

Chemical Industry Update

May 2026

EPA Proposes to Partially Rescind PFAS Drinking Water Standards

Key Notes:

- On May 18th, EPA proposed a rule rescinding drinking water standards for four PFAS compounds that were regulated as of 2024.
- If finalized, the rule will have implications for environmental remediation and drinking water compliance, product liability defense strategies, and other PFAS litigation matters.
- EPA's May 18 MCL rescission announcement also outlined additional PFAS-related actions the agency plans to take.

On May 18, 2026, the United States Environmental Protection Agency (EPA) [announced](#) a proposed rule to rescind the enforceable Maximum Contaminant Levels (MCLs) for four per- and polyfluoroalkyl substances (PFAS)—PFHxS, PFNA, HFPO-DA (GenX chemicals), and Hazard Index mixtures of these three plus PFBS—that were finalized in April 2024 under the Biden Administration. The agency contends that the prior rulemaking failed to follow proper procedures under the Safe Drinking Water Act (SDWA) and characterizes the rescission as a procedural correction rather than a substantive determination regarding PFAS safety. However, EPA notes that the proposed rule, if finalized, would also continue the agency's current PFAS approach of providing "practical, scientifically-sound drinking water protections."

Pending Litigation and the *Loper Bright* Decision

EPA's proposed rescission relies on the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), which eliminated judicial deference to agency interpretations of ambiguous statutes under the *Chevron* framework. EPA now interprets the SDWA as requiring a

sequential process: first finalizing a determination that a contaminant warrants regulation, then proposing a rule. EPA maintains that the prior administration did not follow this sequence for these four PFAS compounds.

Anti-Backsliding and Future Regulation

The SDWA generally prohibits EPA from weakening existing drinking water protections (the "anti-backsliding" rule). EPA argues that this provision applies only to revisions of lawfully promulgated rules and that, because these rules were not lawfully enacted, the restriction does not apply. EPA also distinguishes *NRDC v. Regan*, 67 F.4th 397 (D.C. Cir. 2023), which blocked EPA from withdrawing a regulatory determination based on new science, on the basis that the rescission addresses an alleged procedural deficiency in the agency's exercise of authority rather than a reassessment of the underlying scientific data.

What This Means for Our Clients

The proposed rescission, if finalized, would have implications across a wide range of environmental, product liability, and general litigation matters.

Environmental Compliance and Enforcement. For clients in the manufacturing, chemical, and water utility sectors, the proposed rescission does not eliminate PFAS risk, as PFOA and PFOS remain subject to enforceable MCLs of 4 parts per trillion, with potential compliance extensions for water providers available through 2031. In addition, PFOA and PFOS retain their hazardous substance designation under CERCLA, which continues to implicate potential site investigations and cleanup obligations, affect real estate transactions, and create potential Superfund liability for

"passive receivers," including wastewater treatment plants, farms, and landfills that did not originally generate or discharge the PFAS.

State-Level Developments. The rescission of federal standards for PFHxS, PFNA, HFPO-DA, and PFBS also does not preempt state action. Environmental groups have signaled that they view the rescission as potentially unlawful under the SDWA's anti-backsliding provision, and legal challenges are expected. Meanwhile, many states have adopted or are developing their own PFAS drinking water standards, which in some cases may be more stringent than the rescinded federal standards.

Product Liability and Toxic Tort Claims. For clients defending against or concerned about product liability and toxic tort claims involving PFAS-containing products, the rescission would affect the evidentiary landscape. Plaintiffs have frequently pointed to federal MCLs as evidence that a substance poses an unreasonable risk at certain concentrations. If the rescission is finalized, counsel may argue that the absence of a binding federal standard undermines claims that exposure to these four PFAS compounds at particular levels is harmful. EPA's health assessments, however, continue to identify links between these PFAS and developmental toxicity, immune system suppression, liver damage, thyroid disruption, and elevated cancer risks. This evidence remains available to support causation arguments regardless of regulatory status.

Scientific Evidence and Causation. Without an enforceable MCL serving as a benchmark for the four PFAS compounds subject to the proposed rescission, experts on both sides of litigation will rely more heavily on epidemiological data, toxicological studies, and state-level standards to establish or refute dose-response relationships. As noted above, the EPA's economic analysis acknowledged that the forgone benefits of rescission include adverse health effects "including developmental and reproductive toxicity, immune system suppression, liver damage, thyroid disruption, and elevated risk of kidney and liver cancers." This language itself may become evidence in ongoing and future litigation.

Two additional developments from EPA's announcement warrant attention. First, EPA stated that it is allocating nearly \$1 billion in funding for states to address PFAS in drinking water, signaling continued federal investment in PFAS remediation even as some federal PFAS regulations are relaxed or withdrawn.

Second, EPA indicated it is developing a proposed rule for establishing "technology-based effluent limitations and pretreatment standards for key industrial categories that discharge PFAS, including chemical manufacturers and other sources, to keep PFAS out of waterways in the first place." For manufacturers and industrial dischargers, this demonstrates that even as certain drinking water MCLs may be rescinded, new source-control regulations targeting PFAS discharges may be forthcoming—potentially creating new bases for liability and compliance obligations.

Finally, HHS Secretary Robert F. Kennedy, Jr. stated that HHS is advancing "gold-standard research to better understand PFAS exposure, toxicity and long-term health impacts on Americans." This signals that federal research into PFAS health effects will continue and expand, likely generating additional scientific evidence that may be used in future litigation by both plaintiffs seeking to establish causation and defendants seeking to define dose-response thresholds.

Recommended Actions

Given the scope of these regulatory developments, we recommend that affected clients take the following steps:

- Preserve all existing compliance documentation, internal testing data, and correspondence related to PFAS, as these materials will be critical if future regulations are adopted—potentially including more stringent requirements—or if enforcement actions or litigation arise.
- Evaluate exposure under state PFAS regulatory regimes, which may impose independent obligations that remain in effect regardless of the federal rescission.
- Consider submitting written comments to the EPA docket (EPA-HQ-OW-2025-0654) by the July 20, 2026, deadline or registering to provide verbal testimony at the July 7, 2026, virtual public hearing, particularly

where clients have interests in shaping the scope of any future re-regulation.

- Reassess litigation strategy in pending PFAS-related matters, considering both the absence of federal MCLs for the four PFAS compounds subject to the proposed rescission and the EPA's continued acknowledgment of their associated health risks.

How Thompson Hine Can Help

Thompson Hine's [PFAS Litigation & Regulatory](#) team, drawing from our [Environmental](#), [Product Liability Litigation](#), and general litigation practices, continues to closely monitor this proposed rulemaking and related federal and state PFAS developments. Our attorneys are actively tracking the comment period, evaluating the legal basis for the proposed rescission, and assessing the implications for pending and anticipated regulations and litigation across practice areas. Because a final rule rescinding these MCLs would likely face legal challenge, monitoring the full rulemaking process will be critical. We encourage clients with questions about this development to contact any member of our [PFAS Litigation & Regulatory](#) team.

FOR MORE INFORMATION

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