January 29, 2026

New Mexico Environment Department
1190 St. Francis Drive, Suite N4050
Santa Fe, New Mexico 87505

Submitted via electronic portal

Re: EIB 25-61 (R) – Per- and Poly-Fluoroalkyl Substances Act

The Personal Care Products Council (PCPC)[1] respectfully submits the following comment on the draft rule relating to the Per- and Poly-Fluoroalkyl Substances Protection Act.

PCPC and its member companies have long been supportive of commonsense laws and policies that protect both the consumer and the environment. For this reason, we have supported laws in other states that prohibit certain intentionally added per- and poly-fluoroalkyls (PFAS) in cosmetics. Likewise, PCPC is generally supportive of New Mexico's efforts to regulate PFAS in consumer products. However, several components of the proposed rule are overly broad, vague, or otherwise impracticable as currently drafted. Specifically, we are concerned that there are several key definitions in the law that remain unclear; that the labeling requirement is misleading, not as narrowly tailored as the First Amendment requires, and would take effect unreasonably soon; and that packaging should be explicitly excluded from both the ban and labeling requirements. To that end, we offer the following feedback.

DEFINITIONS

Several of the definitions included in the law require further clarification, which is not provided in the proposed rule. PCPC is particularly concerned with the following unclear definitions:

- ***Intentionally Added (including "Product Component"):*** The definition of "intentionally added" in the statute itself is written very vaguely, due to the inclusion of several undefined or poorly defined terms and concepts. Specifically, it is unclear whether trace contaminant levels of PFAS present in a final product may be found to constitute intentionally added

[1] Based in Washington, D.C., the Personal Care Products Council (PCPC) is the leading national trade association representing global cosmetics and personal care products companies. Founded in 1894, PCPC's approximately 600 member companies manufacture, distribute, and supply the vast majority of finished personal care products marketed in the U.S. As the makers of a diverse range of products millions of consumers rely on and trust every day – from sunscreens, toothpaste, and shampoo to moisturizer, lipstick, and fragrance – personal care products companies are global leaders committed to product safety, quality, and innovation.

PFAS under the definition as written, due to the combination of the words "expected" and "at any level or concentration."

- In addition, the phrase "product component" is integral to this definition but is not defined elsewhere in the law or the proposed rule, which creates significant ambiguity. It is unclear whether this will include some portions of the packaging of a cosmetic or personal care product, tremendously complicating compliance, as described further below.

- ***"Per- or Poly-Fluoroalkyl Substance":*** The proposed definition, while common, is incredibly broad, incorporating all PFAS**.** This definition includes newer short-chain PFAS (those with fewer than 6 fluorinated carbon atoms), where further research is needed to determine their hazard profiles, as well as understudied existing substances. According to the December 2025 U.S. Food and Drug Administration (FDA) *Report on the Use of PFAS in Cosmetic Products and Associated Risks*[2], PFAS are used in only 1744 of the 730,000 products in their database. FDA also determined that, of the thousands of existing PFAS substances, only 51 different PFAS are used in cosmetic products, and 96% of the PFAS used in cosmetic products were actually the same 25 PFAS. In this report, FDA found that most of the 25 substances have insufficient data for a safety conclusion, while five have a low safety concern and only one PFAS substance was determined to have a potential safety concern.

LABELING

The labeling requirement created by the proposed rule reaches far beyond the apparent intended scope of the law itself. The statutory language establishes a PFAS prohibition and reporting requirement with a phased-in approach over the coming years, and states that the agency "may adopt rules to carry out the provisions of [the law], including the labeling of products in English and Spanish." A reasonable interpretation of this allowance does not include the agency creating a sweeping labeling requirement beginning even before the majority of the law itself would take effect. The proposed regulatory text is concerning for several reasons. First, the proposed labeling requirement may be misleading to consumers and is not narrowly tailored per the requirements of the First Amendment. Second, where the statute creates a rolling introduction of the PFAS ban with various industries facing new requirements over the next few years, the labeling requirement would apply across the board beginning in less than one year on January 1, 2027.

The labeling requirement may mislead consumers, even lending to "label fatigue." Stating that a product contains PFAS, even without an explicit claim of potential harm or danger, may imply to the consumer that any PFAS at all found in the product is harmful or dangerous. As described above, this is not the case. PFAS are a large category containing chemicals with a wide variety of

[2] https://www.fda.gov/media/190319/download?attachment

structures, functions, and properties, many of which need further study to determine their hazard. The First Amendment requires that compelled commercial speech, such as the proposed labeling requirement here, be no more extensive than necessary. A governmental requirement that manufacturers notify consumers with an alert regarding an ingredient which is not necessarily unhealthy or unsafe in any way is not narrowly tailored to its intention of protecting consumer health or safety.

Developing new packaging for cosmetics and personal care products is an incredibly involved and complex process. Cosmetic labeling requirements are regulated by the FDA under the authority outlined in the federal Food, Drug & Cosmetic Act (FD&C) and the Fair Packaging Labeling Act (FPLA). Federal law mandates that cosmetics clearly list all ingredients using common or usual names and display them prominently on the outer container to ensure transparency and consumer understanding[3]. Product labels must also include the name and place of business of the manufacturer, packer, or distributor, as well as other specific information[4]. Practically, given the size of many cosmetic and personal care products, this often means that a container that is quite small must include a large amount of text in order to convey all of the information required by federal law as well as all of the information actually sought by consumers. Changes to artwork and packaging are production processes that generally take several years. Adding even a seemingly short phrase such as "Contains PFAS" is not a feasible change to make within a matter of months.

PACKAGING

Product packaging was considered by the legislature, as evidenced in the explicit inclusion of food packaging and exemption of medical device and drug packaging in the statute. PCPC interprets the lack of any mention of other types of packaging in the law and proposed regulation to constitute an exemption. However, we understand that the agency has stated that there may be some intention to capture some packaging in the final requirements. PCPC would appreciate clarification in the resulting final regulation that packaging of consumer products, such as that of cosmetics and personal care products, is intentionally excluded from the PFAS requirements and prohibition. PCPC requests this clarity particularly in light of the confusion created by the definitions mentioned above, including that of a "product component."

In addition, the aforementioned time constraints that apply to product label development similarly apply to product packaging. Many manufacturers do not create their own packaging, instead relying on packaging provided by companies that will not necessarily reveal their proprietary or confidential business information to all of their clients. Based on industry experience, producers should have a minimum of three years to assess packaging and implement changes.

CONCLUSION

[3] https://www.ecfr.gov/current/title-21/chapter-I/subchapter-G/part-701/subpart-A
[4] https://www.ecfr.gov/current/title-16/chapter-I/subchapter-E/part-500

Thank you for the opportunity to engage in this process and provide comments on the proposed PFAS rule. Should you have any questions or wish to discuss any of the above, or additional relevant topics, please do not hesitate to reach out.

Sincerely,

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& General Counsel, PCPC