SEMI (James Amano)

Please refer to attached file.

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October 23, 2025

Submitted via email to pamela.jones@env.nm.gov

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

Re: SEMI Response to *Petition for Regulatory Change to Adopt 20.13.2 NMAC and Request for Hearing* (EIB 25-61)

Dear Chair Suina:

On behalf of SEMI, the industry association serving the global semiconductor design and manufacturing supply chain, we write to offer these comments in response to the New Mexico Environment Department (NMED) *Petition for Regulatory Change to Adopt 20.13.2 NMAC and Request for Hearing* (EIB 25-61). The petition requests that EIB grant a hearing for, and then adopt, a proposed rule on HB 212 regulating intentionally added per- and poly-fluoroalkyl substances (PFAS) in products. The proposed rule would implement the material restriction, reporting, labeling, product testing, and enforcement provisions of that law.

SEMI represents more than 675 member companies in the United States reflecting the full range of the country's semiconductor industry, including design automation and semiconductor intellectual property (IP) suppliers, device manufacturers, equipment makers, materials producers, and subcomponent suppliers. SEMI member companies are the foundation of the $3 trillion global electronics industry, and this vital supply chain supports 350,000 high-skill and high-wage jobs across the United States.

SEMI respectfully requests that EIB deny NMED's petition due to fatal flaws with the proposed PFAS labeling requirements. If the petition proceeds as drafted, stakeholder engagement through the hearing will be consumed by discussion on labeling requirements that are facially inconsistent with statutory authority and impracticable for implementation. This outcome would hinder meaningful dialogue on the reporting and material restriction provisions, both of which are components of HB 212 that must be implemented promptly via rulemaking to meet statutory deadlines in 2027. In contrast, HB 212 gives EIB the discretion of whether or not to promulgate product labeling requirements, and the statute does not require or envision a timeframe for any such requirements. The comments provided herein are focused on explaining the fatal defects with the product labeling provisions of NMED's proposal; SEMI anticipates engaging further if this rulemaking proceeds, including on aspects of the proposal other than labeling.

A key defect with the proposed labeling scheme is that labeling would be required for all products containing intentionally added PFAS, even for products (such as semiconductors and

semiconductor manufacturing equipment) that the legislature exempted from the law's restriction and reporting requirements. This overbroad scope cannot be squared with the text of the statute or with legislative intent. The labeling scheme also presents significant U.S. constitutional concerns, as well as several practical implementation issues that SEMI discusses in more detail below.

If EIB denies the petition, NMED would have the opportunity to recalibrate its approach, such as by removing the problematic labeling provisions from the petition, resubmitting a revised petition on restrictions and reporting to align with statutory priorities, and considering whether to later pursue a separate, legally sound labeling rulemaking. This sequencing would promote regulatory clarity, conserve resources, and foster a more constructive hearing process.

I. **The Proposed Labeling Mandate Exceeds Statutory Authority And Contradicts Legislative Intent**.

HB 212 gives EIB the discretion to consider product labeling as a tool to "carry out" the statute. The operative language in section 4(B) of HB 212 is explicitly permissive: the Board "*may* . . . adopt rules *to carry out* the provisions of [HB 212], *including* requiring the labeling of products in English and Spanish" (emphasis added). The phrasing "may" and "including" signals that labeling is an optional, ancillary implementation measure designed to support the statute's core scheme, not a stand-alone, all-products mandate.

The structure of HB 212 reinforces this understanding. Across over 4,000 words, HB 212 carefully details prohibitions, reporting, testing, and enforcement, and then sets out numerous categorical exemptions to the material restriction and reporting requirement, including for semiconductors and semiconductor manufacturing equipment. Those specifics define the statute's center of gravity. By contrast, labeling is mentioned in one short phrase and only as part of EIB's general authority to implement HB 212. The legislature did not assign a compliance date to labeling or elevate labeling above the statute's other components.

NMED's proposal inverts this design. The proposed rule would impose a broad labeling obligation on all products containing intentionally added PFAS, including to products the legislature purposefully exempted from prohibitions and reporting. Nothing in HB 212 authorizes the Department to use labeling as a backdoor to regulate carte blanche and therefore undermine the exemptions the legislature incorporated into the statute. This backdoor attempt to regulate is further demonstrated by a provision in the labeling requirement that a manufacturer may request a waiver from labeling, provided that they submit specified information to NMED, clearly an attempt to overlay a reporting obligation on products which are otherwise exempt from reporting by statute.

The statutory text makes this outcome untenable. "To carry out" means to implement the legislature's plan, not to override it; "including" introduces examples, not a license to expand the statute's scope; and "may" confirms that labeling is discretionary, not mandatory – particularly where the legislature omitted any deadline for labeling while assigning concrete dates to reporting and sales restrictions. Reading these terms together requires that labeling, if adopted at all, must fit within HB 212's framework, respect the statute's express exemptions, and complement – not dominate – rulemaking regarding the law's restrictions and reporting requirements.

Supporting evidence points the same way. For instance, NMED Secretary Kenney described HB 212 as a "middle ground" among state PFAS in products legislation in testimony before the

legislature.[1] He also noted to the legislature that "we don't need to regulate everything."[2] These statements are consistent with PFAS in products legislation that predates HB 212, including Maine's law which in its original form proved to be unworkable and then was amended twice to incorporate a narrowed and delayed reporting requirement, a delayed material restriction applicable to all products, and several new exemptions to all of the law's provisions – including for semiconductors.[3] HB 212 follows a model that, in other jurisdictions, has evolved toward targeted implementation with tailored exemptions and sequencing, rather than a one-size-fits-all regulatory approach. A sweeping, all-products labeling regime – particularly one that reaches legislatively exempt sectors like semiconductors – cannot be squared with that characterization or with the statute's text.

In short, the proposed rule's labeling provisions recast a brief, permissive reference into a far-reaching mandate that displaces statutory carveouts and eclipses the regulatory programs the legislature prioritized. EIB should not read a single, optional clause to upset the statute's structure and legislative balance.

II. Semiconductors and Semiconductor Manufacturing Equipment – As Well As Other Equipment For Which a Statutory Exemption Applies – Should Be Categorically Exempt From Labeling.

HB 212 Section 3.A expressly exempts certain product categories and materials, including semiconductors and materials used in semiconductor manufacturing from the statute's prohibition and reporting requirements. Some of these exemptions are critical to SEMI members and we ask that all of the Section 3.A exemptions be expressly incorporated into any labeling requirement. The Section 3.A(10) and (14) exemptions reflect the legislature's recognition of the critical role semiconductors play in modern technology and the impracticality of regulating them under the same framework as consumer-facing goods. The Section 3.A(11) and (16) exemptions for non-consumer electronics and products containing fluoropolymers are also critical and relevant to SEMI members. Extending labeling obligations to these products would contradict legislative judgment and create unnecessary compliance burdens without advancing consumer protection.

As a complement to the statutory carveout, several policy considerations weigh towards a categorical labeling exemption for semiconductors and semiconductor manufacturing equipment in particular:

- Lack of Consumer Exposure Risk: Semiconductors are not standalone consumer products; semiconductors instead are embedded internally within electronic devices and industrial systems. Consumers do not handle semiconductor wafers, chips, integrated circuits, and related items during normal use, and chemicals in these components remain encapsulated within finished goods. This fact extends to semiconductor manufacturing equipment,

[1] Hearing on HB 212 Before the Senate Conservation Committee (Mar. 18, 2025) (testimony of Secretary Kenney, timestamp 9:54 AM).
[2] Hearing on HB 212 Before the House Energy, Environment & Natural Resources Committee (Feb. 8, 2025) (testimony of Secretary Kenney, timestamp 9:09 AM).
[3] 38 M.R.S. § 1614 (L.D. 1503 (enacted July 15, 2021)), later amended by L.D. 217 (enacted June 8, 2023) and L.D. 1537 (enacted Apr. 16, 2024).

which is handled by professionals in facilities subject to occupational and environmental controls that minimize exposure risk. Labeling such items would provide no meaningful benefit to consumers because there is no realistic pathway for exposure.

- Global Supply Chain Complexity: Semiconductor manufacturing involves highly specialized, globally integrated processes. Imposing state-specific labeling requirements on intermediate components, and on finished products because of the presence of semiconductors in those products, would disrupt supply chains and impose disproportionate costs on an industry that already operates under stringent international standards for safety and environmental compliance.

- Negative Impacts To New Mexico's Semiconductor Manufacturing Industry. This industry employs over 4,000 people in New Mexico, and semiconductors are the state's second ranked export by value.[4] Governor Lujan Grisham has recognized the importance of the semiconductor manufacturing industry to New Mexico's economy, including through statements commending investments in semiconductor manufacturing facilities in the state that generate high-quality and high-paying jobs for New Mexicans.[5] Relatedly, chip shortages resulting from manufacturing disruptions causes by the COVID-19 pandemic highlighted the country's dependence on overseas suppliers of semiconductors and chips. Passage of the federal CHIPS and Science Act in 2022 therefore focused on strengthening domestic semiconductor manufacturing, such as through funding for research, development, and manufacturing capabilities in the states. Governor Lujan Grisham has applauded investments in New Mexican facilities under the CHIPS and Science Act as a means to fuel new technology and high-wage jobs in the state.[6]

  NMED's proposed PFAS labeling requirements have the potential to undermine these investments in the state's economy. If semiconductor manufacturers cannot feasibly comply with labeling requirements, their only alternative is to withdraw from the New Mexico market. This outcome would not only jeopardize thousands of high-paying jobs in New Mexico but also erode the state's competitive position in a growing sector that underpins technological progress.

- Necessity of PFAS in Semiconductor Manufacturing. Semiconductor manufacturing depends on highly specialized equipment and processes with extremely tight performance tolerances. Even minor deviations from specifications can result in catastrophic yield losses or device failure. PFAS-based materials provide unique combinations of properties – such as chemical resistance, thermal stability, and low friction – that are essential for maintaining these tolerances in critical applications like wafer processing,

[4] Semiconductor Industry Association (SIA), *Semiconductors in New Mexico*.
[5] *See* Office of the Governor Michelle Lujan Grisham, Press Release, *New Mexico applauds Intel's $3.5 billion expansion in Rio Rancho* (May 3, 2021).
[6] *See* New Mexico Economic Development Department, *Second New Mexico-Based Facility Awarded CHIPS Funding* (June 11, 2024).

photolithography, and etching. These characteristics cannot be replicated by alternatives without compromising reliability and performance.[7]

For this reason, PFAS labeling requirements will not serve as an incentive for substitution in this sector. Unlike some other sectors where PFAS alternative materials may already be available, PFAS use in semiconductor manufacturing is driven by functional necessity and does not have viable substitutes. Imposing a labeling mandate on these products would therefore add compliance burdens without achieving any environmental or public health benefit. Instead, labeling risks diverting resources from innovation and process optimization.

- Confidentiality Considerations. The proposed labeling framework could create serious confidentiality challenges for semiconductor manufacturers. For complex durable goods, the proposed rule would require disclosure in manuals and specification sheets of every PFAS-containing component and the location of these components within the product. Semiconductor manufacturing tools often incorporate thousands of proprietary parts, and revealing this level of detail would expose sensitive design information, supply chain relationships, and intellectual property. Similarly, for smaller components and assemblies, affixing PFAS labels or linking to detailed disclosures could force manufacturers to reveal chemical formulations and material choices that are subject to trade secret protection.

- Inefficiency of Case-by-Case Exemptions: NMED's proposed rule contemplates a labeling exemption request process for products covered by the law's restriction and reporting exemptions, such as for semiconductors. Companies would only be eligible for this exemption if they can demonstrate that consumers will not come into direct contact with PFAS in the product. As mentioned above, this demonstration is clear with respect to semiconductors and semiconductor manufacturing equipment. It would be inefficient to require companies in this sector to apply for case-by-case labeling exemptions. The simpler and better approach would be to categorically exempt this sector's products from labeling.

These important policy considerations further underscore why it is necessary for EIB to deny the petition. This denial will give NMED the opportunity to proactively address threshold labeling considerations, including by adding a categorical labeling exemption for semiconductors and semiconductor manufacturing equipment. This addition would be simple to incorporate in the proposal, since it is a matter of copying and pasting the semiconductor restriction and reporting exemption from the statute into the proposed rule with respect to labeling.

III. **The Labeling Requirements Raise Significant First Amendment Concerns**.

The First Amendment of the U.S. Constitution protects businesses from compelled speech. When the government mandates product disclosures, courts have held that such requirements must generally be confined to "purely factual and noncontroversial information."[8] This standard is not satisfied simply because a statement may be technically accurate; even accurate language can be

[7] Detailed information on PFAS uses in semiconductor manufacturing can be found in the Semiconductor PFAS Consortium Technical Papers, available here.
[8] *National Ass'n of Wheat Growers v. Bonta*, 85 F.4th 1263 (9th Cir. 2023).

misleading if presented without context or if the statement conveys an oversimplified message.[9] Likewise, a disclosure may fail the "noncontroversial" test if the disclosure addresses a subject that remains the focus of scientific debate.[10]

Against this backdrop, the labeling approach outlined by NMED raises serious constitutional questions. According to NMED's webinar materials[11], the proposed labeling design includes a prominent symbol (an Erlenmeyer flask with the term "! PFAS") and, for packaging, a warning stating "CAUTION: Associated with environmental impacts and health effects such as cancer," along with a link to a state-managed PFAS webpage. For complex durable goods, the proposed language would declare: "This product is made with PFAS or contains component parts made with PFAS. PFAS are a family of chemicals, exposure to which are associated with negative health and environmental effects."

These statements go well beyond neutral disclosure. They imply a uniform level of risk across all PFAS, despite the fact that PFAS encompasses thousands of substances with widely varying chemical structures. Only a small subset of PFAS have been studied, and some – such as fluoropolymers like PTFE – have been demonstrated to be low hazard based on the weight of scientific evidence and available chemical, physical and biological data, relying on criteria recognized over time by global regulatory authorities and international bodies, including the Organisation for Economic Co-operation and Development.[12] NMED's own leadership has acknowledged that fluoropolymers are "not as risky" as other PFAS.[13] Yet the proposed language treats all PFAS and PFAS-containing products identically, without regard to concentration, hazard, exposure potential, or chemical structure. Coupled with a mandatory link to a government webpage that may change over time without manufacturer input, these requirements introduce a serious risk of compelled speech beyond what the First Amendment permits.

Although NMED has indicated that label design is not final, these constitutional issues are fundamental. Before advancing this rulemaking, NMED must ensure that the labeling requirements are defensible under the First Amendment. As currently envisioned, the proposed labeling program falls short of that benchmark.

IV. **Additional Refinements Are Essential To Make Any Future Labeling Program Practical and Legally Defensible**.

The following refinements are critical to any workable PFAS labeling framework, even one that exempts semiconductors and semiconductor manufacturing equipment. These refinements are preliminary and presented at a high level for the purpose of these comments, though SEMI anticipates providing more detail on these refinements and possibly other recommendations if the rulemaking progresses.

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[9] See *id*. at 1276.
[10] *Id*. at 1277.
[11] NMED, *PFAS Protection Act – Labeling Webinar* (Sept. 25, 2025).
[12] OECD, *Polymers of Low Concern* (2023)
[13] Hearing on HB 212 Before the Senate Conservation Committee (Mar. 8, 2025) (testimony of Secretary Kenney, timestamp 10:28 AM).

- Realistic Compliance Deadline: HB 212 does not impose a statutory deadline for labeling. Any compliance date for labeling should reflect technical feasibility, particularly for complex products with long design cycles. The currently proposed January 1, 2027 compliance date is unworkable given that the rule is not anticipated to be finalized until mid-2026, leaving manufacturers insufficient time to adapt. The deadline must also take into account products that were manufactured before the compliance date but in inventory throughout the supply chain for sale after the compliance date, and the realistic limitations to affix labels or modify packaging after manufacture and distribution.

- Due Diligence Standard: HB 212 does not require the labeling scheme to be subject to strict liability. Instead, NMED should adopt a "known or reasonably ascertainable" due diligence standard, consistent with regulatory programs in other jurisdictions, to ensure compliance expectations are achievable and proportionate.

- De Minimis Threshold: Without a concentration threshold, the rule would treat trace PFAS the same as high-concentration PFAS, contradicting basic principles of chemical risk management where risk is a function of hazard and exposure. A de minimis level is necessary to align labeling with actual exposure risk and help ensure consumers are not misled to believe trace PFAS poses the same risks as PFAS present in higher concentrations.

Exemption for Fluoropolymers: As Secretary Kenney noted and as mentioned above, fluoropolymers do not possess properties associated with exposure risk, and do not warrant being treated as other, particularly non-polymeric, PFAS. Similar to the function of a de minimis threshold, a labeling exemption for fluoropolymers will avoid misleading consumers into believing these compounds pose identical risks to those associated with other PFAS.

- Exemption for Industrial and Professional Use-Only Products: Labeling is intended to inform consumer purchasing decisions, which does not apply to products used exclusively in industrial or professional settings. The handling of these products is subject to workplace safety controls, including personal protective equipment and ventilation, making consumer-facing warnings unnecessary.

- Transparent Exemption Request Process: Manufacturers require clarity on how labeling exemption requests will be evaluated by NMED, including deadlines for when the Department will decide on requests by and a structure whereby manufacturers can appeal denied requests. The current proposed rule provides no information on this process.

V. **Conclusion**.

SEMI is committed to balancing the need for environmental protection and the sustainability of semiconductor manufacturing operations, which is a complex challenge. These comments are focused on the labeling aspects of NMED's proposed rule and explaining why these aspects demonstrate why the petition should be denied. SEMI expects to provide further input on the proposed rule, such as on non-labeling aspects of the proposal, if this rulemaking progresses.

SEMI is grateful for the opportunity to engage with NMED and EIB on this petition and welcomes the opportunity to meet and further elaborate on the issues discussed in these comments. If you have

any questions or would like to discuss our positions, please do not hesitate to contact Ben Kallen (bkallen@semi.org).

Sincerely,

Ben Kallen
Senior Manager, Public Policy & Advocacy
SEMI