated Contaminants in Drinking Water: Evidence from PFAS and Housing Prices*, National Bureau of Economic Research (Apr. 2024), <https://www.nber.org/papers/w31731> (demonstrating media attention on the presence of PFAS depresses property values and contributes to residential sorting).

broadly publicized, and communities throughout the country have likely relied on that information to make life decisions. EPA must consider such reliance interests.

EPA's omission is especially serious because, as discussed, many communities cannot count on states to replace the lost protections—due to a lack of resources or for other reasons. Some states are choosing not to promulgate drinking water standards for the Index PFAS. Georgia, for example, moved forward with draft rule updates for PFOA and PFOS only. For many communities, rescinding the Index PFAS standards means no equivalent state protection at all. EPA therefore cannot ignore these reliance interests or the real-world harms its rescission would impose on communities nationwide.

H. EPA Fails to Consider How the Rule Will Undermine Source Control and Accountability.

Not only would implementation of the Index PFAS standards prevent public harm from drinking these toxic chemicals, it would have broader implications on preventing the spread and promoting the clean-up of PFAS in the environment. While Administrator Zeldin has said that the agency is prioritizing “stopping PFAS from getting into drinking water systems, holding polluters accountable, and providing certainty for passive receivers,”¹⁷⁴ EPA's proposed rescission of the Index PFAS standards capriciously imposes the opposite results with no explanation of the contradiction. Federally, and in many states, drinking water standards provide the regulatory basis for source control and contaminated site clean-up. Removing the Safe Drinking Water Act's protections for the Index PFAS will therefore offer relief to the entities responsible for dumping PFAS into the environment, prolonging contamination and causing further harm to communities.

Many states use drinking water standards established under the Safe Drinking Water Act as one basis for regulating industrial and municipal wastewater pollution released into surface waters. At least 18 states—California, Georgia, Illinois, Indiana, Louisiana, Maine, Minnesota, Mississippi, Missouri, Montana, New York, North Carolina, North Dakota, South Carolina, Tennessee, Texas, Utah, and Wyoming—incorporate drinking water standards directly into their surface water regulations.¹⁷⁵ In some states, drinking water standards are listed in their

¹⁷⁴ EPA, *Administrator Zeldin Announces Major EPA Actions to Combat PFAS Contamination*, News Releases (Apr. 28, 2025), <https://www.epa.gov/newsreleases/administrator-zeldin-announces-major-epa-actions-combat-pfas-contamination>.

¹⁷⁵ See San Diego Region, Cal. Regional Water Quality Control Bd., Water Quality Control Plan 3-24 (2021) (prohibiting inland surface waters designated for use as domestic or municipal supply from containing concentrations of organic chemicals above state drinking water standards); Ga. Comp. R. & Regs. 391-3-6.03(6)(a)(iv); Ill. Admin. Code tit. 35, §§ 302.210(c), 302.645(a)-48 (2023); 327 Ind. Admin. Code 2-1-6(2)(A)(iii), 2-1-8.5 (2024); La. Admin. Code tit. 22, pt. IX, § 113(C)(6)(c) (2026); 06-096 Me. Code R. § 584, App. A, Note 6; Minn. R. 7050.0221 (2017); 11-2 Miss. Code. R. §§ 2.1(F), 2.2(F), 2.3(A); Mo. Code Regs. Ann. tit. 10,

regulations as health-based metrics the state can consider as it regulates surface water quality. In others, drinking water standards are a trigger for establishing surface water quality standards. As an example, in South Carolina drinking water standards are automatically adopted as numeric water quality criteria for the protection of human health and aquatic life. South Carolina regulators have often hesitated or refused to set effluent limitations to protect water quality from toxic PFAS, or to regulate PFAS in land-applied sludge, without a federal drinking water standard to guide their efforts.¹⁷⁶ As South Carolina demonstrates, the federal drinking water standard gives states across the country an established limit or guideline for regulating upstream sources of surface water pollution.

Most states, at least 26, also use EPA's drinking water standards to control sources of groundwater pollution. Alaska, Arizona, California, Delaware, Florida, Georgia, Indiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Washington, and Wisconsin all incorporate drinking water standards directly into their groundwater regulations in various ways.¹⁷⁷ For example, in New Hampshire, federal drinking

§ 20-7.031(5)(M) (2026); Water Quality Plan. Bureau, Mont. Dep't of Env't Quality, Circular DEQ-7 Mont. Numeric Water Quality Standards 5 (2019) (setting surface water standards for human health toxins at the more restrictive of the federal drinking water standard or national recommended water quality criteria); N.Y. Comp. Code R. & Regs. tit 6, § 702.3(a); 15A N.C. Admin. Code 02B .0212, .0214-16, .0218 (2019); N.D. Admin. Code 33.1-16-02.1-09(1)(a)–(c) (2024); S.C. Code Ann. Regs. 61-68E(14)(c)(5) (2023); Tenn. Comp. R. & Regs. 0400-40-3-.03(1)(j) (2024); 30 Tex. Admin. Code §§ 307.6(d)(3)(H), 307.6(d)(8) (2022); Utah Admin. Code R317-2-3.5(d) (2023); 020-0011 Wyo. Code R. §§ 1.11(c)(ii), 1.17(a), (c) (2018) (requiring surface waters designated for drinking water to support human consumption after conventional drinking water treatment or other acceptable levels of treatment and prohibiting pollution from resulting in an exceedance of state drinking water values, many of which are based on federal drinking water standards).

¹⁷⁶ Although South Carolina law does not require an MCL to set effluent limits protective of water quality (indeed, it requires effluent limits protective of water quality regardless of whether there is an MCL), in practice, state regulators often will not use their authority in the absence of a federal MCL. *E.g.*, S.C. Code Ann. Reg. § 61-68(G)(10) (all freshwaters must be “suitable for primary and secondary contact recreation and as a source for drinking water supply after conventional treatment”); *id.* § 122.44(d)(1) (NPDES permits “shall” include effluent limits on “all pollutants or pollutant parameters” with the reasonable potential to violate “any State water quality standard, including State narrative criteria for water quality,” and not requiring a MCL).

¹⁷⁷ *See* Alaska Admin. Code tit. 18, § 75.345(c)(4) (2017); Ariz. Rev. Stat. § 49-223(A) (2025); Cal. Regional Water Quality Control Bd., San Diego Region, Water Quality Control Plan 3-24 (2021) (prohibiting inland ground waters designated for use as domestic or municipal supply from containing concentrations of organic chemicals above state drinking water standards); 7 Del. Admin. Code § 1375-11.2.4.2 (2025); Fla. Admin. Code Ann. r. 62-520.420 (2009) (applying state drinking water standards as the groundwater standards for groundwater classified

water standards are adopted as ambient groundwater quality standards,¹⁷⁸ and in Michigan, they are adopted as the residential groundwater clean-up criteria.¹⁷⁹ Other states, like Maryland, prohibit discharges to groundwater when the groundwater is a source of drinking water and the discharge causes the groundwater quality to exceed its drinking water standards.¹⁸⁰ Pennsylvania even uses federal drinking water standards to limit contaminants in groundwater used for agriculture.¹⁸¹

Federally, Safe Drinking Water Act standards may be incorporated into polluters' remediation obligations to attain a degree of clean-up and control of contamination which assures protection of human health under the Comprehensive Environmental Response, Compensation, and Liability Act.¹⁸²

EPA did not consider the important role that its drinking water standards play in driving polluters' accountability to stop or clean up their pollution of surface water, groundwater, or land. Rescinding the Index PFAS drinking water standards will mean that fewer industries and municipalities will be required to stop dumping PFHxS, GenX, PFNA, or PFBS into surface water or groundwater and that site remediation projects may be less health-protective. Because the agency has entirely failed to consider this important aspect of the problem—namely that it

as a drinking water source); Ga. Comp. R. & Regs. 391-3-6.03(6)(a)(iv); Ind. Dep't of Env't Mgmt., Off. of Land Quality, Risk-based Closure Guide: Table 1 (2025) (incorporating federal drinking water standards for PFAS as the human health groundwater levels); Me. Dep't of Env't Prot., Remedial Action Guidelines for Contaminated Sites (RAGs) 35–36 (2023) (requiring state-adopted interim drinking water standards for PFAS to be used when assessing the residential groundwater exposure pathway); Md. Code Regs. 26.08.02.09(C), (D) 92014; Mich. Admin. Code r. 299.6(11) (2013); Minn. R. 7050.0221 (2017); 11-3-2 Miss. Code R. §§ 2.1.1(C)(45), 2.2.6(A)(2)(b), (c) (2002); Water Quality Plan. Bureau, Mont. Dep't of Env't Quality, Circular DEQ-7 Mont. Numeric Water Quality Standards 5 (2019) (setting groundwater standards for human health toxins at the more restrictive of the federal drinking water standard, if available); 118 Neb. Admin. Code App. A, Step 8 (2023) (requiring groundwater cleanup levels for groundwater used as drinking water to be set at existing state or federal drinking water standards for a contaminant); N.H. Rev. Stat. Ann. § 485-C:6 (2025); N.J. Admin. Code § 7:9C-1.7(c)3 (2025); N.Y. Comp. Code R. & Regs. Tit. 6, § 702.3(a); 15A N.C. Admin. Code 02L .0202(b)(4), .0202(d); Okla. Admin. Code § 252:730-7-4(c)(1) (2024); 25 Pa. Code § 250.304(c) (2021); S.C. Code Ann. Regs. 61-68E(14)(c)(5) (2023); Tenn. Comp. R. & Regs. 0400-40-3-.08(2) (2013); 30 Tex. Admin. Code § 350.74(f) (2020) (setting groundwater ingestion risk-based exposure levels at the federal drinking water standards, if available); Utah Admin. Code R317-6-2.2 (2022); Wash. Admin. Code § 173-340-720(1), (3) (2024); Wis. Stat. § 160.07(4)(a)–(c).

¹⁷⁸ NH Rev. Stat. Ann. § 485-C:6

¹⁷⁹ Mich. Admin. Code R. 299.6(11).

¹⁸⁰ Md. Code Regs. 26.08.02.09(C), (D).

¹⁸¹ 25 Pa. Code § 250.304(c).

¹⁸² 42 U.S.C. § 9621(d)(2)(A)(i).

actively undermines EPA’s stated policy priority of controlling PFAS sources—the agency’s rescission of the Index PFAS drinking water standards is arbitrary and capricious.

I. EPA Fails to Consider the Cumulative Impacts of Both the Delay and Rescission Rules Combined.

EPA is not rescinding the Index PFAS standards in a vacuum. At the very same time it proposes this unprecedented repeal of critical drinking water protections, the agency is also proposing to delay compliance with the drinking water standards for PFOA and PFOS. All six drinking water standards were promulgated together in the single 2024 Rule, yet EPA now seeks to splinter its rollback of these regulations across separate rulemakings—without explanation or justification. Courts have held that when agencies separate related rulemakings into concurrent proceedings and fail to account for the combined effects of those proposed rules, their actions were arbitrary and capricious.¹⁸³ The interplay between contemporaneous and related proposed rules is “an important aspect of the problem” that an agency is required to consider under the APA.¹⁸⁴ An agency’s failure to consider and account for the cumulative effects of “intertwined proposed rules” also obscures the “true impact” of the rules and deprives the public “of a meaningful opportunity to comment.”¹⁸⁵ EPA must assess the combined impacts of rescinding

¹⁸³ See, e.g., *Portland Cement Ass’n v. EPA*, 665 F.3d 177, 185, 187 (D.C. Cir. 2011) (holding the EPA was arbitrary and capricious in promulgating parallel rules and ignoring their “close correlation,” noting that an agency has a responsibility to reevaluate its decision-making “if a significant factual predicate changes” and has “a similar obligation to acknowledge and account for a changed regulatory posture the agency creates—especially when the change impacts a contemporaneous and closely related rulemaking”) (internal quotations omitted); *Off. of Comm’n of United Church of Christ v. FCC*, 707 F.2d 1413, 1441 (D.C. Cir. 1983) (finding the FCC’s decision to eliminate one rule was “seriously disturbing in light of its concurrent proceeding to adopt a simplified renewal procedure” for radio broadcasting licenses); *Centro Legal de la Raza v. Exec. Off. for Immigr. Rev.*, 524 F. Supp. 3d 919, 928, 955 (N.D. Cal. 2021) (holding a notice-and-comment period was “inadequate” because numerous “concurrent regulatory changes” to the immigration system “directly intersect[ed]” with the rule at issue such that the agency was arbitrary and capricious for failing “to consider the combined impact of numerous intersecting policy changes”); *Nat’l Ass’n of Priv. Fund Managers v. SEC*, 151 F.4th 252, 269, 273 (5th Cir. 2025) (holding the SEC should have considered the “collective economic impact” of two rules “promulgated in tandem” and “adopted concurrently” because of their “significant interplay and their nearly concurrent promulgation”); *Casa de Maryland, Inc. v. Wolf*, 486 F. Supp. 3d 928, 964 (D. Md. 2020) (describing how the agency at issue sidestepped fundamental concerns expressed in public comments over the combined effects of staggered rulemakings which supported the court’s holding that the agency violated the APA).

¹⁸⁴ See *Centro Legal de la Raza*, 524 F. Supp. 3d at 959 (stating explicitly that “[a]n agency cannot shirk its obligation to ‘consider an important aspect of the problem,’ such as the interplay of other administrative rules that directly impact this Rule”) (quoting *State Farm*, 463 U.S. at 43)).

¹⁸⁵ *Id.* at 962.

the Index PFAS standards while authorizing widespread delayed compliance with the PFOA and PFOS standards.

As discussed, EPA does not adequately consider the public health harms and forgone benefits of its Proposed Rescission Rule.¹⁸⁶ But even if it tried to, it would not be enough for the agency to simply consider the impact of rescinding the Index PFAS Provisions alone. That is because, together, EPA's Proposed Rescission and Delay rules will cause serious cumulative and cascading harms.

First, the population harmed by EPA's Proposed Rescission Rule will be further injured by EPA's decision to delay PFOA and PFOS standards. This is because individuals who consume water containing PFAS mixtures are at higher risk of adverse health effects.¹⁸⁷ Approximately 63 percent of systems that have at least one Index PFAS present also contain PFOA or PFOS.¹⁸⁸ This means that that people are typically exposed to mixtures of PFAS that include the Index PFAS and PFOA and/or PFOS.

The agency's combined actions will also create compounding harms over time. EPA is delaying compliance with standards for legacy PFAS—such as PFOA and PFOS—that are already being phased out of production in the United States and whose build-up is generally declining in humans.¹⁸⁹ But the same is not true for the Index PFAS. Compounds such as GenX and PFBS, which were introduced as replacements for older PFAS like PFOA, are expected to persist and, in many areas, increase in the environment and in drinking water sources. As discussed in section I.E, that risk is especially serious because PFBS and GenX are closely tied to semiconductor manufacturing, an industry experiencing rapid growth due to surging demand associated with artificial intelligence and related technologies. As semiconductor production expands, use of these PFAS and related precursor chemicals may increase as well, creating an even greater likelihood of future drinking water contamination.

EPA's dual actions will therefore create a widening regulatory gap. In delaying compliance with standards for PFOA and PFOS, which are decreasing in the environment, EPA posits that fewer water systems may need to install treatment in the first place. But that does not mean that communities are protected from harm. At the same time, by rescinding the Index PFAS standards altogether, EPA would eliminate any obligation for systems to monitor, notify

¹⁸⁶ 91 Fed. Reg. at 29418.

¹⁸⁷ 88 Fed. Reg. at 18639; EPA, *supra* note 46, at 13.

¹⁸⁸ Weimer, SELC 2026 UCMR 5 Data Analysis, *supra* note 62.

¹⁸⁹ Jinhua Pan et al., *Temporal Trend of Serum Perfluorooctanoic Acid and Perfluorooctane Sulfonic Acid Among U.S. Adults With or Without Comorbidities in NHANES 1999–2018*, 12 *Toxics* 314 (2024), <https://www.mdpi.com/2305-6304/12/5/314>; *Human Exposure: PFAS Information for Clinicians – 2024*, ASTDR (July 7, 2026), <https://www.atsdr.cdc.gov/pfas/hcp/clinical-overview/human-exposure.html>.

the public about, or treat dangerous levels of replacement PFAS such as GenX and PFBS—chemicals that are becoming more prevalent in drinking water sources.

The result is like closing one lane of traffic to protect pedestrians after the cars have already moved into another. As contamination shifts from legacy PFAS to replacement PFAS, EPA is delaying safeguards for the former while eliminating safeguards for the latter. The result is not merely a temporary pause in protection. It is the removal of safeguards precisely where the contamination problem is headed.

Even where systems eventually install treatment aimed at PFOA and PFOS, that does not solve the problem. As discussed in Section I.D, treatment designed and operated to reduce long-chain PFAS like PFOA and PFOS may be insufficient to control short-chain PFAS such as GenX, PFBS, and similar compounds, which can break through treatment filters more quickly and often require more rigorous operation, maintenance, and replacement schedules. Without enforceable standards for those compounds, systems will have little obligation—and little incentive—to operate treatment in a manner that reduces them effectively. Worse still, poorly maintained treatment media can themselves become secondary sources of PFAS contamination.¹⁹⁰ EPA has already recognized this point. In responding to comments on the 2024 Rule, EPA stated that “treatment systems must be designed and optimized for all of the contaminants that are present, accounting for site specific circumstances. Only designing a treatment system for PFOA and PFOS removal, rather than for the other PFAS which may be present in varying concentrations, may not be as effective for the other PFAS or adequately public health protective.”¹⁹¹

The combined effect of EPA’s actions is therefore far broader than the agency suggests: less treatment, less monitoring, less public notice, and more exposure to harmful PFAS—often without communities even knowing it. EPA cannot ignore these foreseeable, cumulative consequences.

¹⁹⁰ Silmara Sanzana et al., *A review of PFAS remediation: Separation and degradation technologies for water and wastewater treatment*, 74 *Water Process Engineering* 107793 (2025), <https://www.sciencedirect.com/science/article/pii/S2214714425008657>; Yoshifumi Nakazawa et al., *Long-term removal of perfluoroalkyl substances via activated carbon process for general advanced treatment purposes*, 245 *Water Research*, 120559 (2023), <https://www.sciencedirect.com/science/article/abs/pii/S0043135423009995>; *Choosing the Right PFAS Treatment Media: GAC vs Ion Exchange Performance for Short-Chain Compounds*, PFAS^{Tech} (Feb. 27, 2026), <https://www.pfastech.com/insights/short-chain-pfas-treatment-challenges.html>.

¹⁹¹ See Responses to Public Comments on PFAS Rulemaking, *supra* note 65, at 3-4.

J. The Proposed Rescission Rule Is Based on an Arbitrary and Unsupported Economic Analysis.

As explained in the accompanying expert analysis from economist Dr. Dennis Guignet, the Proposed Rescission Rule is arbitrary and capricious because it relies on a deeply flawed, biased economic analysis that underestimates forgone benefits and may overestimate cost savings.¹⁹² EPA asserts that the Proposed Rescission Rule does not trigger the Act's specific requirements for a Health Risk Reduction and Cost Analysis ("HRRCA"). 91 Fed. Reg. at 29418 (citing 42 U.S.C. § 300g-1(b)(3)(C)). Even if EPA is correct that the Act does not specifically require a HRRCA for the Proposed Rescission Rule, "reasonable regulation ordinarily requires paying attention to the advantages *and* the disadvantages of agency decisions" and doing so "before deciding whether regulation is appropriate and necessary." *Michigan v. EPA*, 576 U.S. 743, 753, 759 (2015). And, unless a statute specifically bars the use of a benefit-cost analysis, courts will not "tolerate rules based on arbitrary and capricious cost-benefit analyses." *City of Portland, Or. v. EPA*, 507 F.3d 706, 712-13 (D.C. Cir. 2007).

1. The Economic Analysis for the Proposed Rescission Rule fails to consider key alternative regulatory options.

The Proposed Rescission Rule and its Economic Analysis consider only one possible regulatory option: complete rescission of the regulatory determinations, drinking water goals, and drinking water standards for the Index PFAS. That is blatantly, arbitrarily, and capriciously contrary to EPA's own economic analysis guidelines:

At a minimum, the economic analysis should fully assess and present three options for consideration: the proposed or finalized option; a more stringent option; and a less stringent one. ... Assessing at least three options applies in any circumstance. It is not adequate to evaluate only the selected option, even for a final rule that establishes the option to be promulgated. Similarly, in cases where the design of the regulation is dictated by statute, presenting multiple options is still necessary when the regulation is proposed or finalized -- even though the Agency may have no discretion in its design. Assessing multiple options helps inform the public about the anticipated benefits and costs of the Agency's final action compared to options not pursued, it is imperative that the analysis assesses multiple options.¹⁹³

¹⁹² Memorandum from Dennis Guignet, PhD, to Earthjustice, the Natural Resources Defense Council, and the Southern Environmental Law Center, *Economic Comments Related to the Economic Analyses and Rule Text for the Proposed SDWA PFAS "Delay Rule" and "Rescission Rule"* 14–18 (July 10, 2026) (hereinafter "Guignet Memo").

¹⁹³ U.S. EPA, Guidelines for Preparing Economic Analyses, *supra* note 86, at 3-7; *see* Guignet Memo, *supra* note 192, at 15.

Here, EPA should have considered alternative regulatory options including at least: (1) not rescinding any of the Index PFAS provisions (i.e., treating the baseline also as a no-action alternative that EPA could choose to implement); (2) rescinding only the Index PFAS goals and standards; (3) reproposing the Index PFAS goals and standards; and (4) proposing more protective goals and standards for the Index PFAS. All of these options are regulatory alternatives available to EPA here. The first option is justified because, as discussed above, proper interpretation of the Act shows that EPA did not commit any procedural error and lacks a legal basis to rescind the Index PFAS Provisions. In the alternative, even if EPA maintains its erroneous statutory interpretation, the first option could be based on the harmless error doctrine, as discussed above. The second option is also readily justified because, as discussed above, even if EPA’s statutory interpretation is correct, EPA has not identified a procedural error in its promulgation of the determinations to regulate the Index PFAS and EPA lacks any legal basis to rescind the determinations. The third and fourth options would also build on the continuing vitality of the Index PFAS regulatory determinations.

2. *EPA cannot rely solely on an outdated analysis from 2024 to estimate costs and benefits of a proposed rule in 2026 and must evaluate costs and benefits using the best currently available evidence.*

EPA’s Economic Analysis for the Proposed Rescission Rule improperly relies entirely on repurposing analyses that the agency finalized more than two years ago for the 2024 Rule. *See* 91 Fed. Reg. at 29418. EPA’s economic modeling should be “based on the best available data and empirical evidence.”¹⁹⁴ And, to the extent that EPA asserts that its analysis “addresses the substance of paragraphs 1412(b)(3)(C),” 91 Fed. Reg. at 29418, then its economic analysis should comply with the Act’s requirements. Specifically, EPA must use “the best available public health information” when assessing determinations to regulate, 42 U.S.C. § 300g-1(b)(1)(B)(ii)(II), and must use “the best available, peer-reviewed science and supporting studies” when making all science-based decisions, including when changing goals and standards, *id.* § 300g-1(b)(3)(A).

The best available data for the Proposed Rescission Rule now, in 2026, includes abundant evidence about the prevalence and health effects of the Index PFAS that were not available or not assessed as part of the economic analysis for the 2024 Rule.¹⁹⁵ *See supra* Section IV.F.2. For example, there are myriad additional peer-reviewed studies on the health effects of the Index PFAS and additional data about their prevalence in water systems from UCMR 5. EPA’s economic analysis for the Proposed Rescission Rule does not even acknowledge this additional body of available data, much less analyze it, which is arbitrary and capricious. “[A]n agency cannot *ignore* new and better data.” *Dist. Hosp. Partners, L.P. v. Burwell*, 786 F.3d 46, 57 (D.C. Cir. 2015) (emphasis original); *Catawba Cnty., NC v. EPA*, 571 F.3d 20, 46 (D.C. Cir. 2009)

¹⁹⁴ U.S. EPA, Guidelines for Preparing Economic Analyses, *supra* note 86, at 5-22.

¹⁹⁵ *See* Guignet Memo, *supra* note 192, at 16–17.

(agencies “have an obligation to deal with newly acquired evidence in some reasonable fashion”).

EPA is required to use all of the *currently available* Index PFAS data to assess the costs and benefits of the Proposed Rescission Rule. That includes reassessing the number of water systems that may exceed the Index PFAS standards for purposes of determining the costs avoided by the Proposed Rescission Rule. And it requires EPA to reassess whether there are now sufficient data to quantify additional health benefits that would result from the Index PFAS standards and, if so, to quantify those benefits (which become forgone benefits for the Proposed Rescission Rule).¹⁹⁶

EPA’s failure to consider more recent data is particularly egregious here because, as EPA acknowledges, the 2024 Rule did not quantify *any* health benefits from reduced exposure to the Index PFAS. 91 Fed. Reg. at 29420 (“quantified benefits were not available for PFHxS, PFNA, HFPO-DA, and PFBS due to data limitations”). Instead, the only quantified benefits attributable to the Index PFAS standards in the 2024 Rule’s economic analysis were health benefits from co-removal of PFOA and PFOS that occur when treatment requirements are triggered solely by an exceedance of a standard applicable to PFHxS.¹⁹⁷ It is arbitrary and capricious for EPA to proceed with the Proposed Rescission Rule without (1) evaluating the full body of currently available scientific evidence about the prevalence and health effects of the Index PFAS, (2) determining whether any forgone health benefits from increased exposure to the Index PFAS can be quantified, and then, (3) if possible, quantifying those forgone health benefits.

3. *The introduction to the memorandum that purportedly provides an overview of costs and benefits of the proposed Rescission Rule is biased and unbalanced.*

The Economic Analysis Memorandum is arbitrary and capricious because it violates EPA’s guidance that calls for “a clear, plain language executive summary, including an accounting statement that summarizes the benefit and cost estimates of the regulatory action under consideration, including qualitative and non-monetized benefits and costs.”¹⁹⁸ Here, the introduction to the Economic Analysis memorandum addresses reduced compliance costs but

¹⁹⁶ *See id.*

¹⁹⁷ *See* U.S. EPA, Economic Analysis for the Final Per- and Polyfluoroalkyl Substances National Primary Drinking Water Regulation, EPA Doc. No. EPA-815-R-24-001 (Apr. 2024), at 6-4 tbl. 6-2 note (“Quantifiable benefits are increased under final rule table results relative to the other options presented because of modeled PFHxS occurrence, which results in additional quantified benefits from co-removed PFOA and PFOS.”).

¹⁹⁸ US EPA, Guidelines for Preparing Economic Analyses, *supra* note 86, at 1-5; *see* Guignet Memo, *supra* note 192, at 16.

does not even mention forgone health benefits, in violation of that guidance.¹⁹⁹ Including a discussion of forgone benefits upfront in the Economic Analysis Memorandum is necessary for balance, transparency, and completeness. For the same reasons, an updated version of Exhibit 3—including all quantifiable cost savings and forgone benefits based on the best available current evidence—should be included in the introduction, alongside a balanced discussion of quantified and unquantified cost savings and forgone benefits.

4. *EPA's assessment of forgone benefits is incomplete, misleading, and biased.*

As written, the Economic Analysis Memorandum's discussion of forgone benefits is misleading, and thus arbitrary and capricious, because it suggests that EPA quantified forgone health benefits associated with PFHxS. *See* Economic Analysis Memorandum at 3 (“The annualized quantified national expected value benefit estimate for regulating PFOA, PFOS, and PFHxS was estimated to be \$1,549 million at a two percent discount rate, \$1,394 million, at the three percent discount rate, and \$916 million at the seven percent discount rate, in 2022 dollars.”), 8–9 (presenting quantified forgone benefits). This is misleading because the Economic Analysis Memorandum never states or acknowledges that the quantified benefits associated with regulating PFHxS in the 2024 economic analysis resulted solely from co-removals of PFOA and PFOS that occur when treatment requirements are triggered by an exceedance of a standard applicable to PFHxS.²⁰⁰ Although EPA acknowledges that “quantified benefits were not available for PFHxS, PFNA, HFPO-DA, and PFBS due to data limitations,” Economic Analysis Memorandum at 9, it is confusing and misleading to present quantified forgone benefits related to rescinding the regulation of PFHxS while simultaneously asserting that quantified benefits for PFHxS were unavailable. At a bare minimum, the Economic Analysis Memorandum should clearly explain which health benefits were quantified to generate the estimates of quantified forgone benefits.

EPA's discussion of unquantified forgone benefits is also deficient. To the extent that there are health effects associated with exposure to the Index PFAS for which EPA still does not now, in 2026, have sufficient data to quantify the forgone health benefits, EPA should provide a thorough discussion of those unquantified forgone health benefits and how they affect EPA's overall assessment of forgone benefits. The preamble to the Proposed Rescission Rule and Economic Analysis Memorandum each have only the same four sentences discussing

¹⁹⁹ U.S. EPA, Memo. re Overview of Costs and Benefits and Benefits for the Rescission of Regulatory Determinations and Removal of Related Provisions for Four PFAS Substances, at 1–2 (May 2026), Rulemaking Record EPA-HQ-OW-2025-0654 (hereinafter, “Economic Analysis Memorandum”).

²⁰⁰ *See* U.S. EPA, Economic Analysis for the Final Per- and Polyfluoroalkyl Substances National Primary Drinking Water Regulation, *supra* note 197.

unquantified forgone health benefits. *See* 91 Fed. Reg. at 29420 & Ex. 1; Economic Analysis Memorandum at 9-10 & Ex. 3. This is insufficient and should be greatly expanded.

5. *The sensitivity analysis discussed in the proposed Rescission Rule's Economic Analysis is incomplete, unbalanced, outdated, and biased.*

The Proposed Rescission Rule prominently discusses and presents a sensitivity analysis that EPA conducted in 2024 to suggest that the Proposed Rescission Rule may lead to an additional \$82 million in annualized cost savings due to the avoided costs of complying with the standards applicable to PFNA, HFPO-DA, and PFBS. 91 Fed. Reg. at 29419–20 & Ex. 1; Economic Analysis Memorandum at 6–7, 10 & Ex. 3. EPA concedes that “national-level costs specific to each of these PFAS were not quantified due to limitations in occurrence data available at that time” in 2024. 91 Fed. Reg. at 29419. But EPA does not even acknowledge that additional occurrence data are available now, and EPA makes no effort to update the sensitivity analysis using currently available occurrence data or to present any other method for more accurately quantifying potential cost savings related to PFNA, HFPO-DA, and PFBS using current data. EPA’s discussion of and reliance on an outdated sensitivity analysis is arbitrary and capricious and results in an inaccurate, incomplete, and potentially biased assessment of the Proposed Rescission Rule’s potential cost savings.

EPA’s presentation of the 2024 sensitivity analysis is also unbalanced and biased.²⁰¹ In the 2024 Rule’s Economic Analysis, EPA also conducted a sensitivity analysis that estimated the benefits corresponding to reductions in low birth weight due to reduced exposure to PFNA.²⁰² And EPA conducted a sensitivity analysis that found notably larger benefits from avoided non-fatal health effects when applying willingness-to-pay estimates to calculate health benefits, rather than using cost-of-illness based values for monetization.²⁰³ It is biased and unbalanced for the Proposed Rescission Rule to prominently discuss and display the results of one of the 2024 sensitivity analyses (focused on costs) while completely ignoring other sensitivity analyses that were conducted at the same time (focused on benefits).

More broadly, EPA should also consider whether the scientific data and evidence available now would support additional or expanded sensitivity analyses to better estimate the Proposed Rescission Rule’s potential forgone benefits or cost savings, even if sufficient data are not available for precise quantified estimates.

²⁰¹ Guignet Memo, *supra* note 192, at 18.

²⁰² U.S. EPA, Economic Analysis for the Final Per- and Polyfluoroalkyl Substances National Primary Drinking Water Regulation Appendices, Appendix K.4 Birth Weight Sensitivity Analyses, EPA Doc. No. EPA-815-R-24-002 (Apr. 2024).

²⁰³ *Id.*, Appendix O.2.

6. *EPA should evaluate forgone benefits using willingness-to-pay estimates.*

When quantifying forgone benefits from avoided non-fatal health effects resulting from the Proposed Rescission Rule, EPA should use estimates of willingness-to-pay rather than cost-of-illness estimates.²⁰⁴ The statute expressly encourages EPA to consider “valid approaches for the measurement and valuation of benefits ... including approaches to identify consumer willingness to pay for reductions in health risks from drinking water contaminants.” 42 U.S.C. § 300g-1(b)(3)(C)(iii). The 2024 Rule’s Economic Analysis used cost-of-illness estimates,²⁰⁵ which EPA calculated may have underestimated quantified health benefits by about five percent or more.²⁰⁶ Using willingness-to-pay to assess health-related benefits and costs is conceptually superior to alternative approaches including cost-of-illness because willingness-to-pay better accounts for “pain and suffering and other quality-of-life effects.”²⁰⁷ For all quantified forgone benefits resulting from the proposed Rescission Rule, including forgone benefits from co-removal of PFOA and PFOS (currently the *only* quantified forgone benefit in the Proposed Rule’s Economic Analysis), EPA should update its analyses to use willingness-to-pay rather than cost-of-illness. EPA’s failure to consider willingness-to-pay valuations, which could potentially change the overall balance of costs and benefits for the Proposed Rescission Rule was arbitrary and capricious.

V. Conclusion

For these reasons, EPA should not finalize the Proposed Rescission Rule. The proposal is expressly prohibited by the Safe Drinking Water Act, lacks any legitimate legal basis, is contrary to the Safe Drinking Water Act’s mandate to protect public health, and fails to provide the reasoned explanation required by the Administrative Procedure Act. Because EPA has not adequately justified abandoning the Index PFAS regulatory determinations, goals, and standards, the Agency should withdraw the proposal and retain the current requirements. If you have any questions about these comments, please contact Katherine O’Brien at kobrien@earthjustice.org.

²⁰⁴ Guignet Memo, *supra* note 192, at 17.

²⁰⁵ See U.S. EPA, Economic Analysis for the Final Per- and Polyfluoroalkyl Substances National Primary Drinking Water Regulation, EPA Doc. No. EPA-815-R-24-001 (Apr. 2024), at 2-5.

²⁰⁶ *Id.* at 6-4 (concluding that using willingness-to-pay instead of cost-of-illness to monetize cancer morbidity impacts resulted in “an increase in quantified benefits of approximately 5.4%”).

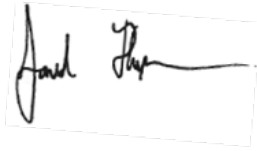
²⁰⁷ U.S. OMB, Circular No. A-4, at 48 (Nov. 9, 2023), *available at* <https://bidenwhitehouse.archives.gov/wp-content/uploads/2023/11/CircularA-4.pdf>.

Respectfully submitted,



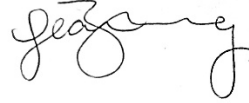
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