January 13, 2026

The Honorable Michelle Lujan Grisham
Governor
State of New Mexico
490 Old Santa Fe Trail Room 400
Santa Fe, NM 87501

RE: Proposed NMED Regulations to Implement HB 212 re: PFAS

Dear Governor Grisham:

The undersigned organizations, representing virtually every sector of the New Mexico economy, are writing to express our serious concerns with the draft approach the New Mexico Environment Department (NMED) proposes to take with the implementation of HB 212[1] as described in proposed rules filed with the Environmental Improvement Board (EIB) on October 8, 2025.[2]

As proposed, these regulations will impact manufacturers of products of all types – from smart phones to solar panels and semiconductors to satellites, resulting in a regulatory environment that runs counter to the on-going efforts to attract innovative new businesses to the state. Additionally, the proposed exemption process outlined in the draft rules will likely result in significant new state costs, as NMED will be required to process hundreds of thousands of exemption applications.

As we outline below, the proposed regulations are inconsistent with the spirit of the legislation, lack strong scientific foundation and may violate First Amendment rights against compelled speech. Collectively, we support the responsible production, use and management of fluorinated substances, including regulatory requirements that are protective of human health and the environment, taking into consideration the diversity of physical and chemical properties and the environmental and health profiles of these substances. However, the initial draft language does not meet these principles.

We urge your Administration to revise the draft regulations to ensure that any final rule is grounded in strong scientific principles, protects human health and the environment, encourages innovation and economic development, and provides regulatory certainty to the business community.

****

The proposed labeling requirement is built on a foundation that incorrectly characterizes all PFAS substances as equal, regardless of any unique properties and uses, environmental and health profiles, potential exposure pathways, and any potential risk. PFAS substances can be a solid (e.g., fluoropolymers), liquid (e.g., fluorotelomer alcohols) or a gas (e.g., hydrofluorocarbon refrigerants). The fundamental physical, chemical, and biological properties of solids, liquids and gases are clearly different from one another. The very distinct physical and chemical properties of the three types demonstrate how varied they are and how imposing a “one-size fits all” approach to labeling would be inappropriate.

Thousands, if not hundreds of thousands of products sold or used in the state would be subject to a proposed labeling requirement. These include smart phones and laptops, solar panels, vehicles, HVAC units, electric appliances, plumbing components, paints and coatings, components of agricultural equipment, telecommunications infrastructure and advanced transportation and aerospace applications to name just a few.

One key type of PFAS in use today is fluoropolymers, a type of specialty material. Fluoropolymer uses include:

- **Automotive:** Gaskets, rings, valves, and hoses in the fuel system; wiring and circuit boards; pull cables; shock absorbers and bushings.

[1] https://www.nmlegis.gov/Sessions/25%20Regular/final/HB0212.pdf
[2] https://www.env.nm.gov/wp-content/uploads/2025/10/2025-10-06-PFAS-Protection-Act-Proposed-Rules.pdf

- **Aerospace (military and civilian):** High performance navigation and communication antennae; lubricants for wing flap mechanisms and landing gear; fuel-oxygen separation systems.

- **Clean Energy**: Electric vehicle batteries, hydrogen fuel cells, solar panels, battery storage, spray foam, electric heat pumps, wind turbines, and sheathing for power cables and coatings for electrical wire.

- **Electronics and Electric Appliances:** Computers and other electronic equipment and related components and accessories.

- **Industrial Processes:** Linings for pipes, valves, and tanks to prevent corrosion; gaskets in high temperature, high pressure production processes to contain reactive substances.

- **Medical:** Surgically implanted medical devices (e.g. stents); COVID testing equipment and respirator tubing; catheters and guide wires; transfer and storage bags for biological fluids; personal protective equipment.

- **Connections:** Seals, O-rings, gaskets, tapes, and connectors which provide functions multiple functions, such as flexibility, corrosion resistance, heat and cold resistance, fugitive emissions control, and tight seals for working with challenging substances and/or in challenging operating environments.

- **Semiconductors:** Ultra-low contamination semiconductor manufacturing; wafer etching; chemical piping and storage.

- **Marine / Recreational Boats:** Boat builders are typically assemblers, not chemical manufacturers, and rely on thousands of purchased components that may contain PFAS. A typical 20-foot boat can include **1,000+ individual components (SKUs)**, making it extremely difficult for small businesses to identify PFAS content across complex, global, multi-tier supply chains.

The legislature expressly exempted many categories of products from the statute's prohibition, reporting, disclosure, and currently unavoidable use (CUU) provisions. The exclusions include "a product that contains fluoropolymers consisting of polymeric substances for which the backbone of the polymer is either a per- or polyfluorinated carbon-only backbone or a perfluorinated polyether backbone that is a solid at standard temperature and pressure."[3]

NMED is proposing to require labeling of products that the Legislature ***specifically exempted from regulation in other areas.*** In so doing, the NMED is exercising a purely discretionary option that is inconsistent with the intent of the legislature. The use of the term "may" in the statute is a clear indication that NMED's initial draft to include a labeling requirement is entirely discretionary.[4] Nowhere in HB 212, including the section on exemptions to the phaseout of products containing intentionally added PFAS, does the legislature state or otherwise infer that such exemptions are conditional upon

[3] See page 10, lines 5-9 in the previously referenced statute.
[4] See page 4, line 5 in the previously referenced statute.

labeling as required by the NMED. Any proposed labeling rules do not have to apply to the products the legislature exempted.

The labeling requirements for exempted products also create clear conflicts with federal labeling statutes, most notably for Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) regulated products that contain active ingredients meeting New Mexico's PFAS definition. The legislature anticipated this issue by requiring NMED to consult with the New Mexico Department of Agriculture, though it is unclear whether that consultation has occurred.

We also note that the phrase "adopt rules to carry out the provisions of the Per-and Poly-Fluoroalkyl Substances Protection Act"[5] implies that the NMED and EIB consider the totality of the statute when proposing any implementing rules, including labeling. It is inappropriate to dismiss the legislature's careful consideration of exemptions for products otherwise exempt from the statute's CUU and reporting requirements. The legislature intended for those products to continue to be available to New Mexico's businesses, institutions, and citizens without additional conditions that may be costly and that could pose complicated compliance challenges for many manufacturers, and which may act as a de facto ban.

In addition, NMED's proposed labeling requirements may violate First Amendment rights against compelled speech by imposing not purely factual or controversial information on product labels. In the proposed rules, the proposed labeling requirements for complex durable goods contemplate "[a] symbol approved by the department accompanied by a statement indicating the presence of intentionally added per- or poly-fluoroalkyl substances and/or component parts with intentionally added per- or poly-fluoroalkyl substances."[6] The proposed rules go on to say that a statement containing the following language is acceptable: "This product is made with PFAS or contains component parts made with PFAS. PFAS are a family of chemicals, exposure to which are [*sic*] associated with negative health and environmental effects." That statement is not true for all PFAS. PFAS are a large, diverse family of chemistries with highly variable chemical and physical properties. Those properties underly interactions with the human body and the environment that may or may not raise potential concerns. For example, fluoropolymers, a class of PFAS, have been found to be substances of low concern for human health and the environment.[7, 8, 9] The same can be said for certain perfluoropolyethers.[10]

Therefore, the proposal to mandate a danger statement about all PFAS is not accurate. The proposed approved statement goes beyond purely factual and noncontroversial information, not just for fluoropolymers, but likely for many fluorinated substances captured by the definition of PFAS in the statute. This furthers the risk of "overwarning" similar to what occurs for California's Proposition 65 warnings.

---

[5] See page 15, lines 6-7 in the previously referenced statute.
[6] See page 9, lines 18-20 in the previously referenced proposed rules.
[7] Henry, B.J., *et al.* 2018. A critical review of the application of polymer of low concern and regulatory criteria to fluoropolymers. Integr Environ Assess Manag, 14: 316-334, https://doi.org/10.1002/ieam.4035.
[8] Korzeniowski, S.H., *et al.* 2022. A critical review of the application of polymer of low concern regulatory criteria to fluoropolymers II: Fluoroplastics and fluor elastomers. Integer Environ Assess Manag, https://doi.org/10.1002/ieam.4646.
[9] Henry, B.J., and Timmer, N. 2025. Environmental fate and behavior studies of a polymeric PFAS, polytetrafluoroethylene (PTFE)—results and application to risk assessment. Chemosphere 385:144569.
[10] Javed, H., *et al*. 2025. A critical review of the application of polymer of low concern and regulatory criteria to perfluoropolyethers. J. Fluorine Chemistry 285-286: 110459.

Furthermore, there are significant practical issues with the proposed regulations. First, the mandate would take effect on January 1, 2027, providing less than one year for manufacturers to reformulate their products, which is unlikely to be long enough for many. This would lead to numerous products that consumers expect to be available being unnecessarily removed from the New Mexico market.

Moreover, the requirement to label packaging that obscures a product label poses implementation challenges. First, there is limited space for labeling due to other requirements. Second, the manufacturers of packaging may be different from the manufacturers of products, creating a logistical problem. Additionally, while HB 212 appropriately does not treat packaging as a regulated product, the regulations do not clarify whether unfilled packaging would be treated as a regulated product – we assert that unfilled packaging is not subject to the law and this should be clearly stated in the regulations.

More than 35 states have promulgated PFAS regulations and advisories or are in the process of issuing them.[11] Last year, over 350 PFAS-related bills were introduced across 39 states, with five states enacting legislation.[12] This diversity among states undermines the proposed rule's provision about consistency with other states. Such an approach is unworkable because it contemplates modifying labels for compliance with HB 212 when they have already been designed for other states' regulations. Laws like California's Proposition 65 contain very strict labeling expectations that cannot reasonably be expected to be adapted and still be compatible in both states.

Finally, the draft proposed rules complicate the labeling exemption by including a criterion related to an exemption from reporting and testing obligations. Specifically, the rules would allow NMED to exempt a product from the labeling requirement only if the product is exempt from reporting and testing obligations and will never expose consumers to the intentionally added PFAS it contains. The latter condition regarding consumer exposure should be sufficient to determine whether something needs to be labeled. Therefore, the reporting and testing exemption status is immaterial and this condition should be removed from proposed paragraph 20.13.2.13(F).

Given the policy and legal issues outlined above, we urge NMED to revise its draft language by proceeding with those regulatory provisions that are time sensitive, but pause on any proposed labeling requirements until further dialogue with impacted stakeholders can occur and the issues outlined above can be resolved. Thank you in advance for your consideration of these concerns. Our organizations stand ready to constructively engage in this process.

Sincerely,

Adhesive and Sealant Council
Alliance for Automotive Innovation
American Chemistry Council
American Institute for Packaging and the Environment
Animal Health Institute
Associated Builders and Contractors of New Mexico

[11] PFAS: State-by-State Regulatory Update (March 2025), ALL4 Consulting,(available at www.all4inc.com).
[12] Multistate Update on PFAS Legislation in the States, May 28, 2025 (available at www.multistate.us/insider/2025/5/28)

Associated General Contractors New Mexico
Association of Equipment Manufacturers
Association of Home Appliance Manufacturers
Association of the Nonwoven Fabrics Industry
Bio-Process Systems Alliance
Center for the Polyurethanes Industry
Color Pigments Manufacturers Association
Communications Cable & Connectivity Association
Flexible Packaging Association
Fluid Sealing Association
Fuel Cell and Hydrogen Energy Association
Greater Albuquerque Chamber of Commerce
Household & Commercial Products Association
Mechanical Contractors Association of New Mexico
Motorcycle Industry Council
National Association of Printing Ink Manufacturers
National Electrical Manufacturers Association
National Federation of Independent Business
New Mexico Chamber of Commerce
New Mexico Farm and Livestock Bureau
New Mexico Industrial Developers Executives Association
New Mexico Retail Association
North American Association of Food Equipment Manufacturers
Outdoor Power Equipment Institute
Personal Care Products Council
PLASTICS Industry Association
PRINTING United Alliance
Recreational Off-Highway Vehicle Association
Retail Industry Leaders Association
Specialty Vehicle Institute of America
Spray Polyurethane Foam Alliance
Truck & Engine Manufacturers Association
Valve Manufacturers Association
Vehicle Suppliers Association
Window and Door Manufacturer’s Association