MICHELLE LUJAN GRISHAM
GOVERNOR

JAMES C. KENNEY
CABINET SECRETARY

December 23, 2025

The Honorable Lee Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave NW
William Jefferson Clinton Building North/South Room: 1448K
Washington, D.C. 20460

Re: Docket ID no. EPA–HQ–OPPT–2020–0549

Dear Administrator Zeldin,

The New Mexico Environment Department (NMED), the New Mexico Department of Health (NMDOH), and the New Mexico Department of Game and Fish (NMDGF) appreciate the opportunity to provide comments on the U.S. Environmental Protection Agency's proposed amendments to the Toxic Substances Control Act (TSCA) regulation for reporting and recordkeeping requirements for perfluoroalkyl and polyfluoroalkyl substances (PFAS), as published in the Federal Register, Docket ID no. EPA–HQ–OPPT–2020–0549 (Vol. 90, No. 217, Thursday, November 13, 2025).

On April 8, 2025, Governor Michelle Lujan Grisham signed into state law the PFAS Protection Act with strong bipartisan support from the New Mexico Legislature (see 74-15-1 to 74-15-7 NMSA 1978). Under state law, New Mexico is reducing exposure to harmful PFAS by phasing out and prohibiting consumer products containing intentionally added PFAS. Further, Governor Lujan Grisham signed into state law amendments to the New Mexico Hazardous Waste Act altering the definition of hazardous waste to include discarded fire-fighting foams containing PFAS (see 74-4-1 to 74-4-14 NMSA 1978). This is the rule of law in New Mexico, and I ask that you commit to practicing cooperative federalism and honor states' rights by maintaining PFAS reporting requirements for manufacturers and importers as originally promulgated in October 2023 and as explained in our attached comments.

Thank you for listening to state leaders who know how to solve problems locally and I ask for your support by incorporating our comments into the final rule.

Sincerely,

James C. Kenney
Cabinet Secretary

Cc: Courtney Kerster, Senior Advisor, Office of Governor Michelle Lujan Grisham
Gina DeBlassie, Secretary, New Mexico Department of Health
Michael B. Sloane, Director, New Mexico Department of Game and Fish
Megan Nelson, U.S. EPA Office of Pollution Prevention and Toxics

New Mexico Environment Department, New Mexico Department of Health, and New Mexico Department of Game and Fish Comments to the Environmental Protection Agency's (EPA's) Proposed Changes

Background: The U.S. Environmental Protection Agency (EPA or Agency) proposed amendments to the Toxic Substances Control Act (TSCA) regulation for reporting and recordkeeping requirements for perfluoroalkyl and polyfluoroalkyl substances (PFAS). As promulgated in October 2023, the regulation requires manufacturers (including importers) of PFAS in any year between 2011–2022 to report certain data to EPA related to exposure and environmental and health effects. EPA is proposing to incorporate certain exemptions and other modifications to the scope of the reporting requirements. According to EPA's proposal, these exemptions would maintain important reporting on PFAS, consistent with statutory requirements, while exempting reporting on activities about which manufacturers are least likely to know or reasonably ascertain.

Regarding the specific details, EPA's proposal is to amend the onetime PFAS reporting and recordkeeping regulation finalized on October 11, 2023 (88 FR 70516) to incorporate the following exemptions to the scope of reportable manufacturing activities: a *de minimis* exemption of 0.1%; imported articles; byproducts; impurities; research and development (R&D); and non-isolated intermediates. While EPA is proposing no other amendments to the scope of the regulation, including to the period for which reporting is required, the Agency is also seeking comments on certain other aspects of the regulation.

Comment 1: EPA's proposal does not adequately consider federalism implications pursuant to Executive Order (EO) 13132.

EPA incorrectly concluded that this action does not have federalism implications as specified in Executive Order 13132 (see 64 FR 43255, August 10, 1999). EPA stated this action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

States are leaders in PFAS responses across the United States. While the EPA and other federal agencies have taken notable actions on PFAS in the last decade, states play a critical role in implementing and enforcing federal rules and regulations, and have enacted their own legislation, policies, and directives to address PFAS across a wide range of programs.

Implementation of New Mexico's state law and regulations depends on manufacturers and importers knowing—and disclosing—the PFAS content of their products (see PFAS Protection Act, 74-15-1 to 74-15-7 NMSA 1978). New Mexico is one of at least sixteen states that have enacted legislation related to the use of PFAS in products, notably consumer products, cosmetics, or food packaging.

While states are moving towards greater transparency in law and rule, EPA is retreating from such requirements with this proposed rule. New Mexico is concerned with EPA's lack of engagement with states related to the following aspects of EPA's proposal: 1) the exemption for imported articles, which eliminates reporting for PFAS contained within imported finished products; 2) the 0.1% concentration threshold, which exempts reporting if PFAS is present below that level; and 3) the exemption for Research and Development (R&D), which excludes PFAS synthesized for experimental purposes. EPA's proposed exemptions could create conflicts between TSCA and state hazardous waste cleanup laws, rules, and permits at the expense of manufacturers.

Throughout New Mexico's comments are other examples where EPA incorrectly concluded there were no federalism issues related to this proposal. EPA's Designated Federalism Official cannot issue a certification stating EPA has met EO 12866 until the federalism issues with states are addressed and cured.

Comment 2: EPA's proposal undermines Cooperative Federalism.

The Environmental Council of the States (ECOS) passed resolution 16-3: On Implementing the Toxic Substances Control Act Reforms on September 5, 2025.[1] In this resolution, ECOS called on EPA to do the following: (1) work with states in key areas of TSCA implementation including chemicals prioritization and risk methodologies; (2) limit its preemption of state authority by granting waivers as appropriate; (3) work with states to share confidential business information; and (4) use TSCA Section 8(a)(7) authority to require reporting of new use of PFAS chemicals.

Related to PFAS, the resolution urged EPA to use TSCA under the provisions of Section 8(a)(7) to require reporting of the uses of PFAS chemicals as soon as possible and ensure this information is available to state regulators and can be used by the states. Further, the resolution urged EPA to use the authority under TSCA to thoroughly evaluate new chemicals to protect public health and the environment.

EPA's proposed rule ignores the bipartisan voices of states reflected in this ECOS resolution. EPA has not engaged with elected officials from state, local, tribal, and territorial governments (SLTG) under the Unfunded Mandates Reform Act (UMRA) and through advisory bodies like the Local Government Advisory Committee (LGAC) to achieve "meaningful involvement."

As a result, EPA should extend the comment period on the proposed rule and meaningfully engage in cooperative federalism with SLTG through docketed meetings prior to finalizing the proposed rule.

Comment 3: EPA's proposal undermines domestic manufacturing

The proposed rule's incorporation of exemptions in the scope of reportable manufacturing activities was taken without consultation of domestic manufacturers, including state chambers of commerce, who will be unfairly targeted by this exemption. Exempting imported articles from TSCA reporting unfairly disadvantages the domestic manufacturing of products and invites further importation of products from foreign manufacturers that may be harmful to public health and the environment.

Therefore, the EPA should convene domestic manufacturers and state chambers of commerce to discuss the implications of this proposed rule on local economies, especially in states that share international borders or host ports/terminals.

Comment 4: EPA's proposal undermines the Congressional intent of TSCA.

As Congress intended, TSCA is to provide an essential layer of protection for Americans through manufacturer disclosure of chemicals and their risks based on the weight of evidence from the peer-reviewed scientific literature. Congress added specific PFAS reporting requirements to TSCA by inserting Section 8(a)(7) into TSCA via the National Defense Authorization Act for Fiscal Year 2020 (NDAA 2020), which was enacted in December 2019, directing the EPA to create a rule for PFAS data collection on chemicals manufactured since 2011.

[1] See https://www.ecos.org/wp-content/uploads/2025/09/Resolution_16-3_TSCA_Reform_Implementation-2025.pdf

EPA's proposed rule attempts to administratively create exemptions in clear opposition to the Congressional intent of TSCA and its current regulations. For example, EPA's import exemption would effectively reduce the number of firms required/expected to report PFAS by approximately 98%.[2]

Further, these wholesale exemptions for any product containing less than 0.1% PFAS – irrespective of the type of PFAS – would lead many manufacturers to no longer report any PFAS constituents. This is especially dangerous to consumers who will unknowingly expose their family members and themselves to PFAS through cosmetics, cookware, textiles, furniture, etc. For example, most cosmetics with intentionally added PFAS have less than 0.1% PFAS by weight. In another example, heavy cast iron skillet coated with a non-stick surface could easily contain less than 0.1% PFAS by weight. Finally, PFAS in treated carpets and rugs can range from 300-4,000 ppm, meaning a significant portion of these household goods would be exempt yet contain significant amounts of PFAS that are neither safe nor *de minimis*. Further, EPA has not adequately contemplated the cumulative impacts of multiple PFAS compounds applied to a product or the impacts to human health and the environment of when such products containing one or more PFAS are discarded.

As a next step, EPA should revise the proposed rule to better align the proposal with the text and intent of TSCA by removing the wholesale exemptions, like the arbitrary exemption for any product containing less than 0.1% PFAS. Instead, EPA should use the best available, science-based approaches for the regulation of chemical substances consistent with the intent of TSCA and Congress.

Comment 5: New Mexico supports EPA's plans to finalize two RCRA rules related to PFAS in April 2026.

On April 28, 2025, EPA Administrator Zeldin outlined the agency's plans to address PFAS. Included in the Administrator's plan was a commitment "…to better use RCRA authorities to address releases from manufacturing operations of both producers and users of PFAS." Consistent with the Administrator's focus, EPA's regulatory agenda states the Agency will finalize two RCRA regulations related to PFAS in April of 2026. These rules include the "Listing of Specific PFAS as Hazardous Constituents" (RIN: 2050-AH26) and the "Definition of Hazardous Waste Applicable to Corrective Action for Releases From Solid Waste Management Units" (RIN: 2050-AH27).

Regarding the "Listing of Specific PFAS as Hazardous Constituents" proposed rule (89 FR 8606), once final the rule would amend the regulations under the RCRA by adding nine specific PFAS, their salts, and their structural isomers, to its list of hazardous constituents in 40 CFR part 261 Appendix VIII. When corrective action requirements are imposed at a RCRA treatment, storage and disposal facility, these PFAS would be among the hazardous constituents expressly identified for consideration in assessments and, when necessary, further investigation and cleanup of these facilities.

Regarding the "Definition of Hazardous Waste Applicable to Corrective Action for Releases From Solid Waste Management Units" proposed rule (89 FR 8598), once final the rule would modify the regulations at 40 CFR part 260, 261 and 270 to clarify that the definition of hazardous waste found in RCRA section 1004(5) is applicable to corrective action for releases from solid waste management units. The proposed rule would more clearly implement EPA's longstanding interpretation of its authority under RCRA section 3004(u) and (v).

[2] See [EPA] Environmental Protection Agency. 2025. Perfluoroalkyl and polyfluoroalkyl substances (PFAS) data reporting and recordkeeping under the Toxic Substances Control Act (TSCA): revision to regulation. Federal Register 90(217):50923-50937. <https://www.govinfo.gov/content/pkg/FR-2025-11-13/pdf/2025-19882.pdf>.

Together, these two RCRA regulations will create certainty for both producers and users of PFAS while empowering states with the necessary regulatory and financial tools to address PFAS contamination. Importantly, these rules will help drive manufacturers – both domestically and internationally – to reduce PFAS use where non-essential or find alternatives to PFAS for their products. EPA can further its TSCA goals simply by finalizing these RCRA rules.

New Mexico appreciates the Administrator's and EPA's commitment to address PFAS under RCRA regulatory authority in the Spring of 2026.

Comment 6: EPA's proposed rule ignores the Agency's own science and regulations related to PFOA and PFOS.

On May 14, 2025, EPA announced its plans to keep the Safe Drinking Water Act (SDWA) maximum contaminant levels for PFOA and PFOS. Administrator Zeldin was quoted as follows: "The work to protect Americans from PFAS in drinking water started under the first Trump Administration and will continue under my leadership. We are on a path to uphold the agency's nationwide standards to protect Americans from PFOA and PFOS in their water. At the same time, we will work to provide common-sense flexibility in the form of additional time for compliance. This will support water systems across the country, including small systems in rural communities, as they work to address these contaminants. EPA will also continue to use its regulatory and enforcement tools to hold polluters accountable."

EPA's commitment to protecting communities from consuming drinking water containing 4.0 part per trillion levels of PFAS stands in stark contrast to exempting manufacturers from reporting *de minimis* levels of PFAS at 0.1% (1,000 part per million) in their products. EPA is essentially opening the door to a multitude of PFAS-containing products at concentrations that could devastate municipal drinking water treatment plants, municipal wastewater treatment plants, and municipal landfills – costing communities millions of dollars in operational and remedial costs. This is happening against the backdrop of the President's Budget Request proposing significant cuts to infrastructure funding programs known as the Clean Water Act and Safe Drinking Water Act revolving loan programs. The proposed rule shifts the manufacturer's reporting costs to municipal governments as infrastructure costs.

Where EPA has determined the concentration of PFAS – either individually or collectively through a hazard index – poses a risk to human health and the environment through a regulation, EPA should revise its proposed rule to require reporting for those products. Further, EPA must revise its own economic analysis to account for the federalism implications for state and local governments in light of the increased infrastructure burden and decrease in the President's budget for such infrastructure.

Comment 7: EPA's *de minimis* exemption is dangerous, imprecise, and not grounded in science; it fails to recognize state-led nuanced regulatory pathways to protect human health and the environment.

With respect to the proposed *de minimis* exemption, the EPA appears to favor a relaxed regulatory regime for manufacturers over consumer protection from adverse exposure. While EPA must consider economic impacts related to the proposal in the context of the Agency's mission, it must do so in a manner that is protective of public health and the environment.

First, to address the contradictory language in the discussion of the proposed rule, the *de minimis* exemption should not apply to PFAS where there is a scientific consensus establishing links between

exposure and adverse health impacts. The *de minimis* blanket exemption as proposed is problematic because there is scientific consensus that certain types of PFAS— perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS), in particular—are more dangerous to human health and the environment than others. Creating a uniform exemption that does not consider differential impacts of certain types of PFAS ignores the best available science and threatens human health and the environment. Further, EPA's proposal may disincentivize further scientific investment by manufacturers in PFAS alternatives or their health impacts.

Second, this proposal also makes municipal governments more responsible for PFAS in their drinking water than manufacturers who add PFAS to their products. As proposed, the *de minimis* exemption (0.1% or 1000 ppm) would create conditions for widespread underreporting of PFAS use, as many products contain concentrations of PFAS lower than the exemption. Furthermore, there is an order of magnitude incongruity between proposed EPA drinking water standard concentrations for PFOA and PFOS and the *de minimis* reporting exemption concentration. Put another way, proposed PFOA and PFOS maximum contaminant levels (MCLS) in drinking water are 4 ppt whereas the *de minimis* exemption is 1,000,000,000 ppt. Because PFAS can enter aquatic systems from consumer products, this concentration disparity will create undue burden on municipal governments charged with protecting clean drinking water.

EPA and the states should coordinate to develop a risk-based standard, based on EPA Regional Screening Levels (RSLs). Thorough analysis by EPA in collaboration with state regulators is crucial for evaluating whether the *de minimis* exemption of 0.1% is an adequate threshold. From a drinking water perspective, the primary question that needs to be answered is whether this exemption would cause a "downstream" burden where manufacturers are located near source water resources – and to what extent if so. The exemption for byproducts presents a similar concern. In the absence of a stricter reporting requirement, New Mexico is concerned that existing federal (e.g., RCRA or Clean Water Act) and/or state regulations may not provide sufficient safeguards against the potential contamination of drinking water sources by manufacturers. Passive receivers – drinking and wastewater utilities, in this case – should not have to address PFAS contamination that could have been predicted and managed under stricter reporting requirements.

Third, New Mexico recognizes the importance of a precise and nuanced approach to regulate PFAS in a manner that chases the risk of PFAS exposure to protect human health and the environment. For example, in New Mexico's PFAS Protection Act, the law enumerates 16 exemptions from the consumer products phaseout, a practical acknowledgement that certain classes of products containing intentionally added PFAS may be essential for human health. Instead of providing blanket exemptions as this proposal intends, the EPA should pursue constructive ways in which PFAS regulation can provide practical pathways to protect the highest number of people. In addition to exempted lower risk consumer products, states, like New Mexico, are creating legal pathways for "currently unavoidable uses" of intentionally added PFAS to consumer products, and this proposal undermines the more nuanced approaches by states to wholesale exempt certain products. There is no scientific basis for the proposed *de minimis* exemption and the EPA should remove the *de minimis* exemption from the proposal because of its contradictory language; the additional burden municipal governments will face; and because the blanket *de minimis* exemption undermines state legislation crafted in the spirit of chasing the risk to minimize PFAS exposure.