American Chemistry Council | Center for the Polyurethanes Industry

Submitted via NMED online comment portal

January 16, 2026

Phoebe Suina
Chair
New Mexico Environmental Improvement Board (EIB)
1190 St. Francis Drive, Suite N4050
Santa Fe, NM 87505

Re: EIB 25-61 (R) – *Proposed Rule to Adopt 20.13.2 NMAC (PFAS in Consumer Products)*

Dear Chair Suina:

The American Chemistry Council's (ACC) Center for the Polyurethanes Industry[1] (CPI) appreciates the opportunity to provide input[2] to the New Mexico Environmental Improvement Board (EIB) regarding the New Mexico Environment Department (NMED) *Petition for Regulatory Change to Adopt 20.13.2 NMAC and Request for Hearing* (EIB 25-61).[3] NMED's petition is to adopt a proposed rule to implement the 2025 *Per- and Poly-Fluoroalkyl Substances Protection Act* (HB 212) to phase out intentionally added PFAS in certain consumer products.[4]

CPI has identified provisions in the proposed rule that are inconsistent with the statute and would add undue burden and significant implementation challenges for industry. Specifically, NMED is seeking to, without statutory authority, extend labeling requirements to products expressly exempted by the law. Additionally, proposed labeling symbols and language do not align with scientific evidence for PFAS as a broad, diverse class of chemicals, and is not consistent with other labeling programs.

Requiring exempt products to label does not align with statutory language
HB 212 phases out intentionally added PFAS in certain product categories, setting deadlines of 2027 and 2028 for two specific sets of products and then a broad 2032 prohibition on remaining products containing intentionally added PFAS. Importantly, Section 3(A) of HB 212 outlines 16 product categories that are exempted from the PFAS prohibitions enacted in the law. In incorporating these exemptions into a law with detailed product prohibitions and explicit timelines, the statute clearly distinguishes these product categories from those identified as presenting a risk to consumers.

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[1] The Center for the Polyurethanes Industry (CPI) of the American Chemistry Council (ACC) serves as the voice of the polyurethanes industry in North America, promoting its development and coordinating with polyurethane trade associations across the globe. CPI members are companies that produce and sell the raw materials and additives that are used to make polyurethane products, equipment used in the manufacture of polyurethanes, and companies engaged in end-use applications and the manufacture of polyurethane products. The polyurethane industry supports research and initiatives that serve its communities and customers.
[2] CPI's comments directly address feedback from the polyurethanes industry.
[3] https://www.env.nm.gov/opf/wp-content/uploads/sites/13/2025/10/2025-10-08-EIB-25-61-Petition-Request-for-Hearing_Statement-of-Reasons_and-Rule.pdf.
[4] New Mexico House Bill 212 (2025 Regular Session), *Per- and Poly-Fluoroalkyl Substances Protection Act*, available at https://www.nmlegis.gov/Sessions/25%20Regular/final/HB0212.pdf.

NMED's proposed labeling requirement for exempt products not only does not adhere to statute, but it also adds to potential consumer and public confusion that the law likely sought to avoid. This is particularly evident when evaluating examples of labels that NMED has presented, showing a large "! PFAS" warning symbol with the following language: "Associated with environmental impacts and health effects such as cancer." This is misleading and does not align with the statute's distinction of risk between products scheduled to be phased out and those products within the categorical exemptions. The law states that the EIB "may adopt other rules that the board deems necessary to carry out the provisions of the [PFAS] Protection Act, including requiring the labeling of products in English and Spanish." The option to develop and adopt a labeling rule should support the requirement to phase out certain products, not create unauthorized requirements that conflict with the statute.

As an example, the polyurethanes industry uses hydrofluoroolefin (HFO) and hydrochlorofluoroolefin (HCFO) blowing agents in the manufacture of foam, including for spray foam insulation. HFOs and HCFOs have an ultra-low global warming potential (GWP) and have replaced hydrofluorocarbon (HFC) and hydrochlorofluorocarbon (HCFC) blowing agents, supporting international efforts under the Montreal Protocol. Critically, the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) Program has approved some HFOs and HCFOs as "acceptable" alternatives to HFCs as foam blowing agents following rigorous evaluation by U.S. EPA technical staff.[5] The U.S. EPA also did not identify HFO and HCFO foam blowing agents as PFAS in the nation's testing strategy.[6] Further, HFOs and HCFOs are not persistent, not bioaccumulative, not carcinogenic and not the target of groundwater contamination concerns.[7]

Requiring a PFAS warning label for products using HFO and HCFO foam blowing agents would contradict the plain-language exemption established in Section 3(A)(12) of the law, which specifically allows for continued use of substances "listed as acceptable, acceptable subject to use conditions or acceptable subject to narrowed use limits in the [U.S. EPA's] rules under the [SNAP] program." Additionally, the imagery and language that NMED is proposing to require on the label for this exempt product category would be incorrect, as evaluated by authoritative bodies like U.S. EPA and the European Chemicals Agency (ECHA).

Label requirements should be harmonized with other labeling programs

The labeling requirements proposed by NMED also do not recognize other chemical disclosure programs at the state and federal levels. The label pictogram and language proposed by NMED depart significantly from established programs and would require companies to print custom state-specific labels at a significant cost while adding confusion and potential misinformation to the market.

Continuing with the example of polyurethane foam production, SNAP program-approved HFO and HCFO blowing agents are already listed on products that contain these chemicals to satisfy the requirements of multiple regulatory programs. Disclosure of HFO and HCFO foam blowing agents on safety data sheets (SDSs) is already required by the U.S. Occupational Safety and Health Administration (OSHA) implementation of the Globally Harmonized System of Classification and Labeling of Chemicals (GHS). Also, some state and local programs require disclosure of HFO and HCFO foam blowing agents on the label as part of regulations for greenhouse gas technology transition.

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[5] U.S. EPA, Substitutes in Foam Blowing Agents.

[6] U.S. EPA, "National PFAS Testing Strategy: Identification of Candidate Per- and Polyfluoroalkyl Substances (PFAS) for Testing," October 2021.

[7] European Chemicals Agency (ECHA) PBT Assessment List.

NMED should update the labeling requirements considering existing disclosure and labeling programs, namely the OSHA Hazard Communication Standard and state rules on greenhouse gases and climate change in order to avoid uncertainty and conflicting information.

Implementation of labeling requirements should be delayed

The current proposal sets a January 1, 2027, enforcement date, and NMED is not expected to issue a final implementation rule for HB 212 until at least July 2026. Companies will need at least one year, particularly for complex products, to accommodate any final requirements into internal systems for product tracking and labeling but can only begin after issuance of the final rule in order to ensure alignment. CPI requests that NMED provide at least one year for compliance following publication of the final rule.

Summary

HB 212 clearly identifies products to phase out due to concern about PFAS exposure, with deliberate product categories for initial prohibition followed by a broad ban in 2032 to allow for manufacturer planning efforts. The statute also exempts certain categories of products for various reasons and does not present a level of risk warranting prohibition. Under these proposed labeling requirements, NMED is seeking to exponentially expand a limited statutory provision intended to "carry out provisions" of the law. Any final labeling rule should be limited to those products identified for prohibition by the statute, be harmonized with other labeling programs, and provide ample time for company development and compliance.

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CPI appreciates EIB consideration of these comments in response NMED's petition to establish rules to govern the processes, requirements, and enforcement of the state's PFAS Protection Act. If you have any questions or need further clarification about the information that has been provided, please feel free to contact me at (202) 249-6105 or Jason_Sloan@americanchemistry.com.

Sincerely,

Jason Sloan
Director, CPI
American Chemistry Council