U.S. SMALL BUSINESS ADMINISTRATION
OFFICE OF ADVOCACY
REGULATION • RESEARCH • OUTREACH

August 15, 2023

VIA ELECTRONIC SUBMISSION

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

Re: Perchloroethylene (PCE); Regulation Under the Toxic Substances Control Act (TSCA), (Docket ID: EPA-HQ-OPPT-2020-0720)

Dear Administrator Regan:

On June 16, 2023, the Environmental Protection Agency (EPA) published a proposed rule titled "Perchloroethylene (PCE); Regulation Under the Toxic Substances Control Act (TSCA)."[1] This letter constitutes the Office of Advocacy's (Advocacy) public comments on the proposed rule.

Advocacy has significant concerns with EPA's proposal. Most of these concerns are similar to those expressed in Advocacy's public comments on the agency's proposal to regulate methylene chloride under TSCA.[2] These concerns include the agency's proposal exceeding its statutory authority, absence of regulatory flexibilities for small entities, and the failure to avoid duplicative and overlapping requirements. Additionally, Advocacy strongly recommends that EPA address concerns pertaining to the proposed existing chemical exposure level (ECEL) and the action level and consider all potential adverse impacts of the rule.

[1] 88 Fed. Reg. 39652 (June 16, 2023).
[2] U.S. Small Bus. Admin, Off. of Advocacy, Comment Letter on Proposed Rule for Methylene Chloride; Regulation Under the Toxic Substances Control Act (TSCA) (July 3, 2023), https://advocacy.sba.gov/2023/07/03/advocacy-provides-public-comment-on-epas-proposed-risk-management-for-methylene-chloride-under-the-toxic-substance-control-act/.

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),[3] as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),[4] gives small entities a voice in the rulemaking process. For all rules that are 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.[5] 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.[6]

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."[7]

B. The Proposed Rule

On June 16, 2023, EPA published a proposed rule to restrict the use of PCE under TSCA. PCE is used as a solvent in a wide range of occupational and consumer applications including fluorinated compound production, petroleum manufacturing, dry cleaning, and aerosol degreasing. TSCA requires that EPA address any unreasonable risk of injury to health or the environment identified in a TSCA risk evaluation to the extent necessary so that the chemical no longer presents an unreasonable risk.[8] EPA evaluated 61 conditions of use of PCE and determined that all but one (i.e. distribution in commerce) present an unreasonable risk of injury to health for workers and consumers.

Based on these risk determinations, EPA is proposing to prohibit most industrial and commercial uses of PCE, including its use in dry cleaning through a 10-year phaseout. EPA is also proposing to ban PCE for consumer use. For the remaining uses, EPA is proposing to require a workplace chemical protection program (WCPP), which includes a requirement to meet an ECEL, set by EPA, as well as exposure monitoring and training. EPA proposes an ECEL of 0.14 ppm (8-hour

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[3] 5 U.S.C. §601 et seq.
[4] Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. §601 et seq.).
[5] Small Business Jobs Act of 2010 (PL. 111-240) §1601.
[6] *Id*.
[7] *Id.*
[8] 15 U.S.C. §2605(a).

time-weighted average (TWA)) and an action level of 0.07ppm. As part of the WCPP, EPA also includes requirements to prevent direct dermal contact with PCE. The uses allowed under a WCPP would include processing as a reactant/intermediate, use in vapor degreasing, use as a maskant for chemical milling, use in adhesives and sealants, use as a processing aid in catalyst regeneration in petrochemical manufacturing, and use as a laboratory chemical.

EPA is proposing to require prescriptive workplace controls for laboratory use. The proposal also includes recordkeeping and downstream notification requirements. In addition, EPA includes time-limited exemptions for certain critical or essential emergency uses of PCE for which no technically and economically feasible safer alternative is available.

TSCA requires EPA to discuss one or more primary alternative regulatory actions.[9] In this case, the agency provides two alternative regulatory actions. The primary alternative includes a WCPP for several additional conditions of use than would be allowed under the proposal. It also provides longer compliance timeframes for prohibitions. The secondary alternative, on the other hand, prohibits some conditions of use that would have requirements for a WCPP under the proposal. The secondary alternative also provides shorter compliance timeframes.

In advance of this proposed rule, EPA convened a small business advocacy review panel under SBREFA to consult with small entity representatives (SERs). The report issued by that panel is available in the docket.[10]

II. Advocacy's Small Business Concerns

Advocacy has several concerns with the rule. First, Advocacy is concerned that the agency's proposal exceeds its statutory authority by prohibiting the use of PCE for most commercial and industrial uses. Second, Advocacy is concerned that the agency did not provide available regulatory flexibilities for the use of PCE for small businesses. Third, Advocacy is concerned that EPA does not satisfy the statutory requirement to consult and coordinate with other federal agencies, particularly OSHA, to avoid duplicative and overlapping requirements. Finally, Advocacy recommends the agency address concerns with the proposed ECEL and action level and consider all potential adverse impacts of the proposed rule.

A. Advocacy remains concerned about EPA exceeding its statutory authority under TSCA by proposing to ban uses of PCE for entities that can demonstrate compliance with the ECEL.

As expressed in Advocacy's public comments on the proposed risk management rule for methylene chloride,[11] Advocacy remains concerned about the EPA's policy of prohibiting uses based on its independent determination about a business' compliance capability with the WCPP.

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[9] 15 §2605(c)2(A)(iv)(II)-(III).
[10] U.S ENV'L PROT. AGENCY, FINAL REPORT OF THE SMALL BUSINESS ADVOCACY REVIEW PANEL ON EPA'S PLANNED PROPOSED RULE TOXIC SUBSTANCES CONTROL ACT (TSCA) SECTION 6(A) PERCHLOROETHYLENE (PCE), (Feb. 1, 2023), https://www.regulations.gov/document/EPA-HQ-OPPT-2020-0720-0066.
[11] U.S. Small Bus. Admin, Off. of Advocacy, *supra* note 2.

According to TSCA, once EPA determines that a chemical substance presents an unreasonable risk of injury to health or the environment, it must apply one or more requirements listed in section 6(a) "*to the extent necessary* so that the chemical substance or mixture no longer presents such risk."[12] In the proposal, EPA presents the ECEL as the benchmark for determining unreasonable risk. Specifically, EPA asserts that, as a matter of risk management policy, ensuring exposures remain at or below the ECEL will eliminate any unreasonable risk of injury to health.[13]

EPA further confirmed that "[i]f ambient exposures are kept at or below the 8-hour ECEL of 0.14 ppm, EPA expects that a potentially exposed person in the workplace would be protected against non-cancer effects resulting from occupational exposures, as well as excess risk of cancer."[14] Therefore, the only justification for such a ban is that it would present an "unreasonable risk," which EPA has determined is not present where the user is in compliance with an ECEL in the WCPP.

EPA proposes to ban many of the industrial and commercial uses of PCE instead of allowing the regulated entities to determine compliance feasibility or demonstrate their ability to comply with the ECEL. EPA cites "uncertainties related to whether users under certain conditions of use could comply with the requirements of a PCE WCPP" as one of the reasons to prohibit many of the PCE uses.[15] It is important to note that TSCA does not specify any level of certainty or compliance capability. It simply requires that the unreasonable risk must be addressed only to the extent necessary. By issuing the ECEL, the EPA identifies the threshold at which the unreasonable risk is considered addressed. If a user can comply with the ECEL, as proposed by EPA, there should be no unreasonable risk present. Speculating about compliance capability goes beyond the scope of the statute.

For example, for the phaseout of PCE for dry cleaning and spot cleaning, EPA's prohibition is partly based on "uncertainty relative to the feasibility of exposure reduction to sufficiently address the unreasonable risk across the broad range of work environments and activities."[16] The phaseout would include the use of PCE in 4th and 5th generation (dry-to-dry machines with refrigerated condenser and carbon adsorber process controls) machines.[17] According to small entities and their representatives, such a prohibition is unnecessary. Their claims are based on documented exposure information by the New York's Department of Environmental Conservation, which notes dry cleaners using 4th or 5th generation machines can achieve low PCE concentration levels over an 8-hour averaging period.[18] Therefore, Advocacy urges the

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[12] 15 U.S.C. §2605(a) (emphasis added).
[13] 88 Fed. Reg. 39660.
[14] *Id.* at 39,672.
[15] *Id.* at 39,691.
[16] *Id.* at 39,671.
[17] *Id.* at 39,670-71.
[18] *See* Halogenated Solvents Industry Alliance, Comment Letter on Draft Risk Evaluation of Perchloroethylene, (July 6, 2020), https://www.regulations.gov/document/EPA-HQ-OPPT-2020-0720-0089.

agency to consider allowing the use of PCE in 4th and 5th generation dry cleaning machines if compliance with ECEL in the WCPP can be achieved.

Again, if a WCPP with an ECEL is indeed protective of health and the environment in certain uses, as EPA claims, then banning those uses that can demonstrate compliance with the ECEL would go beyond the "extent necessary." If a workplace can document and demonstrate compliance with a WCPP, such a use should be allowed to continue. Imposing regulations on a use that can meet the ECEL exceeds the agency's statutory authority under TSCA. Therefore, EPA should not propose banning the use of PCE for entities that can demonstrate compliance with the ECEL in the WCPP.

B. Advocacy is concerned that the agency did not provide available regulatory flexibilities for the use of PCE by small entities.

1. Advocacy recommends that EPA allow the continued industrial and commercial use of PCE as a solvent for aerosol spray degreasers and cleaners.

Advocacy is concerned about the lack of availability of safer and technically feasible available alternatives for the industrial and commercial use of PCE as a solvent for aerosol spray degreasers and cleaners. These products are best described as aerosolized solvent sprays that are used to remove dirt, grease, stains, spots, and foreign matter from electronics, metals, and other fabricated materials.[19] Products in this category are primarily used by small contractors for energized electrical cleaning for equipment with an electrical current running through it, such as electric motors, armatures, relays, electric panel, generators, and other equipment.[20] Oftentimes, these products are used on critical energized equipment that cannot be shut off during the cleaning (e.g., hospital equipment or transportation systems like trains or oil rigs).

In the proposal, EPA prohibits this use[21] because the agency states that it "does not have sufficient information to confidently conclude that these conditions of use can meet requirements of a WCPP."[22] In the primary alternative, however, EPA allows this use to continue under the WCPP.[23] As explained above, EPA's confidence regarding an entity's ability to comply with its regulations is not the requirement under TSCA. Instead, TSCA requires that the agency address the unreasonable risk which, again, the agency concludes is addressed by complying with the proposed ECEL, included in the WCPP.

In addition, small entities and one of their suppliers for these products emphasize that PCE is the safest solvent to clean energized electrical equipment because it is not flammable and does not have upper or lower explosive limit. They have expressed concerns about the lack of safer and technically feasible available alternatives for their use on energized electrical equipment. According to these entities, chemicals that may be considered alternatives are either unsafe

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[19] 88 Fed. Reg. at 39,664.
[20] *Id.*
[21] *Id.* at 39,669.
[22] *Id.* at 39,684.
[23] *Id.* at 39,683-84.

because they are flammable or may soon be unavailable because they are subject to the risk evaluation process and potential regulation by EPA under TSCA (e.g., 1,2-trans-dichloroethylene and trichloroethylene). Rather than speculating about an entity's ability to comply with the WCPP[24] as a justification for a ban, EPA should give more weight and serious consideration to the potential hazards and risk ramifications of flammable alternatives for these critical applications. Advocacy recommends EPA allow the continued industrial and commercial use of PCE as a solvent for aerosol spray degreasers or cleaners, based on the feedback from small entity users of such products.

In addition, Advocacy encourages the agency to consider challenges associated with complying with the WCPP for the small contractors using these products by considering alternative ways to mitigate exposure. These challenges include working at different sites and working outdoors. First, these electrical contractors go to various industrial sites. They are not at the same place each day. Their workplace and conditions of use may change on a daily basis. Even if they wore a monitoring badge for one day of work, that would not necessarily be representative of any other workday. Second, based on the definition of owner/operator in the regulations, the WCPP and ECEL requirement might fall on the owner of the business that they are servicing. Third, many electrical applications using PCE-containing products take place outdoors. The variability of weather conditions also makes testing for an ECEL very difficult (particularly in terms of getting a representative sample).

Advocacy also urges the agency to establish a certification program for the use of these products, along with other measures to address the unreasonable risk they present for this condition of use. For the most part, these users are required to obtain some type of certification for their work on electrical equipment, and a training or certification for the safe use of PCE-containing products could be included as part of their existing training requirements. Advocacy supports any efforts by the agency to ensure that small businesses can maintain access to PCE-containing products for these industrial and commercial uses, including establishing training, certification, and limited access programs.

2. Advocacy recommends that EPA provide a TSCA section 6(g) exemption for the industrial and commercial use of PCE in automotive care products.

Advocacy recommends that EPA consider an exemption for the industrial and commercial use of PCE in automotive care products. According to TSCA section 6(g), EPA has the authority to provide a time-limited exemption for a specific condition of use if it determines that "condition of use is a critical or essential use for which no technically and economically feasible safer alternative is available, taking into consideration hazard and exposure."[25]

EPA proposes to prohibit the industrial and commercial use of PCE in automotive care products which includes use of products for motorized vehicle maintenance and their parts (i.e., engine

[24] During Advocacy's roundtable discussion on this proposal, small entity users for these products discussed their current compliance with the California/OSHA PEL of 25ppm for PCE.
[25] 15 U.S.C. §2605(g).

degreaser and brake cleaner).[26] These products are aerosolized and are used to remove dirt, grease, stains, and foreign matter from interior and exterior vehicle surfaces.[27]

These products are usually employed by auto repair shops, which are almost all small businesses. According to EPA's analysis, there are 77,569 small automotive repair shops.[28] Industry sources estimate over 250,000 small businesses that perform brake cleaning and welding tasks when including all types of auto repair service businesses both general and specialized. These small businesses rely on these PCE-containing products as a nonflammable alternative for brake cleaning.

EPA lists its consideration of alternatives as one of the reasons to support its proposed prohibition.[29] However, EPA's alternative analysis for brake cleaning products concludes that "[s]ince the non-chlorinated brake cleaning products commercially available are extremely flammable, there is a potential barrier to replacing methylene chloride and PCE based products in aerosol brake cleaning applications based upon fire safety requirements."[30] These flammable alternatives include acetone, methanol, toluene, heptane, and isohexane.

Additionally, these small automotive repair shops are likely undercounted in EPA's small business impacts analysis. EPA estimates only 3,102 small businesses use aerosol spray cleaning/degreasing based on assumptions from prior reports and surveys[31] when the affected industries who use this product are made up of tens of thousands and potentially hundreds of thousands of small businesses.

Under the proposed section 6(g) exemptions included in this rule, EPA requires compliance with the WCPP. Once again, if complying with the ECEL included in WCPP adequately addresses the unreasonable risk, then an exemption for continuing a use should not be necessary. An exemption excuses a regulated party from a legal requirement.[32] In granting EPA the authority to provide an exemption for conditions of use that are considered to be a critical or essential use for which no technically and economically feasible safer alternative is available, Congress intended that these entities would not be subject to the legal requirement to address the unreasonable risks (i.e. the ECEL and WCPP).

Advocacy believes that EPA can utilize this exemption, including a consideration for the hazard and exposure concerns, for the industrial and commercial use of PCE in automotive care

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[26] 88 Fed. Reg. at 39,665, 39,669.
[27] *Id.* at 39,665.
[28] U.S. ENV'T. PROT. AGENCY, OFF. OF POLLUTION, PREVENTION & TOXICS, ECONOMIC ANALYSIS FOR THE PROPOSED REGULATION OF PERCHLOROETHYLENE UNDER TSCA SECTION 6(A), 3-12 (May 2023), https://www.regulations.gov/document/EPA-HQ-OPPT-2022-0902-0035 [hereinafter EA].
[29] 88 Fed. Reg. at 39,669.
[30] EA, *supra* note 28, at 5-32.
[31] *Id.* at 10-10.
[32] Admin. Conf. of the U.S., *Administrative Conference Recommendation 2017-7, Regulatory Waivers and Exemptions* (Dec. 15, 2017), https://www.acus.gov/recommendation/regulatory-waivers-and-exemptions.

products, particularly for brake cleaning because there are not any technically and economically feasible safer alternatives that are available.

Advocacy also recommends that the agency consider feedback from small entities to determine the most appropriate time limit for the exemption. Furthermore, Advocacy encourages the agency to establish a certification program for the use of automotive products containing PCE, along with other measures to address the unreasonable risk determined for this condition of use. In addition, Advocacy supports any efforts by the agency to ensure that small businesses can maintain access to PCE for these industrial and commercial uses, including establishing training, certification, and limited access programs.

3. Advocacy recommends EPA provide longer compliance timeframes for small entities.

Advocacy is concerned that EPA's proposal does not provide practicable compliance timelines for small entities. According to TSCA, when the agency is contemplating a prohibition or a substantial restriction on the use of a chemical, it is required to set an appropriate transition period.[33] To make this determination, "the Administrator shall consider, to the extent practicable, whether technically and economically feasible alternatives that benefit health or the environment, compared to the use so proposed to be prohibited or restricted, will be reasonably available as a substitute when the proposed prohibition or other restriction takes effect."[34]

Advocacy is concerned that the agency did not adequately account for the limited resources available to small entities to ensure timely compliance. The uses subject to prohibition will require additional time and costs for researching alternative processes or substitutes, securing financing for testing such alternative, and implementing the use of an alternative into their process/product. Similarly, other small entities will have to utilize their limited staff and financial resources to implement procedures, equipment, and other necessities to comply with the proposed requirement of the WCPP.

A small business engaged in the use of PCE for vapor degreasing shared that the two-year time frame provided for compliance is not feasible either to implement changes to comply with the WCPP or to switch to an alternative process or chemical. EPA provides no such discernments for the unique position of small entities in this case. Instead, the agency equates their capabilities to large businesses who often have dedicated resources that routinely monitor for and work to develop potential alternatives. These larger entities also likely have readily available funding to easily afford any process changes or equipment to comply with the WCPP. Therefore, the availability of substitutes and resources required for compliance with the WCPP will vary for small businesses.

For this reason, Advocacy recommends that EPA provide longer compliance timeframes for small entities. The agency already provides longer compliance timeframes in its primary

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[33] 15 U.S.C. §2605 (c)2(A)(iv)(I).
[34] *Id.*

alternative.[35] For example, while EPA proposes a 10-year phaseout for the use of PCE by dry cleaners, the agency provides a longer 15-year phaseout under the primary alternative.[36] If the agency has determined that longer compliance timelines are practicable, then those timelines should have been selected as the proposed regulatory action and should be finalized. Advocacy urges the agency to consider feedback from small entities to ensure that the maximum compliance timeframe is provided, allowing for an appropriate transition period and timely compliance with the WCPP. In particular, Advocacy recommends that if the agency finalizes the prohibition of PCE for dry cleaners, EPA should provide a 15-year or longer phaseout.

C. Advocacy remains concerned that EPA does not satisfy the statutory requirement to consult and coordinate with OSHA to avoid duplicative and conflicting requirements.

As expressed in Advocacy's public comments on the proposed risk management rule for methylene chloride,[37] Advocacy remains concerned with EPA's failure to satisfy the statutory requirement to consult and coordinate with OSHA to avoid duplicative and conflicting requirements. EPA should not have proposed duplicative, overlapping, and conflicting regulations by issuing a WCPP, including an ECEL, to cover worker exposures subject to OSHA's jurisdiction.

TSCA section 9 requires EPA to consult and coordinate with other federal agencies "for the purpose of achieving the maximum enforcement of this Act while imposing the least burdens of duplicative requirements on those subject to the Act and for other purposes."[38] EPA states that the agency engaged in such coordination with other federal agencies, including OSHA "to identify their respective authorities, jurisdictions, and existing laws with regard to PCE"[39] to achieve "the maximum applicability of TSCA while avoiding the imposition of duplicative requirements."[40]

Under the RFA, the sixth element of the Initial Regulatory Flexibility Analysis (IRFA) is to identify any duplicative, overlapping, and conflicting federal rules.[41] Rules are considered duplicative or overlapping if they are based on the same or similar reasons for the regulation, the same or similar regulatory goals, and if they regulate the same classes of industry. Conflicting rules impose two conflicting regulatory requirements on the same classes of industry. In the IRFA, EPA must examine the potential conflicting and duplicative rules that can unnecessarily add cumulative regulatory burdens on small entities without any gain in regulatory benefits.

EPA's proposal is duplicative of OSHA's regulations for PCE because they both aim to protect workers from unsafe exposure to PCE and they apply to the same classes of industry. OSHA

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[35] 88 Fed. Reg. at 39,683.
[36] *Id.* at 39,683.
[37] U.S. Small Bus. Admin, Off. of Advocacy, *supra* note 2.
[38] 15 U.S.C. §2608(d).
[39] 88 Fed. Reg. at 39,704
[40] *Id.* at 39,659.
[41] 5 U.S.C. §603(b)(5).

regulates worker exposure to PCE under a permissible exposure limit (PEL) of 100ppm.[42] EPA's proposal conflicts with OSHA's regulations as it imposes different regulatory requirements on the same classes of industry. In addition, EPA's proposed ECEL of 0.14ppm is much lower than the OSHA PEL.

TSCA provides EPA with the discretion to avoid such duplicative, overlapping, and conflicting federal requirements. Specifically, under TSCA section 9, if EPA determines that the identified unreasonable risks for PCE:

> "may be prevented or reduced to a sufficient extent by action taken under a Federal law not administered by the Administrator, the Administrator shall submit to the agency which administers such a law a report which describes such risk and includes in such description a specification of the activity or combination of activities which the Administrator has reason to believe so presents such risk."[43]

In the proposed rule, EPA does not determine that unreasonable risk from PCE can be addressed by an action taken under a different federal law.[44]

Regarding workplace exposures, EPA reasons that an action under TSCA can address occupational unreasonable risk and reach entities that are not subject to OSHA, such as self-employed individuals and public sector workers who are not covered by a state plan.[45] EPA also expressed concerns about the potentially longer timeframe for updating OSHA's standards.[46]

TSCA should be administered as a gap-filling statute. EPA should focus its intentions on those workers not currently protected under the Occupational Safety and Health Act.[47] EPA should not attempt to supplant existing regulatory frameworks. Advocacy believes that EPA should proceed with a rulemaking that covers those entities not subject to OSHA's regulations and allow OSHA to address the identified unreasonable risks within its jurisdiction.

EPA asserts that unreasonable risk for PCE "can be addressed in a more coordinated, efficient and effective manner under TSCA than under different laws implemented by different agencies."[48] However, the agency directly contradicts this statement by creating another set of requirements. Specifically, the agency is creating another set of requirements (i.e., ECEL v. PEL) to be implemented by a different agency (i.e., EPA) in addition to OSHA's requirements. Under TSCA section 9, EPA should have consulted with OSHA to address the risk concerns with its standards and worked to support OSHA updating its PEL for PCE instead of creating an additional regulatory framework for the same entities.

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[42] 88 Fed. Reg. at 39,659.
[43] 15 U.S.C. §2608(a)(1).
[44] 88 Fed. Reg. at 39,705.
[45] *Id.* at 39,658.
[46] *Id.*
[47] 29 U.S.C. §§ 651-678 (1970).
[48] 88 Fed. Reg. at 39,705.

D. Advocacy recommends EPA address concerns with the proposed ECEL and action level.

The proposed ECEL and action level set by EPA are too low and may not be reliably measured in real time. As mentioned earlier, the agency proposes an ECEL level of 0.14 ppm. The agency also proposes an action level at 0.07 ppm.[49] The action level will serve as a definitive cut-off point, relieving certain compliance activities such as periodic monitoring.[50] EPA assumes that a regulated entity has the necessary means to detect values at these levels because the agency understands them to be above the detection limit (ranging from ≤0.5 parts per billion (ppb) to 9 ppm).[51] However, small business stakeholders have expressed their disagreement with this assumption.

While there may be commercially available methods to detect an exposure at the proposed levels, it may not be instantaneous, and the ability to measure it on-site is not currently readily available to all potentially regulated entities. Instead, samples must be sent to a laboratory, which can take up to a week to obtain results. Small entities also anticipate incurring additional costs (in comparison to testing for OSHA's PEL) associated with the kind of testing required at such low levels, including the potential need to hire professionals to ensure proper exposure measurement. A small business provided that such tests can cost up to $900 per sampling session.

Considering this feedback from small entities, Advocacy recommends that the agency consider adjusting the ECEL and action level. It is crucial to consider the practical limitations faced by small businesses and ensure that the proposed ECEL and action level are reliably measurable in real-time.

E. Advocacy recommends that EPA consider all important adverse effects of the proposed rulemaking.

Under TSCA, EPA is obligated to consider the reasonably ascertainable economic consequences of the rule, including the likely effect of the rule on the national economy, small businesses, technological innovation, the environment, and public health.[52] Small entity representatives have pointed out that EPA's economic analysis does not consider the impact on American manufacturing competitiveness resulting from the proposed prohibition and restrictions on the use of PCE.

For instance, a small entity expressed that it would have to pass any costs associated with compliance with the WCPP or any consideration of alternatives to its customers. A consequence of increasing costs for services may result in losing customers. In the case of PCE, it may mean that these customers will seek cleaning or degreasing services in other countries such as China, Mexico, or Canada and import serviced parts back into the U.S. In addition, Advocacy is also concerned about the proposed phaseout for dry cleaners as the agency acknowledges that "that a

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[49] 88 Fed. Reg. at 39,672.
[50] *Id.* at 39,659.
[51] *Id.* at 39,673.
[52] 15 U.S.C. §2605(c)(2)(A)(iv)(I).

significant number of members of minority populations may own or work at dry cleaning facilities."[53]

Advocacy encourages the agency to consider the impacts on these entities and provide burden reducing compliance flexibilities. Advocacy strongly urges the agency to take these and other related consequences into account when considering the adverse effect on the national economy and on minority populations.

III. Conclusion

Advocacy is concerned that the agency's proposal exceeds its statutory authority by prohibiting a vast majority of the commercial and industrial uses of PCE. Additionally, Advocacy is concerned about the lack of available regulatory flexibilities for the use of PCE by small businesses, particularly in cases where feasible alternatives are not available. Moreover, Advocacy is concerned that EPA does not satisfy the statutory requirement to consult and coordinate with OSHA to avoid duplicative and overlapping requirements. Lastly, Advocacy strongly urges the agency to address concerns with the proposed ECEL and action level and to consider all potential adverse impacts of the proposed rule.

Advocacy recommends EPA to reconsider the proposed rule. While it is important to protect public health, it is also important to follow the law and take small business impacts into consideration. Advocacy urges the agency to consider feedback from small businesses on these important issues.

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

[53] 88 Fed. Reg. at 39,656.

Copy to: Richard L. Revesz, Administrator
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