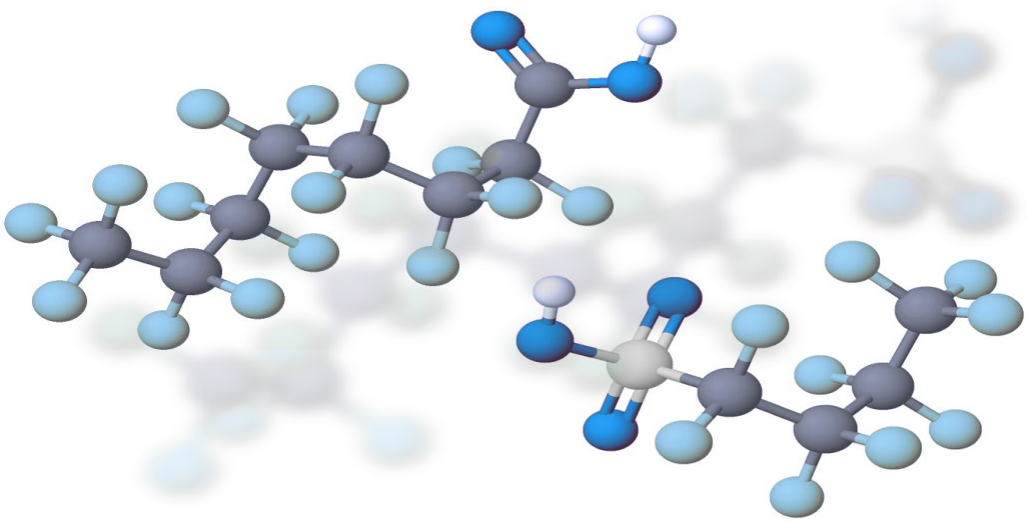
Safe Drinking Water Act (SDWA) Regulatory Process and PFAS

June 2021



Background

- Per- and polyfluoroalkyl substances (PFAS) are a group of man-made chemicals that have been in use since the 1940s.
- PFAS can be found in stain and water repellants used in fabrics, carpets and outerwear, among other consumer products.
- PFAS can also be found at manufacturing and processing facilities, and airports and military installations that use firefighting foams which contain PFAS.
- EPA's ongoing work on PFAS is based on the 2019 EPA PFAS Action Plan.
- Over the past few years, science has progressed rapidly, and the agency must move forward with actions that are based on this new science and a better understanding of the challenges many communities are facing.

EPA Council on PFAS (ECP)

- Develop "PFAS 2021-2025 - Safeguarding America's Waters, Air and Land," a multi-year strategy to deliver critical public health protections to the American public. To develop the strategy, the ECP will
  - Review all ongoing actions, propose any necessary modifications, and identify new strategies and priorities.
  - Continue close interagency coordination on regional specific and cross-media issues to assist states, Tribes, and local communities faced with significant and complex PFAS challenges.
  - Work with all national program offices and regions to maximize the impact of EPA's funding and financing programs and leverage federal and state funds to support cleanup of PFAS pollution, particularly in underserved communities.
  - Expand engagement opportunities with federal, state, and tribal partners to ensure consistent communications, exchange information, and identify collaborative solutions.

Regulating PFAS in Drinking Water

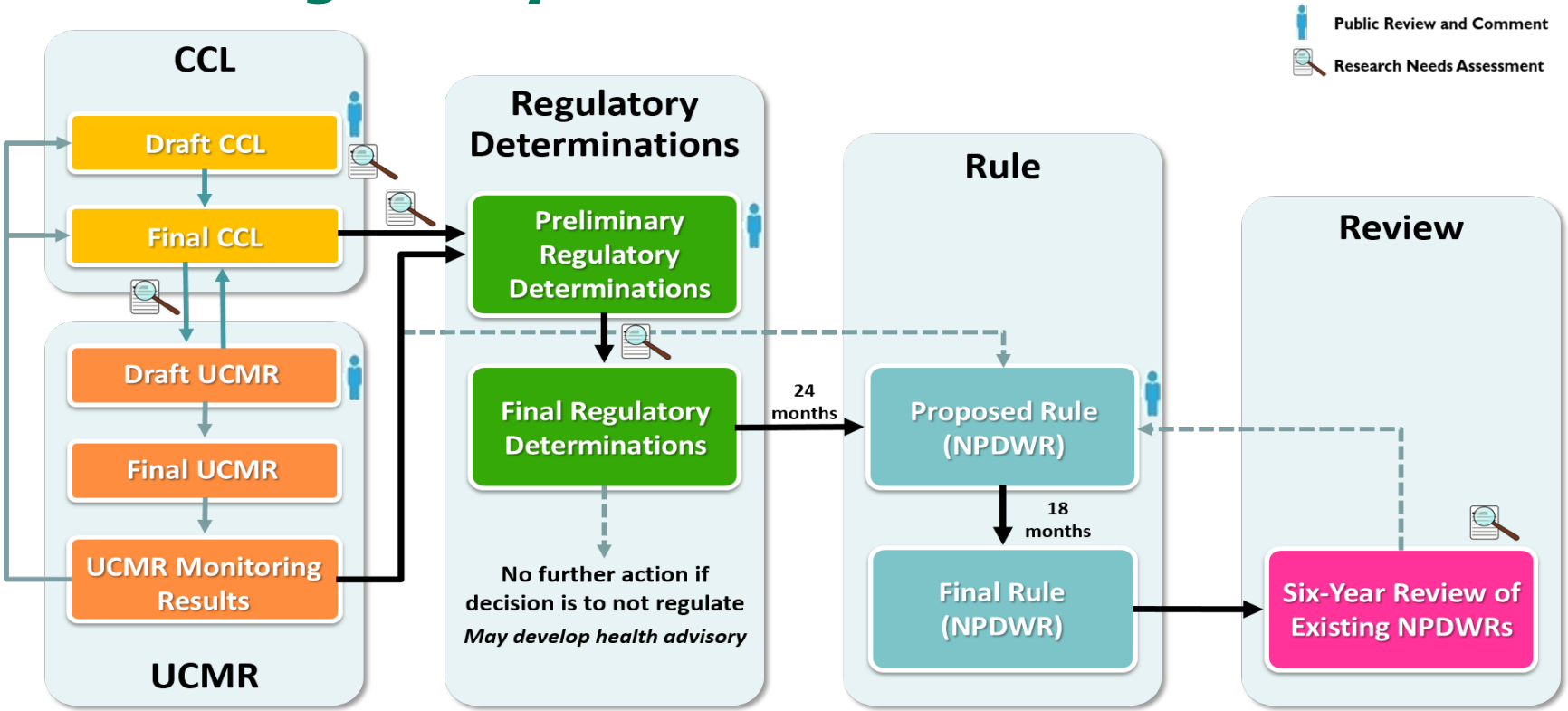
- On March 3rd, EPA reissued the final regulatory determinations for perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) under the Safe Drinking Water Act (SDWA).
- With the final Regulatory Determinations for PFOA and PFOS, EPA will move forward to implement the national primary drinking water regulation development process for PFAS.
- The Regulatory Determinations also outline avenues that the agency is considering to further evaluate additional PFAS chemicals and provide flexibility for the agency to consider groups of PFAS as supported by the best available science.
- As a part of this process, EPA will seek input from the EPA Science Advisory Board, the National Drinking Water Advisory Council, and other stakeholders as we develop the proposed rule.

Monitoring Additional PFAS in Drinking Water

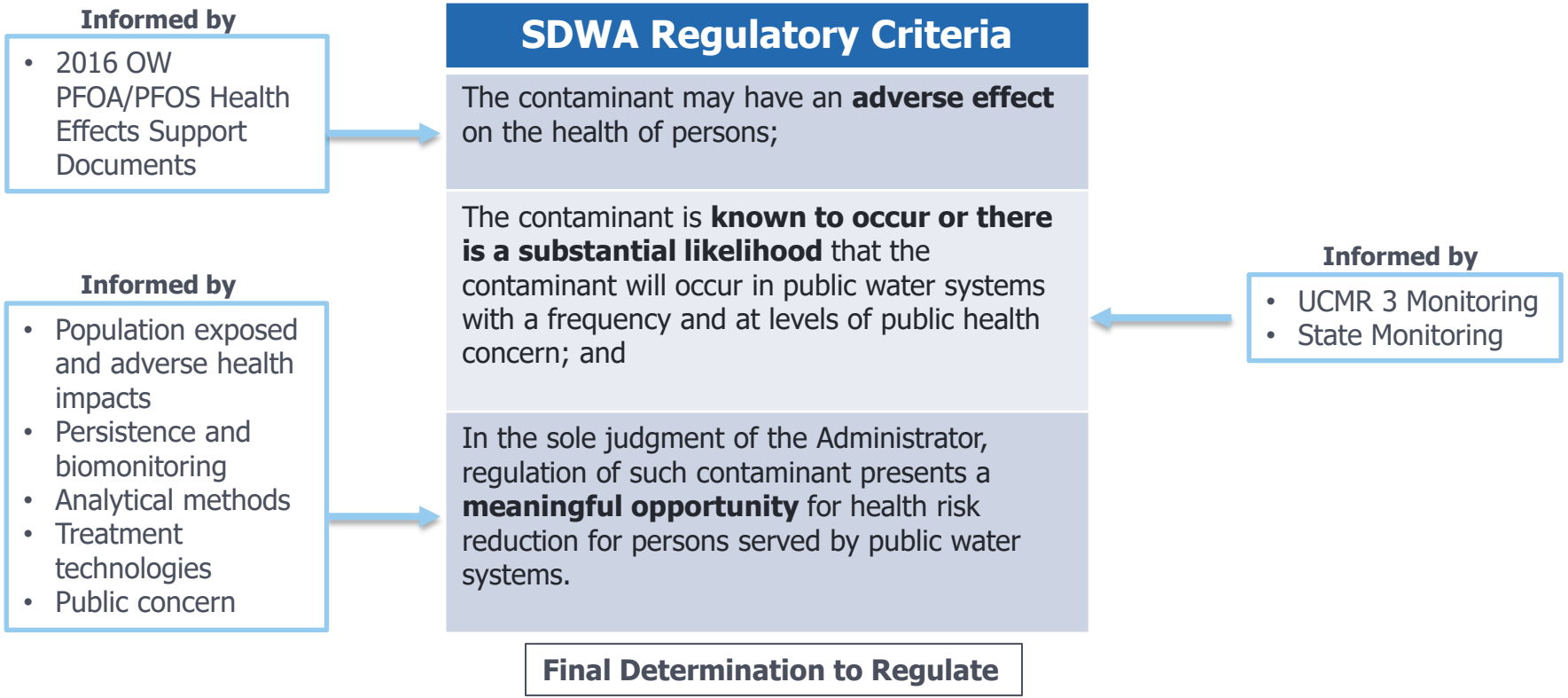
- On March 11, 2021 EPA published the proposed fifth Unregulated Contaminant Monitoring Rule (UCMR 5).
- UCMR5 will provide new data that is critically needed to improve EPA's understanding of the frequency that 29 PFAS are found in the nation's drinking water systems and at what levels.
- UCMR 5, as proposed, would require sample collection between 2023 and 2025 and analysis for PFAS using analytical methods developed by EPA.
- The public comment period closed on May 10, 2021.
- EPA is considering the public comments and expects to publish the final UCMR 5 by the end of 2021.

Statutory Requirements and the Drinking Water Regulatory Process

SDWA Regulatory Processes



SDWA Regulatory Determinations Criteria



SDWA: Proposing a National Primary Drinking Water Regulation

A **Maximum Contaminant Level Goal (MCLG) -** the level at which no known or adverse effects on the health of persons occur and which allows for an adequate margin of safety.

- use the best available peer reviewed science and data collected by accepted methods
- Information on public health effects shall be
  - comprehensive,
  - informative and
  - understandable

SDWA: Proposing a National Primary Drinking Water Regulation

Identify available technologies for contaminant removal

- Small System Compliance Technologies (SSCT) that are affordable* for
  - systems serving 25-500 people,
  - systems serving 501-3,300 people, and
  - systems serving 3,301-10,000 people
- Best Available Technologies (BAT)
  - Examined under field conditions
  - Consider efficacy and cost

*If there are no affordable SSCTs for one or more category of small systems, EPA must identify variance technologies that may not achieve compliance but that achieve the maximum reduction that is affordable and are "protective of public health"

SDWA: Proposing a National Primary Drinking Water Regulation

- An enforceable **Maximum Contaminant Level (MCL)**
  - Set as close as feasible to the MCLG (taking costs and benefits into consideration)
- If it is not economically/technologically feasible to ascertain the level of the contaminant EPA may propose a **Treatment Technique (TT)** in lieu of an MCL
  - Prevents known or anticipated adverse effects to the extent feasible
  - Minimize overall risk by balancing risk from the contaminant and the risk from other contaminants the concentrations of which may be affected by the treatment technique

SDWA: Proposing a National Primary Drinking Water Regulation

criteria and procedures to assure a supply of drinking water that dependably complies with the NPDWR

SDWA: Proposing a National Primary Drinking Water Regulation

A **Health Risk Reduction Cost Analysis** that includes

- Quantifiable and non-quantifiable health risk reduction benefits from removing the regulated contaminant and co-occurring contaminants;
- Quantifiable and non-quantifiable health risk reduction costs of compliance;
- Incremental costs and benefits;
- Effects on sensitive populations such as infants, children, pregnant women, and the elderly;
- Any increased health risk that may result from compliance; and
- Other relevant factors including the quality of information.

SDWA: Proposing a National Primary Drinking Water Regulation

A **determination** as to whether the benefits of the proposed MCL justify, or do not justify the cost

- If benefits do not justify costs, EPA may set the MCL at a level at which health risk reduction benefits are maximized at a cost justified by the benefits

SDWA: Proposing a National Primary Drinking Water Regulation

Consultations with

- The Science Advisory Board (per SDWA)
- The National Drinking Water Advisory Council (per SDWA)
- Health and Human Services (per SDWA)
- As appropriate, Small Business Advocacy Review panels (per Regulatory Flexibility Act)
- State and Local Government Officials (per Unfunded Mandates Reform Act and Executive Order (E.O.) 13132)
- Tribal Officials (per E.O. 13175)
- Environmental Justice groups (per E.O. 12898)
- OMB and other federal Agencies (per E.O. 12866)

SDWA: Promulgating a National Primary Drinking Water Regulation

Promulgate a **final regulation** after:

- Considering and responding to public comment (per the Administrative Procedure Act)
- Consulting with:
  - The National Drinking Water Advisory Council (Per SDWA)
  - Dept. of Health and Human Services (per SDWA)
- Sending to Office of Management and Budget for interagency review (per E.O. 12866).

SDWA: Promulgating a National Primary Drinking Water Regulation

- For each contaminant receiving a positive determination, the Administrator shall
  - propose a Maximum Contaminant Level Goal (MCLG) and NPDWR not later than **24 months after determination** and
  - promulgate within **18 months after proposal**.

Regulation Development – Next Steps Key Points

- With the final Regulatory Determinations for PFOA and PFOS, EPA is moving forward to implement the national primary drinking water regulation development process for PFAS.
- The Regulatory Determinations also outline avenues that the agency is considering to further **evaluate additional PFAS chemicals** and provide flexibility for the agency to consider groups of PFAS as supported by the best available science.
- EPA is committed to listening to the public and working collaboratively with states, tribes, water systems, and local communities that have been impacted by PFAS to identify flexible and pragmatic approaches that will deliver critical public health protections.