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Via email
and U.S. First Class Mail

November 14, 2025

Tiffany Skogstrom, Executive Director
TURA Administrative Council
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, 10th Floor
Boston, MA 02114

Dear Ms. Skogstrom,

RE: Proposed amendments to 301 CMR 41.00: Toxic or Hazardous Substance List, Published in the Massachusetts Register on October 24, 2025.

The National Federation of Independent Business (NFIB)¹ submits these comments in response to the Massachusetts Executive Office of Energy and Environmental Affairs (EEA) proposed amendments to 301 CMR 41.00: Toxic or Hazardous Substance List, published in the Massachusetts Register of October 24, 2025. For the reasons set forth below, NFIB recommends that EEA modify the proposed amendments.

The proposed amendments contain an inadequate small business impact statement. The statement downplays and even ignores the costs that will be borne by small businesses to monitor, report, and comply with the amendments. EEA should revise the statement to provide an accurate analysis of the proposed amendment's impact on small entities.

The Small Business Impact Statement Accompanying the Rule is Inaccurate and Deficient

EEA's proposed amendment adds nine per- and polyfluoroalkyl substances (PFAS) to the Toxic or Hazardous Substance List. Small businesses use these chemicals for a

¹ NFIB is an incorporated nonprofit association representing small and independent businesses. NFIB protects and advances the ability of Americans to own, operate, and grow their businesses and ensures that governments of the United States and the fifty States hear the voice of small business as they formulate public policies.

variety of commercial applications. They include ammonium perfluorodecanoate, which is used to produce non-stick pans; perfluoro-3-methoxypropanoic acid and fluorotelomer sulfonate ammonium salt, which are used to provide waterproof or water-resistant coatings; fluorotelomer sulfonate acid, used in firefighting foams; and fluorotelomer sulfonate sodium salt and sodium perfluorodecanoate, used in cleaning agents.

Though adding these substances to the Toxic or Hazardous Substance List is required by M.G.L. c. 211 § 9 pursuant to the changes made to the United States Environmental Protection Agency (EPA) Toxics Release Inventory,² the Massachusetts Administrative Procedure Act (APA) requires the filing of a small business impact statement that considers ways of reducing the regulation's impact on small businesses.³ The statement provided by EEA is inadequate for this purpose.

First, under the heading "Will small businesses have to implement additional recordkeeping procedures?" the statement answers "no," with the explanation that "[r]egulated manufacturers are required to develop and use a tracking system. However, they already must track use for federal annual waste and emissions reporting for substances that are on the EPA EPCRA 313 list[.]" This answer should be "yes"—small businesses who are being regulated under the amendments will, as the statement admits, have to develop and use a tracking system. Indeed, this tracking system is not longstanding, as the nine PFAS included on the EPA list "are reportable beginning with the 2025 reporting year (*i.e.*, reports due by July 1, 2026)."⁴ Businesses are just beginning to implement their tracking systems, and adding an additional state reporting requirement midway through the first federal reporting cycle is likely to affect their procedures.

Under several headings, the impact statement provides that "[a]ll manufacturers expected to be covered by the regulation are already TURA filers," and therefore they will not have to provide additional oversight, hire additional employees, or hire other professionals to assist with reporting. This fails to consider that new reporting obligations almost always come with additional costs. Though the manufacturers concerned may already file certain reports, they have not yet filed reports relating to these chemicals. With every new reporting requirement—even if one is already subject to existing requirements—there are new burdens and expenditures.

Indeed, the fact that the companies expected to be subject to reporting requirements already file reports undercuts, rather than supports, EEA's argument. Adding additional chemicals to TURA reports will lengthen the reports and create new costs, including:

² Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11023.

³ M.G.L. c. 30A §§ 2, 3, and 5.

⁴ 90 *Fed. Reg.* 573 at 574, col. 1.

reviewing the requirements;⁵ retaining legal counsel to ensure compliance; compiling data that has not before been sought by the Commonwealth; employing additional IT systems or staff to keep up with recordkeeping requirements; paying for existing employees who mainly focus on other tasks to take time away from those tasks to complete and file the report; or hiring additional employees to assist with the reports.⁶ Any of the above will result in costs for reporting entities, especially for small businesses.

Small businesses are uniquely harmed by new recordkeeping and reporting requirements, because much of their compliance work is done in-house. Sixty-four percent of small businesses do their own bookkeeping,⁷ and about half also manage their own payroll, financial paperwork, and recordkeeping.⁸ For the average business, regulatory compliance costs “between 1.3 and 3.3 percent of its total wage bill.”⁹ Adding another reporting and recordkeeping burden on small businesses will almost certainly increase costs.

A proper estimation of costs and impacts on small business owners is not merely a procedural formality. Instead, it is a substantive step in APA rulemaking which EEA must take seriously. As the Supreme Judicial Court recently held, “the purpose of the APA” is “to set minimum standards of fair procedure and ensure uniformity in agency proceedings.”¹⁰ The Court also stated in the same case that the failure to include a small business impact statement invalidates a regulation, as the APA “leaves no room for substantial compliance. Strict compliance for agencies promulgating rules is compelled by the plain terms of the statute. See G. L. c. 30A, § 5 (referencing § 3, ‘no

⁵ The Massachusetts Department of Environmental Protection has published a forty-page reporting instructions document. Massachusetts Department of Environmental Protection, *Toxics Use Reduction Reporting Instructions* (May 2025) <https://www.mass.gov/doc/tura-reporting-instructions/download>. Even if an entity has filed a report previously for other chemicals, the report must contain both federal and state forms for each chemical used. These necessitate, at minimum, carefully reviewing this document, and possibly seeking professional advice or review of the document before submitting.

⁶ If a small business owner elects not to pay an employee to work on the report, he or she could do it themselves, but this likewise is a business cost as it takes away from valuable time that could be spent on other tasks.

⁷ NFIB Research Center, *NFIB National Small Business Poll Tax Complexity and the IRS* (2017), <https://tinyurl.com/yc2snjvu>.

⁸ NFIB Research Center, *NFIB National Small Business Poll Business Structure* (2004), <https://tinyurl.com/5dy54jv6>.

⁹ National Bureau of Economic Research, *Tracking the Cost of Complying with Government Regulation* (Feb. 1, 2023), available at <https://www.nber.org/digest/20232/tracking-cost-complying-government-regulation?page=1&perPage=50>.

¹⁰ *Att’y Gen. v. Town of Milton*, 495 Mass. 183, 195–96 (2025).

rule or regulation ... shall become effective until an agency has filed with the state secretary a statement considering the impact of said regulation on small business.')."¹¹

It is an open legal question whether a defective—as opposed to entirely absent—small business impact statement can invalidate a regulation under the APA. But the Supreme Judicial Court's emphasis on strict compliance should serve as encouragement for EEA to revise the current small business impact statement to ensure it thoroughly and accurately considers the amendments' effects on small businesses, as required by the APA.

Conclusion

NFIB appreciates the opportunity to comment on the proposed rule and hopes that EEA will take seriously its obligation to provide procedural fairness for Massachusetts' small businesses by publishing accurate small business impact statements, both here and going forward. Revising the small business impact statement associated with the proposed amendments will be a strong step toward that goal.

Sincerely,

A handwritten signature in black ink, reading "Chris R. Carozzi". The signature is written in a cursive, flowing style.

Christopher Carozzi
Massachusetts State Director, NFIB

¹¹ *Id.* at 195.