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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

GABRIELLE D'ADAMO SINGER, STAFF DIRECTOR
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March 22, 2019

The Honorable Mick Mulvaney
Director
Office of Management and Budget
Executive Office of the President
725 17th Street NW
Washington, DC 20503

Dear Director Mulvaney,

We write regarding guidelines proposed by the Environmental Protection Agency (EPA) to address groundwater cleanup for perfluorooctanoic acid (PFOA) and perfluorooctanoic sulfonate (PFOS), which have been under review at the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) since August 31, 2018.¹ These guidelines, part of the EPA's broader action plan for addressing a class of chemicals known as PFAS,² have been under review for over six months—nearly three months longer than the review time required by Executive Order 12,866.³

Although we appreciate that interagency review serves to ensure “that decisions taken or planned by one agency do not conflict with the policies or actions taken or planned by another agency,”⁴ a timely review is essential here. According to the EPA, these guidelines will support federal entities making site-specific cleanup decisions by, for example, directing how an agency identifies and remediates PFOA/PFOS-contaminated water sources.⁵ However, a recent article suggested that the delay in finalizing review of these guidelines is due to disagreement between the EPA and other agencies—specifically, the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Small Business Administration (SBA)—about EPA's proposed groundwater contamination standard.⁶ Given the significance of this issue, it is essential that OIRA resolve any remaining interagency conflicts and conclude its review as soon as possible.

¹ Office of Management and Budget, Office of Information and Regulatory Affairs, *Reginfo.gov*, <https://www.reginfo.gov/public/do/eoDetails?rrid=128444>

² EPA's PER- AND POLYFLUOROALKYL SUBSTANCES (PFAS) ACTION PLAN (Feb. 2019), https://www.epa.gov/sites/production/files/2019-02/documents/pfas_action_plan_021319_508compliant_1.pdf

³ Exec. Order No. 12,866 § 6(b)(2), 58 Fed. Reg. 190 (Sept. 30, 1993).

⁴ *Id.* § 2(b).

⁵ *Supra*, note 2, at 21.

⁶ Eric Lipton and Julie Turkewitz, *Pentagon Pushes for Weaker Standards on Chemicals Contaminating Drinking Water*, N. Y. Times (March 14, 2019), <https://www.nytimes.com/2019/03/14/us/politics/chemical-standards-water-epa-pentagon.html>

In order to better understand the role of DOD, NASA, SBA, and other agencies in the interagency review process for EPA's groundwater cleanup guidelines, as well as to better understand the nature of OIRA's continued review, we respectfully request that you provide the following information:

1. Which agency identified EPA's proposed guidelines as a "significant regulatory action" such that review by OIRA was appropriate under Executive Order 12,866? Additionally, please provide all information about that determination, including when that determination was made, the person/s who made that determination, and the substance of the determination?
2. Please provide all substantive documents and communications exchanged between OMB and DOD, EPA, SBA, or NASA, related to the EO 12,866 review of the proposed groundwater cleanup standards for PFOA and PFOS.
3. Has there been a request to extend the OMB review deadline from EPA? If so, who made this request and when?
4. Why is the guidance still being reviewed at OIRA beyond the 90 (or 120) day period allowed under EO 12,866? Please provide OMB's justification and rationale for continuing to review the guidance beyond the 120 days, including all documents and communication associated with this decision.
5. When will OMB release the draft guidance back to EPA?
6. What steps have OIRA/OMB staff taken to resolve any interagency conflicts with respect to the draft guidance? Do any interagency conflicts remain unresolved? If any conflicts are unresolved, has OIRA/OMB exercised the conflict resolution procedures outlined in Section 7 of Executive Order 12,866?

Please provide this material as soon as possible but no later than 5:00 p.m. on April 4, 2019.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate "the efficiency, economy, and effectiveness of all agencies and departments of the Government."⁷ Additionally, Senate Resolution 70 (116th Congress) authorizes the Committee to investigate "the efficiency and economy of operations of all branches of the Government."⁸

Thank you for your prompt attention to this request. If you have any questions about this request, please have your staff contact Satya Thallam of Chairman Johnson's staff at (202) 224-4751 and Yogin Kothari of Ranking Member Peters' at (202)-224-2627. Thank you for your attention to this matter.

⁷ S. Rule XXV(k)(2)(B); *see also* S. Res. 445, 108th Cong. (2004).

⁸ S. Res. 70, 116th Cong. § 12(e)(1)(A) (2019) (enacted).

Sincerely,



Ron Johnson
Chairman



Gary C. Peters
Ranking Member

cc: Paul Ray (OIRA), DOD, NASA, SBA, EPA, HHS