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New Mexico regulators urge legislature to strengthen state's PFAS law

NMED recommends accelerating phase-out timeline, sunsetting exemptions and expanding reporting

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The New Mexico Environment Department (NMED) has asked lawmakers to consider four potential changes to the state's PFAS law, looking to strengthen certain provisions following legal challenges to the department's implementation of the statute.

In a 5 November presentation to the legislature's joint Radioactive and Hazardous Materials Committee, NMED recommended that lawmakers accelerate phase-out timelines in the PFAS Protection Act (HB 212) ahead of the law's existing 2032 prohibition on most PFAS-containing goods.

The department also suggested placing sunset provisions on certain products that are exempt from HB 212's restrictions, recommended reporting requirements for otherwise exempt products and asked lawmakers to strengthen NMED's statutory authority to collect fees to implement the law.

The recommendations are preliminary, but if taken up by lawmakers during the state's 2027 legislative session, they could further strengthen what is already one of the nation's most sweeping regimes restricting PFAS in consumer products, for example by removing an existing exemption for fluoropolymers.

NMED's draft proposal is the first step towards carrying out a legislative mandate (HJM 003) directing the department to evaluate the public health, environmental and economic risks associated with exemptions in HB 212 and recommend whether they should be continued, modified or removed.

While NMED's final report is not due to the legislature and governor until 1 August 2027, the preliminary recommendations offer early input that lawmakers can consider when the legislative session reconvenes next year.

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NMED secretary James Kenney said the recommendations are changes the department feels "pretty passionate about making the legislature aware of before our report comes in next year, so you can take bold action" during 2027's legislative session.

The recommendations come as NMED is defending its actions in litigation challenging key elements of HB 212 and its implementing rule. A federal court has temporarily blocked the law's requirement that PFAS-containing products be labelled, and a separate state case has challenged the same provision as well as NMED's authority to collect fees to implement HB 212.

Separate from the legislative recommendations, NMED recently launched a consumer education campaign about PFAS-containing products as the labelling dispute continues. Part of the campaign includes a 30-second public service announcement (PSA) calling out the "dozen or so trade associations who are trying to take away [consumers'] understanding of what products contain PFAS", Kenney said during the presentation.

Accelerated phase-out timeline

According to NMED, lawmakers should accelerate HB 212's PFAS product ban timeline in case courts remove the PFAS labelling requirement.

Currently, the law's restrictions begin taking effect at the start of 2027, when intentionally added PFAS will be prohibited in several product categories. Further phase-outs follow in 2028, before a broader 2032 prohibition on most products containing intentionally added PFAS.

But in light of the preliminary injunction blocking HB 212's labelling requirements, NMED suggested accelerating that timeline.

"Without the consumer education of a label, the legislature may want to rein those dates in to accelerate the phaseout of certain products," Kenney said, although the department did not specify how the current phaseout timeline should change.

Sunsetting exemptions

NMED also recommended lawmakers place sunset provisions on certain products that are exempt from HB 212's restrictions.

For example, Kenney said a floor-cleaning product containing fluoropolymers that he found in his garage could continue to be sold in New Mexico, because fluoropolymer-containing goods are exempt from the law's restrictions. And if the labelling injunction remains in place, such products also would not have to be labelled, he said.

Thus, "people will continue to buy products like this that are exempt in New Mexico and also contain no label, and no understanding that there are fluoropolymers in there", he said.

While NMED continues studying HB 212's exemptions as directed by HJM 003, Kenney said lawmakers could address them now "by putting sunset provisions in those exemptions, if industry is not willing to label their products, as they indicated through the lawsuit".

Reporting for exempt products

Lawmakers also should consider requiring reporting for PFAS-containing products that are otherwise exempt from HB 212's restrictions, NMED said.

Under the law's existing framework, exempt products do not have to be reported to the department. But with the labelling requirements blocked, Kenney said that "leaves a blind spot for the consumer to understand what PFAS-containing products remain" on store shelves after prohibitions kick in.

Thus, lawmakers "may want to require reporting for all products, including those exempt products", he said.

Fee authority

Finally, NMED asked lawmakers to amend HB 212 to strengthen its statutory authority to collect fees from companies to fund the law's implementation.

The issue is being contested in the state-level challenge to HB 212's implementing rule brought by Iowa-based paint manufacturer Diamond Vogel. The company said the rule does not authorise fee collection, while NMED has argued it possesses implied authority to assess fees to fund its implementation.

Kenney said the issue may need "to be addressed through the legislature" in 2027, adding that companies bringing PFAS into consumer products in New Mexico, rather than taxpayers, should bear the law's implementation costs.

Philip Moffat, the founder of Verdant Law and an attorney representing Diamond Vogel, told Chemical Watch News & Insight that Kenney's recommendation that lawmakers provide the NMED with express fee authority "seems to acknowledge that they're on weak footing there".

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