

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2561 Rayburn House Office Building
Washington, DC 20515-6515

February 14, 2024

The Honorable Michael S. Reagan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460

Dear Administrator Reagan:

The House Committee on Small Business (Committee) writes regarding five of the Environmental Protection Agency's (EPA) rules and proposed rules that could substantially harm U.S. small businesses. Since 2021, rules issued by the EPA are estimated to have cost the U.S. economy over \$249.7 billion across all industries and increased paperwork hours for all businesses by nearly 6.5 million hours.¹ The rules discussed here will have a significant impact on a substantial number of small businesses, increasing costs and regulatory burdens. While some of these rules do not directly regulate business activity, they would—individually and collectively—have a major impact on U.S. small businesses and their operations. The Committee is concerned that the EPA failed to consider small entities in their rulemaking process for the following rules.

National Emission Standards for Hazardous Air Pollutants: Commercial Ethylene Oxide (EtO) Sterilization Technology Review

This proposed rule would effectively ban the commercial use of Ethylene Oxide (EtO).² EtO is an essential chemical used throughout numerous industries in the U.S., most notably in the sterilization of medical equipment.³ Eliminating EtO would require manufacturers to change how they sterilize medical equipment, either adopting more costly or less effective solutions.⁴ Small medical device manufacturers may not be able to sterilize their equipment properly with alternatives to EtO, and it will be costly for these entities to receive new Food and Drug Administration approval for the new sterilization techniques. While larger entities may be able to afford to comply with this rule, small businesses may not be able to shoulder the costs and could

¹ *Regulation Rodeo*, AM. ACTION FORUM (last visited Feb. 9, 2024).

² *NAM Pushed Back on Restrictive Chemical Rule*, NAT'L ASSOC. OF MANUFACTURERS (Nov. 15, 2023).

³ *National Emission Standards for Hazardous Air Pollutants: Commercial Ethylene Oxide (EtO) Sterilization Technology Review*, 88 Fed. Reg. 22790 (Apr. 13, 2023) (to be codified at 40 CFR § 63).

⁴ Letter from Cathy McMorris Rodgers, et al., Chair, H. Comm. on Energy & Commerce, to Lael Brainard, et al., Director, U.S. Nat'l Econ. Council. (Sep. 28, 2023); *NAM Pushed Back on Restrictive Chemical Rule*, NAT'L ASSOC. OF MANUFACTURERS (Nov. 15, 2023).

be forced to shut down.⁵ Despite the EPA initially indicating this rule would cost companies only \$86 million to comply with, industry estimates that the true total cost is over \$220 million for all businesses.⁶ It is unclear whether the benefits supposedly achieved by this rule would overcome the actual human harm that could result from faulty medical device sterilization.

Methane

On December 2, 2023 the EPA issued this rule which implements unnecessary requirements that oil and gas companies must constantly and actively search for methane leaks in their facilities.⁷ This undertaking would be costly, and incomplete compliance may result in businesses being fined. Oil and gas companies already have an incentive to stop leaks, given that each leak is lost profit. Additionally, the rule could require businesses to capture excess methane that is currently being released or flared. This would require a costly retooling.⁸ Industry has described this regulation as incoherent and indicated it would limit the ability of companies to innovate.⁹ Nearly 90 percent of all oil and gas extractors are small businesses, these rules will disproportionately increase costs for them, and may result in many small wells closing.¹⁰

PFAS National Primary Drinking Water Regulation Rulemaking

On September 28, 2023 the EPA issued a rule which would require treatment of perfluoroalkyl and polyfluoroalkyl substances (collectively “PFAS”) used in manufacturing under certain circumstances.¹¹ These new standards are allegedly aimed at reducing the amount of PFAS in the water supply.¹² The EPA issued this rule despite concerns over whether this rule would actually improve health outcomes, and it is estimated to cost water systems, big and small, approximately \$40 billion.¹³ PFAS is used in the production of medical devices, cell phones, and numerous other products. Regulating its use will create additional regulatory burdens on water systems and manufacturers, and likely increase consumer costs on many goods.¹⁴ Small businesses that use PFAS may experience substantial disruptions to their operations when these rules are enforced.

⁵ Katie Hobbins, *EtO Proposal Could Cost Companies More Than the \$220 Million Estimated*, MEDICAL DEVICE & DIAGNOSTIC INDUS. (Jun. 14, 2023).

⁶ Katie Hobbins, *EtO Proposal Could Cost Companies More Than the \$220 Million Estimated*, MEDICAL DEVICE & DIAGNOSTIC INDUS. (Jun. 14, 2023).

⁷ Standards of Performance for New, Reconstructed, and Modified Sources and Emissions, Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, 40 CFR § 60 (Dec. 2, 2023).

⁸ Jennifer Hijazi, *Popular EPA Methane Rule Comes with Cost, Monitoring Concerns*, BLOOMBERG LAW (Dec. 8, 2023); *EPA Finalizes Methane Rule*, NAT’L ASSOC. OF MANUFACTURES (Dec. 6, 2023).

⁹ News Release, Am, Petroleum Inst., API Calls on Congress to Repeal IRA’s Methane Fee (Jan. 12, 2023).

¹⁰ *Oil, Natural Gas, Our Economy and Small Business*, SMALL BUS. & ENTREPRENEURSHIP COUNCIL (May 22, 2023)

¹¹ PFAS National Primary Drinking Water Regulation Rulemaking, 88 Fed. Reg. 18638 (Mar. 29, 2023).

¹² *EPA Proposes PFAS Standards*, NAT’L ASSOC. OF MANUFACTURERS (Mar. 16, 2023).

¹³ *Id.*

¹⁴ Pat Rizzuto, *PFAS Rule to Cost Many Millions More, EPA Analysis Finds*, BLOOMBERG LAW (Nov. 23, 2023).

Reconsideration of the National Ambient Air Quality Standards for Particulate Matter (PM_{2.5})

This rule would require the enactment of significant controls to mitigate the emission of particulate matter 2.5 micrometers or smaller—which is emitted when almost anything is burned, destroyed, or crushed.¹⁵ This new rule will most heavily impact industries that must heat or burn raw materials and mining operations.¹⁶ This will increase the regulatory burden for companies of all sizes, make the permitting process more difficult, and lead to increased outsourcing.¹⁷ Small businesses would be faced with significant and costly operations adjustments, with the rule’s projected costs between \$162 and \$197 billion for all companies to comply with. It is also estimated that this rule could put nearly one million jobs at risk.¹⁸

Clean Power Plant Rule

This proposed rule would require power plants to implement carbon capture technology and/or integrate hydrogen into their fuel cycle; plants that do not implement these technologies and meet emissions goals could be shut down.¹⁹ The process of integrating carbon capture or hydrogen technologies would be costly for manufacturers—estimates range from \$10 to \$14 billion across the industry.²⁰ While the cost of this rule is substantial, it also relies on technology that is either unproven or has not been deployed on a large scale.²¹ Implementing cutting edge, expensive technologies increases cost for small businesses. This would also have a knock-on effect of increasing energy costs for consumers.²² Small businesses are reliant on the electric grid and this rule would increase the cost of energy, while also potentially creating energy scarcity in more rural communities. Additionally, such a large change could amount to a “generational shift” in technology, which the Supreme Court has previously ruled as an impermissible way to implement best practices in emission reduction standards.²³

It is vital for agencies to examine small business interests which make up 99.9 percent of all businesses in the U.S. America’s small businesses deserve to have their voices heard and

¹⁵ Reconsideration of the National Ambient Air Quality Standards for Particulate Matter, 88 Fed. Reg. 5558 (Jan. 27, 2023)(to be codified at 40 CFR §§ 50, 53, 58)

¹⁶ *NAM pushed back on harmful new air regulations*, Nat’l Assoc. of Manufacturers (Feb. 9, 2023).

¹⁷ *Id.*

¹⁸ Letter from Shelly Moore Capito, et al., Ranking Member, Sen. Comm. on Env’t and Pub. Works, to Michael Reagan, et al., Administrator, U.S. Env’t Prot. Agency (Dec. 18, 2023); *U.S. Air Quality Standards and the Manufacturing Sector*, NAT’L ASSOC. OF MANUFACTURERS (Apr. 2023).

¹⁹ 88 Fed. Reg. 33240 (May 23, 2023)(to be codified at 40 CFR § 60).

²⁰ *Id.*, See also *NAM Fights Restrictive Power Plant Rule*, NAT’L ASSOC. OF MANUFACTURERS (Nov. 29, 2023).

²¹ Erin Kelly, *Thousands of Co-op Members Voice Opposition to EPA’s Power Plant Rule*, NRECA (Aug. 22, 2023); *Id.*

²² *The Biden Administration’s Executive Overreach and Its Effect on American Energy Independence: Hearing Before H.Comm. on Natural Resources Subcomm. on Oversight and Investigations*, 118th Cong., 3 (May 11, 2023) (statement of Diana Furchtgott-Roth, Dir., Center on Energy, Climate, & Env’t, & The Herbert and Joyce Morgan Fellow in Energy and Env’t Policy, The Heritage Found.).

²³ Letter from Shelly Moore Capito, et al., Ranking Member, Sen. Comm. on Env’t and Pub. Works, to Michael Reagan, et al., Administrator, U.S. Env’t Prot. Agency (Dec. 18, 2023); See also *West Virginia v. EPA*, 142 S. Ct. 2587 (2022).

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considered. We therefore request the following documents and information on each of these rules as soon as possible but no later than February 28, 2024:

1. Provide the estimated number of small businesses that will be impacted by each of these rules.
2. Provide the estimated additional compliance costs on small businesses that are associated with each of these new rules.
3. Provide location where small businesses can go to examine your analysis of the impact these rules will have on their operations.
4. Provide a list of all alternatives that have been considered to lessen the impact on small businesses for each of these rules.

To schedule the briefing or ask any related follow-up questions, please contact the Committee on Small Business Majority Staff at (202) 225-5821. The Committee on Small Business has broad authority to investigate “problems of all types of small business” under House Rule X. Thank you in advance for your cooperation with this inquiry.

In God We Trust,

A handwritten signature in black ink, appearing to read "Roger Williams". The signature is fluid and cursive, with a large initial "R" and "W".

Roger Williams
Chairman
Committee on Small Business

cc: The Honorable Nydia M. Velasquez, Ranking Member
Committee on Small Business