

Steven Bennett

Comments submitted on behalf of the Household & Commercial Products Association

September 16, 2026 [DRAFT: date of submission]

Mr. James Kenney, Secretary

New Mexico Environment Department

Office of Strategic Initiatives, PFAS Protection Act Program

1190 St. Francis Drive, Suite N4050

Santa Fe, NM 87505

Submitted via NMED SmartComment portal (nmed.commentinput.com, HJM3) and by email to NMED-PFAS@env.nm.gov

Re: House Joint Memorial 3 (2026): NMED Report on the Public Health, Environmental and Economic Risks of the Exemptions Codified in the Per- and Poly-Fluoroalkyl Substances Protection Act (Report 2)

Dear Secretary Kenney:

The Household & Commercial Products Association (HCPA)¹ appreciates the opportunity to comment on the report the New Mexico Environment Department (NMED or the Department) is preparing in response to House Joint Memorial 3 (HJM 3) on the exemptions codified in Section 3(A) and Section 3(F) of the Per- and Poly-Fluoroalkyl Substances Protection Act (HB 212, 2025; the Act) and carried into 20.13.2.10 NMAC. HCPA entered an appearance in the Environmental Improvement Board's rulemaking (EIB 25-61(R)), followed that proceeding closely, and continues to work with our members on compliance with 20.13.2 NMAC. We offer these comments in the same constructive spirit, and we would welcome the chance to meet with the Department's team as the analysis develops.

HCPA's members manufacture and market cleaning, floor-care, air-care, pest-management, antimicrobial, aerosol, and automotive and industrial maintenance products sold throughout New Mexico. In general, PFAS are not intentionally added to those products, and where PFAS chemistry serves an essential function, our members have moved away from it wherever alternatives exist. Several categories of member products do, however, fall squarely within the exemptions the Legislature wrote into the Act: products that use propellants and refrigerants listed by the U.S. Environmental Protection Agency (EPA) under the Significant New Alternatives Policy (SNAP) program (exemptions D, G and L of 20.13.2.10 NMAC); products containing solid fluoropolymer additives and components (exemption P); pesticides registered under the Federal

¹ HCPA is the premier trade association representing the interests of companies engaged in the manufacture, formulation, distribution and sale of more than \$180 billion annually in the U.S. of familiar consumer products that help household and institutional customers create cleaner and healthier environments. HCPA member companies employ hundreds of thousands of people globally. HCPA represents products including disinfectants that kill germs in homes, hospitals and restaurants; air fresheners, room deodorizers, and candles that eliminate odors; pest management products for pets, home, lawn, and garden; cleaning products and polishes for use throughout the home and institutions; products used to protect and improve the performance and appearance of automobiles; aerosol products and a host of other products used every day.

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Insecticide, Fungicide, and Rodenticide Act (FIFRA) (exemption Q and Section 3(F) of the Act); products for which federal law preempts state regulation (exemption A); and non-consumer and manufacturing equipment (exemptions K and N). Our comments address those exemptions and the approach the Department should take to the report as a whole.

Summary of HCPA's recommendations. HCPA respectfully recommends that the Department's report to the Legislature:

- 1) Recommend that the exemptions be continued, with targeted clarifications and without sunset dates or recurring renewal requirements;
- 2) Evaluate each exemption on an exposure- and risk-informed basis that distinguishes among the very different chemistries and product types the Act's definition captures, rather than treating PFAS as a single class;
- 3) Account accurately for the federal programs (EPA's SNAP program and the American Innovation and Manufacturing (AIM) Act Hydrofluorocarbon (HFC) phasedown, FIFRA, and the Food, Drug, and Cosmetic Act) that already govern the exempt products;
- 4) Assess the economic consequences of removing or narrowing exemptions with the same rigor as the consequences of keeping them, including the product lead times and sell-through periods described in Part IV;
- 5) Defer any recommendation to remove or modify an exemption until the Department has reviewed the product reports due under 20.13.2.12 NMAC beginning in 2027; and
- 6) Adopt a transparent process, including a public draft of the report before the November 5, 2026, interim committee presentation and before the final report.

I. The exemptions reflect deliberate legislative choices and should be evaluated as such

HJM 3 asks the Department to report on the risks "of the exemptions codified in" the Act and to recommend whether they "should be continued, modified or removed." The sixteen exemptions in Section 3(A), and the separate provision in Section 3(F) that the prohibitions do not apply to FIFRA-regulated pesticides, occupy a substantial share of the Act's text. They resulted from extensive negotiation during the 2025 session and reflect the Legislature's express policy distinctions among the circumstances in which state restrictions on PFAS in products are warranted, those in which federal law already governs, and those in which essential uses should be preserved. Under the Act, only the Legislature can change them. The Board's own Final Order describes these products as "exempt from regulation under the PFAS Protection Act,"² and the Department's public description of the Act explains that the Legislature included "important exemptions" for products "where PFAS is essential and does not pose serious harm to those using the products."³

² Final Order and Statement of Reasons, In re Proposed Adoption of 20.13.2 NMAC, EIB 25-61(R) (Apr. 17, 2026), ¶ 26.

³ NMED, PFAS Protection Act (HB 212), <https://www.env.nm.gov/pfas/pfas-protection-act-hb212/> ("The legislation includes important exemptions and enforcement provisions ... where PFAS is essential and does not pose serious harm to those using the products."); also quoted in the CPMC and Auto Innovators Motion and Memorandum Brief (Jan. 26, 2026) at 16 and NMED Ex. 16 at 5.

HCPA therefore recommends that the report begin from the premise that each exemption continues unless the Department identifies specific, New Mexico-relevant evidence of risk that the Legislature did not have before it, and that the report state clearly that any change requires legislation. The memorial's recital that the exemptions rest on "limited scientific literature" should not be read as a finding that the exemptions are unsupported. For the products discussed below, the exemptions rest on federal risk evaluations and a substantial body of peer-reviewed science that we urge the Department to review.

HCPA also notes, respectfully, that HJM 3 is a memorial. It expresses the Legislature's request for information and its policy interest, but it does not amend the Act, nor does it narrow the exemptions or enlarge the authority the Act confers on the Board or the Department. The Board's Final Order cites HJM 3 as "clarifying" the Board's authority to require labeling of exempt products,⁴ and whether the Act in fact authorizes labeling of exempt products is now before the New Mexico Court of Appeals in *Diamond Vogel, Inc. v. New Mexico Environmental Improvement Board*, No. A-1-CA-43483. The Department's report should not treat HJM 3 as having resolved that question or as having expanded the authority the Act confers; instead, it should clearly distinguish between the Legislature's request for an evaluation and the statutory authority currently provided by the Act.

II. The analysis should be risk-based and specific to each exemption and chemistry

The Department's August 18 presentation framed the health and environmental discussion at the level of PFAS as a class. The exemptions, by contrast, are drawn around specific product types and specific chemistries. A report that is useful to the Legislature must evaluate each exemption on its own terms: the physical form of the PFAS (a bound solid polymer, a liquid formulation ingredient, or a gas), whether and how consumers or workers contact it during intended use, the realistic release pathways during use and at end of life, and the hazard profile of the specific substances involved. The mere presence of a PFAS, or persistence alone, does not establish risk. A risk assessment requires considering hazard together with exposure, dose, route, duration, and other relevant factors.

The Act's definition reaches any substance with a single fully fluorinated carbon atom, which is broader than the structural definition EPA uses for PFAS reporting under the Toxic Substances Control Act (TSCA),⁵ and the Department's own witnesses acknowledged in EIB 25-61(R) that the substances the definition captures vary substantially in structure and therefore in their biological, chemical and physical properties; that not all of them are persistent, bioaccumulative and toxic; that the available data are insufficient to group PFAS by toxicological properties; and that the toxicological knowledge the Department relied on comes predominantly from perfluoroalkyl acids, which are a small fraction of the substances the definition captures.⁶ OECD, whose 2021

⁴ Final Order and Statement of Reasons, EIB 25-61(R), ¶ 13.

⁵ 40 CFR 705.3 (defining PFAS for purposes of TSCA section 8(a)(7) reporting by three structural formulas, each of which requires at least two fluorinated carbons in a specified arrangement); see 88 Fed. Reg. 70,516 (Oct. 11, 2023).

⁶ NMED Ex. 3 (Chapman direct testimony), EIB 25-61(R), at 44 ("Within this family of fluorinated organic compounds, there is wide variation in chemical structure, which can ultimately influence the biological, chemical, and physical properties") and 45 (scientific and regulatory attention has focused on the

definition the Act's definition tracks, itself cautions that the definition "does not conclude that all PFASs have the same properties, uses, exposure and risks."⁷ The Department's toxicology witness was explicit that the case for treating PFAS as a single class rests on persistence and on toxicity "by extension" from the well-studied perfluoroalkyl acids to substances with "a paucity of toxicological data," applied as a precautionary measure.⁸ That is a policy choice, not a finding about the exempt products, and the report should say so plainly so that the Legislature does not assume that every substance the Act captures shares the properties of the substances the health literature addresses.

Three distinctions matter most for the exemptions that affect HCPA members:

- **Solid fluoropolymers (exemption P)** are high-molecular-weight polymers that are insoluble, non-bioavailable, and stable under conditions of use. The peer-reviewed literature applying the OECD polymer-of-low-concern criteria to fluoropolymers (including Henry et al. 2018 and Korzeniowski et al. 2023, *Integrated Environmental Assessment and Management*⁹) is already part of the EIB 25-61 record through the testimony of Dr. Barbara Henry and Dr. Stephen Korzeniowski,¹⁰ and we urge the Department to review that record. Questions about emissions from fluoropolymer manufacturing are legitimate, but they concern manufacturing sites (none of which, to our knowledge, is located in New Mexico) and are addressed by federal and state air and water programs, not by removing finished articles from store shelves.
- **SNAP-listed propellants and refrigerants (exemptions D, G and L)** are gases used because EPA has determined, after evaluating ozone depletion, global warming potential, flammability, toxicity and exposure, that they are acceptable substitutes for ozone-depleting substances in the listed end use. Many of the hydrofluoroolefins (HFOs) and hydrofluorocarbons (HFCs) EPA lists meet the Act's broad definition of a PFAS because

perfluoroalkyl acids); NMED Ex. 18 (Olson) at 4 ("Physical and chemical properties vary widely within the PFAS family"), 6–7 (no single structure-based definition of PFAS) and 10 (the number of compounds classified as PFAAs is "miniscule"); NMED Ex. 23 (DeWitt) at 2 ("the bulk of toxicological and epidemiological knowledge is associated with a sub-class of PFAS known as the perfluoroalkyl acids") and 3 ("thousands of PFAS that have not been studied as rigorously as PFOA and PFOS"). Hearing testimony to the same effect (Dr. Chapman, Feb. 23, 2026, Tr. 132:15–19, 135:1–6, 159:7–15, 244:1–10; Dr. DeWitt, Feb. 24, 2026, Tr. 383:15–16, 391:10–12, 394:20–395:14) is summarized in ACC's Written Closing Argument and Legal Brief (Mar. 5, 2026) at 10–11 and in the Brief in Chief in *Diamond Vogel, Inc. v. New Mexico Environmental Improvement Board*, No. A-1-CA-43483 (N.M. Ct. App. filed Sept. 8, 2026) at 8. [HCPA has not independently reviewed the hearing transcript.]

⁷ OECD, *Reconciling Terminology of the Universe of Per- and Polyfluoroalkyl Substances: Recommendations and Practical Guidance*, Series on Risk Management No. 61 (2021), at 31 (the definition

"does not conclude that all PFASs have the same properties, uses, exposure and risks") and 8 ("it is highly recommended that such diversity be properly recognized and communicated in a clear, specific and descriptive manner"), quoted in CPMC Written Comments at 6.

⁸ NMED Ex. 23 (DeWitt) at 31 (citing Cousins et al. 2020 for the proposition that "the very high persistence of PFAS is sufficient for their [management] as a single chemical class") and 34 (toxicity "by extension" for "PFAS with a paucity of toxicological data," following "the precautionary principle").

⁹ Available at <https://onlinelibrary.wiley.com/doi/10.1002/ieam.4646>

¹⁰ Available at <https://www.env.nm.gov/opf/docketed-matters/>

they contain a single fully fluorinated carbon. The HFO propellants and refrigerants toward which federal policy is moving the market, HFO-1234ze(E) and HFO-1234yf, do not meet EPA's TSCA structural definition at all, because the carbon adjacent to the fully fluorinated carbon in each molecule is unsaturated. EPA explained that it excluded substances with only a single fluorinated carbon and "unsaturated fluorinated moieties (e.g., fluorinated aromatic rings and olefins)" because they "are more susceptible to chemical transformation than their saturated counterparts, and therefore, are less likely to persist in the environment."¹¹ None of these gases is a long-chain surfactant chemistry of the kind associated with the health findings the Department's presentation cited. One of the Department's own exhibits in EIB 25-61(R) makes the point with a refrigerant: it observes that polytetrafluoroethylene, a fluorotelomer alcohol and HFC-134a "should not be grouped together" merely because each contains a fluorinated carbon, because "they have completely different properties, hazards, and risk based on how they are used."¹²

- **FIFRA-registered pesticides (exemption Q; Act § 3(F))** are individually reviewed by EPA for human health and environmental risk before registration and again in registration review, and their labels, including any warnings, are controlled by federal law. Many of these products control public-health pests and pathogens. EPA's Office of Pesticide Programs has also concluded that pesticide ingredients containing only a single fluorinated carbon are not PFAS for its purposes, because such molecules generally lack the persistence and bioaccumulation properties associated with the PFAS of concern.¹³

HCPA asks that the report evaluate and present each exemption in this differentiated way and avoid extrapolating findings from one PFAS category to another when the scientific basis for doing so has not been demonstrated. The health literature cited in the Department's presentation concerns chemistries that are not those used in the exempt products discussed in these comments.

III. The report should accurately account for the federal programs that govern the exempt products

A. EPA's SNAP program and the AIM Act (exemptions D, G and L)

Exemptions D and L exist because Congress and EPA have already made the federal policy and risk-management determinations on which these exemptions rest. Under Section 612 of the Clean Air Act, EPA's SNAP program lists substitutes for ozone-depleting substances as acceptable, acceptable subject to use conditions, or acceptable subject to narrowed use limits only after a comparative risk evaluation for each end use. Separately, the AIM Act and EPA's implementing rules are phasing down the production and consumption of HFCs and restricting their use in specific sectors, which is driving manufacturers of aerosol products, refrigeration and air-conditioning equipment, and motor vehicle air conditioning toward lower-global-warming-potential HFO alternatives. EPA lists HFO-1234ze(E) as acceptable as an aerosol propellant and HFO-1234yf as acceptable, subject to use conditions, for motor vehicle air conditioning. Both

¹¹ 88 Fed. Reg. 70,516, 70,518 (Oct. 11, 2023).

¹² NMED Ex. 37 (Buck et al., Identification and Classification of Commercially Relevant Per- and Polyfluoroalkyl Substances (PFAS), Integr. Environ. Assess. Manag. 17:1045 (2021)) at 1052.

¹³ EPA, Pesticides Containing a Single Fluorinated Carbon, <https://www.epa.gov/ingredients-used-pesticide-products/pesticides-containing-single-fluorinated-carbon> (last visited Sept. 9, 2026).

contain a fully fluorinated carbon and therefore fall within the Act’s definition of a PFAS, as does the HFC-134a they are replacing. Under EPA’s Technology Transitions rule (40 CFR 84.54(a)(16)), consumer aerosol products manufactured or imported on or after January 1, 2025, may not use propellants with a global warming potential of 150 or more, which in practice leaves manufacturers of many non-flammable aerosol products with HFO-1234ze(E) as the principal compliant option.

The practical consequence is that removing or narrowing exemptions D or L would place New Mexico in direct tension with federal climate policy and would leave many aerosol, refrigeration and air-conditioning products with no compliant propellant or refrigerant. Aerosol products sold in New Mexico that rely on SNAP-listed propellants include air-care, cleaning, automotive-maintenance, insecticide and personal-care products, and refrigerant sold to service existing HVAC and vehicle systems is essential to keeping that equipment in operation.

One HCPA member’s experience illustrates what is at stake. The company, a contract packager of aerosol products, has discontinued every product it makes that contains a substance meeting the Act’s definition of a PFAS, with two exceptions: pesticides it packages under private label, which are FIFRA-registered, and non-flammable tire sealant and inflator products. It formulates the tire products with HFO-1234ze(E) specifically to avoid flammability and the risk of explosion, including when a tire that has been repaired with the product is later serviced. HFC-134a, the non-flammable propellant historically used in these products, can no longer be used in newly manufactured consumer aerosols under EPA’s Technology Transitions rule,¹⁴ and the hydrocarbon propellants that are the principal remaining alternative are flammable. If exemption L were removed, or if the products had to be reported and labeled as PFAS-containing, the company expects that it would withdraw them from New Mexico rather than accept the stigma that reporting and labeling would attach to them. New Mexico drivers, including the many who travel where roadside service is not readily available, would be left without a safe way to repair a flat tire and reach help.

The same propellant also exposes a gap in the current rules. A FIFRA-registered aerosol insecticide and a general-purpose aerosol cleaner can both be formulated with HFO-1234ze(E). Under 20.13.2.13(B)(2) NMAC the insecticide is exempt from labeling, and the cleaner is not, even though the propellant, and the exposure, are the same. HCPA addresses that inconsistency in Part VI.C.

HCPA also notes that exemption L is self-updating by design. It applies only to PFAS with uses “currently listed” by EPA under SNAP, so if EPA delists a substitute, the exemption for that use

¹⁴ 40 CFR 84.54(a)(16)(i). Effective January 1, 2025, no person may manufacture or import “all aerosol products using a regulated substance with a global warming potential of 150 or greater,” subject to exceptions for defense sprays, two HFC solvents, and fifteen enumerated technical uses of HFC-134a (subparagraphs (A) through (O)), none of which covers tire sealants or inflators; the exceptions for technical aerosols end January 1, 2028, under 40 CFR 84.54(a)(16)(ii). HFC-134a has an exchange value (global warming potential) of 1,430 under appendix A to 40 CFR part 84. See *Phasedown of Hydrofluorocarbons: Restrictions on the Use of Certain Hydrofluorocarbons Under the American Innovation and Manufacturing Act of 2020*, 88 Fed. Reg. 73,098 (Oct. 24, 2023). EPA’s May 26, 2026 reconsideration of the Technology Transitions rule, 91 Fed. Reg. 31,284, did not change the aerosol restrictions.

ends with it. That feature addresses the concern motivating proposals for time-limited exemptions: the federal listing, not a state sunset date, already performs the periodic review.

B. FIFRA (exemption Q; Act § 3(F))

Section 3(F) of the Act provides that the prohibitions do not apply to a pesticide regulated under FIFRA, and requires the Department to consult with the New Mexico Department of Agriculture before petitioning the Board with respect to pesticides, fertilizers, and related products. FIFRA expressly preempts state labeling and packaging requirements that are “in addition to or different from” federal requirements (7 U.S.C. § 136v(b)), and EPA reviews every registered pesticide for unreasonable adverse effects on human health and the environment. HCPA asks that the report (1) describe the FIFRA registration and registration-review framework accurately, (2) confirm that the Department has consulted with the Department of Agriculture in preparing the report, and (3) recognize that removing the pesticide exemption would remove from New Mexico products used to control cockroaches, mosquitoes, rodents, bed bugs, and other public-health pests, as well as EPA-registered disinfectants used in homes, hospitals, schools, and food establishments.

The public-health stakes are concrete in New Mexico. Since 1970, slightly more than half of the human plague cases reported in the United States have occurred in New Mexico; the Department of Health reported three human cases in 2025 and a fatal case in Santa Fe County in June 2026. The Department of Health’s guidance for controlling plague relies on EPA-registered pesticides: insecticide dusts applied to rodent burrows to kill infected fleas, permethrin products applied to clothing, and flea-control products for dogs and cats.¹⁵ New Mexico likewise reported seven cases of hantavirus pulmonary syndrome and three deaths in 2025, and the recommended precautions include trapping rodents and treating droppings and nesting material with a household disinfectant or bleach solution.¹⁶ The Legislature exempted these products because EPA has already evaluated their ingredients and controls their labels. Removing that exemption would not change the products’ federal status, but it would expose the products to the State’s own health guidance for withdrawal from the New Mexico market.

C. FDA-regulated products and federal preemption generally (exemptions A and C)

¹⁵ New Mexico Department of Health, Plague in New Mexico, <https://www.nmhealth.org/publication/view/guide/998/> (“Since 1970, slightly more than half of U.S. cases have been reported from New Mexico”; flea control by dusting rodent burrows with carbaryl or a pyrethrin and permethrin dust, deltamethrin dust “used effectively in rodent burrows,” and “[t]reating pet dogs and cats with effective flea repellents”); NMDOH, New Mexico reports first case of human plague in 2026 (June 11, 2026), <https://www.nmhealth.org/news/awareness/2026/6/?view=2344> (three human cases in 2025; recommending DEET repellent on skin and clothing, permethrin-based products on clothing, and flea control for pets); CDC, Plague: Prevention, <https://www.cdc.gov/plague/prevention/index.html>.

¹⁶ NMDOH, Hantavirus confirmed in Santa Fe County resident (Mar. 12, 2026), <https://www.nmhealth.org/news/safety/2026/3/?view=2322> (seven cases and three deaths in 2025; recommending that residents trap mice and soak rodent nests and droppings with a 10 percent bleach solution before cleanup); CDC, Clean Up After Rodents, <https://www.cdc.gov/healthy-pets/rodent-control/clean-up.html> (“Spray urine and droppings with bleach solution or an EPA-registered disinfectant until very wet”).

Exemption A is a necessary acknowledgment that where federal law governs the presence of PFAS in a product in a manner that preempts state authority, the State cannot regulate. It should be continued without change. Exemption C similarly recognizes FDA's exclusive authority over drugs, medical devices, and their packaging. HCPA defers to the affected sectors on the details of Exemption C but supports its continuation. Exemption C also illustrates why a use can be essential even though the substance meets the Act's definition: the FDA-approved metered-dose inhalers that New Mexicans with asthma and chronic obstructive pulmonary disease rely on use HFC propellants (HFA-134a and HFA-227ea) that contain a fully fluorinated carbon, any change in propellant requires FDA approval of the reformulated drug product, and Congress directed EPA in the AIM Act to reserve HFC allowances specifically for that use.¹⁷

IV. The economic analysis should weigh the consequences of removing exemptions, not only of keeping them

HJM 3 asks about the "economic risks of the exemptions." HCPA respectfully submits that the Legislature will not be well served by a one-sided analysis. The report should evaluate, with equal rigor, the economic consequences of removing or narrowing each exemption, including:

- Products that would be withdrawn from New Mexico because no compliant formulation, propellant or refrigerant exists, and the resulting loss of availability and choice for New Mexico consumers, retailers, and institutional purchasers such as schools, hospitals and food establishments;
- Costs to New Mexico businesses, farms and public entities that rely on exempt products, including the cost of servicing existing refrigeration, air-conditioning and vehicle systems;
- The interaction between the exemptions and the labeling rule. Under 20.13.2.13(F) NMAC, a label waiver is available only for a product that falls within one of the statutory exemptions, so removing an exemption also removes the product's eligibility for a waiver and brings its manufacturer within the reporting and fee provisions of 20.13.2.12 and 20.13.2.15 through 20.13.2.22 NMAC. The Department's fee testimony in EIB 25-61(R) anticipated that label-waiver fees would be a meaningful part of program revenue in the first year and in each year through 2029,¹⁸ so a change to the exemptions would affect both the costs borne by regulated companies and the resources available to the program, and the report should account for both;
- Compliance costs imposed on manufacturers by a New Mexico regime that diverges from the exemption structures in Maine, Minnesota, Colorado, Connecticut and Washington, and from the narrower PFAS definitions some states use, including definitions that exclude

¹⁷ 42 U.S.C. § 7675(e)(4)(B)(iv)(I)(aa) (directing EPA to allocate HFC allowances for "a propellant in metered-dose inhalers"); 40 CFR 84.13 (application-specific allowances).

¹⁸ NMED Ex. 57 (Testimony of James C. Kenney), EIB 25-61(R), at 9–10 and Table 1 (projecting approximately \$15 million in label-waiver fees in the first year of the program and total program fee revenue of roughly \$10 million to \$21 million a year through 2029).

gases and volatile liquids altogether,¹⁹ which manufacturers cannot accommodate through state-specific inventory because supply chains are national; and

- The disproportionate effect on small and mid-sized manufacturers, who have the least capacity to reformulate or to manage state-by-state product lines.

Lead times and sell-through. Any economic analysis of removing an exemption has to start from how long it actually takes to change a product and clear the old one from the market. HCPA's experience across state and federal labeling and formulation requirements is consistent on this point. A single label change moves through regulatory review, artwork redesign (including any required translations and font-size requirements that compete with directions for use, storage and disposal for the same label space), printing, application at the manufacturing facility, and distribution. Under ideal conditions, that sequence takes months; across a portfolio of many product lines, it can easily take 12 to 18 months, and third-party printing and packaging capacity is often outside a company's control. Where a product is made under contract or private label, as many aerosol and pesticide products are, each label change also requires the brand owner's review and approval, and often coordination with the brand owner's own artwork vendor, before it can proceed. Reformulating to remove a functional ingredient, or re-engineering a product around a different propellant or refrigerant, takes longer still, because the replacement must be sourced, stability- and performance-tested, and, for a FIFRA-registered product, approved by EPA before it can be sold. The record in EIB 25-61(R) already contains this evidence. Manufacturers and trade associations for coatings, complex durable goods, recreational vehicles, HVAC-R equipment, plumbing products and medical devices each told the Board that the labeling compliance date could not be met on the schedule adopted, and the Department did not rebut them; when the Board's chair asked how the Department had responded to those concerns, the Department's technical lead acknowledged them and said he did not have that information.²⁰ Regulators that have costed relabeling have reached similar conclusions: California's Office of Environmental Health Hazard Assessment, in the economic impact statement for its Proposition 65 warning regulation, assumed a one-time cost of roughly \$1,000 per product SKU to revise a label and

¹⁹ NMED Ex. 63 (Environmental Council of the States, *Compendium of State PFAS Actions* (2025)) at 11 (eighteen states adopt or reference the one-fully-fluorinated-carbon definition; three define PFAS by two fully fluorinated carbons, two of them "excluding gases and volatile liquids") and state pages for Virginia and West Virginia. [Note: NMED's exhibit list labels this document Exhibit 62; the exhibit stamps on the document itself read Exhibit 63.]

²⁰ Written Comments of the Complex Products Manufacturers Coalition (Mar. 5, 2026) at 11 (the January 1, 2027 date is "particularly unrealistic for manufacturers of complex products, which involve hundreds of components sourced through multi-tier global supply chains, long lead times, and fixed production schedules"); Comments of Verdant Law on behalf of Diamond Vogel, Inc. (Mar. 3, 2026) at 3–4 (label revisions "can take a year or more," brand-owner approval for toll and private-label products, and comparison to the three-year implementation period for California's 2024 Proposition 65 short-form warning amendments); NMED Ex. 16 (stakeholder comments) at 6–7 (AdvaMed); Comments of Plumbing Manufacturers International (Feb. 20, 2026) at 8 (label turnaround "anywhere from 18-24 months from the time of finalizing a product label to displaying that product on the shelf"); ACC Written Closing Argument at 18–19 (collecting hearing testimony of the RV Industry Association, the Air-Conditioning, Heating and Refrigeration Institute, Plumbing Manufacturers International and CPMC witnesses on the compliance date, and Dr. Chapman's Feb. 23, 2026 response to Board Chair Ely, Tr. 262:8–263:1).

estimated that 8,000 to 16,000 products would be affected, for a relabeling cost of \$15 million to \$30 million in 2015 dollars.²¹ The Department's economic analysis under HJM 3 should draw on that record rather than start from scratch. At minimum, the report should identify the assumptions it uses for reformulation, testing, regulatory approval, relabeling, inventory depletion, and distribution, and should explain how those assumptions affect its conclusions.

Product that is already in the distribution chain is a separate cost. A shelf-audit study commissioned by HCPA's predecessor, the Chemical Specialties Manufacturers Association, examined more than 7,100 packages across six retail outlet types and found that in every product category surveyed (including all-purpose and glass cleaners and floor waxes and polishes) 20 percent or more of the product on the shelf in at least one outlet type was one to two years past its date of manufacture, and 10 percent or more was two to three years past it. In convenience stores, 65.6 percent of the floor waxes and polishes examined were more than a year old.²² The underlying data is now more than 30 years old, and e-commerce and inventory practices have shortened aging for some high-turnover products, but in our members' experience the overall picture has not changed: a meaningful share of what is on a New Mexico shelf on any given day was made one to three years earlier. Regulators that have studied this have written it into their rules. The California Office of Environmental Health Hazard Assessment gave its 2017 and 2025 revisions to the Proposition 65 warning regulations a three-year implementation period and a sell-through provision for products manufactured before the effective date,²³ the California Air Resources Board's consumer products regulation includes a three-year sell-through provision (17 CCR § 94509(c)) that other states have copied in their VOC rules,²⁴ and the California Cleaning Products Right to Know Act followed a similar schedule. Removing an exemption on a short timeline would strand inventory that was lawful when it was made. The Board's labeling rule itself recognizes the principle: the Department changed the labeling trigger from "sell, offer for sale" to "manufacture for sale or distribution" specifically, in its words, to establish "a practical and pragmatic labeling provision to address products on shelves," and the rule allows product manufactured before a label-waiver denial to be sold without a label.²⁵ The Department's economic analysis should account for that inventory, the reformulation and relabeling costs across the affected product lines, and the reality that a manufacturer facing those costs for a single state will often withdraw the

²¹ California Office of Environmental Health Hazard Assessment, Economic Impact Statement for Title 27, California Code of Regulations, Proposed Repeal of Article 6 and Adoption of New Article 6 Regulation for Clear and Reasonable Warnings (Nov. 17, 2015) at 1, 6, as summarized in CPMC Written Comments at 5.

²² Audits & Surveys (Selling Areas Distribution Index division), *Age of Product Evaluation Report (Selected Personal and Household Products)*, Los Angeles/San Diego Marketing Area, prepared for CTFA/CSMA, November 1991 (attached). Field work was conducted November 21–22, 1991 in supermarkets, small food stores, convenience stores, drug stores, variety stores and discount stores.

²³ See <https://oehha.ca.gov/proposition-65/cnr/title-27-california-code-regulations-notice-amendments-article-6-clear-and-reasonable-warnings> and <https://oehha.ca.gov/proposition-65/cnr/proposition-65-clear-and-reasonable-warnings-safe-harbor-methods-and-content>.

²⁴ See <https://ww2.arb.ca.gov/sites/default/files/2022-11/Consumer%20Products%20Reg%20Article%2021-30-22.pdf>.

²⁵ NMED Ex. 3 (Chapman) at 36–37 ("NMED Established a Practical and Pragmatic Labeling Provision to Address Products on Shelves") and 41 (products manufactured before a waiver denial "may be sold without a label"); 20.13.2.13(A) and (F) NMAC.

product from New Mexico rather than absorb them. HCPA would be glad to provide additional data to the Department's economic analysis.

We also recommend that the Department engage the Economic Development Department or an academic economist to conduct the economic portion of the report, and that the report disclose its methodology and assumptions. The analysis should also include a sensitivity analysis showing how its conclusions change under different assumptions about compliance costs, product withdrawals, reformulation timelines, and sell-through periods.

V. Recommendations to modify or remove exemptions should await the Department's own data

Manufacturers of non-exempt products containing intentionally added PFAS must report to the Department on or before January 1, 2027, under 20.13.2.12 NMAC, and the Department holds testing authority under 20.13.2.14 NMAC. By the time the final report is due, the Department will hold actual data on which PFAS are present in which products sold in New Mexico, in what quantities, and for what functions. That information is far more probative of New Mexico-specific risk than a literature review alone. HCPA recommends that the preliminary findings presented on November 5, 2026, be limited to a description of the Department's methodology and the state of the science, without a recommendation to remove or sunset any exemption, and that any recommendation in the final report be grounded in the reporting data and the Department's implementation experience.

If the Department believes it lacks information about products in exempt categories, HCPA would support a targeted, voluntary information request to affected sectors as a far less disruptive way to obtain it than recommending removal of an exemption. A working model exists. For decades, HCPA and its predecessor associations have worked with the California Air Resources Board (CARB) on CARB's periodic consumer and commercial products surveys, through which manufacturers report product-level formulation and sales data for products sold in California under confidentiality protections for trade secrets. CARB uses that data to build its emissions inventory and to decide which categories warrant regulatory attention before it proposes limits, and industry works with CARB staff on category definitions, reporting formats, and timing so that the data is complete and comparable across companies. The result is a regulator that sets requirements on the basis of what is actually in the products in its market rather than on assumptions about them. HCPA would be pleased to help the Department design a comparable request for the product categories our members manufacture.

VI. Specific recommendations on individual exemptions

For the reasons above, HCPA recommends that the Department report to the Legislature that each of the exemptions in Section 3(A) and Section 3(F) of the Act should be continued. For the exemptions most relevant to our members, we also recommend the following clarifications, which we ask the Department to carry to the Legislature as recommended improvements. Suggested statutory language is offered for the Department's convenience; we recognize that only the Legislature can amend the Act.

A. Exemption D: heating, cooling, ventilation, air conditioning and refrigeration equipment

Recommendation: continue, and clarify that refrigerant and service gas sold to charge, recharge or maintain the exempt equipment is covered. The exemption currently reaches equipment "sold

... for the use for which the refrigerant is listed.” Equipment cannot be kept in service without replacement refrigerant, which is sold separately, often in small containers through retail and professional channels. Suggested language (proposed additions in bold):

“D. Cooling, heating, ventilation, air conditioning or refrigeration equipment that contains intentionally added per- or poly-fluoroalkyl substances or refrigerants listed as acceptable, acceptable subject to use conditions or acceptable subject to narrowed use limits by the United States environmental protection agency pursuant to the significant new alternatives policy program, Subpart G of 40 CFR Part 82, **and refrigerant or service gas sold, offered for sale, distributed or distributed for sale to charge, recharge, service or maintain such equipment**, in each case for the use for which the refrigerant is listed pursuant to that program.”

B. Exemption G: motor vehicles and motor vehicle equipment

Recommendation: continue, and resolve the conflict between the refrigerant carve-out in exemption G and exemptions D and L. Exemption G excludes “any textile article or refrigerant that is included in or as a component part of” a motor vehicle. Read literally, that carve-out could be understood to reach SNAP-listed motor vehicle air-conditioning refrigerant (such as HFO-1234yf and HFC-134a) that exemption L independently exempts, creating uncertainty for refrigerant sold to service vehicle air-conditioning systems. That uncertainty matters because EPA has listed HFC-134a as unacceptable for newly manufactured vehicles beginning with model year 2026, while the large existing fleet of HFC-134a vehicles will require servicing for many years. Suggested language (proposed additions in bold):

“G. A motor vehicle or motor vehicle equipment regulated under a federal motor vehicle safety standard, as defined in 49 U.S.C. Section 30102(a)(10), **including parts and refrigerant sold for the servicing of such vehicles and equipment**, except that the exemption under this paragraph does not apply to any textile article, **or to any refrigerant that is not listed as acceptable for that use under the significant new alternatives policy program**, that is included in or as a component part of such products.”

C. Exemption L: SNAP-listed substitutes for ozone-depleting substances

Recommendation: continue without a sunset, and clarify that the exemption applies across all SNAP end-use sectors and to products sold to service or maintain exempt products. Exemption L is the exemption of greatest consequence to HCPA’s aerosol members. It should continue to track EPA’s current listings, which provide the periodic federal review the Legislature can rely on. If the report takes up trifluoroacetic acid as an atmospheric degradation product of HFO refrigerants and propellants, as the Department’s toxicology testimony did,²⁶ HCPA asks that it also account for the assessments already in the record: EPA’s TSCA structural definition does not capture trifluoroacetic acid, and the UNEP Environmental Effects Assessment Panel concluded in its 2022 assessment that it does not bioaccumulate and is unlikely to cause adverse effects in terrestrial and aquatic organisms. Suggested language (proposed additions in bold):

²⁶ NMED Ex. 23 (DeWitt) at 3 and NMED Ex. 25 (Arp et al. 2024); see CPMC Written Comments at 8–9 (citing 40 CFR 705.3 and the UNEP Environmental Effects Assessment Panel, 2022 Assessment Report of Stratospheric Ozone Depletion, UV Radiation, and Interactions with Climate Change (May 2023) at 5).

“L. A product that contains intentionally added per- or poly-fluoroalkyl substances with uses that are currently listed as acceptable, acceptable subject to use conditions or acceptable subject to narrowed use limits in the United States environmental protection agency’s rules under the significant new alternatives policy program, **in any end-use sector addressed by that program, and any product sold, offered for sale, distributed or distributed for sale to charge, recharge, service or maintain such a product;** provided that the product contains per- or poly-fluoroalkyl substances that are being used as substitutes for ozone-depleting substances under the conditions specified in the rules.”

HCPA also asks the Department to note in its report an implementation inconsistency our members have identified: under 20.13.2.13 NMAC, a SNAP-listed propellant in a FIFRA-registered product is exempt from labeling, while the identical propellant in an otherwise identical non-FIFRA product is not. Two products can sit side by side on a New Mexico shelf, one bearing a PFAS label and one not, based solely on which federal statute registers the product. That inconsistency reflects rule implementation rather than the statutory exemption, but it illustrates why the Legislature’s exemptions and the Board’s rules should align.

D. Exemption P: fluoropolymers

Recommendation: continue. Solid fluoropolymers such as PTFE are used in HCPA members’ products as additives in lubricants, polishes, waxes and floor finishes, and as seals, valves and components in dispensing systems and equipment. These are high-molecular-weight polymers that are stable, insoluble and non-bioavailable under conditions of use, and the OECD polymer-of-low-concern criteria and the peer-reviewed literature applying them to fluoropolymers are already in the EIB 25-61 record. The Department’s own exhibits in that proceeding describe fluoropolymers as high-molecular-weight, water-insoluble, inert polymers that are not bioavailable and are less mobile than non-polymer PFAS, and identify side-chain fluorinated polymers rather than fluoropolymers as the polymers that can act as precursors to perfluoroalkyl acids; the Department’s technical lead was not aware of any PFAS manufacturing in New Mexico.²⁷ The concerns the Department’s testimony did raise about fluoropolymers concern polymer processing aids used in fluoropolymer manufacturing and emissions from cookware at cooking temperatures,²⁸ neither of which describes the bound fluoropolymer additives and components in the products discussed here. HJM 3’s recital that further study of fluoropolymers is needed is a reason for the Department to review that literature carefully, not a reason to recommend removal in advance of the review. HCPA supports the more detailed submissions of the American Chemistry Council and fluoropolymer producers on the science, and asks that the Department’s

²⁷ NMED Ex. 18 (Olson) at 11–12 (fluoropolymers are “generally considered to be less mobile in the environment than non-polymer PFAS”; side-chain fluorinated polymers, not fluoropolymers, identified as the polymers that can function as PFAA precursors); NMED Ex. 37 (Buck et al. 2021) at 1053 (“fluoropolymers are high molecular weight, water-insoluble, inert polymers that are not bioavailable”); ACC Written Closing Argument at 11 (Dr. Chapman unaware of any PFAS manufacturing in New Mexico, Tr. 167:15–19; Dr. Olson identifying only side-chain polymers as potential precursors, Tr. 297:8–12). [The hearing testimony on consumer exposure to fluoropolymers cited in the Diamond Vogel Brief in Chief (Tr. 416:17–418:4, 430:15–16) has not been independently reviewed by HCPA.]

²⁸ NMED Ex. 3 (Chapman) at 46.

report distinguish between finished articles containing fluoropolymers, which the exemption covers, and fluoropolymer manufacturing, which it does not.

E. Exemption Q and Section 3(F): FIFRA-regulated pesticides

Recommendation: continue. For the reasons in Part III.B, the pesticide exclusion reflects both federal preemption and the public-health role of EPA-registered pesticides and antimicrobials. HCPA supports the more detailed submissions of CropLife America and the pesticide registrant community and asks that the report record the Department's consultation with the Department of Agriculture.

F. Exemption O: currently unavoidable uses

Recommendation: continue, and recommend improvements to make the pathway workable. The currently-unavoidable-use (CUU) designation is the only route by which a non-exempt product may remain on the market after January 1, 2032, and its workability is therefore central to the "efficacy" of the Act. HCPA recommends that the report recommend (1) a five-year designation term, consistent with Maine and Minnesota, rather than the three-year term in 20.13.2.11 NMAC; (2) active use of the Board's authority under Section 4(B)(2) of the Act to recognize CUU determinations made by other states; and (3) an application process and fee structure proportionate to the information the Department actually needs. Commenters in EIB 25-61(R) from the electronics and complex durable goods sectors made the same request, asking for a five-year minimum term with discretion to set longer periods where the transition timeline requires it.²⁹

G. Exemptions A, K and N

Recommendation: continue. Exemption A is required by the Supremacy Clause. Exemptions K (non-consumer electronics and laboratory equipment) and N (equipment used to manufacture exempt products) appropriately keep the Act focused on consumer products and should be continued. HCPA asks only that the report confirm that exemption K reaches industrial and institutional products not ordinarily used for personal, family or household purposes.

VII. HCPA opposes converting exemptions to time-limited or renewable exemptions

HCPA anticipates that some commenters will propose that the exemptions expire on a fixed date or be made subject to periodic renewal. We urge the Department not to recommend that approach. A sunset converts a settled legislative judgment into a recurring, uncertain, and typically fee-bearing application process, and it denies manufacturers and their customers any basis for multi-year product, packaging and equipment decisions.

Given the lead times and sell-through periods described in Part IV, a manufacturer cannot responsibly invest in a product line whose legal status may lapse before the first production run has cleared the shelf, so a sunset would in practice function as a delayed prohibition even where the underlying federal determination or product-specific evidence has not changed. Where the Legislature wishes to revisit an exemption, the appropriate mechanism is a scheduled legislative review informed by the Department's reporting data and implementation experience, which is

²⁹ Consumer Technology client comments (Beveridge & Diamond, Feb. 18, 2026) at 3–4; CPMC Written Comments at 14 (three-year term "is not workable"; reformulation of a complex durable good "can take on the order of 7 years or more"; up to 15 years where appropriate).

precisely what HJM 3 has set in motion. A legislative review also allows the Legislature to consider the full range of scientific, economic, and implementation information without placing manufacturers in a recurring cycle of regulatory uncertainty.

VIII. Process recommendations

To ensure the report is credible to the Legislature and to the regulated community, HCPA recommends that the Department:

1. Publish the protocol for its literature review, including search strategy, inclusion criteria, and the list of sources relied upon, and make the underlying sources available;
2. Release a public draft of Report 2, or at minimum a detailed outline of preliminary findings, for comment before the November 5, 2026, interim committee presentation, and a full public draft before the report is finalized in 2027;
3. Identify the state agencies consulted and confirm consultation with the Department of Agriculture with respect to pesticides;
4. Engage a qualified economist to conduct the economic analysis and disclose its methodology;
5. Subject the scientific portions of the report to independent external peer review; and
6. Convene at least one technical stakeholder session, in addition to the August 18 webinar, at which manufacturers, formulators and users of exempt products can present information directly to the Department's reviewers.

HCPA further recommends that the Department provide stakeholders with sufficient time to review and respond to any draft findings, particularly where the Department is considering a recommendation to modify or remove an exemption.

HCPA also notes that HJM 3 requests a separate report from the Environmental Improvement Board on the implementation and efficacy of the rules. HCPA intends to provide the Board with its members' implementation experience, including the January 1, 2027, labeling deadline, the design of the label-waiver process, the readiness of the reporting system, and interstate consistency, and asks that the Department and the Board coordinate the two reports so that the Legislature receives a complete picture.

IX. Conclusion

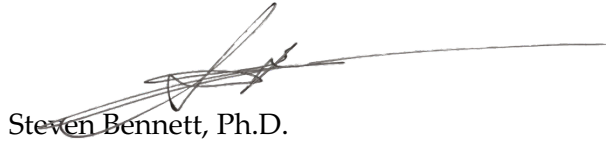
The exemptions in the PFAS Protection Act reflect the Legislature's express distinctions among products, uses, federal regulatory programs, and circumstances in which restrictions were not adopted. HCPA urges the Department to recommend that they be continued, with the clarifications described above, and to build its report on a differentiated, exposure-informed analysis, an even-handed economic assessment, and the product data the Department will soon have in hand.

In particular, HCPA respectfully requests that the Department refrain from recommending removal, sunset, or narrowing of an exemption based solely on the presence of a substance within the Act's broad PFAS definition or on evidence concerning materially different PFAS chemistries or exposure pathways. Any recommendation to change an exemption should be supported by

product-specific evidence, should account for applicable federal requirements, and should address the economic and implementation consequences of the proposed change.

We appreciate the Department's consideration and would welcome the opportunity to discuss these comments with the Office of Strategic Initiatives and the PFAS Protection Act program staff.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Steven Bennett', with a long horizontal flourish extending to the right.

Steven Bennett, Ph.D.
Executive Vice President, Scientific & Regulatory Affairs
Household & Commercial Products Association

Attachments: Audits & Surveys, *Age of Product Evaluation Report* (prepared for CTFA/CSMA, November 1991)

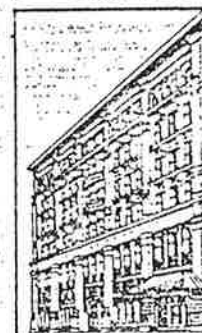
AUDITS & SURVEYS

AGE OF PRODUCT EVALUATION REPORT (SELECTED PERSONAL AND HOUSEHOLD PRODUCTS) LOS ANGELES/SAN DIEGO MARKETING AREA

NOVEMBER 1991

Prepared For: C.T.F.A./C.S.M.A.

SELLING AREAS DISTRIBUTION INDEX
A DIVISION OF AUDITS & SURVEYS
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CONFIDENTIAL

I. OBJECTIVE

The purpose of this study was to measure the age from date of manufacture of products available on retail shelves in various outlet types. This measurement method thus tracks the initial two stages of the packaged goods "pipeline" prior to actual consumer purchase - manufacturer to distributor/retailer warehouse and distributor/retailer warehouse to store shelves.

II. SCOPEA. Market

This program was conducted in the S.A.D.I.-defined Marketing Area of Los Angeles/San Diego, which is comprised of the following counties:

San Louis Obispo	San Bernardino
Kern	Orange
Santa Barbara	Riverside
Ventura	San Diego
Los Angeles	Imperial

B. Outlet Types/Trade Classes

The study was designed to include a sample of stores from classes of trade/outlet types with varying velocities of product movement and product volumes in order to provide a representative cross-section of the market in its entirety. The program included six (6) major outlet types -- Supermarkets, Small Food Stores, Convenience Stores, Drug Stores, Variety Stores and Discount Stores. Descriptions of these outlet types are found in Appendix

A.

C. Sample Sizes

Each outlet's sample size is derived from secondary source materials (U.S. Census of Retail Establishments, Progressive Grocer, etc.) and annually reviewed against results of Audits & Surveys' annual National Sample Census of Retail Distribution.

The number of sample stores by outlet type is:

Supermarkets	121
Small Food Stores	39
Convenience Stores	49
Drug Stores	74
Variety Stores	23
Discount Stores	21
<u>Total</u>	<u>327</u>

D. Timing

This study was conducted during November, 1991, with the field work completed on November 21-22.

E. Categories/Brands

Five categories were monitored in the Personal Care and Household Products area -- Hair Sprays, Nail Polish Removers, Aerosol Cooking Sprays, All Purpose Cleaners/Glass Cleaners, Floor Waxes and Polishes. In each category, leading brands and secondary brands were monitored to ensure a representative cross-section of the category.

F. Methodology/Data Collection

Experienced auditors visited each of the pre-selected sample stores on the scheduled field dates. The auditors were instructed to examine packages of the various brands within each product category and record the date code stamped on the first observable (accessible for inspection) package for each item. Additional packages were selected from sections of the cubic area in which the particular items were stocked. Data code information was pre-programmed into our data processing system. This information included all data code interpretations provided by the various participating manufacturers.

III. REPORTING

The report provides data for each product category by each of the outlet types separately and for the total of all outlet types combined within the Los Angeles/San Diego marketing area. A total of the number of packages which were examined in each category and outlet is provided, as well as a breakdown of product age, classified into the following groupings from date of manufacture:

- 0 - 1 year
- 1 - 2 years
- 2 - 3 years
- 3 years +

IV. REPORT ANALYSIS AND RESULTS SUMMARYA. Combined Outlets

In three of the five categories, (Hair Spray, Aerosol Cooking Sprays, Floor Waxes/Polishes) over 15% of products were between one and two years old and over 4.5% were between two and three years. A fourth category (Nail Polish Removers) had almost 10% between one and two years and 8% between two and three years. In the five categories and six outlets combined, over 7,100 packages were examined.

B. Supermarkets

In four product categories (Hair Spray, Nail Polish Removers, Aerosol Cooking Sprays, Floor Waxes/Polishes), more than 15% of the products found on the shelf were between one and two years old and 3% were between two and three years old. Our experience shows that this is one of the fastest moving classes of trade for these types of products.

C. Drug Stores

In three of the five product categories (Hair Spray, Aerosol Cooking Sprays, Floor Waxes/Polishes), over 20% of the products were found to be between one and two years old. Over 5% of Hair Spray and almost 11% of Nail Polish Removers were between two and three years old.

D. Convenience Stores

Over 80% of Floor Waxes/Polishes was older than one year, 44% of Aerosol Cooking Sprays, and over 30% of Hair Spray, Nail Polish Removers, and All Purpose/Glass Cleaners were manufactured longer than one year before our study was conducted.

E. Small Food Stores

In this outlet type, products between one and two years old ranged from almost 12% (Nail Polish Removers) to over 30% (Floor Waxes/Polishes). In four out of five categories, over 8% of product checked was over two years old (17% of Floor Waxes/Polishes).

F. Variety Stores

Two categories (Hair Spray, All Purpose/Glass Cleaners) had over 30% of product older than one year on the shelf.

G. Discount Stores

Over 21% of Floor Waxes/Polishes and approximately 15% of Hair Spray and Nail Polish Removers were older than one year.

V. SUMMARY

In every product category, 20% or more of the products were found on the shelf one to two years after date of manufacture in at least one type of retail outlet. In some cases, these percentages were much higher. For example, 65.6% of the Floor Waxes/Polishes and 40% of the Aerosol Cooking Sprays found in Convenience Stores were over one year old. 27% of the All Purpose/Glass Cleaners and 25% of the Hair Spray found in Variety Stores were over one year old. There are many other examples.

In every product category, 10% or more of the products were found on the shelf two to three years after date of manufacture in at least one type of retail outlet.

The study indicates that a substantial number (as great as 20%) of consumer products in the categories surveyed remain in the market place for one to two years, and that a significant number (as great as 10%) of products remain unsold after two years.

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<u>TOTAL COMBINED OUTLETS</u>		(curr - 12/90)	(11/90 - 12/89)	(11/89 - 12/88)	(before 12/88)
# ITEMS CHECKED		<u>0 - 1 YR</u>	<u>1 - 2 YRS</u>	<u>2 - 3 YRS</u>	<u>3 YRS +</u>
Hair Sprays	(2071)	75.7	17.7	4.6	1.5
Nail Polish Remover	(598)	80.4	9.3	8.4	1.4
Aerosol Cooking Spray	(1838)	78.8	18.5	2.3	0.3
APC/Glass Cleaners	(1112)	91.3	7.0	1.5	0.1
Floor Wax/Polisher	(1535)	77.0	17.9	4.0	1.2

 7,154

AUDITS & SURVEYS

<u>SUPERMARKETS</u>		(curr - 12/90)	(11/90 - 12/89)	(11/89 - 12/88)	(before 12/88)
# ITEMS CHECKED		<u>0 - 1 YR</u>	<u>1 - 2 YRS</u>	<u>2 - 3 YRS</u>	<u>3 YRS +</u>
Hair Sprays	(1063)	79.8	15.8	3.0	1.2
Nail Polish Remover	(219)	84.9	6.5	8.8	--
Aerosol Cooking Spray	(1660)	80.9	17.3	1.7	0.1
APC/Glass Cleaners	(720)	96.7	2.6	0.6	--
Floor Wax/Polisher	(907)	84.7	11.7	3.2	.2
<u>SMALL FOOD STORES</u>					
Hair Sprays	(92)	67.3	21.9	8.8	2.2
Nail Polish Remover	(34)	79.2	11.7	8.8	--
Aerosol Cooking Spray	(103)	48.5	37.0	12.7	1.9
APC/Glass Cleaners	(32)	84.5	12.6	--	3.1
Floor Wax/Polisher	(111)	43.2	30.6	17.1	9.0
<u>CONVENIENCE STORES</u>					
Hair Sprays	(109)	68.0	23.9	8.3	--
Nail Polish Remover	(60)	70.1	25.0	5.0	--
Aerosol Cooking Spray	(25)	56.0	40.0	--	4.0
APC/Glass Cleaners	(9)	66.7	22.2	11.1	--
Floor Wax/Polisher	(61)	18.1	65.6	13.1	3.3

AUDITS & SURVEYS

<u>DRUG STORES</u>		(curr - 12/90)	(11/90 - 12/89)	(11/89 - 12/88)	(before 12/88)
# ITEMS CHECKED		<u>0 - 1 YR</u>	<u>1 - 2 YRS</u>	<u>2 - 3 YRS</u>	<u>3 YRS +</u>
Hair Sprays	(513)	70.7	20.4	6.2	2.7
Nail Polish Remover	(197)	77.7	7.1	10.9	4.2
Aerosol Cooking Spray	(19)	79.0	21.1	--	--
APC/Glass Cleaners	(208)	77.8	18.4	3.9	--
Floor Wax/Polisher	(257)	76.7	20.3	1.2	1.6
<u>VARIETY STORES</u>					
Hair Sprays	(116)	62.9	25.0	10.4	1.7
Nail Polish Remover	(28)	96.5	3.6	--	--
Aerosol Cooking Spray	(16)	87.6	12.5	--	--
APC/Glass Cleaners	(30)	66.8	27.0	6.7	--
Floor Wax/Polisher	(44)	84.1	15.8	--	--
<u>DISCOUNT STORES</u>					
Hair Sprays	(178)	85.2	11.9	2.9	--
Nail Polish Remover	(60)	83.1	11.9	5.1	--
Aerosol Cooking Spray	(15)	100.0	--	--	--
APC/Glass Cleaners	(113)	93.9	6.3	--	--
Floor Wax/Polisher	(155)	78.9	21.2	--	--

AUDITS & SURVEYS

C.T.F.A. - Los Angeles/San Diego

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