

Comments of:
Earthjustice | Natural Resources Defense Council | Southern Environmental Law Center

July 20, 2026

Via Regulations.gov

Assistant Administrator Jessica Kramer
Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Extending the Compliance Deadline for the PFOA and PFOS Maximum Contaminant Levels, Docket No. EPA-HQ-OW-2025-1742

Dear Assistant Administrator Kramer:

Earthjustice, the Natural Resources Defense Council, and the Southern Environmental Law Center submit these comments strongly opposing EPA’s proposed rule¹ to extend the compliance deadline for the maximum contaminant levels (“MCLs” or “drinking water standards”) for perfluorooctanoic acid (“PFOA”) and perfluorooctane sulfonic acid (“PFOS”) (the “Delay Rule” or “Proposed Delay Rule”). EPA’s proposal for an unprecedented nationwide exemption-by-rule abdicates EPA’s duty to ensure drinking water safety by allowing water systems to opt in and self-certify their eligibility for an exemption, violates the Safe Drinking Water Act and the Administrative Procedure Act, and is completely unnecessary because water systems can already seek individual exemptions if truly needed.

PFOA and PFOS are toxic chemicals that pose significant risks to public health, including increased risks of cancer, immune system suppression, developmental harms, and other serious adverse health effects. Delaying compliance with the drinking water standards for these contaminants would prolong exposure for millions of people who rely on public water systems and undermine the protections established through EPA’s 2024 PFAS National Primary Drinking Water Regulations (the “2024 Rule”).² Communities across the country have already waited too long for safe drinking water free from dangerous levels of PFAS contamination, and EPA should

¹ Extending the Compliance Deadline for the PFOA and PFOS Maximum Contaminant Levels, 91 Fed. Reg. 29425 (May 20, 2026).

² PFAS National Primary Drinking Water Regulation, 89 Fed. Reg. 32532 (Apr. 26, 2024) (codified at 40 C.F.R. pts. 141 & 142). All documents included in the docket and administrative record for the 2024 Rule are properly part of the docket and record for EPA’s Proposed Delay Rule.

prioritize timely implementation of these critical public health safeguards rather than postponing them.

At least as early as 1998, nearly 30 years ago, EPA became aware that certain per- and polyfluoroalkyl substances (“PFAS”) were building up in Americans’ blood, posing potential human health concerns.³ Years of research, study, and evaluation followed, confirming that this class of chemicals is toxic at extraordinarily low levels,⁴ persistent and widespread throughout our environment,⁵ and contaminates the drinking water for enormous swaths of our population.⁶ So it was widely celebrated when, in April 2024, EPA finalized regulations under the Safe Drinking Water Act (the “Act”) that limit the amount of six of the most common PFAS in public drinking water supplies.⁷ While many harmful PFAS were not addressed, EPA’s 2024 Rule nevertheless was a historic and monumental step forward towards protecting public health. When fully implemented, EPA’s 2024 Rule promises to prevent PFAS exposure in drinking water for approximately 30 percent of the entire population in the United States.⁸

Now, EPA proposes to delay the drinking water regulations pertaining to PFOA and PFOS,⁹ undermining its stated “urgency to reduce PFAS concentrations in drinking water.”¹⁰ In

³ Letter from Dr. Charles Reich, 3M Center, to U.S. Env’t Protection Agency (May 15, 1998), https://static.ewg.org/reports/2020/pfas-epa-timeline/1998_3M-Alerts-EPA.pdf.

⁴ See Carol F. Kwiatkowski et al., *Scientific Basis for Managing PFAS as a Chemical Class*, 7 Env’t Sci. & Tech. Letters 532, 532–43 (2020), <https://pubs.acs.org/doi/10.1021/acs.estlett.0c00255>.

⁵ Annie Sneed, *Forever Chemicals Are Widespread in U.S. Drinking Water*, Sci. Am. (Jan. 22, 2021), <https://www.scientificamerican.com/article/forever-chemicals-are-widespread-in-u-s-drinking-water/>; Antonia M. Calafat et al., *Polyfluoroalkyl Chemicals in the U.S. Population: Data from the National Health and Nutrition Examination Survey (NHANES) 2003–2004 and Comparisons with NHANES 1999–2000*, 115 Env’t Health Persp. 1596 (2007), <https://stacks.cdc.gov/view/cdc/3901>.

⁶ Kelly L. Smalling et al., *Per- and Polyfluoroalkyl Substances (PFAS) in United States Tapwater: Comparison of Underserved Private-Well and Public-Supply Exposures and Associated Health Implications*, 178 Env’t Intn’l 108033 (2023), <https://www.sciencedirect.com/science/article/pii/S0160412023003069?via%3Dihub>; David Q. Andrews and Olga V. Naidenko, *Population-Wide Exposure to Per- and Polyfluoroalkyl Substances from Drinking Water in the United States*, 7 Env’t. Sci. & Tech. Letters 931 (2020), <https://doi.org/10.1021/acs.estlett.0c00713>.

⁷ 89 Fed. Reg. 32532.

⁸ EPA, *Per- and Polyfluoroalkyl Substances (PFAS): Final PFAS National Primary Drinking Water Regulation*, <https://www.epa.gov/sdwa/and-polyfluoroalkyl-substances-pfas> (last updated May 18, 2026) (“EPA expects that over many years the final rule will prevent PFAS exposure in drinking water for approximately 100 million people.”).

⁹ 91 Fed. Reg. at 29413.

¹⁰ PFAS National Primary Drinking Water Regulation Rulemaking, 88 Fed. Reg. 18638, 18652 (Mar. 29, 2023).

an unprecedented action to “streamline the ... process,” the agency is offering a blanket two-year exemption to public water systems’ compliance with the 2029 compliance deadline for the PFOA and PFOS drinking water standards.¹¹ Utilities nationwide will automatically be granted the exemption whether or not they need it and regardless of the risks to their customers’ health, as long as they recite the language prescribed by EPA.¹² The agency’s proposal is illegal, and it is a betrayal of the millions of Americans who will face two more years of exposure to PFOA and PFOS in the water that they drink, cook family dinners with, and even use in their children’s bottles.

On top of this, EPA simultaneously seeks to throw out standards for PFHxS, HFPO-DA (commonly known as GenX), PFNA, and PFBS (collectively, the “Index PFAS”), prolonging and increasing the health risks faced by residents who rely on drinking water contaminated with these toxic chemicals.¹³

I. Background

A. The Safe Drinking Water Act Was Enacted to Protect the Public.

“The Safe Drinking Water Act ... was enacted to ensure that public water supply systems meet minimum national standards for the protection of public health.”¹⁴ To prevent drinking water contamination, the Act requires EPA to establish National Primary Drinking Water Regulations (“NPDWRs”) that specify the “maximum levels for contaminants that may have an adverse effect on the health of consumers.”¹⁵

EPA’s obligation to issue NPDWRs is triggered by the Administrator’s regulatory determination that: (1) a contaminant “may have an adverse effect on the health of persons,” (2) “the contaminant is known to occur or there is a substantial likelihood that the contaminant will occur in public water systems with a frequency and at levels of public health concern,” and (3) “regulation of such contaminant presents a meaningful opportunity for health risk reduction for persons served by public water systems.”¹⁶ EPA’s regulatory determinations, and other science-based decisions under the Safe Drinking Water Act, “shall use ... the best available, peer-reviewed science and supporting studies.”¹⁷

¹¹ 91 Fed. Reg. at 29428.

¹² *Id.* at 29434.

¹³ Rescission of Regulatory Determinations and Removal of Related Provisions for Four PFAS Substances (PFHxS, PFNA, HFPO-DA (GenX), and the Mixture of These Three PFAS Plus PFBS), 91 Fed. Reg. 29413 (May 20, 2026).

¹⁴ *Nat’l Wildlife Fed’n v. EPA*, 980 F.2d 765, 768 (D.C. Cir. 1992).

¹⁵ *Id.* (citing 42 U.S.C. § 300g-1).

¹⁶ 42 U.S.C. § 300g-1(b)(1)(A).

¹⁷ *Id.* § 300g-1(b)(3)(A)(i); *see also id.* § 300g-1(b)(1)(B)(ii)(II).

A National Primary Drinking Water Regulation must contain either a “maximum contaminant level” or a “treatment technique.”¹⁸ A maximum contaminant level is “the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.”¹⁹ A maximum contaminant level must be set “as close ... as is feasible” to the “level at which no known or anticipated adverse effects on the health of persons occurs and which allows an adequate margin of safety,” also known as the Maximum Contaminant Level Goal (“MCLG” or “goal”).²⁰ The analysis of feasibility “tak[es] cost into consideration,”²¹ but it does not prioritize those considerations over public health protection or require EPA to find that the economic benefits of a maximum contaminant level outweigh the costs.²²

B. EPA Promulgated Drinking Water Standards for PFOA and PFOS Because These Chemicals Pose Serious Risks to Public Health.

Research consistently confirms that PFOA and PFOS pose a significant threat to human health, with no known safe level of exposure. EPA finalized the PFAS drinking water standards based on an extensive compilation of research documenting the health impacts of drinking water contaminated with PFOA and PFOS.

This did not happen overnight. Over decades, EPA and the broader scientific community improved their understanding of PFOA and PFOS before EPA required regulation under the Safe Drinking Water Act. In 1998, EPA was alerted that these synthetic chemicals were building up in the blood of residents living near PFAS manufacturers.²³ By 2009, EPA recognized that PFOA and PFOS are toxic, highly persistent, and present in drinking water at levels of concern to human health.²⁴ That year, the agency included them in its list of contaminants potentially requiring regulation under the Safe Drinking Water Act²⁵ and issued provisional health

¹⁸ *Id.* § 300f(1)(C).

¹⁹ *Id.* § 300f(3).

²⁰ *Id.* § 300g-1(b)(4)(A).

²¹ *Id.* § 300g-1(b)(4)(D).

²² See S. Rep. No. 104-169 at 33 (Nov. 7, 1995) (“The Administrator is not precluded from ... set[ting] a maximum contaminant level as close to the maximum contaminant level goal as feasible, even if the Administrator determines that the benefits of the MCL at this level do not justify the costs.”); see also 42 U.S.C. § 300g-1(b)(3)(C)(i) (requiring EPA to consider “nonquantifiable health risk reduction benefits” when establishing MCLs); *City of Portland, Oregon v. EPA*, 507 F.3d 706, 712 (D.C. Cir. 2007).

²³ Letter from Dr. Charles Reich, 3M Center, to U.S. Env’t Protection Agency (May 15, 1998), https://static.ewg.org/reports/2020/pfas-epa-timeline/1998_3M-Alerts-EPA.pdf; see also *EPA and 3M Announce Phase Out of PFOS*, EPA (May 16, 2000), https://www.epa.gov/archive/epapages/newsroom_archive/newsreleases/33aa946e6cb11f35852568e1005246b4.html.

²⁴ Drinking Water Contaminant Candidate List 3—Final, 74 Fed. Reg. 51854 (Oct. 8, 2009).

²⁵ *Id.* at 51850.

advisories—the levels above which action should be taken to reduce exposure from PFOA and PFOS in drinking water.²⁶ A few years later, in 2012, EPA required nationwide monitoring of certain public water systems for PFOA and PFOS,²⁷ and in 2016, the agency finalized its health advisories for these chemicals.²⁸

In February 2020, EPA issued its preliminary determination to regulate PFOA and PFOS under the Safe Drinking Water Act and finalized this determination in March 2021, concluding that regulating PFOA and PFOS in drinking water is consistent with, and required by, the Act to protect human health and safety.²⁹ EPA then issued Unregulated Contaminant Monitoring Rule 5 (“UCMR 5”) in December 2021.³⁰ This rule directed public water systems to monitor for 29 different PFAS, including all six PFAS for which EPA subsequently promulgated drinking water standards.³¹

Two years later, in March 2023, the agency proposed drinking water standards for the chemicals.³² EPA then held an extensive public comment period, during which the agency received roughly 120,000 comments.³³ Over the course of nearly a year, EPA reviewed, considered, and responded to the public’s comments. After the agency’s thorough analysis, EPA finalized enforceable PFOA and PFOS standards at 4.0 nanograms per liter (“ng/L”, equivalent to parts per trillion (“ppt”)) in April 2024 and set the compliance deadline for April 2029.³⁴

EPA premised its PFOA and PFOS regulations on a well-accepted body of science demonstrating that these contaminants pose an array of health impacts when consumed, even in

²⁶ *Provisional Health Advisories for Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonate (PFOS)*, EPA (Jan. 8, 2009), <https://www.epa.gov/sites/default/files/2015-09/documents/pfoa-pfos-provisional.pdf>.

²⁷ *See* Revisions to the Unregulated Contaminant Monitoring Regulation (UCMR 3) for Public Water Systems, 77 Fed. Reg. 26072 (May 2, 2012); Revisions to the Unregulated Contaminant Monitoring Rule (UCMR 5) for Public Water Systems and Announcement of Public Meetings, 86 Fed. Reg. 73131 (December 27, 2021).

²⁸ EPA, *Drinking Water Health Advisory for Perfluorooctane Sulfonate (PFOS)*, EPA 822-R-16-004 (May 2016), https://www.epa.gov/sites/default/files/2016-05/documents/pfos_health_advisory_final_508.pdf; EPA, *Drinking Water Health Advisory for Perfluorooctanoic Acid (PFOA)*, EPA 822-R-16-005 (May 2016), https://www.epa.gov/sites/default/files/2016-05/documents/pfoa_health_advisory_final_508.pdf.

²⁹ Announcement of Final Regulatory Determinations for Contaminants on the Fourth Drinking Water Contaminant Candidate List, 86 Fed. Reg. 12272, 12273 (Mar. 3, 2021).

³⁰ *See* 86 Fed. Reg. at 73131.

³¹ *Id.*

³² 88 Fed. Reg. at 18638.

³³ EPA, *Final PFAS National Primary Drinking Water Regulation* (2024), <https://www.epa.gov/system/files/documents/2024-04/general-overview-webinar-presentation-final-pfas-ndpwr.pdf>.

³⁴ 89 Fed. Reg. at 32532.

extremely small quantities. EPA found that exposure to either may lead to cancer, liver toxicity, immune effects, and changes in cholesterol, and that they may be associated with tumor formation.³⁵ The agency also explained that PFOA and PFOS can cause developmental effects in fetuses or infants—a result of the chemicals passing through the placenta or breast milk.³⁶ The science showing that both PFOA and PFOS are likely to be carcinogenic to humans was the foundation for EPA setting the drinking water standards.³⁷ EPA explained that there is no known level of exposure below which there is not an appreciable cancer risk, so the exposure level at which PFOA and PFOS are anticipated to have no adverse effect on people’s health is zero.³⁸

EPA then evaluated feasibility when setting the drinking water standards for the chemicals, as required by the Safe Drinking Water Act. After considering treatment availability, analytical capabilities, cost, and other relevant factors, EPA concluded that drinking water standards of 4.0 ppt for PFOA and PFOS are both appropriate and achievable in a five-year timeframe. EPA found that multiple treatment technologies had been shown, in full-scale applications, to remove PFOA and PFOS to 4 ppt and lower.³⁹ Additionally, EPA determined that laboratories across the country could use existing analytical methods to accurately and

³⁵ 86 Fed. Reg. at 12276; *Drinking Water Health Advisory for Perfluorooctane Sulfonate (PFOS)*, *supra* note 28; EPA, *Health Effects Support Document for Perfluorooctane Sulfonate (PFOS)*, EPA 822-R-16-002 (May 2016), https://www.epa.gov/sites/default/files/2016-05/documents/pfos_hesd_final_508.pdf; *Drinking Water Health Advisory for Perfluorooctanoic Acid (PFOA)*, *supra* note 28; EPA, *Health Effects Support Document for Perfluorooctanoic Acid (PFOA)*, EPA 822-R-16-005 (May 2016), https://www.epa.gov/sites/default/files/2016-05/documents/pfoa_hesd_final_508.pdf; U.S. Dep’t of Health & Human Services Nat’l Toxicology Program, *NTP Technical Report on the Toxicology and Carcinogenesis Studies of Perfluorooctanoic Acid (CASRN 335-67-1) Administered in Feed to Sprague Dawley (HSD: Sprague Dawley SD) Rats (Revised)*, NTP TR 598 (May 2020), https://ntp.niehs.nih.gov/sites/default/files/ntp/htdocs/lt_rpts/tr598_508.pdf.

³⁶ 86 Fed. Reg. at 12276; *Drinking Water Health Advisory for Perfluorooctane Sulfonate (PFOS)*, *supra* note 28; *Drinking Water Health Advisory for Perfluorooctanoic Acid (PFOA)*, *supra* note 28.

³⁷ 89 Fed. Reg. at 32564.

³⁸ *Id.*; EPA, *Public Comment Draft Toxicity Assessment and Proposed Maximum Contaminant Level Goal for Perfluorooctanoic Acid (PFOA) in Drinking Water* (Mar. 29, 2023), <https://www.regulations.gov/document/EPA-HQ-OW-2022-0114-0032>; EPA, *Public Comment Draft Toxicity Assessment and Proposed Maximum Contaminant Level Goal for Perfluorooctane Sulfonic Acid (PFOS) in Drinking Water* (Mar. 29, 2023), <https://www.regulations.gov/document/EPA-HQ-OW-2022-0114-0034>; EPA, *Guidelines for Carcinogen Risk Assessment* (Mar. 2005), https://www.epa.gov/sites/default/files/2013-09/documents/cancer_guidelines_final_3-25-05.pdf.

³⁹ 89 Fed. Reg. at 32577.

precisely measure the chemicals to the levels necessary for evaluating compliance with the standards.⁴⁰

Moreover, EPA conducted a rigorous assessment of the costs and benefits of the PFOA and PFOS standards and found that not only did the benefits exceed the costs,⁴¹ but also that there are many additional health benefits that EPA could not quantify—related to developmental, cardiovascular, hepatic, immune, endocrine, metabolic, reproductive, musculoskeletal, and carcinogenic effects (other than liver cancer impacts).⁴² Taken together, these findings further underscore the reasonableness and strong scientific and economic justification for the standards EPA ultimately adopted.

In June 2024, the American Chemistry Council, National Association of Manufacturers, The Chemours Company (“Chemours”), the American Water Works Association, and the Association of Metropolitan Water Agencies challenged EPA’s PFAS drinking water standards.⁴³ EPA defended the standards, including those for PFOA and PFOS, arguing that they are a culmination of “a coordinated years-long research and regulatory process across multiple administrations” that “establishes enforceable standards ... estimated to prevent thousands of deaths and reduce tens of thousands of serious PFAS-attributable illnesses.”⁴⁴

C. EPA Decided to Delay the PFOA and PFOS Drinking Water Standards Only After a Change in Administration.

The fundamental science remains unchanged—and if anything, the need for these standards has only grown more urgent. Research continues to confirm that PFOA and PFOS are toxic to human health.⁴⁵ As EPA’s own documents put it, “the agency’s underpinning of the

⁴⁰ *Id.*

⁴¹ 89 Fed. Reg. at 32710.

⁴² 89 Fed. Reg. at 32717.

⁴³ See Petition for Review, Doc. No. 2058535, *Am. Water Works Ass’n v. EPA*, No. 24–1188 (D.C. Cir. June 7, 2024); Petition for Review, Doc. No. 2058848, *Nat’l Assoc. of Manuf. and Am. Chem. Council v. EPA*, No. 24–1191 (D.C. Cir. June 10, 2024); Petition for Review, Doc. No. 2059361, *The Chemours Co. FC, LLC v. EPA, et al.* No. 24–1192, (D.C. Cir. June 10, 2024); Clerk’s Consolidation Order, Doc. 2058852, *Am. Water Works Ass’n v. EPA*, No. 24–1188 (June 10, 2024); Clerk’s Consolidation Order, Doc. 2059369, *Am. Water Works Ass’n v. EPA*, No. 24–1188 (June 10, 2024).

⁴⁴ Respondents’ Proof Brief 2, Doc. No. 2091318, *Am. Water Works Ass’n v. EPA*, No. 24–1188 (D.C. Cir. Dec. 3, 2024).

⁴⁵ See *infra* Section III.B.3; see also U.S. Env’t Protection Agency, Final Human Health Toxicity Assessment for Perfluorooctanoic Acid (PFOA) and Related Salts, 815R24006 (Apr. 2024) (“Final Human Health Toxicity Assessment for PFOA”), <https://www.epa.gov/system/files/documents/2024-05/final-human-health-toxicity-assessment-pfoa.pdf>; U.S. Env’t Protection Agency, Final Human Health Toxicity Assessment for Perfluorooctane Sulfonic Acid (PFOS) and Related Salts, 815R24007 (Apr. 2024) (“Final

[2024] [R]ule is robust and interconnected ... [and even] if you pull one string, the web of scientific underpinning remains substantial and compelling.”⁴⁶ But EPA now seeks to undermine progress in protecting communities from these chemicals by moving to delay the PFOA and PFOS drinking water standards. EPA’s proposal is not only unlawful under the Safe Drinking Water Act and the Administrative Procedure Act, but also inconsistent with the agency’s prior finding that compliance with the PFOA and PFOS drinking water standards by April 2029 is feasible.

EPA’s change in position occurred only after a change in presidential administration. Mere months after inauguration day, EPA abruptly retreated from its previously expressed urgency to protect the public from PFOA and PFOS in drinking water. In May 2025, the agency announced its intent to “develop a rulemaking to provide additional time for compliance, including a proposal to extend the compliance date to 2031.”⁴⁷ At that time, EPA offered only a cursory justification for the delay, stating that additional time would provide public water systems with greater “flexibility” to achieve compliance.⁴⁸

When EPA finally published the Proposed Delay Rule a year later, it attempted to give a reason for a decision it had effectively made twelve months earlier. But the agency’s explanation remains inadequate, as discussed in more detail throughout this letter. For example, EPA asserted, without meaningful analysis, that “many systems *may* be unable to comply ... by the current 2029 compliance date.”⁴⁹ Yet EPA did not attempt to determine how many systems would actually be unable to comply by 2029, how serious those challenges would be, or whether more targeted solutions could address them. That speculation serves as the sole basis for EPA’s proposal to expose millions of Americans to these toxic chemicals for years longer than necessary.

D. Delaying Compliance with the PFOA and PFOS Drinking Water Standards Will Harm Millions of People Throughout the Country.

Delay of the drinking water protections for PFOA and PFOS will harm millions of Americans—something EPA does not seriously dispute. Even as the agency proposes to give public water systems two more years—on top of the five years they already have to comply—

Human Health Toxicity Assessment for PFOS”), <https://www.epa.gov/system/files/documents/2024-05/final-human-health-toxicity-assessment-pfos.pdf>.

⁴⁶ Jess Kramer, EPA, *National Association of Manufacturers Roundtable*, at 6 (May 20, 2025) obtained via FOIA case number 25-EPA-07215.

⁴⁷ EPA, *EPA Announces It Will Keep Maximum Contaminant Levels for PFOA, PFOS* (May 14, 2025), <https://www.epa.gov/newsreleases/epa-announces-it-will-keep-maximum-contaminant-levels-pfoa-pfos> (last updated May 15, 2025).

⁴⁸ *Id.*

⁴⁹ 91 Fed. Reg. at 29428 (emphasis added).

EPA has not abandoned its prior conclusion⁵⁰ that consumption of these chemicals can cause serious illness. In this proposed rulemaking, EPA does not reassess any of the substantive findings of harm underlying the PFOA and PFOS standards.⁵¹

When EPA made its regulatory determination to establish drinking water standards for PFOA and PFOS, the agency determined that there is widespread occurrence of these chemicals in drinking water throughout the country.⁵² Recent nationwide monitoring data confirms this. Data released from EPA's UCMR 5 in 2026 shows that at least about 80 million people across 48 states and four territories will be harmed by EPA's proposed Delay Rule.⁵³ The cumulative harms caused by the proposed delay will be even greater because EPA is also moving to rescind the drinking water standards for the Index PFAS. Taken together, these actions would significantly weaken PFAS protections, leave communities exposed to contamination for far longer, and delay critical public health benefits.

We have seen examples of PFAS disasters across the country, including those caused by PFOA and PFOS. In one prominent instance, 3M was responsible for decades of PFOA and PFOS contamination in Minnesota. Contamination impacted the drinking water supplies for more than 140,000 Minnesotans.⁵⁴ Even though 3M discontinued the use of PFOS and PFOA in

⁵⁰ 89 Fed. Reg. at 32532.

⁵¹ See 91 Fed. Reg. at 29427.

⁵² 86 Fed. Reg. at 12276; see also EPA, *Final Regulatory Determination 4 Support Document*, 815-R-21-001 (Jan. 2021), <https://nepis.epa.gov/Exe/ZyPDF.cgi/P10142HV.PDF?Dockkey=P10142HV.PDF>.

⁵³ Libbie Weimer, *Analysis of UCMR 5 data to identify populations potentially impacted by rollbacks of PFAS regulations*, Southern Environmental Law Center (July 2026) (attached to these comments). The Southern Environmental Law Center's Senior Geospatial Analyst, Libbie Weimer, developed this statistic from EPA's national PFAS data collected for public water systems under UCMR 5. EPA, *Fifth Unregulated Contaminant Monitoring Rule Data Finder* (Jan. 15, 2026), <https://www.epa.gov/dwucmr/occurrence-data-unregulated-contaminant-monitoring-rule#5> (analysis based upon the maximum sampling result for each public water system across all monitoring of that system, without distinguishing between individual water sources to a public water system). Characteristics of each public water system monitored, including population served and type of system were collected from EPA's Enforcement and Compliance History Online ("ECHO") Drinking Water Systems API. EPA, *ECHO: Facility Search – Drinking Water Systems*, <https://echo.epa.gov/tools/web-services/facility-search-drinking-water/> (queried March 20, 2026). Hereinafter, statistics developed by the Southern Environmental Law Center's Libbie Weimer from EPA's UCMR 5 data, supplemented with information from EPA's ECHO tool, are cited as "Weimer, SELC 2026 UCMR 5 Data Analysis."

⁵⁴ Minnesota Pollution Control Agency, *East Metro 3M PFAS Contamination*, <https://www.pca.state.mn.us/local-sites-and-projects/east-metro-3m-pfas-contamination> (last visited July 13, 2026).

2002,⁵⁵ community members’ blood levels of PFOS and PFOA “significantly exceeded” baseline U.S. population levels years later.⁵⁶ This is just one example of the harm caused when PFAS contamination is not addressed quickly and comprehensively. Americans deserve a comprehensive framework for safe drinking water without delay.

II. EPA’s Proposed Delay Rule Violates the Safe Drinking Water Act.

The Safe Drinking Water Act establishes a default maximum compliance period of three years after promulgation of a new national primary drinking water regulations, “unless [EPA] determines that an earlier date is practicable.” 42 U.S.C. § 300g-1(b)(10). When promulgating the drinking water standards in 2024, EPA exercised its authority to issue the only broadly applicable compliance extension available under the Act: a one-time, two-year, nationwide extension if it determines that additional time is necessary for capital improvements. *Id.* § 300g-1(b)(10); 40 C.F.R. § 141.900(b)(4); 40 C.F.R. § 141.903.

EPA cannot provide a further nationwide extension by mislabeling it an “exemption” under 42 U.S.C. § 300g-5, which allows exemptions only on a case-by-case basis, with specific prerequisites. Such prerequisites include individualized determinations that: an individual water system is unable to comply with the drinking water standard or implement measures to develop an alternative water source; granting an exemption to that particular system will not result in an unreasonable risk to health; and, management and/or restructuring changes at that system cannot reasonably be made to result in compliance with the standards. 42 U.S.C. § 300g-5(a)(1), (a)(3), (a)(4). The Act also requires holding a public hearing on the proposed compliance schedule. *Id.* § 300g-5(b)(1). The unprecedented nationwide exemption proposed here contradicts the statutory text, legislative history, and EPA’s previous interpretations of the Act, which all confirm that the exemption authority is to be used only on a case-by-case basis.

A. EPA Has Exhausted Its Compliance Extension Authority Under the Act.

Under the Act, a new drinking water standard generally “shall take effect” three years after promulgation. *Id.* § 300g-1(b)(10). The Act allows only one generally applicable extension, under paragraph 1412(b)(10), through which EPA may allow “up to 2 additional years to comply ... if the Administrator ... determines that additional time is necessary for capital

⁵⁵ Fardin Oliaei et al., *Investigation of Perfluorochemical (PFC) Contamination in Minnesota Phase One*, at 6 (Feb. 2007), <https://www.leg.mn.gov/archive/leg/minutes/database/84-s-1261-0-20060227-a.pdf>.

⁵⁶ Fardin Oliaei et al., *PFOS and PFC Releases and Associated Pollution from a PFC Production Plant in Minnesota (USA)*, 20 *Env’t Sci. & Pollution Rsch.* 1977, at 1988 (2018), [PFOS-and-PFC-releases-and-associated-pollution-from-a-PFC-production-plant-in-Minnesota-USA.pdf](#); accord Robert Bilott, Taft, Stetinius, & Hollister LLP, *Perfluorochemical Residential Exposure Data for Washington County, Minnesota*, at 3–12 (Feb. 2, 2007), <https://www.regulations.gov/document/EPA-HQ-OPPT-2003-0012-1230>.

improvements.” *Id.* This two-year extension combined with the standard three-year period yields a maximum allowable time frame of five years from promulgation of the rule to required compliance.

EPA recognized this five-year ceiling when it invoked paragraph (b)(10) to grant a nationwide two-year capital improvement extension on top of the standard three-year compliance period in the 2024 Rule,⁵⁷ setting the compliance deadline for the PFOA and PFOS standards as April 26, 2029.⁵⁸ In doing so, EPA explained that “Congress intended the extension under [paragraph (b)(10)] to allow for a total of five years to comply with the MCL,” and that once “EPA provides a two-year extension ... a state cannot provide an additional two-year extension” under paragraph (b)(10).⁵⁹ EPA’s own interpretation thus confirms that the two-year capital improvement extension is a one-time, maximum allowance—not one that can be supplemented by successive exemptions.

Accordingly, EPA previously exhausted its authority to grant a nationwide compliance extension under paragraph 1412(b)(10). The April 26, 2029, deadline established in the 2024 Rule already reflects the full five-year statutory maximum.

B. The Safe Drinking Water Act’s Exemption Provision Does Not Authorize the Categorical, Rule-Based Exemption EPA Proposes.

EPA cannot invoke the exemption provision in section 1416 to further extend nationwide compliance deadlines past the five-year statutory maximum. The Act’s exemption provision requires individualized applications and approval by a reviewing authority prior to granting an exemption—it does not permit EPA to provide exemptions-by-rule that automatically grant extensions to water systems that self-certify their eligibility. Congress established a detailed process for granting exemptions to individual water systems that demonstrate an inability to comply with an applicable standard. The legislative history underscores the importance of case-by-case review, and EPA may not disregard that requirement.

⁵⁷ 89 Fed. Reg. at 32631.

⁵⁸ *Id.* at 32632; 40 C.F.R. § 141.900(b)(4).

⁵⁹ 89 Fed. Reg. at 32631. In the 2024 Rule, EPA recognized that while it had exhausted the ability for it or a state to grant a blanket two-year extension under paragraph (b)(10), a state “could grant exemptions under [42 U.S.C. § 300g-5] consistent with applicable requirements.” *Id.* However, as described below, section 300g-5 authority cannot be exercised to issue a nationwide exemption-by-rule as EPA is proposing here.

1. *The Act allows exemptions to be issued only on a case-by-case basis.*

In the Proposed Delay Rule, EPA states that it evaluated new information and considered several compelling factors that “collectively” support a finding that “*some* water systems,” “regardless of system size and location,” may be unable to comply by April 2029.⁶⁰ However, that assertion does not justify bypassing the statutory requirement to make individualized findings before granting an exemption.

Under subsection 1416(f) of the Act, for water systems located in states that do not have primacy for a drinking water standard, EPA has authority to exempt a public water system from MCLs or treatment technique requirements “under the same conditions and in the same manner as the State would be authorized to grant exemptions.” 42 U.S.C. § 300g-5(f). The Act allows a primacy state or the Administrator to grant exemptions to a “public water system”—singular, not plural. *Id.* § 300g-5(a).

Before granting an exemption, the reviewing authority must find that: (1) there are “compelling factors” demonstrating “*the public water system* is unable to comply” with the standard “or to implement measures to develop an alternative source of water supply”; (2) “*the public water system* was in operation” on the standard’s effective date or there is not a reasonable alternate source of drinking water available to the system; (3) the exemption will not result in an “unreasonable risk to health”; and (4) no management or restructuring changes can be made that will result in compliance or improve the quality of the drinking water. *Id.* (emphasis added). By requiring the reviewing authority to make a finding on four criteria that are inherently unique to each “public water system” that seeks an exemption, the Act plainly limits states and EPA to granting exemptions based on case-by-case evaluations of the circumstances facing each individual public water system.

Further, if the reviewing authority finds that an individual system is eligible for an exemption, it must provide a compliance schedule tailored to that system. *Id.* § 300g-5(b)(1). That schedule can take effect only after “notice and opportunity for a public hearing on the schedule.” *Id.* § 300g-5(b). Furthermore, this subsection of the Act shows that Congress knew how to authorize agency action affecting multiple systems when it chose to do so: it expressly permitted states and EPA to conduct a single public hearing addressing multiple exemption-related compliance schedules. *Id.* Yet Congress did not similarly authorize states or EPA to make a single exemption eligibility determination covering multiple systems. That omission further confirms that exemption eligibility must be determined on a system-by-system basis.

The fact that EPA must determine that compliance with a national drinking water standard is “feasible” before promulgating it reinforces this interpretation. *See id.* § 300g-1(b)(4)(B) (requiring that EPA set standards “as close to the maximum contaminant level goal as

⁶⁰ 91 Fed. Reg. at 29429 (emphasis added).

is feasible”); *id.* § 300g-1(b)(4)(D) (defining “feasible” to mean “feasible with the use of the best technology, treatment techniques and other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration)”). Courts have taken this language to mean “technically possible and affordable.”⁶¹ It would make little sense for Congress to require that EPA find that compliance with a standard is feasible on a nationwide basis as a predicate to promulgating the standard while also authorizing EPA to grant a nationwide exemption from compliance based on the contradictory finding that it is not feasible for water systems nationwide to comply.

This reading of section 1416 is supported by prior EPA interpretations. In the 2023 proposed PFAS rule, EPA sought comment on what conditions should be required to ensure that section 1416 exemptions are “only used in rare circumstances where there are no other viable alternatives.”⁶² This framing is incompatible with an exemption-by-rule, which in this case would allow for widespread exemptions and would bypass any assessment of viable alternatives.

Legislative history further reinforces the reading that only case-by-case exemptions are allowed. The 1980 House Report ahead of the passage of the Act’s 1980 Amendments emphasized “in the strongest possible terms” that “exemptions be granted on a case-by-case basis and only to those systems that are unable, due to economic factors, to comply immediately.”⁶³ That same report warned that states’ application of the exemption authority “should not be interpreted as an invitation to slacken efforts” to meet drinking water standards.⁶⁴ During the passage of the 1996 Amendments, which tightened exemption criteria further by requiring the reviewing authority to make fact-intensive findings for an individual system prior to issuing an exemption,⁶⁵ the accompanying House Report continued to characterize the existing exemption authority as limited to “temporary case-by-case exemptions.”⁶⁶ The 1996 Amendments further required that any individual water system that seeks an exemption must

⁶¹ *City of Portland, Oregon*, 507 F.3d at 712; *cf. Am. Textile Mfrs. Inst., Inc. v. Donovan*, 452 U.S. 490, 508–09 (1981) (defining “feasible” in the Occupational Safety and Health Act as “capable of being done, executed, or effected”).

⁶² 88 Fed. Reg. at 18689.

⁶³ H.R. Rep. No. 96-1348, at 4 (1980).

⁶⁴ *Id.*

⁶⁵ Safe Drinking Water Act Amendments of 1996, Pub. L. No. 104-182, 110 Stat. 1613, 1644; Revision of Existing Variance and Exemption Regulations to Comply with Requirements of the Safe Drinking Water Act, 63 Fed. Reg. 43834 (Aug. 14, 1998).

⁶⁶ H.R. Rep. No. 104-632(I), at 7 (1996).

demonstrate that it cannot achieve compliance through restructuring or management changes— issues that can only be evaluated on a system-by-system basis.^{67, 68}

Thus, Congress was clear that exemptions were to be granted on a case-by-case basis only after EPA or a state verifies the water system’s eligibility. EPA may not act contrary to that limitation. *Sierra Club v. EPA*, 294 F.3d 155, 161 (D.C. Cir. 2002) (explaining EPA “may not disregard the Congressional intent clearly expressed in the text simply by asserting that its preferred approach would be better policy”) (cleaned up); *cf. Centro de Trabajadores Unidos v. Bessent*, 167 F.4th 1218, 1230–31 (D.C. Cir. 2026) (noting that statute “imposes specific requirements,” and “the court has no justification for departing from the plain text of the statute”). EPA is wrong to contend that its proposal for a “combination of categorical findings and system-specific application,” 91 Fed. Reg. at 29428, complies with the Act’s exemption requirements.

2. *The Act does not permit the Proposed Delay Rule’s self-certification scheme.*

The Proposed Delay Rule also violates the Act by delegating the findings that states or EPA must make to the water systems themselves. Under the proposal, EPA need not make the “finding” required by the Act that any individual public water system actually satisfies any of the statutory criteria before granting an exemption. 42 U.S.C. § 300g-5(a). Instead, for any system that submits the information listed in proposed 40 C.F.R. § 142.58(b), the exemption “is granted” without any assessment or rationally explained or supported findings required from EPA. 90 Fed. Reg. at 29447. EPA effectively outsources its statutory duty to make case-by-case findings to the very public water systems seeking exemptions.

EPA attempts to support this self-certification scheme for issuing an exemption-by-rule by pointing to instances where EPA has authorized permits-by-rule, *id.* at 29428, but those are distinguishable. For example, EPA has authorized permits-by-rule under the Resource

⁶⁷ See H. Conf. Rep. No. 104-741, at 88 (1996) (Joint Explanatory Statement of the Committee on Conference); H.R. Rep. No. 104-632(I), at 38.

⁶⁸ EPA’s variance provisions also do not allow EPA to skip an individualized evaluation. A general variance may be issued only after the primacy state/Tribe or EPA Administrator evaluates the quality of the source water or size of the water system’s service area, fact-intensive questions not easily addressed by the exemption proposed in the rule. 42 U.S.C. § 300g-4; 40 C.F.R. § 131.14(b). A general variance requires water systems to install the best technology, treatment techniques, or other means available, rather than allow for a delay in compliance, like an exemption. 42 U.S.C. § 300g-5. Small system variances similarly require the primacy state/Tribe or EPA Administrator to evaluate the “quality of the source water for the system and the removal efficiencies and expected useful life of the treatment technology required by the variance,” again fact-intensive questions which must be evaluated on a case-by-case basis. *Id.* § 300g-4(e)(2)(C), (3)(B).

Conservation and Recovery Act (RCRA) when there is overlap between the RCRA permit and a permit authorized under another enabling statute (including the Safe Drinking Water Act;⁶⁹ Marine Protection, Research, and Sanctuaries Act;⁷⁰ and Clean Water Act⁷¹) to reconcile or avoid duplicative permitting processes. In contrast, the Proposed Delay Rule here is not justified by potential duplication of extensions offered by other enabling statutes.

EPA's general Clean Air Act permits and permits-by-rule for selected new minor source categories in Indian Country are also distinguishable. Those permits-by-rule establish standard requirements to control air emissions from sources that have similar characteristics,⁷² but are not automatic. To obtain coverage under such a permit-by-rule, sources must submit required documentation to EPA and the reviewing authority demonstrating that the source has completed screening processes regarding threatened and endangered species and historic properties and must receive determinations from EPA and the reviewing authority stating that the source has satisfactorily completed those processes.⁷³ Here, in contrast, the proposed nationwide exemption applies as soon as an "eligible" water system provides EPA with a certified application—without any affirmative determination of eligibility from a reviewing authority.

EPA wrongly suggests that, because "nothing in the statute expressly forecloses a more streamlined exemption-by-rule approach," section 1416 authorizes permits-by-rule. 91 Fed. Reg. at 29428. The Proposed Delay Rule ignores the statutory factors EPA must consider before granting exemptions, including system-specific, individualized findings that, by their nature, vary system-to-system and cannot be made categorically based on global or industry-wide data. Additionally, paragraph 1416(b)(1) requires "notice and opportunity for a public hearing" before an exemption schedule may take effect, 42 U.S.C. § 300g-5(b)(1), a process similarly ill-suited

⁶⁹ EPA authorized RCRA permits-by-rule for underground injection of hazardous wastes with a permit under the Safe Drinking Water Act's underground injection control program to "avoid duplication, to the maximum extent practical, with the appropriate provisions of ... the Safe Drinking Water Act." Consolidated Permit Regulations, 45 Fed. Reg. 33325, 33326 (May 19, 1980) (quotation omitted); 40 C.F.R. § 270.60(b). After NRDC challenged that a permit-by-rule regulation could satisfy RCRA requirements, the D.C. Circuit invalidated the regulation and held that EPA must "demonstrate that the process meets the statutory requirements for such a permit." *Nat. Res. Def. Council, Inc. v. EPA*, 907 F.2d 1146, 1165 (D.C. Cir. 1990).

⁷⁰ Ocean disposal barges or vessels which accept hazardous waste for ocean disposal are deemed to have a RCRA permit if they have a permit for ocean dumping issued under 40 C.F.R. part 220, comply with the conditions of the permit, and comply with a number of enumerated hazardous waste regulations. 40 C.F.R. § 270.60(a).

⁷¹ Owners or operators of publicly owned treatment works are deemed to have a RCRA permit if they have a National Pollutant Discharge Elimination System (NPDES) permit, comply with the conditions of the permit, comply with specified additional regulations, and meet all pretreatment requirements. *Id.* § 270.60(c).

⁷² 40 C.F.R. § 49.156(f)(6)(iii).

⁷³ *Id.*

to an exemption-by-rule method. EPA’s proposal “would render these terms—and Congress’s design—meaningless.” *Nat’l TPS All. v. Noem*, 150 F.4th 1000, 1009 (9th Cir. 2025). A statute should be “read to effectuate its purposes rather than frustrate them.” *United States v. Barnes*, 295 F.3d 1354, 1364 (D.C. Cir. 2002) (quotation omitted).

C. EPA Is Not Authorized to Conduct a Rulemaking Under Section 1416 of the Act.

EPA invokes its general authority under section 1450 of the Act, 42 U.S.C. § 300j-9, to “prescribe such regulations as are necessary or appropriate to carry out [its] functions.” 91 Fed. Reg. at 29428. However, EPA cannot rely on this general rulemaking authority to expand the exemption authority granted by section 1416. Under subsection 1416(f), EPA’s authority to grant exemptions in non-primacy jurisdictions is limited to the authority that a primacy state would possess. Congress provided that EPA may exempt public water systems only “under the same conditions and in the same manner” as a state with primary enforcement responsibility. 42 U.S.C. § 300g-5(f). States, however, do not possess EPA’s general rulemaking authority under section 1450. Accordingly, EPA cannot augment its section 1416 exemption authority by combining it with powers unavailable to the states whose role it is temporarily exercising. Because a primacy state could not promulgate a rule granting categorical exemptions to multiple water systems, EPA cannot accomplish the same result by invoking section 1450 while acting pursuant to subsection 1416(f). The statute gives EPA only the same exemption authority as states, not greater exemption authority than states.

Even if section 1450 were available in this context, it could not override the limitations Congress imposed in section 1416. Section 1416 establishes a detailed framework governing exemptions, including individualized eligibility determinations and compliance schedules. Where Congress has specifically addressed the conditions under which EPA may grant exemptions, the specific provision controls over a general grant of rulemaking authority, including where, as here, general and specific authorizations exist side-by-side.⁷⁴ This is true especially where Congress has “deliberately targeted specific problems with specific solutions.”⁷⁵

III. EPA’s Proposed Delay Rule Is Arbitrary and Capricious.

In addition to being substantively unlawful, the proposed Delay Rule is a textbook example of arbitrary and capricious agency action under the Administrative Procedure Act (“APA”). The Delay Rule violates numerous tenets of reasoned decision-making. As explained below, EPA violated the APA by failing to rationally support its assertions that its proposal satisfies the statutory prerequisites for exemptions under section 1412 of the Safe Drinking

⁷⁴ *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012).

⁷⁵ *Id.* (quoting *Varity Corp. v. Howe*, 516 U.S. 489, 519 (1996) (Thomas, J., dissenting)).

Water Act, failing to consider reliance interests, relying on an arbitrary and inadequately supported analysis of the proposed rule's costs and benefits, and failing to consider reasonable alternatives.

Congress enacted the APA to ensure stability and rationality in agency action. The Act requires courts to “hold unlawful and set aside agency action, findings, and conclusions found to be ... arbitrary [and] capricious.” 5 U.S.C. § 706(2)(A). Agency action is “arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Motor Vehicle Mfrs. Ass’n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Courts “must ensure that the agency has examined the relevant data and articulated a satisfactory explanation for its action,” *Def’s of Wildlife v. U.S. Dep’t of Interior*, 931 F.3d 339, 345 (4th Cir. 2019) (quotation omitted), “including a rational connection between the facts found and the choice made.” *Dep’t of Commerce v. New York*, 588 U.S. 752, 773 (2019) (quoting *State Farm*, 463 U.S. at 43). At bottom, the APA demands “reasoned decisionmaking” from federal agencies. *State Farm*, 463 U.S. at 52.

Under the Administrative Procedure Act, policy change “cannot be solely a matter of political winds and currents. The APA requires that the pivot from one administration’s priorities to those of the next be accomplished with at least some fidelity to law and legal process. Otherwise, government becomes a matter of the whim and caprice of the bureaucracy.” *N.C. Growers’ Ass’n, Inc. v. United Farm Workers*, 702 F. 3d 755, 772 (4th Cir. 2012) (Wilkinson, J., concurring). Where, as here, an agency is not writing on a “blank slate” but is “changing [its] position,” the agency must “provide a more detailed justification than what would suffice for a new policy” if, “for example, ... its prior policy has engendered serious reliance interests that must be taken into account.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). When changing policy, agencies must “assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy interests.” *Dep’t of Homeland Sec. v. Regents of Univ. of Cal.*, 591 U.S. 1, 33 (2020). “[W]hen an agency rescinds a prior policy its reasoned analysis must [also] consider the alternatives that are within the ambit of the existing policy.” *Id.* at 30 (cleaned up). An agency must further give “good reasons for the new policy,” *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 223 (2016) (quotation omitted), including “a reasoned explanation ... for disregarding facts and circumstances that underlay or were engendered by the prior policy.” *Fox*, 556 U.S. at 516.

A. EPA Has Not Rationally Demonstrated “Compelling Factors” That Make Water Systems “Unable to Comply” With the Existing Deadline or Develop Alternative Water Sources.

To grant an exemption from compliance with a national drinking water standard, EPA must find that, “due to compelling factors ... the public water system” seeking the exemption “*is unable to comply*” with the standard or “implement measures to develop an alternative source of water supply.” 42 U.S.C. § 300g-5(a)(1) (emphasis added).⁷⁶ EPA does not even argue that the systems eligible for its proposed exemption meet this threshold. The Proposed Delay Rule is arbitrary, capricious, and contrary to the Safe Drinking Water Act on that basis alone.

EPA instead asserts in the Proposed Delay Rule that “*some* water systems that exceed the PFOA and PFOS MCLs *may be unable* to comply with those MCLs by the current compliance date of April 26, 2029.” 91 Fed. Reg. at 29429 (emphasis added). That is inadequate on its face to establish that any system *is unable* to comply by the existing deadline, let alone a proportion of systems across the country that is commensurate with the scope of the proposed exemption. See 42 U.S.C. § 300g-5(a)(1). Indeed, EPA admits that “many water systems are able to fully meet the requirements of the rule,” 91 Fed. Reg. at 29429, and evidence that a substantial number of water systems already have fully or partially implemented PFAS treatment or are on track to do so by the 2029 deadline undercuts EPA’s claim that a nationwide exemption is needed to address water systems’ supposedly widespread inability to comply.⁷⁷ Further, aside

⁷⁶ See also 42 U.S.C. § 300g-5(f) (providing that, in states that lack primary enforcement authority for a national drinking water standard, EPA “shall have the same authority to exempt public water systems in such State ... under the same conditions and in the same manner as the State would be authorized to grant exemptions under [section 1416 of the Safe Drinking Water Act] if it had primary enforcement responsibility”).

⁷⁷ See, e.g., U.S. Gov’t Accountability Office, *Persistent Chemicals: Additional EPA Actions Could Help Public Water Systems Address PFAS in Drinking Water* 16 (2024) (“GAO 2024”), EPA-HQ-OW-2025-1742-0047 (estimating that nearly 25 percent of public water systems already had fully or partially implemented PFAS treatment); Connecticut Water, *Treating for the Future – Connecticut Water Invests in Treatment Facilities Targeting PFAS Removal*, <https://www.ctwater.com/community-commitment/community-news/treating-for-the-future-connecticut-water-invests-in-treatment-facilities-targeting-pfas-removal/> (Feb. 10, 2026) (explaining that Connecticut Water is proactively implementing more than two dozen PFAS filtration projects across its system to meet PFAS MCLs by the 2029 deadline); Anaheim Public Utilities, *2025 Public Health Goals Report 5*, https://www.anaheim.net/DocumentCenter/View/26514/Public-Health-Goals-Report_FINAL-0531 (last visited July 3, 2026) (explaining that Anaheim Public Utilities has installed ion exchange systems to meet PFOA and PFOS MCLs); Daily Journal Staff, *Indiana American Water to Build Second PFAS Treatment Facility* (Apr. 9, 2026), <https://dailyjournal.net/2026/04/09/indiana-american-water-to-build-second-pfas-treatment-facility/> (describing installation of PFAS treatment technology by Indiana American Water to ensure compliance with 2024 PFAS MCLs by 2029 deadline); Suffolk Cty. Water Authority,

from asserting without support that it “anticipates the majority of systems that will be required to take action to address levels of PFOA and PFOS exceeding the MCLs” will pursue treatment in lieu of non-treatment compliance options, *id.*, EPA says nothing about systems’ ability to comply by developing alternative sources of water supply, *see* 42 U.S.C. § 300g-5(a)(1).

Because the Proposed Delay Rule does not require EPA to make this finding for individual systems that request exemptions, this critical gap in the reasoning supporting the Proposed Delay Rule cannot and will not be filled later in the contemplated exemption process. Indeed, water systems seeking an exemption under EPA’s Proposed Delay Rule would not be required to submit any evidence substantiating their asserted inability to comply. *See id.* at 29447 (requiring water systems seeking an exemption to provide, in relevant part, “[a] statement certified by the owner or operator that the system cannot comply with the PFOA and PFOS MCLs by April 26, 2029, due to economic or other compelling factors” and stating that any exemption request that meets the enumerated requirements “is granted” without any system-specific evidence or any review or findings by EPA).

Furthermore, even if EPA could lawfully create a nationwide exemption-by-rule (which it cannot, as explained above), EPA’s claims in the Proposed Delay Rule that compelling circumstances justify this proposed nationwide exemption-by-rule are arbitrary and unsupported. Each is discussed below.

1. Construction and equipment cost increases do not justify EPA’s rule.

EPA provides no support for its claim that escalating construction and equipment costs since publication of the 2024 Rule are a “compelling factor” justifying the proposed nationwide exemption-by-rule and the contention is arbitrary. *Id.* at 29429. Indeed, as explained in the accompanying expert analyses from economist Dr. Dennis Guignet and water systems engineers Elin Betanzo and Dr. Vanessa Speight, current trends indicate that these costs are likely to continue rising over time—such that the proposed delay will *exacerbate*, not mitigate, any existing compliance challenges from rising construction and equipment costs.⁷⁸ As explained by

Suffolk County Water Authority Achieves Full Compliance with Federal PFAS Standards Six Years Early (June 10, 2025), <https://www.scwa.com/suffolk-county-water-authority-achieves-full-compliance-with-federal-pfas-standards-six-years-early/> (describing installation of GAC systems to meet PFOA and PFOS MCLs); Penn. Am. Water, *Yardley Water System Expected to Meet 2029 U.S. EPA PFAS Standards by End of 2025* (May 9, 2025), <https://www.amwater.com/press-room/press-releases/pennsylvania/yardley-water-system-expected-to-meet-2029-us-epa-pfas-standards-by-end-of-2025> (describing treatment project to ensure compliance with federal PFAS MCLs by 2029 deadline).

⁷⁸ Memorandum from Dennis Guignet, PhD, to Earthjustice, the Natural Resources Defense Council, and the Southern Environmental Law Center, Economic Comments Related to the Economic Analyses and Rule Text for the Proposed SDWA PFAS “Delay Rule” and “Rescission Rule” 2–3 (July 13, 2026) (“Guignet Memo”); Elin Betanzo, Safe Water Engineering, LLC and

Dr. Guignet, “[t]here is no evidence to suggest that the trend in increasing costs and volatility will subside within an additional two years”; to the contrary, “the overall evidence based on current trends and events suggests that compliance costs after the two year delay will likely be even higher.”⁷⁹ “Though an agency’s predictive judgments about the likely economic effects of a rule are entitled to deference, deference to such judgments must be based on some logic and evidence, not sheer speculation.” *Sorenson Communications v. FCC*, 755 F.3d 702, 708 (D.C. Cir. 2014) (cleaned up).

Further, the evidence EPA cites does not rationally establish that rising construction and equipment costs make it impossible for any water systems to comply with the PFOA and PFOS standards by the existing deadline—let alone a proportion of systems commensurate with the proposed nationwide exemption. For example, EPA asserts that “ongoing volatility in global steel markets ... may create procurement uncertainty and affect the timely ability of water systems to maintain and upgrade treatment facilities.” 91 Fed. Reg. at 29429 (citing NUCA, 2025; Reuters, 2025). But the cited statement from the National Utility Contractors Association (“NUCA”) is a generalized critique of the Trump Administration’s steel and aluminum tariffs and says nothing about their impact on the cost of technologies identified as the best available technology (“BAT”) for PFAS treatment in the 2024 rule,⁸⁰ which EPA affirms “continue to currently be widely available,” *id.* at 29429.

EPA also cites a Reuters article that merely presents data on the origin of U.S. aluminum and steel imports and likewise says nothing about procurement or maintenance challenges for water systems seeking PFAS treatment technology.⁸¹ It is arbitrary for EPA to speculate without evidence that global steel market volatility will substantially increase costs for PFAS treatment technologies—let alone to the point of making it impossible for the water systems eligible for EPA’s proposed exemption to comply with the existing deadline—and to further speculate that a

Vanessa Speight, PhD, *Technical Review of “Extending the Compliance Deadline for the PFOA and PFOS Maximum Contaminant Levels”* 15–17 (July 14, 2026) (“Betanzo and Speight Memo”); *see also* EPA, *U.S. Env’t Prot. Agency Nat’l Drinking Water Advisory Council (NDWAC) Virtual Public Meeting Summary* 15 (July 28, 2025) (“NDWAC Meeting Summary”), EPA-HQ-OW-2025-1742-0059 (NDWAC Chair explaining that “any delay in the rule deadlines may increase costs for systems. As inflation continues ... it will only be more expensive in the future to drill a deeper well or add treatment”).

⁷⁹ Guignet Memo, *supra* note 78, at 3; *see also* Betanzo and Speight Memo, *supra* note 78, at 16 (projecting based on current trends that construction costs will increase approximately 10–15 percent during proposed exemption period compared to 2026 levels).

⁸⁰ Nat’l Utility Contractors Ass’n, *NUCA Statement on Increased Steel and Aluminum Tariffs* (2025), EPA-HQ-OW-2025-1742-0018, <https://nuca.com/wp-content/uploads/2025/02/Media-Statement-Tariffs-on-Critical-Infrastructure-2-12-25.pdf>.

⁸¹ Reuters, *The Top Sources of U.S. Steel and Aluminum Imports* (2025), EPA-HQ-OW-2025-1742-0020, <https://www.reuters.com/markets/commodities/where-does-us-get-its-steelaluminum-2025-02-10/>.

two-year delay would effectively address that compliance challenge. *See, e.g., Sinclair Wyo. Refining Co. v. EPA*, 114 F.4th 693, 713 (D.C. Cir. 2024) (rejecting EPA decision as arbitrary where EPA “provided no studies or data to support [its] conclusion,” which therefore amounted to “sheer speculation”) (quotation omitted); *Nat’l Lifeline Ass’n v. FCC*, 921 F.3d 1102, 1115 (D.C. Cir. 2019) (holding agency action was arbitrary and capricious where it rested on speculative conclusions unsupported by data).

The American Water Works Association’s (“AWWA”) 2025 *State of the Water Industry Report* cited by EPA also does not rationally support EPA’s contention that escalating construction and equipment costs are a compelling factor justifying the Proposed Delay Rule. Citing that report, EPA asserts that “supply chain disruptions continue to delay procurement of specialized filtration media for PFAS treatment technologies which leads to longer-than-anticipated development times and higher-than-expected capital cost increases.” 91 Fed. Reg. at 29429. But that report provides no information supporting EPA’s specific contention that supply chain disruptions present an obstacle to *installing PFAS treatment technology*, as it only discusses effects on “the acquisition of essential chemicals, goods, and services necessary for efficient operation” of water systems generally.⁸² This is inadequate to demonstrate that the systems eligible for EPA’s proposed exemption cannot comply with the existing deadline. Nor is it adequate to rationally undermine EPA’s finding in the 2024 Rule that there will be “excess capacity as well as investment in production” by BAT suppliers. 89 Fed. Reg. at 32623.

EPA also ignores evidence at its fingertips that contradicts the theory that supply chain issues will make timely compliance impossible. *See Def’s of Wildlife v. U.S. Dep’t of Interior*, 931 F.3d 339, 345 (4th Cir. 2019) (stating that agencies must examine relevant data). For example, the 2024 U.S. Government Accountability Office report cited in the Proposed Delay Rule states that less than half of water systems that have partially or fully implemented PFAS treatment faced supply chain challenges in obtaining treatment materials.⁸³ EPA fails to address this data, which further undermines the asserted need for a nationwide exemption. Finally, to the extent that supply chain disruptions may present a compliance challenge for some systems, that is nothing new. AWWA’s 2025 report states that water systems’ concerns about supply chain challenges have been consistently significant over a period of at least four years, meaning this is not a new factor post-dating the 2024 Rule.⁸⁴

2. *Workforce challenges do not justify EPA’s rule.*

EPA also fails to rationally support its claim that new information since the 2024 Rule demonstrates that “workforce challenges” are a compelling factor precluding compliance with

⁸² Am. Water Works Ass’n, *State of the Water Industry 2025* at 6 (2025), EPA-HQ-OW-2025-1742-0092 (“AWWA 2025”).

⁸³ GAO 2024, *supra* note 77, at 70.

⁸⁴ AWWA 2025, *supra* note 82, at 6.

the existing deadline. 91 Fed. Reg. at 29429. First, here too, EPA ignores the likelihood that delaying compliance activities may exacerbate, not alleviate, any existing challenges with an aging workforce, inadequate compensation, and information transfer gaps.⁸⁵ EPA also ignores relevant economic theory, which suggests that implementing regulatory requirements such as the PFOA and PFOS standards will increase demand for skilled water system workers and lead to an increase in wages that entices more skilled workers into the market. In contrast, delaying such requirements will dampen that demand and growth.⁸⁶

Further, none of EPA’s cited references support its assertions that workforce challenges preclude compliance, nor that such challenges would be alleviated by the proposed exemption. First, AWWA’s 2025 report provides no support for EPA’s specific concern about “having a sufficient number of qualified personnel necessary to operate the advanced treatment facilities that remove PFAS in drinking water.” *Id.* The report does not address that issue. And to the extent that the cited report substantiates broader workforce concerns in the drinking water industry, it indicates that this is not a new issue post-dating the 2024 Rule.⁸⁷ If anything, workforce concerns within the water industry have lessened in recent years; AWWA’s most recent survey report states that, “[w]hile an aging workforce continues to rank in the top 10 concerns for survey respondents, it is now #9, down from #3 in 2023. A majority indicate their utility’s workforce training program is fully funded (68%) or expected to be fully funded in the next three years (12%).”⁸⁸

The second source EPA cites, the 2024 annual report of the National Rural Water Association (“NRWA”), includes only vague workforce survey results and says nothing at all about the specific asserted challenge with attracting and retaining adequate skilled personnel to operate PFAS treatment systems.⁸⁹

Finally, the 2024 Government Accountability Office report EPA cites does not shed any light on water systems’ ability to comply with the PFOA and PFOS drinking water standards by the existing 2029 deadline because it reports on water systems’ concerns about workforce challenges at a time when they believed the compliance deadline would be in 2026, not 2029.⁹⁰ Even assuming the survey responses in the report were relevant, which they are not, they indicate that a substantial proportion of systems did not face any workforce challenges—even in a

⁸⁵ Guignet Memo, *supra* note 78, at 4.

⁸⁶ *Id.*

⁸⁷ AWWA 2025, *supra* note 82, at 21 (asserting that “workforce issues have been in the top 10” among water system concerns “for several years, ranking #7 in this year’s survey”).

⁸⁸ Am. Water Works Ass’n, 2026 State of the Water Industry Executive Summary at 11 (2026), <https://www.awwa.org/wp-content/uploads/SOTWI-2026-Executive-Summary.pdf>.

⁸⁹ See Nat’l Rural Water Ass’n, *Annual Report* 12 (2024), EPA-HQ-OW-2025-1742-0023.

⁹⁰ GAO 2024, *supra* note 77, at 69 n.2.

scenario where compliance was required by 2026.⁹¹ This undermines EPA’s contention that a nationwide exemption-by-rule is needed. Moreover, while the survey respondents reported actual or anticipated staffing “challenges,” there is no information about whether the systems could overcome those challenges, albeit at some potential cost. For this reason, too, the data are inadequate to show that any systems will be unable to comply with the existing deadline, let alone a proportion of systems commensurate with the scope of EPA’s proposed exemption. *See* 42 U.S.C. § 300g-5(a)(1) (requiring finding that water system is “unable to comply” with drinking water standard to justify exemption).

3. *Financial limitations do not justify EPA’s rule.*

EPA likewise fails to rationally demonstrate that “financial limitations” affecting some water systems constitute compelling circumstances supporting the proposed nationwide exemption. 91 Fed. Reg. at 29429. At the outset, EPA’s assertion that “*some* water systems *may* face financial hardship and economic challenges” complying with the PFOA and PFOS standards in the short-term, *id.* (emphasis added), does not establish that *any* specific system will be unable to comply by the existing deadline—let alone a proportion of systems commensurate with the proposed nationwide exemption, *see* 42 U.S.C. § 300g-5(a)(1).

Furthermore, EPA does not rationally justify reversing its conclusion just two years ago that the PFOA and PFOS standards are “achievable and implementable” by 2029 given existing treatment technology and “unprecedented funding” at the federal level to support compliance.⁹² This includes \$9 billion earmarked specifically for addressing emerging drinking water contaminants such as PFAS under the Infrastructure Investment and Jobs Act (“IIJA”), plus \$12 billion in additional IIJA funding for general drinking water improvements, including for addressing PFAS.⁹³ *See Air All. Houston v. EPA*, 906 F.3d 1049, 1067–68 (D.C. Cir. 2018) (holding EPA rule delaying compliance with recently promulgated regulation was arbitrary and capricious where EPA “d[id] not explain its departure from EPA’s previous conclusions regarding the appropriate and practicable timeline for implementing the ... Rule”).

EPA also irrationally ignores that the IIJA funding expires in September 2026, and no substantial new funding has been allotted, meaning that substantially *less* funding will be

⁹¹ *See id.* at 70 (reporting that 61 percent of surveyed water systems that had not yet treated for PFAS “expected to face challenges related to having enough qualified staff to implement a treatment method,” while 46 percent of systems that had partially or fully implemented PFAS treatment reported challenges with having sufficient staff for implementation).

⁹² EPA, *Fact Sheet, PFAS National Primary Drinking Water Regulation* 2–3 (April 2024), https://www.epa.gov/system/files/documents/2024-04/pfas-npdwr_fact-sheet_general_4.9.24v1.pdf.

⁹³ 89 Fed. Reg. at 32538; *see also* GAO 2024, *supra* note 77, at 2; EPA, *PFAS National Primary Drinking Water Regulation, FAQs for Drinking Water Primacy Agencies* (April 2024), https://www.epa.gov/system/files/documents/2024-04/pfas_npdwr_faqsstates_4.8.24.pdf.

available during the proposed exemption period. While EPA claims that some proportion of unused funds may be “reallotted to eligible states over subsequent years,” 91 Fed. Reg. at 29433, it cites no data demonstrating that there will be a substantial amount of unused funding available for reallocation and use during the proposed exemption period. Instead, as the Chair of EPA’s National Drinking Water Advisory Council warned, EPA’s proposed delay “may cause some systems to put off improvements, at which point the money will have run out.”⁹⁴

EPA further ignores that the administration is actively undermining water systems’ ability to access federal funding and technical assistance during the proposed exemption period by advocating for extreme cuts to the agency’s budget. The volume of IIJA funding awarded already has declined sharply under the administration “due to a combination of executive orders, staffing reductions, and uncertainty over emerging contaminant regulations.”⁹⁵ Furthermore, the Administration’s fiscal year 2027 budget request would reduce the Drinking Water State Revolving Fund by 90 percent, from \$1.1 billion in fiscal year 2026 to \$150 million in fiscal year 2027, based on the administration’s position that states should assume greater responsibility for financing their own water infrastructure projects.⁹⁶ It is irrational (and disingenuous) for EPA to assert that additional federal funding is likely to be available during the compliance period while taking actions to promote the opposite.

EPA’s speculation that settlement proceeds from litigation against polluters will provide a significant new source of funding during the proposed exemption period does not fill this gap in the agency’s reasoning. *See* 91 Fed. Reg. at 29433. Settlement funds are not guaranteed to go to impacted communities. For example, the United States’ recently announced settlement with Chemours does not provide any direct or guaranteed funding for the drinking water treatment necessitated by Chemours’ years of contamination and inadequate water treatment. Even though some settlement dollar values may appear significant, there is no systematic process to align settlement dollars with drinking water treatment needs and no guarantee that settlement funds will go to impacted communities and their water systems.⁹⁷

Finally, EPA arbitrarily ignores information that contradicts its claim that financial challenges preclude widespread compliance with the PFOA and PFOS standards by 2029. *See Sorenson Commc’ns*, 755 F.3d at 710 (holding that it is arbitrary and capricious for an agency to

⁹⁴ NDWAC Meeting Summary, *supra* note 78, at 15.

⁹⁵ Charlie Suse, *Mapping the Progress of IIJA Funding for Water Infrastructure*, Water Finance & Management (Aug. 25, 2025) (“These governance challenges now outweigh previous concerns about tariffs, further slowing the rollout of IIJA funding and adding to the list of deferred projects.”).

⁹⁶ EPA, *FY 2027 EPA Budget in Brief* 23 (Apr. 2026), https://www.epa.gov/system/files/documents/2026-04/00_fy-2027-bib_combined_final.pdf; Current Strategies, *Draining Our Future, Cuts to Water Funding Undermine U.S. Competitiveness* 1 (undated).

⁹⁷ Betanzo and Speight Memo, *supra* note 78, at 27–28.

ignore evidence that is contrary to its conclusions). For example, according to the 2025 AWWA report on which EPA relies, more than half of water systems “reported that their utility’s access to capital was as good as or better than at any time in the past five years, which is a higher response than in [the] past two years of the survey.”⁹⁸ And AWWA’s 2026 report states that, for more than 80 percent of surveyed water systems, their access to capital is at least consistent with their level of access over the past five years, which undermines any assertion that this factor has significantly worsened since the 2024 Rule.⁹⁹

In sum, EPA’s assertion that financial challenges preclude timely compliance with the PFOA and PFOS standards at a scale commensurate with the proposed exemption—and that this situation is likely to improve substantially during the proposed exemption period—is arbitrary and unsupported and cannot justify the Proposed Delay Rule.

4. *The other considerations EPA invokes also do not justify the rule.*

The grab-bag of “other considerations” EPA cites also fail—alone or in combination with the factors discussed above—to establish “compelling factors” justifying the Proposed Delay Rule. 91 Fed. Reg. at 29429. Indeed, EPA does not seriously argue that these factors make it impossible for any water system—let alone a proportion of systems commensurate with the proposed nationwide exemption—to timely comply. The agency merely asserts that these “considerations ... when combined with the previously discussed capital improvement, workforce challenges, and financial hardship, are likely to significantly influence water systems’ ability to comply with the MCLs by 2029.” *Id.* But EPA lacks authority to grant exemptions based on “considerations” that it deems likely to “influence” water systems’ ability to comply; instead, it may grant exemptions only upon rationally determining, among other findings, that *each* system subject to an exemption “is unable to comply.” 42 U.S.C. § 300g-5(a)(1).

a. *The prospect of promoting cost-effective treatment decisions does not justify EPA’s rule.*

EPA first claims that the proposed exemption “would allow systems more time and flexibility to determine and comprehensively evaluate all of their financial assistance and funding options for capital improvements, making the most cost-effective decisions for their customers and water system financial sustainability.” 91 Fed. Reg. at 29429. But EPA does not even attempt to explain why this time and flexibility is needed on a nationwide basis.¹⁰⁰ Moreover, as explained above, EPA ignores substantial evidence that treatment will be *less* cost-

⁹⁸ AWWA 2025, *supra* note 82, at 1; *see also id.* at 14.

⁹⁹ Am. Water Works Ass’n, 2026 State of the Water Industry (full report) 15 (2026), *available by request at* <https://www.awwa.org/state-of-the-water-industry/>.

¹⁰⁰ *Cf.* Betanzo and Speight Memo, *supra* note 78, at 23–24 (describing typical treatment project timeline).

effective for systems that delay due to continued increases in construction and equipment costs over time and reductions in available federal funding and technical assistance.

EPA’s claim that the proposed delay is warranted because it would allow it to provide financial and technical assistance to “a much greater number of systems” through its PFAS OUTreach (“PFAS OUT”) and Tackling Emerging Contaminants (“TEC”) initiatives is not persuasive. *Id.* at 29429–30. PFAS OUT “does not offer any direct funding or technical assistance”; it merely connects water systems to other EPA programs.¹⁰¹ As for the TEC technical assistance program, EPA has not committed to fund the program at any particular level through the proposed exemption period, and EPA’s efforts to dramatically reduce its own funding for drinking water programs provide reason to doubt that the program will be adequately funded. Even assuming funding remains at the level of recent years, the program would be capable of assisting a mere 6.6 percent of the systems that EPA estimates must take action to comply with the PFOA and PFOS standards.¹⁰² Further, EPA does not explain the scope of assistance it would offer. Accordingly, any potential effect of the TEC program does not rationally justify the proposed exemption.

b. The prospect of technological innovation does not justify EPA’s rule.

EPA next claims that “allowing more time through the exemptions” will allow for “emerging technologies not previously designated as BATs [to] become better understood and ... more widely available.” *Id.* at 29430. Even assuming for the sake of argument that this were correct, it could not rationally justify an exemption because there is no dispute that the established technologies identified as BAT in the 2024 Rule “continue to currently be widely available,” *id.* at 29429, and the Safe Drinking Water Act does not permit EPA to grant exemptions on the basis that additional technologies for achieving compliance may become available after the deadline, *see* 42 U.S.C. § 300g-5 (establishing exemption requirements).¹⁰³

Further, here the idea that new technologies for meeting the PFOA and PFOS drinking water standards will become widely available during the proposed two-year exemption period is speculative. As explained in the accompanying analysis by Dr. Guignet, “EPA presents no evidence to suggest that an additional two years would lead to any substantive innovation that would reduce future compliance costs.”¹⁰⁴ If anything, the economic literature indicates that the

¹⁰¹ EPA, *PFAS OUT*, <https://www.epa.gov/water-infrastructure/pfas-out> (last visited July 16, 2026).

¹⁰² Betanzo and Speight Memo, *supra* note 78, at 20.

¹⁰³ Indeed, Congress itself determined that “granular activated carbon is feasible for the control of synthetic organic chemicals.” 42 U.S.C. § 300g-1(b)(4)(D).

¹⁰⁴ Guignet Memo, *supra* note 78, at 3–4.

regulatory uncertainty EPA has introduced with respect to PFAS drinking water treatment may reduce innovation incentives during the relevant period.¹⁰⁵

EPA also ignores evidence suggesting that the technologies it cites are unlikely to become sufficiently available during the proposed exemption period to support compliance with the PFOA and PFOS standards. For example, EPA cites alternative sorbents and exchange media as promising emerging technologies.¹⁰⁶ But EPA ignores that such materials either have not received required certifications—the timeline for which presents a barrier to their adoption during the proposed exemption period—or have not been implemented sufficiently to establish operational success.¹⁰⁷ Accordingly, it is unlikely that a large number of affected water systems would benefit from advanced sorbents or ion exchange media during the proposed exemption period.¹⁰⁸

Similarly, EPA fails to explain how foam fractionation or emerging PFAS destruction technologies are likely to become available as treatment options for a significant number of water systems during the proposed exemption period—EPA simply lists them without discussion.¹⁰⁹ While these technologies have shown some promise, significant implementation challenges remain, and it is unlikely that research will advance sufficiently to support widespread adoption during the proposed exemption period.¹¹⁰ EPA’s unsupported speculation to the contrary is insufficient to demonstrate compelling circumstances that justify the proposed exemption.

EPA’s speculation that “allowing more time for ... compliance through exemptions will result in ... the availability of [point-of-use] and [point-of-entry] devices as both an additional and lower-cost compliance option” for certain small water systems also does not justify the proposed exemption. 91 Fed. Reg. at 29430. As EPA acknowledges, these devices have not been certified to meet the PFOA and PFOS drinking water standards, and EPA has no evidence that this certification will occur in time to facilitate their adoption during the proposed exemption period. *Id.* Instead, EPA makes only the very general observation that “EPA is aware that the NSF/ANSI Drinking Water Treatment Unit Joint Committee Task Group is currently continuing the process to update their standards to align with the 2024 [Rule].” *Id.* But EPA provides no evidence that this will happen in time for new treatment options to become available during the

¹⁰⁵ *Id.*

¹⁰⁶ 91 Fed. Reg. at 29430.

¹⁰⁷ Betanzo and Speight Memo, *supra* note 78, at 17–18.

¹⁰⁸ *Id.* at 18.

¹⁰⁹ 91 Fed. Reg. at 29430.

¹¹⁰ Betanzo and Speight Memo, *supra* note 78, at 19.

proposed exemption period, and the NSF website likewise provides no timeline for this process.¹¹¹

Furthermore, EPA does not adequately support its contention that adopting point-of-use or point-of-entry devices could be substantially more cost effective for water systems. *See id.* First, EPA provides zero evidence concerning point-of-entry devices. As for point-of-use devices, EPA claims that by adopting such devices instead of centralized granular activated carbon treatment, very small systems could save 40 to 72 percent relative to centralized granular activated carbon treatment. *Id.* However, EPA’s cost analysis does not rationally support this assertion because it does not provide adequate treatment-unit cost data.¹¹² Devices certified to meet the PFOA and PFOS standards may actually cost more than EPA assumes and may require more frequent filter replacement, further increasing overall costs. But because EPA does not provide enough underlying cost data, it is impossible to independently assess the validity of EPA’s cost estimates and EPA fails to provide an adequate basis for its purported cost savings.¹¹³

Finally, EPA describes powdered activated carbon as an innovative treatment for PFAS, *see* 91 Fed. Reg. at 29430, but powdered activated carbon is not a new technology and was discussed in the 2024 Rule.¹¹⁴ Given its powdered form, it can be added to existing processes (typically to the raw water or coagulation) without requiring construction of a dedicated tank or basin. However, adding this material generates additional solids that must be separated and disposed of, thereby transferring the PFAS contamination to the residuals and significantly increasing their volume. Even though many utilities already use powdered activated carbon seasonally or temporarily to remove spikes in different contaminants, when developing the 2024 PFAS Rule, EPA decided not to list powdered activated carbon as a BAT due to a lack of operational PFAS data and the impact on other water quality parameters. Even more, there is no need for a two-year delay to further the implementation of powdered activated carbon, as there is ample research on the technology’s effectiveness and it is widely used.¹¹⁵

c. The prospect of forthcoming monitoring data does not justify EPA’s rule.

The prospect that additional monitoring data collected under UCMR 5 and other unidentified programs would allow water systems to make more informed treatment decisions also does not demonstrate “compelling circumstances” justifying the proposed exemption. *See* 91

¹¹¹ *See* NSF, *Forever Chemicals and the Advancement of Filtration Standards*, <https://www.nsf.org/knowledge-library/forever-chemicals-advancement-filtration-standards> (last visited July 16, 2026).

¹¹² Betanzo and Speight Memo, *supra* note 78, at 14–15.

¹¹³ *Id.*

¹¹⁴ *Id.* at 19; *see* 89 Fed. Reg. at 32623.

¹¹⁵ Betanzo and Speight Memo, *supra* note 78, at 19.

Fed. Reg. at 29430–31. EPA does not cite any new information about forthcoming monitoring data that post-dates the 2024 Rule, nor any that demonstrates that water systems eligible for the proposed exemption are unable to comply until they obtain additional monitoring data. Further, as EPA acknowledges in the Proposed Delay Rule, water systems completed sampling under UCMR 5 in December 2025, *id.* at 29430, so it is unclear what additional information relevant to their treatment decisions is still forthcoming under that program. There is no need for a water system to review EPA’s final nationwide dataset for UCMR 5 to understand the system’s own levels of regulated PFAS and make informed treatment decisions. Additionally, all systems subject to the 2024 Rule must complete required monitoring for PFOA and PFOS by April 2027. EPA does not even attempt to explain why this monitoring data, plus systems’ specific results under UCMR 5, are insufficient to support informed treatment decisions—let alone how the lack of additional monitoring data makes compliance by the 2029 deadline impossible.

d. The prospect of future source-reduction measures does not justify EPA’s rule.

The proposed rule asserts that a nationwide exemption is warranted because future source reduction measures may “preclude the need for installing costly treatment technologies.”¹¹⁶ But EPA’s reliance on “source control” to justify delaying the PFOA and PFOS drinking water standards is arbitrary, hypocritical, and speculative. Source control can reduce treatment burdens only if EPA actually is using its authority to identify, limit, and prevent PFAS releases before they reach drinking water sources. But EPA’s recent actions point in the opposite direction. This administration has withdrawn proposed PFAS effluent limitations guidelines for manufacturers, proposed to narrow PFAS reporting requirements under the Toxic Substances Control Act, and reduced the staff and resources needed to implement and enforce PFAS protections—steps that reduce information about sources and weaken controls on upstream discharges. EPA cannot credibly claim that utilities may not need treatment because source control will solve the problem while, at the same time, dismantling or delaying the regulatory tools needed to achieve source control.

EPA references effluent limitations guidelines (“ELGs”) that are in “development.”¹¹⁷ First off, this administration *withdrew* proposed ELGs for PFAS in January 2025,¹¹⁸ delaying action to control PFAS sources. EPA does not explain what ELGs being in “development” means, nor cite any evidence that they are in development or when they would be finalized. But

¹¹⁶ 91 Fed. Reg. at 29431.

¹¹⁷ *Id.*

¹¹⁸ Off. of Mgmt. & Budget: Off. of Info. & Regul. Affs., *OIRA Conclusion of EO 12866 Regulatory Review: Clean Water Act Effluent Limitations Guidelines and Standards for PFAS Manufacturers Under the Organic Chemicals, Plastics and Synthetic Fibers Point Source Category* (2025), <https://www.reginfo.gov/public/do/eoDetails?rrid=571911> (showing OIRA’s action to withdraw).

even if EPA does eventually promulgate ELGs, they are likely to cover only a handful of facilities that contribute to PFOA and PFOS source water contamination and will not improve conditions for the approximately 100 million Americans affected by this rule.¹¹⁹ Even more, EPA has not shown they would reduce contamination in affected drinking water sources on a timeline that matters for compliance. To have the cost-saving impacts suggested by EPA, any ELGs would have to be proposed, finalized, incorporated into Clean Water Act NPDES permits, and then enforced. It would take at least five years, if not ten,¹²⁰ before communities or utilities could see PFAS levels decrease because of ELGs. EPA cannot delay enforceable drinking water standards based on hypothetical source-control measures—especially when EPA has only delayed those measures so far. In addition, EPA’s consideration of these hypothetical future ELGs is contrary to EPA’s economic guidelines, “which emphasize that only *finalized* rules should be accounted for” in assessing the costs and benefits of a proposed rule.¹²¹

This administration is making source control more difficult in other ways. The agency is undoing efforts under the Toxic Substances Control Act to protect consumers from PFAS contamination by proposing to eliminate reporting requirements for certain PFAS sources.¹²² This applies to four categories including imported PFAS and byproduct PFAS,¹²³ likely exempting a substantial number of PFAS products from being covered by the reporting requirements. Even more, this Administration has eliminated EPA’s Office of Research and Development. The office previously “provide[d] technical assistance to Tribes, states, and territories to help characterize the PFAS found in their communities,” which could “include

¹¹⁹ EPA, *Administrator Zeldin Announces Major EPA Actions to Combat PFAS Contamination*, (April 28, 2025), <https://www.epa.gov/newsreleases/administrator-zeldin-announces-major-epa-actions-combat-pfas-contamination> (noting that ELGs in development only apply to “PFAS manufacturers and metal finishers”).

¹²⁰ Although NPDES permits cycles should only last five years, many of them are administratively extended for years after they expire. *See, e.g.*, N.C. Dep’t of Env’t Quality, Lear Corporation NPDES Permit No. NC0002305 (2018), <https://edocs.deq.nc.gov/WaterResources/DocView.aspx?id=709151&dbid=0&repo=WaterResources&cr=1> (currently operating under administratively continued permit issued in 2018 that was set to expire in 2023); N.C. Dep’t of Env’t & Nat. Res., City of Greensboro NPDES Permit No. NC0047384 (2014), <https://edocs.deq.nc.gov/WaterResources/DocView.aspx?id=1028225&dbid=0&repo=WaterResources> (currently operating under administratively continued permit issued in 2014 that was set to expire in 2019).

¹²¹ Guignet Memo, *supra* note 78, at 5.

¹²² Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) Data Reporting and Recordkeeping Under the Toxic Substances Control Act (TSCA); Revision to Regulation, 90 Fed. Reg. 50923 (November 13, 2025).

¹²³ *Id.* at 50924.

efforts to identify sources of PFAS detected in the environment.”¹²⁴ PFOA and PFOS cannot be controlled in drinking water sources if the sources of that contamination are unknown.

EPA’s reliance on source control is thus deeply disingenuous. The Agency points to source control as a reason to delay enforceable drinking water protections, while ignoring its own decisions that have weakened the tools needed to identify, limit, and prevent PFAS releases in the first place.

In sum, EPA fails to rationally demonstrate that “compelling factors” make any water systems “unable to comply” with the PFOA and PFOS standards, let alone a proportion of systems commensurate with EPA’s proposed nationwide exemption. 42 U.S.C. § 300g-5(a)(1). Moreover, even if EPA had demonstrated such compelling factors, it does not even attempt to explain why the existing framework for system-specific exemptions under section 1416 of the Safe Drinking Water Act, 42 U.S.C. § 300g-5, is inadequate to provide qualifying systems with relief.

Instead, the agency claims that “a national rule to streamline the statutory process for providing additional time is appropriate” merely “[b]ecause it is possible that there will be a large number of requests for additional time for compliance with the PFOA and PFOS MCLs before states obtain primacy.” 91 Fed. Reg. at 29428. This vague assertion does not explain why the longstanding statutory process for system-specific exemptions would be insufficient for the specific systems that are truly unable to comply by the existing deadline. It is also disingenuous because, to the extent that is a problem, it is a problem of EPA’s own making. EPA is “strongly encourag[ing]” states to delay their primacy applications,¹²⁵ thereby increasing the likelihood that EPA, rather than individual states, will have to respond to more exemption requests from public water systems. It is arbitrary for EPA to justify its proposed nationwide exemption based on a hypothetical demand for federal exemptions that, if it occurs, will largely be caused by EPA.

Because EPA has not rationally demonstrated that compelling factors preclude compliance with the 2024 Rule for systems nationwide, the Proposed Delay Rule is arbitrary, capricious, and contrary to the Safe Drinking Water Act.

¹²⁴ GAO 2024, *supra* note 77, at 13.

¹²⁵ Memorandum from Marietta Echeverria, Div. Dir., EPA Drinking Water Capacity & Compliance Assistance Div., Off. of Ground Water & Drinking Water, to Water Div. Dirs., Regions I – X, Re: Primacy Extension Request Documents for the 2024 Control of Per- and Polyfluoroalkyl Substances National Primary Drinking Water Regulation (Sep. 30, 2025).

B. EPA Has Not Rationally Demonstrated That the Proposed Exemption-By-Rule Poses No Unreasonable Risk to Health.

The Proposed Delay Rule is arbitrary and unlawful for the additional reason that EPA has not rationally demonstrated that its proposed exemption will pose no unreasonable risk to health. 42 U.S.C. § 300g-5(a)(3).

1. EPA's determination is not supported by any health-risk analysis.

First, EPA does not rationally support its contention that two additional years of exposure to PFOA and PFOS at levels up to 12 ppt each poses no unreasonable risk to health. 91 Fed. Reg. at 29431. EPA's proposed finding that PFOA and PFOS exposure between 4 to 12 ppt during the exemption period poses no unreasonable health risk is not supported by any health risk analysis, and therefore is quintessentially arbitrary. EPA does not even attempt to quantify or qualitatively characterize the health risks associated with this exposure—nor attempt to explain why the health risks the Proposed Delay Rule poses are not “unreasonable.” *See id.* (conceding that “a two-year exemption from the PFOA and PFOS MCLs poses a risk to health”).

In other contexts that call for EPA to determine whether health risks are “unreasonable” (or otherwise unacceptable within the relevant statutory context), EPA conducts a risk assessment to characterize the risks presented, and it compares estimated risks to benchmarks to evaluate whether they are unreasonable or otherwise unacceptable. These include risk determinations under the Toxic Substances Control Act¹²⁶ and the Comprehensive Environmental Response, Cleanup, and Liability Act.¹²⁷

But in the Proposed Delay Rule, EPA states only that PFOA and PFOS levels between 4 to 12 ppt are “within the average range of current state PFOA and PFOS standards” and “would have the ancillary benefit of assisting in the identification of the highest risk systems, and the communities they serve, to prioritize implementing long-term compliance actions.” 91 Fed. Reg. at 29431. These considerations do not relate to health risks posed by the proposed exemption. As a result, they provide no support for EPA's determination that the proposed exemption poses no unreasonable risk to health for systems whose most recently measured PFOA and PFOS levels are below 12 ppt. EPA does not claim, let alone show, that the referenced state standards prevent unreasonable health risks—or even are intended to do so. Further, as EPA acknowledged in the 2024 Rule, PFOA and PFOS levels in a water system's finished water can fluctuate over time,

¹²⁶ *See, e.g.,* EPA, *Risk Evaluation for 1,1-Dichloroethane* 186–87, 322–23, 367 (2025); EPA, *Risk Evaluation for Tris(2-chloroethyl) Phosphate (TCEP)* 321–22, 330–31, 336–49 (2024); EPA, *Risk Evaluation for 1-Bromopropane (n-Propyl Bromide)* 277–78 (2020).

¹²⁷ *See, e.g.,* EPA, *Record of Decision for an Interim Remedy in the Upper 9 Miles of the Lower Passaic River Study Area OU4 of the Diamond Alkali Superfund Site Essex, Bergen and Passaic Counties, New Jersey*, 23–24 (2021).

such that a single set of results does not reliably reflect contaminant levels.¹²⁸ This further undermines EPA’s assertion that providing an exemption based on a *single monitoring result* poses no unreasonable health risk.

Because EPA’s proposed finding that exposure to PFOA and PFOS at levels between 4 to 12 ppt during the proposed exemption period poses no unreasonable health risks is not supported by *any* analysis of the risks presented or why they are reasonable, it—and the Proposed Delay Rule—are arbitrary and unlawful. *See State Farm*, 463 U.S. at 43 (holding that agency must “articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made”) (quotation omitted).

Second, EPA does not rationally support its contention that implementing two of EPA’s proposed interim control measures would prevent any unreasonable risk posed by two additional years of exposure to PFOA and PFOS levels above 12 ppt. *See* 91 Fed. Reg. at 29431–32. At the outset, only a fraction of systems subject to the rule will be required to implement any interim control measures under EPA’s proposal. According to the economic analysis supporting the 2024 Rule, a mean of 4,310 public water systems are anticipated to exceed the PFOS and/or PFOA drinking water standard.¹²⁹ According to the Proposed Delay Rule Economic Analysis, a total of 993 public water systems are expected to require interim control measure requirements under the Proposed Delay Rule.¹³⁰ This means that about 75 percent of water systems that are estimated to exceed the PFOS and PFOA standards would not be required to take *any action* to address PFOA and PFOS levels above the drinking water standards during the proposed exemption period.¹³¹ Put simply, the proposal would allow most water systems that exceed the PFOA and PFOS drinking water standards to postpone action, leaving communities exposed to contamination levels that EPA has already found pose unacceptable health risks.

Furthermore, by definition, EPA’s proposed interim control measures cannot ensure that no unreasonable risks to health occur during the proposed exemption period because EPA does not even claim that the interim control measures will reduce PFOA and PFOS concentrations below 12 ppt, or to any particular level. *See id.* at 29431 (“The EPA acknowledges that these mitigation actions may not reduce PFOA and PFOS to either the MCLs or below 12 ppt.”); *id.* at 29434 (“Control measures are not required to reduce concentrations to levels as low as the MCLs or achieve MCL compliance.”). Therefore—even assuming for the sake of argument that EPA

¹²⁸ 89 Fed. Reg. at 32574; *see also* Comment by Alaska Cmty. Action on Toxics et al., *Re: PFAS National Primary Drinking Water Regulation Rulemaking*, EPA-HQ-OW-2022-0114-1808, at 34–35 nn.205–208 (May 30, 2023) (citing evidence of substantial intra-annual variation in PFAS levels in finished drinking water as well as in industrial discharges that can contribute to elevated levels in drinking water).

¹²⁹ Betanzo and Speight Memo, *supra* note 78, at 25.

¹³⁰ *Id.*

¹³¹ *Id.*

articulated a reasoned basis for asserting that there will be no unreasonable health risk from exempting systems with levels below 12 ppt, which it did not—the Proposed Delay Rule is arbitrary because the interim control measures will not ensure that exempt systems keep their PFOA and PFOS concentrations below that threshold.

Without any guarantee, or even any assessment, of the interim control measures’ effectiveness in reducing PFOA and PFOS concentrations in drinking water, EPA has no basis to conclude that granting an exemption to water systems on the condition that they implement these measures will prevent any unreasonable risks to health. This is especially true for individuals who will be highly susceptible to harm during the proposed exemption period because it aligns with critical periods of development in their life.

Indeed, EPA’s proposal would allow water systems with PFOA and/or PFOS levels above 12 ppt to satisfy the interim control measures requirement by taking steps that, on their face, will not reduce PFAS levels in their customers’ drinking water *at all* during proposed exemption period. Thus, a system could comply with the requirement for interim control measures while continuing to provide water with PFOA and PFOS concentrations well above 12 ppt throughout the exemption period. For example, a system could merely certify that it has access to “funding or technical assistance to implement source water assessment planning” and will distribute written public education materials about PFOA and PFOS exposure to its customers. *See* 91 Fed. Reg. at 29431 (describing requirements for “source water controls” and “public education materials” as interim control strategies); *id.* at 29434 (explaining that systems may select any combination of two interim control measures from EPA’s list, so long as they do not select only public education materials and public outreach activities). As another example, EPA assumes that source-water assessment planning will meaningfully reduce PFAS contamination, yet a Government Accountability Office report cited by EPA found that approximately 90 percent of public water systems do not know the source or sources of PFAS contamination in their drinking water.¹³² If most systems cannot identify the source of contamination, EPA offers no reasoned basis for concluding that mere planning for source-water controls will reduce PFAS exposures during the proposed exemption period. Interim control strategies that do nothing to reduce PFOA and PFOS levels in drinking water cannot rationally be relied upon to prevent any unreasonable risks to health.

Furthermore, to the extent that EPA discusses at all the likely impact of the proposed interim control measures, it makes multiple arbitrary and unsupported assertions. For example, EPA asserts that the pitcher-filter control measure will “significantly reduce” concentrations of PFOA, PFOS, and other PFAS and ensure no unreasonable risk to health for residents served by water systems with PFOA or PFOS levels above 12 ppt. 91 Fed. Reg. at 29431–32. But EPA provides no rational basis for that conclusion. Indeed, EPA estimates that 80 percent of

¹³² GAO 2024, *supra* note 77, at 12.

customers of systems who implement pitcher filters as an interim control measure will not receive a pitcher filter,¹³³ meaning they likely will experience no reduction in PFOA or PFOS exposure from drinking water during the proposed exemption period. And even the 20 percent of households that EPA expects will receive a pitcher filter will receive only one, meaning that residents of those households likely will continue consuming untreated water from taps outside the kitchen (or other location where the single pitcher filter is kept).¹³⁴ The program's efficacy also will be reduced by the lack of any requirement to deliver reminders and replacement filter cartridges around the time when replacement is needed, instead of providing a two-year supply of filters when the pitcher is initially provided.¹³⁵

Similarly, for the proposed public education and community outreach interim control measures, EPA cites no evidence supporting its theory that residents can meaningfully reduce their PFOA and PFOS exposure through individual actions that could be encouraged through those measures.

2. EPA is required, but fails, to consider available evidence that the proposed exemption may pose unreasonable health risks.

Not only does EPA provide no evidence to support its conclusion that the Proposed Delay Rule would not pose unreasonable risk, it fails to consider evidence undermining its contention. Available evidence indicates that exposure to PFOA and PFOS in drinking water under the proposed exemption may present unreasonable health risks. This is particularly true for populations that are at greater risk of harm because they experience greater exposure and/or susceptibility to harm compared to the general population. This includes communities already exposed to high levels of PFAS, people with pre-existing health conditions such as those that are immunocompromised, pregnant and nursing women, fetuses, infants, and children.

Fetuses, infants, and children are particularly vulnerable populations for several reasons. Fetuses are exposed in utero because PFAS can pass from the mother through the placenta.¹³⁶ Infants are further exposed to PFAS through breastmilk or contaminated formula and/or the water it is reconstituted in.¹³⁷ Further, infants and young children display hand-to-mouth

¹³³ EPA, *Economic Analysis for the Proposed Rule Extending the Compliance Date for the PFOA and PFOS Maximum Contaminant Levels*, at 4-3 (2026) ("Delay Rule EA"), EPA-HQ-OW-2025-1742-0068.

¹³⁴ Betanzo and Speight Memo, *supra* note 78, at 13.

¹³⁵ *Id.* at 12–13.

¹³⁶ ATSDR, *Toxicological Profile for Perfluoroalkyls* (2021), <https://www.atsdr.cdc.gov/toxprofiles/tp200.pdf>; Cynthia B. Manzano-Salgado et al., "Transfer of Perfluoroalkyl Substances from Mother to Fetus in a Spanish Birth Cohort," *Environmental Research* 142 (October 2015): 471–78, <https://doi.org/10.1016/j.envres.2015.07.020>.

¹³⁷ Irina Gyllenhammar et al., "Perfluoroalkyl Acids (PFAAs) in Serum from 2–4-Month-Old Infants: Influence of Maternal Serum Concentration, Gestational Age, Breast-Feeding, and

behavior that increases their exposure.¹³⁸ Infants and children also eat and drink more relative to their body weight than adults. This results in higher body burdens of PFAS at a time of rapid growth and complex development that is particularly susceptible to chemical disruption. Studies show that this early life exposure can result in decreased birth weight, immune system dysfunction, and hormonal effects later in life.¹³⁹

Contaminated Drinking Water,” *Environmental Science & Technology* 52, no. 12 (2018): 7101–10, <https://doi.org/10.1021/acs.est.8b00770>; Marta Llorca et al., “Infant Exposure of Perfluorinated Compounds: Levels in Breast Milk and Commercial Baby Food,” *Environment International* 36, no. 6 (2010): 584–92, <https://doi.org/10.1016/j.envint.2010.04.016>; Judy S. LaKind et al., “Current Breast Milk PFAS Levels in the United States and Canada: After All This Time, Why Don’t We Know More?,” *Environmental Health Perspectives* 130, no. 2 (2022): 025002, <https://doi.org/10.1289/EHP10359>; Judy S. LaKind et al., “Erratum: Current Breast Milk PFAS Levels in the United States and Canada: After All This Time, Why Don’t We Know More?,” *Environmental Health Perspectives* 131, no. 3 (2023): 39001, <https://doi.org/10.1289/EHP12915>; Gloria B. Post, “Invited Perspective: Current Breast Milk PFAS Levels in the United States and Canada Indicate Need for Additional Monitoring and Actions to Reduce Maternal Exposures,” *Environmental Health Perspectives* 130, no. 2 (2022): 021301, <https://doi.org/10.1289/EHP10730>; Heidelore Fiedler and Mohammad Sadia, “Regional Occurrence of Perfluoroalkane Substances in Human Milk for the Global Monitoring Plan under the Stockholm Convention on Persistent Organic Pollutants during 2016–2019,” *Chemosphere* 277 (August 2021): 130287, <https://doi.org/10.1016/j.chemosphere.2021.130287>; Inge A. L. P. van Beijsterveldt et al., “Poly- and Perfluoroalkyl Substances (PFAS) Exposure through Infant Feeding in Early Life,” *Environment International* 164 (June 2022): 107274, <https://doi.org/10.1016/j.envint.2022.107274>; Ulla B. Mogensen et al., “Breastfeeding as an Exposure Pathway for Perfluorinated Alkylates,” *Environmental Science & Technology* 49, no. 17 (2015): 10466–73, <https://doi.org/10.1021/acs.est.5b02237>; Alexander R. Bogdan et al., “Per- and Polyfluoroalkyl Substances (PFAS) in Powdered Infant Formula: Potential Exposures and Health Risks,” *Journal of Environmental Exposure Assessment* 3, no. 2 (2024): N/A-N/A, <https://doi.org/10.20517/jeea.2024.08>; Judy S. LaKind, “Invited Perspective: PFAS in Breast Milk and Infant Formula—It’s Time to Start Monitoring,” *Environmental Health Perspectives* 131, no. 3 (2023): 031301, <https://doi.org/10.1289/EHP12134>; Rachel C. Thorig et al., “Assessment of Arsenic, Cadmium, Lead, Mercury, and Per- and Polyfluoroalkyl Substances Concentrations in Human Milk and Infant Formula in the United States: A Systematic Review,” *The American Journal of Clinical Nutrition* 122, no. 4 (2025): 1006–26, <https://doi.org/10.1016/j.ajcnut.2025.07.039>.

¹³⁸ David Trudel et al., “Estimating Consumer Exposure to PFOS and PFOA,” *Risk Analysis* 28, no. 2 (2008): 251–69, <https://doi.org/10.1111/j.1539-6924.2008.01017.x>; David Trudel et al., “Erratum to ‘Estimating Consumer Exposure to PFOS and PFOA,’ by David Trudel, Lea Horowitz, Matthias Wormuth, Martin Scheringer, Ian T. Cousins, and Konrad Hungerbühler, in *Risk Analysis*, 28(2), 2008,” *Risk Analysis* 28, no. 3 (2008): 807–807, <https://doi.org/10.1111/j.1539-6924.2008.01095.x>.

¹³⁹ ATSDR, *Toxicological Profile for Perfluoroalkyls* (2021), <https://www.atsdr.cdc.gov/toxprofiles/tp200.pdf>; Final Human Health Toxicity Assessment for PFOA, *supra* note 45; Final Human Health Toxicity Assessment for PFOS, *supra* note 45.

In the Proposed Delay Rule, EPA arbitrarily ignores available evidence that a two-year delay of compliance with the PFOA and PFOS drinking water standards may pose unreasonable risks to health—particularly to the sensitive population of fetuses, infants, and children. First, EPA ignores its own findings that both PFOA and PFOS have critical effects that are developmental endpoints “and can potentially result from a short-term exposure during critical periods of development,”¹⁴⁰ “lead[ing] to clinical outcomes in a sensitive lifestage (children).”¹⁴¹

Second, EPA ignores available evidence that supports quantification of the exposures associated with the proposed two-year delay and that indicates the potential for unreasonable risk to infants. The potential impact of a two-year delay in PFOA and PFOS protections can be quantified using a publicly available transgenerational toxicokinetic model to calculate serum PFOA and PFOS concentrations under multiple drinking water exposure scenarios.¹⁴² Such models show that infants drinking formula made with PFAS-contaminated water will be among the most harmed by this delay. Breastfed infants also will be among the most harmed, as their mothers have been and will continue to consume the contaminated water that is then transferred to the baby in the breastmilk. EPA could and should have used available tools and data to assess these risks to vulnerable populations before proposing the rule. Instead, the agency failed to conduct the analyses necessary to evaluate the impacts of the proposed delay. To address that gap, NRDC scientists Dr. Anna Reade, Ph.D., and Dr. Katie Pelch, Ph.D., used a publicly available transgenerational toxicokinetic model to estimate the potential impacts on serum concentrations of the proposed delay on infants.¹⁴³ The results are described below.

Serum concentrations were modeled for infants born in 2029 living in a community served by a public water system with 12 ppt PFOA or 12 ppt PFOS in the presence or absence of the two-year delay. In the absence of the delay, water systems must be in compliance (below 4.0 ppt PFOA and 4.0 ppt PFOS) by 2029. As a conservative estimate, the model assumes drinking water served will drop from 12 ppt to 4 ppt in 2029, though levels for systems in compliance will

¹⁴⁰ Final Human Health Toxicity Assessment for PFOA, *supra* note 45, at xxiv; Final Human Health Toxicity Assessment for PFOS, *supra* note 45, at xxiv.

¹⁴¹ Final Human Health Toxicity Assessment for PFOA, *supra* note 45, at 4-66; Final Human Health Toxicity Assessment for PFOS, *supra* note 45, at 4-66.

¹⁴² Christopher W. Greene et al., “A Revised and Improved Toxicokinetic Model to Simulate Serum Concentrations of Bioaccumulative PFAS,” *Journal of Environmental Exposure Assessment* 3, no. 2 (2024), <https://doi.org/10.20517/jeea.2024.09>.

The transgenerational toxicokinetic model by Greene et al. (2024) uses updated toxicokinetic parameters for PFOA. For PFOS, modeling was performed using the transgenerational toxicokinetic model published by Greene et al. (2024) with PFOS-specific toxicokinetic parameters from Meghan T. Lynch et al., “Community-Facing Toxicokinetic Models to Estimate PFAS Serum Levels Based on Life History and Drinking Water Exposures,” *Environment International* 176 (June 2023): 107974, <https://doi.org/10.1016/j.envint.2023.107974>.

¹⁴³ Christopher W. Greene et al., “Revised Toxicokinetic Model,” (2024), <https://doi.org/10.20517/jeea.2024.09>.

likely be lower. Impacts were explored for both formula-fed and breastfed infants. The modeling suggests that the additional exposure allowed by the Proposed Delay Rule may pose an unreasonable risk to health for infants and children. The specifics of the scenarios modeled are as follows:

Public water system currently at 12 ppt of PFOA or PFOS

- **Without delay** (PFOA and PFOS levels drop to 4 ppt in 2029):
 - Fetal exposure: Infants' initial PFOA/PFOS blood serum levels are determined by the model's placental transfer rate and a maternal steady state serum concentration based on maternal lifetime drinking water exposure of 12 ppt PFOA/PFOS.
 - After-birth infant exposure:
 - Formula-fed only infant exposure: Infant serum concentrations are modeled with a drinking water exposure of 4 ppt PFOA/PFOS to age two years, or
 - Breastfed to formula-fed infant exposure: Infant serum concentrations were modeled with three-month exclusive breastfeeding¹⁴⁴ followed by a drinking water exposure of 4 ppt PFOA/PFOS to age two years. Exposure from breastmilk is determined by the model's breastmilk transfer rate and mother's maternal steady state serum concentration based on a maternal lifetime drinking water exposure of 12 ppt PFOA/PFOS.
- **With delay caused by the Proposed Delay Rule** (PFOA and PFOS levels stay at 12 ppt until 2031):
 - Fetal exposure: Infants' initial PFOA/PFOS blood serum levels are determined by the model's placental transfer rate and a maternal steady state serum concentration based on maternal lifetime drinking water exposure of 12 ppt PFOA/PFOS.
 - After-birth infant exposure:
 - Formula-fed only infant exposure: Infant serum concentrations are modeled with a drinking water exposure of 12 ppt PFOA/PFOS to age two years, or

¹⁴⁴ An exclusive breastfeeding duration of three months was selected based on the most recent data from the Center for Disease Control and Prevention's National Immunization Survey results showing that 47.6 percent of infants in the US were exclusively breastfed through three months of age (CDC, "NIS-Child Data Results; Breastfeeding among U.S. Children Born 2015-2022," Breastfeeding Data, August 21, 2025, <https://www.cdc.gov/breastfeeding-data/survey/results.html>).

- Breastfed to formula-fed infant exposure: Infant serum concentrations were modeled with three-month exclusive breastfeeding¹⁴⁵ followed by a drinking water exposure of 12 ppt PFOA/PFOS to age two years. Exposure from breastmilk is determined by the model's breastmilk transfer rate and mother's maternal steady state serum concentration based on a maternal lifetime drinking water exposure of 12 ppt PFOA/PFOS.

Importantly, the modeling scenario above likely underestimates the harm that could result from the Proposed Delay Rule. The modeling above assumes that infants are exposed to PFOA/PFOS concentrations of 12 ppt and that EPA's Proposed Delay Rule would keep concentrations at 12 ppt. But many systems currently have PFOA or PFOS concentrations well above 12 ppt, and the Proposed Delay Rule does not require them to reduce concentrations to 12 ppt or to any other specified level. Indeed, as discussed, EPA's interim control measures may not reduce PFAS concentrations in finished drinking water at all.¹⁴⁶ As a result, some water systems could continue serving water with PFOA and PFOS levels substantially above 12 ppt throughout the exemption period. To better understand the impacts on infants and children being served by water systems with PFOA or PFOS levels greater than 12 ppt, Dr. Reade and Dr. Pelch also modeled exposures from drinking water concentrations that are representative of the 95th percentile of the available results from the ongoing UCMR 5 national monitoring:¹⁴⁷

Public water system currently at the 95th percentile of UCMR 5 data (17.1 ppt PFOA and 25.8 ppt PFOS)¹⁴⁸

- **Without delay** (PFOA and PFOS levels drop to 4 ppt in 2029):
 - Fetal exposure: Infants' initial PFOA/PFOS blood serum levels are determined by the model's placental transfer rate and a maternal steady state serum concentration based on maternal lifetime drinking water exposure of 17.1 ppt PFOA or 25.8 ppt PFOS.
 - After-birth infant exposure:
 - Formula-fed only infant exposure: Infant serum concentrations are modeled with a drinking water exposure of 4 ppt PFOA/PFOS to age two years, or

¹⁴⁵ *Id.*

¹⁴⁶ *See supra* Section III.B.1.

¹⁴⁷ EPA, *Fifth Unregulated Contaminant Monitoring Rule Data Finder*, Data and Tools, <https://www.epa.gov/dwucmr/fifth-unregulated-contaminant-monitoring-rule-data-finder> (last updated Feb. 12, 2026).

¹⁴⁸ Weimer, *supra* note 53.

- Breastfed to formula-fed infant exposure: Infant serum concentrations were modeled with three-month exclusive breastfeeding¹⁴⁹ followed by a drinking water exposure of 4 ppt PFOA/PFOS to age two years. Exposure from breastmilk is determined by the model's breastmilk transfer rate and mother's maternal steady state serum concentration based on a maternal lifetime drinking water exposure of 17.1 ppt PFOA or 25.8 ppt PFOS.
- **With delay caused by the Proposed Delay Rule** (PFOA and PFOS levels stay at 95th percentile until 2031):
 - Fetal exposure: Infants' initial PFOA/PFOS blood serum levels are determined by the model's placental transfer rate and a maternal steady state serum concentration based on maternal lifetime drinking water exposure of 17.1 ppt PFOA or 25.8 ppt PFOS.
 - After-birth infant exposure:
 - Formula-fed only infant exposure: Infant serum concentrations are modeled with a drinking water exposure of 17.1 ppt PFOA or 25.8 ppt PFOS to age two years, or
 - Breastfed to formula-fed infant exposure: Infant serum concentrations were modeled with three-month exclusive breastfeeding¹⁵⁰ followed by a drinking water exposure of 17.1 ppt PFOA or 25.8 ppt PFOS to age two years. Exposure from breastmilk is determined by the model's breastmilk transfer rate and mother's maternal steady state serum concentration based on a maternal lifetime drinking water exposure of 17.1 ppt PFOA or 25.8 ppt PFOS.

As shown in Tables 1 and 2 below, delaying compliance and allowing drinking water concentrations to remain at 12 ppt rather than reducing them to the 4 ppt standard would increase predicted serum concentrations in two-year-old children by approximately 1.2 to 1.6 ng/mL. The impacts could be even greater if water systems continue to provide water with PFAS levels above 12 ppt as a result of the Proposed Delay Rule. When exposures are modeled using the 95th-percentile concentrations observed among systems exceeding 12 ppt, predicted serum concentrations at age two are approximately 2.0 to 4.3 ng/mL higher than they would be if drinking water concentrations were reduced to 4 ppt.

¹⁴⁹ An exclusive breastfeeding duration of three months was selected based on the most recent data from the Center for Disease Control and Prevention's National Immunization Survey results showing that 47.6 percent of infants in the US were exclusively breastfed through three months of age (CDC, 2025).

¹⁵⁰ *Id.*

Maintaining PFOA and PFOS levels at or above 12 ppt rather than reducing them to 4 ppt in 2029 is predicted to result in breastfed and formula-fed infants with serum levels that exceed the National Academies of Sciences Engineering, and Medicine’s (“NASEM”) clinical guideline value of 2 ng/mL for the sum of seven PFAS.¹⁵¹ In other words, two additional years of elevated exposure caused by the Proposed Delay Rule pose a potential for unreasonable risk to infants.¹⁵² These modeling results demonstrate that the Proposed Delay Rule could have a significant impact on infants and children, and they invalidate EPA’s assertion that the Proposed Delay Rule poses no unreasonable risk to health.

Table 1. Results of transgenerational toxicokinetic model to calculate infant serum PFOA concentrations with various drinking water concentrations

Maternal drinking water concentrations (ppt)	Breastfeeding duration	Infant serum concentration at 2 years (ng/ml)		
		Infant drinking water concentrations of 4 ppt (without delay)	Infant drinking water concentrations of 12 ppt (with two-year delay)	Infant drinking water concentrations of 17.1 ppt (with two-year delay; drinking water concentration at 95 th percentile)
12	0 (formula only)	0.93	2.2	-
12	3	2.2	3.4	-
17.1	0 (formula only)	1.0	-	3.2
17.1	3	2.9	-	4.9

¹⁵¹ National Academies of Sciences, Engineering, and Medicine, *Guidance on PFAS Exposure, Testing, and Clinical Follow-Up* (The National Academies Press, 2022), <https://doi.org/10.17226/26156>.

¹⁵² In contrast to the drinking water standards that are set for PFOA and PFOS individually, NASEM’s guidelines are for a sum of seven PFAS, including PFOA and PFOS. Therefore, if both PFOA and PFOS were present in the drinking water, the resulting serum levels should be summed before comparing to the NASEM guidelines. In other words, given that PFOA and PFOS often do not occur in isolation, these modeling scenarios may actually underestimate the overall impact of the EPA’s proposal.

(-) indicates that this modeling scenario was not considered. Specifically, modeling was not conducted for maternal drinking water beginning at 12 ppt PFOA and then increasing to 17.1 ppt in 2031. Likewise, modeling was not conducted for maternal drinking water beginning at 17.1 ppt PFOA and decreasing to 12 ppt in 2031.

Table 2. Results of transgenerational toxicokinetic model to calculate infant serum PFOS concentrations with various drinking water concentrations

Maternal drinking water concentrations (ppt)	Breastfeeding duration	Infant serum concentration at 2 years (ng/ml)		
		Infant drinking water concentrations of 4 ppt (without delay)	Infant drinking water concentrations of 12 ppt (with two-year delay)	Infant drinking water concentrations of 25.8 ppt (with two-year delay; drinking water concentration at 95 th percentile)
12	0 (formula only)	1.0	2.6	-
12	3	1.5	2.9	-
25.8	0 (formula only)	1.3	-	5.6
25.8	3	2.5	-	6.2

(-) indicates that this modeling scenario was not considered. Specifically, modeling was not conducted for maternal drinking water beginning at 12 ppt PFOS and then increasing to 25.8 ppt in 2031. Likewise, modeling was not conducted for maternal drinking water beginning at 25.8 ppt PFOS and decreasing to 12 ppt in 2031.

3. *EPA did not review new science that has been published since the 2024 Rule.*

EPA further fails to evaluate new evidence of health effects that was not considered in the 2024 Rule and that represent foregone benefits of the proposed rule. The literature search supporting the scientific findings in the 2024 Rule was last updated in February 2023.¹⁵³ Since

¹⁵³ US EPA, *FINAL APPENDIX: Human Health Toxicity Assessment for Perfluorooctanoic Acid (PFOA) and Related Salts*, No. 815R24008, at A-10 (2024),

that time, a great deal of new research has been published on the health impacts of PFOA and PFOS exposure, including on health impacts that were discussed only in the Appendices of the Human Health Toxicity Assessments.¹⁵⁴ In the final toxicity assessments, EPA “focused on qualitative and quantitative assessment of five ‘priority’ health outcome categories based on those with the strongest weight of evidence. These five priority health outcomes are cancer, hepatic, developmental, cardiovascular, and immune.”¹⁵⁵ However, EPA also reached the conclusion that the “evidence suggests” other health effects are associated with PFOA and PFOS exposure, including: reproductive, endocrine, systemic and metabolic, nervous, renal, respiratory, and musculoskeletal effects.¹⁵⁶

Since the literature search was conducted for the 2024 Rule, there have been many new publications—including several reviews and systematic reviews that EPA should have evaluated in order to determine the potential for unreasonable risks associated with the Proposed Delay Rule. For example, new systematic reviews are available for male and female reproductive outcomes;¹⁵⁷ changes in hormone levels;¹⁵⁸ fertility;¹⁵⁹ lactation duration;¹⁶⁰ gestational

<https://www.epa.gov/system/files/documents/2024-05/appendix-final-human-health-toxicity-assessment-pfoa.pdf>; US EPA, *FINAL APPENDIX: Human Health Toxicity Assessment for Perfluorooctane Sulfonic Acid (PFOS) and Related Salts*, No. 815R24009, at A-10 (2024), <https://www.epa.gov/system/files/documents/2024-05/appendix-final-human-health-toxicity-assessment-pfos.pdf>.

¹⁵⁴ *Id.*

¹⁵⁵ Final Human Health Toxicity Assessment for PFOA, *supra* note 45, at xxi; Final Human Health Toxicity Assessment for PFOS, *supra* note 45, at xxi.

¹⁵⁶ Final Human Health Toxicity Assessment for PFOA, *supra* note 45, at C-23, C-24, C-34, C-70, C-102, C-169, C-176; Final Human Health Toxicity Assessment for PFOS, *supra* note 45, at C-23, C-24, C-34, C-70, C-102, C-169, C-176.

¹⁵⁷ Alex Haimbaugh et al., “Environmental Exposure to Per- and Polyfluoralkyl Substances (PFASs) and Reproductive Outcomes in the General Population: A Systematic Review of Epidemiological Studies,” *International Journal of Environmental Research and Public Health* 21, no. 12 (2024): 1615, <https://doi.org/10.3390/ijerph21121615>; Sarah Pilling et al., “Per- and Polyfluoroalkyl Substances and Endometriosis: A Systematic Review and Meta-Analysis,” *Toxics* 14, no. 4 (2026): 337, <https://doi.org/10.3390/toxics14040337>.

¹⁵⁸ Ling Li et al., “Association between Exposure to Per- and Perfluoroalkyl Substances (PFAS) and Reproductive Hormones in Human: A Systematic Review and Meta-Analysis,” *Environmental Research* 241 (January 2024): 117553, <https://doi.org/10.1016/j.envres.2023.117553>.

¹⁵⁹ Wei Wang et al., “The Effects of Perfluoroalkyl and Polyfluoroalkyl Substances on Female Fertility: A Systematic Review and Meta-Analysis,” *Environmental Research* 216, no. Pt 3 (2023): 114718, <https://doi.org/10.1016/j.envres.2022.114718>.

¹⁶⁰ Amalie Timmermann et al., “Per- and Polyfluoroalkyl Substances and Breastfeeding as a Vulnerable Function: A Systematic Review of Epidemiological Studies,” *Toxics* 11, no. 4 (2023): 4, <https://doi.org/10.3390/toxics11040325>; Katherine E. Pelch et al., “Lactation

diabetes;¹⁶¹ pregnancy induced hypertension;¹⁶² changes in bone mineral density;¹⁶³ childhood neurodevelopment;¹⁶⁴ and kidney, liver, and testicular cancer.¹⁶⁵ Many of these reviews conclude that PFOA or PFOS exposure is detrimental to human health, and several of these health effects covered by these reviews impact vulnerable populations, including infants, children, or pregnant people. Without reviewing the existing evidence, as well as new research that has been published since the 2024 Rule, EPA cannot rationally determine the Proposed Delay Rule does not pose an unreasonable risk to human health.

C. EPA Fails to Support Its Determination That Most Systems Cannot Achieve Timely Compliance or Improve Drinking Water Quality Through Management or Restructuring Changes.

EPA also fails to rationally demonstrate that “management or restructuring changes (or both) cannot reasonably be made that will result in compliance [with the PFOA and PFOS drinking water standards] or, if compliance cannot be achieved, improve the quality of the

Interrupted: PFAS Impact on Capacity to Breastfeed Ignored,” *Current Environmental Health Reports* 13, no. 1 (2026): 27, <https://doi.org/10.1007/s40572-026-00546-6>.

¹⁶¹ Feng Quan et al., “Associations of Prenatal Per- and Polyfluoroalkyl Substances Exposure with Glucose Homeostasis and Gestational Diabetes Mellitus: A Systematic Review and Meta-Analysis,” *Journal of Hazardous Materials* 501 (January 2026): 140890, <https://doi.org/10.1016/j.jhazmat.2025.140890>; Dongying Wang et al., “Correlation of Perfluoroalkyl and Polyfluoroalkyl Substance Levels during Pregnancy with Gestational Diabetes Mellitus: A Systematic Review and Meta-Analysis,” *BMC Pregnancy and Childbirth* 25, no. 1 (2025): 448, <https://doi.org/10.1186/s12884-025-07551-x>.

¹⁶² Nurliana Abd Mutalib et al., “Maternal Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) Exposure and Preeclampsia: A Systematic Review and Meta-Analysis,” *BMC Pregnancy and Childbirth* 25, no. 1 (2025): 279, <https://doi.org/10.1186/s12884-025-07366-w>; Cheng-Yang Hu et al., “Perfluoroalkyl and Polyfluoroalkyl Substances and Hypertensive Disorders of Pregnancy: A Systematic Review and Meta-Analysis,” *Environmental Research* 231, no. Pt 2 (2023): 116064, <https://doi.org/10.1016/j.envres.2023.116064>.

¹⁶³ Kai Tao et al., “Associations between Per- and Polyfluoroalkyl Substances Exposures and Bone Mineral: A Systematic Review and Best Evidence Synthesis,” *Environment & Health* (Washington, D.C.) 3, no. 4 (2025): 363–72, <https://doi.org/10.1021/envhealth.4c00143>; Mohammad Ali Khosrojerdi et al., “Exposure to Per- and Polyfluoroalkyl Substances and Bone Health: A Systematic Review and Meta-Analysis,” *International Journal of Environmental Health Research* 34, no. 12 (2024): 4074–95, <https://doi.org/10.1080/09603123.2024.2338269>.

¹⁶⁴ Dongge Liu et al., “Association of Prenatal Exposure to Perfluorinated and Polyfluoroalkyl Substances with Childhood Neurodevelopment: A Systematic Review and Meta-Analysis,” *Ecotoxicology and Environmental Safety* 271 (February 2024): 115939, <https://doi.org/10.1016/j.ecoenv.2024.115939>.

¹⁶⁵ Monireh Sadat Seyyedsalehi and Paolo Boffetta, “Per- and Poly-Fluoroalkyl Substances (PFAS) Exposure and Risk of Kidney, Liver, and Testicular Cancers: A Systematic Review and Meta-Analysis,” *La Medicina Del Lavoro* 114, no. 5 (2023): e2023040, <https://doi.org/10.23749/mdl.v114i5.15065>.

drinking water.” 42 U.S.C. § 300g-5(a)(4). EPA cites no evidence to support its proposed finding that, “for some water systems that exceed the MCLs, management and restructuring changes supporting the ability of the system to install and use advanced treatment, such as rate increases and new system operators and owners, cannot reasonably be made in time to result in compliance with the MCLs by the current compliance date.” 91 Fed. Reg. at 29432. And EPA ignores evidence to the contrary. For example, as described in the accompanying Betanzo and Speight Memorandum, the water system for the city of Parchment, Michigan established new permanent water connections within only 21 days of determining that their municipal wells had PFAS concentrations above the existing EPA health advisory levels.¹⁶⁶ And EPA ignores that some water systems already have backup water sources, including interconnections to other water systems, that may facilitate water quality improvements relatively quickly.

Further, even if this finding were rationally supported, a finding that “some” systems may not be able to achieve compliance through such changes would not justify the proposed nationwide exemption. *Id.* EPA also does not even attempt to demonstrate that any systems, let alone a proportion commensurate with the scope of the nationwide exemption-by-rule, cannot “improve the quality of the[ir] drinking water” through management or restructuring changes. 42 U.S.C. § 300g-5(a)(4). EPA may not ignore this statutory prerequisite to granting exemptions.

D. EPA Arbitrarily Fails to Consider Reliance Interests of States, Tribes, and Communities.

EPA fails to consider the reliance interests of states, tribes, and communities that have already begun planning, investing, and regulating based on the final standards. That failure is arbitrary and capricious. Under the Administrative Procedure Act, a “change that does not take account of legitimate reliance ... may be ‘arbitrary, capricious [or] an abuse of discretion.’” *Smiley v. Citibank (S. Dakota), N.A.*, 517 U.S. 735, 742 (1996). An agency changing policies must therefore “assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns.” *Regents of the Univ. of Cal.*, 591 U.S. at 33.

1. EPA fails to consider impacts to states and tribes.

EPA fails to consider state and tribal reliance interests created by the Safe Drinking Water Act’s longstanding cooperative-federalism framework. The Act assigns states and tribes a central role in implementing and enforcing drinking water standards and limits EPA’s exemption authority to the same authority available to primacy states. 42 U.S.C. §§ 300g-2(a), 300g-5(f). By replacing the Act’s individualized exemption process with a nationwide self-certification regime, EPA departs from that framework without considering how states and tribes have relied on the statutory allocation of authority in developing their drinking water programs and

¹⁶⁶ Betanzo and Speight Memo, *supra* note 78, at 25.

compliance plans. EPA's failure to acknowledge or address those reliance interests is arbitrary and capricious.

Next, the Proposed Delay Rule strips states, tribes, and their citizens of the protections afforded by the Act's case-by-case exemptions. That careful approach reserves exemptions for situations where the state or tribe makes a "finding" that each exempted water system actually faces "compelling factors" and that the particularized health risks to the community will not be "unreasonable" and will be mitigated. Instead, the Rule automatically grants exemptions based on the self-serving and conclusory statements of water systems. The Proposed Delay Rule thus allows water systems across the country that would not qualify under the Act's individualized exemption process to nevertheless provide drinking water with unacceptable levels of toxic PFOA and PFOS to communities for two additional years.

Relatedly, the Proposed Delay Rule necessarily prolongs exposure to PFOA and PFOS in communities that otherwise would have received earlier treatment. This could lead to more cases of cancer or other illnesses, deaths, hospitalizations, and increased health care costs. States and tribes may shoulder a portion of these costs—whether through Medicaid contributions, state employee health plans, public hospitals and clinics, or programs for low-income or disabled residents. As a result of the Proposed Delay Rule, states and tribes may also need to spend more time and resources educating their citizens on the health risks of PFAS, assisting residents with polluted water to obtain treatment, or implementing health advisories or epidemiological monitoring. EPA does not acknowledge or address the potential health-related costs to states and tribes from the Proposed Delay Rule. Likewise, EPA fails to evaluate the consequences for states and tribes of delaying federal drinking water protections that they have relied upon and will rely upon to reduce PFAS exposures to their residents and citizens.

EPA further does not consider the practical consequences of assuming this authority during the interim period before states and tribes obtain primacy for the PFOA and PFOS standards. EPA asserts in one cursory sentence that "[s]tates may also decide not to allow the federal exemptions to continue after obtaining primacy." 91 Fed. Reg. at 29,438. But EPA does not consider whether states have the authority to unwind or rescind federally granted exemptions. If states conclude that EPA's categorical exemptions are facially unlawful, may states categorically revoke all Proposed Delay Rule exemptions upon obtaining primacy? If states determine that exemptions to certain public water systems will cause an unacceptable level of harm to their residents, will those states have any ability to revoke exemptions for those water systems? EPA does not cite or address states' authorities to unwind exemptions or consider legal or practical restraints on states' ability to do so—such as state administrative procedure acts or possible reliance interests by public water systems that may constrain later action.

Even if states ultimately can obtain primacy and unwind EPA's illegal exemptions, obtaining primacy can take significant time, and the Proposed Delay Rule could cause substantial

harm in the interim. To obtain primacy, states must adopt implementing regulations, demonstrate that they satisfy the statutory requirements for primary enforcement responsibility, and obtain EPA approval. *See* 42 U.S.C. § 300g-2. All the while, EPA’s blanket exemption decisions will govern compliance by public water systems throughout those states—meaning that state residents and citizens will be exposed to higher levels of toxic PFOA and PFOS during this time. As discussed above, any additional exposure to these chemicals beyond the five-year statutory limit presents serious public health risks that cannot be undone retroactively even if states manage to revoke EPA’s blanket exemptions.

These are not trivial administrative or public health concerns. They go to the heart of the cooperative federalism structure Congress created in the Safe Drinking Water Act and the ability of states and tribes to protect public health through their own implementation decisions. The Proposed Delay Rule contains no meaningful discussion of these effects on state and tribal authority, no assessment of how the Rule comports with the Act’s cooperative federalism structure, and no explanation why Congress would have intended EPA to exercise exemption authority more broadly than the states and tribes themselves may exercise. Because EPA entirely fails to consider these significant impacts on states and tribes and on the allocation of regulatory authority established by Congress, the Proposed Delay Rule fails to consider an “important aspect of the problem” and is therefore arbitrary and capricious. *State Farm*, 463 U.S. at 43.

2. *EPA fails to consider impacts to communities.*

EPA fails to consider the reliance interests of communities across the country. First, as discussed, EPA has not shown that its proposed exemption will protect communities during the delay. Under EPA’s proposal, systems with PFOA or PFOS at or above 12 ppt need only identify interim “control measures” that have no guarantee of protecting public health during the added years of exposure, while systems with levels between 4 to 12 ppt do not need to take any steps to manage exposure at all.

Furthermore, the 2024 PFAS drinking water standards created concrete expectations that those protections were coming on a defined schedule. Once EPA finalized enforceable standards for six PFAS and announced those protections, communities could reasonably expect that they would soon receive more information about PFAS in their drinking water and, if necessary, benefit from future treatment requirements by April 2029. Public reporting shows that PFAS pollution drives concrete life decisions, affecting where families live,¹⁶⁷ and where children can

¹⁶⁷ *See* Michael Phillis & Helen Wieffering, *A Crisis Emerges Across the US as ‘Forever Chemicals’ Quietly Contaminate Drinking Water Wells*, AP News (Feb. 2, 2026), <https://apnews.com/article/pfas-wells-contamination-forever-chemicals-water-b132294aca85d569926dbf47c0d02355> (highlighting how residents of Stella, Wisconsin are effectively trapped in their homes because the presence of PFAS makes properties hard to sell).

safely attend school.¹⁶⁸ Economic research likewise shows that publicized PFAS contamination significantly depresses property values and can drive residential sorting.¹⁶⁹ The PFAS drinking water standards were broadly publicized (including by EPA itself), and communities throughout the country have likely relied on that information to make life decisions. EPA must consider such reliance interests.

EPA's omission is especially serious because many communities cannot count on states to replace the lost protections. Even where states would like to take back the authority to issue exemptions, many of them may struggle due to a lack of resources. For many communities, then, EPA's delay will mean that the promised protections for PFOA and PFOS arrive later than announced—with no earlier or equivalent state safeguard to fill the gap. EPA cannot ignore these reliance interests or the real-world harms that its Proposed Delay Rule would impose on communities nationwide.

¹⁶⁸ See, e.g., Emmett Gartner, *Schools Across Maine Confront Unique Challenges in Ridding Their Water of 'Forever Chemicals'*, *Maine Monitor* (July 21, 2024), <https://themainemonitor.org/pfas-maine-schools/> (describing how PFAS contamination at Raymond Elementary School in Maine caused the school to switch to bottled water, affecting students and school operations); Mal Meyer, *Years After Discovering Elevated PFAS Levels, Maine Schools Still Working to Address It*, *WGME* (Nov. 21, 2024), <https://wgme.com/news/local/maine-schools-pfas-forever-chemicals-drinking-water-testing-cdc-remediation-radon-raymond> (discussing the PFAS contamination at Raymond Elementary School and how two years of water samples show thirty-one schools in Maine have PFAS levels above the state maximum); Katrina Liu, *Out of Concern for PFAS, Chilmark School Moves to Bottled Water*, *Vineyard Gazette* (Oct. 21, 2025), <https://vineyardgazette.com/news/2025/10/21/out-concern-pfas-chilmark-school-moves-bottled-water> (conveying Chilmark School shut off fountains, blocked student access to the school's drinking water, and switched to bottled water while pursuing a filtration system because of concerns with rising PFAS concentrations in the well); Alasdair McNinch, *Taking on the 'Forever Chemical' Threat in North Carolina School Water Supplies*, *Facing South* (Mar. 15, 2023), <https://www.facingsouth.org/2023/03/taking-forever-chemical-threat-north-carolina-school-water-supplies> (reporting Belville Elementary School in Leland, North Carolina had installed a reverse-osmosis filtration unit for school drinking water and how Emily Donovan said she was “terrified for my children” after learning about PFAS contamination in the family's water supply).

¹⁶⁹ Michelle M. Marcus & Rosie Mueller, *Unregulated Contaminants in Drinking Water: Evidence From PFAS and Housing Prices*, *National Bureau of Economic Research* (Apr. 2024), <https://www.nber.org/papers/w31731> (demonstrating media attention on the presence of PFAS depresses property values and contributes to residential sorting).

E. EPA Arbitrarily Fails to Consider the Cumulative Impacts of the Proposed Delay Rule and the Proposed Rescission Rule.

EPA is not delaying compliance with the PFOA and PFOS standards in a vacuum. At the very same time it proposes to postpone compliance with these core drinking water protections, EPA is also proposing to rescind the Index PFAS standards (“Proposed Rescission Rule”). *See* 91 Fed. Reg. 29413. All six drinking water standards were promulgated together in the single 2024 Rule, yet EPA now seeks to splinter its rollback of these regulations across separate rulemakings—without explanation or justification. Courts have held that when agencies separate related rulemakings into concurrent proceedings and fail to account for the combined effects of those proposed rules, their actions were arbitrary and capricious.¹⁷⁰ The interplay between contemporaneous and related proposed rules is “an important aspect of the problem” that an agency is required to consider under the Administrative Procedure Act.¹⁷¹ An agency’s failure to consider and account for the cumulative effects of “intertwined proposed rules” also obscures the “true impact” of the rules and deprives the public “of a meaningful opportunity to comment.”¹⁷² EPA must assess the combined impacts of rescinding the Index PFAS standards while authorizing widespread delayed compliance with the PFOA and PFOS standards.

¹⁷⁰ *See, e.g., Portland Cement Ass’n v. EPA*, 665 F.3d 177, 185, 187 (D.C. Cir. 2011) (holding the EPA was arbitrary and capricious in promulgating parallel rules and ignoring their “close correlation,” noting that an agency has a responsibility to reevaluate its decisionmaking “if a significant factual predicate changes” and has “a similar obligation to acknowledge and account for a changed regulatory posture the agency creates—especially when the change impacts a contemporaneous and closely related rulemaking” (internal quotations omitted)); *Off. of Comm’n of United Church of Christ v. FCC*, 707 F.2d 1413, 1441 (D.C. Cir. 1983) (finding the FCC’s decision to eliminate one rule was “seriously disturbing in light of its concurrent proceeding to adopt a simplified renewal procedure” for radio broadcasting licenses); *Centro Legal de la Raza v. Exec. Off. for Immigr. Rev.*, 524 F. Supp. 3d 919, 928, 955 (N.D. Cal. 2021) (holding a notice-and-comment period was “inadequate” because numerous “concurrent regulatory changes” to the immigration system “directly intersect[ed]” with the rule at issue such that the agency was arbitrary and capricious for failing “to consider the combined impact of numerous intersecting policy changes”); *Nat’l Ass’n of Priv. Fund Managers v. SEC*, 151 F.4th 252, 269, 273 (5th Cir. 2025) (holding the SEC should have considered the “collective economic impact” of two rules “promulgated in tandem” and “adopted concurrently” because of their “significant interplay and their nearly concurrent promulgation”); *Casa de Maryland, Inc. v. Wolf*, 486 F. Supp. 3d 928, 964 (D. Md. 2020) (describing how the agency at issue sidestepped fundamental concerns expressed in public comments over the combined effects of staggered rulemakings which supported the court’s holding that the agency violated the APA).

¹⁷¹ *See Centro Legal*, 524 F. Supp. 3d at 959 (stating explicitly that “[a]n agency cannot shirk its obligation to ‘consider an important aspect of the problem,’ such as the interplay of other administrative rules that directly impact this Rule” (quoting *State Farm*, 463 U.S. at 43)).

¹⁷² *Id.* at 962.

Together, EPA’s Proposed Rescission Rule and Proposed Delay Rule will cause serious cumulative and cascading harms. First, the population harmed by EPA’s Proposed Rescission Rule will be further injured by EPA’s decision to delay PFOA and PFOS standards. This is because individuals who consume water containing PFAS mixtures are at higher risk of adverse health effects.¹⁷³ Approximately 63 percent of systems that have at least one Index PFAS present also contain PFOA or PFOS.¹⁷⁴ This means that people are typically exposed to mixtures of PFAS that includes the Index PFAS and PFOA/PFOS, and they are at greater risk of harm from EPA’s two proposed rules.

The agency’s combined actions will also create compounding harms over time. PFOA and PFOS are legacy PFAS that are already being phased out of production in the United States¹⁷⁵ and whose build-up is generally declining in humans.¹⁷⁶ But the same is not true for the Index PFAS. Compounds such as GenX and PFBS—which were introduced as replacements for older PFAS like PFOA—continue to be produced and used. As industry shifts away from PFOA and PFOS toward these replacement chemicals, their presence in the environment and drinking water is expected to grow.¹⁷⁷ Because GenX, PFBS, and other replacement PFAS are already widely detected in tap water,¹⁷⁸ delaying protections for these chemicals will compound existing PFAS burdens and increase the likelihood of future harm.

GenX and PFBS contamination will only be exacerbated by the boom of the artificial intelligence industry. Semiconductors, which are the backbone of the artificial intelligence industry, are manufactured through a highly complex process that uses PFAS.¹⁷⁹ As domestic

¹⁷³ 88 Fed. Reg. at 18639; EPA Office of Water, *2024 Final National Primary Drinking Water Regulation for PFAS: Overview of Health Science and Review Process (PART II)*, at 13 (March 27, 2025) obtained via FOIA case number 25-EPA-07215.

¹⁷⁴ Weimer, SELC 2026 UCMR 5 Data Analysis, *supra* note 53; 88 Fed. Reg. at 18675.

¹⁷⁵ See 89 Fed. Reg. at 32536. Note that PFOA and PFOS remain a continuing concern despite reductions in their direct manufacture and use. Ongoing releases from sources such as landfills, waste incineration, and legacy firefighting foam stockpiles can contribute to environmental contamination, while other PFAS may degrade into PFOA and PFOS over time.

¹⁷⁶ Jinhua Pan et al., Temporal Trend of Serum Perfluorooctanoic Acid and Perfluorooctane Sulfonic Acid Among U.S. Adults With or Without Comorbidities in NHANES 1999–2018, 12 *Toxics* 314 (2024), <https://www.mdpi.com/2305-6304/12/5/314>; Human Exposure: PFAS Information for Clinicians – 2024, ASTDR (July 7, 2026), <https://www.atsdr.cdc.gov/pfas/hcp/clinical-overview/human-exposure.html>.

¹⁷⁷ See 89 Fed. Reg. at 32536; Respondent’s Proof Brief at 10, *Am. Water Works Ass’n v. U.S. Env’t Prot. Agency*, No. 24-1188 (D.C. Cir. Dec. 23, 2024).

¹⁷⁸ Uthradevi Kannan et al., *Short-chain PFAS: A global challenge - Environmental fate, health risks, and promising removal technologies*, 20 *Results in Chemistry*, at 5 (2026) <https://doi.org/10.1016/j.rechem.2025.103000>.

¹⁷⁹ Devashish Gokhale et al., *Challenges and Opportunities in PFAS Waste Management for Semiconductor Manufacturing*, 60 *Env’t Sci. & Tech.* 2259, 2260 (2026) (“Gokhale, *Semiconductor Manufacturing*”),

semiconductor manufacturing capacity is projected to *triple* in the United States by 2032,¹⁸⁰ demand for these chemicals is expected to surge accordingly. This growth carries significant consequences. The PFAS used and produced by semiconductor plants end up in the waste streams of these facilities and are not removed by their standard treatment processes.¹⁸¹ As a result, inadequately treated wastewater from semiconductor plants contains “a complex mixture of chemically diverse PFAS,” dominated by shorter-chain PFAS like GenX and PFBS.¹⁸² Once discharged, these mixtures enter nearby waterways, where they spread through the environment and contaminate drinking water sources.

EPA’s dual actions will therefore create a widening regulatory gap. In delaying compliance with standards for PFOA and PFOS, which are decreasing in the environment, EPA posits that fewer water systems may install treatment in the first place. *But see supra* Section III.A.4.D (explaining that EPA’s supposition lacks support). Even if that were true, that does not mean that communities are protected from harm. At the same time, by rescinding the Index PFAS standards altogether, EPA would eliminate any obligation for systems to monitor, notify the public about, or treat dangerous levels of replacement PFAS such as GenX and PFBS—chemicals that are becoming more prevalent in drinking water sources.

The result is like closing one lane of traffic to protect pedestrians after the cars have already moved into another. As contamination shifts from legacy PFAS to replacement PFAS, EPA is delaying safeguards for the former while eliminating safeguards for the latter. The result is not merely a temporary pause in protection. It is the removal of safeguards precisely where the contamination problem is headed.

Even where systems eventually install treatment aimed at PFOA and PFOS, that does not solve the problem. Treatment designed and operated to reduce long-chain PFAS like PFOA and PFOS may be insufficient to control short-chain PFAS such as GenX, PFBS, and similar compounds. For two of the most common PFAS treatment technologies, granular activated carbon (“GAC”) and anion exchange, PFAS with shorter chains tend to be more difficult to remove than PFAS with longer chains.¹⁸³ Accordingly, utilities that install GAC or anion

<https://pubs.acs.org/doi/pdf/10.1021/acs.est.5c10109>; *State of the U.S. Semiconductor Industry*, Semicond Indus. Ass’n (2025), <https://www.semiconductors.org/wp-content/uploads/2025/07/SIA-State-of-the-Industry-Report-2025.pdf>.

¹⁸⁰ See Gokhale, *Semiconductor Manufacturing*, *supra* note 179, at 2259.

¹⁸¹ See *id.* at 2264.

¹⁸² See 179 *id.* at 2261, 2264; see also Lenny Siegel, *PFAS: “Essential” for Semiconductor Production*, Ctr. for Pub. Env’t Oversight (June 12, 2024), <https://cpeo.org/pubs/PFAS-Essential.pdf>.

¹⁸³ See 89 Fed. Reg. at 32624; Responses to Public Comments on Per- and Polyfluoroalkyl Substances (PFAS) National Primary Drinking Water Regulation Rulemaking, U.S. Env’t Prot. Agency: Off. of Water 10-69 (Apr. 2024) (“*Responses to Public Comments on PFAS Rulemaking*”), EPA-HQ-OW-2025-1742-0037; U.S. Env’t Prot. Agency, *Technologies and Costs*

exchange to remove PFOS or PFOA, which have eight carbon chains, will not necessarily remove shorter-chain PFAS present in the water, like PFHxS (six-carbon chain), PFBS (four-carbon chain), and GenX (six-carbon chain) Index PFAS.¹⁸⁴ EPA itself admits that “[o]nly designing a treatment system for PFOA and PFOS removal, rather than for the other PFAS which may be present in varying concentrations, may not be as effective for the other PFAS or adequately public health protective.”¹⁸⁵ That is why EPA promulgated the Index PFAS standards.

Without enforceable standards for the Index PFAS, systems will have little obligation—and little incentive—to operate treatment in a manner that effectively reduces them. Worse still, poorly maintained treatment media can themselves become secondary sources of PFAS contamination.¹⁸⁶ The combined effect of EPA’s actions is therefore far broader than the agency suggests: less treatment, less monitoring, less public notice, and more exposure to harmful PFAS—often without communities even knowing it. EPA cannot ignore these foreseeable, cumulative consequences.

F. The Proposed Delay Rule Is Predicated on an Arbitrary and Inadequately Supported Analysis of Its Costs and Benefits.

As detailed in the accompanying expert memoranda, there are numerous flaws in EPA’s economic analysis for the Proposed Delay Rule and EPA’s discussion of the Rule’s benefits and costs in the preamble, which further undermines the basis for the Proposed Delay Rule. Indeed,

for Removing Per- and Polyfluoroalkyl Substances (PFAS) from Drinking Water 23, 36 (2024) (“EPA Technologies and Costs for Removing PFAS”), https://www.epa.gov/system/files/documents/2024-04/2024-pfas-tech-cost_final-508.pdf; Uthradevi Kannan et al., *Short-chain PFAS: A global challenge - Environmental fate, health risks, and promising removal technologies*, 20 Results in Chemistry, at 2 (2026) <https://doi.org/10.1016/j.rechem.2025.103000> (“Most available PFAS treatment methods, including activated carbon, ion exchange resins ... were primarily developed for long-chain PFAS. Their effectiveness against short-chain PFAS is restricted due to smaller molecular size and reduced sorption affinity of these substances.”).

¹⁸⁴ *Id.*

¹⁸⁵ *Responses to Public Comments on PFAS Rulemaking*, *supra* note 183, at 3–4.

¹⁸⁶ EPA Technologies and Costs for Removing PFAS, *supra* note 183, at 18, 38; Silmara Sanzana et al., *A review of PFAS remediation: Separation and degradation technologies for water and wastewater treatment*, 74 Water Process Engineering 107793 (2025), <https://www.sciencedirect.com/science/article/pii/S2214714425008657>; Yoshifumi Nakazawa et al., *Long-term removal of perfluoroalkyl substances via activated carbon process for general advanced treatment purposes*, 245 Water Research, 120559 (2023), <https://www.sciencedirect.com/science/article/abs/pii/S0043135423009995>; *Choosing the Right PFAS Treatment Media: GAC vs Ion Exchange Performance for Short-Chain Compounds*, PFAS Tech (Feb. 27, 2026), <https://www.pfastech.com/insights/short-chain-pfas-treatment-challenges.html>.

EPA’s economic analysis and associated preamble discussion “appear to be strategically crafted to support a predetermined decision, rather than to inform that decision,” and are inconsistent in multiple ways with EPA’s own economic analysis guidelines.¹⁸⁷

1. EPA erroneously claims that the Proposed Delay Rule would provide the same level of health protection as the 2024 Rule.

EPA arbitrarily claims that under the Proposed Delay Rule, “[t]he same level of health protection from PFOA and PFOS and co-occurring [disinfection byproducts] is reached when compared to the baseline.” 91 Fed. Reg. at 29440. As explained by Dr. Guignet, “this statement is simply not true,” as “the proposed delay does not achieve the same level of protection relative to the economically valid baseline.”¹⁸⁸ This assertion is arbitrary on its face, as there plainly would be foregone health benefits under the Proposed Delay Rule for the tens of millions of people who would experience years of additional exposure to heightened levels of highly toxic, persistent pollutants in their drinking water. Accordingly, EPA admits elsewhere in the Proposed Delay Rule that “a two-year exemption from the PFOA and PFOS MCLs poses a risk to health.” 91 Fed. Reg. at 29431. This is particularly true for pregnant people, infants, and children who will be uniquely susceptible to harm during the specific years of the proposed exemption period because they coincide with sensitive developmental stages in their lives.¹⁸⁹

EPA’s assertion that the Proposed Delay Rule offers the same level of health protection as the baseline also contravenes EPA’s economic guidelines. That guidance states that the appropriate baseline for evaluating a proposed rule’s benefits and costs is “the future state of the world without the regulation”—here, full implementation of the 2024 Rule by April 2029, without the delay EPA now proposes.¹⁹⁰ Indeed, that is the baseline EPA utilizes in its supporting economic analysis for the Proposed Delay Rule. The inconsistency between the Proposed Delay Rule’s preamble and the supporting economic analysis reveals a critical defect in EPA’s rationale. As a result, EPA’s stated justification for the Proposed Delay Rule is not supported by substantial evidence and is arbitrary and capricious.

¹⁸⁷ Guignet Memo, *supra* note 78, at 18; see EPA, *Guidelines for Preparing Economic Analyses* (3d ed., 2024) (“Economic Analysis Guidelines”), EPA-HQ-OW-2025-1742-0032.

¹⁸⁸ Guignet Memo, *supra* note 78, at 5.

¹⁸⁹ *Id.* at 5; see also *supra* Section III.B.2.

¹⁹⁰ Guignet Memo, *supra* note 78, at 5 (quoting Economic Analysis Guidelines, *supra* note 187, at 5-7).

2. *EPA's conclusion that the cost savings from the Proposed Delay Rule exceed the foregone benefits is not rationally supported.*

For multiple reasons elaborated in the accompanying expert memorandum from Dr. Guignet, EPA's conclusion that the cost savings from the Proposed Delay Rule will exceed the foregone benefits associated with delaying compliance is not rationally supported.¹⁹¹

First, EPA fails to calculate and present the estimated costs and foregone benefits of the Proposed Delay Rule under a two percent discount rate, which is contrary to best economic practice and inconsistent with EPA's approach in the economic analyses for both the 2024 Rule and its current proposal to rescind the regulatory determinations, maximum contaminant level goals, and drinking water standards for PFNA, PFHxS, GenX, and PFBS.¹⁹²

Second, EPA substantially understates the foregone benefits associated with the Proposed Delay Rule by failing to describe fully the nonquantifiable foregone benefits, and by failing to quantify and monetize several key foregone benefits for which there are adequate data to support quantitative characterization.¹⁹³ As Dr. Guignet explains, EPA's cursory listing of a subset of the unquantified foregone health benefits of the Proposed Delay Rule contravenes EPA's Economic Analysis Guidelines, is inconsistent with the 2024 Rule, and significantly skews EPA's characterization of the Proposed Delay Rule's foregone benefits.¹⁹⁴ Moreover, a robust body of newer studies not considered in the 2024 Rule supports quantification and monetization of additional foregone health benefits that were not quantified in the economic analysis for the 2024 Rule, such as reduced adverse impacts on breastfeeding duration and immune function and reduced risks of liver cancer.¹⁹⁵ To rationally support the Proposed Delay Rule, EPA's economic analysis must account for this current evidence. EPA's failure to account for this new evidence is particularly arbitrary given that the agency attempts to incorporate new evidence postdating the 2024 Rule to justify the Proposed Delay Rule and estimate associated cost-savings.

Third, EPA further understates the foregone benefits associated with the Proposed Delay Rule by relying exclusively on cost-of-illness estimates to monetize non-fatal human health benefits.¹⁹⁶ That approach does not account for pain and suffering or other quality-of-life impacts associated with non-fatal health harms. EPA should instead rely on willingness-to-pay estimates, which more fully capture the harms associated with exposure to PFOA, PFOS, and disinfection

¹⁹¹ *Id.* at 7–14.

¹⁹² *Id.* at 8.

¹⁹³ *Id.* at 9–11.

¹⁹⁴ *Id.* at 9.

¹⁹⁵ *See id.* at 9–10; *supra* Sections III.B.2–3 (quantifying infant exposure to PFOA and PFOS attributable to proposed exemption and identifying new scientific evidence regarding PFOA and PFOS health effects not addressed in the 2024 Rule).

¹⁹⁶ Guignet Memo, *supra* note 78, at 10–11.

byproducts that will be reduced as a result of treatment for PFOA and PFOS.¹⁹⁷ As Dr. Guignet explains, data are available to conduct this analysis for the foregone benefits associated with renal cell carcinoma, bladder cancer, and liver cancer.¹⁹⁸ Doing so in this case “is particularly important because the EPA’s primary conclusion that the cost-savings of the proposed rule outweigh the foregone benefits may not be robust when using more economically valid [willingness-to-pay] estimates for valuation.”¹⁹⁹

Fourth, EPA fails to rationally account for the full costs of the pitcher filter program it proposes as an interim control measure for systems with PFOA or PFOS levels above 12 ppt. As described in the accompanying expert memorandum from Elin Betanzo and Dr. Vanessa Speight, EPA underestimates the time and costs associated with implementing a pitcher filter program—particularly a program that is likely to be effective—as an interim control measure.²⁰⁰ EPA also fails to justify its assumption that only 20 percent of customers whose water systems offer pitcher filters will request one, which strongly influences EPA’s overall cost estimate for this interim control measure.²⁰¹ In addition, EPA does not account for the costs to customers whose water systems implement such programs.²⁰² Similarly, EPA fails to account for the costs to customers who take action to attempt to mitigate their exposure to high levels of PFAS in their drinking water in response to the proposed public education and outreach interim measures.²⁰³ Each of these omissions leads EPA to understate the costs of the Proposed Delay Rule.

Fifth, EPA does not rationally support its assumption that 100 percent of systems that exceed the PFOA or PFOS drinking water standards will apply for the proposed exemption. EPA does not account for the fact that systems in multiple states likely will be legally ineligible for the exemption because their states have applied for primacy to implement the 2024 Rule, while systems in still more states will have no motive to seek an exemption because their states have adopted the 2024 Rule—including its 2029 compliance deadline—as a matter of state law.²⁰⁴ EPA also fails to rationally consider that it will be cheaper for some systems to timely comply with the 2024 Rule rather than sink resources into interim control measures that will not further their long-term compliance, which will disincentivize applications for the exemption.²⁰⁵

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 11.

²⁰⁰ Betanzo and Speight Memo, *supra* note 78, at 10–14.

²⁰¹ Guignet Memo, *supra* note 78, at 13.

²⁰² *Id.* at 11–12.

²⁰³ *Id.*

²⁰⁴ Betanzo and Speight Memo, *supra* note 78, at 6, 30–31; Guignet Memo, *supra* note 78, at 13–14.

²⁰⁵ Betanzo and Speight Memo, *supra* note 78, at 9–10; Guignet Memo, *supra* note 78, at 12–13.

G. Even If EPA Could Create a Nationwide Exemption by Rule, the Proposed Delay Rule Unlawfully Fails to Consider Reasonable Alternatives.

Even if EPA could create a nationwide exemption by rule—which it cannot, as explained in Section II, *supra*—the Proposed Delay Rule is unlawful because EPA fails to consider any reasonable alternatives to its proposal. “An agency is required to consider responsible alternatives to its chosen policy and to give a reasoned explanation for its rejection of such alternatives.” *Spirit Airlines, Inc. v. U.S. Dep’t of Transp.*, 997 F.3d 1247, 1255 (D.C. Cir. 2021) (quoting *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 242 (D.C. Cir. 2008) (cleaned up)). Similarly, EPA’s Economic Analysis Guidelines specify that:

At a minimum, the economic analysis should fully assess and present three options for consideration: the proposed or finalized option; a more stringent option; and a less stringent one. ... Assessing at least three options applies in any circumstance. It is not adequate to evaluate only the selected option, even for a final rule that establishes the option to be promulgated. Similarly, in cases where the design of the regulation is dictated by statute, presenting multiple options is still necessary when the regulation is proposed or finalized -- even though the Agency may have no discretion in its design. Assessing multiple options helps inform the public about the anticipated benefits and costs of the Agency’s final action compared to options not pursued, it is imperative that the analysis assesses multiple options.²⁰⁶

The Proposed Delay Rule arbitrarily and capriciously fails to consider and analyze numerous reasonable alternatives to a nationwide exemption-by-rule available to all water systems.

First, EPA should have considered and rigorously evaluated whether case-by-case individual exemptions are a viable alternative to a nationwide exemption-by-rule. EPA asserts vaguely, and without citing any evidence, that EPA “has become aware” that “many” systems “*may seek*” exemptions from EPA and “it is *possible*” there could be “a large number of requests.” 91 Fed. Reg. at 29428 (emphasis added). Notably, EPA does not cite *any* actual exemption requests that it has received or any data to back up these conclusory assertions. And, in the same breath, EPA asserts that “many water systems are able to fully meet the requirements of the rule.” *Id.* at 29429. In its analysis, EPA assumes that all water systems that exceed the PFOA and/or PFOS standards will seek an exemption, even as it admits that this “overestimates the number of systems opting into the exemption process.” *Id.* at 29439, 29440. As discussed above, these contradictory, conclusory, unsupported assumptions are an insufficient basis for the proposed nationwide exemption-by-rule. Moreover, EPA must seriously consider and analyze a regulatory alternative of considering and granting exemption applications on a case-by-case basis. As part of that analysis, EPA should consider the ability of both state primacy agencies and

²⁰⁶ Economic Analysis Guidelines, *supra* note 187, at 3-7.

EPA (for states that have not yet obtained primacy) to process a reasonable projection of the number of likely exemption applications on a case-by-case basis.

Second, EPA should have considered a more targeted exemption limited to water systems whose characteristics EPA has identified, based on actual evidence, as being associated with legitimate compliance challenges. If EPA has data linking factors—such as system size, type of water source, or other water system characteristics—to compliance challenges, EPA should consider an exemption narrowly tailored to the water systems with such characteristics. For example, EPA estimates that about 10.7 million people have PFOA or PFOS in their water at or above 12 ppt, but the vast majority are in water systems that serve 10,000 or more people.²⁰⁷ Large water systems have greater resources and technical expertise to be able to comply with the 2024 Rule and have the capacity to seek a case-by-case exemption in truly extraordinary circumstances. In addition, interim control measures like distributing and maintaining pitcher filters or other point-of-use devices may be more feasible and cost-effective in small systems. EPA admits that some larger systems “may also find [interim] control measure requirements to be more costly than implementing the long-term treatment option.” 91 Fed. Reg. at 29441. An exemption-by-rule is not legal or necessary for any water systems, for all the reasons discussed in this comment letter. However, if EPA proceeds with this rulemaking, limiting the exemption-by-rule to water systems that fit a narrower set of criteria would help to reduce the public health harms caused by delaying compliance with the PFOA and PFOS standards and would better target the exemption to the systems that are more likely to need it.

Third, EPA should have considered reasonable alternatives to key details of the Proposed Delay Rule. For example, EPA should consider alternatives to the 12 ppt threshold for requiring interim control measures, such as requiring interim control measures for all systems that seek an exemption, or requiring interim control measures for all systems that exceed a threshold lower than 12 ppt. As discussed above, EPA fails to justify the 12 ppt threshold, and its failure to even consider any alternative thresholds is further arbitrary and capricious. Similarly, EPA should consider alternatives to the two-year duration of the exemption, such as a more limited exemption for only one year, or for only the period that an individual water system can justify—based on its unique circumstances—on a case-by-case basis. *See* 42 U.S.C. § 300g-5(b)(2)(A) (mandating that the schedule for an exemption “shall require compliance by the system with each contaminant level ... as expeditiously as practicable”). As another example, EPA should consider whether to require more than two interim control measures for water systems that receive an exemption and should consider whether to require more stringent interim control measures. For example, EPA should consider requiring that any pitcher filters used be certified to reduce PFOA and PFOS to the lowest, currently certified level at the time the pitcher filter program is instituted (e.g., requiring pitcher filters certified to 20 ppt, not 70 ppt, based on current

²⁰⁷ Delay Rule EA, *supra* note 133, at 5-1.

certifications, and requiring pitcher filters that achieve even lower PFAS levels as pitcher filters become certified at lower levels).

EPA should abandon this misguided and unlawful rulemaking. To be clear, assessing reasonable alternatives would not cure all the legal flaws in the Proposed Delay Rule. But EPA's failure to consider reasonable alternatives is yet another reason why the Proposed Delay Rule is arbitrary, capricious, and procedurally unlawful.

IV. If EPA Finalizes the Proposed Delay Rule Despite Its Myriad Legal Flaws, EPA Should Close Several Loopholes and Make Technical Corrections.

For all the reasons discussed above, the Proposed Delay Rule is unlawful and unwise, and EPA should not finalize this rule. However, if EPA goes ahead with a final rule similar to the proposed rule, EPA should correct several loopholes and weaknesses in the Proposed Delay Rule.

First, as proposed, 40 C.F.R. § 142.58(b)(5) would require water systems seeking an exemption to report only their “[m]ost recent sample result(s).” 91 Fed. Reg. at 29447. The 2024 Rule required compliance sampling based on a running annual average, due in part to the possibility of fluctuations in PFAS concentrations in source water over time. *See* 89 Fed. Reg. at 32574. Given the possibility that PFAS concentrations in source water may vary, EPA should require water systems to submit all their sample results for PFOA and PFOS, or at least all results over a multi-year period, such as since the beginning of UCMR 5. Requiring all results over a multi-year period would help to ensure that all systems that should be required to implement interim control measures will be triggered to do so. In requiring multiple years of sampling results, EPA should retain the language in proposed 40 C.F.R. § 142.58(b)(6) that “any result(s) equal to or exceeding” the threshold for interim control measures will trigger the requirement for a water system to implement interim control measures during the exemption period. 91 Fed. Reg. at 29447.

Second, as proposed, 40 C.F.R. § 142.59(a) would allow an interim control measure of providing an alternative water source or blending water sources. 91 Fed. Reg. at 29447. Sudden, poorly planned changes to water sources can alter source water chemistry and corrosivity, which can have dire results. For example, the Flint, Michigan, crisis of lead in drinking water was triggered by a change to source water with greater corrosivity. To protect public health from potentially dangerous corrosion, this provision should be amended to require that any water system that selects an alternative source of water or blending of source waters shall comply with 40 C.F.R. § 141.81(h) to ensure that the use of a new water source does not change the corrosivity of the water and does not undermine corrosion control treatments necessary to control lead and copper.

Third, as proposed, the interim source water control measures in 40 C.F.R. § 142.59(d)(4) would allow a water system to select this interim control measure if a system merely “has

funding or technical assistance to implement source water assessment *planning*” without any requirement to have funding or plans to *implement* activities that address and reduce PFOA and PFOS. 91 Fed. Reg. at 29447 (emphasis added). At a minimum, this language should be changed to: “The water system has funding or technical assistance to implement source water assessment planning and activities focused on addressing and reducing PFOA and PFOS,” and it should be further amended to require water systems to *implement* activities to address and reduce PFOA and PFOS, not just have funding or technical assistance *available* to do so with no commitment or requirement to act. Without these changes, this interim “source control measure” is unlikely to provide any actual protection of public health during a two-year exemption—at most, it will just generate paperwork and unenforceable plans for source water assessment.

Fourth, as proposed, the source water controls described in 40 C.F.R. § 142.59(d) are likely to generate, at best, long-term benefits, but little or no public health benefit or reduction of PFAS in drinking water during the two-year exemption period. *See* 91 Fed. Reg. at 29447. Source control measures that have only long-term benefits will provide little or no protection during the exemption period and will divert resources that would be better focused on implementing effective treatment. Any water system selecting source water control measures should be required to demonstrate that it will implement source water controls that are reasonably expected to reduce PFOA and PFOS in the system’s drinking water during the exemption period.

Fifth, the Proposed Delay Rule lacks any reporting or functional enforcement mechanisms, particularly for the interim control measures. The Proposed Delay Rule feebly gestures at the need for enforcement by providing that “[a]ny exemption may be terminated upon a finding by the Regional Administrator that the system has failed to comply with any requirements of the exemption.” 91 Fed. Reg. at 29447 (proposed 40 C.F.R. § 142.58(c)(1)). But the rule completely fails to require any ongoing reporting that would enable EPA to determine whether a system is complying with the requirements of the exemption. For example, there is little to stop a water system from promising to implement interim control measures in its exemption request, receiving an exemption, and then failing to implement the control measures, because EPA likely would never know. EPA should require all water systems that receive an exemption to provide status updates to EPA at least every six months. The updates should include: (a) any additional sample results for PFOA and PFOS that have not yet been reported to EPA; (b) for systems required to implement interim control measures, a detailed report of the control measure implementation activities undertaken during the preceding six-month period; (c) a report and copy of any required public notification that was distributed during the preceding six-month period; and (d) a detailed summary of the water system’s progress toward and anticipated timeline for achieving long-term compliance with the PFOA and PFOS standards. Any water system that reports new water sampling results over the threshold for interim control measures and is not already implementing such measures should be required to implement control measures for the remainder of the exemption period or have its exemption terminated.

And any water system that is not in compliance with its interim control measure requirements or public notification requirements, or that fails to submit a timely status update, should have its exemption terminated.

Sixth, in response to EPA's request for comment on the public notification requirements, 91 Fed. Reg. at 29437, EPA should require advance public notice of any exemptions or, at a bare minimum, a Tier 2 notice for every system operating under an exemption of the PFOA and/or PFOS standards. A Tier 2 notice would merely require that customers are notified of the exemption within 30 days after the system begins to operate under the exemption. Prompt notification that the water system is not even trying to meet the PFOA and PFOS standards is essential to facilitate customers taking action to protect themselves, such as obtaining and using point-of-use filters or bottled water. Under the circumstances of the Proposed Delay Rule, it appears that water systems are likely to have substantial advance notice that they have received an exemption prior to the April 2029 compliance date. Accordingly, and to provide the best possible protections for public health despite an exemption, the Proposed Delay Rule should require water systems that receive an exemption to provide public notification to all their customers *before* the exemption period begins. Providing notice 30 days after the PFOA and PFOS standards are supposed to take effect is too late; customers should receive notice far earlier that their water system is not, and will not be, in compliance with the PFOA and PFOS standards. Moreover, a Tier 3 notice provided up to one year after the exemption period begins would be absurd here. A Tier 3 notice would mean that customers would not even get notice of the exemption until halfway through the exemption period and could be unknowingly consuming PFAS-contaminated water during the entire first year of the exemption. In sum, if finalized, the Proposed Delay Rule should require water systems that receive an exemption to provide public notification of the exemption before it takes effect in April 2029. If EPA does not require advance notice, a Tier 2 notice requirement would be far more appropriate and health-protective than a Tier 3 notice requirement.

Seventh, EPA should commit to maintain and publish publicly online an up-to-date, searchable, and filterable list of all water systems that have been granted an exemption under this rule. Such a list should include, at a minimum, for each water system that receives an exemption: (a) the water system's name; (b) the water system's ID number; (c) the state where the water system is located; (d) the number of people the water system serves; (e) the highest PFOA and PFOS sample results the water system has reported, including in required updates throughout the exemption period; (f) whether the water system is required to implement interim control measures; (g) for systems required to implement control measures, which control measures the system is implementing; and (h) copies of the water system's exemption request and of any status updates provided to EPA.

Eighth, EPA should make available online an up-to-date list showing the status of state primacy applications for the PFOA and PFOS NPDWR.

Ninth, to be eligible for an exemption, a water system should be required to be in compliance with other provisions of the PFAS NPDWR and with other Safe Drinking Water Act rules. For example, to be eligible for an exemption, a water system should have to certify and demonstrate that it is in compliance with its initial monitoring requirements for PFOA and PFOS under 40 C.F.R. § 141.902(b)(1); is in compliance with its applicable UCMR sampling requirements under 40 C.F.R § 141.40; and is in compliance with the Consumer Confidence Report rule, *see* 40 C.F.R. Part 141, Subpart O.

V. Conclusion

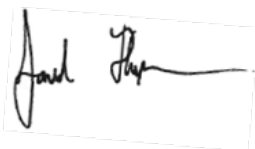
For these reasons, EPA should withdraw the proposed rule. The proposed exemption is contrary to the Safe Drinking Water Act and is arbitrary and capricious under the Administrative Procedure Act. By delaying compliance with enforceable drinking water standards for PFOA and PFOS, EPA would unlawfully weaken critical public health protections and prolong communities' exposure to these dangerous contaminants. EPA should maintain the existing compliance deadline and ensure timely implementation of the 2024 Rule. If you have any questions about these comments, please contact Katherine O'Brien at kobrien@earthjustice.org.

Respectfully submitted,



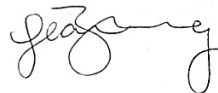
Earthjustice

Katherine O'Brien
Suzanne Novak
Isabel An



Natural Resources Defense
Council

Jared Thompson
Karen Chen
Anna Reade
Katie Pelch
Erik Olson



Southern Environmental Law
Center

Jean Zhuang
Kasey Moraveck
Tim Barbera
Carl Brzorad