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New Mexico Environment Department
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Comments of the Sustainable PFAS Action Network
Request for Comment on House Joint Memorial 3 Report by the
New Mexico Environment Department

The Sustainable PFAS Action Network (SPAN) appreciates the opportunity to comment on the exemptions under the Per- and Poly-Fluoroalkyl Substances (PFAS) Protection Act (the “Act”) (N.M. Stat. Ann. § 74-15-3(A)), currently subject to review by the New Mexico Environment Department (NMED) pursuant to House Joint Memorial 3 (HJM 3). HJM 3 directs NMED to evaluate the public health, environmental, and economic risks associated with those exemptions and to recommend to the legislature whether they should be continued, modified, or removed. SPAN respectfully submits that the exemptions, in particular those addressed below, should be continued. The covered uses are important and, in many instances, essential for health, safety, or the functioning of society.

SPAN is a coalition of PFAS users and producers committed to sustainable, risk-based PFAS management. Our members advocate for responsible policies grounded in science that provide assurance of long-term human health and environmental protection while recognizing the critical need for certain PFAS materials for U.S. economic growth and global competitiveness. SPAN was formed with the objectives of ensuring legislators and regulatory agencies are aware of the essentiality of products generated by our members while simultaneously supporting practical regulatory programs focused on protecting human health and the environment and maintaining America’s global economic edge.

Any evaluation of whether a PFAS use is essential, or whether an alternative is available, must be specific to the PFAS chemistry, product, and use at issue. PFAS should not be treated as a single undifferentiated category for purposes of evaluating these exemptions. Alternatives must be assessed based on actual safety, performance, durability, availability, environmental effects (including global warming), energy efficiency, and practical implementation considerations. Conducting that analysis across the many products and uses covered by these exemptions would be time- and resource-intensive. Furthermore, the existence of a nominal substitute in one application does not establish that it is safe, feasible, or reliable in another. Requiring substitution without reliable, use-specific data increases the risk of regrettable substitution. Continuing the Act’s exemptions is therefore necessary to avoid such regrettable substitution.

Finally, the existing categorical exemptions also provide a workable administrative structure. Eliminating or materially narrowing them could channel many affected uses into the currently unavoidable use (CUU) process. Given the number of products and components within the exempted categories, that approach could generate a very large number of CUU requests and impose substantial burdens on both NMED and manufacturers. If companies are unable to justify such a burden, they may instead be forced to cease sales of their products in New Mexico.

SPAN appreciates NMED's willingness to consider these comments and would be happy to meet with NMED or provide any additional information necessary as NMED prepares its report in accordance with HJM 3.

Comments Regarding Specific Exemptions Under Review

1. FDA-Regulated Medical Devices, Drugs, and Packaging (§ 74-15-3(A)(3))

SPAN supports retaining the exemption for FDA-regulated medical devices and drugs, including prosthetic and orthotic devices, and their packaging. These products are already subject to stringent FDA regulation and serve important health and safety functions. Further, their components and packaging may require specialized materials to satisfy product-specific performance requirements, decreasing the likelihood that alternatives to fluorinated chemistries are readily available. An additional discussion of the importance of fluoropolymers for medical devices and drug packaging is included in section 6 below.

2. HVACR Equipment and SNAP-Related Products (§§ 74-15-3(A)(4), (12))

The use of certain PFAS in cooling, ventilation, air conditioning, and refrigeration (HVACR) products is essential, as safe, reliable, and commercially available alternatives for these products do not currently exist. These uses of PFAS are also required to support the phase-out of ozone-depleting substances consistent with the U.S. Environmental Protection Agency's Significant New Alternatives Policy (SNAP) program. The exemptions under NM 74-15-3(4) and (12) therefore must be maintained.

HVACR products containing intentionally added PFAS—including aerosol applications and building foam applications—are required to ensure the safe transportation of food and medicines and to ensure that people are able to live and work comfortably, among many other critical uses. Additionally, fluorinated refrigerants like R-1234yf have significantly lower global warming potential than the hydrofluorocarbons they replace, providing environmental benefits. HVACR products relying upon intentionally added PFAS are complex and precisely designed to support these uses. Because of these complexities, identifying alternatives to intentionally added PFAS for these uses is often not as simple as replacing PFAS chemistries with new chemistries in existing systems.

Any current or potential NMED restrictions on refrigerants currently allowed under federal law could leave New Mexico with no viable refrigerant option for particular HVACR applications, preventing installation of equipment consumers need. Replacements must be permitted under federal law and usable in equipment that meets current building codes, required performance parameters, and governing safety standards. Relevant safety standards—such as UL 60335-2-40, ASHRAE 15, ISO 5149-1, and EN 378—include parameters such as flammability limits, chemical and material compatibility requirements, and pressure and temperature cycling requirements that necessitate the use of fluorinated refrigerants.

Even if safe, reliable, available alternatives to certain PFAS chemistries existed that could meet all of the relevant standards, the technical nature of HVACR applications and the importance of ensuring that HVACR systems do not fail may require a fundamental redesign of HVACR equipment in homes, businesses, and medical facilities, among others. Specifically, differing requirements for HVACR equipment as it relates to operating pressures, flammability, material compatibility, and performance may require a redesign of compressors, heat exchangers, piping, ventilation, leak detection, and other safety systems before an

alternative chemistry could be introduced. In addition, the abovementioned standards may have to be modified to account for such redesigns—a process that can require years of testing, research, and stakeholder review. Once all of these steps have been completed, HVACR technicians would require additional training on how to safely handle refrigerants with different flammability or operating characteristics.

As to availability of alternatives to fluorinated refrigerants, safe, reliable, and commercially available alternatives to intentionally added PFAS in HVACR products do not exist. Those alternatives that do exist (e.g., “natural” refrigerants like ammonia, hydrocarbons, and carbon dioxide) often have concerning toxicity, flammability/combustibility, and other problematic characteristics that limit their usefulness in settings where people are regularly present, such as homes and commercial buildings. NMED must take into consideration the potential human health and environmental hazards of these alternatives when assessing the HVACR-related exemptions, and the Department must ensure that it does not force a transition to regrettable substitutes for these applications.

Due to the lack of available PFAS alternatives for HVACR applications, removing or narrowing the exemptions for the use of PFAS in HVACR equipment and SNAP-related products creates the risk that existing equipment and products may be rendered unusable. HVACR systems that are designed to last for decades may have to be prematurely replaced, imposing significant costs on homeowners, businesses, and public institutions and likely raising the costs of food and healthcare services. The imposition of such costs is not justified by the limited exposure to fluorinated refrigerants expected during normal operations. Such refrigerants are used in closed-loop systems designed to minimize emissions. Existing requirements relating to leak prevention, maintenance of closed loop systems, and recovery, reclamation, and recycling of refrigerants are further anticipated to reduce exposure.

In assessing the HVACR-related exemptions under NM 74-15-3(4) and (12), NMED must heavily weigh the burden of requiring replacement of PFAS chemistries in HVACR applications given the lack of safe, reliable alternatives, and the potentially catastrophic consequences of failed replacements. Additionally, NMED should consider existing federal frameworks—including the SNAP program, the American Innovation and Manufacturing (AIM) Act, and the Toxic Substances Control Act—that assess fluorinated refrigerants and potential alternatives based on factors including safety, potential health and environmental impacts, feasibility, and performance. Any decision to remove or modify these exemptions must be based on robust scientific evidence and carefully weigh the importance of fluorinated chemistries in HVACR-related uses, the absence of viable alternatives with more favorable human health and environmental impact profiles, and existing federal analyses of the safety and performance of fluorinated refrigerants.

3. Semiconductors (§ 74-15-3(A)(10))

SPAN supports retaining the exemption for semiconductors, including semiconductors incorporated into electronic equipment and materials used in the manufacture of semiconductors. Restrictions on the use of PFAS in these applications would have a significant impact on semiconductor manufacturing—

undermining the investments in the state's semiconductor industry provided by the CHIPS and Science Act, negatively impacting New Mexico's economy, and harming the domestic semiconductor supply chain.

Semiconductor manufacturing has exacting performance standards that PFAS-based materials are needed to meet as they provide chemical resistance, thermal stability, low friction, and other properties required in complex applications such as wafer processing, photolithography, and etching. Semiconductor manufacturing is also subject to stringent chemical- and fire-safety performance requirements reflected in standards including SEMI S2, SEMI S14, FM 4910, and UL 2360. A material change in the integrated semiconductor manufacturing process can therefore affect the safety, reliability, and yield of the process. Furthermore, ordinary consumer exposure is expected to be limited because semiconductors are generally embedded inside electronic devices and industrial systems, rather than handled by consumers during ordinary use, and because the relevant materials remain contained within finished products during use. The anticipated significant impacts that would result from restrictions on the use of PFAS in semiconductor manufacturing are therefore unjustified by the potential exposure to human health that result from these uses.

Finally, when considering whether alternatives to PFAS are available for use in semiconductor manufacturing, NMED's analysis must be specific to the semiconductor application and manufacturing step at issue. An alternative used successfully in one process or component of semiconductor manufacturing should not be treated as evidence that the same alternative can meet the performance requirements of other uses across the sector. SPAN is confident that such an analysis will find that for many semiconductor-related applications, reliable alternatives providing comparable performance simply do not exist. Thus, if the semiconductor exemption were removed, many of these varied uses would need to be addressed through the CUU process. Given the breadth of PFAS uses across semiconductor fabrication processes, the potential need for numerous CUU determinations could impose a substantial administrative burden on NMED and manufacturers and may ultimately lead semiconductor manufacturers to reconsider manufacturing and selling their products in the state. NMED should therefore recommend that the New Mexico Legislature maintain the semiconductor exemption.

4. Non-Consumer Electronics and Non-Consumer Laboratory Equipment (§ 74-15-3(A)(11))

SPAN supports retaining the exemption for non-consumer electronics and non-consumer laboratory equipment that is not ordinarily used for personal, family, or household purposes. The distinction between consumer products and complex commercial or industrial goods is relevant to expected exposure. Non-consumer equipment may have a long service life and many constituent components that are not readily accessible during normal use. Additionally, persons using this equipment also are more likely than ordinary consumers to have specialized training and access to equipment that minimizes exposure during use. The same rationale supports retaining the categorical exemption for specialized non-consumer electronics and laboratory equipment. The specialized applications for non-consumer electronics and non-consumer laboratory equipment and the limited exposure that is expected to result from PFAS used in such products warrants continuation of this exemption.

5. Products Used for Generation, Distribution, or Storage of Electricity (§ 74-15-3(A)(13))

SPAN supports retaining the exemption for products used in the generation, distribution, or storage of electricity. PFAS are used in products that support grid reliability and are needed to reduce load on, or otherwise support, the electricity system. These products are part of the infrastructure needed both for continued economic development in New Mexico and for reliable service to existing commercial and non-

commercial users. Furthermore, PFAS used in these applications is not readily exposed to people or the environment, significantly limiting the potential for adverse effects to result from such exposure. Because of the importance of these applications and limited potential for exposure to PFAS used in these applications, this exemption should be maintained.

6. Fluoropolymers (§ 74-15-3(A)(16))

SPAN strongly encourages NMED to recommend that the New Mexico Legislature maintain the exemption under NM 74-15-3(16) for fluoropolymers.

Fluoropolymers have different physical and chemical properties that should be reflected in how these substances are treated under the Act. For example, fluoropolymers are generally recognized as “thermally, biologically, and chemically stable, negligibly soluble in water, nonmobile, nonbioavailable, nonbioaccumulative, and nontoxic.”¹ The distinction between fluoropolymers and other PFAS has been recognized by various organizations in the United States and throughout the world. For example, the U.S. Food and Drug Administration (FDA) [acknowledges](#) that “fluoropolymers used in medical devices are not the same as PFAS linked to environmental contamination or health concerns.” Similarly, the Organisation for Economic Co-operation and Development (OECD) [recognizes](#) that its “[c]riteria for polymers of low concern have recently been applied to justify low concern for some fluoropolymers.” The United Kingdom Drinking Water Inspectorate has also [noted](#) that fluoropolymers “have been referred to as ‘polymers of low concern’ because they have high molecular weight and are extremely stable.” Further, Environment and Climate Change Canada has [explained](#) that it assesses fluoropolymers separately from other PFAS on the basis that they “may have significantly different exposure and hazard profiles when compared with other PFAS in the class.” New Mexico’s approach to the regulation of PFAS in products must continue to take into account these differences between fluoropolymers and other PFAS through the maintenance of the fluoropolymer exemption.

In addition to having different physical and chemical properties (and thus different potential for impacts to human health and the environment), fluoropolymers are used in a wide range of critical applications. Fluoropolymers are designed to remain inert in harsh environments, they are flame and smoke resistant, and they have crucial weatherability, durability, and chemical resistance characteristics that are necessary in the highly technical applications in which they are used.

For example, polyvinylidene fluoride (PVDF) fluoropolymers are used in applications including electric vehicle batteries, semiconductor chips, 5G communication equipment, and water filtration. Because of their unique properties, products that use PVDF fluoropolymers can last 2-5 times longer than products that rely on alternative technologies. Furthermore, PVDF polymers are approved for uses that are subject to stringent U.S. and international standards, including standards applicable to food contact use chemicals, chemicals used in commercial food equipment (e.g., NSF/ANSI 51), and chemicals used in potable water systems (e.g., NSF/ANSI 61).

¹ Stephen H. Korzeniowski, et al., [A Critical Review of the Application of Polymer of Low Concern Regulatory Criteria to Fluoropolymers II: Fluoroplastics and Fluoroelastomers](#), 19 Integrated Env'tl. Assessment and Mgmt 236 (2022) (also finding that “approximately 96% of the global commercial fluoropolymer market” meets the “polymer of low concern” criteria).

Fluoropolymers like PVDF and polychlorotrifluoroethylene (PCTFE) are also used in critical healthcare applications, including in medical devices and drug packaging. With respect to medical devices, the U.S. FDA has [acknowledged](#) that “PFAS in the form of fluoropolymers remain essential materials for devices” and “no other materials have been shown to possess the combination of unique properties that are necessary for their essential function in medical devices.” Notably, the U.S. FDA has also stated that it is “not aware of any evidence that suggests the fluoropolymer PFAS materials in medical devices have harmful health effects” and has “determined there is no reason to restrict their use in devices.” Chemicals used in medical devices, such as PVDF, are also subject to strict international standards (e.g., ISO 10993). Fluoropolymers like PCTFE play an equally important role in the pharmaceutical industry. Specifically, certain “blister” packaging used to protect pharmaceutical products from external factors including moisture relies on fluoropolymers like PCTFE. The characteristics of PCTFE—specifically, that it has a high barrier to moisture, is thermally formable, is stable and inert, is non-sticking and non-aging, and is sterilizable—make it ideal for use in packaging pharmaceuticals that require a high level of protection.

In summary, fluoropolymers have distinct physical and chemical properties that distinguish them from other types of PFAS. These properties are also highly valuable in many critical applications—including in semiconductors, medical devices, HVACR equipment, and pharmaceutical packaging—and alternatives providing similar levels of performance are not always readily available. SPAN therefore strongly encourages NMED to recommend that the New Mexico Legislature maintain the fluoropolymer exemption.

Conclusion

SPAN respectfully requests that NMED recommend continuing the exemptions under the Act, in particular those addressed above. These exemptions cover important uses, many of which are essential and a very large number of which would be channeled into the CUU process absent an exemption, creating significant burdens for industry and NMED. To the extent NMED recommends that the New Mexico Legislature modify or remove an exemption, such a recommendation must rest on a developed record specific to the PFAS chemistry, product, and use at issue. SPAN welcomes the opportunity for further engagement with NMED as it prepares its report pursuant the HJM 3.