



October 22, 2025

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:

I am writing to you on behalf of the American Chemistry Council.¹ We are concerned about the approach the New Mexico Environment Department (NMED) proposes to take with the implementation of H.B. 212² as described in the proposed rules filed with the Environmental Improvement Board (EIB) on October 8, 2025.³ For the reasons stated below, we request that the Environmental Improvement Board send the proposed rules back to the NMED to address the issues with overreach and authority addressed in this letter. The proposed labeling requirement is inconsistent with the spirit of the legislation, the intent of the legislature, and may violate First Amendment rights against compelled speech.

The New Mexico 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."⁴

The NMED is petitioning the EIB 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 the NMED's petition to the EIB to include a labeling requirement is entirely discretionary.⁵ Nowhere in HB 212, including the section on exemptions

¹ The American Chemistry Council's mission is to advocate for the people, policy, and products of chemistry that make the United States the global leader in innovation and manufacturing. To achieve this, we: Champion science-based policy solutions across all levels of government; Drive continuous performance improvement to protect employees and communities through Responsible Care®; Foster the development of sustainability practices throughout ACC member companies; and Communicate authentically with communities about challenges and solutions for a safer, healthier and more sustainable way of life. Our vision is a world made better by chemistry, where people live happier, healthier, and more prosperous lives, safely and sustainably—for generations to come.

² <https://www.nmlegis.gov/Sessions/25%20Regular/final/HB0212.pdf>

³ <https://www.env.nm.gov/wp-content/uploads/2025/10/2025-10-06-PFAS-Protection-Act-Proposed-Rules.pdf>

⁴ See page 10, lines 5-9 in the previously referenced statute.

⁵ See page 4, line 5 in the previously referenced statute.



to the phaseout of products containing intentionally added PFAS, does the legislature state or otherwise infer that such exemptions are conditional upon labeling as required by the NMED. Any proposed labeling rules do not have to apply to the products the legislature exempted. We also note that the phrase “adopt rules to carry out the provisions of the Per- and Poly-Fluoroalkyl Substances Protection Act”⁶ implies that the NMED and EIB to 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 counterfactual and 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.”⁷ 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.^{8, 9, 10} The same can be said for certain perfluoropolyethers.¹¹

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.

Thank you for the opportunity to provide our perspective on implementation of H.B. 212. This letter does not capture the full extent of our comments and questions on the October 8, 2025, proposed rules and should not be interpreted as such. Rather, we bring attention to two matters, labeling and compelled speech, that require immediate consideration and an appropriate recast

⁶ See page 15, lines 6-7 in the previously referenced statute.

⁷ See page 9, lines 18-20 in the previously referenced proposed rules.

⁸ 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>.

⁹ Korzeniowski, S.H., *et al.* 2022. A critical review of the application of polymer of low concern regulatory criteria to fluoropolymers II: Fluoroplastics and fluoroelastomers. *Integr Environ Assess Manag*, <https://doi.org/10.1002/ieam.4646>.

¹⁰ 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.

¹¹ 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.

of the proposed rules. Therefore, we respectfully request that the EIB not approve NMED's petition and instead require the department to bring forward a revised proposed rule that addresses the issues outlined above.

Should you or your staff have any questions, please contact me at 916-448-2581 or tim_shestek@americanchemistry.com. You may also contact our New Mexico-based representative Jason Espinoza at 505-417-4001 or jespinoza.kw@gmail.com. Thank you in advance for considering our views.

Sincerely,

A handwritten signature in black ink, appearing to read "Ti" followed by a stylized flourish.

Tim Shestek
Senior Director, State Affairs
Western Region

cc: Secretary James Kenney, New Mexico Environment Department
Members, Environmental Improvement Board