

September 17, 2026

New Mexico Environment Department
PFAS Protection Act Program
Office of Strategic Initiatives
1190 St. Francis Drive
Santa Fe, NM 87505

Re: HJM3 Comments on HVAC, refrigeration, and medical exemptions under the PFAS Protection Act

To Whom It May Concern:

Orbia Fluor & Energy Materials (“Orbia”) recommends that the New Mexico Environment Department (“NMED”) advise the Legislature to retain the exemptions for heating, ventilation, and air conditioning (“HVAC”) equipment, refrigeration equipment, qualifying substitute products, and medical products under the Per- and Poly-Fluoroalkyl Substances Protection Act (“Act”). Specifically, NMED should recommend continuing:

- The equipment exemption in Section 74-15-3(A)(4) and the separate exemption in Section 74-15-3(A)(12) for qualifying products containing substitutes listed under the Environmental Protection Agency (“EPA”) Significant New Alternatives Policy (“SNAP”) program; and
- The exemption in Section 74-15-3(A)(3) for medical devices, drugs, and their packaging regulated by the Food and Drug Administration (“FDA”). N.M. Stat. Ann. § 74-15-3(A)(3), (4), (12) (2025).

These exemptions account for federal controls on refrigerant alternatives and medical products. NMED should assess the health, environmental, and economic consequences of restricting those uses, including the suitability and availability of replacements. The report should distinguish the substances and applications covered by each exemption and account for the requirements governing their use and substitution.

Orbia Advance Corporation, S.A.B. de C.V., through its Fluor & Energy Materials business, develops, manufactures, and supplies fluoroproducts for indoor climate management, food and medicine refrigeration, electric vehicles, energy storage, and infrastructure. The business also develops propellants with low global warming potentials (“GWPs”) for metered dose inhalers (“MDIs”) used to treat respiratory conditions. Orbia employs 1,800 people and operates seven manufacturing facilities worldwide, serving more than 60 countries through its sales and distribution network. Orbia supports the Kigali Amendment to the Montreal Protocol and the American Innovation and Manufacturing Act of 2020

(AIM Act), 42 U.S.C. § 7675, and is developing and bringing to market next generation refrigerants with low GWPs.

1. NMED SHOULD EVALUATE THE SUBSTANCES AND USES COVERED BY EACH EXEMPTION

House Joint Memorial 3 (“HJM3”) requests a report on the public health, environmental, and economic risks of the statutory exemptions and recommendations on whether they should continue, change, or be removed. The report should compare the consequences of those choices. H.J.M. 3, 57th Leg., 2d Sess., at 3 (N.M. 2026).

The Act defines a per- or poly-fluoroalkyl substance (“PFAS”) by reference to fluorinated organic chemicals containing at least one fully fluorinated carbon atom. N.M. Stat. Ann. § 74-15-2(S) (2025). That definition establishes statutory coverage. NMED should separately identify the evidence concerning the hazards, exposures, and environmental effects associated with each substance and use under review.

For each study on which it relies, NMED should identify the substance examined, exposure route, dose or concentration, and conditions of use. If NMED applies findings to a different substance or application, it should explain the scientific basis. The analysis should distinguish refrigerants, medical propellants, and materials used in equipment components. It should address relevant releases during manufacturing, use, servicing, and disposal, together with degradation products, existing controls, and remaining uncertainties.

The statutory exemptions also should remain distinct from currently unavoidable use determinations. Products within the enumerated exemptions do not need a separate determination that alternatives are unavailable. The Act provides that additional route for other qualifying uses, and the implementing rule makes those determinations expire after three years. Replacing the existing exemptions with that process would make continued sales depend on recurring determinations. N.M. Stat. Ann. §§ 74-15-2(H), -3(A)(3), (4), (12), (15), -4(A)(3) (2025); N.M. Code R. § 20.13.2.10–.11 (2026).

2. NMED SHOULD RETAIN THE HVAC AND REFRIGERATION EXEMPTIONS

a. The Act expressly exempts equipment and qualifying SNAP substitute products

Section 74-15-3(A)(4) expressly addresses cooling, heating, ventilation, air conditioning, and refrigeration equipment containing intentionally added PFAS or refrigerants listed under SNAP, with the provision specifying sale or distribution for the listed use. Section 74-15-3(A)(12) separately exempts products containing intentionally added PFAS used as substitutes for ozone depleting substances (“ODS”) where the uses are listed as acceptable, acceptable subject to use conditions, or acceptable subject to narrowed use limits, under the conditions specified in the SNAP rules. N.M. Stat. Ann. § 74-15-3(A)(4), (12) (2025); N.M. Code R. § 20.13.2.10(D), (L) (2026).

b. SNAP provides a basis for comparing refrigerant risks and alternatives

EPA assesses ODS substitutes for safety under the Significant New Alternatives Policy (SNAP), including substitutes used as refrigerants. 42 U.S.C. § 7671k. This federally mandated review directly addresses considerations relevant to the HJM3 report. EPA evaluates atmospheric effects, risks from exposure, ecosystem effects, occupational and consumer risks, flammability, and substitute cost and availability. EPA may impose use conditions to minimize risks or permit narrowed uses for specialized applications lacking other technically feasible alternatives. 40 C.F.R. § 82.180(a)(7), (b)(2)–(3) (2026).

These evaluations support retaining exemptions tied to listed uses. NMED should consider the underlying EPA assessments, the alternatives evaluated, and any use conditions imposed. If subsequent evidence identifies a concern that those assessments or conditions do not address, the report should explain that concern and its significance for the particular use.

The exemptions also operate alongside the federal refrigerant transition. EPA regulations under the AIM Act restrict the manufacture and import of specified products and the installation of specified systems using hydrofluorocarbons (“HFCs”) or blends containing them. 40 C.F.R. § 84.54(a), (c) (2026). Those restrictions continue to govern products and systems qualifying for the New Mexico exemptions. NMED should evaluate whether removing an exemption would leave each application with any refrigerants that meet AIM Act requirements, are permitted under SNAP for that end use, and can be used in equipment that complies with governing building and mechanical codes. *See* 40 C.F.R. § 82.174(b)–(d) (2026); N.M. Code R. § 14.9.2.8(A), (C) (2026). If no such refrigerant remains available, the restriction could prevent installation of equipment needed for that application

c. Substitution should be evaluated for the equipment and operating conditions

NMED should assess whether a proposed substitute can perform the required function in the equipment under review. The assessment should address capacity, energy use, flammability, operating pressure, material compatibility, certification, and availability in commercial quantities. It should distinguish an alternative suitable for newly designed equipment from one that can service equipment already installed.

The economic analysis should identify costs of redesign, testing, certification, technician training, and any equipment replacement that a restriction would require. It should also evaluate effects on access to heating and cooling and refrigeration of food and medicine. Any projected costs or disruptions should identify the affected products, customers, and assumptions, with New Mexico effects quantified where the evidence permits.

d. Existing requirements continue to address disclosure and refrigerant handling

Retaining the exemptions preserves the distinction between product prohibitions and other requirements. Qualifying products are exempt from reporting requirements under the Act. The equipment and SNAP exemptions do not themselves exempt products from the separate labeling rule, which provides labeling alternatives for complex durable goods and a waiver process. NMED’s labeling guidance illustrates these requirements with a PFAS label on a consumer facing specification sheet for an air conditioning unit. *See* N.M. Env’t Dep’t, *Labeling Guidance for Consumer Products With Intentionally Added PFAS in New Mexico* 6, 9 (July 2026). NMED may require testing where the conditions in the testing rule are met. N.M. Stat. Ann. § 74-15-5(K) (2025); N.M. Code R. §§ 20.13.2.12(H), .13(A)–(B), (D), (F), .14 (2026).

Federal requirements also govern refrigerant handling. Subject to specified exceptions, EPA prohibits knowing releases during maintenance, servicing, repair, or disposal and requires recovery practices and equipment. 40 C.F.R. § 82.154(a)–(b) (2026). NMED should account for these controls when evaluating releases and identify any remaining concern associated with a covered substance and use.

3. NMED SHOULD RETAIN THE MEDICAL DEVICE AND DRUG EXEMPTION

a. The exemption reflects the regulatory status of the medical product

Section 74-15-3(A)(3) exempts FDA regulated medical devices, drugs, and their packaging, including prosthetic and orthotic devices. The statutory definition of medical device includes qualifying components and accessories. N.M. Stat. Ann. §§ 74-15-2(Q), -3(A)(3) (2025). These provisions allow the analysis to follow the regulated product and its intended function, including where a material forms part of a device or drug delivery system.

The Act and implementing rule separately exempt qualifying medical products from reporting, testing, and labeling. NMED should recommend preserving those protections together with the exemption from product prohibitions. N.M. Stat. Ann. §§ 74-15-5(K), -6(E) (2025); N.M. Code R. §§ 20.13.2.10(C), .12(H), .13(B)(4), .14(A) (2026).

b. FDA requirements govern changes to formulations and devices

The availability of a different material does not by itself establish that a manufacturer can substitute it in a medical product. Under FDA regulations governing changes to approved new drug applications, application holders must assess the effects of manufacturing changes before distributing a drug product made with the change. Changes to formulations, including inactive ingredients, generally require a supplement and prior FDA approval, subject to the exceptions and alternative procedures in the regulation. The same provisions address changes to a container closure system that controls delivery of the drug. 21 C.F.R. § 314.70(a), (b)(2)(i), (vi), (b)(3) (2026).

Under FDA regulations governing the 510(k) premarket notification process for medical devices, a change in material or chemical composition that could significantly affect safety or effectiveness requires a new notification unless an exception applies. 21 C.F.R. § 807.81(a)(3), (b) (2026). NMED should account for the review and supporting evidence required for the particular product and change when assessing the feasibility and timing of substitution.

c. Continued access should accompany development of alternative propellants

Orbia has invested in Zephex 152a, an alternative medical propellant, and collaborated with Bepak on development of metered dose inhalers using propellants with lower GWP. That work has included nonclinical safety studies at external laboratories, including Lovelace Biomedical Institute in Albuquerque, New Mexico. Orbia, 2024 Impact Report 28, 91. This work illustrates the development and safety assessment involved in bringing an alternative propellant into medical use.

NMED should assess replacement inhalers by reference to the finished product, including its authorization for the intended use, suitability for the patients concerned, and availability in sufficient quantities. A propellant development program alone does not establish that replacement inhalers are available for every medicine or patient population. The report should account for treatment continuity, procurement costs, and patient access when evaluating a restriction.

NMED should separately evaluate environmental releases associated with medical propellants and any proposed alternatives. The analysis should address climate effects and other environmental concerns on their respective evidence. Retaining the exemption allows medical product development and review to proceed while preserving access to products that satisfy existing FDA requirements.

4. CONCLUSION

NMED should recommend retaining the exemptions in Sections 74-15-3(A)(3), (4), and (12), together with the related reporting protections and existing medical testing and labeling exemptions. If NMED recommends changing an exemption, the report should identify the substances and uses affected, the evidence supporting the change, the expected benefit, and the available alternatives. It should explain how the proposed change would address the identified risk while accounting for product performance, patient access, federal requirements, and the time and cost of transition.

Thank you for the opportunity to submit these comments on HJM3 and NMED's report on the implementation of the Act. Please contact me if you have any questions or if you require any further information.

Sincerely,

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