



September 17, 2026

**New Mexico Environment Department
Office of Strategic Initiatives
PFAS Protection Act Program**

RE: House Joint Memorial 3 Review of PFAS Protection Act Exemptions

Dear New Mexico Environment Department:

The Fuel Cell and Hydrogen Energy Association (FCHEA) appreciates the opportunity to comment as the New Mexico Environment Department (NMED) evaluates the exemptions contained in the state's PFAS Protection Act pursuant to House Joint Memorial 3 (HJM 3).

FCHEA is the national industry association representing companies and organizations across the fuel cell and hydrogen supply chain, including fuel cell and electrolyzer manufacturers, component suppliers, vehicle manufacturers, hydrogen producers and transporters, utilities, end users, and hydrogen storage developers.

FCHEA supports thoughtful regulation of PFAS substances and shares New Mexico's interest in protecting public health and the environment. HJM 3 directs NMED to evaluate the public health, environmental, and economic risks associated with the Act's exemptions and to recommend whether those exemptions should be retained, modified, or removed.

1. Public Health Considerations

A public health review of these exemptions should look beyond the potential risks of the exempted materials themselves and weigh the consequences of removing exemptions that support technologies people rely on for safe, resilient power. Fuel cells and hydrogen systems provide electricity and backup power in settings where continuity of service matters, including hospitals, emergency communications networks, and other critical facilities. The same technologies support zero-emission transit and hydrogen fueling infrastructure.

In these applications, the materials used are tied directly to safe and reliable performance. Hydrogen equipment often operates under elevated pressure, through electrochemical processes, and across a wide range of temperatures, with strict requirements for leak prevention and material compatibility. Fluorinated materials are used in membranes and ionomers, seals and gaskets, valves, hoses and tubing, electrical insulation, coatings, and other specialized components because they hold up under these conditions in ways that alternative materials may not yet match. Narrowing or removing exemptions without a qualified substitute in hand can affect equipment availability, reliability, containment, certification, and deployment timelines.

For that reason, NMED's public health assessment should weigh the role these technologies play in supporting hospitals, emergency response, and other critical services, alongside the time and testing needed to qualify any alternative material for safe use.

2. Environmental Considerations

NMED should also draw a distinction between applications that create a real pathway for direct environmental release and fluoropolymers built into durable, engineered articles. A fuel cell, electrolyzer, hydrogen storage system, or fueling component does not create the same release pathway as a product where a PFAS-containing substance is intentionally dispersed or readily released during normal use.

Where fluoropolymers are used in hydrogen and fuel cell applications, they are generally selected for their chemical resistance, thermal stability, electrical performance, durability, and sealing properties. In proton exchange membrane (PEM) fuel cells, for example, fluorinated ionomers and PTFE-containing materials support proton conductivity, mechanical strength, water management, and long-term durability. PTFE and other fluorinated materials also appear in gaskets, seals, regulators, meters, valves, and other equipment where containment and resistance to temperature, pressure, or corrosion are design requirements.

Given these differences, FCHEA encourages NMED to assess each exemption based on the properties of the specific substance, its function in the product, the likely exposure and release pathway, and whether a technically qualified alternative exists. Durable components in closed or contained systems warrant a different level of scrutiny than applications with a more direct release pathway to the environment.

3. Economic Considerations

The economic question NMED must address under HJM 3 is directly tied to how these exemptions affect substitution and supply chains for hydrogen and fuel cell manufacturers, project developers, suppliers, and customers in New Mexico. These systems depend on global, multi-tier supply chains, and a finished product may include specialized components whose material makeup is not always visible to the system manufacturer itself.

If an exemption is removed or substantially narrowed, manufacturers may need to identify every affected component across their supply chain, evaluate substitute materials, redesign equipment, run performance and durability testing, qualify new suppliers, and in some cases repeat safety or certification processes. Even when a substitute material already exists, this work takes time and adds cost. Where no equivalent substitute is available, manufacturers may face reduced product availability or may conclude that supplying certain products into the New Mexico market is not practical.

The administrative burden associated with PFAS documentation should also be considered. Hydrogen and fuel cell systems can contain numerous specialized components sourced through complex, multi-tier supply chains, making component-by-component reporting time-consuming for manufacturers and suppliers, particularly where the same materials or components are used across multiple product configurations. NMED should provide a practical mechanism that allows companies to submit applicable PFAS information in bulk, such as through consolidated product, component, or material-level reporting, rather than requiring separate submissions for each individual component. A streamlined approach would reduce duplicative reporting while still providing NMED with the information needed to understand PFAS use in covered products.

These are the kinds of effects NMED should weigh in its economic analysis: project costs, hydrogen and energy infrastructure investment, business activity, supply-chain continuity, industrial competitiveness, and New Mexico's ability to attract and retain hydrogen and fuel cell projects. Changes to the existing exemptions could influence investment and siting decisions if they increase compliance costs, constrain product availability, or create additional redesign and qualification requirements. The analysis under HJM 3 should therefore consider both direct compliance costs and the potential for delayed or foregone investment in the state.

4. Recommendation on the Existing Exemptions

Based on the public health, environmental, and economic considerations described above, FCHEA recommends that NMED retain Exemptions M, N, and P. Each exemption addresses a distinct part of the hydrogen and fuel cell value chain and, in FCHEA's view, merits evaluation on its own record rather than as part of a blanket removal.

Exemption M – Products Used for the Generation, Distribution, or Storage of Electricity

FCHEA supports retaining Exemption M because fuel cells are, by function, electricity-generating equipment used in stationary, backup-power, transportation, and other energy applications. Fuel cells directly generate electricity, while electrolyzers and related hydrogen systems can form part of integrated energy systems that support energy storage, grid flexibility, and resilient power applications. Preserving this exemption avoids unintended constraints on technologies that New Mexico and other states rely on for grid resilience, backup power, critical facilities, and other applications where dependable electricity is essential.

Exemption N – Equipment Directly Used in the Manufacture or Development of Exempted Products

FCHEA supports retaining Exemption N because the equipment used to manufacture and develop fuel cells, electrolyzers, and hydrogen infrastructure is itself essential to producing and servicing these products. Restricting the materials used in specialized manufacturing equipment can disrupt supply chains and require redesigning, testing, supplier qualification, and requalification of manufacturing processes, even when the finished product remains exempt. Those changes add cost and can delay the availability of hydrogen and fuel cell products in the market.

Exemption P – Products Containing Fluoropolymers

FCHEA supports retaining Exemption P because fluoropolymers perform specific functions in certain hydrogen and fuel cell applications that are not always readily replicated with substitute materials. Evaluation of fluoropolymer uses should recognize the broad categories of applications where these materials provide critical safety, containment, durability, chemical resistance, electrical performance, or another required functions rather than requiring product-specific assessments for each individual use.

Examples include membranes and ionomers in proton exchange membrane systems; PTFE used in certain gas diffusion and microporous layers; and seals, gaskets, valves, hoses, tubing, coatings, and related components used in hydrogen production, distribution, storage, and fueling equipment. In many of these applications, material selected is driven by stringent

performance, durability, safety, material-compatibility, and certification requirements over the expected operating life of the equipment.

5. Conclusion

FCHEA encourages NMED to take a risk-based, application-specific approach when evaluating the PFAS Protection Act exemptions. PFAS is a broad category that includes substances and applications with different physical and chemical characteristics, uses, exposure pathways, and risk profiles. A risk-based approach also allows for life cycle product stewardship¹ to achieve the shared goal of protecting public health and the environment.

Regulatory decisions should reflect those differences rather than treat all PFAS-containing materials or products as posing the same risk.

Accordingly, FCHEA recommends NMED:

- Retain Exemptions M, N, and P for the applications described above;
- Evaluate PFAS substances and uses according to their specific properties, functions, exposure and release pathways, and risk profiles;
- Consider the availability, technical feasibility, safety, durability, performance, and certification status of substitutes before recommending restrictions;
- Recognize the role these exemptions play in supporting reliable hydrogen and fuel cell technologies, critical energy applications, and the manufacturing base behind them; and
- Provide adequate transition periods and continued stakeholder engagement before recommending changes that would require product redesign, material substitution, testing, certification, or supply-chain adjustments.
- Provide practical bulk or consolidated reporting options for PFAS information to reduce duplicative component-level submissions while maintaining the information necessary for effective regulatory oversight.

FCHEA appreciates NMED's willingness to seek stakeholder input as it develops its recommendations under HJM 3. The hydrogen and fuel cell industry shares the state's interest in protecting public health and the environment, and that interest is best served by an approach that also accounts for the technical realities of advanced energy technologies and the consequences of material substitution.

FCHEA is pleased to provide additional technical information on these applications as NMED continues its review, and we welcome further engagement with the Department. Please contact me by email at fwolak@fchea.org with any comments or questions regarding this submission.

Sincerely,

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Sources: ¹Sinha P, Cypher SM. Life Cycle Fluoropolymer Management in Proton Exchange Membrane Electrolysis. *Hydrogen* **2024**, 5, 710–722. <https://doi.org/10.3390/hydrogen5040037>