AGC America Inc. and AGC Chemicals Americas Inc. (Warren Lehrenbaum)

Please see the attached comments on the proposed regulations implementing HB 212, submitted on behalf of AGC America, Inc. and AGC Chemicals Americas, Inc.

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January 2, 2026

Honorable James C. Kenney, Secretary
New Mexico Environment Department
1190 St. Francis Drive, Suite N4050
Santa Fe, NM 87505

Re: Proposed Regulations to Implement HB 212

Dear Secretary Kenney:

AGC Chemicals Americas ("AGCCA") and its parent company, AGC America, Inc., appreciate your efforts and those of your staff to develop proposed regulations implementing HB 212, that were filed with the Environmental Improvement Board (EIB) on October 8, 2025.[1] However, we are writing to highlight our serious concerns regarding one particular aspect of the proposed regulations: the labeling requirements.

Under the proposed regulations at 20.13.2.13, any product containing intentionally added PFAS that is sold or distributed for sale after January 1, 2027, must be labeled to warn of the presence of PFAS in the product, regardless of whether, or how, the product is otherwise regulated under the law. This requirement is inconsistent with the statute and legislative intent, and will cause confusion among consumers. Broadly speaking, HB 212 recognizes three different categories of PFAS-containing products: (i) products that must be phased out according to the schedule set forth in the statute; (ii) products that warrant a delay in their scheduled phase-out because NMED determines that the use of PFAS in those products is "currently unavoidable"; and (iii) products that are not required to be phased out, presumably because, in the view of the legislature, they do not present risks warranting their prohibition in commerce. The proposed labeling requirement ignores these distinctions by requiring labeling of all products – even those products that, in the legislature's view, do not present risk concerns that merit restriction or phase-out. For this reason, the proposed labeling requirement is inconsistent with the legislature's intent to distinguish between products that warrant phase-out and those that do not. For this same reason, the labeling requirement is misleading to consumers because it

[1] https://www.env.nm.gov/wp-content/uploads/2025/10/2025-10-06-PFAS-Protection-Act-Proposed-Rules.pdf

implies that all labeled products present similar risk concerns, when clearly that was not the conclusion of the legislature.

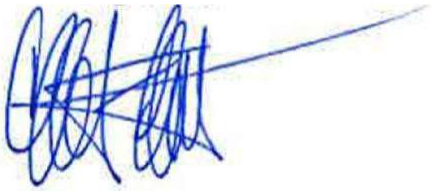
Moreover, the legislature included provisions in Section 5 of the statute requiring manufacturers of products containing intentionally added PFAS to provide detailed product information to NMED, so that the Department can create a public database of PFAS-containing products sold in the state. The statute also authorizes NMED to collaborate with other states in creating a shared database, and it allows NMED to waive the reporting requirements for a product if the required information for that product is otherwise publicly available. This suggests that it was a priority of the legislature to provide the New Mexico public with detailed information on PFAS-containing products sold in the state, ***with one important exception***: Section 5(K) of the statute specifically excludes from reporting those products that are exempt from the phase-out provisions of the statute. In other words, the legislature appears to have concluded that if a product does not present risk concerns warranting a phase-out, it is not necessary to collect information on that product for inclusion in a public database. NMED's proposal to require a PFAS warning label on exempt products is inconsistent with the legislature's determination, reflected in Section 5 of the statute, that it is not necessary to collect or disseminate information regarding products that are excluded from the phase-out provisions of the statute.

Finally, the statute's labeling provision, in Section 4(B), authorizes EIB to adopt labeling requirements "to carry out the provisions of" the statute. However, the sweeping labeling requirements in the proposed rule go well beyond what is necessary to "carry out the provisions of" the law. As discussed above, the statute identifies certain products and product categories that the legislature concluded do not present risk concerns warranting phase-out or reporting for inclusion in a public database. Requiring a warning label on those exempt products is in no way necessary for – or consistent with – "carrying out the provisions" of the statute. Indeed, because it is ***not*** necessary to carry out the provisions of the statute, requiring such labeling would appear to exceed NMED's authority under the law.[2]

[2] The proposed labeling requirements also raise broader concerns, beyond their inconsistency with the underlying statute. Mandating that all products containing an intentionally added PFAS bear a warning label implies that all PFAS and all products containing PFAS present similar risk concerns. This is inherently misleading and scientifically incorrect. A substantial body of scientific evidence demonstrates that all PFAS do ***not*** present similar risk concerns. For example, as we have noted in prior comments, fluoropolymers have been shown to satisfy internationally recognized standards for being "polymers of low concern," as they are not bioavailable (do not cross cell membranes), not soluble in water, not mobile in the environment, and do not, under environmental conditions, degrade into substances exhibiting these characteristics. *See, e.g.,* 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;* 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.* Under these circumstances, where substantial scientific evidence establishes that all PFAS do ***not*** present similar risk concerns, requiring labeling that suggests otherwise (or that points to a website suggesting otherwise), constitutes a violation of the First Amendment's protection against compelled speech. *See, e.g., Nat'l Ass'n of Wheat Growers et al. v.* Bonta, No. 20-16758 (9th Cir. 2023).

Thank you for considering our comments. Please let us know if you have any questions regarding our concerns or if you would like any additional information.

Sincerely,



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