



December 16, 2022

The Honorable Shalanda Young
Director
Office of Management and Budget
Washington, DC 20503

Re: RIN: 2040-AG18 (Per- and polyfluoroalkyl Substances (PFAS): Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) National Primary Drinking Water Regulation Rulemaking)

Dear Director Young:

The U.S. Chamber of Commerce is concerned about the potential significant regulatory cost burden that would be associated with establishing Maximum Contaminant Levels (MCL) under the Safe Drinking Water Act for Perfluorooctanoic acid (PFOA) and Perfluorooctane sulfonic acid (PFOS) at levels that are inappropriately low.

If the interim Health Advisory Levels and proposed MCLGs for PFOA and PFOS provided to the Environmental Protection Agency's Science Advisory Board are any indication of the substance of the proposal that is now under Office of Management and Budget (OMB) interagency review, it seems inescapable that the costs of finalizing the proposal would be very high. On the likely assumption that the relevant thresholds have been satisfied, we request that OMB conclude that EPA's proposed MCL for PFOA and PFOS is "economically significant" under Executive Order (EO) 12866 and require EPA to perform the requisite regulatory impact analysis, consistent with OMB Circular A-4, before proceeding with any proposed rulemaking. We also request that OMB designate the rulemaking as a "major rule" under the Congressional Review Act (CRA), confirm to Congress that the rule would impose unfunded mandates under the Unfunded Mandates Reform Act. In addition, OMB, as well as EPA, should carefully consider the advice of the Small Business Advocacy Review (SBAR) Panel that EPA appropriately convened for this rulemaking pursuant to the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996.

Attached to this letter is a report and an associated update concerning estimated water treatment costs for PFOA and PFOS. The report offers the following key findings for your consideration:

- The probability is high that treatment would exceed the \$10 billion contained in the Infrastructure Investment and Jobs Act for PFAS cleanup if the drinking water standard were 10 ppt or lower, particularly if EPA's proposed MCLGs are lower than 0.5 ng/L.

- At a non-detect drinking water standard, the costs are as much as \$59.4 billion, while at the lowest level for laboratory detection at 4 ppt, the costs are approximately \$32.5 billion.
- The annualized cost estimates of up to \$1.8 billion for the possible 4 ppt level greatly exceed the \$100 million threshold requiring EPA to prepare a full regulatory impact analysis consistent with EO 12866 and the fulfillment of additional statutory requirements under the Congressional Review Act and Unfunded Mandates Reform Act.
- The estimates are modeled and are more conservative than the projected costs by the American Water Works Association, which suggests that costs for a 20 ppt national drinking water standard are up to \$50 billion.¹

The significant cost increase observed as MCLs are set below 10 ng/L suggests that a cost-benefit analysis required by the SDWA should play a pivotal role in determining MCLs, not least because they could ultimately influence CERCLA cleanup levels and the cost of cleanup.

We urge you to designate the proposed rulemaking as “economically significant” to ensure that EPA prepares and appropriately considers the costs of this proposal. We ask that the information contained in the report assist OMB in its determination and in its further review of EPA’s proposed MCL development. We stand ready to assist you.

Sincerely,



Chuck Chaitovitz
Vice President
Environmental Affairs and Sustainability
U.S. Chamber of Commerce

cc: Michael Regan, Radhika Fox, Dom Mancini

¹ https://www.awwa.org/Portals/0/AWWA/ETS/Resources/15683PFAS_web.pdf