February 6, 2025

The Honorable Joanne J. Ferrary
New Mexico House of Representatives
State Capitol Room 314C
490 Old Santa Fe Trail
Santa Fe, NM 87501

RE: HB 212 – Oppose

Dear Representative Ferrary:

The undersigned organizations are writing to regretfully inform you of our opposition to the introduced version of your HB 212, legislation proposing to create a sweeping and complex new

regulatory program that would regulate all commercial and consumer products, as well as any industrial manufacturing processes that may use perfluoroalkyl and polyfluoroalkyl (PFAS) substances.

Collectively, we support the responsible production, use, and management of fluorinated substances. This includes regulatory requirements that are protective of human health and the environment, taking into consideration the diversity of physical and chemical properties and the corresponding environmental and health profiles of these compounds, the critical and essential uses of products in which these substances are present, and the technical and economic feasibility of alternatives.

HB 212 proposes to create a new regulatory requirement that, beginning 1/1/28, would restrict the sale or distribution of any personal, residential, commercial, or industrial product (or equipment to manufacture a product) that contains a "PFAS" compound unless the Environmental Improvement Board (Board) adopts a rule concluding the use of PFAS in that product is a "currently unavoidable use."

Thousands of companies, and the hundreds of thousands of products and product components these companies manufacture, could only remain in the marketplace pending rules that would be promulgated by the Board. Given the sweeping scope of products and processes that would have to be reviewed, we are concerned that the Board may not have the necessary technical expertise with the various chemistries, the manufacturing processes, the function of the product or the complicated (often global) supply chains that bring these products and product components to New Mexico.

PFAS are a diverse group of chemistries that provide strength, durability, stability, and resilience. These properties are critical to the reliable and safe function of a broad range of products that are important for industry and consumers. They impart a wide range of performance characteristics that are vital for the manufacture and performance of thousands of different products and industrial equipment. As drafted, HB 212 impacts products ranging from consumer smart phones to satellites.

HB 212 is built on a foundation that incorrectly characterizes all PFAS substances as equal, regardless of any unique properties and uses, environmental and health profiles, potential exposure pathways, and any potential risk. PFAS substances, as defined by HB 212, can be a solid (e.g., fluoropolymers), liquid (e.g., fluorotelomer alcohols) or a gas (e.g., hydrofluorocarbon refrigerants). The fundamental physical, chemical, and biological properties of solids, liquids and gases are clearly different from one another. The very distinct physical and chemical properties of the three types demonstrate how varied they are and how imposing a "one-size fits all" approach as proposed would be inappropriate.

Given the bill includes a definition of PFAS that is extremely broad and provides no reasonable threshold for triggering compliance (arguably one detectable molecule of PFAS in a product or piece of equipment is all that would be necessary*), thousands if not hundreds of thousands of products sold or used in the state would be subject to a reporting requirement and potentially a use restriction.* These include smart phones and laptops, solar panels, electric vehicles, HVAC units, electric appliances, plumbing components, paints and coatings, components of agricultural

equipment, telecommunications infrastructure and advanced transportation and aerospace applications to name just a few.

One key type of PFAS in use today is fluoropolymers, a type of specialty material. Fluoropolymer uses include:

- **Automotive: Gaskets**, rings, valves, and hoses in the fuel system; wiring and circuit boards; pull cables; shock absorbers and bushings.

- **Aerospace (military and civilian):** High performance navigation and communication antennae; lubricants for wing flap mechanisms and landing gear; fuel-oxygen separation systems.

- **Clean Energy**: Electric vehicle batteries, hydrogen fuel cells, solar panels, wind turbines, and sheathing for power cables and coatings for electrical wire.

- **Electronics and Electric Appliances:** Computers and other electronic equipment and related components and accessories.

- **Industrial Processes:** Linings for pipes, valves, and tanks to prevent corrosion; gaskets in high temperature, high pressure production processes to contain reactive substances.

- **Medical:** Surgically implanted medical devices (e.g. stents); COVID testing equipment and respirator tubing; catheters and guide wires; transfer and storage bags for biological fluids; personal protective equipment.

- **Connections:** Seals, o-rings, gaskets, tapes, and connectors which provide functions multiple functions, such as flexibility, corrosion resistance, heat and cold resistance, fugitive emissions control, and tight seals for working with challenging substances and/or in challenging operating environments.

- **Semiconductors:** Ultra-low contamination semiconductor manufacturing; wafer etching; chemical piping and storage.

HB 212 Proposes to Replicate an Unproven Policy

A similar California bill (SB 903) failed to pass in 2024 amid concerns raised by a diverse coalition that represented virtually every aspect of the state's economy including manufacturers, biotech, life sciences, car makers, grocers, clean energy producers, and agriculture.

Where similar laws have been adopted, implementation has proven to be extremely challenging. For example, in the European Union, industries have submitted thousands of comments on the widespread consequences of a ban and the lack of suitable alternatives. As a result, EU authorities have had to delay implementation given the complexity of the issue, the number of industries and applications impacted, and the potential consequences for the EU's long-term sustainability, public health, and economic growth goals.

Since 2021, the Maine Department of Environmental Protection (DEP) has struggled to implement a similar mandate. The Maine DEP has issued more than 2400 extensions to companies for just its PFAS reporting requirement due to a variety of reasons including complicated supply chains for manufacturers to determine if PFAS is included, lack of an operational database for manufacturers to submit product information, limited lab capacity within the US to test products for PFAS and lack of protection for confidential business information.

As a result, Maine Governor Janet Mills (D) signed LD 1537 last year that substantially reformed the initial law. Changes included extending some compliance deadlines, streamlining reporting requirements, including protections for confidential business information and exempting several broad product categories.

Minnesota, which more recently enacted a comprehensive ban on PFAS, has already run into complications resulting from this law. Minnesota lawmakers worked last year to sign amendments into law that delay enforcement provisions. Now, Minnesota businesses are struggling with unsellable inventory due to the law's restrictions, and state lawmakers are actively discussing further possible revisions.

Reporting requirements of the Minnesota law are also of concern among impacted parties. With less than 11 months before reporting must begin (January 1, 2026), stakeholders have still not received a draft of the proposed rule from the department. It is expected that millions of products and components of products will be required to report into the state and no framework for submission or system has been made available to those entities required to report under the law. A fee structure for reporting is also required under the law but currently is still up in the air as the department has now combined the rulemaking for reporting and fees associated.

Expansive Delegation of Regulatory Authority

As drafted, the bill delegates expansive authority to make determinations on "currently unavoidable uses," which products are "essential for health, safety or the functioning of society," or whether "alternatives are not reasonably available." However, the bill does not provide sufficient guidelines or scientific criteria on how these determinations would be made and lacks an appeal process if a manufacturer disagrees with a determination. The envisioned reporting requirement would likely require manufacturers to submit complex, detailed, and perhaps proprietary information about their products, manufacturing processes, or suppliers, yet the bill provides no protection for confidential business information.

Impractical Compliance Timelines

Given the volume of manufacturers and products that would be subject to the reporting requirements, the compliance deadlines are not practical. Currently unavoidable use determinations would require an indefinite cycle of reviews of highly complex products and equipment, necessitating the creation of an exceptionally large standalone program. The fiscal and programmatic implications of HB 212 would likely result in staggering new costs for both the public and private sectors.

Though we are opposed to the current bill, we are committed to working with you and other stakeholders on a PFAS policy that is grounded in strong scientific principles, protects human health and the environment, leverages existing regulatory requirements and resources, encourages

innovation and economic development, and provides regulatory certainty to the business community.

Thank you for the opportunity to share these concerns and we look forward to constructively engaging in this discussion during the legislative session. Please contact us should you have any questions or comments.

Sincerely,

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Alliance for Automotive Innovation
Alliance for Chemical Distribution
American Apparel & Footwear Association
American Chemistry Council
American Coatings Association
American Forest & Paper Association
American Fuel & Petrochemical Manufacturers
Animal Health Institute
Association of the Nonwoven Fabrics Industry
Auto Care Association
Bio-Process Systems Alliance
Center for Polyurethanes Industry
Color Pigments Manufacturers Association
Consumer Brands Association
Consumer Healthcare Products Association
Cookware Sustainability Alliance
European Federation of the Cookware, Cutlery and Houseware Industry
Flexible Packaging Association
Fluid Sealing Association
Household and Commercial Products Association
Juvenile Product Manufacturers Association
Motorcycle Industry Council
National Association of Printing Ink Manufacturers
North American Association of Food Equipment Manufacturers
Outdoor Power Equipment Institute
Personal Care and Products Council
Plastics Industry Association
Power Tool Institute
PRINTING United Alliance
Recreational Off-Highway Vehicle Association
Responsible Industry for a Sound Environment
Specialty Equipment Market Association
Specialty Vehicle Institute of America
Spray Foam Roofing & Building Envelop Specialists

Spray Polyurethane Foam Alliance
The Cookware and Bakeware Alliance
The Toy Association
The Vehicle Suppliers Association
Truck and Engine Manufacturers Association
Valve Manufacturers Association
Window and Door Manufacturers Association

cc: James Kenney, Cabinet Secretary, New Mexico Environment Department
Rob Black, Cabinet Secretary, New Mexico Economic Development Department