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# Industry braces for New Mexico PFAS product labelling requirements

## Manufacturers adjusting to final rule ahead of 2027 deadlines, experts say

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New Mexico's final rule implementing its PFAS restriction law is now in place, and manufacturers have begun shifting to the practical work of complying with its fast-approaching deadlines.

Much of the focus has thus far been on the product labelling requirements in the final rule, which some experts say pose the most immediate logistical challenge for manufacturers. The labelling provisions are notable for their breadth, setting them apart from other state efforts that have stopped short of such sweeping productlevel disclosure mandates.

Meanwhile, the final rule's PFAS reporting mandate is seen by some as a more familiar exercise for companies that are already dealing with similar requirements elsewhere (see box).

New Mexico enacted legislation (HB 212) last year to restrict the intentional use of PFAS in products. The statute phases in sales prohibitions on PFAScontaining products for specified categories beginning in 2027, culminating in a broad ban for most goods by 2032, unless a use is deemed currently unavoidable.

While HB 212 made New Mexico the third US state to broadly ban PFAS in most products, it left key implementation decisions to regulators, including labelling and reporting. The New Mexico Environment Department (NMED) fleshed out those details in a rule finalised by the state's Environmental Improvement Board (EIB) in March.

The final rule requires that most covered products sold in the state bear a label disclosing the presence of PFAS. It also requires manufacturers to submit reports on PFAS-containing products sold in the state to NMED by 1 January 2027.

Taken together, the rule's implementation exemplifies the shift now underway as states move from passing PFAS laws to confronting the realities of implementation.

### Complicated labelling process

Several experts told Chemical Watch News & Insight that companies are now focused on complying with the newly finalised rule – particularly its sweeping labelling mandate,

which could pose the most significant operational challenges for manufacturers in the coming months.

Under the final rule, most covered products containing intentionally added PFAS sold in New Mexico and manufactured after 1 January 2027 must carry a label that pictures an Erlenmeyer flask containing the word 'PFAS' or apply for a waiver to avoid the mandate.

Complex durable goods face a separate pathway, with the symbol required on product specification sheets and in operation and maintenance manuals.

Although NMED pared back the labelling requirements during the rulemaking process, some experts say it represents a substantial obligation for many manufacturers, particularly those with large product portfolios or complex supply chains.

Philip Moffat, founder of Verdant Law, said companies are focused on the practical question of whether they can realistically meet the labelling deadline, given how internal approvals for labels and other packaging aspects typically unfold.

Companies often work on timelines of 18 months or longer to relabel products and must coordinate across multiple internal and external partners before rolling out a new label, Moffat said.

New Mexico's labelling requirement poses particular challenges for companies with large product lines or private label arrangements, where control over packaging artwork and approvals often sits with multiple parties across the supply chain, according to Moffat.

"There are practical issues with it for companies that have a lot of different SKUs [stock keeping units], or a lot of different formulations," he said. "And even if you have a limited number of products, it's still a lot of work."

### Legal challenge on the way?

According to Moffat, some companies have discussed whether to bring a legal challenge against New Mexico's PFAS labelling requirement on First Amendment compelled speech grounds.

"There are discussions ongoing about whether that is going to occur", Moffat said, though he did acknowledge that he has "heard from a number of clients that it is going to be very difficult" to fight the labelling mandate in court.

That is because, while early versions of the proposed rule had envisioned more expansive label content, including text about the possible health effects of PFAS exposure, NMED ultimately scaled the requirement back to just the flask symbol indicating the presence of PFAS in products.

By avoiding prescriptive language about PFAS effects, the final mandate more closely resembles established ingredient disclosure regimes. In turn, some experts anticipate

## Companies familiar with PFAS reporting

New Mexico's final rule requires companies to submit reports to NMED by 1 January 2027 on products sold in the state that contain intentionally added PFAS.

Compared with labelling, experts say the reporting requirement has generated less anxiety among manufacturers because they already face similar obligations in other states.

Judah Prero, an attorney at Arnold & Porter, said companies now view PFAS reporting as an unavoidable feature of the regulatory landscape.

"The horse is out of the barn, so to speak", he said. "You already have reporting requirements in Minnesota."

But that experience has tempered expectations about how smoothly reporting may function in practice. Minnesota has already delayed its reporting deadline several times, and it "has not been an easy process" for clients attempting to file there thus far, Prero said.

Manufacturers are therefore watching to see whether New Mexico chooses to align its reporting framework with existing regimes rather than introducing new obligations, according to Prero.

He said industry hopes New Mexico's scheme will mimic Minnesota's requirements. "Don't change the type of information required," Prero said. "Let it at least be all the same, or if we can satisfy the requirements by doing the same thing in another jurisdiction, let's do that."

Carla Hutton, senior regulatory analyst at Bergeson & Campbell, noted that HB 212 explicitly allows the NMED to accept 'substantially equivalent' information on PFAS in products through interstate agreements or shared systems, which could reduce the compliance burden for companies in New Mexico.

"That could maybe leave manufacturers out of it for the most part, if New Mexico can just pull the data that was reported to Minnesota", she said. "It would help industry if each state did not have its own very different set of requirements. If they could be as similar as possible, that would make things easier."

companies will likely prioritise compliance over attempting to litigate the rule.

David Quigley, a partner at Akin Gump, said pursuing legal action over the labelling requirements would be "a hard argument to make, given that we have a fairly significant history in the US of warning labels already".

### 'Start labelling everything'

Instead, Quigley said the final rule's relatively simplified labelling requirements have shifted the cost-benefit analysis for many manufacturers. Rather than investing resources into seeking waivers or mounting legal challenges, general compliance with the new labelling requirements may be the least resistant path forward, he said.

Companies are also keen to avoid souring relationships with regulators at a time when guidance and rule interpretation will prove critical, according to Quigley.

"The requirements are incredibly broad, and the dispensation available to get away from those requirements is so onerous that it doesn't make sense for us to go down that path," he said. "Honestly, I think you're going to see companies start labelling everything."

Still, Quigley cautioned that New Mexico's approach could carry unintended consequences, such as consumers becoming "numb to the labels" if they appear on nearly all products – similar to California's Proposition 65 right-to-know scheme.

In the end, he said, the labelling required under the rule is a manageable, albeit challenging, endpoint compared with drafts floated earlier in the rulemaking process.

"The final labelling requirements are a much better landing spot than [they] could have been," Quigley said. "The easiest path forward, the least resistant path forward, and the least costly path forward is to just stick a sticker on it and move on."

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Final order and statement of reasons →

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