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Bringing Clean Power to the World™

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January 23, 2026

VIA ELECTRONIC SUBMISSION: EIB 25-61 (R) - Per- and Poly-Fluoroalkyl Substances Act

To: Environmental Improvement Board (EIB)

In the Matter of Proposed Adoption of 20.13.2 NMAC

The Truck and Engine Manufacturers Association (EMA) hereby submits comments: In the Matter of Proposed Adoption of 20.13.2 NMAC, Per- and Poly-Fluoroalkyl Substances in Consumer Products. (The proposed rules). The proposed rules are pursuant to the Per- and Poly-Fluoroalkyl Substances Protection Act ("PFAS Protection Act") (NMSA 1978, Article 15, Section 74-15-1 et seq.).

I. INTRODUCTION

EMA represents worldwide manufacturers of internal combustion engines and on-highway medium and heavy-duty vehicles (greater than 10,000 pounds gross vehicle weight rating). EMA member companies design and manufacture internal combustion engines that are used in a wide variety of applications, including: trucks and buses (including school buses); farm, construction, and industrial equipment; marine vessels; locomotives; lawn, garden and utility equipment, and electric generators and other stationary applications. Our member companies are widely recognized with an extensive variety of products offered across multiple sectors. Our member list is included as an attachment to these comments, for your information.

PFAS is widely used in a variety of applications to provide products with strength, durability, stability, and resilience. It is also known to be used for its flame retardant properties. PFAS is present at the component level, in extremely small quantities, (often de minimis levels), to ensure the functionality and safety of these products. Consequently, EMA's members are significantly and directly impacted by the proposed rules.

II. SUMMARY OF KEY ISSUES

- The New Mexico Environment Department (NMED) is exceeding their statutory authority by failing to recognize specific exemption provisions in the PFAS Protection Act and proposing labeling requirements on products that the New Mexico legislature determined should be exempt from the operative provisions of the PFAS Protection Act. Exempt products are identified under Subsection A of Section 3 of the PFAS

Protection Act. The product exemptions are further reinforced under the "RULES -- INFORMATION REQUIRED—EXTENSIONS--WAIVERS.—" in Subsection K of Section 5 of the PFAS Protection Act.

- The proposed rule allows exempt products only, to seek a waiver from the labeling requirements. The waiver does not cure the deficiencies in the labeling provisions. The waiver is not available if even a single PFAS-containing component in an exempt product may come into contact with the consumer. In addition, the information required to seek a waiver amounts to a reporting requirement. In addition to requiring identification of specific substances by chemical name and CASRN number, NMED has included a catch all provision that requires "any other information the department deems necessary for the evaluation of the waiver request." This language would allow NMED to request the remainder of reporting information not explicitly listed in the waiver provisions and apply that "information" demand to exempt products seeking a waiver from the unauthorized labeling requirements.
- Excessive fees ($2,000/product, $5,000/product class) are charged for a label waiver request. Waivers expire 3 years after approval and must be resubmitted along with the fee. NMED is proposing to charge an excessive fee, on repeat, for exempt products to be free from requirements that they should not be subject to in the first place. There should be no fee associated with seeking a waiver of labeling requirements. Moreover, the waiver should not expire.
- Even if the labeling provisions are authorized, the labeling provisions are unreasonable, burdensome, and require the disclosure of excessive amounts of information, including proprietary designs and manufacturing information, in the operation and maintenance manual (for complex durable products – like on-road and off road engines, vehicles and equipment), including for parts and components that will never come into contact with the consumer. The labeling requirements resemble reporting requirements, are technically impracticable and do not accomplish the stated intent of labeling.
- Failure to meet labeling requirements results in sales prohibitions, including for exempt products that were never intended by the New Mexico legislature to be subject to such prohibitions.
- Labeling requirements should not apply to exempt products. In addition to the exceedance of statutory authority related to the labeling requirements, the labeling requirements require significant revisions to be implementable, including but not limited to lead-time, label content, language requirements, de minimis threshold, accuracy linked content, transparency of the exemption process.
- Exemptions for SNAP approved refrigerants should be clear and unrestricted since they have been thoroughly evaluated by the Environmental Protection Agency.
- The 2028 PFAS ban on textiles and upholstery affects vehicle interiors such as seats, carpets, seatbelts and headliners and may impact the ability to meet Federal requirements related to safety, flammability and durability. FMVSS Standard 302, related to the flammability of interior materials specifies burn resistance requirements for materials used in the occupant compartments of motor vehicles.
- The CUU determination process is technically infeasible, unreasonable and must be significantly revised.

III. DISCUSSION OF ISSUES

A. 20.13.2.13 LABELING

The Requirement to Label Exempt Products is Not Authorized Under the PFAS Protection Act

The New Mexico legislature very deliberately exempted many categories of products from the sales prohibitions, reporting, disclosure, and currently unavoidable use (CUU) provisions of the PFAS Protection Act. (See Section 74-15-3(A)).

Although PFAS Protection Act provides that the Board **may** (emphasis added) adopt rules to carry out the provisions of the PFAS Protection Act, including requiring the labeling of products in English and Spanish. (NMSA 1978, Article 15, Section 74-15-4(B)), the legislative authority to impose labeling requirements (or "rules") is explicitly confined "to carry out the provisions of the PFAS Protection Act".

The labeling requirement is not, in and of itself, a provision of the PFAS Protection Act. It is a "rule" that the Board may adopt, but requiring the labeling of a product is only authorized by the legislation if it carries out the provisions of the PFAS Protection Act. It is unclear which provisions of the Per- and Poly-Fluoroalkyl Substances Protection Act (NMSA 1978, Article 15, Section 74-15-1 et seq.) (PFAS Protection Act") are being carried out by the proposed requirement to label products that are exempt from sales prohibitions, reporting requirements and will not utilize CUU determinations because they are exempt categories.

Exempt categories of products are not subject to the operative provisions of the PFAS Protection Act. They are not subject to reporting requirements. They are not subject to product bans. They are not subject to CUU determination decisions because exempt products will not require a CUU determination. Consequently, the imposition of labeling requirements on products exempt from all operative provisions of the PFAS Protection Act amounts to overreach beyond the legislative authority granted by the PFAS Protection Act.

In addition, in granting the authority to adopt rules, section 74-15-5 of the PFAS Protection Act titled "RULES – INFORMATION REQUIRED – EXTENSIONS – WAIVERS.—" includes specific parameters for the information that will be required of a manufacturer, including information that "shall" be included and information that shall not be required. See 74-15-5(A). Also included are parameters surrounding waivers and extensions. See 74-15-5(G) and (I). Specific dates are prescribed for provision of information pursuant to the PFAS Protection Act and to rules adopted pursuant to that Act. See 74-15-5(B) and (D). Agreements with states or political subdivision for information collection are also addressed. See 74-15-5(H).

But the PFAS Protection Act states that NONE of the requirements of section 74-15-5 of the PFAS Protection Act apply to products that are exempt pursuant to Subsection A of Section 3 of the Per- and Poly-Fluoroalkyl Substances Protection Act. See 74-15-5(K). It could not be more clear that the New Mexico Legislature did not intend to authorize the application of rules to products that they specifically identified as exempt pursuant to Subsection A of Section 3 of the PFAS Protection Act. There is no other reasonable interpretation.

Contrary to the clear language of the PFAS Protection Act (See 74-15-5(K)), NMED has purposefully included exempt categories in their extensive labeling requirements. The labeling provisions include all of the elements addressed under the PFAS Protection Act under section 74-15-5 and enumerated above including: specific information required, waivers, extensions, dates for compliance, agreements with states. (See Proposed New Rule 20.13.2.13, Pages 8-10 of Exhibit B).

Labeling requirements of complex durable goods (for exempt products like motor vehicles and motor vehicle equipment), are particularly complex and include a significant amount of detailed information. (See Proposed New Rule 20.13.2.13(D), Page 9, lines 14 -46 of Exhibit B). NMED has very thoroughly covered the elements referenced in the PFAS Protection Act under section 74-15-5 but has ignored the very clear restriction set out in section 74-15-5(K), that prohibits the application of the requirements of this section to products that are exempt pursuant to Subsection A of Section 3 of the Per-and Pol-Fluoroalkyl Substances Protection Act.

The only nod that NMED offers to the clear limits on their legislative authority may be evident in the waiver provisions under 20-13.2.13(F) that state:

> The department may waive the obligation of a manufacturer to label a product as required by this section if the product is exempt pursuant to Section **20.13.2.8** (**emphasis** added) of this part, and none of the product's material containing intentionally added per- or poly-fluoroalkyl substances will ever come into direct contact with a consumer while the product is being used as intended during the useful life of the product. The waiver request must contain the following information:
>
> **(1)** Information contained in Section 20.13.2.12.B.4 of this Part;
>
> **(2)** A description of the product for which a waiver is requested;
>
> **(3)** Identification of the specific per- or poly-fluoroalkyl substance(s) intentionally added to the product or its components by the chemical name and the Chemical Abstracts Service Registry number (CASRN), or if no CASRN exists, another chemical identifying number;
>
> **(4)** An explanation of why the product should not require a label pursuant to this section; and
>
> **(5)** any other information the department deems necessary for the evaluation of the waiver request.

Although NMED proposes to allow exempt products to seek a waiver of labeling requirements, the information required to seek such a waiver includes exactly the information that exempt products are not required to provide to NMED, because they are excluded from reporting requirements. In addition to boldly ignoring the limits on their authority to require labeling, NMED is attempting to use the unlawful labeling requirements to collect information that they are not authorized to collect because exempt products are not subject to the reporting requirements. This is nothing more than a poorly disguised bid to force manufacturers to choose between providing PFAS reporting information for products exempt from reporting requirements, or compliance with labeling requirements that are impossibly difficult and burdensome. In addition to requiring identification of specific substances by chemical name and CASRN number, NMED

has also included a catch all provision that requires "any other information the department deems necessary for the evaluation of the waiver request." This language would allow NMED to request the remainder of reporting information not explicitly listed in the waiver provisions and apply that "information" demand to exempt products via the labeling waiver process.

Furthermore, in the absence of a waiver, if a product does not meet the labeling requirements, then the product cannot be sold or distributed in New Mexico. See 20.13.2.13(A) – (Exhibit B, page 8, beginning at line 23). NMED in crafting labeling requirements that are clearly outside of the authority granted to them, have effectively imposed product reporting requirements and product bans on exempt products.

It is improper and illegitimate to impose labeling requirements on exempt categories of products, when labeling is only authorized to "carry out the provisions of the PFAS Protection Act" and those provisions do not apply to exempt categories of products. It is particularly problematic when the improper labeling requirements also serve to impose reporting requirements and potentially product bans on exempt products. All such requirements should be removed from the proposed rules.

De Facto Reporting Requirements are Imposed on Products Exempt from Reporting Obligations

NMED has proposed labeling obligations on categories of products that are expressly excluded from reporting requirements. As discussed above, we do not believe that the PFAS Protection Act authorizes this requirement. However, even if it does, the proposed labeling requirement for complex durable goods has more in common with a reporting requirement than a label and amounts to a de facto reporting requirement on goods specifically excluded from reporting requirements.

Motor vehicles and motor vehicle equipment are exempt from reporting obligations (with some exceptions for textiles and refrigerants within vehicles, to be discussed later). The broad exemption was provided understanding that these complex durable products have a demonstrated need for PFAS in components and that the use of PFAS (often de minimus levels) ensures the functionality and safety of these products. It is widely known and understood that suitable alternatives do not exist for all of the critical uses of PFAS in motor vehicles and motor vehicle equipment.

Furthermore, NMED provides some insight into their intent in their PFAS Protection Act Labeling Requirements Frequently Asked Questions (FAQ) document available here: https://www.env.nm.gov/wp-content/uploads/2025/10/PFAS-Protection-Act-Labeling-Requirments-FAQ-Sheet-10.17.2025.pdf

Key sections from the FAQ document have been copied below (**emphasis** added):

If my product is exempt from reporting requirements in the PFAS Protection Act, why does it need to be labeled?	*Labeling provides consumers with the ability to **make informed choices** about the products that they choose to buy.*

Can you explain the labeling exemption for an exempt product? For example, for motor vehicles? If PFAS is in interiors, buttons, etc...	*If the only intentionally added PFAS are on an internal component of a product that a consumer will not interact with when the product is used as intended, then the product is eligible for a labeling exemption**. However, If PFAS was used in the interior which a consumer may interact with, labeling would be required on the vehicle.***
Does exemption eligibility depend on location of PFAS in the product?	*Generally, yes.* ***Labeling is to inform consumers if they would come into contact with material containing intentionally added PFAS while using the product as intended****.*

The goals outlined above are not relevant to vehicles and motor vehicle equipment, particularly commercial vehicles that are purchased to perform work for a commercial enterprise. A purchaser, likely a commercial enterprise, cannot choose to purchase a motor vehicle or motor vehicle equipment that does not contain PFAS, because that option does not exist.

Moreover, the uses of PFAS are overwhelmingly in parts and components that will not come into contact with the operator during the course of normal vehicle operation. If the goal of labeling is to inform consumers if they would come into contact with material containing PFAS, then the requirement should not entail naming all components that contain PFAS and providing reams of detailed location information, for parts and components that will not come into contact with the consumer.

Finally, the use of PFAS in parts and components that may come into contact with the operator during normal operation are related to compliance with Federal requirements related to safety, flammability and durability. For example, FMVSS Standard 302, related to the flammability of interior materials specifies burn resistance requirements for materials used in the occupant compartments of motor vehicles. See 49 CFR 571.302. The standard applies to passenger cars, multipurpose passenger vehicles, trucks, and buses. The presence of PFAS in interior materials used in occupant compartments is critically important for meeting requirements that are intended to protect occupants of vehicles. Seatbelts, carpeting, textile seat covers, textile heat shields, are some examples of components that likely contain PFAS and may come into contact with operators of vehicles.

The NMED identified goals of labeling are not accomplished by naming these components, when the use of PFAS in these applications is driven by Federal requirements related to flammability and safety and suitable alternatives have not been identified for all uses and may not exist for some applications. Should the operators of vehicles not wear seatbelts? Do we want textiles in vehicles to fail to meet Federal safety and flammability standards? What are the goals of the labeling requirement for these products? Because they cannot logically be the goals identified in the NMED FAQ document. There is a fundamental disconnect between the goals identified by NMED and the reality of the proposed labeling requirements for durable complex products.

Beyond the disconnect between the identified goals of labeling, a critical flaw is that NMED is imposing a de facto reporting requirement in the form of a "label" that is in fact, a detailed component list with extensive additional information, contained in an operation manual. It is inaccurate and misleading to describe it as a label and as discussed further below, the example of a label for a complex durable product that was provided by NMED in webinar materials, does not meet their own requirements. Similar to the waiver provisions related to labeling, NMED is attempting to do indirectly what they do not have legislative authority to do directly.

The Requirements are Vague, Unreasonable and Compromise Proprietary Information

Even if the labeling requirements are authorized by the PFAS Protection Act, and we do not believe that they are, the proposed labeling requirements are vague, unreasonable and compromise proprietary information. The NMED proposed rule requires manufacturers to label complex durable products, including heavy-duty engines, vehicles and equipment which are composed of hundreds of components and thousands of parts. Additionally, there is a high level of customization with heavy-duty vehicles and equipment, with a variety of options and therefore differing components. The labeling requirement is fulfilled through inclusion of the required information in the operation and maintenance manual associated with the product.

The level of detail required is extremely onerous and unreasonable. Moreover, 20.13.2.13(D) requires inclusion of "sufficient detail about the components' locations within the complex durable good such that they can be readily located." The descriptive terms "sufficient detail" and "readily located" are vague, undefined and subject to interpretation. NMED does not identify who must be able to readily locate the component. It is unclear if this applies to a mechanic, a vehicle operator, a design engineer or any other member of the public. Many of these parts are deeply embedded internal components like wiring, seals, capacitors and electronic control modules. It is difficult to identify the goal that NMED is trying to accomplish with this requirement since most of these components will never come into contact with an operator (or anyone else) during the normal course of operation.

Moreover, pursuant to Section 20.13.2.13(F), a waiver from the labeling requirements can only be sought for products that are exempt pursuant to Section 20.13.2.10. Additionally, the waiver is only available to exempt products if none of the product's material containing intentionally added per-or poly-fluoroalkyl substances will ever come into direct contact with a consumer while the product is being used as intended during the useful life of the product. Consider a motor vehicle with a single component that may contact a consumer, like a seatbelt, that may contain PFAS to meet FMVSS Standard 302, related to the flammability of interior materials. See 49 CFR 571.302. Even a single PFAS containing component, that may contact a consumer, requires disclosure, identification and location information for every part and component containing PFAS, according to the labeling requirements, including potentially thousands of parts that will never come into contact with the consumer during the course of normal operation. The requirements are nonsensical and unreasonable, in addition to being unauthorized.

Regardless of who must be able to readily locate the component, this element of the labeling requirements would necessitate location drawings for a staggering number of parts and/or components (hundreds to thousands) within complex products like engines and heavy-duty

vehicles. Most, if not all this information, would be completely incomprehensible to the public. It would be extremely challenging, if not impossible, to provide this information without revealing proprietary designs, manufacturing information, and confidential business information. There is no legitimate reason to require this level of detail for components that do not pose any documented risk to users of the complex product. Moreover, the availability of the information will not impact consumer behavior in any way. These are not consumer products and purchasing decisions will not be impacted by this information. Alternative options that do not contain PFAS, do not exist. Consequently, the requirement is excessive, unduly burdensome, unreasonable and provides no benefit to consumers.

It should be noted that NMED has provided examples of how to meet labeling requirements in their October 24th slide presentation available here (slide 32): https://www.env.nm.gov/wp-content/uploads/2025/10/PFAS-Protection-Act_Public-Meeting-Webinar-Slides.pdf

However, their example does not meet the complex durable labeling requirement as proposed since it does not include "sufficient detail about the components' locations within the complex durable good such that they can be readily located." Moreover, to provide an example of a label for a vehicle that includes only three PFAS containing components and fails to meet the most burdensome element of this particular requirement, is misleading at best, and demonstrates a lack of recognition and understanding of the scope of the burden imposed by these requirements.

An accurate depiction of the information required in the operation and maintenance manual would include hundreds to thousands of parts, accompanied by drawings or other representations for each part or component, to provide "sufficient detail" for components to be "readily located". This could entail hundreds and hundreds of pages of drawings, schematics or other representations. As discussed above, this is not a label by any reasonable definition. It is a reporting requirement for inclusion in an operation and maintenance manual, with a significant associated cost for compliance. NMED is indirectly imposing a reporting requirement on products that the legislature explicitly excluded from such requirements.

Labeling requirements (that are in effect, unauthorized reporting requirements) imposed on exempt product categories, exemplifies heavy-handed overreach and in this case these requirements are also unreasonable, costly, extremely burdensome and offer no identifiable benefit. There is nothing to prevent the Environmental Improvement Board (EIB) enacting a rule that exempts certain product categories from labeling when appropriate. However, there is a requirement that EIB consider the "technical practicality, necessity for and economic reasonableness" of its rulemaking actions. N.M. St. § 74-19(B). The labeling requirements are technically impracticable, unnecessary and economically unreasonable and should be removed from the proposed rule.

Additional Concerns with Labeling Requirements

If the labeling requirements are not eliminated, there are significant compliance challenges in addition the those already identified above. The following additional issues must be addressed:

1. Labeling requirements for vehicles are applicable for sales on or after January 1, 2027. Stock vehicles like heavy-duty trucks may be in the possession of dealers in New Mexico for months to over a year prior to purchase. Lead time must be provided to implement the extensive requirements. At least one full year of lead time must be provided after finalization of the proposed rule. Labeling requirements should coincide with model year changeover of 2028 at the earliest (if the rule is finalized in 2026) and should be based on the vehicle model year, not the date of sale.

2. Labeling and the detailed information required for labeling of complex durable goods should only be required for components that will come into contact with the operator during the normal course of operation, not for all PFAS-containing components. Similarly, a waiver of labeling requirements should not require disclosure of detailed information for all parts containing PFAS, including those that will never come into contact with an operator.

3. Section 20.13.2.13(D)(5) of the proposed requirements requires the labeling information to be provided in languages in addition to Spanish and English, if other product information is provided in another language. It is not uncommon for product information to be provided in French for products common to the United States and Canada. There is no reason for NMED to require the detailed, excessive labelling information to be reproduced in French, or any language beyond Spanish and English, for customers in New Mexico. Section 4(B) of the PFAS Protection Act references labeling of products in English and Spanish. No additional languages are mentioned. The proposed requirement is outside of the authority of NMED and should be removed.

4. NMED should include a de minimis threshold for labeling requirements. As proposed, labeling requirements will describe trace-level PFAS the same as high concentration PFAS.

5. The language required by 20.13.2.13(D)(1) and the information on the NMED hosted web page that must be included pursuant to 20.13.2.13(D)(2), cannot fairly represent the different levels of risk and exposure encompassed by the thousands of parts and components of complex durable goods like motor vehicles and motor vehicle equipment, most of which will never come into contact with the operator during the normal course of operation. The language treats all PFAS as equivalent. But we know that not all PFAS is equivalent in terms of environmental and human health impacts. The required link to the NMED website forces manufacturers to "endorse" any information that NMED chooses to post without any opportunity to question, clarify or contradict the accuracy or applicability of such information. As such the labeling requirements may act to misinform the public and in any event, fail to provide any identifiable benefit.

6. The waiver application fee of $2,000 (for a product) or $5,000 (for a product class) is excessive. Please note that only exempt products may seek a waiver from labeling requirements. This is an excessive fee for products that the legislature has determined should be exempt. The waiver is only valid for 3 years and then the process must be repeated and the fee is charged again. The information is likely to remain unchanged.

NMED is proposing to charge an excessive fee, on repeat, for exempt products to be free from requirements that they should not be subject to in the first place. There should be no fee associated with seeking a waiver of labeling requirements. Moreover, the waiver should not expire.

7. NMED must establish a clear, transparent process for granting labeling exemptions that includes firm deadlines for NMED decisions on exemption requests and a mechanism for manufacturers to appeal denials.

8. Complex durable goods and components of complex durable goods are exempt from section 20.13.2.13(C). Aftermarket parts that are components of complex durable goods should be identified as exempt if they are not encompassed by the proposed exemption language.

B. TEXTILES and UPHOLSTERY

The proposed 2028 PFAS ban on textiles and upholstery affects vehicle interiors such as seats, carpets, seatbelts and headliners. PFAS is used in these components to meet Federal requirements related to safety, flammability and durability. For example, FMVSS Standard 302, related to the flammability of interior materials specifies burn resistance requirements for materials used in the occupant compartments of motor vehicles. See 49 CFR 571.302. The standard applies to passenger cars, multipurpose passenger vehicles, trucks, and buses. The presence of PFAS in interior materials used in occupant compartments is needed to meet Federal standards that are intended to protect occupants of vehicles. Bans on PFAS in these uses may compromise the safety of the product and conflict with compliance with Federal standards. Such materials should therefore be explicitly exempt as federally regulated safety components.

C. SNAP APPROVED REFRIGERANTS

The proposed rule should clearly exempt vehicle refrigerants listed as "acceptable, acceptable subject to use conditions or acceptable to narrowed use limits by the United States Environmental Protection Agency pursuant to the significant new alternatives policy program."

The proposed exemption provisions related to refrigerants that are approved under the significant new alternatives policy program (SNAP) are confusing. The broad motor vehicle or motor vehicle equipment exemption under 20.13.2.10(G) carves out refrigerants included in or as a component part of such products. While 20.13.2.10(L) essentially identifies as exempt SNAP approved products, but then adds an additional qualifier that states "provided that the product contains per-or poly-fluoroalkyl substances that are being used as substitutes for ozone-depleting substances under the conditions specified in the rules". A separate exemption under 20.13.2.10(D) that references cooling, heating, ventilation, air conditioning or refrigeration equipment and SNAP-approved refrigerants, does not include the additional qualifier.

There are widely used SNAP approved refrigerants (HFO-1234yf and HFC-134a) that have equivalent ozone-depletion values of zero. One may be used to replace the other in a motor vehicle. It is unclear if the substitute would be considered exempt under the proposed wording.

This ambiguity should be corrected and all SNAP approved refrigerants should be exempt. The SNAP program framework conducts a comprehensive assessment of substances as part of their approval process.

As described in the snap program overview at https://www.epa.gov/snap/snap-program-overview:

> The SNAP framework considers the following:
> - Looks at overall risk to human health and the environment of both existing and new substitutes;
> - Publishes lists of acceptable and unacceptable substitutes by end-use;
> - Promotes the use of acceptable substitutes; and
> - Provides the public with information about the potential environmental and human health impacts of substitutes.
>
> To arrive at determinations on the acceptability of substitutes, the Agency performs a cross-media analysis of risks to human health and the environment from the use of various substitutes in different industrial and consumer uses that have historically used ODS. EPA reviews characteristics, including the following, when evaluating each proposed substitute:
> - Ozone depletion potential (ODP),
> - Global warming potential (GWP),
> - Toxicity,
> - Flammability,
> - Occupational and consumer health/safety,
> - Local air quality, and
> - Ecosystem effects.
>
> The SNAP program does not provide a static list of alternatives but instead, evolves the list as EPA makes decisions that are informed by its overall understanding of the environmental and human health impacts as well as its current knowledge about available substitutes. The EPA must prohibit the use of a substitute where EPA has determined that there are other available substitutes that pose less overall risk to human health and the environment.

The EPA SNAP program represents the highest level of scrutiny and expertise to evaluate refrigerants on the most important factors relevant to consumer safety. NMED should not insert themselves in this area as a substitute decision maker in place of experts in this area. The exemption for SNAP approved refrigerants should be clear and unequivocal and should not include additional qualifiers that may result in SNAP-approved refrigerants not being eligible for the exemption.

D. CUU DETERMINATION PROCESS

The CUU determination process is technically infeasible, unreasonable and must be significantly revised to be achievable. Many of the requirements do not seem to accomplish any

valid purpose. Section 20.13.2.11(A)(6) requires information lists of federal regulations and other state regulations, information about other sales prohibitions and other CUU processes. Section 20.13.2.11(A)(7) requires "If, in another jurisdiction the product is subject to an absolute prohibition or no currently unavoidable use determination or similar has been made, a list of comparable products that the proposer is aware of remaining available for sale, offered for sale, distributed or distributed for sale within that jurisdiction." These purpose of these requirements is difficult to determine. However, requiring the entity seeking a CUU determination to identify bans and CUU determinations in other jurisdictions and to investigate products that they do not produce, is excessive and unreasonable.

The CUU timeline does not align with the implementation timeline. The process for requesting a CUU determination is not available until after the reporting requirements take effect so manufacturers will have to prepare to report (at a minimum) and possibly actually begin reporting.

Additionally, the 3 year duration for a CUU designation is inadequate and does not allow sufficient time for identification and testing of reasonable alternatives. Inadequate timelines for investigation, development, testing and implementation of alternatives, will increase the chances of regrettable substitutions. Furthermore, resubmittal of a CUU proposal is required "no later than 12 months prior to the expiration date of the determination in effect." This effectively creates a 2 year cycle for renewal of ongoing, vital, CUU determinations. The 3 year (effectively 2 year) cycle is unworkable and will lead to resubmittal of unchanged information. This is ineffective and unduly burdensome. CUU determinations should be effective for no less than 5 years.

E. ADDITIONAL ISSUES

1. NMED should incorporate a due diligence standard, "known to or reasonably ascertainable by", to ensure compliance expectations for reporting and labeling are reasonable. In the absence of this qualifying language, the information demands are virtually impossible to meet since much of the information is not controlled or held by the manufacturers subject to the proposed rule.

2. Replacement parts for vehicles sold prior to the proposed ban in January 1, 2028 (for textiles containing PFAS), should be explicitly exempt from the proposed ban.

IV. CONCLUSION

The NMED proposal is critically flawed and should not be approved without significant revisions. The labeling provisions exceed statutory authority, by requiring labeling of products expressly exempt from the operative provisions of the PFAS Protection Act. Furthermore, the labeling requirements and labeling waiver requirements are de facto reporting requirements for products expressly exempt from reporting requirements. Moreover, the labeling provisions are vague, unreasonable and require disclosure of proprietary designs, manufacturing information, and potentially confidential business information. The labeling requirements are unauthorized, technically impracticable, unnecessary and economically unreasonable. Consequently, the labeling provisions should be removed from the proposed rule.

Additionally, the CUU determination process is so burdensome that it is unlikely to be useful to address critical PFAS uses that are not adequately captured by the exemption provisions, including textiles and possibly SNAP-approved refrigerants. The CUU determination process must be significantly revised to be technically practicable and economically reasonable.

Significant revisions are needed to resolve the exceedance of statutory authority and reduce the substantial burden and formidable challenges associated with compliance with the NMED proposal. The costs and burdens associated with compliance will be considered by manufacturers and the costs of compliance may impact consumers. Product bans that come into effect because of non-compliance with labeling requirements, may impact product availability of categories of products that were intended to be exempt from such bans. This is an unacceptable outcome for products explicitly exempt pursuant to the PFAS Protection Act.

We appreciate the opportunity to provide these comments. Please do not hesitate to contact Dawn Friest at (519) 999-4480 (or at dfriest@emamail.org) if you have any questions.

Respectfully submitted,

TRUCK & ENGINE
MANUFACTURERS ASSOCIATION

Cc: The Honorable Michelle Lujan Grisham
Governor – State of New Mexico
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Attachment: EMA Member List

141741.6

EMA Member Companies

AGCO Corporation
American Honda Motor Co., Inc.
Blue Bird Corporation
Briggs & Stratton, LLC.
Caterpillar Inc.
CNH Industrial
Cummins Inc.
Daimler Truck North America LLC
Deere & Company
DEUTZ Corporation
FPT Industrial
Generac Power Systems
General Motors Company
Hino Motors Manufacturing USA, Inc.
INNIO
International Motors, LLC
Isuzu Technical Center of America, Inc.
JCB Power Systems
Kawasaki Motors Corp., USA
Komatsu Ltd.
Kubota Engine America Corporation
Liebherr Machines Bulle SA
MAN Truck & Bus SE
PACCAR Inc
Rolls-Royce Solutions America Inc.
Scania CV AB
Stellantis N.V.
Volvo Group North America
Wärtsilä North America, Inc.
Yanmar America Corporation