NATIONAL ASSOCIATION OF Manufacturers

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Re: House Joint Memorial 3 Review of the Per- and Poly-Fluoroalkyl Substances (PFAS) Protection Act Exemptions

Dear Secretary Kenney:

The National Association of Manufacturers (NAM) respectfully submits these comments to inform the New Mexico Environment Department's (NMED) report as mandated by House Joint Memorial 3 to evaluate the public health, environmental, and economic risks associated with the codified exemptions in the Per- and Poly-Fluoroalkyl Substances (PFAS) Protection Act (hereinafter, the Act) and providing recommendations on continuation, modification, or removal of such exemptions.

The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that supports and empowers the 13 million people who make things in America. As the largest manufacturing association in the U.S., the NAM's membership includes businesses of all sizes, across all industrial sectors, and in all 50 states. Manufacturers across integrated supply chains support responsible, science-based regulation to protect human health and the environment in relation to PFAS, an extremely wide-ranging family of thousands of chemistries which are in many instances irreplaceable inputs to manufacturing processes and products. The Act significantly affects manufacturers throughout the supply chain, including companies that produce PFAS-containing materials and rely on those materials in their operations, especially where there are no known or suitable substitutes currently available for such materials.

The NAM recommends that NMED advise the Legislature to retain all existing exemptions, including the fluoropolymer exemption, and clarify that the Act and its implementing regulations are limited to consumer products as statutorily defined. In evaluating the public health, environmental, and economic considerations identified in HJM3, the NMED should consider not only potential risks associated with exempted uses, but also the consequences of removing or substantially modifying those exemptions. As discussed below, those consequences include potential disruption of access to transportation, medical technologies, critical equipment, and other products that rely on PFAS-containing materials, as well as significant economic and supply-chain impacts where suitable alternatives are not reasonably available.

A clear understanding of the Act's scope is essential to evaluating its exemptions. The available legislative materials consistently reflect a consumer-protection focus.[1] The NMED has publicly

[1] New Mexico Department of Health, Agency Analysis of HB212 (Feb. 03,2025), https://www.nmlegis.gov/Sessions/25%20Regular/AgencyAnalysis/HB0212_665.pdf; and HB 212 Sponsor Fact Sheets (2025) (describing the legislation as protecting New Mexicans from PFAS in products used every day), https://www.env.nm.gov/wp-content/uploads/2025/03/2025-03-10-HB212-PFAS-Protection-Act-Combined.pdf.

described the implementing rule as regulating consumer products containing intentionally added PFAS.[2] However, the Act's definitions create interpretive uncertainty regarding its intended scope. Although "consumer product"[3] is expressly tied to "personal, family or household use," the broader definition of "product"[4] encompasses items prepared for sale to a consumer while also including product components sold or distributed for commercial or industrial use. Consequently, manufacturers across multiple sectors have reported uncertainty about the extent to which the Act applies beyond traditional consumer products to industrial machinery, manufacturing equipment, commercial and industrial products, and other items supplied for commercial or industrial use. The NMED should reaffirm its interpretation and recommend that Legislature clarify the law and make the consumer-product scope limitation explicit.

PFAS encompass thousands of chemistries with substantial differences in chemical structure, physical properties, environmental behavior, and potential health effects. Their functions and potential for exposure or environmental release also vary by application; the presence of PFAS alone therefore does not establish a product's risk. Retaining the exemptions recognizes these meaningful distinctions among PFAS chemistries and uses, preserves critical health, safety, and industrial functions and accounts for product categories governed by comprehensive federal regulatory programs.

Removing or narrowing these exemptions would require years of product redesign, equipment modification, testing, material qualification, manufacturing process development, and regulatory approvals. For many applications, no technically or economically feasible PFAS-free alternative is currently available. The economic risk of their removal would be significant, imposing the high cost of redesign and qualification on manufacturers, reducing product and replacement part availability, increasing equipment repair cost, and causing supply chain disruptions. The NMED's evaluation should therefore address realistic exposure, the availability and suitability of alternatives and the consequences of substitution. This approach would protect public health and the environment while avoiding unnecessary supply-chain disruption, risk of regrettable substitution, and preserving uses that are essential for health, safety, or the functioning of society until viable alternatives become reasonably available.

The NMED Should Recommend Retaining the Fluoropolymer Exemption

The NAM recommends retaining the exemption in Section 3(A)(16) for products containing fluoropolymers that meet the Act's structural and solid-state criteria. The Legislature defined this exemption by the polymer's chemical structure and physical state, not by the product's use or the availability of alternatives for a particular application. Although fluoropolymers are encompassed by the Act's structural definition of PFAS, their distinct polymer chemistry, physical properties, and exposure characteristics warrant separate regulatory treatment. The NMED's evaluation should account for differences in polymer chemistry, product form, intended use, and exposure potential.

The NAM encourages the NMED to consult the Interstate Technology and Regulatory Council's (ITRC) *PFAS Technical and Regulatory Guidance Document*, particularly Sections 2.1 and 2.2.2.1, as a technical resource for its review.[5] The ITRC describes the relative stability, insolubility, and limited bioavailability of certain fluoropolymers, including PTFE, FEP, PFA and ETFE, and distinguishes their environmental behavior from that of other PFAS. The ITRC states that these fluoropolymers "are considered to be polymers of low concern" because "they are relatively stable, insoluble in the environment, and not bioavailable," and that "a stable, insoluble fluoropolymer such as PTFE may

[2] NMED, House Joint Memorial 3 Status Update: PFAS Protection Act Program Presentation at slide 8 (Aug. 18, 2026), https://www.env.nm.gov/wp-content/uploads/2026/08/2026-08-04-OSI-NMED-Stakeholder-Presentation-on-HJM3.pdf.
[3] NMSA 1978, § 74-15-2(E).
[4] NMSA 1978, § 74-15-2(T).
[5] ITRC, *PFAS Technical and Regulatory Guidance Document*, §2.1 and §2.2.2.1, https://pfas-1.itrcweb.org/2-1-environmental-significance/ and https://pfas-1.itrcweb.org/2-2-chemistry-terminology-and-acronyms/#table_2_1 respectively.

pose little environmental/ecological or health risk once it is in a product." These characteristics provide a scientific basis for differentiated evaluation and treatment. The NMED relied on the ITRC guidance in the rulemaking record of EIB No. 25-61 (R), where the witness NMED presented described the guidance as "a comprehensive, consensus-based resource." [6]

Fluoropolymers provide a combination of chemical and corrosion resistance, thermal stability, electrical insulation, durability, and low friction that support product safety, reliability, and performance. These properties are critical in applications such as seals that prevent fluid leakage, insulations that protect electrical components, and systems that must resist water, oil, dirt, dust, corrosive chemicals, and other harsh operating conditions. Substitution may require substantial redesign, testing, and qualification to establish that alternative materials can satisfy the application's safety, reliability, durability, and performance requirements.

An example of such a fluoropolymer is polymer processing aid (PPA), utilized during the extrusion process for packaging. These fluoroelastomer polymers are made from the monomers vinylidene fluoride, hexafluoropropylene, and/or tetrafluoroethylene. These substances are authorized for food-contact packaging applications in the US under 21 CFR, either through regulations 177.1380 and 177.1550, or through Food Contact Notifications (FCNs). PPAs are used at very small concentrations (a few hundred parts per million) during production, and substitution may be technically difficult or not cost competitive in many situations

The Food and Drug Administration's (FDA) evaluation of fluoropolymers in medical devices further supports differentiated treatment based on material properties and conditions of use. In its September 1, 2026, update, the FDA reaffirmed that available scientific evidence provides no reason to restrict the continued use of fluoropolymers in medical devices.[7] The FDA cites its commissioned review by ECRI of PTFE, which found no conclusive evidence of patient health issues associated with PTFE as a material in medical applications.[8]

At the same time, the NAM recognizes that emissions associated with the manufacturing, processing, and disposal of fluoropolymers, as well as other PFAS, warrant appropriate controls. Those considerations, however, do not establish that removing the Act's fluoropolymer exemption would effectively address the identified risks. In addressing questions of environmental risk, the NMED should distinguish presence of a fluoropolymer in a product from evidence of a release pathway that poses environmental risk. Consistent with the Act's consumer-product focus, the NMED therefore should base any recommendation on product and use specific evidence regarding the affected products, relevant exposure pathways, and whether the proposed change would meaningfully reduce those risks.

The NAM believes that nationally consistent, source-specific controls by the Environmental Protection Agency (EPA) are better suited to address manufacturing emissions or waste management concerns at their source. Where an environmental risk arises from a facility discharge, emission, or waste management practice, controls directed at that release pathway can address the risk. By contrast, removing a broad exemption would restrict uses regardless of their contribution to the identified contamination pathway. This complementary regulatory framework should be considered when evaluating the exemptions, ensuring that regulatory measures are appropriately targeted, evidence-based, and not duplicative of existing source-specific controls.

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[6]Direct Testimony of Mitchell R. Olson, PE, PhD, NMED Exhibit 18, at 3, 14, In re Proposed Adoption of 20.13.2 NMAC, EIB No. 25-61 (R).

[7] FDA, PFAS in Medical Devices: What You Need to Know (Sept. 1, 2026), https://www.fda.gov/medical-devices/products-and-medical-procedures/pfas-medical-devices-what-you-need-know.

[8] ECRI, Medical Device Material Performance Study: PTFE Safety Profile (Mar. 31, 2021), https://www.fda.gov/media/158495/download?attachment.

Accordingly, the NAM recommends retaining the fluoropolymer exemption without modification. The NMED's evaluation should identify risks specific to the affected materials and uses and evaluate the suitability of available alternatives together with the public health, environmental and economic consequences of potential regrettable substitution.

The NMED Should Recommend Retaining Exemptions that Respect Federal Preemption and Support Coordination with Federal Regulatory Programs

The NAM recommends retaining the exemption for products whose PFAS content is governed by federal law in a manner that preempts state authority. Preemption depends on the particular federal statute, product, and requirement at issue. Removing this exemption would not expand New Mexico's authority; retaining it makes that limitation explicit, promotes regulatory clarity, and helps manufacturers understand their obligations.

The Act's separate exemptions for medical devices and drugs; veterinary products; motor vehicles and equipment; cooling, heating, ventilation, air conditioning or refrigeration equipment; aircraft; and watercraft recognize that many products are already subject to comprehensive federal regulatory frameworks that govern safety, performance, and market authorization. Even where preemption does not apply, restricting one material used in these products may require reopening an extensive federal approval process including redesign, retesting, and recertification. The NMED should recommend retaining these exemptions to preserve product safety and availability while emerging alternatives are evaluated against applicable safety, reliability, performance, and regulatory requirements.

The exemptions involving the EPA's Significant New Alternatives Policy (SNAP) program likewise support regulatory coordination. The EPA evaluates substitutes by end use, comparing their health and environmental risks with those of available alternatives. Consequently, restricting an EPA-approved substitute without considering those federal comparative risk assessments could reduce available alternatives, available options and introduce regrettable tradeoff risks involving flammability, toxicity or environmental performance, while providing little corresponding benefit. The NAM recommends retaining these exemptions and considering whether restricting an EPA-approved substitute would meaningfully improve health or environmental outcomes relative to available alternatives.

The NMED Should Recommend Retaining the Remaining Exemptions that Protect Critical Functions and Prevent Unintended Consequences

Collectively, the Act's remaining exemptions reflect the Legislature's recognition that certain products, equipment, and activities serve essential public, industrial, and infrastructure functions that warrant different regulatory treatment. As discussed in the introduction, the NMED's evaluation should consider not only potential risks associated with exempted uses, but also the public health, economic, and other consequences that could result from removing or substantially modifying exemptions before suitable alternatives are reasonably available. Those consequences are particularly relevant where exempted products support health and safety functions, critical infrastructure, or industrial supply chains and where substitution would require substantial redesign, testing, qualification, or equipment modification.

The exemptions for products developed or manufactured for public health, environmental, and water-quality testing, as well as products used for the generation, distribution, or storage of electricity, protect functions that are essential to public health, environmental protection, critical infrastructure, and the functioning of society. These products support contaminant detection, regulatory decision-making, and the reliable operation of electric systems upon which communities, emergency services, and industry depend. Removing these exemptions would impair access to tools needed to detect contamination and inform protective action, potentially endangering public health. Removal would also complicate the maintenance and replacement of equipment needed to provide reliable electricity to hospitals,

emergency services, and drinking-water systems. Retaining these exemptions is consistent with the Act's recognition that certain uses remain essential while technically and economically feasible alternatives continue to be evaluated. To promote greater certainty the NAM also supports modifying Section 3(A)(6) to state expressly that such plumbing products are products developed or manufactured for the purpose of public health.

Several exemptions, likewise, preserve the continuity of essential public, industrial, and infrastructure functions by maintaining industrial supply chains and advanced manufacturing. Semiconductors and semiconductor manufacturing materials, non-consumer electronics and laboratory equipment, equipment directly used to manufacture exempt products, and any other motor vehicles - including off-highway vehicles, specialty motor vehicles, agricultural equipment, and similar industrial equipment - support manufacturing, transportation, energy, mining, construction, agriculture, forestry, and other essential industries that are foundational for the safe and reliable functioning of society. These products, with service lifespans of multiple decades, are engineered for demanding operating environments and would require extensive redesign, testing, validation, certification, or regulatory approval before alternative materials can be implemented without affecting safety, durability, reliability, or performance. Removing these exemptions would result in restrictions that reduce the availability of these products or compatible replacement parts, undermining access to reliable transportation and delaying repairs to equipment supporting essential services. Retaining these exemptions provides regulatory clarity while allowing manufacturers to evaluate alternatives in a technically sound and orderly manner.

The economic scale of the industries that depend on these chemistries further illustrates why the consequences of modifying the exemptions warrant careful consideration. A 2024 analysis by the U.S. Chamber of Commerce and FTI Consulting estimated that the portions of seven sectors in New Mexico dependent on essential fluorochemistries—including aerospace, healthcare, mobility, energy, and semiconductors—support approximately 17,900 jobs, $6.9 billion in economic output, $2.5 billion in GDP, and $251 million in state and local tax revenues.[9] While these figures do not represent all of the sectors covered under the existing exemptions, they demonstrate the scale of economic activity connected to sectors that rely on fluorochemistries and the importance of evaluating the availability and feasibility of substitutes before restricting products or uses covered by existing exemptions.

The costs of substitution are also not limited to the price of an alternative material. A 2024 Savannah River National Laboratory assessment, sponsored by the U.S. Department of Energy's Office of Environmental Management, found that removing fluoropolymers generally or from specific uses could increase raw-material and manufacturing costs and create additional costs associated with equipment modifications, maintenance, and compliance with industry standards. The assessment further noted that transitioning to alternatives may require expensive retrofits of existing infrastructure and machinery and identified potential effects on technological advancement in semiconductor and microelectronics production.[10] These findings reinforce the need to evaluate substitution at the product- and application-specific level, including the time and investment required to redesign products and processes, qualify replacement materials, modify existing equipment, and demonstrate continued compliance with applicable safety and performance standards.

The exemption for used products likewise serves an important sustainability objective by allowing serviceable products to remain in commerce, supporting repair, reuse, refurbishment, and

[9] U.S. Chamber of Commerce, Essential Chemistries: Providing Benefits Across the U.S. Economy (Aug. 2024), https://www.uschamber.com/assets/documents/Essential-Chemistries_-Providing-Benefits-Across-the-U.S.-Economy.pdf.

[10] Jacobs, Stephanie A., et al., Assessment of Fluoropolymer Production and Use With Analysis of Alternative Replacement Materials, (Jan. 2024), https://doi.org/10.2172/2370520.

remanufacturing while avoiding unnecessary waste and the premature disposal of equipment that can continue to be used safely and effectively.

Finally, the currently unavoidable use process provides an evidence-based mechanism for addressing essential uses for which technically and economically feasible alternatives are not reasonably available. This process complements the statutory exemptions by allowing the Board to evaluate specific products and uses as technology evolves, reducing the risk of premature substitution, unnecessary supply-chain disruption, and unintended consequences The NAM recommends preserving all these exemptions as well as this flexible mechanism. The NAM also notes that the labeling provision in 20.13.2.13 NMAC applies to products the Legislature exempted from the Act's prohibitions and recommends that the reports under HJM 3 address the labeling of exempt products.

However, if the NMED recommends the removal of any current exemptions, the NAM respectfully requests that NMED provide for subsequent comment processes through which interested parties can provide more comprehensive feedback on the potential consequences in the context of the specific recommended change.

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The NAM appreciates the NMED's consideration of these comments. For the reasons discussed above, the NAM urges the NMED to recommend retaining all current exemptions in the PFAS Protection Act based on the risks posed by their discontinuation to public health, the environment, and the economy, including the fluoropolymer exemption, and clarifying the Act's consumer-product scope. This approach would continue to protect New Mexico's public health and environment while promoting regulatory certainty, avoiding unnecessary conflicts with federal regulatory programs, preserving critical infrastructure and supply chains, and avoiding premature substitution where suitable alternatives are not yet available.

Sincerely,

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