

SUBMITTED VIA NMED'S PUBLIC COMMENTING PORTAL

James Kenney
Cabinet Secretary
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Re: Information and Communications Technology Client Comments on New Mexico Environment Department Report to the Legislature Pursuant to House Joint Memorial 3

Dear Secretary Kenney:

On behalf of a client who is a worldwide leader in the manufacture of information technology products, thank you for the opportunity to provide comments on the New Mexico Environment Department's (NMED's) report to the Legislature as directed by House Joint Memorial 3 (HJM3). HJM3 directs NMED to analyze the statutory exemptions in the Per- and Poly-Fluoroalkyl Substances (PFAS) Protection Act¹ and to recommend whether those exemptions should be continued, modified, or removed. HJM3 frames that review as means to improve consumer PFAS protections.²

Our client respectfully requests that NMED recommend retaining the existing exemptions that are particularly important to the information and communications technology (ICT) sector, including the exemptions for fluoropolymers, non-consumer electronics, semiconductors, and used products. NMED should recognize that the currently unavoidable use (CUU) process is not an adequate substitute for those exemptions. Our client also respectfully requests that NMED recommend maintaining the PFAS Protection Act's exclusive focus on consumer products.

I. NMED Should Recommend Retaining Exemptions Critical to the ICT Sector.

The PFAS Protection Act imposes very burdensome obligations on manufacturers of non-exempt products. The Legislature enacted certain exemptions from these requirements

¹ Codified at N.M. Stat. Ann. § 74-15.

² H. J. Mem. 3, 57th Leg., 2d Sess. (N.M. 2026).

for good reasons, including that some PFAS are of lower concern, some products will present low PFAS exposure potential, there are no substitutes for certain PFAS uses, and state regulation of certain products is preempted. NMED should carefully consider these and other factors when considering whether any exemptions should be modified or removed. The exemptions described in this section are especially critical for the ICT sector. Our client explains below why it urges NMED to recommend that these exemptions be retained as enacted.

A. The Legislature Should Retain the Existing Exemption for Fluoropolymers.

The PFAS Protection Act exempts “a product that contains fluoropolymers consisting of polymeric substances for which the backbone is either a per- or polyfluorinated carbon-only backbone or a perfluorinated polyether backbone that is a solid at standard temperature and pressure.”³ HJM3 specifically states that additional health and environmental studies are needed to understand more fully the toxicological profiles, exposure risks, and public health implications of fluoropolymers. However, existing exposure and toxicological information about fluoropolymers support retaining this exemption.

Many fluoropolymers meet the Organization for Economic Cooperation’s (OECD’s) “polymer of low concern” criteria. In addition, the Interstate Technology and Regulatory Council’s (ITRC’s) “PFAS Technical and Regulatory Guidance Document” distinguishes the bioavailability and solubility of fluoropolymers from small-molecule PFAS.

Recognizing these concepts, regulators in other jurisdictions have distinguished fluoropolymers from small-molecule PFAS. In 2025, Environment and Climate Change Canada and Health Canada excluded fluoropolymers from their class-wide PFAS assessment and risk management approach because available evidence suggests that fluoropolymers have significantly different exposure and hazard profiles from other PFAS.⁴ The Organisation for Economic Co-operation and Development likewise issued a fluoropolymer-specific life cycle report in 2025, reflecting the need to evaluate fluoropolymers based on their particular properties, uses, release pathways, and life-cycle considerations rather than assuming a uniform risk profile across the entire PFAS class.⁵

³ N.M. Stat. Ann. § 74-15-3(16).

⁴ Env’t and Climate Change Canada and Health Canada, *Risk management approach for [PFAS], excluding fluoropolymers* (Mar. 2025), <https://www.canada.ca/en/environment-climate-change/services/evaluating-existing-substances/risk-management-approach-per-polyfluoroalkyl-substances.html>.

⁵ Org. for Econ. Coop. and Dev., *Synthesis report on understanding fluoropolymers and their life cycle*, (Nov. 14, 2025), https://www.oecd.org/en/publications/synthesis-report-on-understanding-fluoropolymers-and-their-life-cycle_35b035df-en.html.

Retention of the fluoropolymer exemption is important because fluoropolymers perform unique and vital technical functions. EPA notes their use in electronics and semiconductors.⁶ In technology products, fluoropolymers may be selected to satisfy requirements involving thermal stability, chemical resistance, electrical performance, fire resistance, durability, and reliability. Given these performance requirements, suitable non-fluorinated alternatives may not be available for particular applications, and determining whether an alternative can provide comparable performance requires consideration of technical performance, commercial availability, qualification requirements, and the health and environmental profile of the substitute.

Given the vital uses of fluoropolymers, as well as available evidence indicating that high-molecular weight fluoropolymers generally exhibit low bioavailability and low toxicity, NMED should recommend retaining the fluoropolymer exemption. Removing the exemption could impose substantial costs across complex products and supply chains without a corresponding reduction in risk. It could also encourage substitutions that have not been shown to provide an overall health or environmental benefit. The exemption currently saves both the regulated community and NMED considerable time and resources, which allows NMED to focus its resources on PFAS with different bioavailability and toxicology profiles.

B. The Legislature Should Retain the Existing Exemption for Non-Consumer Electronics.

The PFAS Protection Act also exempts “non-consumer electronics and non-consumer laboratory equipment not ordinarily used for personal, family or household purposes.”⁷ This exemption is consistent with the consumer protection focus of the PFAS Protection Act and recognizes that non-consumer electronics generally present lower exposure scenarios as compared to products ordinarily purchased for and used in households.

Non-consumer products are commonly procured through business-to-business channels and are installed, operated, maintained, and serviced in professional settings. They are rarely (if ever) used by the public, and routine direct user contact is generally more limited than for products intended for personal, family, or household use. Public disclosure from companies whose products the public is unlikely ever to encounter provides little, if any, meaningful public health or environmental risk-reduction.

Non-consumer electronics are also more frequently subject to high performance requirements. This includes a need to provide electrical insulation, thermal stability,

⁶ U.S. Env’tl Prot. Agency, *Risk Management for [PFAS] under TSCA* (last updated Mar. 26, 2026), <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-and-polyfluoroalkyl-substances-pfas>.

⁷ N.M. Stat. Ann. § 74-15-3(11).

chemical resistance, fire resistance, or other performance characteristics over a long service life. Removing the non-consumer electronics exemption could require extensive supply-chain diligence, reporting, redesign, requalification, or CUU submissions for broad categories of specialized commercial and industrial equipment, even where there is no meaningful exposure pathway. Those costs are directly relevant to HJM3's direction to evaluate the economic risks associated with the exemptions.

C. The Legislature Should Retain the Existing Exemption for Semiconductors.

The PFAS Protection Act exempts “a semiconductor, including semiconductors incorporated in electronic equipment, and materials used in the manufacture of semiconductors.”⁸ This exemption is particularly important because semiconductors are foundational components of modern technology and critical infrastructure for which PFAS are essential.⁹

NMED’s report should recommend that the Legislature retain the existing exemption for semiconductors. Semiconductors are not standalone consumer products. Instead, semiconductors are embedded within finished products, and consumers do not handle any part of the semiconductors during any part of the product life cycle. Like other non-consumer electronics, semiconductor manufacturing equipment is handled by trained professionals in a controlled setting. Therefore, imposing consumer-product style obligations on semiconductors would not meaningfully reduce exposure.

Removal of this exemption would be especially economically burdensome given the nature of semiconductor supply chains, which are highly specialized, complex, and global. Reporting requires outreach and due diligence, which consumes substantial time and resources, for even a simple supply chain. Requiring semiconductor manufacturers to gather information across global supply chains would impose a significant burden on an industry already subject to stringent international human health and environmental standards. Additionally, there are unlikely to be viable alternatives to PFAS for semiconductor manufacturing due to the complex and specific nature of the product.

Another important economic impact of retaining the semiconductor exemption would be to protect the serious confidentiality concerns of the ICT industry. Semiconductor manufacturing can incorporate thousands of proprietary components. Requiring disclosures about these products would reveal sensitive information about design, materials, and supply chain dynamics. Upstream suppliers in semiconductor supply chains often view certain data as proprietary and may be contractually prohibited from

⁸ N.M. Stat. Ann. § 74-15-3(10).

⁹ U.S. National Science Foundation, *Semiconductors: Powering the Modern World* (Mar. 6, 2025), <https://www.nsf.gov/impacts/semiconductors>.

disclosing such data, which impedes manufacturers' ability to accurately report on their products.

Lastly, in EPA's summary of its *Framework for Addressing New PFAS and New Uses of PFAS* under the Toxic Substances Control Act, EPA explains that even PFAS that are likely persistent, bioaccumulative, and toxic "are not expected to result in releases to the environment, such as PFAS used in a closed system to make semiconductors or other electronic components."¹⁰ EPA characterizes closed-system uses of PFAS in semiconductors as a "negligible exposure and environmental release scenario." NMED's analysis should account for EPA's recognition that the environmental risk of certain PFAS uses in semiconductor manufacturing may be low, supporting continuation of the semiconductor exemption.

D. The Legislature Should Retain the Existing Exemption for Used Products.

The PFAS Protection Act exempts used products offered for sale or resale.¹¹ The final rule defines "used" as "the condition of a product having been installed, operated, or utilized for its intended purpose by at least one owner or operator."¹² Retaining that exemption advances, rather than undermines, important environmental objectives.

NMED's report should recommend that the Legislature retain the existing exemption for used products. The PFAS Protection Act has a strong focus on protecting the environment, so removal or modification of the used product exemption would deter manufacturers from reusing, reselling, and refurbishing products that were already in the stream of commerce. Without this exemption, otherwise functional products could enter the waste stream more quickly and manufacturers could be forced to stop resale practices. These outcomes are contrary to the PFAS Protection Act's environmental objectives.

Additionally, from a practical perspective, requiring reporting for used products would be extremely difficult and burdensome on manufacturers. Used products may have been manufactured several years ago such that information regarding the identity, concentration, or function of PFAS may not have been collected when the product was originally manufactured. Further, former component suppliers may no longer exist or may no longer retain the relevant records, so a reseller may not have access to the original supply chain information. Imposing reporting or CUU obligations in those circumstances

¹⁰ U.S. Env't Prot. Agency, *Framework for Addressing New PFAS and New Uses of PFAS* (last updated January 6, 2026), <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/framework-addressing-new-pfas-and>.

¹¹ N.M. Stat. Ann. § 74-15-3(2).

¹² 20.13.2.7(P) NMAC.

could make legitimate resale uneconomic and reduce the value of reportable information. NMED should therefore recommend retaining the used products exemption.

E. The CUU Process Is Not an Adequate Substitute for the Existing Categorical Exemptions.

NMED should not justify recommending removing exemptions on the theory that manufacturers can simply seek CUU determinations. The PFAS Protection Act defines a CUU as “a use of a [PFAS] that the board has determined by rule to be essential for health, safety or the functioning of society and for which alternatives are not reasonably available.”¹³ The final rule then establishes a detailed, product- and sector-specific application process.¹⁴ Among other things, a proposal must identify the specific PFAS and product, explain why the use is essential, describe the performance characteristics requiring PFAS, evaluate potential alternatives and their availability and cost, compare health and environmental risks, assess possible manufacturing-process changes, address restrictions in other jurisdictions, and provide information regarding human exposure, environmental release pathways, and end-of-life fate.¹⁵ CUU designations expire after three years, and renewal proposals must address changes and efforts to develop or identify alternatives.¹⁶

Those requirements would impose substantial recurring costs and uncertainty if applied across entire technology sectors that the Legislature has already categorically exempted. Replacing categorical exemptions with CUU applications would require manufacturers and NMED to devote resources to repeated cycles of technical reviews across numerous products, product categories, and industrial sectors and could create uncertainty regarding long-term product and supply continuity.

II. NMED Should Encourage the Legislature to Maintain the Focus of the PFAS Protection Act on Consumer Products.

A. The PFAS Protection Act, the NMED’s Rule Promulgated Thereunder, Applies Exclusively to Consumer Products.

The PFAS Protection Act and its implementing rule apply exclusively to consumer products. The PFAS Protection Act defines “consumer product” as:

¹³ N.M. Stat. Ann. § 74-15-2(H).

¹⁴ 20.13.2.11(A) NMAC.

¹⁵ *Id.*

¹⁶ 20.13.2.11(D) NMAC.

[A] tangible personal property that is distributed in commerce and normally used for personal, family or household use, including product categories that are normally used in households but designed for or sold to businesses, such as commercial carpet or floor waxes.¹⁷

The PFAS Protection Act defines “product” as an item “created, produced, assembled, packaged or otherwise prepared for sale to a consumer,” including certain product components.¹⁸ The final rule, in turn, defines a “consumer” as “a person who seeks or acquires...a consumer product as that term is defined in [the PFAS Protection Act].”¹⁹ Thus, the PFAS Protection Act’s attachment of obligations to “products” solely applies to items used for personal, family, or household use.

Our client appreciates that NMED has interpreted the statute consistent with this analysis. NMED’s public guidance describes the prohibition, reporting, and labeling requirements in terms of consumer products.²⁰ NMED officials have also directly confirmed to Beveridge & Diamond that NMED’s position is that the scope of both the reporting and labeling requirements is limited to “consumer products” as that term is defined in the PFAS Protection Act.

B. Maintaining the PFAS Protection Act’s Focus on Consumer Products is Consistent with HJM3 and Sound Public Policy.

Maintaining the consumer-product focus is also consistent with the Legislature’s framing of the present review. HJM3’s title asks NMED and the Board for recommendations to “improve consumer protections” from PFAS. Its findings discuss PFAS added to consumer products, disclosures to consumers, and state costs associated with the purchase, use, and disposal of consumer products. HJM3 asks NMED to evaluate the existing exemptions, not to reevaluate the general statutory scope.

Maintaining a consumer product focus will likewise maintain certainty for the regulated community, whereas expanding the scope of the PFAS Protection Act to include non-consumer products would substantially increase compliance costs for industry and the administrative burdens for NMED, regardless of whether a particular product presents consumer exposure concerns. For the above reasons, NMED should recommend to the

¹⁷ N.M. Stat. Ann. § 74-15-2(E).

¹⁸ N.M. Stat. Ann. § 74-15-2(T) (emphasis added).

¹⁹ 20.13.2.7(D) NMAC (emphasis added).

²⁰ N.M. Env’t Dept., *Manufacturers* (2026), [https://www.env.nm.gov/pfas/manufacturers/#:~:text=Label%20files%20\(available,in%20larger%20materials.](https://www.env.nm.gov/pfas/manufacturers/#:~:text=Label%20files%20(available,in%20larger%20materials.)

Legislature that if the statute is amended, the existing applicability solely to consumer products should be retained.

III. Conclusion

Our client shares NMED's goal of protecting human health and the environment and supports an evidence-based evaluation of the PFAS Protection Act under HJM3. Our client requests that NMED recommend retaining the exemptions for fluoropolymers, non-consumer electronics, semiconductors, and used products; recognize that the CUU process is not an adequate substitute for those categorical exemptions; and recommend maintaining the PFAS Protection Act's exclusive focus on consumer products. Our client appreciates the opportunity to provide these comments and welcomes further discussion as NMED develops its report to the Legislature.

Sincerely,



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