October 17, 2025

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

Dear Secretary Kenney,

I write on behalf of the Animal Health Institute (AHI) to express significant concerns about and opposition to the New Mexico Environment Department's (NMED) proposed rulemaking implementing House Bill 212, the Per-and Poly-Fluoroalkyl Substances (PFAS) Protection Act, especially the proposed 20.13.2.13 NMAC pertaining to the labeling of products containing intentionally added PFAS.

AHI represents manufacturers of animal biologics, diagnostics, medicines, pesticides, and feed additives used to maintain the health and productivity of U.S. livestock, service, and companion animals. The animal health industry serves to improve the health and welfare of nearly ten billion service, companion, and food-producing animals in the United States, resulting in significant health, economic and social benefits for Americans. The economic health of farmers and ranchers depends upon their ability to prevent disease and keep animals healthy, and the human-animal bond is strengthened due to the development of innovative products that improve our pets' quality and length of life.

As enacted, HB 212 contains an express exemption for veterinary/animal health products from the legislation's ban on products containing intentionally added PFAS. (This exemption is very similar to the one contained in Colorado and Maine's PFAS laws.) The exemption first appears in Section 3, on pages 7-8, lines 23-26 and 1-14. That exemption is reiterated four additional times in Section 3. In addition, animal health products also enjoy the benefits of the exemptions provided for in Section 3, lines 8-11, for medical devices and drugs regulated by the U.S. Food and Drug Administration and their packaging and Section 3, lines 20-23 for products regulated by or under the jurisdiction of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Moreover, veterinary/animal health products are explicitly exempt from the legislation's reporting requirements. All told, HB 212 exempts veterinary/animal health products from the legislation's ban and reporting requirements at least 10 times.

Despite the numerous express and other exemptions for veterinary/animal health products, NMED is proposing to subject said products to labeling requirement that would go into effect on January 1, 2027. NMED is presumably acting under the authority granted it under Section 4, subsection B, lines 6-9 that reads "The board may (1) adopt rules to carry out the provisions of the Per-and Poly-Fluoroalkyl Substances Protection Act, including requiring the labeling of products in English and Spanish;"

The use of the term “may” is a clear indication that NMED petitioning the Environmental Improvement Board (EIB) to include a labeling requirement in its proposed PFAS rulemaking is entirely discretionary. Additionally, any proposed labeling requirement does not have to apply to almost every type of product that was exempted from the law’s most significant provisions.

It is also important to note that the phrase “adopt rules to carry out the provisions of the Per-and Poly-Fluoroalkyl Substances Protection Act” makes clear that any rulemaking pertaining to labeling consider the entirety or totality of the law. Given that roughly five to six pages of a 20-page bill are devoted to granting categorical exemptions to HB 212’s most onerous provisions, the proposed labeling requirement is clearly inconsistent with the spirit of the legislation and the will of the Legislature.

Indeed, it seems unlikely that legislators would have invested so much time and energy to consider, craft, and approve exemptions for veterinary/animal health and various other products from HB 212’s provisions and requirements only to want NMED to completely undermine that work through an unprecedently broad and burdensome labeling requirement, unlike any other state in the country. To that end, for many manufacturers of products containing intentionally added PFAS, NMED’s labeling mandate is akin to a de facto ban, especially those that are already labeling their products to comply with Colorado’s PFAS labeling requirement. Obviously, the Legislature did not grant express exemptions only for them to be rendered moot by an NMED labeling requirement.

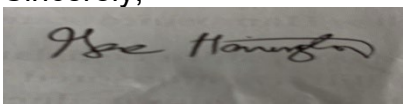
Furthermore, Section 20.13.2.13.A of the proposed rule seeks to set conditions for the exemptions for veterinary/animal health and many other products granted by the Legislature. Specifically, the provision states that “a manufacturer may not sell, offer for sale, distribute, or distribute for sale a product containing intentionally added per-or poly-fluoroalkyl” unless it complies with the labeling requirement. Nowhere in the more than five pages of HB 212 devoted to granting exemptions to the phaseout of products containing intentionally added PFAS does it mention, reference, or otherwise infer that a manufacturer must meet some condition to be granted such an exemption. Accordingly, this wording clearly exceeds NMED and EIB’s authority.

Not all PFAS are the same and since HB 212’s definition of the term likely captures more than 20,000 substances it is clear why the Legislature devoted so much time to the granting of categorial exemptions. It also makes it extremely difficult to come up with labeling that adequately covers so many disparate compounds. Unfortunately, the proposed label seems to falsely imply that all intentionally added PFAS substances are carcinogenic. This compelled misleading speech likely violates the First Amendment. Furthermore, requiring labeling for products regulated under the Federal Food, Drug, and Cosmetic Act and the FIFRA may be preempted by both statutes.

As NMED is likely aware, Colorado enacted a PFAS law in 2022 and amended it in 2024. It contains a much narrower labeling requirement than New Mexico's proposal and it mostly applies to products being labeled during the time that they are being phased out and also requires less inflammatory language. Accordingly, AHI strongly encourages NMED to honor the exemption for veterinary/animal health and other exempted products and instead consider adopting a much narrower labeling requirement like Colorado's.

AHI appreciates the opportunity to comment on NMED's proposed rulemaking. Please feel free to contact me at gharrington@ahi.org or (202) 549-5934 if you have any questions about the letter.

Sincerely,



Gene Harrington
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