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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

O. **"used"** means the condition of a product having been installed, operated, or utilized for its intended purpose by at least one owner or operator. Used does not apply to a product that has been returned to a retailer or that is otherwise offered for resale without the product having been installed, operated, or utilized.

[20.13.2.7 NMAC – N, 07/01/2026]

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

[20.13.2.8 NMAC – N, 07/01/2026]

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

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

(1) cookware;

(2) food packaging;

(3) dental floss;

(4) juvenile products; and

(5) firefighting foam.

B. Except as provided in Section 20.13.2.10 of this rule, beginning 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, the following products if that product contains an intentionally added per- or poly-fluoroalkyl 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, except that any such products approved by the United States environmental protection agency pursuant to that law for aerial and land application are not exempt from this section;

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

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

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

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

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

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

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

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

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

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

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

[20.13.2.10 NMAC – N, 07/01/2026]

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

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

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

i. The chemical name, and

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

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

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

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

iii. The North American Industry Classification System (NAICS) code for the sector or sectors in which the products containing intentionally added per- and poly-fluoroalkyl substances will be used.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Documentation of any product stewardship programs or other government-imposed processes at the end of a product's lifecycle,

b. How the product is intended to be disposed of, such as landfilling or via a sewage or septage system, and

c. The recycling rate of the product. Information submitted to the department must contain sufficient detail or supporting documentation to satisfy the requirements of the currently unavoidable use as essential for health, safety or the functioning of society for which alternatives are not reasonably available.

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

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

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

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

E. A list of approved CUUs will be made available to the public and posted on the NMED website.

[20.13.2.11 NMAC – N, 07/01/2026]

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

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

(1) the reporting manufacturer or trade organization must notify any other manufacturer that is a party to the agreement that the reporting manufacturer has fulfilled the reporting requirements;

(2) all manufacturers must maintain documentation of a reporting responsibility;

(3) all manufacturers must execute the agreement and must provide the documentation to the department upon request;

(4) all manufacturers must verify, in a format specified by the department, that the data submitted on their behalf is accurate and complete; and

(5) for the verification required under Section 20.13.2.12.A.4 of this rule to be considered complete, all manufacturers subject to the agreement must submit the fee required under Section 20.13.2.15.A of this rule.

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

(1) a brief description of the product, including a universal product code, stock keeping unit or other numeric code assigned to the product;

(2) the purpose for which a per- or poly-fluoroalkyl substances is used in the product;

(3) the amount, expressed as a percentage concentration in the product, of each per- or polyfluoroalkyl substance in the product, identified by its chemical abstracts service registry number and reported as

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

i. Less than 100 ppm (0.01 percent);

ii. Equal to or more than 100 ppm (0.01 percent), but less than 500 ppm (0.05 percent);

iii. Equal to or more than 500 ppm (0.05 percent), but less than 1,000 ppm (0.1 percent);

iv. Equal to or more than 1,000 ppm (0.1 percent), but less than 5,000 ppm (0.5 percent);

v. Equal to or more than 5,000 ppm (0.5 percent), but less than 10,000 ppm (1.0 percent); or

vi. Equal to or more than 10,000 ppm (1.0 percent).

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

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

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

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

(1) The waiver request must contain the following information:

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

ii. A description of the products or components for which a waiver is requested;

iii. A list of requirements under Section 20.13.2.12.B of this rule for which the manufacturer seeks a waiver;

iv. A description of the publicly available records that contain substantially equivalent information to the information required under Section 20.13.2.12.B of this rule.

v. A manufacturer or group of manufacturers must still submit a report for any requirements under Section 20.13.2.12.B of this rule that are not waived.

vi. A manufacturer or group of manufacturers must submit the waiver request to the department at least thirty days before the applicable reporting due date.

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

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

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

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

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

ii. the reason for the extension request, including a detailed explanation of the circumstances that prevent timely submission;

iii. supporting documentation, including any relevant documents that substantiate the need for an extension, such as communication records with other manufacturers, evidence of technical challenges, or third-party testing delays; and

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

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

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

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

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

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

[20.13.2.12 NMAC – N, 07/01/2026]

20.13.2.13 LABELING:

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

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

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

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

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

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

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

(3) If the product is sold in consumer packaging that obscures the label on the product, then the consumer packaging must be labeled in a manner compliant with Section 20.13.2.13.C.1 of this rule. In addition, consumer packaging shall 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.

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

(4) Where the consumer is unable to view the labels on the product or consumer packaging at the time of purchase or receipt, such as in catalog or online sales transactions that occur over the internet or telephone, the manufacturer or retailer shall, prior to sale or distribution, clearly include information to the prospective consumer prior to purchase that the product contains intentionally added per- and poly-fluoroalkyl substances by providing a label or disclosure as described in Section 20.13.2.13.C.1 of this rule and 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, as described in Section 20.13.2.13.C.3 of this rule. Disclosure and the website address shall be included on sales literature, webpages, product specification sheets, and marketing materials, as applicable.

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

(6) 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.

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

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

(2) The statement shall also be included in Spanish and shall 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 [https://www.env.nm.gov/pfas/] for a web page hosted by the department that provides information about per- and poly-fluoroalkyl substances in products.

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

(4) The operation and maintenance manual associated with the complex durable good shall include a statement indicating the presence of intentionally added per- or poly-fluoroalkyl substances and/or component parts with intentionally added per- or poly-fluoroalkyl substances, using words and symbols approved by the department, followed by a complete list of components with intentionally added per- and 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.

(6) 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 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 as required by this section if the product is exempt pursuant to Section 20.13.2.8 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 Section 20.13.2.12.B.4 of this Part;

(2) A description of the product for which a waiver is requested;

(3) 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;

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

(5) any other information the department deems necessary for the evaluation of the waiver request.

[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.

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

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

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

i. Less than 100 ppm (0.01 percent);

ii. Equal to or more than 100 ppm (0.01 percent), but less than 500 ppm (0.05 percent);

iii. Equal to or more than 500 ppm (0.05 percent), but less than 1,000 ppm (0.1 percent);

iv. Equal to or more than 1,000 ppm (0.1 percent), but less than 5,000 ppm (0.5 percent);

v. Equal to or more than 5,000 ppm (0.5 percent), but less than 10,000 ppm (1.0 percent); or

vi. Equal to or more than 10,000 ppm (1.0 percent); and

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

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

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

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

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

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

[20.13.2.14 NMAC – N, 07/01/2026]

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

[20.13.2.15 NMAC – N, 07/01/2026]

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

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

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

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

[20.13.2.16 NMAC – N, 07/01/2026]

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

[20.13.2.17 NMAC – N, 07/01/2026]

20.13.2.18 CURRENTLY UNAVOIDABLE USE DESIGNATION APPLICATION FEE SCHEDULE: Initial and renewal application fees for currently unavoidable use designations are non-refundable and are set forth below:

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

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

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

[20.13.2.18 NMAC – N, 07/01/2026]

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

[20.13.2.19 NMAC – N, 07/01/2026]

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

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

20.13.2.21 ENFORCEMENT, COMPLIANCE ORDERS, PENALTIES:

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

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

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

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

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

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

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

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

(5) Penalties collected pursuant to an administrative order shall be deposited in the recycling and illegal dumping fund. Administrative costs collected pursuant to this part shall be deposited in the hazardous waste permitting fund.
[20.13.2.21 NMAC – N, 07/01/2026]