

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

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 7 **20.13.2.1 ISSUING AGENCY:** Environmental Improvement Board  
 8 [20.13.2.1 NMAC – N, 07/01/2026]  
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10 **20.13.2.2 SCOPE:** This part applies to manufacturers, distributors, and retailers that sell, offer for sale,  
 11 distribute or distribute for sale in the state of New Mexico, directly or indirectly or through intermediaries, certain  
 12 products to which per- or poly-fluoroalkyl substances (PFAS) are intentionally added.  
 13 [20.13.2.2 NMAC – N, 07/01/2026]  
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15 **20.13.2.3 STATUTORY AUTHORITY:** Statutory Authority comes from the Environmental Improvement  
 16 Act, Sections 74-1-1 NMSA 1978 et seq., the Per- and Poly-Fluoroalkyl Substances Protection Act, Sections 74-15-1  
 17 NMSA 1978 et seq., and the Department of Environment Act, Sections 9-7A-1 NMSA 1978 et seq.  
 18 [20.13.2.3 NMAC – N, 07/01/2026]  
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20 **20.13.2.4 DURATION:** Permanent.  
 21 [20.13.2.4 NMAC – N, 07/01/2026]  
 22

23 **20.13.2.5 EFFECTIVE DATE:** July 1, 2026, unless a later date is cited at the end of a section.  
 24 [20.13.2.5 NMAC – N, 07/01/2026]  
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26 **20.13.2.6 OBJECTIVE:** The objective of this part is to establish rules for the prohibition of certain  
 27 products that contain an intentionally added per- or poly-fluoroalkyl substance, for the reporting of information and  
 28 testing of products sold, offered for sale, distributed or distributed for sale in New Mexico that contain intentionally  
 29 added per- and poly-fluoroalkyl substances, and for the labeling of certain products sold, offered for sale, distributed  
 30 or distributed for sale in New Mexico that contain intentionally added per- and poly-fluoroalkyl substances. In  
 31 addition, the objective of this part is to establish fees for mandatory reporting and applications for currently  
 32 unavoidable use designations. Further, this part establishes provisions for enforcement, penalties and administrative  
 33 costs related to violations of the Per- and Poly-Fluoroalkyl Substances Protection Act, Sections 74-15-4 NMSA 1978  
 34 et seq. Penalties, fees, and administrative costs paid are for deposit into the recycling and illegal dumping fund.  
 35 [20.13.2.6 NMAC – N, 07/01/2026]  
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37 **20.13.2.7 DEFINITIONS:** The definitions in the Per- and Poly-Fluoroalkyl Substances Protection Act,  
 38 Section 74-15-2 NMSA 1978 shall apply in this part. The following terms, as used in this part, have the following  
 39 meanings:

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

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

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

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

53 **E. “consumer information”** means warnings, directions for use, ingredients lists, and nutritional  
 54 information. “Consumer information” does not include the brand name, product name, company name, location of  
 55 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 class"** means a group of products that share similar essential physical characteristics,  
9 function and may be substitutable;

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

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

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

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

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

30          **P. "used"** means the condition of a product having been installed, operated, or utilized for its  
31 intended purpose by at least one owner or operator. Used does not apply to a product that has been returned to a  
32 retailer or that is otherwise offered for resale without the product having been installed, operated, or utilized.  
33 [20.13.2.7 NMAC – N, 07/01/2026]

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35 **20.13.2.8 SEVERABILITY:** If any provision or application of this part is held invalid, the remainder, or its  
36 application to other situations or persons, shall not be affected.  
37 [20.13.2.8 NMAC – N, 07/01/2026]

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

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

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

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

- (1) carpets or rugs;
- (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 (FIFRA), 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;

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

3           **K.** non-consumer electronics and non-consumer laboratory equipment not ordinarily used for  
4 personal, family or household purposes;

5           **L.** a product that contains intentionally added per- or poly-fluoroalkyl substances with uses that are  
6 currently listed as acceptable, acceptable subject to use conditions or acceptable subject to narrowed use limits in the  
7 United States environmental protection agency's rules under the significant new alternatives policy program;  
8 provided that the product contains per- or poly-fluoroalkyl substances that are being used as substitutes for ozone-  
9 depleting substances under the conditions specified in the rules;

10          **M.** a product used for the generation, distribution or storage of electricity;

11          **N.** equipment directly used in the manufacture or development of the products described in  
12 Paragraphs A through M of this section;

13          **O.** a product for which the board has adopted a rule providing that the use of the per- or poly-  
14 fluoroalkyl substances in that product is a currently unavoidable use; or

15          **P.** a product that contains fluoropolymers consisting of polymeric substances for which the backbone  
16 of the polymer is either a per- or polyfluorinated carbon-only backbone or a perfluorinated polyether backbone that  
17 is a solid at standard temperature and pressure.

18          **Q.** a pesticide that is regulated by or under the jurisdiction of the Federal Insecticide, Fungicide, and  
19 Rodenticide Act.

20 [20.13.2.10 NMAC – N, 07/01/2026]

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22 **20.13.2.11 CURRENTLY UNAVOIDABLE USE:** This section provides directions for submitting CUU  
23 proposals.

24          **A.** Proposals for currently unavoidable use (“CUU”) determinations may be submitted by  
25 manufacturers individually or collectively. A separate proposal must be submitted for each individual combination of  
26 product category and the associated industrial sector (i.e., North American Industry Classification System (NAICS)  
27 code). Proposals will be submitted using the department’s online submission portal. For initial currently  
28 unavoidable use proposals, the requester shall submit the information identified in this section of the rule no later  
29 than 12 months prior to the applicable sales prohibition. The department will not consider any proposals for an  
30 initial currently unavoidable use determination prior to 60 months in advance of the applicable sales prohibition; any  
31 proposals received prior to this date will need to be updated and resubmitted between 60 and 12 months before the  
32 effective date of the applicable sales prohibition (with the exception of CUU proposals for sales prohibitions taking  
33 effect January 1, 2027, which must be submitted no later than October 31, 2026. Complete CUU proposals for sales  
34 prohibitions effective January 1, 2027, received by October 31, 2026, will be considered approved pending review  
35 and a final determination of whether to approve or deny the proposals will be issued by the department by March 1,  
36 2027). A proposal must, at a minimum, contain:

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

39           **i.** The chemical name, and

40           **ii.** The Chemical Abstracts Service Registry number (CASRN), or if no CASRN  
41 exists, another chemical identifying number.

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

44           **i.** A brief narrative of the product; its physical structure and appearance; how it  
45 functions; and if applicable its place in larger items, systems, or processes;

46           **ii.** If applicable, the universal product code, stock keeping unit or other numeric  
47 code assigned to the product; and

48           **iii.** NAICS code for the sector or sectors in which the products containing  
49 intentionally added per- and poly-fluoroalkyl substances will be used.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35           (8)       If a similar program’s sales prohibition is identified as applicable in Section  
36 20.13.2.11.A.6 of this rule and similar products are available for sale, offered for sale, distributed or distributed for  
37 sale;

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

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

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

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

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

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

1                   iii. Any information documenting environmental impacts as a result of the specific  
2 use of per- or poly-fluoroalkyl substances in the product;  
3                   iv. A description of any likely pathways for environmental release of per- or poly-  
4 fluoroalkyl substances as a result of the specific use of per- or poly-fluoroalkyl substances in the product; and  
5                   v. A description of the product's fate at the end of its lifecycle including;  
6                   a. Documentation of any product stewardship programs or other  
7 government-imposed processes at the end of a product's lifecycle,  
8                   b. How the product is intended to be disposed of, such as landfilling or via  
9 a sewage or septage system, and  
10                   c. The recycling rate of the product. Information submitted to the  
11 department must contain sufficient detail or supporting documentation to satisfy the requirements of the currently  
12 unavoidable use as essential for health, safety or the functioning of society for which alternatives are not reasonably  
13 available.

14 If any of the information above is omitted from the proposal, the requestor must explain why this information is  
15 omitted.

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

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

23           **D.** CUU designations will expire three years after approval. Upon expiration, a currently unavoidable  
24 use determination is no longer applicable, and all sales, offers for sale, distributions or distributions for sale are  
25 immediately prohibited. If a person believes the currently unavoidable use remains, they may submit a proposal to  
26 the department for a new currently unavoidable use determination. That proposal, in addition to the information  
27 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  
28 since the time of the first currently unavoidable use determination and a summary of efforts made during that time to  
29 develop or discover alternatives or to make existing alternatives reasonably available. The department will consider  
30 all subsequent proposals no sooner than 24 months prior to and no later than 12 months prior to the expiration date  
31 of the determination in effect.

32           **E.** A list of approved CUUs will be made available to the public and posted on the NMED website.  
33 [20.13.2.11 NMAC – N, 07/01/2026]

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35 **20.13.2.12 REPORTING REQUIREMENT:** A manufacturer of a product sold, offered for sale, distributed  
36 or distributed for sale in the state must submit a report for each product or component that contains intentionally  
37 added per- or poly-fluoroalkyl substances.

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

- 44                   (1) the reporting manufacturer or trade organization must notify any other manufacturer that  
45 is a party to the agreement that the reporting manufacturer has fulfilled the reporting requirements;  
46                   (2) all manufacturers must maintain documentation of a reporting responsibility;  
47                   (3) all manufacturers must execute the agreement and must provide the documentation to the  
48 department upon request;  
49                   (4) all manufacturers must verify, in a format specified by the department, that the data  
50 submitted on their behalf is accurate and complete; and  
51                   (5) for the verification required under Section 20.13.2.12.A.4 of this rule to be considered  
52 complete, all manufacturers subject to the agreement must submit the fee required under Section 20.13.2.16.A of this  
53 rule.

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

1 (1) a brief description of the product, including a universal product code, stock keeping unit  
2 or other numeric code assigned to the product;  
3 (2) the purpose for which a per- or poly-fluoroalkyl substances is used in the product;  
4 (3) the amount, expressed as a percentage concentration in the product, of each per- or  
5 polyfluoroalkyl substance in the product, identified by its chemical abstracts service registry number and reported as  
6 an exact quantity determined using commercially available analytical methods or as falling within the following  
7 reporting ranges. The manufacturer shall provide documentation verifying analytical method results to the  
8 department.

9 i. Less than 100 ppm (0.01 percent);  
10 ii. Equal to or more than 100 ppm (0.01 percent), but less than 500 ppm (0.05  
11 percent);  
12 iii. Equal to or more than 500 ppm (0.05 percent), but less than 1,000 ppm (0.1  
13 percent);  
14 iv. Equal to or more than 1,000 ppm (0.1 percent), but less than 5,000 ppm (0.5  
15 percent);  
16 v. Equal to or more than 5,000 ppm (0.5 percent), but less than 10,000 ppm (1.0  
17 percent); or  
18 vi. Equal to or more than 10,000 ppm (1.0 percent).

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

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

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

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

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

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

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

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

54 (1) A manufacturer or group of manufacturers requesting an extension must submit the  
55 request in a format specified by the department. The request must contain:

56 i. information contained in Section 20.13.2.12.B.4 of this rule;

1                   ii.       the reason for the extension request, including a detailed explanation of the  
2 circumstances that prevent timely submission;  
3                   iii.       supporting documentation, including any relevant documents that substantiate  
4 the need for an extension, such as communication records with other manufacturers, evidence of technical  
5 challenges, or third-party testing delays; and  
6                   iv.       a plan for completion, including an outline of how the manufacturer will submit  
7 the remaining work by the new deadline.

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

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

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

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

23                   H.       The requirements of this section do not apply to products that are exempt as specified in Section  
24 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  
25 this rule.

26 [20.13.2.12 NMAC – N, 07/01/2026]

27  
28 **20.13.2.13 LABELING:**

29                   A.       Labeling required. Unless exempted under Section 20.13.2.13.B of this rule, after January 1, 2027,  
30 a manufacturer may not manufacture for sale or distribution a product containing intentionally added per- or poly-  
31 fluoroalkyl substances unless the manufacturer does one of the following:

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

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

36                   B.       Labeling exemptions. The labeling requirements of this rule do not apply to:

37                   (1)       used products offered for sale or resale;

38                   (2)       products for which labeling requirements are preempted pursuant to the Federal  
39 Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136v, or for which labeling requirements currently  
40 exist at 40 C.F.R. 156.10;

41                   (3)       veterinary products, including veterinary parasiticides and veterinary biologics, and the  
42 packaging of veterinary products regulated by the United States food and drug administration, the United States  
43 department of agriculture, or the United States environmental protection agency; and

44                   (4)       medical devices, drugs, and the packaging of medical devices and drugs regulated by the  
45 United States food and drug administration.

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

50                   (1)       The label must clearly inform the consumer that the product contains intentionally added  
51 per- and poly-fluoroalkyl substances. The label shall be an outline of an Erlenmeyer flask with the word “PFAS”  
52 inside the flask. The label must be affixed to the product such that the label is clearly visible and legible prior to sale.  
53 The label must be displayed with such conspicuousness as compared with other words, statements, design or devices  
54 on the product as to render the label likely to be seen, read, and understood by an ordinary individual under  
55 customary conditions of purchase or use. Text shall be no smaller than the largest font used for other consumer  
56 information on the product.

1                   (2)       Labels affixed to products must be printed, mounted, molded, engraved, embossed, or  
2 otherwise affixed to the product.

3  
4                   (3)       If the product is sold in consumer packaging that obscures the label on the product, then  
5 the consumer packaging must also be labeled in a manner compliant with Section 20.13.2.13.C.1 of this rule.  
6 If, prior to sale, a retailer re-packages the labeled product, then the retailer shall label the new consumer packaging  
7 in accordance with this section.

8                   (4)       Where the consumer is unable to view the labels on the product or consumer packaging at  
9 the time of purchase or receipt, such as in catalog or online sales transactions that occur over the internet or  
10 telephone, the manufacturer or retailer shall, prior to sale or distribution, clearly include information to the  
11 prospective consumer prior to purchase that the product contains intentionally added per- and poly-fluoroalkyl  
12 substances by providing a label or disclosure as described in Section 20.13.2.13.C.1 of this rule.

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

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

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

20                   (1)       A label indicating the presence of intentionally added per- or poly-fluoroalkyl substances  
21 shall be included in the consumer facing product specification sheet available to potential consumers prior to  
22 purchase. The label shall be an outline of an Erlenmeyer flask with the word “PFAS” inside the flask.

23                   (2)       The label must be easily identified and legible on the consumer facing product  
24 specification sheet. A 10-point font or larger is presumed to be legible.

25                   (3)       The consumer facing operation and maintenance manual associated with the complex  
26 durable good shall include a label as described in 20.13.2.13.D.1 of this rule indicating the presence of intentionally  
27 added per- or poly-fluoroalkyl substances.

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

30                   E.       Consistency with other states. The manufacturer of a product with intentionally added per- or  
31 poly-fluoroalkyl substances may comply with the labeling requirements of this rule by labeling all units, or, as  
32 applicable, consumer facing specification sheets and consumer facing operation and maintenance manuals of the  
33 product sold in New Mexico in compliance with corresponding requirements adopted by another state. A  
34 manufacturer may comply in this manner by providing the department with the following:

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

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

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

43                   F.       The department may waive the obligation of a manufacturer to label a product or product class as  
44 required by this section if the product is exempt pursuant to Section 20.13.2.10 of this part, and none of the  
45 product’s material containing intentionally added per- or poly-fluoroalkyl substances will ever come into direct  
46 contact with a consumer while the product is being used as intended during the useful life of the product. The  
47 waiver request must contain the following information:

48                   (1)       Information contained in paragraphs (1), (3), and (4), of Subsection B of Section  
49 20.13.2.12 of this Part;

50                   (2)       Identification of the specific per- or poly-fluoroalkyl substance(s) intentionally added to  
51 the product or its components by the chemical name and the Chemical Abstracts Service Registry number (CASRN),  
52 or if no CASRN exists, another chemical identifying number;

53                   (3)       An explanation of why the product should not require a label pursuant to this section; and

54                   (4)       Any other information the department deems necessary for the evaluation of the waiver  
55 request.

1 If seeking a label waiver for a product class, in addition to the information in paragraphs (1) to (4) of Subsection F  
2 of Section 20.13.2.13, the waiver request must provide sufficient evidence to demonstrate that the products share  
3 similar essential physical characteristics, function, and may be substitutable. Complete label waiver requests for an  
4 individual product or product class received by October 31, 2026, will be considered approved pending review and a  
5 final determination of whether to approve or deny the request will be issued by the department by June 1, 2027) If a  
6 label request is denied, a manufacturer must label a product for sale or distribution pursuant to Section 20.13.2.13  
7 within 90 days of the label waiver denial; products which have already been manufactured up to the date of denial,  
8 may be sold without a label. Approved label waiver requests will expire three years after approval.  
9 [20.13.2.13 NMAC – N, 07/01/2026]

10  
11 **20.13.2.14 TESTING:** If there is reasonable suspicion that a product contains intentionally added per- or  
12 poly-fluoroalkyl substances but either has not fulfilled the reporting requirements specified in Section 20.13.2.12 of  
13 this rule or has not labeled the product in accordance with Section 20.13.2.13 of this rule, the department may test or  
14 may require a manufacturer to test their product to determine the presence and concentration of per- and poly-  
15 fluoroalkyl substances in the product. For the purposes of this section, the presence of fluorine in a product or  
16 product component above 100 ppm, as measured by a commercially available analytical method, creates a rebuttable  
17 presumption that per- or poly-fluoroalkyl substances were intentionally added to the product. A manufacturer must  
18 rebut the presumption by demonstrating that the per- or poly-fluoroalkyl substances were not intentionally added.

19 **A.** The provisions of this section do not apply to a medical device or drug or the packaging of a  
20 medical device or drug that is regulated by the United States food and drug administration.

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

24 **(1)** Each per- or poly-fluoroalkyl substance's name, chemical abstracts services (CAS)  
25 number, and chemical formula, if known or the amount, expressed as a percentage concentration in the product, of  
26 each per- or poly-fluoroalkyl substance or the range of each per- and poly-fluoroalkyl substance, as falling within  
27 the following reporting ranges:

- 28 **i.** Less than 100 ppm (0.01 percent);
- 29 **ii.** Equal to or more than 100 ppm (0.01 percent), but less than 500 ppm (0.05  
30 percent);
- 31 **iii.** Equal to or more than 500 ppm (0.05 percent), but less than 1,000 ppm (0.1  
32 percent);
- 33 **iv.** Equal to or more than 1,000 ppm (0.1 percent), but less than 5,000 ppm (0.5  
34 percent);
- 35 **v.** Equal to or more than 5,000 ppm (0.5 percent), but less than 10,000 ppm (1.0  
36 percent); or
- 37 **vi.** Equal to or more than 10,000 ppm (1.0 percent); and

38 **(2)** Documentation verifying analytical method results to the department.

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

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

- 46 **(1)** Submit a report as required in Section 20.13.2.12 of this rule;
- 47 **(2)** If the product is prohibited for sale, notify distributors and retailers that the product is  
48 prohibited for sale or distribution in the state of New Mexico; and
- 49 **(3)** If the product is prohibited for sale, provide the department with a list of the distributors  
50 and retailers notified.

51 [20.13.2.14 NMAC – N, 07/01/2026]

52  
53 **20.13.2.15 REPORTING FEES:** Every manufacturer of a product containing an intentionally added per- or  
54 poly-fluoroalkyl substance that is sold, offered for sale, distributed or distributed for sale in the state, directly or  
55 indirectly or through intermediaries and is not exempt pursuant to Section 20.13.2.10 shall pay reporting fees in  
56 accordance with the provisions of this section.

1 [20.13.2.15 NMAC – N, 07/01/2026]

2  
3 **20.13.2.16 REPORTING FEE SCHEDULE:** Initial and subsequent reporting fees are non-refundable and  
4 are set forth below:

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

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

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

17 [20.13.2.16 NMAC – N, 07/01/2026]

18  
19 **20.13.2.17 CURRENTLY UNAVOIDABLE USE DESIGNATION APPLICATION FEES:**

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

24 [20.13.2.17 NMAC – N, 07/01/2026]

25  
26 **20.13.2.18 CURRENTLY UNAVOIDABLE USE DESIGNATION APPLICATION FEE SCHEDULE:**

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

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

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

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

41 [20.13.2.18 NMAC – N, 07/01/2026]

42  
43 **20.13.2.19 LABEL WAIVER APPLICATION FEE:** Manufacturers that apply for a waiver for the  
44 requirement to label a product containing intentionally added per- or poly-fluoroalkyl substances shall pay a fee to  
45 the department in accordance with the provisions of this part.

46 [20.13.2.19 NMAC – N, 07/01/2026]

47  
48 **20.13.2.20 LABEL WAIVER APPLICATION FEE SCHEDULE:** Application fees for label waiver  
49 applications are non-refundable and are set forth below:

50 **A.** The fee for a manufacturer applying for a waiver to label a product containing intentionally added  
51 per- or poly-fluoroalkyl substances is \$2,000 and the fee for a manufacturer applying for a waiver to label a product  
52 class containing intentionally added per- or poly-fluoroalkyl substances is \$5,000; and

53 **B.** Every year, beginning in 2028, the fees specified in this section shall be adjusted on January 1 to  
54 reflect changes in the consumer-price index for all urban consumers (“CPI-U”), which is published monthly by the  
55 United States Department of Labor. The change will be calculated by averaging the CPI-U for the last 12-month  
56 period ending on August 31 of the previous year, then multiplying the fees by the percentage of increase (or

1 decrease) between that figure and the figure from the prior adjustment. If the United States Department of Labor  
2 fails to update the CPI-U, the Secretary shall propose an alternative inflation adjustments for approval by the  
3 Environmental Improvement Board. The department shall make a fee schedule of the fees in this section available  
4 on the department's website.

5 [20.13.2.20 NMAC – N, 07/01/2026]  
6  
7

8 **20.13.2.21 MANNER OF PAYMENT:** All fees shall be paid to the department by online payment only by  
9 ACH or credit card. Cash payments are not an acceptable method of payment.

10 [20.13.2.21 NMAC – N, 07/01/2026]  
11

12 **20.13.2.22 LATE CHARGES:** If any fee for which this part provides is not paid in full when due, the  
13 person owing the fee shall pay a billing charge of one thousand dollars (\$1,000), plus late charges in the amount of  
14 an additional one percent of all fees owed for every month or part of a month in which the fees remain unpaid  
15 beyond the due date. Billing and late charges shall be deposited in the recycling and illegal dumping fund and are  
16 independent of any penalties assessed under the act.

17 [20.13.2.22 NMAC – N, 07/01/2026]  
18

19 **20.13.2.23 ENFORCEMENT, COMPLIANCE ORDERS, PENALTIES:**

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

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

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

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

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

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

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

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

46 (5) Penalties collected pursuant to an administrative order shall be deposited in the recycling  
47 and illegal dumping fund. Administrative costs collected pursuant to this part shall be deposited in the recycling and  
48 illegal dumping fund.

49 [20.13.2.23 NMAC – N, 07/01/2026]

1 **TITLE 20 ENVIRONMENTAL PROTECTION**  
2 **CHAPTER 13 PER- AND POLY-FLUOROALKYL SUBSTANCES IN CONSUMER PRODUCTS**  
3 **PART 2 PROHIBITIONS ON PRODUCTS CONTAINING PER- OR POLY-FLUOROALKYL**  
4 **SUBSTANCES; CURRENTLY UNAVOIDABLE USE; REPORTING; LABELING;**  
5 **TESTING; FEES AND PENALTIES**  
6

7 **20.13.2.1 ISSUING AGENCY:** Environmental Improvement Board  
8 [20.13.2.1 NMAC – N, 07/01/2026]  
9

10 **20.13.2.2 SCOPE:** This part applies to manufacturers, distributors, and retailers that sell, offer for sale,  
11 distribute or distribute for sale in the state of New Mexico, directly or indirectly or through intermediaries, certain  
12 products to which per- or poly-fluoroalkyl substances (PFAS) are intentionally added.  
13 [20.13.2.2 NMAC – N, 07/01/2026]  
14

15 **20.13.2.3 STATUTORY AUTHORITY:** Statutory Authority comes from the Environmental Improvement  
16 Act, Sections 74-1-1 NMSA 1978 et seq., the Per- and Poly-Fluoroalkyl Substances Protection Act, Sections 74-15-1  
17 NMSA 1978 et seq., and the Department of Environment Act, Sections 9-7A-1 NMSA 1978 et seq.  
18 [20.13.2.3 NMAC – N, 07/01/2026]  
19

20 **20.13.2.4 DURATION:** Permanent.  
21 [20.13.2.4 NMAC – N, 07/01/2026]  
22

23 **20.13.2.5 EFFECTIVE DATE:** July 1, 2026, unless a later date is cited at the end of a section.  
24 [20.13.2.5 NMAC – N, 07/01/2026]  
25

26 **20.13.2.6 OBJECTIVE:** The objective of this part is to establish rules for the prohibition of certain  
27 products that contain an intentionally added per- or poly-fluoroalkyl substance, for the reporting of information and  
28 testing of products sold, offered for sale, distributed or distributed for sale in New Mexico that contain intentionally  
29 added per- and poly-fluoroalkyl substances, and for the labeling of certain products sold, offered for sale, distributed  
30 or distributed for sale in New Mexico that contain intentionally added per- and poly-fluoroalkyl substances. In  
31 addition, the objective of this part is to establish fees for mandatory reporting and applications for currently  
32 unavoidable use designations. Further, this part establishes provisions for enforcement, penalties and administrative  
33 costs related to violations of the Per- and Poly-Fluoroalkyl Substances Protection Act, Sections 74-15-4 NMSA 1978  
34 et seq. Penalties, fees, and administrative costs paid are for deposit into the recycling and illegal dumping fund.  
35 [20.13.2.6 NMAC – N, 07/01/2026]  
36

37 **20.13.2.7 DEFINITIONS:** The definitions in the Per- and Poly-Fluoroalkyl Substances Protection Act,  
38 Section 74-15-2 NMSA 1978 shall apply in this part. The following terms, as used in this part, have the following  
39 meanings:

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

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

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

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

53 **E. “consumer information”** means warnings, directions for use, ingredients lists, and nutritional  
54 information. “Consumer information” does not include the brand name, product name, company name, location of  
55 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 class"** means a group of products that share similar essential physical characteristics,  
9 function and may be substitutable;

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

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

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

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

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

30          **P. "used"** means the condition of a product having been installed, operated, or utilized for its  
31 intended purpose by at least one owner or operator. Used does not apply to a product that has been returned to a  
32 retailer or that is otherwise offered for resale without the product having been installed, operated, or utilized.  
33 [20.13.2.7 NMAC – N, 07/01/2026]

34  
35 **20.13.2.8 SEVERABILITY:** If any provision or application of this part is held invalid, the remainder, or its  
36 application to other situations or persons, shall not be affected.  
37 [20.13.2.8 NMAC – N, 07/01/2026]

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

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

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

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

- (1) carpets or rugs;
- (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 (FIFRA), 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;

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- 1           **J.** a semiconductor, including semiconductors incorporated in electronic equipment, and materials  
2 used in the manufacture of semiconductors;
- 3           **K.** non-consumer electronics and non-consumer laboratory equipment not ordinarily used for  
4 personal, family or household purposes;
- 5           **L.** a product that contains intentionally added per- or poly-fluoroalkyl substances with uses that are  
6 currently listed as acceptable, acceptable subject to use conditions or acceptable subject to narrowed use limits in the  
7 United States environmental protection agency's rules under the significant new alternatives policy program;  
8 provided that the product contains per- or poly-fluoroalkyl substances that are being used as substitutes for ozone-  
9 depleting substances under the conditions specified in the rules;
- 10          **M.** a product used for the generation, distribution or storage of electricity;
- 11          **N.** equipment directly used in the manufacture or development of the products described in  
12 Paragraphs A through M of this section;
- 13          **O.** a product for which the board has adopted a rule providing that the use of the per- or poly-  
14 fluoroalkyl substances in that product is a currently unavoidable use; or
- 15          **P.** a product that contains fluoropolymers consisting of polymeric substances for which the backbone  
16 of the polymer is either a per- or polyfluorinated carbon-only backbone or a perfluorinated polyether backbone that  
17 is a solid at standard temperature and pressure.
- 18          **Q.** a pesticide that is regulated by or under the jurisdiction of the Federal Insecticide, Fungicide, and  
19 Rodenticide Act.  
20 [20.13.2.10 NMAC – N, 07/01/2026]

21  
22 **20.13.2.11 CURRENTLY UNAVOIDABLE USE:** This section provides directions for submitting CUU  
23 proposals.

24          **A.** Proposals for currently unavoidable use (“CUU”) determinations may be submitted by  
25 manufacturers individually or collectively. A separate proposal must be submitted for each individual combination of  
26 product category and the associated industrial sector (i.e., North American Industry Classification System (NAICS)  
27 code). Proposals will be submitted using the department’s online submission portal. For initial currently  
28 unavoidable use proposals, the requester shall submit the information identified in this section of the rule no later  
29 than 12 months prior to the applicable sales prohibition. The department will not consider any proposals for an  
30 initial currently unavoidable use determination prior to 60 months in advance of the applicable sales prohibition; any  
31 proposals received prior to this date will need to be updated and resubmitted between 60 and 12 months before the  
32 effective date of the applicable sales prohibition (with the exception of CUU proposals for sales prohibitions taking  
33 effect January 1, 2027, which must be submitted no later than October 31, 2026. Complete CUU proposals for sales  
34 prohibitions effective January 1, 2027, received by October 31, 2026, will be considered approved pending review  
35 and a final determination of whether to approve or deny the proposals will be issued by the department by March 1,  
36 2027). A proposal must, at a minimum, contain:

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

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

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

- 44                   **i.** A brief narrative of the product; its physical structure and appearance; how it  
45 functions; and if applicable its place in larger items, systems, or processes;  
46                   **ii.** If applicable, the universal product code, stock keeping unit or other numeric  
47 code assigned to the product; and  
48                   **iii.** NAICS code for the sector or sectors in which the products containing  
49 intentionally added per- and poly-fluoroalkyl substances will be used.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35           (8) If a similar program’s sales prohibition is identified as applicable in Section  
36 20.13.2.11.A.6 of this rule and similar products are available for sale, offered for sale, distributed or distributed for  
37 sale;

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

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

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

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

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

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

1                           iii. Any information documenting environmental impacts as a result of the specific  
2 use of per- or poly-fluoroalkyl substances in the product;  
3                           iv. A description of any likely pathways for environmental release of per- or poly-  
4 fluoroalkyl substances as a result of the specific use of per- or poly-fluoroalkyl substances in the product; and  
5                           v. A description of the product's fate at the end of its lifecycle including;  
6                               a. Documentation of any product stewardship programs or other  
7 government-imposed processes at the end of a product's lifecycle,  
8                               b. How the product is intended to be disposed of, such as landfilling or via  
9 a sewage or septage system, and  
10                            c. The recycling rate of the product. Information submitted to the  
11 department must contain sufficient detail or supporting documentation to satisfy the requirements of the currently  
12 unavoidable use as essential for health, safety or the functioning of society for which alternatives are not reasonably  
13 available.

14 If any of the information above is omitted from the proposal, the requestor must explain why this information is  
15 omitted.

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

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

23           **D.** CUU designations will expire three years after approval. Upon expiration, a currently unavoidable  
24 use determination is no longer applicable, and all sales, offers for sale, distributions or distributions for sale are  
25 immediately prohibited. If a person believes the currently unavoidable use remains, they may submit a proposal to  
26 the department for a new currently unavoidable use determination. That proposal, in addition to the information  
27 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  
28 since the time of the first currently unavoidable use determination and a summary of efforts made during that time to  
29 develop or discover alternatives or to make existing alternatives reasonably available. The department will consider  
30 all subsequent proposals no sooner than 24 months prior to and no later than 12 months prior to the expiration date  
31 of the determination in effect.

32           **E.** A list of approved CUUs will be made available to the public and posted on the NMED website.  
33 [20.13.2.11 NMAC – N, 07/01/2026]

34  
35 **20.13.2.12 REPORTING REQUIREMENT:** A manufacturer of a product sold, offered for sale, distributed  
36 or distributed for sale in the state must submit a report for each product or component that contains intentionally  
37 added per- or poly-fluoroalkyl substances.

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

- 44                   (1) the reporting manufacturer or trade organization must notify any other manufacturer that  
45 is a party to the agreement that the reporting manufacturer has fulfilled the reporting requirements;  
46                   (2) all manufacturers must maintain documentation of a reporting responsibility;  
47                   (3) all manufacturers must execute the agreement and must provide the documentation to the  
48 department upon request;  
49                   (4) all manufacturers must verify, in a format specified by the department, that the data  
50 submitted on their behalf is accurate and complete; and  
51                   (5) for the verification required under Section 20.13.2.12.A.4 of this rule to be considered  
52 complete, all manufacturers subject to the agreement must submit the fee required under Section 20.13.2.16.A of this  
53 rule.

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

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1 (1) a brief description of the product, including a universal product code, stock keeping unit  
2 or other numeric code assigned to the product;  
3 (2) the purpose for which a per- or poly-fluoroalkyl substances is used in the product;  
4 (3) the amount, expressed as a percentage concentration in the product, of each per- or  
5 polyfluoroalkyl substance in the product, identified by its chemical abstracts service registry number and reported as  
6 an exact quantity determined using commercially available analytical methods or as falling within the following  
7 reporting ranges. The manufacturer shall provide documentation verifying analytical method results to the  
8 department.

9 i. Less than 100 ppm (0.01 percent);  
10 ii. Equal to or more than 100 ppm (0.01 percent), but less than 500 ppm (0.05  
11 percent);  
12 iii. Equal to or more than 500 ppm (0.05 percent), but less than 1,000 ppm (0.1  
13 percent);  
14 iv. Equal to or more than 1,000 ppm (0.1 percent), but less than 5,000 ppm (0.5  
15 percent);  
16 v. Equal to or more than 5,000 ppm (0.5 percent), but less than 10,000 ppm (1.0  
17 percent); or  
18 vi. Equal to or more than 10,000 ppm (1.0 percent).

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

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

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

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

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

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

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

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

54 (1) A manufacturer or group of manufacturers requesting an extension must submit the  
55 request in a format specified by the department. The request must contain:

56 i. information contained in Section 20.13.2.12.B.4 of this rule;

1                   ii.       the reason for the extension request, including a detailed explanation of the  
2 circumstances that prevent timely submission;  
3                   iii.       supporting documentation, including any relevant documents that substantiate  
4 the need for an extension, such as communication records with other manufacturers, evidence of technical  
5 challenges, or third-party testing delays; and  
6                   iv.       a plan for completion, including an outline of how the manufacturer will submit  
7 the remaining work by the new deadline.

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

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

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

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

23                   H.       The requirements of this section do not apply to products that are exempt as specified in Section  
24 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  
25 this rule.

26 [20.13.2.12 NMAC – N, 07/01/2026]

27  
28 **20.13.2.13 LABELING:**

29                   A.       Labeling required. Unless exempted under Section 20.13.2.13.B of this rule, after January 1, 2027,  
30 a manufacturer may not manufacture for sale or distribution a product containing intentionally added per- or poly-  
31 fluoroalkyl substances unless the manufacturer does one of the following:

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

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

36                   B.       Labeling exemptions. The labeling requirements of this rule do not apply to:

37                   (1)       used products offered for sale or resale;

38                   (2)       products for which labeling requirements are preempted pursuant to the Federal  
39 Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136v, or for which labeling requirements currently  
40 exist at 40 C.F.R. 156.10;

41                   (3)       veterinary products, including veterinary parasiticides and veterinary biologics, and the  
42 packaging of veterinary products regulated by the United States food and drug administration, the United States  
43 department of agriculture, or the United States environmental protection agency; and

44                   (4)       medical devices, drugs, and the packaging of medical devices and drugs regulated by the  
45 United States food and drug administration.

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

50                   (1)       The label must clearly inform the consumer that the product contains intentionally added  
51 per- and poly-fluoroalkyl substances ~~in both English and Spanish. The label shall include a symbol. The symbol~~  
52 ~~shall be an outline of an Erlenmeyer flask with the word "PFAS" inside the flask. The label may also include the~~  
53 ~~following words directly adjacent to the flask: "This product is made with PFAS," "Made with PFAS" or "Contains~~  
54 ~~PFAS." The following wording is acceptable: "This product is made with PFAS," "Made with PFAS" or "Contains~~  
55 ~~PFAS."~~The label must be affixed to the product such that the label is clearly visible and legible prior to sale. The  
56 label must be displayed with such conspicuousness as compared with other words, statements, design or devices on

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1 the product as to render the label likely to be seen, read, and understood by an ordinary individual under customary  
2 conditions of purchase or use. Text shall be no smaller than the largest font used for other consumer information on  
3 the product.

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

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

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

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

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

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

29 **D.** Labeling of complex durable goods with intentionally added per- or poly-fluoroalkyl substances.  
30 Prior to sale of a complex durable good that contains intentionally added per- or poly-fluoroalkyl substances ~~or  
31 components that contain intentionally added per- or poly-fluoroalkyl substances~~, the manufacturer shall conform to  
32 the information requirements of this section.

33 (1) ~~A symbol approved by the department accompanied by a A label statement~~ indicating the  
34 presence of intentionally added per- or poly-fluoroalkyl substances ~~and/or component parts with intentionally added  
35 per- or poly-fluoroalkyl substances~~ shall be included in the consumer facing product specification sheet ~~and other  
36 product labeling information~~ available to potential consumers prior to purchase. ~~The following wording is  
37 acceptable: "This product is made with PFAS," "Made with PFAS," "Contains PFAS," or "Contains component  
38 parts made with PFAS." The specification sheet and other product labeling information shall include a symbol. The  
39 label symbol shall be an outline of an Erlenmeyer flask with the word "PFAS" inside the flask. The label may also  
40 include the following words directly adjacent to the flask: "This product is made with PFAS," "Made with PFAS" or  
41 "Contains PFAS." The specification sheet and other product labeling information shall contain the following  
42 statement: "For more information on the location of components made with PFAS, review the product's operation  
43 and maintenance manual."~~

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

49 (23) The ~~statement~~ label must be easily identified and legible on the consumer facing product  
50 specification sheet ~~and other information available to potential consumers prior to purchase~~. A 10-point font or  
51 larger is presumed to be legible.

52 (34) The consumer facing operation and maintenance manual associated with the complex  
53 durable good shall include a symbol label as described in 20.13.2.13.D.1 of this rule ~~statement~~ indicating the  
54 presence of intentionally added per- or poly-fluoroalkyl substances. ~~and/or component parts with intentionally added  
55 per- or poly-fluoroalkyl substances, using words and symbols approved by the department, followed by a complete  
56 list of components with intentionally added per- or poly-fluoroalkyl substances, including sufficient detail about the~~

~~components' locations within the complex durable good such that they can be readily located. The statement must also include an internet website address for a web page hosted by the department [<https://www.env.nm.gov/pfas/>] that provides information about per- and poly-fluoroalkyl substances in products or a quick response (QR) code or other machine readable code, consisting of an array of squares, used for storing an internet website for a web page hosted by the department [<https://www.env.nm.gov/pfas/>] that provides information about per- and poly-fluoroalkyl substances in products.~~

~~(5) Where product information and labeling include consumer information about a product in 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 rule shall also be provided in that language in addition to English and Spanish.~~

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

E. Consistency with other states. The manufacturer of a product with intentionally added per- or poly-fluoroalkyl substances may comply with the labeling requirements of this rule by labeling all units, or, as applicable, consumer facing specification sheets and consumer facing operation and maintenance manuals of the product sold in New Mexico in compliance with corresponding requirements adopted by another state. A manufacturer may comply in this manner by providing the department with the following:

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

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

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

F. The department may waive the obligation of a manufacturer to label a product or product class as required by this section if the product is exempt pursuant to Section 20.13.2.10 of this part, and none of the product's material containing intentionally added per- or poly-fluoroalkyl substances will ever come into direct contact with a consumer while the product is being used as intended during the useful life of the product. The waiver request must contain the following information:

(1) Information contained in paragraphs (1), (3), and (4), of Subsection B of Section 20.13.2.12 of this Part;

(2) Identification of the specific per- or poly-fluoroalkyl substance(s) intentionally added to the product or its components by the chemical name and the Chemical Abstracts Service Registry number (CASRN), or if no CASRN exists, another chemical identifying number;

(3) An explanation of why the product should not require a label pursuant to this section; and

(4) Any other information the department deems necessary for the evaluation of the waiver

request.

If seeking a label waiver for a product class, in addition to the information in paragraphs (1) to (4) of Subsection F of Section 20.13.2.13, the waiver request must provide sufficient evidence to demonstrate that the products share similar essential physical characteristics, function, and may be substitutable. Complete label waiver requests for an individual product or product class received by October 31, 2026, will be considered approved pending review and a final determination of whether to approve or deny the request will be issued by the department by June 1, 2027) If a label request is denied, a manufacturer must label a product for sale or distribution pursuant to Section 20.13.2.13 within 90 days of the label waiver denial; products which have already been manufactured up to the date of denial, may be sold without a label. Approved label waiver requests will expire three years after approval.

[20.13.2.13 NMAC – N, 07/01/2026]

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

1           **A.** The provisions of this section do not apply to a medical device or drug or the packaging of a  
2 medical device or drug that is regulated by the United States food and drug administration.

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

6                   **(1)** Each per- or poly-fluoroalkyl substance’s name, chemical abstracts services (CAS)  
7 number, and chemical formula, if known or the amount, expressed as a percentage concentration in the product, of  
8 each per- or poly-fluoroalkyl substance or the range of each per- and poly-fluoroalkyl substance, as falling within  
9 the following reporting ranges:

- 10                           **i.** Less than 100 ppm (0.01 percent);  
11                           **ii.** Equal to or more than 100 ppm (0.01 percent), but less than 500 ppm (0.05  
12 percent);  
13                           **iii.** Equal to or more than 500 ppm (0.05 percent), but less than 1,000 ppm (0.1  
14 percent);  
15                           **iv.** Equal to or more than 1,000 ppm (0.1 percent), but less than 5,000 ppm (0.5  
16 percent);  
17                           **v.** Equal to or more than 5,000 ppm (0.5 percent), but less than 10,000 ppm (1.0  
18 percent); or  
19                           **vi.** Equal to or more than 10,000 ppm (1.0 percent); and

20                   **(2)** Documentation verifying analytical method results to the department.

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

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

28                   **(1)** Submit a report as required in Section 20.13.2.12 of this rule;

29                   **(2)** If the product is prohibited for sale, notify distributors and retailers that the product is  
30 prohibited for sale or distribution in the state of New Mexico; and

31                   **(3)** If the product is prohibited for sale, provide the department with a list of the distributors  
32 and retailers notified.

33 [20.13.2.14 NMAC – N, 07/01/2026]  
34

35 **20.13.2.15 REPORTING FEES:** Every manufacturer of a product containing an intentionally added per- or  
36 poly-fluoroalkyl substance that is sold, offered for sale, distributed or distributed for sale in the state, directly or  
37 indirectly or through intermediaries and is not exempt pursuant to Section 20.13.2.10 shall pay reporting fees in  
38 accordance with the provisions of this section.

39 [20.13.2.15 NMAC – N, 07/01/2026]  
40

41 **20.13.2.16 REPORTING FEE SCHEDULE:** Initial and subsequent reporting fees are non-refundable and  
42 are set forth below:

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

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

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

55 [20.13.2.16 NMAC – N, 07/01/2026]  
56

1 **20.13.2.17 CURRENTLY UNAVOIDABLE USE DESIGNATION APPLICATION FEES:**

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

6 [20.13.2.17 NMAC – N, 07/01/2026]  
7

8 **20.13.2.18 CURRENTLY UNAVOIDABLE USE DESIGNATION APPLICATION FEE SCHEDULE:**

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

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

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

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

23 [20.13.2.18 NMAC – N, 07/01/2026]  
24

25 **20.13.2.19 LABEL WAIVER APPLICATION FEE:** Manufacturers that apply for a waiver for the  
26 requirement to label a product containing intentionally added per- or poly-fluoroalkyl substances shall pay a fee to  
27 the department in accordance with the provisions of this part.

28 [20.13.2.19 NMAC – N, 07/01/2026]  
29

30 **20.13.2.20 LABEL WAIVER APPLICATION FEE SCHEDULE:** Application fees for label waiver  
31 applications are non-refundable and are set forth below:

32 **A.** The fee for a manufacturer applying for a waiver to label a product containing intentionally added  
33 per- or poly-fluoroalkyl substances is \$2,000 and the fee for a manufacturer applying for a waiver to label a product  
34 class containing intentionally added per- or poly-fluoroalkyl substances is \$5,000; and

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

43 [20.13.2.20 NMAC – N, 07/01/2026]  
44

45  
46 **20.13.2.21 MANNER OF PAYMENT:** All fees shall be paid to the department by online payment only by  
47 ACH or credit card. Cash payments are not an acceptable method of payment.

48 [20.13.2.21 NMAC – N, 07/01/2026]  
49

50 **20.13.2.22 LATE CHARGES:** If any fee for which this part provides is not paid in full when due, the  
51 person owing the fee shall pay a billing charge of one thousand dollars (\$1,000), plus late charges in the amount of  
52 an additional one percent of all fees owed for every month or part of a month in which the fees remain unpaid  
53 beyond the due date. Billing and late charges shall be deposited in the recycling and illegal dumping fund and are  
54 independent of any penalties assessed under the act.

55 [20.13.2.22 NMAC – N, 07/01/2026]  
56

1 **20.13.2.23 ENFORCEMENT, COMPLIANCE ORDERS, PENALTIES:**

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

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

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

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

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

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

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

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

28 (5) Penalties collected pursuant to an administrative order shall be deposited in the recycling  
29 and illegal dumping fund. Administrative costs collected pursuant to this part shall be deposited in the recycling and  
30 illegal dumping fund.

31 [20.13.2.23 NMAC – N, 07/01/2026]