July 20, 2026

The Honorable Lee Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Submitted electronically to: https://www.regulations.gov/

RE: Comments of the New Mexico Environment Department on the Environmental Protection Agency's Proposed Extension of the Compliance Deadline for the PFOA and PFOS Maximum Contaminant Levels

Dear Administrator Zeldin,

The New Mexico Environment Department (NMED) appreciates the opportunity to submit comments on the Environmental Protection Agency's (EPA) Notice of Proposed Rulemaking to extend the compliance deadline for the Maximum Contaminant Levels (MCL) for PFOA and PFOS (Docket ID No. EPA–HQ– OW–2025–1742).

Implementation challenges and resource constraints facing public water systems nationwide are not sufficient reasons to risk the public health of the families consuming drinking water contaminated with "forever chemicals." In fact, the continued retreat from a meaningful regulatory framework to address PFAS contamination in drinking water only exacerbates the problems facing the nation's drinking water systems while gambling with the health of current and future generations of Americans. When taking this action in context with other EPA proposals, including reporting exemptions that mask dangerous amounts of PFAS entering the economy through product importation and manufacturing (Docket ID no. EPA–HQ–OPPT–2020–0549) and abruptly retreating from regulating PFAS as hazardous wastes (EPA-HQ-OLEM-2023-0085) – the EPA can no longer profess it is pursuing "polluter pays" models. EPA's new approach will saddle state and local governments—and their taxpayers—with the costs of PFAS contamination. While PFAS contamination of the past is broadly attributable to the chemical industry, product manufacturers, and the U.S. Department of Defense, future PFAS contamination will be attributed to EPA's lack of action.

In support of New Mexico's 1,100 public and private drinking water systems serving 1.9 million New Mexicans, NMED urges the EPA to reverse course on its retreat from meaningful PFAS regulation. NMED offers technical comments to strengthen the proposed interim control measures and cure fundamental flaws in the proposed approach.

I ask for your consideration of our comments and their incorporation into the final rule on behalf of those communities that continue to wait for national and enforceable PFAS drinking water standards.

Sincerely,

James C. Kenney
Cabinet Secretary

Cc: Courtney Kerster, Senior Advisor, Office of Governor Michelle Lujan Grisham

New Mexico Environment Department Comments on EPA's Proposed Extension of the Compliance Deadline for the PFOA and PFOS Maximum Contaminant Levels

Background: In this proposed rulemaking, published on May 20, 2026, the U.S. Environmental Protection Agency (EPA) proposes a federal exemption under the Safe Drinking Water Act (SDWA) to extend the compliance deadlines for Maximum Contaminant Levels (MCLs) of perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) from April 26, 2029, to April 26, 2031, for public water systems that submit a request. The extension is intended to provide greater regulatory flexibility and address compounding implementation challenges, including capital improvement project timelines, workforce shortage of certified operators, and financial limitations. Under this proposed framework, eligible systems facing compelling factors can individually request the two-year federal exemption before states obtain primary enforcement authority. To ensure the delay does not pose an unreasonable risk to health, systems with PFOA or PFOS sampling results at or above 12 parts per trillion (ppt) must implement at least two interim control measures—such as distributing water filtration pitchers or alternative water supplies—during the exemption period. Concurrently, the EPA is proposing to separate out and rescind regulations for several other specific PFAS contaminants and their associated Hazard Index. The EPA held a virtual public hearing on July 7, 2026, and is requesting public comments on the proposal by July 20, 2026.

Comment 1. EPA incorrectly concluded that this action does not have federalism implications.

In the preamble to this proposed rulemaking, the EPA states: "This action does not have federalism implications. It 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."

This boilerplate determination fundamentally mischaracterizes both the structural mechanism of the proposed rule and its downstream operational impacts on state regulatory authorities. Although the EPA sets national standards under the Safe Drinking Water Act (SDWA), the statutory framework relies on cooperative federalism. In practice, 49 states, 5 territories, and the Navajo Nation hold primary enforcement authority (referred to as "primacy") and are responsible for implementing and enforcing National Primary Drinking Water Regulations (NPDWR). By proposing a centralized federal "exemption-by-rule" framework that requires individual public water systems to submit compliance extension requests directly to EPA, the agency is displacing the administrative relationship between the federal government, state primacy agencies, and local public water systems.

Furthermore, the proposed action imposes a "substantial direct effect" on states by creating a bifurcated regulatory landscape that state agencies must navigate and oversee. Specifically, the EPA's proposal creates several direct administrative and operational burdens on states:

First, it creates bifurcated compliance oversight. States will be forced to track and manage two distinct tiers of public water systems within their borders: those adhering to the original April 26, 2029, compliance deadline, and those operating under a federally granted extension until April 26, 2031.

Second, it creates enforcement mandates of interim control measures. For systems with PFOA/PFOS sampling results at or above 12 ppt, the EPA mandates the implementation of at least two interim control measures (e.g., distributing water filtration pitchers or alternative water supplies). State primacy agencies will ultimately bear the administrative burden of technical assistance, compliance monitoring,

and enforcing the compliance of these localized, non-structural interim controls.

Third, it creates regulatory inconsistency from rescissions. Concurrently proposing to rescind regulations for the four "Index PFAS" contaminants and their associated Hazard Index alter the regulatory floor. States that have already begun the process of adopting the 2024 standards into state law must now expend additional legislative and administrative resources, which are often limited at the outset, to decouple their state regulations from the rescinded federal rules.

The proposed rule fundamentally alters the procedural interaction between the federal government and state primacy programs. Because it creates substantial unfunded mandates for state agencies, it carries clear federalism implications.

NMED requests EPA withdraw its negative determination under Executive Order 13132 (EO 13132). Instead, EPA should initiate a formal consultation process with state and local officials early in the rulemaking process, as required by Section 6 of EO 13132, and prepare a comprehensive Federalism Summary Impact Statement before attempting to finalize this compliance extension and rescission framework.

Comment 2. Rejection of the 12 ppt "Unreasonable Risk to Health" benchmark as insufficiently protective of public health.

NMED strongly objects to the EPA's arbitrary and capricious proposed use of 12 parts per trillion (ppt) for PFOA and PFOS as the "Unreasonable Risk to Health" (URTH) concentration benchmark for compliance deadline exemptions. While NMED acknowledges that an extended timeline allows public water systems crucial time to secure infrastructure resources, the proposed 12 ppt threshold prolongs communities' exposure to toxic compounds. This benchmark directly contradicts the EPA's own established science; the agency previously issued non-enforceable Lifetime Drinking Water Health Advisories of 0.004 ppt for PFOA and 0.02 ppt for PFOS (87 FR 36848). These near-zero values demonstrate that these contaminants pose significant chronic health risks at any detectable concentration. Setting an exemption threshold at 12 ppt—three times higher than the finalized MCLs of 4.0 ppt—is an unacceptable criterion that fails to safeguard populations from prolonged, cumulative exposure. NMED argues that a contaminant concentration criterion should not be used to justify delayed compliance when dealing with substances of such extreme toxicity.

Comment 3. Adoption of the 12 ppt "Unreasonable Risk to Health" benchmark is an arbitrary and capricious standard – not backed by EPA's own science.

Under SDWA § 1416, the EPA has the authority to grant exemptions or compliance extensions to public water systems, but only if the extension will not result in an "unreasonable risk to health." In the prepublication text of the proposed rule, the EPA explicitly proposed that while any exposure above the 4.0 ppt MCL carries some health risk, that risk does not cross the threshold into being "unreasonable" over a temporary two-year period if concentrations remain below 12 ppt for both PFOA and PFOS. EPA provided no new toxicological studies or data to support this claim. In fact, the EPA failed to rely on its own data regarding PFOA and PFOS toxicology established during the 2024 National Primary Drinking Water Regulation (see 89 FR 32532). That data set the MCL goal for both compounds at zero (40 CFR § 141.50(a)) based on clear evidence that they are likely human carcinogens with no safe level of exposure. Further, EPA's justification completely ignores its own peer-reviewed data on non-cancer endpoints—such as immune suppression, decreased vaccine response in children, and developmental

toxicity as outlined in the EPA's 2024 *Health Effects Support Documents*—which demonstrate that even brief, short-term exposure windows can cause irreversible harm. By failing to reconcile the 12 ppt threshold with its own published pharmacokinetic and bioaccumulation kinetics showing that these chemicals have a biological half-life of 3 to 5 years in human tissue, the EPA has decoupled its own scientific record from the proposed rule.

Rather than look at its own scientific record under SDWA § 1461 to determine if an extension would result in unreasonable risk to the health, EPA looked to a small number of state standards to justify its action. However, EPA relied on older state standards which were often set based on the best available technology at the time (circa 2020–2022). The EPA cites these state benchmarks to justify a higher interim limit of 12 ppt while ignoring that those same states more recently acknowledged that 12 ppt is insufficient for long-term health protection. In general, states are often more consistent with EPA's own scientific record.

EPA's reliance on older state standards from a very small number of states does not lend itself to a national model because it fundamentally ignores the geographic, geological, and demographic diversity of the country's public water infrastructure. By extracting a generic baseline from a handful of early-adopter, coastal, or industrial states that possessed fiscal resources and specialized laboratory capacity to pioneer early PFAS limits, EPA has created an unrepresentative standard. This regulatory framework completely discounts the technical realities of small, rural, and tribal water systems across different regions, which face vastly different baselines for source water, water chemistry, and infrastructure constraints. Developing a sweeping national threshold for an "unreasonable risk to health" exemption based on an arbitrary subset of local state data rather than a comprehensive, nationwide impact analysis fails to provide a scientifically defensible or legally stable model for the entire country.
To cure these inappropriate conclusions under SDWA § 1461, the EPA should utilize its own scientific record in concert by conducting a nationally representative technical and economic analysis before allowing greater exposure of toxic chemicals to people across the nation for two more years.

Comment 4. EPA failed to use "Best Available Science" as required by the SDWA and created an arbitrary "National Model."

Executive Order 13563 mandates that federal regulations must be based on the "best available, peer-reviewed science and reasonably obtainable economic information." By substituting a historical mathematical average of older state rules from a tiny subset of early-adopting jurisdictions while ignoring EPA's own scientific record for actual empirical toxicological data, EPA failed to provide a rational scientific basis for the 12 ppt dividing line.

In the regulatory impact analysis submitted to OMB, EPA essentially concluded that water under 12 ppt poses no "unreasonable risk" for two years. However, OMB standards dictate that "best available science" cannot be applied selectively. The EPA's active scientific record already states that the only safe level (MCL goal) is zero due to linear carcinogenicity and rapid childhood immune suppression. EPA's invention of a 12 ppt ceiling is a decision that directly conflicts with the SDWA Health Risk Reduction and Cost Analysis (HRRCA) OMB's data integrity mandates. SDWA requires the EPA to design regulations in the most cost-effective manner, accounting for the diverse nature of the nation's public water infrastructure and ensure that the chosen regulatory approach "maximizes net benefits" to society.

EPA constructed the 12 ppt interim trigger based on data from a very small number of highly industrialized, high-resource states (like New Jersey, New York, and Michigan) that had the unique

laboratory capacities, budgets, and specific baseline water chemistry to implement early PFAS limits. In regulatory impact analysis submitted to OMB, EPA treated this small data pool as an acceptable proxy for a "national model." By doing so, EPA failed to perform a representative national impact analysis. It completely ignored how a rigid 12 ppt trigger for mandatory, immediate interim physical mitigations (like distributing thousands of pitcher filters) would disproportionately impact the administrative and financial capacity of small, rural, and tribal water systems. New Mexico's utilities and populations are not reflected in the state utilities and populations that EPA relied upon to calculate the average. By failing to evaluate nationwide technical and demographic disparities and substituting legacy local policy for current federal science, EPA's conclusions in the Federal Register run afoul of the administrative rigor required by the OMB for major rule adoption. Without curing these glaring conflicts with federal requirements, EPA's promulgation of a final rule may result in legal challenges under the Administrative Procedures Act.

Comment 5: The Department of Defense cannot set EPA standards.

On September 3, 2024, the Office of the Assistant Secretary of Defense for Energy, Installations, and Environment issued an implementation memorandum establishing a new "prioritized action level" for addressing PFAS contamination in private wells and public water systems impacted by military operations. This internal policy established an interim action threshold of 12 ppt for PFOA and PFOS—calculated strictly as an arbitrary three-times (3x) multiplier of the EPA's 4.0 ppt MCL. As documented in public defense cleanup proceedings, DOD representatives have openly conceded that this 12 ppt value is a "policy value" authorized for resource allocation rather than a health- or science-based ceiling. It was designed as a logistical triage mechanism under successive National Defense Authorization Act (NDAA) cycles to permit the military to implement a "worst-first" approach and limit immediate expenditures on alternative water delivery, such as bottled water or point-of-use filtration, to the most heavily impacted off-base plumes.

Under Article II of the Constitution, the Executive Branch must operate as a cohesive, single-voiced entity. By issuing a final rule that formally declares water between 4.0 ppt and 12 ppt "reasonable" for public consumption over a multi-year period, the EPA splits the executive branch against itself and creates an irreconcilable conflict between the SDWA and NDAA. EPA formally declares that water containing up to 11.9 ppt of PFOA/PFOS does *not* pose an "unreasonable risk to health" if provided to consumers temporarily while DOD is bound by the EPA's *active 2024 scientific record*, which states that these chemicals are bioaccumulative carcinogens with a safe target MCL Goal of zero.

While the 12 ppt threshold provides a temporary administrative standard for federal entities, it fails as a legal shield against state lawsuits and third-party toxic tort litigation. EPA's 2024 scientific record establishes carcinogenicity and rapid bioaccumulation of PFOA and PFOS. Utilizing an arbitrary loophole to delay off-base water mitigation invites such litigation risk. States and residents can use the EPA's scientific record to prove that the executive branch knowingly permitted the prolonged consumption of known carcinogens, leaving the federal government exposed to severe liability.

To cure this fundamental problem with the proposed rule, EPA should utilize its own scientific record in concert by conducting a nationally representative technical and economic analysis before allowing greater exposure of toxic chemicals to people across the nation for two more years.

Comment 6. EPA's proposal creates greater liabilities for drinking water utilities.

When the EPA designated PFOA and PFOS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), it opened the door for cost-recovery lawsuits. If a utility operates under an EPA extension and distributes water at 11 ppt between 2029 and 2031, that utility is actively discharging PFAS back into the environment via wastewater effluent and biosolids. EPA's creation of a perceived SDWA "safe zone" of up to 12 ppt creates a false sense of compliance given drinking water utilities will increase their CERCLA liability.

There is no way for EPA to cure this liability without addressing passive receiver liability in federal law or through EPA regulatory action. New Mexico notes that listing discarded PFAS as a hazardous waste under the Resource Conservation and Recovery Act would mitigate the vast majority of passive receiver liability issues under CERCLA.

Comment 7. The compounding toxic risk of co-contaminant exposure and rule alignment.

Extending the compliance deadlines for PFOA and PFOS cannot be viewed in an administrative vacuum; it carries profound, compounding health risks due to chemical co-occurrence. In NMED's concurrent comments on Docket ID No. EPA-HQ-OW-2025-0654, the EPA's proposed rescission of the NPDWR for PFHxS, PFNA, HFPO-DA, and PFBS mixtures relies heavily on the economic assumption that existing PFOA and PFOS treatment technology (such as granular activated carbon or anion exchange) inherently removes these co-contaminants simultaneously.

By extending the PFOA and PFOS compliance timelines under this proposed action, the EPA effectively delays the installation of that treatment infrastructure. This creates a dangerous regulatory paradox where the EPA is actively stripping away individual health protections for four toxic PFAS formulations under the guise that PFOA/PFOS compliance will capture them, while simultaneously delaying the PFOA/PFOS compliance deadlines that would make that capturing possible. As a result, downstream communities will suffer prolonged, multi-generational exposure not only to PFOA and PFOS, but also to unmitigated concentrations of PFHxS, PFNA, HFPO-DA, and PFBS. The EPA must align these regulatory timelines to prevent this compounded public health deficit.

Comment 8. Mandating control measures to achieve sub-MCL concentrations and maximizing technical and financial support.

NMED urges the EPA to strengthen the requirements for public water systems that are granted a compliance deadline extension by transforming optional interim actions into robust public health mandates. The proposed rule currently permits systems to implement a minimum of two out of six identified control measures—ranging from public education to alternative water supplies—without requiring that PFOA and PFOS concentrations actually fall below their respective MCLs during the extension period. To properly protect public health and shield utilities from ongoing legal liability, the EPA must instead mandate that systems implement a strategic combination of physical control measures (such as water filtration pitchers, alternative water supplies, or point-of-use/point-of-entry treatment devices) explicitly engineered to reduce PFOA and PFOS levels below the 4.0 ppt MCLs. Furthermore, to make these stringent interim targets viable, the EPA must actively provide targeted technical and financial assistance to help under-resourced water systems deploy and maintain these critical exposure-reduction strategies.

Comment 9. Impending critical infrastructure failure and unprecedented compliance burdens.

NMED is concerned about the implementation challenges currently affecting our public water systems and regulatory infrastructure. Public water systems continue to face challenging treatment design and construction timelines, supply chain constraints, workforce shortages, and funding limitations. In addition, both public water systems and state regulatory agencies are actively implementing several major federal regulatory initiatives, including the Lead and Copper Rule Improvements (LCRI), Consumer Confidence Report (CCR) Rule revisions, and ongoing PFAS monitoring and reporting requirements. These concurrent efforts require significant staff resources, technical expertise, data management updates, public outreach, and compliance oversight activities. While NMED requests flexible implementation timelines so utilities can secure funding and build vital treatment facilities, any extended runway must be rigorously structured to halt prolonged public exposure and defend public health.

Comment 10. Objections to the de-listing and rescission of the Hazard Index and component PFAS contaminants.

NMED strongly objects to the EPA's proposed amendments to Appendix C to Subpart Q, § 141.901, and § 141.902, which systematically remove the Hazard Index— and its component PFAS contaminants, specifically Perfluorobutane Sulfonate (PFBS), Perfluorohexane Sulfonate (PFHxS), Perfluorononanoate (PFNA), and HFPO-DA (GenX Chemicals)—from analytical methods, acceptance limits, and trigger level frameworks. While NMED acknowledges that the EPA is addressing these contaminants in a separate administrative action, completely stripping these compounds from the National Primary Drinking Water Regulations implementation framework creates a severe regulatory vacuum.

Groundwater resources are frequently impacted by complex, multi-contaminant PFAS plumes where these specific compounds co-occur alongside PFOA and PFOS. Eliminating the Hazard Index framework deprives state primacy agencies of a vital tool used to evaluate the cumulative, additive toxicity of chemical mixtures. Protecting public health requires a holistic approach to emerging contaminants; treating these highly persistent compounds as non-entities in performance evaluations and trigger levels undermines the progress made toward comprehensive source water protection and leaves communities exposed to unmonitored chemical mixtures.

Comment 11. The proposed rescission of the Hazard Index and component PFAS constitutes an illegal statutory "anti-backsliding" violation under SDWA § 1412(b)(9).

NMED strongly objects to the EPA's proposed rescission of the Hazard Index framework and its four component PFAS because this action violates the explicit statutory boundaries governing the revision of NPDWRs. Under SDWA 1412(b)(9), the EPA is bound by a strict mandate that any revision to a national primary drinking water regulation must maintain or provide for greater health protection than the standard being revised. This anti-backsliding clause serves as a statutory floor, ensuring that federal drinking water protections operate as a one-way ratchet to safeguard public health.

By completely stripping these four compounds and the Hazard Index from the active rule without simultaneously replacing them with an equal or more stringent enforceable standard within the exact same administrative action, the EPA is engaging in illegal statutory backsliding. This creates an immediate regulatory vacuum that actively reduces public health protections.
This arbitrary removal undermines state-level implementation efforts. Since 2019, NMED has

consistently advocated for comprehensive, cumulative risk-based approaches to emerging contaminants to protect New Mexico's vulnerable groundwater supplies. Forcing state primacy agencies to decouple their frameworks from an established health-protective standard—only to leave those communities exposed to unmonitored chemical mixtures—directly conflicts with the statutory intent of SDWA § 1412. The EPA cannot legally backslide on finalized public health protections under the guise of an administrative pause or separate rulemaking track.

To cure this fundamental issue, the EPA should withdraw its proposed rescission of the Hazard Index and its component PFAS unless it can simultaneously substitute a standard that guarantees equal or greater public health protection as required by law.

Comment 12. Logistical feasibility of the 180-day deadline for exemption submissions and primacy alignment.

The EPA's proposed 180-day window following rule promulgation (setting a strict deadline of November 16, 2026) for systems to submit their system-specific information is logistically unfeasible. For a state like New Mexico, which features a vast geographic dispersion of small, rural, and severely under-resourced Community Water Systems and Non-Transient Non-Community Water Systems, a six-month window is entirely insufficient to execute the required data collection. NMED urges the EPA to remove this exemption from the final rule.

Comment 13. Inequitable economic and operational burdens of mandatory pitcher filter distribution on small systems.

EPA's economic modeling assumption that public water systems exceeding the 12 ppt threshold will universally opt for public education and water filtration pitchers as their preferred interim control measures because they represent the "least cost alternatives" is not an evidenced-based conclusion. This assumption fundamentally misunderstands the operational and financial realities of all utilities, especially those small utilities. Under proposed § 142.59(c), a system electing to distribute pitcher filters must provide the physical devices, maintain a continuous two-year supply of certified replacement filters, and deliver comprehensive usage instructions to every single consumer upon request. The administrative overhead required to manage inventory, track distribution, and audit compliance for thousands of individual households will overwhelm the utility staff. Furthermore, the EPA's reliance on a 20% consumer adoption rate pulled from the Lead and Copper Rule Improvements (LCRI) economic analysis introduces massive financial risk. If public concern triggers an adoption rate of 60% or 80%, small systems will face immediate, unbudgeted capital deficits that cannot be recovered through localized rate increases. The EPA must not use idealized cost-minimization models to justify shifting the logistical burden of public health protection directly onto local water system operators.