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Attached please find comments on the House Joint Memorial 3 (HJM3). These comments were prepared by, and are being submitted on behalf of, one of Farella Braun + Martel LLP's clients.

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Comments Supporting the Continued Exemption of Fluoropolymers under the New Mexico PFAS Protection Act

Dear New Mexico Environment Department,

We appreciate that the New Mexico Environment Department (NMED) is conducting a scientific evaluation of public health, environmental, and economic risks associated with the exemptions provided under the PFAS Protection Act, and is considering recommendations to the State Legislature on this matter.

We support appropriate regulation of PFAS substances that are shown, based on scientific evidence, to pose unacceptable risks to human health or the environment. At the same time, we believe that maintaining the current exemption for fluoropolymers is scientifically sound and reasonable, given that fluoropolymers are fundamentally different from the low-molecular-weight PFAS of general concern in terms of their exposure characteristics, environmental behavior, and risk profiles.

1. Fluoropolymers Possess Fundamentally Different Properties from Low-Molecular-Weight PFAS

PFAS encompasses a highly diverse group of chemical substances. Fluoropolymers, however, are generally solid polymeric materials with large molecular size, and their physicochemical properties differ from those of certain low-molecular-weight PFAS that exhibit high water solubility and mobility.

Many solid fluoropolymers are generally characterized by:

- Low solubility in water
- Large molecular size
- High stability under normal conditions of use
- Limited bioavailability of the polymer itself

Fluoropolymers therefore behave very differently from low-molecular-weight

PFAS, which raise concerns due to their environmental mobility and potential for exposure to humans and organisms. Accordingly, fluoropolymers and mobile, bioavailable low-molecular-weight PFAS should not be subject to the same regulatory conclusions solely on the basis of shared structural features. Evaluations should instead reflect factors such as molecular size, water solubility, mobility, residual low-molecular-weight constituents, forms of use, frequency of exposure, and disposal conditions.

2. Regulatory Decisions Should Be Based on Actual Risk, Not Chemical Structure Alone

We believe that a risk-based approach is essential to PFAS regulation. Many of the environmental and health concerns associated with PFAS arise from substances with high mobility, bioavailability, and potential for exposure. Fluoropolymers, in contrast, exist as stable polymeric materials under normal conditions of use, and their exposure characteristics differ fundamentally from those of low-molecular-weight PFAS.

Even in the context of medical devices—an application involving potential direct contact with the human body—the U.S. FDA has explained that fluoropolymers used in medical devices are generally too large to cross cell membranes, making them highly unlikely to cause toxicity to patients, unlike the small-molecule PFAS associated with environmental contamination and health concerns. The FDA has further stated that, based on currently available scientific information, there is no reason to restrict the continued use of these materials in medical devices [1]. While this FDA position pertains specifically to medical device applications, it illustrates a practical regulatory example demonstrating that fluoropolymers and low-molecular-weight PFAS should not be uniformly evaluated as having the same risk profile.

Accordingly, treating fluoropolymers in the same manner as low-molecular-weight PFAS based solely on chemical structure would be inconsistent with the principles of risk-based regulation.

3. Regulatory Focus Should Be on Actual Exposure Pathways and Lifecycle Management

We recognize the importance of appropriate management measures for environmental protection. What matters is not a blanket prohibition based on material name, but rather identifying and managing the specific stage, substance, receiving medium, and quantity of any release. The OECD has noted that while manufacturing sites can be sources of PFAS emissions, progress is being made in transitioning polymerization aids and improving emission control technologies [2]. Therefore, rather than imposing uniform prohibitions or reporting requirements on finished fluoropolymer materials, it would be more reasonable and effective to target measures at stages where actual environmental releases may occur—such as controlling emissions of low-molecular-weight PFAS, monomers, byproducts, and particulates at manufacturing and processing facilities, as well as ensuring appropriate product recovery, recycling, and disposal management.

Regulatory focus should be placed on actual exposure pathways and environmental impacts, rather than on uniform regulation based solely on chemical structure. What should be regulated is actual risk and exposure pathways; substance groups with differing risk profiles should not be treated uniformly.

Maintaining the fluoropolymer exemption does not preclude effective environmental protection. Environmental objectives can be addressed through measures focused on actual emission sources, lifecycle management, waste handling, and controls on low-molecular-weight PFAS where such risks are identified.

4. Fluoropolymers Provide Wide-Ranging Societal Benefits

Fluoropolymers are used in numerous products and technologies that support modern society, including:

- Batteries and energy storage technologies
- Water treatment and filtration systems
- Semiconductor manufacturing equipment
- Medical devices
- Electronic materials and high-performance components

A 2025 report by the U.S. Department of Defense (DoD) indicates that fluoropolymers, including PVDF, perform critical functions in energy storage, semiconductor manufacturing equipment, piping, hoses, seals, gaskets, wires, cables, and medical devices [3]. The report notes that, for medical devices in particular, no functional alternatives currently exist, and developing viable alternatives from concept to market could take 10 to 15 years. It further points out that, for certain applications, the development and qualification of alternative materials may take a long time, and that regulatory complexity, uncertainty, and inconsistency could lead to supply disruptions or undesirable substitutions—so-called "regrettable substitution" [3]. Although the DoD assessment primarily addresses defense applications, the batteries, semiconductors, medical devices, and wires/cables discussed in the report have significant overlap with civilian applications, suggesting that a contraction of the fluoropolymer supply chain could affect a broad range of industries.

This does not mean that every application is indispensable. However, a blanket removal of exemptions across all applications would simultaneously affect numerous societal functions without evaluating performance, safety, durability, product lifespan, recertification requirements, and supply chain impacts. Alternative materials should be evaluated on an application-specific basis, confirming equivalent performance, safety, service life, and lifecycle impacts.

5. Sufficient Grounds Have Not Been Presented to Justify Repealing or Uniformly Narrowing the Exemption at This Time

New Mexico currently exempts fluoropolymers from prohibition and reporting requirements under existing law. We understand this to reflect a risk-based determination recognizing that fluoropolymers possess characteristics distinct from other PFAS.

We do not oppose continued evaluation based on emerging scientific knowledge. However, currently available information still contains data gaps regarding the types, product forms, residual low-molecular-weight constituents, exposure pathways, and disposal conditions of fluoropolymers.

Accordingly, it has not been sufficiently demonstrated what additional public health or environmental benefits would result from repealing or substantially narrowing the exemption for fluoropolymers as a whole at this time.

At the same time, the technical and societal benefits provided by fluoropolymers, and the wide-ranging impacts of substitution on performance, safety, durability, recertification, supply chains, and the economy, are extensive. Therefore, narrowing or repealing the exemption uniformly, without an application-specific comparative assessment of these impacts, would not constitute a proportionate measure.

Conclusion

We believe that fluoropolymers and low-molecular-weight PFAS should not automatically be subject to the same regulatory conclusions solely because they fall within a broader PFAS definition. The exemption for fluoropolymers currently adopted under New Mexico law is consistent with this science-based, risk-based approach.

We recognize the importance of continued evaluation as scientific knowledge advances in the future. However, based on currently available information, the additional risk-reduction benefits of repealing or uniformly narrowing the exemption for fluoropolymers as a whole have not been sufficiently demonstrated, and no adequate grounds have been presented to justify such measures.

We therefore support New Mexico's maintenance of the current exemption for fluoropolymers, and encourage the continued adoption of a regulatory approach grounded in scientific evidence, actual exposure potential, and risk assessment.

References

- [1] U.S. Food and Drug Administration, *PFAS in Medical Devices: What You Need to Know*, updated September 1, 2026, <https://www.fda.gov/medical-devices/products-and-medical-procedures/pfas-medical-devices-what-you-need->

[know](#)

[2] OECD (2025), *Synthesis Report on Understanding Fluoropolymers and Their Life Cycle*, OECD Series on Risk Management of Chemicals, OECD Publishing, Paris, DOI: 10.1787/35b035df-en, pp. 17–18, 32–59, 68–94.

[3] U.S. Department of Defense (2025), *Update on Critical Per- and Polyfluoroalkyl Substance Uses Pursuant to House Report 118-121*, July 2025, pp. 3–9, Appendix A.