

**STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD**

**IN THE MATTER OF PROPOSED
ADOPTION OF 20.13.2 NMAC,
*Per- and Poly-Fluoroalkyl Substances
in Consumer Products***

No. EIB 25-61 (R)

**New Mexico Environment Department,
Office of Strategic Initiatives,**

Petitioner.

**PETITION FOR REGULATORY CHANGE TO ADOPT 20.13.2 NMAC
AND REQUEST FOR HEARING**

The Office of Strategic Initiatives (“OSI”) of the New Mexico Environment Department (“Department”), pursuant to 20.1.1.300 NMAC, respectfully petitions the Environmental Improvement Board (“Board”) to adopt the proposed new rule of 20.13.2 NMAC, *Per- and Poly-Fluoroalkyl Substances in Consumer Products* (“New Rule”). As required by 20.1.300(B) NMAC, the Department’s statement of reasons in support of this Petition is attached as **Exhibit A** and the text of the new rule of 20.13.2 NMAC is attached as **Exhibit B**.

The Department respectfully requests that the Board consider this Petition at its regular meeting on October 24, 2025. *See* NMSA 1978, § 74-1-9(A) (“the Board shall determine within 60 days whether to hold a hearing for the proposed regulation”); *see also* 20.1.1.300(C) NMAC (“the board shall determine, at a public meeting occurring at least 15 days and no later than 60 days, after receipt of the petition, whether or not to hold a public hearing on the proposal.”).¹ The Department respectfully requests approximately 20 minutes for the Department to present this Petition. The Department respectfully requests the Board grant a hearing on this Petition and issue

¹ Fifteen days after the filing date of this Petition is October 24, 2025.

orders pursuant to 20.1.1.300(D) NMAC for a hearing on the adoption of the proposed New Rule by November 5, 2025.²

The Department anticipates that the hearing to adopt the proposed New Rule will take approximately five days. The Department respectfully requests that the Board order that the hearing shall occur before March 13, 2026.

Due to the complexity of the issues that are likely to arise in this rulemaking, the Department requests the Board appoint an administrative hearing officer to conduct the rulemaking proceedings, which will allow the Board members to devote their full attention to the substantive testimony and comment, and will help prevent potential procedural challenges to any final regulation adopted by the Board. *See* NMSA 1978, § 74-1-9(F); *see also* 20.1.1.107(B) NMAC.

JURISDICTION

The Board is authorized to adopt regulations regarding intentionally added per- and poly-fluoroalkyl substances in consumer products pursuant to the Environmental Improvement Act, NMSA 1978, Sections 74-1-5, et seq., and the Per- and Poly-Fluoroalkyl Substances Protection Act, NMSA 1978, Sections 74-15-1, et seq., in accordance with the requirements and process set forth in the Environmental Improvement Act, NMSA 1978, Sections 74-1-9 and 20.1.1 NMAC.

WHEREFORE, the Department respectfully requests that the Board:

- A. Include this Petition on the agenda for the Board's next meeting and consider this Petition at the meeting;
- B. Authorize a hearing to consider the merits of this Petition; and

² The New Mexico Register submittal deadline for the public notice of the hearing is November 6, 2025, which will allow for publication of the hearing notice on November 18, 2025. *See* State Records Center and Archives, 2025 New Mexico Register, Submittal Deadlines and Publication Dates, Volume XXXVI, Issues 1-24, available at <https://www.srca.nm.gov/nmac/nmregister/pdf/2025%20New%20Mexico%20Register%20Schedule.pdf>; *see also* 20.1.1.301(A) NMAC (public notice requirements).

- C. Appoint a hearing officer to schedule and conduct the hearing.

Respectfully submitted,

**NEW MEXICO ENVIRONMENT
DEPARTMENT**

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**IN THE MATTER OF PROPOSED
ADOPTION OF 20.13.2 NMAC —**
*Per- and Poly-Fluoroalkyl Substances
in Consumer Products*

No. EIB 25 - _____(R)

**STATEMENT OF REASONS TO SUPPORT
ADOPTION OF 20.13.2 NMAC**

The Office of Strategic Initiatives (“OSI”) of the New Mexico Environment Department (“Department”), pursuant to 20.1.1.300(B) NMAC, respectfully submits to the Environmental Improvement Board (“Board”) this Statement of Reasons as **Exhibit A** to the Petition for Regulatory Change to Adopt 20.13.2 NMAC, *Per- and Poly-Fluoroalkyl Substances in Consumer Products* (“Petition”).

AUTHORITY AND BACKGROUND

1. The Per- and Poly-Fluoroalkyl Protection Act (“PFAS Protection Act”) was passed by the New Mexico Legislature and signed into law by the Governor on April 8, 2025. The PFAS Protection Act is codified at NMSA 1978, Article 15, Section 74-15-1, et seq.

2. The PFAS Protection Act, at Section 74-15-4(A), mandates that the Board shall adopt rules to:

- A. exempt from the reporting requirements any product that contains an intentionally added per- or poly-fluoroalkyl substance (“PFAS”) that is exempt pursuant to Section 74-15-3(A) of the PFAS Protection Act or that has been designated as a currently unavoidable use;

- B. create a series of ranges for the amount of PFAS in a product that contains an intentionally added PFAS for reporting purposes unless exempted in Section 74-15-3 A) of the PFAS Protection Act; and
 - C. identify currently unavoidable uses of PFAS that are essential for health, safety or the functioning of society and for which alternatives are not reasonably available unless exempted in Section 74-15-3(A) of the PFAS Protection Act.
3. The PFAS Protection Act, at Section 74-15-5(A), mandates that the Board shall also adopt rules that enumerate the information required of a manufacturer of a product containing intentionally added PFAS.
4. Additionally, the PFAS Protection Act provides that, pursuant to Section 74-15-4(B), the Board may adopt rules to carry out the provisions of the PFAS Protection Act, including requiring the labeling of products in English and Spanish.
5. The Board is further authorized to adopt rules regarding PFAS in Consumer Products pursuant to the Environmental Improvement Act, NMSA 1978, Section 74-1-5.

SUMMARY OF THE PROPOSED RULE

6. New Rule 20.13.2 NMAC establishes rules for the prohibition of certain products that contain an intentionally added PFAS, for the reporting of information and testing of products sold, offered for sale, distributed or distributed for sale in New Mexico that contain intentionally added PFAS, and for the labeling of certain products sold, offered for sale, distributed or distributed for sale in New Mexico that contain intentionally added PFAS.
7. New Rule 20.13.2 NMAC also establishes fees for mandatory reporting and applications for currently unavoidable use designations.

8. New Rule 20.13.2 NMAC establishes provisions for enforcement, penalties and administrative costs related to violations of the PFAS Protection Act.

9. As required by Section 74-15-3(A), New Rule 20.13.2 NMAC lists the products and categories of products which are exempt from regulation under the PFAS Protection Act.

10. As required by Section 74-15-3(B), New Rule 20.13.2 NMAC establishes that, except as provided in Section 74-15-3(A), beginning January 1, 2027, a manufacturer may not sell, offer to sell, distribute or distribute for sale in New Mexico, directly or indirectly or through intermediaries, cookware, food packaging, dental floss, juvenile products, and firefighting foam, if that product contains an intentionally added PFAS.

11. As required by Section 74-15-3(C), New Rule 20.13.2 NMAC establishes that, except as provided in Section 74-15-3(A), beginning January 1, 2028, a manufacturer may not sell, offer to sell, distribute or distribute for sale in New Mexico, directly or indirectly through intermediaries, carpets or rugs, cleaning products, cosmetics, fabric treatments, feminine hygiene products, textiles, textile furnishings, ski wax, and upholstered furniture, if that product contains an intentionally added PFAS.

12. As required by Section 74-15-3(E), New Rule 20.13.2 NMAC establishes that, except as provided in Section 74-15-3(A), beginning January 1, 2032, a manufacturer may not sell, offer to sell, distribute or distribute for sale in New Mexico, directly or indirectly through intermediaries, a product containing intentionally added PFAS, unless said use is deemed to be a currently unavoidable use pursuant to a rule adopted by the Board.

13. As required by Section 74-15-4(A), New Rule 20.13.2 NMAC exempts from reporting requirements certain products and classes of products outlined at Section 74-15-3(A).

14. As required by Section 74-15-4(A)(1), New Rule 20.13.2 NMAC establishes a process to exempt from reporting requirement products or classes of products which contain intentionally added PFAS that are either expressly enumerated in Section 74-15-3(A) or designated as a currently unavoidable use.

15. As required by Section 74-15-4(A)(2), New Rule 20.13.2 NMAC creates a series of ranges for the amount of PFAS in a product that contains an intentionally added PFAS for reporting purposes.

16. As required by Section 74-15-4(A)(3), New Rule 20.13.2 NMAC proposes the process by which the Department will identify currently unavoidable uses of PFAS that are essential for health, safety or the functioning of society and for which alternatives are not reasonably available.

17. As permitted by Section 74-14-4(B)(1), New Rule 20.13.2 NMAC proposes the adoption of rules requiring the labeling of products containing PFAS.

18. As required by Section 74-15-5(A), New Rule 20.13.2 NMAC proposes the adoption of rules which will enumerate the information required of a manufacturer of a product containing an intentionally added PFAS.

GENERAL PROVISIONS OF THE PROPOSED NEW RULE

19. New Rule 20.13.2 NMAC creates a new Part 2 in Chapter 13 of Title 20 of the New Mexico Administrative Code with the following sections:

A. Mandatory Sections:

i. 20.13.2.1 NMAC (“Issuing Agency”) identifies the Board as the issuing agency.

ii. 20.13.2.2 NMAC (“Scope”) identifies that the New Rule will apply to manufacturers, distributors, and retailers that sell, offer for sale, distribute or distribute for sale in the State of New Mexico, directly or indirectly or through intermediaries, certain products to which PFAS are intentionally added.

iii. 20.13.2.3 NMAC (“Statutory Authority”) cites the statutes that provide authority for the New Rule, which are the Environmental Improvement Act, NMSA 1978, Sections 74-1-1, et seq. and the PFAS Protection Act, NMSA 1978, Sections 74-15-4, et. seq.

iv. 20.13.2.4 NMAC (“Duration”) indicates that the New Rule will be permanent, at least until the Board amends the rule.

v. 20.13.2.5 NMAC (“Effective Date”) states the effective date of the New Rule will be July 1, 2026, unless a later date is cited at the end of a section.

vi. 20.13.2.6 (“Objective”) identifies that the purpose of the New Rule is to establish rules for the prohibition of certain products that contain an intentionally added PFAS, for the reporting of information and testing of products sold, offered for sale, distributed or distributed for sale in New Mexico that contain intentionally added PFAS, for the labeling of certain products sold, offered for sale, distributed or distributed for sale in New Mexico that contain an intentionally added PFAS, and to establish

provisions for the enforcement, penalties, and administrative costs related to violations of the PFAS Protection Act. It also identifies that penalties paid shall be deposited into the recycling and illegal dumping fund, while fees and administrative costs shall be deposited into the hazardous waste permitting fund.

vii. 20.13.2.7 (“Definitions”) provides the definitions for commonly used terms in the New Rule. Definitions for specific terms only appearing in a section of the New Rule are contained in that section.

B. Section Establishing Severability: 20.13.2.8 (“Severability”) provides for enforceability of the remainder of the New Rule where a provision or application of a provision in a specific circumstance is held to be unconstitutional or invalid.

C. Sections Pertaining to the Prohibition of Products Containing PFAS:

viii. 20.13.2.9 (“Prohibitions on Products Containing Per- and Poly-fluoroalkyl Substances”) identifies the dates on which specific products and classes of products containing intentionally added PFAS will be prohibited for sale and distribution in the State of New Mexico.

ix. 20.13.2.10 (“Exemptions”) identifies the products or classes of products which are exempt from Sections 20.13.2.11 (“Currently Unavoidable Use”), 20.13.2.12 (“Reporting Requirement”), and 20.13.2.14 (“Testing”) of the New Rule.

D. Section Establishing Currently Unavoidable Uses: 20.13.2.11 (“Currently Unavoidable Use”) provides the directions for submitting Currently

Unavoidable Use proposals to the Department, the contents required in a Currently Unavoidable Use proposal, the process by which the Department will consider Currently Unavoidable Use determinations made by other states, potential implications arising from claims of confidentiality in association with Currently Unavoidable Use proposals, the duration of approved Currently Unavoidable Use designations, and the means by which approved Currently Unavoidable Use designations will be made to the public.

- E. Section Establishing Reporting Requirements: 20.13.2.12 (“Reporting Requirement”) establishes reporting requirements for manufacturers of products containing intentionally added PFAS sold, offered for sale, distributed or distributed for sale in the state as well as setting forth a process for manufacturers to request a waiver of reporting obligations when publicly available information satisfies enumerated requirements, and outlining certain products that are exempt from the reporting requirements.
- F. Section Establishing Labeling Requirements: 20.13.2.13 (“Labeling”) establishes labeling requirements for manufacturers of products containing intentionally added PFAS sold offered for sale, distributed or distributed for sale in the state as well as outlining the process for manufacturers of certain statutorily exempt products to seek a waiver from the department of the labeling requirement.
- G. Section Establishing Testing Requirements: 20.13.2.14 (“Testing”) establishes testing requirements for manufacturers to test for PFAS if there is a reasonable suspicion that the product contains intentionally added PFAS as well as

establishing the department's authority to test products for PFAS under the same circumstances.

- H. Section Regarding Reporting Fees: 20.13.2.15 ("Reporting Fees") requires manufacturers of products containing intentionally added PFAS sold offered for sale, distributed or distributed for sale in the state to pay a reporting fee in accordance with 20.13.2.16.
- I. Section Establishing Reporting Fee Schedule: 20.13.1.16 ("Reporting Fee Schedule") establishes a schedule of reasonable fees for the Department's processing and review of required reports related to products containing intentionally added PFAS sold offered for sale, distributed or distributed for sale in the state as required by 20.13.2.12.
- J. Section Regarding Currently Unavoidable Use Designation Application Fees: 20.13.2.17 ("Currently Unavoidable Use Designation Application Fees") requires manufacturers that apply to designate the use of a PFAS in a product as a currently unavoidable use to pay a fee to the department in accordance with 20.13.2.18.
- K. Section Establishing Currently Unavoidable Use Designation Application Fee Schedule: 20.13.2.18 ("Currently Unavoidable Use Designation Application Fee Schedule") establishes a schedule of reasonable fees for the Department's processing and review of currently unavoidable use applications submitted to the Department by manufacturers pursuant to 20.13.2.11.

- L. Section Regarding Accepted Manner of Payment: 20.13.2.19 (“Manner of Payment”) outlines the acceptable methods of payment for manufacturers to pay fees to the Department as established in 20.13.2.15, 20.13.2.16, 20.13.2.17, and 20.13.2.18.
- M. Section Regarding Late Charges: 20.13.2.20 (“Late Charges”) establishes reasonable fees for the Department’s processing and collection of fees owed pursuant to 20.13.2.15, 20.13.2.16, 20.13.2.17, and 20.13.2.18 but not paid to the Department by the due dates established in 20.13.2.
- N. Section Regarding Enforcement, Compliance Orders, and Penalties: 20.13.2.21 (“Enforcement, Compliance Orders, Penalties”) outlines the Department’s authority to enforce the PFAS Protection Act and 20.13.2 as well as the penalties and fees associated with violations of the PFAS Protection Act.

COMPLIANCE WITH STATUTORY RULEMAKING REQUIREMENTS

20. Adoption of New Rule 20.13.2 NMAC is justified given the character and degree of injury to or interference with health, welfare, animal and plant life, property, and the environment. *See* NMSA 1978, § 74-1-9(B)(1).

21. Adoption of New Rule 20.13.2 NMAC is in the public interest, including when considering the social, economic and cultural value of the regulated activity, and the rule aims to address the environmental degradation and human health effects caused by PFAS in consumer products. *See* NMSA 1978 § 74-1-9(B)(2).

22. New Rule 20.13.2 NMAC is technically practicable and economically reasonable in the methods the rule employs to address environmental degradation and human health effects caused by PFAS in consumer products. *See* NMSA § 74-1-9(B)(3).

23. New Rule 20.13.2 NMAC is drafted to comply with 1.24.10 NMAC, the uniform drafting rules for regulations in the New Mexico Administrative Code.

24. Therefore, New Rule 20.13.2 NMAC complies with the statutory rulemaking requirements.

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 13 PER- AND POLY-FLUOROALKYL SUBSTANCES IN CONSUMER PRODUCTS
PART 2 PROHIBITIONS ON PRODUCTS CONTAINING PER- OR POLY-FLUOROALKYL
SUBSTANCES; CURRENTLY UNAVOIDABLE USE; REPORTING; LABELING;
TESTING; FEES AND PENALTIES

20.13.2.1 ISSUING AGENCY: Environmental Improvement Board
[20.13.2.1 NMAC – N, 07/01/2026]

20.13.2.2 SCOPE: This part applies to manufacturers, distributors, and retailers that sell, offer for sale, distribute or distribute for sale in the state of New Mexico, directly or indirectly or through intermediaries, certain products to which per- or poly-fluoroalkyl substances (PFAS) are intentionally added.
[20.13.2.2 NMAC – N, 07/01/2026]

20.13.2.3 STATUTORY AUTHORITY: Statutory Authority comes from the Environmental Improvement Act, Sections 74-1-1 NMSA 1978 et seq., and the Per- and Poly-Fluoroalkyl Substances Protection Act, Sections 74-15-1 NMSA 1978 et seq.
[20.13.2.3 NMAC – N, 07/01/2026]

20.13.2.4 DURATION: Permanent.
[20.13.2.4 NMAC – N, 07/01/2026]

20.13.2.5 EFFECTIVE DATE: July 1, 2026, unless a later date is cited at the end of a section.
[20.13.2.5 NMAC – N, 07/01/2026]

20.13.2.6 OBJECTIVE: The objective of this part is to establish rules for the prohibition of certain products that contain an intentionally added per- or poly-fluoroalkyl substance, for the reporting of information and testing of products sold, offered for sale, distributed or distributed for sale in New Mexico that contain intentionally added per- and poly-fluoroalkyl substances, and for the labeling of certain products sold, offered for sale, distributed or distributed for sale in New Mexico that contain intentionally added per- and poly-fluoroalkyl substances. In addition, the objective of this part is to establish fees for mandatory reporting and applications for currently unavoidable use designations. Further, this part establishes provisions for enforcement, penalties and administrative costs related to violations of the Per- and Poly-Fluoroalkyl Substances Protection Act, Sections 74-15-4 NMSA 1978 et seq. Penalties paid are for deposit into the recycling and illegal dumping fund. Fees and administrative costs are for depositing into the hazardous waste permitting fund.
[20.13.2.6 NMAC – N, 07/01/2026]

20.13.2.7 DEFINITIONS: The definitions in the Per- and Poly-Fluoroalkyl Substances Protection Act, Section 74-15-2 NMSA 1978 shall apply in this part. The following terms, as used in this part, have the following meanings:

A. “brand name” means a name, symbol, word, or mark that identifies a product, and attributes the product to the owner of the brand;

B. “commercially available analytical method” means any test methodology used by a laboratory that performs analyses or tests for third parties to determine the concentration of per- and poly-fluoroalkyl substances in a product or a methodology which is publicly available or available for purchase. Commercially available analytical methods do not need to be performed at a third-party laboratory; however, the method must remain unmodified. Laboratories performing commercially available analytical methods must be certified by the department or by a national or regional certifying authority recognized by the department;

C. “complex durable good” means a product that is a manufactured good composed of 100 or more manufactured components, with an intended useful life of five or more years, where the product is typically not consumed, destroyed, or discarded after a single use;

D. “consumer” means an individual, partnership, corporation, state agency, or a subdivision or agency of the state who seeks or acquires by purchase or lease, any goods or services;

E. “consumer information” means warnings, directions for use, ingredients lists, and nutritional information. “Consumer information” does not include the brand name, product name, company name, location of manufacturer, or product advertising;

1 **F. "consumer packaging"** means packaging constituting, with its contents, a sales unit to the final
2 user or consumer at the point of retail. Also referred to as retail packaging, sales packaging, or primary packaging;

3 **G. "distribute for sale"** means to ship or otherwise transport a product with the intent or
4 understanding that it will be sold or offered for sale in New Mexico by a receiving party subsequent to its delivery;

5 **H. "labeling"** means any written, printed, graphic, or electronically provided communication that
6 accompanies a product, such as a package insert;

7 **I. "legible"** means capable of being read by a person with normal vision;

8 **J. "product label"** means a display of written, printed, or graphic material that appears on, or is
9 affixed to, the exterior of a product, or its exterior container or wrapper that is visible to a consumer, if the product
10 has an exterior container or wrapper;

11 **K. "publicly available"** means information that is lawfully made available to the general public from
12 federal, state, or local government records, widely distributed media, or disclosures made to the general public that
13 are required by federal, state, or local law;

14 **L. "retailer"** means any person or business that sells or otherwise provides products containing
15 intentionally added per- and poly-fluoroalkyl substances in New Mexico, including persons who sell directly to
16 consumers and persons who sell to others for resale by any means, including via the internet;

17 **M. "significant change"** means a change in the composition of a product that results in the
18 intentional addition of a specific per- and poly-fluoroalkyl substance; a change in the amount of per- and poly-
19 fluoroalkyl substances of more than a 10 percent increase, above the method variability allowed by the
20 commercially available analytical method used, of the concentration that has been reported when compared to the
21 existing notification; or a change in responsible official or contact information. Significant change includes when
22 information used to obtain a waiver is no longer accurate;

23 **N. "substantially equivalent information"** means information that the department can reasonably
24 identify as conveying the same information required in Section 20.13.2.12 of this rule. Substantially equivalent
25 information must all be in a single document or location. Substantially equivalent information may include an
26 existing notification by a person who manufactures a product or product component when the same product or
27 product component is offered for sale under multiple brands;

28 **O. "used"** means the condition of a product having been installed, operated, or utilized for its
29 intended purpose by at least one owner or operator. Used does not apply to a product that has been returned to a
30 retailer or that is otherwise offered for resale without the product having been installed, operated, or utilized.
31 [20.13.2.7 NMAC – N, 07/01/2026]

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33 **20.13.2.8 SEVERABILITY:** If any provision or application of this part is held invalid, the remainder, or its
34 application to other situations or persons, shall not be affected.

35 [20.13.2.8 NMAC – N, 07/01/2026]

36
37 **20.13.2.9 PROHIBITIONS ON PRODUCTS CONTAINING PER- OR POLY-FLUOROALKYL**

38 **SUBSTANCES:** This section pertains to the prohibition of the sale, offering for sale, distribution, or offering for
39 distribution of certain products containing intentionally added per- or poly-fluoroalkyl substances. Manufacturers
40 are responsible for determining if their products contain an intentionally added per- or poly-fluoroalkyl substance as
41 enumerated in Sections 20.13.2.9.A through 20.13.2.9.C of this part.

42 **A.** Except as provided in Section 20.13.2.10 of this rule, beginning January 1, 2027, a manufacturer
43 may not sell, offer for sale, distribute or distribute for sale in this state, directly or indirectly or through
44 intermediaries, the following products if that product contains an intentionally added per- or poly-fluoroalkyl
45 substance:

- 46 (1) cookware;
- 47 (2) food packaging;
- 48 (3) dental floss;
- 49 (4) juvenile products; and
- 50 (5) firefighting foam.

51 **B.** Except as provided in Section 20.13.2.10 of this rule, beginning January 1, 2028, a manufacturer
52 may not sell, offer for sale, distribute or distribute for sale in this state, directly or indirectly or through
53 intermediaries, the following products if that product contains an intentionally added per- or poly-fluoroalkyl
54 substance:

- 55 (1) carpets or rugs;
- 56 (2) cleaning products;

- (3) cosmetics;
- (4) fabric treatments;
- (5) feminine hygiene products;
- (6) textiles;
- (7) textile furnishings;
- (8) ski wax; and
- (9) upholstered furniture.

C. Except as provided in Section 20.13.2.10 of this rule, beginning January 1, 2032, a manufacturer may not sell, offer for sale, distribute or distribute for sale in this state, directly or indirectly or through intermediaries, a product containing an intentionally added per- or polyfluoroalkyl substance, unless the board has adopted a rule providing that the use of the per- or poly-fluoroalkyl substance in that product is a currently unavoidable use or is or otherwise exempt pursuant to Section 20.13.2.11 of this rule.

D. On or after January 1, 2028, a manufacturer may not sell, offer for sale, distribute or distribute for sale in this state, directly or indirectly or through intermediaries, a product if testing requested by the department, as enumerated in Section 20.13.2.14 of this rule, demonstrates that the product contains an intentionally added per- or poly-fluoroalkyl substance and the manufacturer has failed to provide the department the information required by Section 20.13.2.12 of this rule.

E. On or after January 1, 2028, a manufacturer, trade association, or other responsible party may not sell, offer for sale, distribute or distribute for sale in this state, directly or indirectly or through intermediaries, a product that contains an intentionally added per- or poly-fluoroalkyl substance unless the manufacturer has submitted to the department the information required by Section 20.13.2.12 of this rule.

[20.13.2.9 NMAC – N, 07/01/2026]

20.13.2.10 EXEMPTIONS: The following are exempt from the requirements in Sections 20.13.2.11, 20.13.2.12, and 20.13.2.14 (limited to medical devices outlined in 20.13.2.10.C) of this rule:

A. a product for which federal law governs the presence of a per- or poly-fluoroalkyl substance in the product in a manner that preempts state authority;

B. used products offered for sale or resale;

C. medical devices or drugs and the packaging of the medical devices or drugs that are regulated by the United States food and drug administration, including prosthetic and orthotic devices;

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 to narrowed use limits by the United States environmental protection agency pursuant to the significant new alternatives policy program, 40 Code of Federal Regulations, Part 82, Subpart G and sold, offered for sale, distributed or distributed for sale for the use for which the refrigerant is listed pursuant to that program;

E. a veterinary product and its packaging intended for use in or on animals, including diagnostic equipment or test kits and the veterinary product's components and any product that is a veterinary medical device, drug, biologic or parasiticide or that is otherwise used in a veterinary medical setting or in veterinary medical applications that are regulated by or under the jurisdiction of:

(1) the United States food and drug administration;

(2) the United States department of agriculture pursuant to the federal Virus-Serum-Toxin

Act; or

(3) the United States environmental protection agency pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, except that any such products approved by the United States environmental protection agency pursuant to that law for aerial and land application are not exempt from this section;

F. a product developed or manufactured for the purpose of public health or environmental or water quality testing;

G. a motor vehicle or motor vehicle equipment regulated under a federal motor vehicle safety standard, as defined in 49 United States Code, Section 30102(a)(10), except that the exemption under this paragraph does not apply to any textile article or refrigerant that is included in or as a component part of such products;

H. any other motor vehicle, including an off-highway vehicle or a specialty motor vehicle, such as an all-terrain vehicle, a side by-side vehicle, farm equipment or a personal assistive mobility device;

I. a watercraft, an aircraft, a lighter-than air aircraft or a seaplane;

J. a semiconductor, including semiconductors incorporated in electronic equipment, and materials used in the manufacture of semiconductors;

- 1 **K.** non-consumer electronics and non-consumer laboratory equipment not ordinarily used for
2 personal, family or household purposes;
3 **L.** a product that contains intentionally added per- or poly-fluoroalkyl substances with uses that are
4 currently listed as acceptable, acceptable subject to use conditions or acceptable subject to narrowed use limits in the
5 United States environmental protection agency's rules under the significant new alternatives policy program;
6 provided that the product contains per- or poly-fluoroalkyl substances that are being used as substitutes for ozone-
7 depleting substances under the conditions specified in the rules;
8 **M.** a product used for the generation, distribution or storage of electricity;
9 **N.** equipment directly used in the manufacture or development of the products described in
10 Paragraphs A through M of this section;
11 **O.** a product for which the board has adopted a rule providing that the use of the per- or poly-
12 fluoroalkyl substances in that product is a currently unavoidable use; or
13 **P.** a product that contains fluoropolymers consisting of polymeric substances for which the backbone
14 of the polymer is either a per- or polyfluorinated carbon-only backbone or a perfluorinated polyether backbone that
15 is a solid at standard temperature and pressure.
16 [20.13.2.10 NMAC – N, 07/01/2026]

17
18 **20.13.2.11 CURRENTLY UNAVOIDABLE USE:** This section provides directions for submitting CUU
19 proposals.

20 **A.** Proposals for currently unavoidable use (“CUU”) determinations may be submitted by
21 manufacturers individually or collectively. A separate proposal must be submitted for each individual combination of
22 product category and the associated industrial sector (i.e., NAICS code). Proposals will be submitted using the
23 department’s online submission portal. For initial currently unavoidable use proposals, the requester shall submit
24 the information identified in this section of the rule no later than 12 months prior to the applicable sales prohibition.
25 The department will not consider any proposals for an initial currently unavoidable use determination prior to 60
26 months in advance of the applicable sales prohibition; any proposals received prior to this date will need to be
27 updated and resubmitted between 60 and 12 months before the effective date of the applicable sales prohibition
28 (with the exception of CUU proposals for sales prohibitions taking effect January 1, 2027, which must be submitted
29 no later than October 31, 2026. Complete CUU proposals for sales prohibitions effective January 1, 2027, received
30 by October 31, 2026, will be considered approved pending review and a final determination of whether to approve
31 or deny the proposals will be issued by the department by March 1, 2027). A proposal must, at a minimum, contain:

32 **(1)** Identification of the specific per- or poly-fluoroalkyl substance(s) intentionally added to
33 the product or its components as identified by:

- 34 **i.** The chemical name, and
35 **ii.** The Chemical Abstracts Service Registry number (CASRN), or if no CASRN
36 exists, another chemical identifying number.

37 **(2)** A brief description of the type of product to which a per- or poly-fluoroalkyl substance is
38 intentionally added including:

- 39 **i.** A brief narrative of the product; its physical structure and appearance; how it
40 functions; and if applicable its place in larger items, systems, or processes;
41 **ii.** If applicable, the universal product code, stock keeping unit or other numeric
42 code assigned to the product; and
43 **iii.** The North American Industry Classification System (NAICS) code for the sector
44 or sectors in which the products containing intentionally added per- and poly-fluoroalkyl substances will be used.

45 **(3)** An explanation of why the inclusion of per- or poly-fluoroalkyl substances in the specific
46 product is essential for health, safety or the functioning of society. This explanation may include or take the form of
47 a description of the negative impact that would be caused by the removal of per- or poly-fluoroalkyl substances for
48 use in the product and the subsequent unavailability or unsatisfactory performance of the product;

49 **(4)** A description of how the specific use of per- or poly-fluoroalkyl substances in the product
50 is essential to the function of the product. Including:

- 51 **i.** If the use of per- or poly-fluoroalkyl substances in the product is required by
52 federal or state law or regulation, provide citations to that requirement. For the purposes of this section, “required”
53 means the applicable statute or regulation specifically states that per- or poly-fluoroalkyl substances or a specific
54 per- or poly-fluoroalkyl substance is required to be present in the product, not that the proposer’s understanding or
55 experience of per- or poly-fluoroalkyl substances is necessary to meet a performance standard; such performance
56 standards may be addressed below; and

1 ii. The required specific characteristic or combination of characteristics that
2 necessitate the use of per- and poly-fluoroalkyl substances.

3 (5) A description of whether there are alternatives for this specific use of per- or poly-
4 fluoroalkyl substances that are reasonably available including:

5 i. Identification of specific compounds, classes of materials, or combinations of
6 materials identified as potential alternatives including the removal of per- and poly-fluoroalkyl substances without
7 substitution;

8 ii. An assessment of how the materials above meet or fail to meet the criteria
9 identified in Section 20.13.2.11.A.4.ii of this rule;

10 iii. An assessment if materials identified in Section 20.13.2.11.A.5.i of this rule are
11 anticipated to be available in sufficient quantities to meet production needs without regard to cost;

12 iv. An assessment of the anticipated cost difference between obtaining per- or poly-
13 fluoroalkyl substances for use in a product and obtaining the material identified for the same purpose;

14 v. A comparison of the known risks to human health and the environment between
15 per- or poly-fluoroalkyl substances and the materials identified; and

16 vi. An assessment of whether there are feasible changes to the manufacturing
17 process of the product that would eliminate the need for per- and poly-fluoroalkyl substances.

18 (6) A list of federal regulations, other State of New Mexico rules, and regulations of other
19 states to which the product described in Section 20.13.2.11.A of this rule is subject by reason of containing
20 intentionally added per- or poly-fluoroalkyl substances, including details of any sales prohibition the product is
21 subject to because of containing intentionally added per- or poly-fluoroalkyl substances including;

22 i. Whether that sales prohibition is absolute or if there is a process similar to the
23 State of New Mexico's currently unavoidable use determination.

24 ii. If there is a similar process available, whether the requester has filed a proposal
25 under the relevant state or federal program, and its status.

26 (7) If, in another jurisdiction the product is subject to an absolute prohibition or no currently
27 unavoidable use determination or similar has been made, a list of comparable products that the proposer is aware of
28 remaining available for sale, offered for sale, distributed or distributed for sale within that jurisdiction;

29 (8) If a similar program's sales prohibition is identified as applicable in Section
30 20.13.2.11.A.6 of this rule and similar products are available for sale, offered for sale, distributed or distributed for
31 sale;

32 i. A justification explaining how products available in compliance with other
33 similar sales prohibitions are not reasonably available alternatives for the product subject to the proposed CUU in
34 the State of New Mexico. This justification may include demonstrating that additional sales in the State of New
35 Mexico would result in such an increased demand for the per- or poly-fluoroalkyl substance alternative that it would
36 no longer be available in sufficient quantities. Such a demonstration must include an assessment that an increase in
37 production of the per- or poly-fluoroalkyl substance alternative is not possible; or

38 ii. Documentation demonstrating that products containing per- or poly-fluoroalkyl
39 substance alternatives in other jurisdictions would not perform as intended in the State of New Mexico due to
40 differing physical or climate conditions in the State of New Mexico;

41 (9) Contact information for the submitter of the proposal. The contact person or persons
42 should be familiar with the contents of the proposal and, if necessary, be able to answer department questions or
43 provide additional requested information; and

44 (10) Any information known or reasonably ascertainable by the manufacturer regarding the
45 impacts on human health or the environment of per- or poly-fluoroalkyl substances in the product. At a minimum
46 this information should include the following items, if available;

47 i. Any information documenting impacts on human health as a result of the
48 specific use of per- or poly- fluoroalkyl substance in the product;

49 ii. A description of the likely pathways of human exposure for the specific use of
50 per- or poly-fluoroalkyl substances in the product;

51 iii. Any information documenting environmental impacts as a result of the specific
52 use of per- or poly-fluoroalkyl substances in the product;

53 iv. A description of any likely pathways for environmental release of per- or poly-
54 fluoroalkyl substances as a result of the specific use of per- or poly-fluoroalkyl substances in the product; and

55 v. A description of the product's fate at the end of its lifecycle including;

1 a. Documentation of any product stewardship programs or other
2 government-imposed processes at the end of a product's lifecycle,
3 b. How the product is intended to be disposed of, such as landfilling or via
4 a sewage or septage system, and
5 c. The recycling rate of the product. Information submitted to the
6 department must contain sufficient detail or supporting documentation to satisfy the requirements of the currently
7 unavoidable use as essential for health, safety or the functioning of society for which alternatives are not reasonably
8 available.
9 If any of the information above is omitted from the proposal, the requestor must explain why this information is
10 omitted.

11 **B.** The department will consider CUU determinations made by other states for products subject to
12 this rule. For consideration to be given, the manufacturer must provide the department with documents evidencing
13 the CUU determination from the other state in the same timeframe as stipulated in 20.13.2.11.A.

14 **C.** Should a proposal for a currently unavoidable use determination contain claims of confidentiality,
15 the department may determine that there is insufficient publicly available information to evaluate the proposal. The
16 department strongly recommends that all proposals for currently unavoidable use determinations do not contain
17 claims of confidentiality.

18 **D.** CUU designations will expire three years after approval. Upon expiration, a currently unavoidable
19 use determination is no longer applicable, and all sales, offers for sale, distributions or distributions for sale are
20 immediately prohibited. If a person believes the currently unavoidable use remains, they may submit a proposal to
21 the department for a new currently unavoidable use determination. That proposal, in addition to the information
22 required in Sections 20.13.2.11.A.1 through 20.13.2.11.A.10 of this rule, must include a description of any changes
23 since the time of the first currently unavoidable use determination and a summary of efforts made during that time to
24 develop or discover alternatives or to make existing alternatives reasonably available. The department will consider
25 all subsequent proposals no sooner than 24 months prior to and no later than 12 months prior to the expiration date
26 of the determination in effect.

27 **E.** A list of approved CUUs will be made available to the public and posted on the NMED website.
28 [20.13.2.11 NMAC – N, 07/01/2026]
29

30 **20.13.2.12 REPORTING REQUIREMENT:** A manufacturer of a product sold, offered for sale, distributed
31 or distributed for sale in the state must submit a report for each product or component that contains intentionally
32 added per- or poly-fluoroalkyl substances.

33 **A.** In the case of official reporting, “manufacturers” refer to individual manufacturers, as well as
34 groups reporting on behalf of other manufacturers. All manufacturers must assume responsibility to report unless
35 manufacturers in the same supply chain enter into an agreement to establish their respective reporting
36 responsibilities. A manufacturer may submit the information required for reporting on behalf of another
37 manufacturer. A trade organization representing the manufacturer or group of manufacturers may also submit the
38 information required for reporting if the following requirements are met:

39 (1) the reporting manufacturer or trade organization must notify any other manufacturer that
40 is a party to the agreement that the reporting manufacturer has fulfilled the reporting requirements;
41 (2) all manufacturers must maintain documentation of a reporting responsibility;
42 (3) all manufacturers must execute the agreement and must provide the documentation to the
43 department upon request;
44 (4) all manufacturers must verify, in a format specified by the department, that the data
45 submitted on their behalf is accurate and complete; and
46 (5) for the verification required under Section 20.13.2.12.A.4 of this rule to be considered
47 complete, all manufacturers subject to the agreement must submit the fee required under Section 20.13.2.15.A of this
48 rule.

49 **B.** On or before January 1, 2027, a manufacturer of a product sold, offered for sale, distributed or
50 distributed for sale in the state, directly or indirectly or through intermediaries, that contains an intentionally added
51 per- or poly-fluoroalkyl substances must submit to the department the following information:

52 (1) a brief description of the product, including a universal product code, stock keeping unit
53 or other numeric code assigned to the product;
54 (2) the purpose for which a per- or poly-fluoroalkyl substances is used in the product;
55 (3) the amount, expressed as a percentage concentration in the product, of each per- or
56 polyfluoroalkyl substance in the product, identified by its chemical abstracts service registry number and reported as

1 an exact quantity determined using commercially available analytical methods or as falling within the following
2 reporting ranges. The manufacturer shall provide documentation verifying analytical method results to the
3 department.

- 4
 - i. Less than 100 ppm (0.01 percent);
 - 5 ii. Equal to or more than 100 ppm (0.01 percent), but less than 500 ppm (0.05
6 percent);
 - 7 iii. Equal to or more than 500 ppm (0.05 percent), but less than 1,000 ppm (0.1
8 percent);
 - 9 iv. Equal to or more than 1,000 ppm (0.1 percent), but less than 5,000 ppm (0.5
10 percent);
 - 11 v. Equal to or more than 5,000 ppm (0.5 percent), but less than 10,000 ppm (1.0
12 percent); or
 - 13 vi. Equal to or more than 10,000 ppm (1.0 percent).

14 (4) the name and address of the manufacturer and the name, address and phone number of a
15 contact person for the manufacturer; and

16 (5) any additional information requested by the department as necessary; provided that the
17 department shall not require disclosure of records, reports or information or particular parts of records, reports or
18 information that would divulge confidential business records or methods or processes entitled to protection as trade
19 secret, and provided further that the manufacturer shall, by a preponderance of evidence, demonstrate that the
20 information requested would divulge confidential business records or methods or processes entitled to protection as
21 trade secrets.

22 C. A manufacturer shall submit a revision of the information provided on a product within thirty days
23 of a significant change to the information the manufacturer previously submitted or upon the request of the
24 department.

25 D. The department may waive the obligation of a manufacturer to submit all or part of the
26 information required by this section if the department determines that substantially equivalent information is
27 publicly available. The manufacturer must notify the department that the information is publicly available via
28 methods deemed acceptable by the department. The department may grant a waiver to a manufacturer or a group of
29 manufacturers for multiple products or a product category.

- 30 (1) The waiver request must contain the following information:
- 31 i. Information contained in Section 20.13.2.12.B.4 of this rule;
 - 32 ii. A description of the products or components for which a waiver is requested;
 - 33 iii. A list of requirements under Section 20.13.2.12.B of this rule for which the
34 manufacturer seeks a waiver;
 - 35 iv. A description of the publicly available records that contain substantially
36 equivalent information to the information required under Section 20.13.2.12.B of this rule.
 - 37 v. A manufacturer or group of manufacturers must still submit a report for any
38 requirements under Section 20.13.2.12.B of this rule that are not waived.
 - 39 vi. A manufacturer or group of manufacturers must submit the waiver request to the
40 department at least thirty days before the applicable reporting due date.

41 (2) If the department denies a waiver request, the manufacturer or group of manufacturers
42 must submit their report within thirty days of the notice of denial or by the established reporting due date, whichever
43 is later.

44 E. The department may enter into, modify, or dissolve an agreement with one or more states or
45 political subdivisions of a state to collect information and may accept information to a shared system as meeting the
46 information requirements of this section.

47 F. The department may extend the deadline for a manufacturer to submit the information required by
48 this section upon a determination by the department that the circumstances merit an extension of time.

- 49 (1) A manufacturer or group of manufacturers requesting an extension must submit the
50 request in a format specified by the department. The request must contain:
- 51 i. information contained in Section 20.13.2.12.B.4 of this rule;
 - 52 ii. the reason for the extension request, including a detailed explanation of the
53 circumstances that prevent timely submission;
 - 54 iii. supporting documentation, including any relevant documents that substantiate
55 the need for an extension, such as communication records with other manufacturers, evidence of technical
56 challenges, or third-party testing delays; and

1 iv. a plan for completion, including an outline of how the manufacturer will submit
2 the remaining work by the new deadline.

3 (2) A manufacturer or group of manufacturers must submit the request for an extension to the
4 department at least thirty days before the reporting due date established in Section 20.13.2.12.B of this rule. The
5 request must include documentation demonstrating that the extension is justified, based on the materials submitted
6 under Section 20.13.2.12.B of this rule, to allow the manufacturer or group of manufacturers to comply with the
7 reporting requirements.

8 (3) If the department determines that the requestor has demonstrated that an extension is
9 justified, based on the materials submitted under Section 20.13.2.12.F.1 of this rule, the department will grant a
10 ninety-day extension of the established reporting due date.

11 (4) If an extension request is denied by the department, the manufacturer or group of
12 manufacturers must submit a report according to Section 20.13.2.12.B of this rule within thirty days after the notice
13 of denial or by the established reporting due date, whichever is later.

14 G. Within sixty days of receiving information from a manufacturer, the department shall notify the
15 manufacturer that adequate information has been received or that additional information is required. A manufacturer
16 shall submit to the department any additional information requested by the department within thirty days of the
17 request.

18 H. The requirements of this section do not apply to products that are exempt as specified in Section
19 20.13.2.10 of this rule or that have been designated as a currently unavoidable use pursuant to Section 20.13.2.11 of
20 this rule.

21 [20.13.2.12 NMAC – N, 07/01/2026]

22
23 **20.13.2.13 LABELING:**

24 A. Labeling required. Unless exempted under Section 20.13.2.13.B of this rule, after January 1, 2027,
25 a manufacturer may not sell, offer for sale, distribute, or distribute for sale a product containing intentionally added
26 per- or poly-fluoroalkyl substances unless the manufacturer does one of the following:

27 (1) Labels the product in accordance with the standards set forth in Sections 20.13.2.13.C
28 and 20.13.2.13.D of this rule, as applicable;

29 (2) Documents in accordance with Section 20.13.2.13.E of this rule that the product is
30 labeled in a manner consistent with corresponding labeling requirements enacted by another state.

31 B. Labeling exemptions. The labeling requirements of this rule do not apply to used products offered
32 for sale or resale

33 C. Labeling standards. Prior to sale of a product that contains intentionally added per- or poly-
34 fluoroalkyl substances, the manufacturer of the product shall affix or cause to be affixed, a label that conforms to the
35 requirements of this section. Complex durable goods and components of complex durable goods are exempt from
36 the requirements of this section and are addressed in Section 20.13.2.13.D of this rule.

37 (1) The label must clearly inform the consumer, using words and symbols approved by the
38 department, that the product contains intentionally added per- and poly-fluoroalkyl substances in both English and
39 Spanish. The label must be affixed to the product such that the label is clearly visible and legible prior to sale. The
40 label must be displayed with such conspicuousness as compared with other words, statements, design or devices on
41 the product as to render the label likely to be seen, read, and understood by an ordinary individual under customary
42 conditions of purchase or use. Text shall be no smaller than the largest font used for other consumer information on
43 the product.

44 (2) Labels affixed to products must be printed, mounted, molded, engraved, embossed, or
45 otherwise affixed using materials and methods that are sufficiently durable to remain legible for the useful life of the
46 product.

47 (3) If the product is sold in consumer packaging that obscures the label on the product, then
48 the consumer packaging must be labeled in a manner compliant with Section 20.13.2.13.C.1 of this rule. In addition,
49 consumer packaging shall also include an internet website address for a web page hosted by the department
50 [<https://www.env.nm.gov/pfas/>] that provides information about per- and poly-fluoroalkyl substances in products or
51 a quick response (QR) code or other machine-readable code, consisting of an array of squares, used for storing an
52 internet website for a web page hosted by the department [<https://www.env.nm.gov/pfas/>] that provides information
53 about per- and poly-fluoroalkyl substances in products.

54 If, prior to sale, a retailer re-packages the labeled product, then the retailer shall label the new consumer packaging
55 in accordance with this section.

1 (4) Where the consumer is unable to view the labels on the product or consumer packaging at
2 the time of purchase or receipt, such as in catalog or online sales transactions that occur over the internet or
3 telephone, the manufacturer or retailer shall, prior to sale or distribution, clearly include information to the
4 prospective consumer prior to purchase that the product contains intentionally added per- and poly-fluoroalkyl
5 substances by providing a label or disclosure as described in Section 20.13.2.13.C.1 of this rule and an internet
6 website address for a web page hosted by the department [<https://www.env.nm.gov/pfas/>] that provides information
7 about per- and poly-fluoroalkyl substances in products, as described in Section 20.13.2.13.C.3 of this rule.
8 Disclosure and the website address shall be included on sales literature, webpages, product specification sheets, and
9 marketing materials, as applicable.

10 (5) The manufacturer shall apply any product and package labels required under this section
11 unless the wholesaler or retailer agrees with the manufacturer to accept responsibility for such application.

12 (6) Nothing in this section shall be construed to require or replace such disclosure, notice or
13 labeling that is otherwise prohibited or prescribed by federal law.

14 **D.** Labeling of complex durable goods with intentionally added per- or poly-fluoroalkyl substances.
15 Prior to sale of a complex durable good that contains intentionally added per- or poly-fluoroalkyl substances or
16 components that contain intentionally added per- or poly-fluoroalkyl substances, the manufacturer shall conform to
17 the information requirements of this section.

18 (1) A symbol approved by the department accompanied by a statement indicating the
19 presence of intentionally added per- or poly-fluoroalkyl substances and/or component parts with intentionally added
20 per- or poly-fluoroalkyl substances shall be included in the specification sheet and other product labeling
21 information available to potential consumers prior to purchase. The following wording is acceptable: This product is
22 made with PFAS or contains component parts made with PFAS. PFAS are a family of chemicals, exposure to which
23 are associated with negative health and environmental effects. For more information on the location of components
24 made with PFAS, review the product's operation and maintenance manual.

25 (2) The statement shall also be included in Spanish and shall include an internet website
26 address for a web page hosted by the department [<https://www.env.nm.gov/pfas/>] that provides information about
27 per- and poly-fluoroalkyl substances in products or a quick response (QR) code or other machine-readable code,
28 consisting of an array of squares, used for storing an internet website [<https://www.env.nm.gov/pfas/>] for a web page
29 hosted by the department that provides information about per- and poly-fluoroalkyl substances in products.

30 (3) The statement must be easily identified and legible on the specification sheet and other
31 information available to potential consumers prior to purchase. A 10-point font or larger is presumed to be legible.

32 (4) The operation and maintenance manual associated with the complex durable good shall
33 include a statement indicating the presence of intentionally added per- or poly-fluoroalkyl substances and/or
34 component parts with intentionally added per- or poly-fluoroalkyl substances, using words and symbols approved by
35 the department, followed by a complete list of components with intentionally added per- and poly-fluoroalkyl
36 substances, including sufficient detail about the components' locations within the complex durable good such that
37 they can be readily located. The statement must also include an internet website address for a web page hosted by
38 the department [<https://www.env.nm.gov/pfas/>] that provides information about per- and poly-fluoroalkyl substances
39 in products or a quick response (QR) code or other machine-readable code, consisting of an array of squares, used
40 for storing an internet website for a web page hosted by the department [<https://www.env.nm.gov/pfas/>] that
41 provides information about per- and poly-fluoroalkyl substances in products.

42 (5) Where product information and labeling include consumer information about a product in
43 a language other than English or Spanish, the requirements of Section 20.13.2.13.D.1 through 20.13.2.13.D.4 of this
44 rule shall also be provided in that language in addition to English and Spanish.

45 (6) Nothing in this section shall be construed to require or replace such disclosure, notice or
46 labeling that is otherwise prohibited or prescribed by federal law.

47 **E.** Consistency with other states. The manufacturer of a product with intentionally added per- or
48 poly-fluoroalkyl substances may comply with the labeling requirements of this rule by labeling all units of the
49 product sold in New Mexico in compliance with corresponding requirements adopted by another state. A
50 manufacturer may comply in this manner by providing the department with the following:

51 (1) A copy of the label as it will appear on products and consumer packaging sold in New
52 Mexico and a narrative explaining how it fulfills the intent of the requirements established in this rule; and

53 (2) If the approved labeling plan includes state-specific elements such as telephone numbers,
54 statutory references, websites or public outreach measures, a description of the adjustments that will be made to
55 implement the plan in New Mexico.

1 Submittal of these documents to the department constitutes compliance with this rule unless, within ninety days of
2 receipt, the department notifies the manufacturer that the label or labeling alternative violates New Mexico law and
3 explains in writing the nature of the violation.

4 **F.** The department may waive the obligation of a manufacturer to label a product as required by this
5 section if the product is exempt pursuant to Section 20.13.2.8 of this part, and none of the product's material
6 containing intentionally added per- or poly-fluoroalkyl substances will ever come into direct contact with a
7 consumer while the product is being used as intended during the useful life of the product. The waiver request must
8 contain the following information:

- 9 (1) Information contained in Section 20.13.2.12.B.4 of this Part;
- 10 (2) A description of the product for which a waiver is requested;
- 11 (3) Identification of the specific per- or poly-fluoroalkyl substance(s) intentionally added to
12 the product or its components by the chemical name and the Chemical Abstracts Service Registry number (CASRN),
13 or if no CASRN exists, another chemical identifying number;
- 14 (4) An explanation of why the product should not require a label pursuant to this section; and
- 15 (5) any other information the department deems necessary for the evaluation of the waiver
16 request.

17 [20.13.2.13 NMAC – N, 07/01/2026]

18
19 **20.13.2.14 TESTING:** If there is reasonable suspicion that a product contains intentionally added per- or
20 poly-fluoroalkyl substances but either has not fulfilled the reporting requirements specified in Section 20.13.2.12 of
21 this rule or has not labeled the product in accordance with Section 20.13.2.13 of this rule, the department may test or
22 may require a manufacturer to test their product to determine the presence and concentration of per- and poly-
23 fluoroalkyl substances in the product. For the purposes of this section, the presence of fluorine in a product or
24 product component above 100 ppm, as measured by a commercially available analytical method, creates a rebuttable
25 presumption that per- or poly-fluoroalkyl substances were intentionally added to the product. A manufacturer must
26 rebut the presumption by demonstrating that the per- or poly-fluoroalkyl substances were not intentionally added.

27 **A.** The provisions of this section do not apply to a medical device or drug or the packaging of a
28 medical device or drug that is regulated by the United States Food and Drug Administration.

29 **B.** If directed to test for per- and poly-fluoroalkyl substances, manufacturers must use a commercially
30 available analytical method to report the amount of intentionally added per- and poly-fluoroalkyl substances within
31 thirty days of the testing notification. The report shall contain:

- 32 (1) Each per- or poly-fluoroalkyl substance's name, chemical abstracts services (CAS)
33 number, and chemical formula, if known or the amount, expressed as a percentage concentration in the product, of
34 each per- or poly-fluoroalkyl substance or the range of each per- and poly-fluoroalkyl substance, as falling within
35 the following reporting ranges:
 - 36 i. Less than 100 ppm (0.01 percent);
 - 37 ii. Equal to or more than 100 ppm (0.01 percent), but less than 500 ppm (0.05
38 percent);
 - 39 iii. Equal to or more than 500 ppm (0.05 percent), but less than 1,000 ppm (0.1
40 percent);
 - 41 iv. Equal to or more than 1,000 ppm (0.1 percent), but less than 5,000 ppm (0.5
42 percent);
 - 43 v. Equal to or more than 5,000 ppm (0.5 percent), but less than 10,000 ppm (1.0
44 percent); or
 - 45 vi. Equal to or more than 10,000 ppm (1.0 percent); and
- 46 (2) Documentation verifying analytical method results to the department.

47 **C.** If the product is not found to contain any intentionally added per- and poly-fluoroalkyl substances,
48 and any fluorine from impurities or contaminants is present below 100 ppm, the manufacturer will provide a
49 certificate of compliance to the department. This certificate must contain the testing results, analytical method, and
50 any other relevant information. A senior management official must certify the accuracy and completeness of the
51 information reported on the form by signing and dating the form.

52 **D.** If the product is found to contain any intentionally added per- or poly-fluoroalkyl substances
53 above 100 ppm, within thirty days the manufacturer must:

- 54 (1) Submit a report as required in Section 20.13.2.12 of this rule;
- 55 (2) If the product is prohibited for sale, notify distributors and retailers that the product is
56 prohibited for sale or distribution in the state of New Mexico; and

(3) If the product is prohibited for sale, provide the department with a list of the distributors and retailers notified.
[20.13.2.14 NMAC – N, 07/01/2026]

20.13.2.15 REPORTING FEES: Every manufacturer of a product containing an intentionally added per- or poly-fluoroalkyl substance that is sold, offered for sale, distributed or distributed for sale in the state, directly or indirectly or through intermediaries and is not exempt pursuant to Section 20.13.2.10 shall pay reporting fees in accordance with the provisions of this section.
[20.13.2.15 NMAC – N, 07/01/2026]

20.13.2.16 REPORTING FEE SCHEDULE: Initial and subsequent reporting fees are non-refundable and are set forth below:

A. A manufacturer must pay a \$2,500 fee to submit the initial report pursuant to Section 20.13.2.12 of this part.

B. The fee for each instance of subsequent reporting following a significant change pursuant to Section 20.13.2.12.C of this part is \$1,000.

C. Every year, beginning in 2028, the fees specified in this section shall be adjusted on January 1 to reflect changes in the consumer-price index for all urban consumers (“CPI-U”), which is published monthly by the United States Department of Labor. The change will be calculated by averaging the CPI-U for the last 12-month period ending on August 31 of the previous year, then multiplying the fees by the percentage of increase (or decrease) between that figure and the figure from the prior adjustment. If the United States Department of Labor fails to update the CPI-U, the Secretary may propose an alternative inflation adjustments for approval by the Environmental Improvement Board. The department shall make a fee schedule of the fees in this section available on the department’s website.

[20.13.2.16 NMAC – N, 07/01/2026]

20.13.2.17 CURRENTLY UNAVOIDABLE USE DESIGNATION APPLICATION FEES:

Manufacturers that apply to designate the use of a per- or poly-fluoroalkyl substance in a product as a currently unavoidable use, shall pay a fee to the department in accordance with the provisions of this part. Manufacturers that apply for a renewal of a previously approved designation of a per- or poly-fluoroalkyl substance in a product as a currently unavoidable use, shall pay a fee to the department in accordance with the provisions of this part.

[20.13.2.17 NMAC – N, 07/01/2026]

20.13.2.18 CURRENTLY UNAVOIDABLE USE DESIGNATION APPLICATION FEE SCHEDULE:

Initial and renewal application fees for currently unavoidable use designations are non-refundable and are set forth below:

A. The initial fee for a manufacturer applying to designate the use of a per- or poly-fluoroalkyl substance in a product as a currently unavoidable use in a consumer product is \$5,000; and

B. The fee for the new CUU determination to designate a per- or poly-fluoroalkyl substance in a product as a currently unavoidable use in a product is \$2,500.

C. Every year, beginning in 2028, the fees specified in this section shall be adjusted on January 1 to reflect changes in the consumer-price index for all urban consumers (“CPI-U”), which is published monthly by the United States Department of Labor. The change will be calculated by averaging the CPI-U for the last 12-month period ending on August 31 of the previous year, then multiplying the fees by the percentage of increase (or decrease) between that figure and the figure from the prior adjustment. If the United States Department of Labor fails to update the CPI-U, the Secretary shall propose an alternative inflation adjustments for approval by the Environmental Improvement Board. The department shall make a fee schedule of the fees in this section available on the department’s website.

[20.13.2.18 NMAC – N, 07/01/2026]

20.13.2.19 MANNER OF PAYMENT: All fees shall be paid to the department by online payment only by ACH or credit card. Cash payments are not an acceptable method of payment.

[20.13.2.19 NMAC – N, 07/01/2026]

20.13.2.20 LATE CHARGES: If any fee for which this part provides is not paid in full when due, the person owing the fee shall pay a billing charge of one thousand dollars (\$1,000), plus late charges in the amount of

1 an additional one percent of all fees owed for every month or part of a month in which the fees remain unpaid
2 beyond the due date. Billing and late charges shall be considered hazardous waste fees for deposit in the hazardous
3 waste fund and are independent of any penalties assessed under the act.
4 [20.13.2.20 NMAC – N, 07/01/2026]

5
6 **20.13.2.21 ENFORCEMENT, COMPLIANCE ORDERS, PENALTIES:**

7 **A.** Whenever on the basis of any credible information the secretary determines that any person has
8 violated, is violating or threatens to violate any requirement of the Per- and Poly-Fluoroalkyl Substances Act or any
9 rule adopted and promulgated pursuant to the act, the secretary may:

10 (1) issue a compliance order stating with reasonable specificity the nature of the violation or
11 threatened violation and requiring compliance immediately or within a specified time period or assessing a civil
12 penalty for any past or current violation, or both; or

13 (2) commence a civil action in district court for appropriate relief, including temporary or
14 permanent injunction.

15 **B.** A manufacturer that violates a provision of the Per- and Poly-Fluoroalkyl Substances Act or a rule
16 adopted pursuant to that act shall be assessed a civil penalty not to exceed fifteen thousand dollars (\$15,000), and for
17 each day during which any portion of a violation occurs, the department may assess the manufacturer administrative
18 costs the department incurs for enforcement of the Per- and Poly-Fluoroalkyl Substances Act or a rule adopted
19 pursuant to that act.

20 (1) If a violator fails to take corrective action within the time specified in a compliance order,
21 the secretary may assess a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each day of
22 continued noncompliance with the order.

23 (2) In addition to assessing a civil penalty, the department shall recoup the economic benefit
24 of noncompliance from delayed or avoided compliance.

25 (3) Any order issued pursuant to this part shall become final unless, no later than thirty days
26 after the order is served, the person named in the order submits a written request to the secretary for a public
27 hearing. Upon such request, the secretary shall promptly conduct a public hearing. The hearing officer shall make
28 and preserve a record of the proceedings and forward their recommendation based on the record to the secretary,
29 who shall make the final decision.

30 (4) In connection with any proceedings under this part, the secretary may issue subpoenas for
31 the attendance and testimony of witnesses and the production of relevant papers, books and documents and may
32 promulgate rules for discovery procedures.

33 (5) Penalties collected pursuant to an administrative order shall be deposited in the recycling
34 and illegal dumping fund. Administrative costs collected pursuant to this part shall be deposited in the hazardous
35 waste permitting fund.

36 [20.13.2.21 NMAC – N, 07/01/2026]