

September 13, 2022

The Honorable Barry Breen  
Acting Assistant Administrator  
Office of Land and Emergency Management  
Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

**Re: Proposed Rule, Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances; EPA-HQ-OLEM-2019-0341; 87 Fed. Reg. 54415 (September 6, 2022)**

Dear Administrator Breen:

The undersigned organizations respectfully request an additional 60-day extension of the deadline for public comment on EPA's proposed rule to designate PFOA and PFOS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The same extension is requested with respect to the accompanying *Economic Assessment of the Potential Costs and Other Impacts of the Proposed Rulemaking to Designate Perfluorooctanoic Acid and Perfluorooctanesulfonic Acid as Hazardous Substances*. The current deadline for providing comments is November 7, 2022. This request assumes that EPA immediately releases a full Regulatory Impact Analysis (RIA) for the proposed rule, to allow members of the public adequate time to review the RIA as they prepare to submit comments. If EPA does not release a full RIA by September 23, 2022, then the deadlines for comment should be extended so that they are at least 45 days after the date on which the RIA is made available.

A number of important considerations support providing more time for public comment and engagement with respect to this significant regulatory action:

- 1) Designation under CERCLA Section 102(a) is novel and complex and will require extensive analysis of all potential impacts, as well as the novel legal and policy questions raised by the proposed decision. Constructive and robust responses to the proposed rule and the economic analysis will assist EPA in understanding the impacts of a final regulation, including understanding the potential immediate impact of proposed reporting obligations. Among other things, detailed, comprehensive, and accurate responses to the specific questions set forth for comment by EPA in the proposed rule and the economic assessment will take considerable time for organizations and other commenters to compile and prepare.
- 2) EPA should work with the Small Business Administration's Office of Advocacy to convene a Small Business Regulatory Enforcement Fairness Act panel to ensure appropriate public engagement concerning the impacts on small entities.
- 3) EPA should conduct a full RIA pursuant to OMB circular A-4 that considers the full compliance and clean-up costs, including the direct and indirect costs and benefits, associated with the proposed designation. (It bears emphasis that EPA's economic

assessment is not an RIA and does not satisfy the requirements of an RIA.) Upon completing this important analysis, EPA should issue a supplemental proposal providing a full discussion of issues relevant to the estimated costs and benefits. This would allow the public to provide adequate, needed input on those estimates and on all relevant considerations.

- 4) The White House Office of Management and Budget has designated the proposed rule as economically significant, requiring the agency to prepare a regulatory cost benefit analysis consistent with EO 12866. We urge EPA to provide sufficient time for the public to review the full regulatory impact analysis without which the business community is at a significant disadvantage in responding effectively. A complete analysis of the costs and benefits and an assessment of the regulatory impact require more time.

The business community continues to support accelerating cleanups using existing tools to address the challenges presented by PFAS to public health and the environment in communities across our nation. It is not surprising that EPA has requested comment on an array of important and challenging questions related to this rulemaking.<sup>1</sup> Careful and thorough review of the

---

<sup>1</sup> EPA requests comment on the following questions:

- \* EPA requests comment on the number of PFOA and PFOS releases expected going forward. (See Section ES-3)
- \* EPA requests comment on the assumption that ammonia or ammonium releases provide a reasonable upper bound for PFOA and PFOS releases. (See Section ES-3)
- \* EPA requests comment on the annual number of releases expected per small entity, and any other information that could help EPA estimate small entity reporting costs. (See Section ES-4)
- \* EPA requests comment on the PFAS release levels from these facilities and the types of PFAS that they release. (See Section ES-4)
- \* EPA requests comment on information about PFOA and PFOS production and the use by the eight companies that participated in the PFOA Stewardship Program that may be useful in understanding the extent and magnitude of localized environmental levels of the chemicals. (See Section 2.1.1)
- \* EPA requests comment on expected rule familiarization costs per affected entity. (See Section ES-3 and Section 3.1)
- \* EPA requests comment on the number of properties that were previously transferred out of federal control with a deed that includes a covenant to provide remedial action. (See Section 3.4)
- \* EPA requests comment on uncertainties regarding the unquantifiability of indirect cost, benefit, and transfer impacts as described below. (See Section 3.5)
- \* EPA requests information and comment that may allow EPA to estimate incremental indirect costs associated with this rule. (See Section 3.5)

considerations raised by this rulemaking is in the best interest of the public and of all affected stakeholders and commenters.

Sincerely,

Aerospace Industries Association  
Airlines for America  
Alliance for Automotive Innovation  
American Apparel & Footwear Association  
American Chemistry Council  
American Coatings Association  
American Farm Bureau Federation  
American Forest & Paper Association  
American Fuel and Petrochemical Manufacturers  
American Petroleum Institute  
Associated General Contractors of America  
Council of Industrial Boiler Owners  
Flexible Packaging Association  
Fluid Sealing Association  
National Association of Chemical Distributors  
National Association of Manufacturers  
National Association of Printing Ink Manufacturers  
National Association for Surface Finishing  
National Cattlemen's Beef Association  
National Council of Textile Organizations  
National Mining Association  
National Oilseed Processors Association  
National Waste and Recycling Association  
Plastics Industry Association  
PRINTING United Alliance  
Superfund Settlements Project  
Sustainable PFAS Action Network  
U.S. Chamber of Commerce

---

\* EPA requests comment on the R&D expenditures that may be necessary to ensure effective removal of PFOA and PFOS. (See Section 3.6.1)

\* EPA requests comment on any R&D-related benefits that may result from the Proposed Rule. (See Section 3.6.2)

\* EPA seeks information and comment that will allow EPA to estimate incremental costs associated with this rule. (See Section 3.7)

\* EPA requests comment on the associated impacts to small governments, including small municipal drinking water utilities from the rule. (See Section 4.2.2)

