



March 9, 2026

VIA ELECTRONIC SUBMISSION

The Honorable Lee Zeldin
Administrator
U.S. Environmental Protection Agency
Washington, DC 20460

Re: National Primary Drinking Water Regulation for Perchlorate, Docket No. EPA-HQ-OW-2024-0592.

Dear Administrator Zeldin:

On January 6, 2026, the U.S. Environmental Protection Agency (EPA) published a proposed national primary drinking water regulation (NPDWR) for perchlorate.¹ This letter constitutes the Office of Advocacy's (Advocacy) public comments on the agencies' proposal.

Advocacy recommends the EPA withdraw the perchlorate NPDWR and seek review of the *NRDC v. Regan* decision² which directed its proposal. As a result of the court's misguided decision, the proposed rule will impose significant administrative costs on small water systems without producing meaningful health benefits. Advocacy also maintains that the proposed rule was unlawfully certified under the Regulatory Flexibility Act (RFA) and violates President Trump's Executive Order (EO) 14303, *Restoring Gold Standard Science*.³ Additionally, the proposed rule imposes unnecessary regulatory burdens on small water systems while offering little to no health benefits in return.

I. Background

A. The Office of Advocacy

Congress established the Office of Advocacy in 1976 under Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent voice within the executive branch that seeks to ensure small business concerns are heard in the federal regulatory process. Advocacy also works to ensure that regulations do not unduly inhibit the ability of small entities to compete, innovate, or comply with federal laws. The views expressed

¹ 91 Fed. Reg. 398 (Jan. 6, 2026).

² 67 F. 4th 397 (D.C. Cir. 2023).

³ 91 Fed. Reg. 398, 424 (Jan. 6, 2026).

by Advocacy do not necessarily reflect the views of the Small Business Administration (SBA) or the Administration.

The RFA, 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.⁵ If a rule is not expected to have a significant economic impact on a substantial number of small entities, agencies may certify it as such and submit a statement of the factual basis for such a determination that adequately supports its certification.⁶

Additionally, section 609 of the RFA requires the EPA to conduct special outreach efforts through a small business advocacy review (SBAR) panel.⁷ The panel must carefully consider the views of the impacted small entities, assess the impact of the proposed rule on small entities, and consider less burdensome alternatives for small entities.⁸

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."⁹

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.¹⁰ 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.¹¹

B. The EPA's National Primary Drinking Water Standard for Perchlorate

Perchlorate is an inorganic chemical compound that occurs naturally and can also be manufactured. It is commonly used in rocket propellants, munitions, fireworks, airbag initiators for vehicles, matches, signal flares, and may also be found in fertilizers and as a byproduct of improper handling of hypochlorite solutions used for drinking water treatment. Perchlorate exposure to humans occurs primarily through the ingestion of contaminated food and drinking water.¹² Exposure to perchlorate can interfere with thyroid gland function and lead to both developmental and cardiovascular issues.¹³

⁴ Pub. L. No. 104-121, tit. II, 110 Stat. 857 (1996) (codified in scattered sections of 5 U.S.C. §§601-612).

⁵ 5 U.S.C. § 603.

⁶ *Id.* § 605(b).

⁷ *Id.* § 609.

⁸ *Id.*

⁹ Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

¹⁰ Small Business Jobs Act of 2010, Pub. L. No. 111-240, §1601, 214 Stat. 2551 (codified at 5 U.S.C. § 604).

¹¹ *Id.*

¹² 91 Fed. Reg. 398, 399 (Jan. 6, 2026).

¹³ *Id.*

The EPA is proposing a NPDWR and a health-based Maximum Contaminant Level Goal (MCLG) for perchlorate under the Safe Drinking Water Act (SDWA).¹⁴ Specifically, the EPA’s rule sets the perchlorate MCLG at 0.02 mg/L (20 µg/L).¹⁵ The EPA is also proposing and taking comment on setting an enforceable Maximum Contaminant Level (MCL) for perchlorate at 0.02 mg/L (20 µg/L), 0.04 mg/L (40 µg/L), or 0.08 mg/L (80 µg/L).¹⁶

Additionally, the EPA is proposing requirements for water systems to conduct monitoring for perchlorate in drinking water, take mitigation actions if the level exceeds the MCL, provide information about perchlorate to their consumers through public notification and consumer confidence reports, and report to their respective primacy agency.

II. Small Entity Issues with the EPA’s Proposed Perchlorate Standard.

The small entities subject to the requirements of this proposal are water systems serving 10,000 or fewer people.¹⁷ Advocacy held a small entity roundtable on February 4, 2026, to discuss the proposed rule. The roundtable discussion focused on the costs and impacts of the perchlorate NPDWR to small public water systems.

A. The Court Decision That Led to the EPA’s Proposed Rule Does Not Reflect the Best Reading of the Safe Drinking Water Act.

The EPA acknowledges that the benefits of the proposed perchlorate NPDWR do not justify its costs.¹⁸ The agency also states that the proposed rule “fails to satisfy the SDWA prerequisite that a nationwide regulation must present a meaningful opportunity for health risk reduction for persons served by public water systems.”¹⁹ While the EPA has asked for comment on a range of different MCLs, they acknowledge “there is no MCL at which the benefits of treatment at a limited number of systems justify the costs of monitoring across systems where perchlorate is not expected to occur at levels of concern.”²⁰

Despite this realization that the proposed rule does more harm than good, the EPA is required to issue it as a result of the *Natural Resources Defense Council (NRDC) v. Regan* decision from the United States Court of Appeals for the District of Columbia Circuit.²¹ Specifically, the court “held that the EPA lacked authority under the SDWA to withdraw a determination to regulate a contaminant and must proceed to regulate, despite new and additional data and analyses that

¹⁴ *Id.* at 398.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 426.

¹⁸ *Id.* at 398.

¹⁹ *Id.* at 399.

²⁰ *Id.* at 401.

²¹ 67 F.4th 397 (D.C. Cir. 2023).

changed the scientific underpinnings of the original regulatory determination.”²² Thus, because EPA had originally proposed to regulate perchlorate under the SDWA back in 2011, the court held it was not allowed to reverse that decision despite more recent science that affirms perchlorate “does not occur in public drinking water systems at levels of public health concern.”²³

On April 9, 2025, President Donald J. Trump issued a Presidential Memorandum titled *Directing the Repeal of Unlawful Regulations*.²⁴ The memorandum directed agencies to ensure that their regulations complied with a list of ten different Supreme Court cases, including *Loper Bright Enterprises v. Raimondo*.²⁵ The memorandum directs agencies to “immediately take steps to effectuate the repeal of any regulation, or the portion of any regulation, that clearly exceeds the agency’s statutory authority or is otherwise unlawful” and gives priority to rules in conflict with the listed Supreme Court decisions.²⁶

The EPA has noted in previous proposed rules that *Loper Bright* demands “that statutory interpretation be based on the ‘best reading’ of the statute.”²⁷ Indeed, in *Loper Bright* the Court states “[i]n the business of statutory interpretation, if it is not the best, it is not permissible.”²⁸ In this case, the *NRDC v. Regan* decision, decided before *Loper Bright*, states that the SDWA commands the EPA to issue a regulation that science concludes is not necessary and economics concludes has no benefits.

The *NRDC v. Regan* decision cannot be the best reading of the SDWA As EPA notes “Congress could not have intended that the EPA’s regulatory decision-making be hamstrung by older data when newer, more accurate scientific and public health data demonstrate that regulation of a new contaminant would not present a meaningful opportunity for health risk reduction.”²⁹

Advocacy strongly recommends the EPA seek reexamination of the *NRDC v. Regan* decision in light of *Loper Bright*’s requirement to look to the best reading of the SDWA. The EPA should not be compelled to regulate small water systems in cases where the regulation at issue is not scientifically or economically justified.

B. The EPA’s Proposed NPDWR for Perchlorate Unnecessarily Burdens Small Water Systems.

²² 91 Fed. Reg. 398, 400 (Jan. 6, 2026).

²³ *Id.* at 401.

²⁴ The White House, *Memorandum for the Heads of Executive Departments and Agencies, Directing the Repeal of Unlawful Regulations*, (April 9, 2025), <https://www.whitehouse.gov/presidential-actions/2025/04/directing-the-repeal-of-unlawful-regulations/>.

²⁵ 603 U.S. 369 (2024).

²⁶ The White House, *supra* note 20.

²⁷ 91 Fed. Reg. 2023 (Jan. 15, 2026).

²⁸ 603 U.S. 369 (2024).

²⁹ 91 Fed. Reg. 398, 409 (Jan. 6, 2026).

President Trump’s EO 14219, *Ensuring Lawful Governance and Implementing the President’s “Department of Governmental Efficiency” Initiative*,³⁰ instructs agencies to specifically identify “regulations that impose undue burdens on small business and impede private enterprise and entrepreneurship.”³¹

The EPA estimates the proposed perchlorate rule would cost more than it benefits, with estimated annual net losses of \$3.3–\$7.8 million at a 3% discount rate and \$9.9–\$17.3 million at a 7% discount rate.³² The EPA further states “the proposed rule would impose significant monitoring and administrative cost burdens”³³ and that “few systems are expected to experience health benefits from reduced levels of perchlorate.”³⁴

Small water systems face several challenges, as outlined by the Association of State Drinking Water Administrators (ASDWA), which will impact their ability to comply with new, unnecessary regulatory burdens. These challenges include:

- A lack of capable full-time operators and reliance on volunteer board members from the community that have a limited understanding of how to run the water system and meet health-based standards and requirements.
- The inability to pay back loans, as small systems are often challenged by the lack of political support to take on loans. Small systems also often lack debt capacity to qualify for loans.
- Population decline and competing demands for basic community needs that rank higher than paying rates for drinking water.³⁵

As one small system told Advocacy, they often “have only two employees, one inside city hall and one outside city hall.”³⁶

The EPA has acknowledged that the monitoring and administrative requirements of the proposed rule are “significant.”³⁷ If water systems, regardless of their size, do not have the money to comply with these requirements, the burden will have to be passed on to the communities in which they operate.

³⁰ 90 Fed. Reg. 10583 (Feb. 25, 2025).

³¹ *Id.*

³² 91 Fed. Reg. 398, 404 (Jan. 6, 2026).

³³ *Id.* at 423.

³⁴ *Id.*

³⁵ Assc. of State Drinking Water Administrators White Paper on “State Drinking Water Program Challenges and Best Practices: Small and Disadvantaged Water System Funding and Assistance” p. 3-4 (August 2022). Available at: <https://www.asdwa.org/wp-content/uploads/2022/08/ASDWA-White-Paper-Small-and-Disadvantaged-Water-System-Funding-and-Assistance-FINAL-080822.pdf>.

³⁶ See Kan. Rural Water Ass’n, *Comments to SBAR Panel National Primary Drinking Water Regulations for Lead and Copper Improvements (LCRI)*, B1-5, https://downloads.regulations.gov/EPA-HQ-OW-2022-0801-0045/attachment_3.pdf.

³⁷ 91 Fed. Reg. 398, 423 (Jan. 6, 2026).

This burden will be exacerbated in areas served by small water systems. Small water systems generally serve areas with fewer people spread over a larger distance. Individuals in these areas will face larger rate increases to pay for compliance with the perchlorate NPDWR because there will be fewer ratepayers on which to spread the impact. As noted by the National Conference of State Legislators, “[b]ecause small systems have comparably fewer ratepayers, rates for some small, disadvantaged communities often exceed levels considered affordable.”³⁸

C. The Perchlorate NPDWR’s Impacts on Small Water Systems Demonstrate that the Rule was Improperly Certified under the RFA.

As part of the proposed rule’s RFA analysis the EPA certifies “that this proposed action would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.”³⁹ However, the agency also states that the proposed rule “is an economically significant regulatory action under Executive Order 12866.”⁴⁰ Additionally, as previously mentioned, EPA has termed the administrative and monitoring costs of the proposed rule as “significant.”⁴¹ Thus, according to the EPA, while both the proposed rule overall, as well as its administrative burdens and monitoring costs are economically significant, it would not be a significant impact on small water systems.

To its credit, the EPA asks for comment on “ways to further reduce burden on small water systems, including flexibilities for monitoring and compliance dates.”⁴² The agency also asks for comment on a two-year nationwide extension to the proposed rule’s compliance date.⁴³ Advocacy supports this recommendation, as it would allow small water systems additional time to comply with the proposed rule.

Perhaps most telling is that the EPA “is seeking comment on the cost estimates for small water systems.”⁴⁴ An SBAR panel would have allowed small water systems to provide these cost estimates as well as input before the proposed rule was put out for comment and possibly provide additional avenues for flexibility and ways to lessen the proposed rule’s impacts. However, the EPA has improperly certified its NPRM rather than convening a SBAR panel.

Improper certifications bypass opportunities for small-entity feedback that improves rules. A SBAR panel allows the EPA to comply with the RFA and gather small entity input early in the rulemaking process. It also helps to ensure that once a rule is proposed, small entity concerns are addressed. Additionally, SBAR panels provide small entities with a more detailed analysis of what type of regulatory options the EPA was pursuing when developing the NPRM and offer multiple opportunities for small entities to offer both written and verbal input.

³⁸ See Nat’l Conf. of State Legislatures, *State Policy Options for Small and Rural Water Systems* (Nov. 23, 2022), <https://www.ncsl.org/environment-and-natural-resources/state-policy-options-for-small-and-rural-water-systems>.

³⁹ 91 Fed. Reg. 398, 426 (Jan. 6, 2026).

⁴⁰ *Id.* at 425.

⁴¹ *Id.* at 423.

⁴² *Id.* at 424.

⁴³ *Id.*

⁴⁴ *Id.* at 425.

In this case, small water systems are being asked to shoulder the costs of a rule that the EPA admits do not justify its benefits.⁴⁵ In fact, the EPA notes that “few systems are expected to experience health benefits from reduced levels of perchlorate” as a result of the proposed rule.⁴⁶ In a case such as this where small water systems are being asked to absorb significant costs in exchange for little or no benefit, the EPA should be seeking to minimize unnecessary regulatory burdens.

Advocacy recommends the EPA withdraw this proposed rule and conduct a SBAR panel. This will allow the agency to develop a proposed rule that properly considers the flexibilities needed by small water systems.

D. The Perchlorate NPDWR Does Not Comply with President Trump’s EO 14303 “Restoring Gold Standard Science”.⁴⁷

The EPA has specifically asked for comments on “the consistency of the proposed rule” with President Trump’s EO 14303, *Restoring Gold Standard Science*.⁴⁸ The EO states “[s]cientific integrity in the production and use of science by the Federal Government is critical to maintaining the trust of the American people and ensuring confidence in government decisions informed by science.”⁴⁹ The goal of President Trump’s EO is to ensure that regulatory decisions are backed by the best possible science.

The SDWA echoes President Trump’s goal of backing regulatory policy with sound science by requiring the use of “the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices” in regulatory decision making.⁵⁰ However, in this case, the EPA is being forced to do just the opposite.

Here, the best available and most recent science has informed the EPA that “due to infrequent perchlorate occurrence at levels of health concern, the vast majority of the approximately 66,000 water systems that would be subject to the rule will incur substantial administrative and monitoring costs with limited or no corresponding public health benefit as a whole.”

Both science and the legislative text of the SDWA argue against the need for the EPA’s proposed rule. Advocacy recommends the EPA withdraw the proposed perchlorate NPDWR because it does not meet the standards of EO 14303.

III. Conclusion

Advocacy recommends the EPA withdraw its proposed perchlorate NPDWR. The regulation was improperly certified and violates multiple EOs issued by President Trump. Additionally, the

⁴⁵ *Id.* at 398.

⁴⁶ *Id.* at 423.

⁴⁷ 90 Fed. Reg. 22601 (May 29, 2025).

⁴⁸ 91 Fed. Reg. 398, 424 (Jan. 6, 2026).

⁴⁹ 90 Fed. Reg. 22601 (May 29, 2025).

⁵⁰ 42 U.S.C. § 300g-1(b)(3)(A).

agency should seek review of the misguided judicial decision in *NRDC v. Regan* which forced it to propose the rule. Small water systems should not be forced to bear the burden of additional regulatory costs where sound science and good public policy cannot justify the need to regulate.

If you have any questions or require additional information, please contact me or Assistant Chief Counsel Nick Goldstein at (202) 772-6948 or nick.goldstein@sba.gov.

Sincerely,

/s/

Dr. Casey B. Mulligan
Chief Counsel
Office of Advocacy
U.S. Small Business Administration

/s/

Nick Goldstein
Assistant Chief Counsel
Office of Advocacy
U.S. Small Business Administration

Copy to: Mr. Jeffrey B. Clark, Sr. Associate Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget