



**American Water Works
Association**

Dedicated to the World's Most Important Resource®

FEDERAL REGULATORY HORIZON

ADAM T. CARPENTER, PHD

MANAGER OF ENERGY AND ENVIRONMENTAL POLICY

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Tracy Mehan
Executive Director,
Government Affairs
202.326.6125



Steve Via
Director of Federal
Relations
202.326.6130



Tommy Holmes
Director of Legislative
Affairs
202.326.6128



Patricia Chism
Office Manager
202.326.6123



Kevin Morley
Manager of Federal
Relations
202.326.6124



Nate Norris
Senior Legislative
Specialist
202.326.6122



Adam Carpenter
Manager of Energy
& Env. Policy
202.326.6126



Chris Moody
Regulatory Manager
202.326.6127

**DC Government Affairs
Office**
202-628-8303



OUTLINE

Overview:

1. Key National Regulatory Issues

- Current drivers
- AWIA pending regulations
- Regulatory process
- Other pending regulations

2. Recent Legislative Activities

- Water Infrastructure
 - Farm Bill
- 



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PART 1: KEY NATIONAL REGULATORY ISSUES

POLICY
PRIORITIES
THROUGH 2021

- **WUC Roadmap through 2021**
 - **Safe drinking water**
 - **Sound infrastructure**
 - **Resilient and Secure Water Systems**
 - **Effective Water Resource Management**
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CURRENT DRIVERS

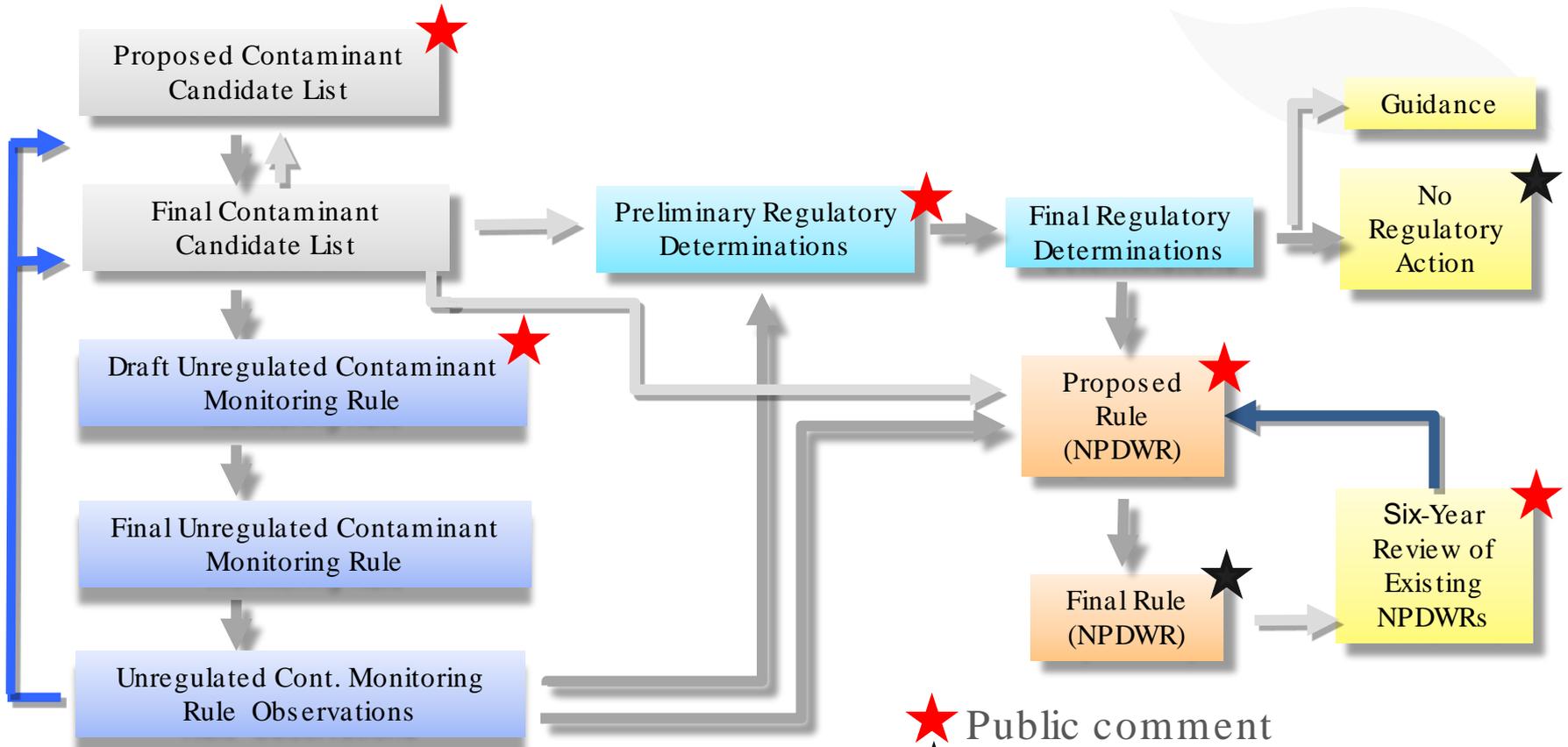
Most current activity driven by (alone or in combination)

1. America's Water Infrastructure Act of 2018
 2. Reactions to specific events
 3. Deregulatory pressures
- 

SDWA RULES IN PROCESS

- **Rules to implement AWIA provisions**
 - Updates to CCR rule
 - Updates rules or guidance updating SRF provisions
 - Rules or procedures for downstream notification of spills impacting utilities
 - Rules or guidance on vulnerability assessments and physical/cybersecurity plans
 - Others
 - **Rules previously announced**
 - Long term Lead and Copper Rule revisions
 - Perchlorate
 - **Rules related to ongoing regulatory processes**
 - Regulatory Determinations (PFAS and cyanotoxins are strong candidates)
 - CCL proposal in 2020
 - UCMR5 preliminary development
- 

SAFE DRINKING WATER ACT STANDARD SETTING PROCESSES



Source: Adapted from USEPA presentation (April, 2010)

★ Public comment
★ Subject to legal challenge

§2013 COMMUNITY WATER SYSTEM RISK & RESILIENCE

BT Act 2002

Vulnerability Assessment
(VA)
Terrorism or Intentional Act

Submit VA to EPA

Emergency Response
Plan



AWIA 2018

Risk & Resilience Assessment

Malevolent & Natural Hazard Threats

Submit certification to EPA

Prepare/Update & Submit certification
to EPA

Directs EPA to recognize voluntary
consensus standards

Baseline threat info by Aug 1, 2019

§ 2013 COMPLIANCE DEADLINES[#]

Community Water System (pop. served)*	Certify Risk & Resilience Assessment (RRA) prior to:	Certify ERP within 6 months of RRA, but not later than:
>100K	March 31, 2020	September 30, 2020
50,000 – 99,999	December 31, 2020	June 30, 2021
3,300 – 49,999	June 30, 2021	December 30, 2021

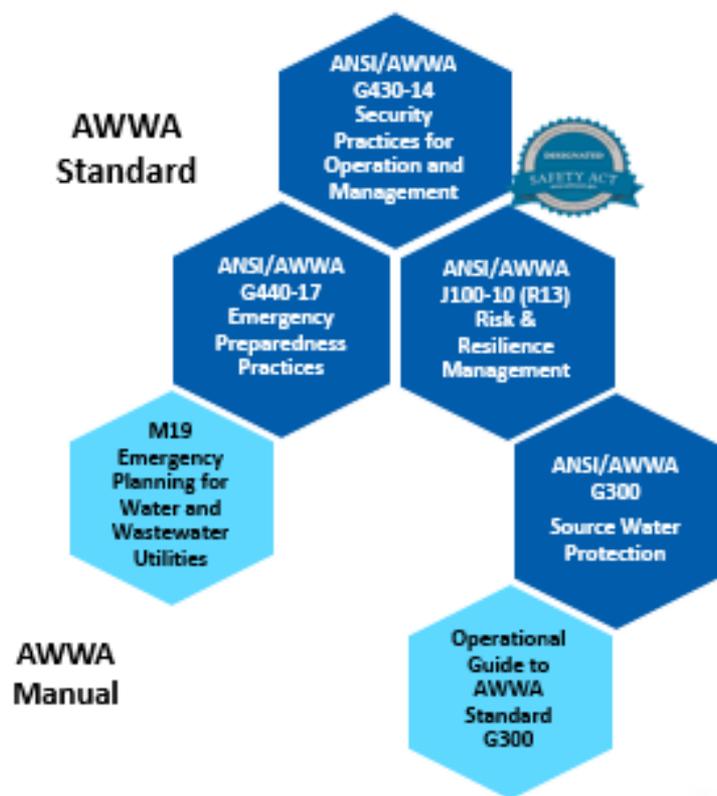
* Wholesalers use pop of all systems

Must review, update & recertify every 5 years

§2018 SOURCE WATER

Action	Effective Immediately
Notification	State must promptly notify a community water system of a release impacting source waters
Data Access	Access to EPCRA Tier II data from any facility within a delineated source water area of a community water system

AWWA RISK & RESILIENCE RESOURCE SUITE

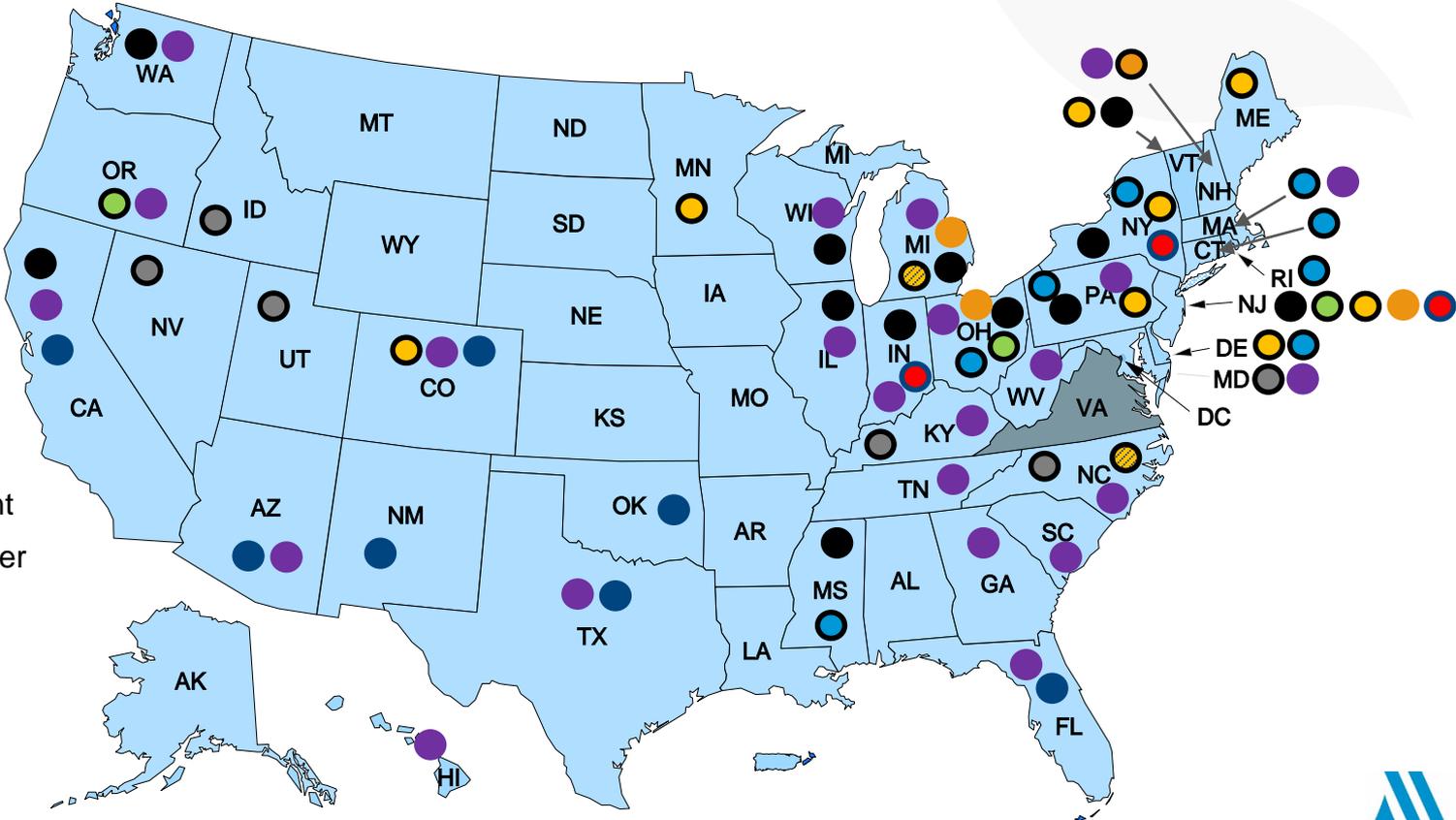


§2008 IMPROVED CONSUMER CONFIDENCE REPORTS

- Twice annual CCRs (systems serving >10,000) instead of once annual
 - Earliest feasible implementation is 2021, more likely 2022
- Electronic CCR option now specifically in law, previously was interpretation of law
- EPA instructed to revise CCR rule to increase understandability and accuracy
- Utilities to include information on corrosion control

STATE WATER POLICY DISCUSSION / ACTION

- Lead
- Cyanotoxins
- PFAS
- Legionella
- Asset Management
- Non-Revenue Water
- Potable Reuse
- Cybersecurity



CYANOTOXINS

- Health Advisories for Microcystins and Cylindrospermopsin
- Different for different age groups – communications challenge
- UCMR4 measuring occurrence – limited so far
- States have taken widely differing approaches.

AWWA has many cyanotoxins tools, reference documents, and others on our Cyanotoxins Resource Page



WATERS OF THE UNITED STATES

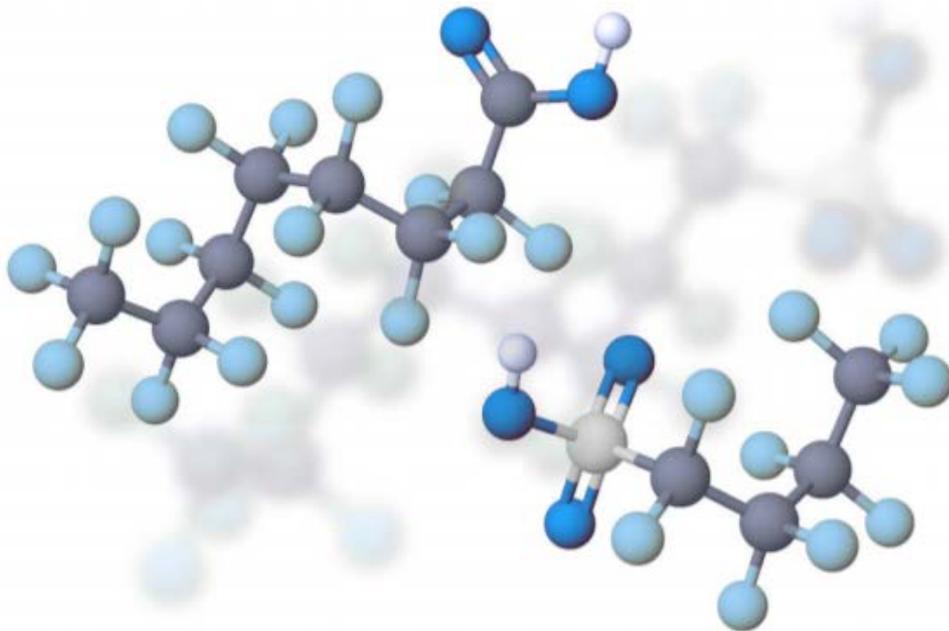
“... includes only those relatively permanent, standing or continuously flowing bodies of water “forming geographic features” that are described in ordinary parlance as “streams,” “oceans, rivers, [and] lakes, ...”

Plurality opinion in *Rapanos*

- Definition of “Waters of the United States” underpins nearly all Clean Water Act provisions
- Obama era “Clean Water Rule” definition would have covered greater area than pre-2015 status quo
- January 23, 2020 final “Navigable Waters Protection Rule” limits jurisdiction to the following:
 - Traditional navigable waters and territorial seas
 - Tributaries
 - Lakes, ponds, and impoundments of jurisdictional waters
 - Adjacent wetlands
- Twelve categories of non-jurisdictional waters
- Litigation is a near-certainty

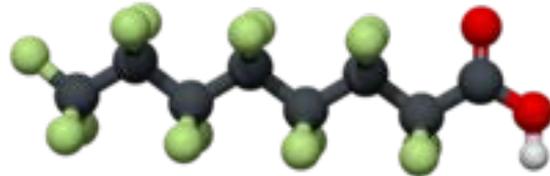
CONTAMINANTS
OF EMERGING
CONCERN

EPA's Per- and Polyfluoroalkyl Substances (PFAS) Action Plan



PER- AND POLYFLUOROALKYL SUBSTANCES (PFAS)

- PFOA/PFOS Health Advisory of 70 PPT
- Challenging as present at a number of sites, but not likely to grow as PFOA/PFOS phased out
- However, thousands of other PFAS compounds exist, most with unknown toxicity
- Many related to industrial and DOD activities
- Unclear impacts and occurrence of replacement materials
- Several states taking action using HA or different levels, some much lower than HA

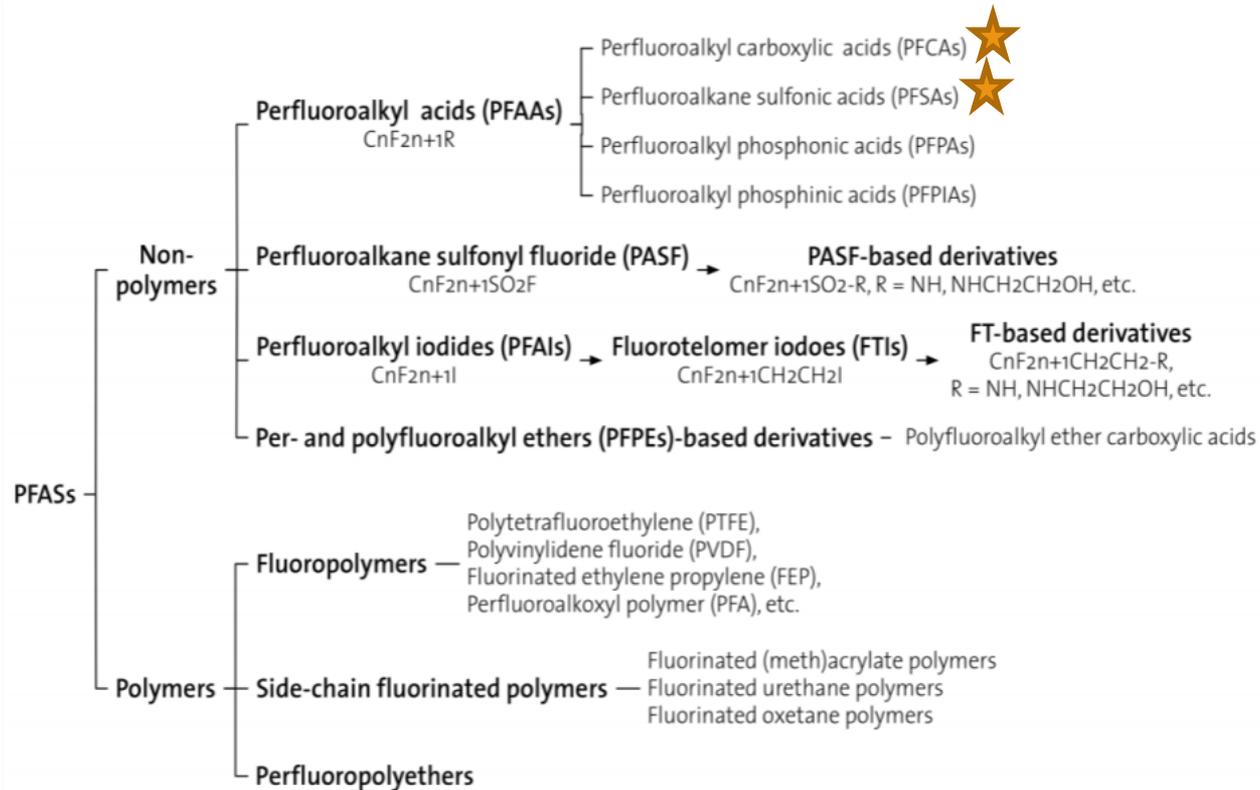


PER- AND POLYFLUOROALKYL SUBSTANCES (PFAS)

Adequate basis for an MCL(s)?

Regulate PFOA, PFOS, ... PFAS?

Likely candidate for regulatory determination



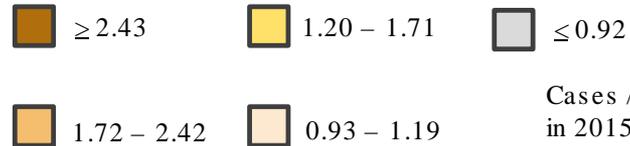
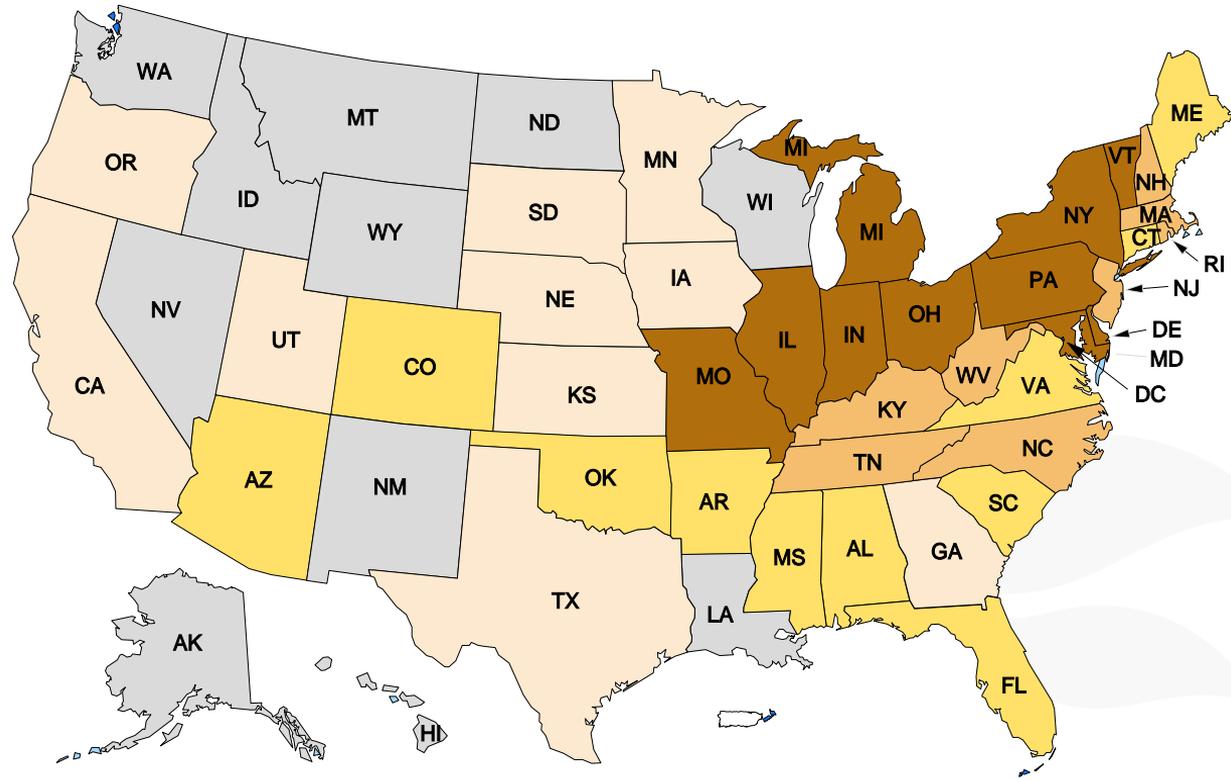
LEGIONELLA

CMS Memo impacts roughly 22,000 hospitals and nursing homes.

CDC views *Legionella* as one of many biofilm associated opportunistic pathogens

Presence does not equal risk

Installing treatment creates consecutive PWSs



Cases / 100,000 persons
in 2015

UCMR4

Ten of thirty UCMR4 contaminants have short-term health advisories

Health Canada considering health-based MAC for manganese (100 µg/L) and aesthetic objective (20 µg/L)

UCMR4 Analyte	Method Reporting Level (µg/L)	Reference Concentration (µg/L)	Chronic	Short-term	Organ System
Manganese	0.4	300	Y	Y	Neurological
Tebuconazole	0.2	190	Y	Y	Neurological
Microcystins (Total, LA, LF, LR, LY, RR, YR)	0.3 / 0.008 / 0.006 / 0.02 / 0.009 / 0.006 / 0.02	0.3 / 1.6	Y	Y	Liver
Cylindrospermopsin	0.09	0.7 / 3	Y	Y	Liver

PERCHLORATE



Image courtesy of Paul Herman, Colorado River, Horseshoe Bend, Page, AZ (2012)

- Long and winding road to reach current proposal
- EPA actively examining 56 ug/l, 90 ug/l, 18 ug/l and withdrawing positive regulatory determination (no federal regulation)
- AWWA comments suggesting that benefits do not meet the costs, and that most of the challenge has already been addressed by state laws.
- Fate remains uncertain, any outcome likely to be challenged

DEVELOPMENTS
- LEAD IN
DRINKING
WATER

2019 proposed rule is a substantial change, and include six broad categories (as defined by EPA):

1. Identifying areas most impacted
2. Strengthening treatment requirements
3. Replacing lead service lines
4. Increasing sampling reliability
5. Improving risk communication
6. Protecting children in schools

DEVELOPMENTS

- LEAD IN DRINKING WATER

2019 proposed rule is a substantial change, and include six broad categories (as defined by EPA):

1. Identifying areas most impacted
 - Public lead service line inventory
 - Plan for removing LSLs
 - “Find and fix” methodology for high samples
2. Strengthening treatment requirements
 - Reevaluate corrosion control or conduct a corrosion control study
3. Replacing lead service lines
 - New “trigger level” of 10ppb: develop an annual goal with state
 - Above 15ppb action level requires >3% annual total replacement of “known or potential” LSLs

DEVELOPMENTS

- LEAD IN DRINKING WATER

2019 proposed rule is a substantial change, and include six broad categories (as defined by EPA):

4. Increasing sampling reliability
 - Adjustments to sampling procedures, sites, and in some cases more frequent sampling

5. Improving risk communication
 - More rapid notification of elevated levels within community
 - LSL inventories to help inform customers

6. Protecting children in schools
 - Utilities to be required to test school and childcare facilities
 - Provide information to schools and childcare facilities about actions that reduce lead in water

DEVELOPMENTS - LEAD IN DRINKING WATER

- **Federal Lead Action Plan**
 - Integrated communication tools
- **National Compliance Initiative**
 - Office of Enforcement and Compliance
- **Health Canada Guideline finalized**
 - MAC of 5 µg/L
- **Long-Term LCR Revisions**
 - Proposal issued in 2019
- **Current LCR**
 - Strict compliance

DEREGULATORY PROCESSES

Key concepts:

- “2 for 1”
- Regulatory budget
- Deregulatory actions

- Two “deregulatory actions” for every new regulatory action (net across all agencies)
- Total regulatory budget must be zero in each agency (in practice has included ‘trading’)
- Some exceptions: statutory or court-ordered rules
- Proceeding quickly, although attempts to rapidly reverse some Obama era rules have been caught up in administrative or court issues
- Expect litigation to span for years for some issues



EXPECTED DELAYS

- Significant rules remain difficult to get through the Office of Management and Budget, other than deregulatory actions
- Additionally slowed due to significant cuts in EPA resources (and current lapse in appropriations)
- Many rules delayed repeatedly

Key concepts:

- Work will continue
- Proposed and final rules less certain
- Some rules exempted



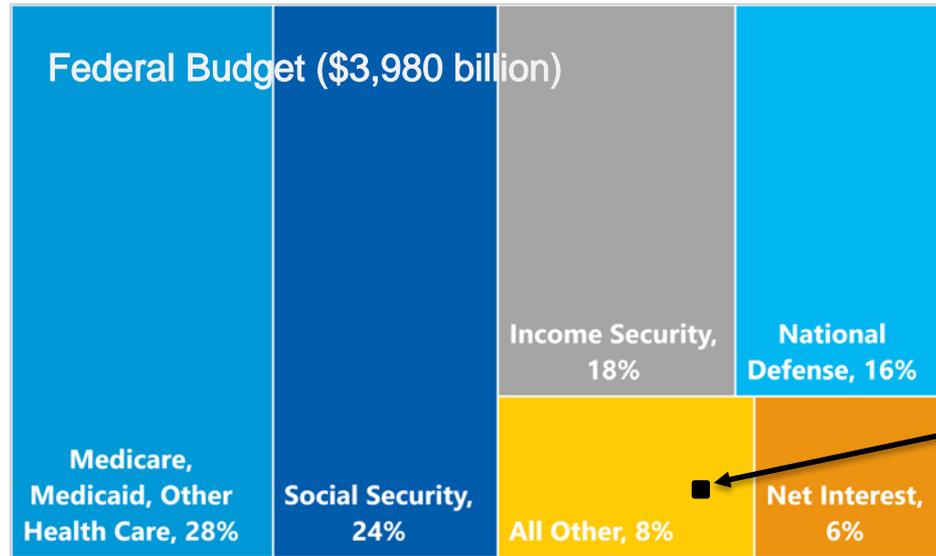


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PART 2: RECENT LEGISLATIVE PRIORITIES

INFRASTRUCTURE FUNDING



Water Infrastructure loan programs - 0.07% of federal budget (0.26% of discretionary spending)

State Revolving Loan Funds

SDWA

- FY 2018.....\$1.163B (Up from \$0.864 B)

CWA

- FY 2018\$1.694B (Up from \$1.394 B)

Other Funding

RUS

- FY 2018 \$0.560B (down from \$0.571B)

WIFIA

- FY 2018 \$0.063B, leveraging \$6.7B in loan capacity (up from \$0.030 billion leveraging \$3.0B)

2014: WIFIA passes into law

Years of advocacy by AWWA and partners led to the Water Infrastructure Finance and Innovation Act (WIFIA) being passed into law as part of the 2014 Water Resources Development Act

2018: WIFIA issues first loan

Passing the law was only one step. Funding, rules, and generating interest of applicants were all needed. EPA is now regularly issuing loans, saving utilities tens of millions in costs for each.

20??: WIFIA improvements

Various changes will increase WIFIA's utility (such as removing the 49% cap) and will continue to be pursued.

AWWA's Involvement in the Farm Bill

AWWA's Advocacy on the 2018 Farm Bill helped to:

1. Make source water protection an explicit goal of the conservation programs
2. Require that NRCS invite utilities to participate on state and local committees that inform conservation programs
3. Increase federal cost share of measures that help to protect source waters
4. Spend at least 10% of conservation funding on source water protection – An astonishing \$4 billion over the next 10 years!



Key Resources

Working with the NRCS for Source Water Protection

Why work with the Natural Resources Conservation Service (NRCS)?

On December 20, 2018, the President signed the Agriculture Improvement Act of 2018, commonly known as the Farm Bill. That date marked the culmination of an extensive, long-term, and successful effort by AWWA to make source water protection a priority within U.S. Department of Agriculture conservation programs – and to designate significant funding towards those efforts.

Under the new Farm Bill, ten percent of spending on Conservation Title programs is to be directed to source water protection, providing at least \$4 billion over the next 10 years. These programs assist farmers, ranchers, and forest landowners protect and enhance environmental outcomes that will benefit both on and off-farm. Moreover, there is now a directive for USDA to work closely with utilities to identify and prioritize areas that need source water protection.

In addition to the funding and prioritization successes, AWWA was also successful in gaining utilities a seat at the table in the state and local groups that decide how, where, on what, and how much of the conservation funds go toward SWP. The NRCS administers most of USDA's conservation programs and working with the Agency is vital if utilities wish to address nonpoint sources such as nutrients, sediment, and chemicals.

In order to assure the successful deployment of these funds to protect source waters, utilities need to come to the table locally with NRCS state technical committees and local work groups to help discuss and prioritize source water protection needs. In-depth information can be found in [USDA Tools to Support Source Water Protection](#) on [AWWA's Source Water Protection resource page](#), and the Source Water Collaborative's [Protecting Drinking Water Sources through Agricultural Conservation Tools](#).

Background on NRCS

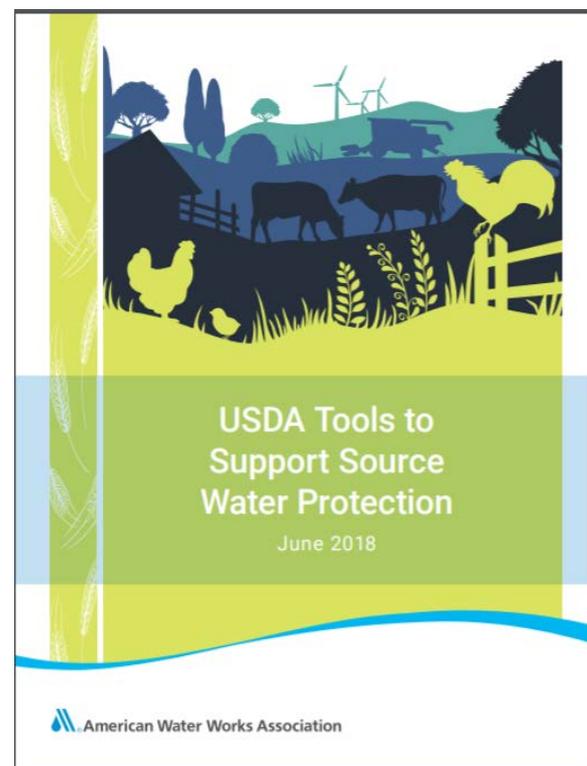
The NRCS was created in the 1930s to bring the Dust Bowl under control and restore the Nation's agricultural productivity. Concurrent with the Agency's creation was the establishment of local Soil and Water Conservation Districts who help provide direction to the NRCS. Today there are some 11,000 NRCS employees in 3,000 small offices around the country, most of which are co-located with local soil and water conservation districts.

If you need more information, contact your state NRCS office, or Adam Carpenter (acarpenter@awwa.org) or Tracy Mehan (tmehan@awwa.org) at AWWA

1. YouTube whiteboard explaining water-agricultural partnerships
2. Working with NRCS for Source Water protection (two-pager)
3. USDA tools to support source water protection



These and other source water protection resources are available on the [AWWA Source Water Protection page](#).



Key Take-Aways

The following will help to greatly increase the targeting of funds for source water protection needs:

1. Get to know the NRCS state, area, and district [conservationists](#).
2. Sign up for [state technical committees](#) and local workgroups and contribute their knowledge of source water issues and concerns.
3. Partner with their [conservation districts](#) and others with established track records in their watersheds.
4. When/where ready and appropriate, be part of [RCPP](#), [NWQI](#), [CIG](#),
or other projects.





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QUESTIONS ?

ADAM CARPENTER

ACARPENTER@AWWA.ORG

202-326-6126