

Industry Challenges New Mexico's PFAS Labeling Rule as Compelled Speech: What Manufacturers Should Watch For

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On August 27, 2026, a New Mexico federal court will determine whether to enjoin a state's effort to compel manufacturers to include a warning label for products sold in the state that contain per- and polyfluoroalkyl (PFAS). On July 1, 2026, a coalition of nine manufacturing and trade groups filed suit in the US District Court for the District of New Mexico to block the state's new requirement that consumer products containing PFAS carry a warning label.¹ The plaintiffs contend the mandate compels commercial speech in violation of the First Amendment and also violates the Commerce Clause.² The state counters that the label simply conveys factual information that encourages "transparency" and, as such, will survive constitutional review.³ As it currently stands, the labeling requirement applies to nearly all products manufactured for sale in New Mexico on or after January 1, 2027.

The Statute

On April 8, 2025, New Mexico enacted the "PFAS Protection Act," becoming the third state to sign into law a comprehensive ban on the use of intentionally added PFAS in consumer and commercial products. The law will phase out the use of PFAS in a variety of consumer products by instituting gradual statewide prohibitions on the sale, offer for sale, distribution and distribution for sale of products containing intentionally added PFAS, culminating in 2032 with a comprehensive ban under which no product containing intentionally added PFAS shall be sold, offered for sale, distributed or distributed for sale in New Mexico unless the Environmental Improvement Board determines that the use of PFAS in the product is a "currently unavoidable use," or the product is covered by one of the exemptions in the legislation. The PFAS Protection Act also creates requirements, beginning January 1, 2027, for manufacturers to submit certain information about products to the New Mexico Environment Department (NMED). Specifically, manufacturers are required to submit a report to the NMED containing various information, including the purpose of the PFAS intentionally added and the amount of each type of PFAS in the product. In addition, the Act requires products containing intentionally added PFAS to include a universal PFAS label in the form of an Erlenmeyer flask symbol with the word "PFAS" written in the flask, which must be visible and legible on the product prior to sale.⁴ It is this last requirement that is the subject of the trade groups' suit.

The Lawsuit

The plaintiffs include the American Chemistry Council, the Alliance for Automotive Innovation, and the New Mexico Retail Association.⁵ They have sued James Kenney, Secretary of the New Mexico Environment Department (NMED), and New Mexico Attorney General Raul Torrez.⁶ The complaint asks the court for an injunction barring the state from implementing the labeling requirement.⁷

The plaintiffs' theory is that the flask symbol "conveys a sense of chemical danger" to consumers, and that NMED intends the label to function as a deterrent, "a means for furthering its goal of 'turning off the spigot' of PFAS-containing products in New Mexico, by warning consumers not to buy such products."⁸ Industry emphasizes that PFAS comprise thousands of substances, and that in many products the chemicals are "entirely enclosed or sequestered" so "a consumer is not exposed to PFAS."⁹ That no-exposure argument is central: it frames the warning

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not as neutral information but often as a misleading suggestion of danger.

The state's position, articulated by NMED spokesman Jorge Estrada, is that the suit “intentionally misrepresents” the requirement and that “labeling provides consumers with transparency and freedom to make informed decisions about what they bring into their homes.”¹⁰ NMED maintains the rule was “crafted to protect the First Amendment rights of manufacturers” and will withstand challenge.¹¹

Each side thus starts from a plausible premise. Industry frames the label as an implied and misleading message, while the state frames it as a neutral, factual disclosure of a product ingredient. As the case law below shows, that characterization dispute is likely to decide the case.

The Governing Framework

The plaintiffs' First Amendment arguments center on which level of scrutiny applies to this commercial speech. Compelled commercial speech is ordinarily subject to heightened scrutiny, which the plaintiffs argue the labeling requirement cannot survive. The state argues a lesser standard applies because the disclosures are purely factual and uncontroversial, relate to the terms under which a product or service is offered, and are not unduly burdensome. The level of scrutiny applied by the court will likely be outcome-determinative.

The intermediate-scrutiny test of *Central Hudson Gas & Electric Corp. v. Public Service Commission* governs government restrictions on commercial speech. Under it, protected commercial speech must concern lawful activity and not be misleading; the asserted government interest must be substantial; and the regulation must directly advance that interest and be no more extensive than necessary.¹²

A more deferential standard under *Zauderer v. Office of Disciplinary Counsel* addresses compelled disclosures rather than restrictions.¹³ *Zauderer* held that a state may require a commercial actor to include “purely factual and uncontroversial information” about its product or service, and that such a requirement is permissible so long as it is “reasonably related to the State's interest in preventing deception of consumers” and is not “unjustified or unduly burdensome.”¹⁴

In *National Institute of Family & Life Advocates (NIFLA) v. Becerra*, the Supreme Court limited *Zauderer*, stressing that the deferential standard reaches only disclosures of “purely factual and uncontroversial information.”¹⁵ The court further found that even when *Zauderer* applies, a disclosure “cannot be ‘unjustified or unduly burdensome,’ must remedy a harm that is ‘potentially real not purely hypothetical,’ and can ‘extend no broader than reasonably necessary.’”¹⁶ At the same time, *NIFLA* expressly declined to disturb “the legality of health and safety warnings long considered permissible.”¹⁷

The Plaintiffs' Arguments

The plaintiffs argue the Erlenmeyer flask symbol does not convey factual information so much as it conveys a warning and signals danger. The filing next argues that this warning is controversial because the risks associated with PFAS as a class are “at best unsettled.” The plaintiffs also argue that any upstream or downstream harms associated with PFAS—including releases from manufacturing or disposal—fall outside *Zauderer*'s scope because they do not relate to the terms of the transaction with the consumer. Finally, the plaintiffs assert that the compelled labeling is unduly burdensome because of the extraordinary cost associated with compliance because manufacturers may be required to relabel their entire product lines. The plaintiffs request the court issue a preliminary injunction to enjoin the enforcement of the labeling requirement as applied to products containing fluoropolymers or PFAS to which consumers will not be exposed.

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Anticipating a Ruling

On balance, the current weight of persuasive authority suggests a meaningful likelihood that the plaintiffs obtain injunctive relief, at least if the evidentiary record establishes scientific disagreement about consumer risk from sequestered PFAS. The state's most viable path is to characterize the flask symbol as conveying only the undisputed presence of PFAS, framed as an ingredient-style disclosure, and to build a record that the warning neither misleads nor unduly burdens.

Implications for Trade and Manufacturing Groups

Even if the court enjoins enforcement of the current labeling requirements, it is likely the State will modify, rather than abandon, the labeling requirements. As such, manufacturers selling PFAS-containing products in New Mexico should be prepared for some future labeling requirement.

The ruling here, however, is likely to resonate well past the current dispute and impact labeling requirements across the country. The decisions striking down compelled warnings share a common lesson for regulators: a mandate is most defensible when it compels only an undisputed, product-related fact that industry does not contend is untrue, and most vulnerable when it forces a contested characterization of danger or health risk absent scientific consensus.¹⁸ States drafting PFAS or other chemical-disclosure laws will likely respond by narrowing labels toward neutral presence statements and away from hazard symbolism, and by building legislative records of consumer risk.

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¹ Olivier Uyttebrouck, *Federal Suit Challenges State Labeling of PFAS Products*, Yahoo! News (July 23, 2026).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557, 564 (1980).

¹³ *See Zauderer v. Off. of Disciplinary Couns. of Sup. Ct. of Ohio*, 471 U.S. 626 (1985).

¹⁴ *Id.* at 651, 657.

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¹⁵ *Nat'l Inst. of Farm & Life Advocs. v. Becerra*, 585 U.S. 755, 768 (2018).

¹⁶ *Id.* at 776.

¹⁷ *Am. Beverage Ass'n v. City & County of San Francisco*, 916 F.3d 749, 759 (9th Cir. 2019).

¹⁸ *See Am. Meat Inst.*, 760 F.3d 18.