



February 20, 2026

Phoebe Suina

Chair, New Mexico Environmental Improvement Board (EIB)

1190 St. Francis Drive

Santa Fe, New Mexico 87507

Submitted via online public comment portal and via email to NMED-PFAS@env.nm.gov, Luis.Lopez@env.nm.gov, and pamela.jones@env.nm.gov

RE: Public Comments on EIB 25-61 – Proposed Adoption of 20.13.2 NMAC, Per- and Poly-Fluoroalkyl (PFAS) Substances in Consumer Products

Dear Chair Suina:

On behalf of The Toy Association, thank you for the opportunity to provide comments on the proposed adoption of 20.13.2 NMAC, Per- and Poly-Fluoroalkyl (PFAS) Substances in Consumer Products administrative rules.

The Toy Association is the North America-based trade association; our membership includes more than 800 businesses, from inventors and designers of toys to toy manufacturers and importers, retailers and safety testing labs, and all members are involved in bringing safe & fun toys and games to children. We are invested in bringing the benefits of play to kids and adults across the world, including in New Mexico. The toy sector creates \$238 million in annual economic impact to the state of New Mexico. We look forward to working with you to ensure that the rules adopted do not inhibit the availability of safe, affordable, and educational toys in New Mexico.

Executive Summary:

Toy Association members strongly support safety for children as well as environmental stewardship. We have a history of innovation and leadership in safety standards and sustainable manufacturing practices, working closely with industry partners and federal and state regulators. This is the heart of our industry: ensuring everyone has access to safe, affordable, sustainable, and educational play.

For this reason, our members do not intentionally add PFAS to our toys. Overall, PFAS is found in only a small percentage of toys, predominantly toys that contain internal

electronic components. The PFASs used provide specific properties to prevent overheating and fire hazards, ensuring the safety of those toys that contain electronic components. These portions of the product do not come into contact with the child or adult. Additionally, it is important to highlight that these components are common consumer-product components which are manufactured by third parties, not toy manufacturers themselves, so they are components that toy manufacturers cannot reformulate or redesign.

This is precisely the type of situation envisioned by the New Mexico legislature in exempting products containing fluoropolymers, products in which the PFAS is a currently unavoidable use, and products with PFAS in certain electronic components. **We support these exemptions. However, the proposed rules would extend onerous reporting and labeling requirements on these products despite this exemption.** Such reporting and labeling requirements do not improve product safety or environmental quality, and risk misinforming consumers by indicating that a danger exists with the product when there is no risk whatsoever.

The Toy Association looks forward to working with the New Mexico Environment Improvement Board to address concerns with the proposed rules that, if not addressed, will result in safe and educational toys being removed from the New Mexico market:

- **Labeling:** the proposed rule should not require labeling, or even a labeling waiver process, on products that are statutorily exempt under SB 212. Such requirements are burdensome, unnecessary, contrary to legislative intent, and do not further the goals of consumer safety or environmental protection.
- **Timelines:** the proposed timelines for labeling of products are not achievable. While we appreciate the revised draft rules and understand the effective dates contained in SB 212, the proposed rules would allow only 6 months from the conclusion of the rulemaking process until labels would be required to be manufactured with products and packaging. For products with a pending waiver application, if the waiver is denied, this timeline would be only 90-days. Given the timeframes to update products and packaging, these timelines remain infeasible.
- **Reporting requirements:** The proposed reporting requirements are costly and administratively burdensome even for the largest toy manufacturers, and will not increase transparency for consumers or improve environmental outcomes.

Even with these concerns, we believe that, with the following revisions, the rules can achieve the underlying statute’s goals of product safety and environmental protection without the burdensome and unnecessary requirements in the draft rules:

- **Labeling:** Remove the labeling requirement for the following products, keeping the rulemaking in line with legislative intent:
 - Products exempt from the statute, including products in which the PFAS is entirely embedded within the product and will not come into contact with the child or adult during the life of the toy. This exemption should be expressly contained in the rules, and not require an exemption waiver application process every three years.
 - Products exempt from reporting should also be exempt from labeling.
- **Timelines:** We appreciate the revised rulemaking draft that applies the requirements to products manufactured beginning January 1, 2027, rather than sold after that date. However, while we understand the January 1, 2027 effective date in the statute, we ask the NMED to phase-in enforcement with an understanding of global product supply chains and manufacturing processes. For toys, the timeline from product design and manufacture to product sale can be 24 months or longer, even for the addition of labels on products and packaging. Enforcement for the initial 24 months of the new law should be limited to education and outreach with administrative support for compliance.
- **Reporting requirements:** As detailed below, the proposed reporting requirements are unnecessarily onerous without introducing a corresponding benefit for consumer safety or environmental protection. For example, as drafted it is unclear if each required report fee is per product or based on another parameter. If the reporting fee is per product, this will be challenging to manage and incur significant additional costs for the toy industry given that new products are constantly developed and introduced to the market; this burden would be compounded by the fact that the fee would be required even if the product is exempt from the underlying statute and even where the product presents no risk of PFAS exposure to the consumer. We ask that the reporting requirements be narrowed to reflect the language in SB 212, including eliminating reporting requirements for exempt products.

The above recommendations will ensure that the goals of SB 212 can be realized, without unintended consequences, and we sincerely appreciate your consideration of these important concerns.

A. Mandatory labeling of statutorily exempt products conflicts with legislative intent and raises legal concerns

Toy Association members are committed to toy safety, regulatory compliance, and providing meaningful information to consumers. However, as currently drafted, the PFAS labeling requirements raise significant concerns for our members.

The draft rules would require labels that would undermine consumer confidence in toy safety where no safety risk exists:

Any rulemaking should not require labels on products that the Legislature expressly exempted from SB 212. This includes products in which the PFAS is: (1) entirely enclosed within the product and does not come into contact with the child during play; (2) is a currently unavoidable use; and/or (3) is present as a fluoropolymer exempt from the statute. Requiring labeling for these products does not adhere to legislative intent given that these products were specifically enumerated exemptions in the statute. Further, mandating such labeling risks misleading consumers by implying a health or safety risk where none exists. Every parent and caregiver wants to know that the toys their children play with are safe, and requiring a label implying a safety concern where none exists is misleading, inappropriate, and can undermine confidence in safe products.

The Toy Association asks the rules to be amended as follows:

1. *Exempt inaccessible internal electronic components from labeling requirements.* Clarify in the rule that products containing PFAS solely in fully enclosed, inaccessible internal components – such as embedded electronics in toys – are categorically exempt from labeling. This is consistent with the statutory exemptions and reflects the fact that the child will not come into contact with PFAS while playing with the toy. While we appreciate the revised rulemaking draft that allows a labeling exemption process for an entire product class, the waiver process still amounts to an unnecessary administrative burden that would need to be completed every three years for products that are otherwise exempt from the statute.

Practical constraints make product labels unworkable for toys:

Toy products present unique labeling challenges. Many toys are very small, leaving insufficient space for legible and permanent on-product labels. As drafted, the rules are unclear as to what constitutes a product sufficiently small to be exempt from the on-product label requirement. Toy packaging itself is also often quite small, leaving little to no room available for labels, leading to consumer confusion as well as additional uncertainties and difficulties for manufacturers.

The Toy Association asks the rules to be amended as follows:

1. *Establish practical standards for small products and packaging.*
Allow manufacturers to determine if a toy and/or packaging is “too small” for on-product or on-package labeling. For on-product labels on small toys, this allows manufacturers to consider the durability, safety, and practical limitations of on-product labels for toys. For packaging, the rules should allow for (though not mandate) an alternative placement of the information, such as an on-package QR code linking to a website with the information or separate literature inside the package.

The proposed labeling waiver and exemption process is insufficient and overly burdensome:

The proposed waiver and exemption criteria is ambiguous and not risk-based. For example, the definition of “intentionally added PFAS,” could be interpreted so broadly as to capture PFAS used in manufacturing (such as mold-release agents) that serve no function in the final product, have no function in the finished product and are not intended to remain on the product when it reaches the consumer.

The Toy Association asks the rules to be amended as follows:

1. *Refine and clarify the definitions.*
Replace the current “ever come into contact with the consumer” standard with a clearer, science- and risk-based approach comparable to what is applied for Federal US Toy requirements and the European Union framework, focusing on actual exposure conditions during normal and foreseeable use.

Additionally, ensure the definition excludes residuals from manufacturing processes that serve no functional purpose in the final product and are not intended or reasonably expected to remain when the product reaches the consumer.

B. The timelines for rulemaking necessitate extension of enforcement timelines

The Toy Association appreciates the NMED’s engagement with stakeholders and a lengthy rulemaking process to ensure robust public input. However, with the lengthy rulemaking process, the statutory effective date of January 1, 2027 will be only six months following the finalization of the rules. This timeline is simply too short to ensure compliance without significant changes to the labeling exemption draft rules, coupled with a phased-in and practical approach to enforcement for non-exempt products.

Toy products typically require approximately 12 to 24 months for design, testing, and packaging development. Even the addition of an on-product or on-package label takes longer than the timeframes allowed by the revised rulemaking draft.

Also, toys are not a state-specific product category. Rather, they are sold nationally through many brick-and-mortar and online retailers, and toy manufacturers do not control when and where products are ultimately sold within each state in the US; this is determined and managed instead by other downstream parties including retailers.

The Toy Association asks the rules to be amended as follows:

1. *Include a phase-in approach for enforcement.*

For at least the first 24 months following the statutory effective date, enforcement should be limited to education, outreach, and administrative assistance in compliance.

C. Third problem – reporting requirements

Toy safety is paramount for our members, and the Toy Association regularly provides information to consumers to help them make informed decisions to ensure they are buying safe, compliant toys. While we understand the desire for increased reporting to provide information to consumers, as drafted, the proposed reporting requirements are

unnecessarily costly, are unclear, and would not improve public information for those wanting to ensure the toys they are buying are safe for children and for the environment.

Product reporting should be at the product-category level, not SKU-by-SKU:

Unlike other state PFAS laws that permit reporting at the product-group or category level, the proposed New Mexico rules appear to require product-specific reporting, potentially down to the SKU level—even where a product is exempt from the statutory ban. For the toy industry, which produces thousands of SKUs across rapidly evolving product lines, this approach would be unnecessarily burdensome.

The Toy Association asks the rules to be amended as follows:

1. *Allow reporting at the product-category level.*

Revise the rules to align New Mexico’s reporting requirements with other state programs by permitting manufacturers to report by product class, rather than requiring SKU-by-SKU specific submissions.

Permit reliance on upstream supplier information in lieu of testing:

For the limited number of toys that contain PFAS, the PFAS-containing component of the product is almost always within the electrical wiring and components of an electronic toy. These electronic components are very rarely manufactured by the toy manufacturer, but instead are purchased “off-the-shelf” from a third-party manufacturer. Often, these are common components that will be used and present across multiple individual products, which would result in redundant reporting is at the per-product level. Yet Section 20.13.2.12(B)(3) would require manufacturers to provide documentation verifying the results of analytical methods used to identify PFAS. However, commercially available analytical methods capable of identifying specific PFAS are limited. Other regulatory frameworks—including Maine’s PFAS in Products law and the Environmental Protection Agency (EPA)’s PFAS reporting rule under the Toxic Substances Control Act (TSCA)—recognize these limitations by allowing reporting based on information that is known or reasonably ascertainable.

The Toy Association asks the rules to be amended as follows:

1. *Expressly permit reliance on upstream supplier information in lieu of testing.*

Revise the rules to clarify that manufacturers are only required to report information that is known or reasonably ascertainable, consistent with Maine’s PFAS law and the TSCA PFAS reporting requirements.

Additionally, allow reporting based on information provided by third-party suppliers. Lastly, allow reporting generically where specific information is unavailable due to analytical or confidentiality/proprietary information limitations.

Provide clear guidance and reasonable limitations on fees:

The proposed reporting and application fee schedules raise significant questions and concerns. It is unclear whether the \$2,500 initial reporting fee applies per manufacturer, per product category, or per SKU, and whether the \$1,000 update fee would apply even when PFAS use is reduced or eliminated.

The Toy Association asks the rules to be amended as follows:

1. *Clarify the fee structure for reporting and ensure that it is reasonable and representative.*

Revise the rules to expressly state that reporting fees apply on a per-manufacturer basis, not per product category or per SKU, and ensure that fees are not assessed when PFAS is reduced or eliminated. Fee amounts should be as low as possible, with a maximum fee amount established in rule with the possibility of a consultation to allow for fee reductions where the cost to the Department for processing the reporting is less than the maximum allowable. Reporting should be limited to new or modified products only, on an annual basis.

Conclusion

The Toy Association respectfully asks that the proposed new rule of 20.13.2 NMAC, *Per- and Poly-Fluoroalkyl Substances in Consumer Products* be amended as follows:

- Clarify in the rule that products containing PFAS solely in fully enclosed, inaccessible internal components – such as embedded electronics in toys – are categorically exempt from labeling. This is consistent with the statutory exemptions and reflects the fact that the child will not come into contact with PFAS while playing with the toy.

- Allow manufacturers to determine if a toy and/or its packaging are “too small” for labeling, given the durability, safety, and practical limitations of labels.
- Replace the current PFAS “ever come into contact with the consumer” standard with a clearer, risk-based approach similar to other existing framework, focusing on direct and prolonged exposure during normal and foreseeable use.
- Ensure the definition of PFAS excludes residuals from manufacturing processes that serve no functional purpose in the final product and are not intended or reasonably expected to remain when the product reaches the consumer.
- For at least the first 24 months following the statutory effective date, enforcement should be limited to education, outreach, and administrative assistance in compliance.
- Revise the rules to align New Mexico’s reporting requirements with other state programs by permitting manufacturers to report by product group or category, rather than requiring SKU-by-SKU specific submissions.
- Revise the rules to clarify that manufacturers are only required to report information that is known or reasonably ascertainable, consistent with Maine’s PFAS law and the TSCA PFAS reporting requirements.
- Allow reporting based on information provided by third-party suppliers.
- Allow reporting generically where specific information is unavailable due to analytical or confidentiality/proprietary information limitations.
- Revise the rules to expressly state that reporting fees apply on a per-manufacturer basis, not per product category or per SKU, and ensure that fees are not assessed when PFAS is reduced or eliminated.

Taken together, these revisions would align the draft rules with legislative intent, reduce unnecessary and impractical compliance burdens, and ensure that any required labeling and reporting is accurate, meaningful, and helpful for consumers.

We sincerely appreciate your attention to these concerns. The Toy Association’s members are committed to protecting children’s health and safety, while advancing environmental sustainability. We look forward to collaborating with you on these rules to ensure the continued availability of toys in New Mexico that are safe, fun, educational, and sustainable.



Thank you again for the opportunity to submit comments. If you have any questions about this letter, please do not hesitate to reach out; we would be delighted to discuss further.

Sincerely,

Lindsey Hueer
Senior Manager, State Government Affairs, West
The Toy Association

cc: Governor Michelle Lujan Grisham, via Daniel Schlegel, Chief of Staff to Governor Lujan Grisham (Daniel.Schlegel@state.nm.us)
New Mexico Environment Department Secretary James Kenney
(james.kenney@env.nm.gov)

About The Toy Association and the toy industry:

The Toy Association is the North America-based trade association; our membership includes more than 800 businesses, from inventors and designers of toys to toy manufacturers and importers, retailers and safety testing labs, and all members are involved in bringing safe & fun toys and games to children. The toy sector is a global industry of more than US \$90 billion worldwide annually, and our members account for more than half of this amount.

Toy safety is the top priority for The Toy Association and its members. Since the 1930s, we have served as leaders in global toy safety efforts; in the 1970s we helped to create the first comprehensive toy safety standard, which was later adopted under the auspices of ASTM International as ASTM F963. The ASTM F963 Toy Safety Standard has been recognized in the United States and internationally as an effective safety standard that has been adopted as a mandatory toy safety standard for all toys sold in the U.S. under the Consumer Product Safety Improvement Act (CPSIA) in 2008. It also serves as a model for other countries looking to protect the health and safety of their citizens with protective standards for children. The 2023 revision to ASTM F963 was accepted by the Commission and came into force in April 2024. The Toy Association continues to work with medical experts,

government, consumers and industry to provide technical input to ensure that toy safety standards keep pace with innovation and potential emerging issues.

The Toy Association is committed to working with legislators and regulators around the world to reduce barriers to trade and to achieve the international alignment and harmonization of risk-based standards that will provide a high level of confidence that toys from any source can be trusted as safe for use by children. Standards alignment assures open markets between nations to maximize product availability and choice.
