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February 15, 2026

Phoebe Suina
Chair, New Mexico Environmental Improvement Board
1190 St. Francis Drive, Suite N4050
Santa Fe, NM 87505

RE: Public Comment on Proposed Rules for the PFAS Protection Act New Mexico Environment Department Docket/Reference: PFAS Protection Act Proposed Rules (Filed October 8, 2025)

Chair Suina,

On behalf of the Consumer Healthcare Products Association (CHPA)[1], I am writing to submit public comment on the proposed rules implementing the PFAS Protection Act (HB 212), filed with the Environmental Improvement Board on October 8, 2025. While we support the Legislature's intent to protect New Mexicans from unnecessary PFAS exposure, the proposed rules contain fundamental inconsistencies and create critical ambiguities that must be resolved before adoption.

We appreciate the Department's responsiveness in releasing revised proposed rules that address the treatment of statutorily exempt products under the labeling, reporting, and testing requirements. This clarification properly respects the comprehensive exemptions established in Sections 3(A), 4(A)(1), 5(K), and 6(E) of HB 212, and we thank the Department for this important revision. The modified approach will prevent regulatory incoherence and ensure that the rules align with legislative intent.

However, several critical issues remain that require resolution before the rules can be adopted.

CRITICAL ISSUE #1: Direct Contradiction Between Covered Products and Medical Device Exemption

The Problem

The proposed rule creates an irreconcilable conflict by listing dental floss and feminine hygiene products in two contradictory categories. Section 20.13.2.9 lists these items as covered products subject to PFAS prohibition, while Section 20.13.2.10 simultaneously exempts them as FDA-regulated medical devices under Section 3(A). This renders the rule internally inconsistent and unenforceable.

Federal Classification Is Unambiguous

These products are definitively classified as FDA-regulated medical devices under federal law. Dental floss is classified as a Class I medical device under 21 CFR § 872.6390. Menstrual

[1] The Consumer Healthcare Products Association (CHPA) is the Washington, D.C. based national trade association representing the manufacturers of over-the-counter (OTC) medications, dietary supplements, and OTC medical devices

tampons are classified as Class II medical devices under 21 CFR § 884.5470, and menstrual pads are classified as Class I medical devices under 21 CFR § 884.5435.

Compliance Is Impossible

Manufacturers cannot determine whether dental floss and feminine hygiene products are subject to the 2027 and 2028 PFAS prohibitions under Sections 3(B) and 3(C), reporting requirements under Section 20.13.2.12, labeling requirements under Section 20.13.2.13, or testing provisions under Section 20.13.2.14. A product cannot simultaneously be prohibited and exempt.

Recommended Resolution

Remove dental floss and feminine hygiene products from Section 20.13.2.9. These are FDA-regulated medical devices and must be treated consistently with all other medical devices exempted by Section 3(A).

CRITICAL ISSUE #2: Insufficient Definition of "Intentionally Added" PFAS and Lack of De Minimis Value

Statutory Ambiguity

HB 212 defines "intentionally added" PFAS as a substance where "the continued presence, at any level or concentration, of the per- or poly-fluoroalkyl substances is desired or expected in the final product or one of the product's components." The term "expected" creates fundamental uncertainty. Does it mean PFAS deliberately incorporated for functional purposes? Does it include incidental contamination from manufacturing processes? Does it encompass PFAS from contaminated water sources or raw materials? Does it include PFAS carried over from purchased supplier components?

Inconsistent Definitions Across the Rule

The proposed rule partially addresses this through a 100 PPM rebuttable presumption in the testing section (20.13.2.14), but this creates several problems. First, the 100 PPM standard doesn't apply to reporting (20.13.2.12) or labeling (20.13.2.13), creating inconsistent thresholds across different requirements. Second, there is no de minimis threshold established, meaning trace contamination could technically trigger all requirements. Third, the rule provides no specification of what evidence rebuts the presumption, leaving the rebuttal standard unclear. Fourth, there is no safe harbor providing certainty that PFAS below 100 PPM is definitively not "intentionally added."

"Product Components" Remains Undefined

Critical questions remain unanswered regarding the scope of "product components." Does this include packaging (primary, secondary, tertiary)? How far upstream does manufacturer responsibility extend? Who bears responsibility for PFAS in purchased components—manufacturer or supplier? Does this cover raw materials or only assembled components?

Practical Compliance Impact

Manufacturers cannot determine whether to report trace PFAS contamination below 100 PPM, whether products with incidental contamination require labeling, whether trace PFAS from environmental sources triggers the 2032 prohibition, what analytical methods and detection limits to use, or whether to test every component and raw material.

Recommended Resolution

Adopt clear, consistent definitions for "intentionally added" PFAS. First, clarify "expected" to focus on functional, performance-related purposes rather than any possible presence. Second, explicitly exclude incidental contamination, including trace contamination from manufacturing processes, equipment, or facilities; PFAS from environmental inputs such as water or air; and PFAS in purchased materials where the manufacturer did not specify PFAS content. Third, adopt a 100 PPM de minimis threshold consistently across all sections (reporting, labeling, testing, prohibitions), creating a rebuttable presumption that PFAS below this level is not intentionally added. Fourth, define "product components" with clear boundaries specifying what constitutes a component (parts incorporated into final product), what is excluded (tertiary packaging, manufacturing equipment), and where manufacturer responsibility begins and ends in the supply chain.

CRITICAL ISSUE #3: Practical Compliance Challenges with Current Timelines

Inadequate Timeline for Labeling Compliance

The proposed rules require manufacturers to manufacture new labels for covered products beginning January 1, 2027. Given the anticipated adoption of the rules, this leaves roughly 10 months to complete all necessary compliance steps. Manufacturers must review all products within their portfolio, verify intentionally added PFAS content in every component, redesign packaging and labeling for each product when applicable, and manage logistics across complex, multinational supply chains. For many companies producing products in bulk or distributing through multiple channels, this timeline is simply not feasible and could result in disruptions to product availability for consumers in New Mexico.

Recommended Resolution

To ensure manufacturers can comply effectively without disrupting product availability, we respectfully urge the Department to extend the labeling implementation period to at least a year to January 1, 2028. This would provide a more practical and achievable timeframe for updating product packaging, coordinating with suppliers and distributors, and implementing required internal quality control processes.

In addition, the proposed rules do not currently provide a clear sell-through period and process for products already in the supply chain or on retail shelves. We urge the Department to include a formal sell-through provision as part of any subsequent rulemaking, which would allow manufacturers to sell existing inventory without relabeling while ensuring that all new production complies with any labeling requirements. A sell-

through period is essential to avoid waste, avoid product disruption, and allow manufacturers a more plausible transition process to maintain compliance.

Conclusion

The PFAS Protection Act represents important legislative progress. However, the proposed rules require critical revisions to resolve contradictions, and provide workable compliance standards.

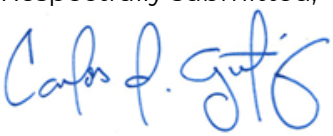
The rules must resolve the medical device contradiction by removing dental floss and feminine hygiene products from Section 20.13.2.9. They must clarify "intentionally added" by defining "expected," excluding incidental contamination, adopting a consistent 100 PPM de minimis threshold, and defining "product components." Finally, they must establish realistic timelines for compliance and appropriate sell-through dates for products already on retailer shelves or active in the supply chain.

Without these revisions, the proposed rules will create legal uncertainty, and undermine effective implementation of this important legislation. The Legislature carefully balanced public health protection with recognition that not all PFAS uses pose risks and certain products require PFAS for essential functions. The proposed rules must respect these legislative determinations.

We urge the Environmental Improvement Board to carefully consider these fundamental issues before deciding whether to adopt the proposed rules in their current form. If EIB were to deny the petition from NMED, the Department would have the opportunity to provide clarification and corrections to the proposed rule. Resubmission of amended rules would promote both greater regulatory clarity and foster a more constructive implementation process.

Thank you for considering these comments.

Respectfully submitted,



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Cc: Members of the Environmental Improvement Board
New Mexico Environment Department
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