



April 18, 2023

VIA ELECTRONIC SUBMISSION

The Honorable Michael S. Regan
Administrator
Environmental Protection Agency
Washington, DC 20460

Re: PFAS National Primary Drinking Water Regulation Rulemaking (Docket ID: EPA-HQ-OW-2022-0114)

Dear Administrator Regan:

On March 29, 2023, the Environmental Protection Agency (EPA) published a proposed rule titled “PFAS National Primary Drinking Water Regulation Rulemaking.”¹ The Office of Advocacy (Advocacy) is concerned that given the complexity and scope of the rule, the current comment period will not be sufficient to allow small entity stakeholders to provide meaningful feedback. Therefore, Advocacy recommends EPA extend the public comment period for this proposed rule by at least 30 days.

I. Background

A. The Office of Advocacy

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small entities before Federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA). As such, the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),² as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),³ gives small entities a voice in the rulemaking process. For all rules that are

¹ 88 Fed. Reg. 18638 (March 29, 2023).

² 5 U.S.C. §601 et seq.

³ Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. §601 et seq.).

expected to have a significant economic impact on a substantial number of small entities, the RFA requires federal agencies to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.⁴ The agency must include a response to these written comments in any explanation or discussion accompanying the final rule's publication in the *Federal Register*, unless the agency certifies that the public interest is not served by doing so.⁵

Advocacy's comments are consistent with Congressional intent underlying the RFA, that "[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public."⁶

B. The Proposed Rule

On March 29, 2023, EPA published its proposed National Primary Drinking Water Regulation (NPDWR) rulemaking, which includes the following per- and polyfluoroalkyl substances (PFAS):

- perfluorooctanoic acid (PFOA)
- perfluorooctane sulfonic acid (PFOS)
- perfluorohexane sulfonic acid (PFHxS)
- hexafluoropropylene oxide dimer acid (HFPO-DA) and its ammonium salt (also known as a GenX chemicals)
- perfluorononanoic acid (PFNA)
- perfluorobutane sulfonic acid (PFBS)

The proposed rule requires public water systems to monitor for these PFAS, notify the public of the levels of these PFAS, and reduce the levels of these PFAS in drinking water if they exceed the proposed standards. Reduction methods can include the installation of and disposal of PFAS residue from treatment technologies such as granular activated carbon, anion exchange, nanofiltration and reverse osmosis or switching to an alternative water source.

The proposal contains several agency actions:

⁴ Small Business Jobs Act of 2010 (PL. 111-240) §1601.

⁵ *Id.*

⁶ *Id.*

1. Proposed legally enforceable levels, called Maximum Contaminant Levels (MCLs), for PFOA and PFOS at 4 parts per trillion (ppt).
2. Proposed preliminary determination to regulate PFHxS, GenX chemicals, PFNA and PFBS, and mixtures of these PFAS.
3. Proposed MCLs for the above four PFAS at a unitless MCL of 1.0, based on a novel approach called a hazard index, which is used to evaluate potential health risks from exposure to chemical mixtures.
4. Proposed health-based, non-enforceable Maximum Contaminant Level Goals (MCLGs) for these six PFAS. For PFOA and PFOS, the proposed MCLG is zero and for the PFAS mixture the agency proposes the same unitless 1.0 hazard index.

In advance of the proposed rule, EPA convened a SBREFA panel to consult with small entity representatives (SERs). EPA presented to the small entities some PFAS background (with only PFOA and PFOS specifically identified) and potential monitoring and reporting rule compliance considerations and treatment and feasibility considerations. EPA, however, did not provide the SERs with the identity of the other four PFAS, any MCL values, any MCLG values and the technical details and analyses supporting these additional elements.

II. Recommendation for Extension of the Public Comment Period

EPA's current comment deadline for May 30, 2023, provides stakeholders with only 62 days to review its proposed actions, and over 1,000 supporting materials replete with complex and technical analyses. The rule is expected to impose a costly regulatory burden on small entities such as small public water systems. Therefore, Advocacy urges EPA to extend this public comment period by at least 30 additional days to allow for a meaningful review of this important and consequential proposed rulemaking package.

Small entities and their representatives have expressed concerns about their ability to provide constructive feedback given the scope and complexity of the proposal. Small entities are usually constrained due to their limited resources. Adding the responsibility to review this proposal and its supporting materials within just two months may limit a small entity's ability to express their concerns and provide useful feedback. Based on our initial outreach, small entities are gravely concerned about the substantial compliance costs associated with the rule, especially in light of the low levels proposed for the MCLs.

EPA has received extension requests from trade associations representing the interests of large and small public water systems. Among this group is the Association of State Drinking Water Administrators (ASDWA), an organization that represents EPA's co-regulators in implementing the NPDWR. EPA also conducted outreach with this group in developing the proposal. In its

request for additional time, ASDWA cautions EPA that “an expeditious schedule should not come at the expense of obtaining meaningful engagement with stakeholders.”⁷ Advocacy agrees.

At least a 30-day extension of the public comment period will allow small entities the additional time needed to provide useful and important feedback to ensure that the finalized rule can be effectively implemented and lead to successful compliance.

III. Conclusion

Advocacy urges EPA to extend the public comment period by at least 30 days to allow for small entities to participate more meaningfully in this rulemaking process. Such an extension will help small entities provide more comprehensive and detailed comments on this important rulemaking.

If you have any questions or require additional information, please contact me or Assistant Chief Counsel Tayyaba Zeb at (202) 798-7405 or by email at tayyaba.zeb@sba.gov.

Sincerely,

/s/

Major L. Clark, III
Deputy Chief Counsel
Office of Advocacy
U.S. Small Business Administration

/s/

Tayyaba Zeb
Assistant Chief Counsel
Office of Advocacy
U.S. Small Business Administration

Copy to: Richard L. Revesz, Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget

⁷ Letter from the Association of State Drinking Water Administrators to the Environmental Protection Agency, (March 29, 2023), Request for Comment Period Extension for Proposed PFAS National Primary Drinking Water Regulation (NPDWR), [Docket ID: EPA-HQ-OW-2022-0114-1469](#).