IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

DIAMOND VOGEL, INC.

Appellant,

v. **Ct. App. No._____**

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD,

Appellee.

IN THE MATTER OF PROPOSED ADOPTION OF 20.13.2 NMAC, PER- AND POLY-FLUOROALKYL SUBSTANCES IN CONSUMER PRODUCTS

No. EIB 25-61 (R)

DIAMOND VOGEL, INC.'S NOTICE OF APPEAL

Pursuant to NMSA 1978, § 74-1-9 (1985), and Rule 12-601(B) NMRA, Diamond Vogel, Inc. hereby gives notice of appeal to the New Mexico Court of Appeals from the New Mexico Environmental Improvement Board's (the "Board") Order and Statement of Reasons, filed on April 17, 2026, (the "Order") for the adoption of Per- and Poly-Fluoroalkyl Substances in Consumer Products at 20.13.2 NMAC. The regulations that are the subject of this appeal were filed with the State Records Center and Archives on April 22, 2026.

This appeal is taken against the Board and is timely filed pursuant to Section 74-1-9(H), and Rule 12-601(B). A copy of the Board's Order and Statement of Reasons and 20.13.2 NMAC, as filed with the State Records Center and Archives, are attached as Exhibits A and B, respectively.

Respectfully submitted,

GALLAGHER & KENNEDY, PA

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CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2026, a copy of the foregoing *Diamond Vogel, Inc.'s Notice of Appeal* was served via electronic mail to the following:

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EXHIBIT A

STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD

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

No. EIB 25-61 (R)

New Mexico Environment Department, Office of Strategic Initiatives
Petitioner.

FINAL ORDER AND STATEMENT OF REASONS

This matter comes before the New Mexico Environmental Improvement Board ("Board") upon a petition filed by the New Mexico Environment Department ("NMED") on October 8, 2025, proposing the adoption of 20.13.2 NMAC – Per- and Poly-Fluoroalkyl Substances in Consumer Products.

An evidentiary hearing was held February 23, 2026, through February 26, 2026, in Santa Fe, New Mexico. All interested persons had an opportunity to submit data, views, and arguments and to examine witnesses testifying at the hearing.

Persons and organizations participating as a party in addition to Petitioner included CropLife America and the American Chemistry Council ("ACC"), represented by Dalva L. Moellenberg, Anthony J. Trujillo, and Serafina I. Seluja, PFAS Pharmaceutical Working Group ("PPWG"), represented by Stuart R. Butzier, Stan N. Harris, and Benjamin C. Rossi, Alliance for Automotive Innovation ("AAI") and Complex Products Manufacturers Coalition ("CPMC"), represented by Rebecca J. Fiebig and Martha Marrapese, and Bruce Wetherbee with The Candle. Petitioner was represented by Gregory S. Smithkier, Mark F. Rosebrough, and Andrew P. Knight from the NMED Office of General Counsel. Eduardo Ugarte II of the New Mexico Department

of Justice served as Board Counsel, and Pamela Jones and Luis Lopez of the Department's Office of Public Facilitation provided administrative and technical support.

On March 6, 2026, and March 23, 2026, the Board deliberated and voted to adopt Proposed New Rule 20.13.2 NMAC, as adjusted, based on the substantial evidence in the record for the reasons set forth below. The new rule in its final form for submission to the State Records Center and Archives is attached as Exhibit A.

PROCEDURAL BACKGROUND

On October 8, 2025, NMED filed its Petition for Regulatory Change to Adopt 20.13.2 NMAC and Request for Hearing ("Petition"). In accordance with the rulemaking procedures at 20.1.1 NMAC, the Board met with a quorum in Santa Fe, New Mexico on October 24, 2025, and considered NMED's Petition. The Board granted NMED's Petition at the meeting, and on October 30, 2025, the Board entered an Order that designated Felicia Orth to serve as Hearing Officer and directed her to issue a scheduling order setting the date, time, and location of the hearing. *See* Order Scheduling Hearing on Petition, and Hearing Officer Appointment (filed 10/30/25). Hearing Officer Orth entered a Pre-Hearing Order on December 3, 2025. Among other things, the Pre-Hearing Order set a hearing to begin on February 23, 2026, at 9 a.m. to continue as long as necessary to hear all testimony, evidence, and public comment through March 6, 2026. *See* Pre-Hearing Order (filed 12/3/25).

A public hearing was held in Santa Fe, New Mexico between February 23 and February 26, 2026, with a quorum of the Board present during the hearing. The Board heard technical testimony from NMED and other parties and admitted exhibits into the record. On March 6, 2026, and March 23, 2026, the Board deliberated and voted to adopt the proposed rule for the reasons that follow.

BACKGROUND

1. Many per- and poly-fluoroalkyl substances ("PFAS") exhibit toxic properties and can harm both the environment and human health. Written Testimony of Jamie C. DeWitt, PhD, NMED Exhibit 23, p. 2; Written Testimony of Andy Jochems, NMED Exhibit 21, p. 6; Written Testimony of Eric J. Chapman, PhD, NMED Exhibit 3, p. 7.

2. Numerous drinking water systems throughout New Mexico have already been impacted by contamination from PFAS released into the environment from a variety of sources. Written Testimony of James C. Kenney, NMED Exhibit 57, p. 16; Written Testimony of Andy Jochems, NMED Exhibit 21, p. 6.

3. Some of the major sources of PFAS exposure for humans include PFAS in consumer products such as food packaging, dental floss, waterproof and stain resistant clothing, rugs, and furniture. Written Testimony of Dr. Alison Ling, NMED Exhibit 32, pp. 2, 4.

4. Approximately 95 percent of New Mexicans depend on public drinking water utilities for their drinking water. Written Testimony of Andy Jochems, NMED Exhibit 21, p. 6.

5. Once released into the environment, PFAS contamination can be economically unfeasible to remediate, due to the persistence and mobility of many forms of PFAS, and the extremely low concentrations at which they affect the safety of groundwater. Written Testimony of Dr. Alison Ling, NMED Exhibit 32, p. 2; Written Testimony of Andy Jochems, NMED Exhibit 21, p. 6; Written Testimony of James C. Kenney, NMED Exhibit 57, p. 11; Written Testimony of Dr. Mitchell Olson, NMED Exhibit 18, p. 3.

6. All types of PFAS are persistent in the environment. Written Testimony of Dr. Alison Ling, NMED Exhibit 32, p. 2; Written Testimony of Dr. Mitchell Olson, NMED Exhibit 18, pp. 6, 10.

7. PFAS do not break down in the environment into anything other than smaller forms of PFAS. Mobile PFAS continually cycle through air, land, and water, while bioaccumulating in plant and animal tissue. NMED Exhibit 62 (Birnbaum Testimony); Written Testimony of James C. Kenney, NMED Exhibit 57, p. 6; Written Testimony of Andy Jochems, NMED Exhibit 21, p. 3; Written Testimony of Dr. Alison Ling, NMED Exhibit 32, p. 2; Written Testimony of Eric J. Chapman, PhD, NMED Exhibit 3, p. 47; Written Testimony of Jamie C. DeWitt, PhD, NMED Exhibit 23, p. 6.

8. Many PFAS take years to decades to exit the body and can cause health effects such as high cholesterol, hormonal impacts, reproductive irregularities, and even cancer over these intervals. Written Testimony of Jamie C. DeWitt, PhD, NMED Exhibit 23, p. 6-13; Testimony of Andy Jochems, NMED Exhibit 21, p. 3.

THE PFAS PROTECTION ACT

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

10. The PFAS Protection Act, at Section 74-15-4(A), mandates that the Board shall adopt rules to: (a) exempt from the reporting requirements any product that contains an intentionally added PFAS that is exempt pursuant to Section 74-15-3(A) of the PFAS Protection Act or that has been designated as a currently unavoidable use; (b) create a series of ranges for the amount of PFAS in a product that contains an intentionally added PFAS for reporting purposes unless exempted in Section 74-15-3(A) of the PFAS Protection Act; and (c) identify currently unavoidable uses of PFAS that are essential for health, safety or the functioning of society and for

which alternatives are not reasonably available unless exempted in Section 74-15-3(A) of the PFAS Protection Act.

11. The PFAS Protection Act, at Section 74-15-5(A), mandates that the Board shall also adopt rules that enumerate the information required of a manufacturer of a product containing intentionally added PFAS.

12. Additionally, the PFAS Protection Act provides that, pursuant to Section 74-15-4(B), the Board may adopt rules to carry out the provisions of the PFAS Protection Act, including requiring the labeling of products in English and Spanish.

13. On February 19, 2026, the New Mexico Legislature passed House Joint Memorial 3, clarifying the Board's authority to require labeling for products that are exempt from phase out or prohibition under the PFAS Protection Act.

PETITION AND HEARING

14. On October 8, 2025, NMED filed a petition with the Board for a public hearing to adopt new rule 20.13.2 NMAC for the purpose of implementing the PFAS Protection Act. See NMED Petition.

15. At a meeting conducted in compliance with the Open Meetings Act and other applicable requirements, the Board granted NMED's request for a hearing and scheduled the hearing to begin on February 23, 2026.

16. Public notice of the hearing was published in English and in Spanish in the *New Mexico Register* on December 23, 2025, in the *Albuquerque Journal* on December 14, 2025, the *Santa Fe New Mexican* on December 15, 2025, and in the *Las Cruces Sun News* on December 21, 2025. See NMED Exhibit 6.

17. The notice stated that the Board may make a decision on the proposed rule at the conclusion of the hearing or may convene at a later date to take action on the proposal. *Id.*

18. Additionally, NMED met the public notice requirements outlined in 20.1.1.407 NMAC by providing public notice of the hearing in English and Spanish to members of the general public by the methods outlined in 20.1.1.7(N) NMAC and as described in paragraph 4, above. Written Testimony of Eric J. Chapman, Ph.D., NMED Exhibit. 3, p. 11.

19. The Board therefore finds that all public notice requirements were met for this rulemaking.

20. NMED, the American Chemistry Council, the Complex Manufacturers Coalition, and CropLife America each filed a Notice of Intent to Present Technical Testimony ("NOI") on January 16, 2026, in accordance with 20.1.1.302 NMAC and the Pre-hearing Order.

21. The parties also filed rebuttal testimony pursuant to the Pre-hearing Order on February 16, 2026.

22. A public hearing in this matter was held in Santa Fe, New Mexico, between February 23 and February 26, 2026, at which a reasonable opportunity for all persons to be heard was provided. The Board heard testimony, admitted exhibits, and received extensive public comment.

SUMMARY OF THE RULE

23. New Rule 20.13.2 NMAC establishes rules for the prohibition of certain products that contain intentionally added PFAS, for the reporting of information and testing of products sold, offered for sale, distributed or distributed for sale in New Mexico that contain intentionally added PFAS, and for the labeling of certain products sold, offered for sale, distributed or distributed for sale in New Mexico that contain intentionally added PFAS.

24. New Rule 20.13.2 NMAC also establishes fees for mandatory reporting and applications for currently unavoidable use designations. Written Testimony of Eric J. Chapman, Ph.D., NMED Exhibit 3, pp. 31-32; Written Testimony of James C. Kenney, NMED Exhibit 57, pp. 9-10.

25. New Rule 20.13.2 NMAC establishes provisions for enforcement, penalties and administrative costs related to violations of the PFAS Protection Act. Written Testimony of Eric J. Chapman, Ph.D., NMED Exhibit 3, pp. 32-33; Written Testimony of Dr. Kyle Staggs, NMED Exhibit 55.

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

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

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

29. As required by Section 74-15-3(E), New Rule 20.13.2 NMAC establishes that, except as provided in Section 74-15-3(A), beginning January 1, 2032, a manufacturer many not

sell, offer to sell, distribute or distribute for sale in New Mexico, directly or indirectly through intermediaries, a product containing intentionally added PFAS, unless said use is deemed to be a currently unavoidable use pursuant to a rule adopted by the Board.

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

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

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

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

34. As permitted by Section 74-14-4(B)(1), New Rule 20.13.2 NMAC requires the labeling of products containing intentionally added PFAS.

35. As required by Section 74-15-5(A), New Rule 20.13.2 NMAC lists the information required of a manufacturer of a product containing intentionally added PFAS.

GENERAL PROVISIONS OF THE RULE

36. New Rule 20.13.2 NMAC creates a new Part 2 in Chapter 13 of Title 20 of the New Mexico Administrative Code.

37. 20.13.2.1 NMAC ("Issuing Agency") identifies the Board as the issuing agency.

38. 20.13.2.2 NMAC ("Scope") identifies that the New Rule will apply to manufacturers, distributors, and retailers that sell, offer for sale, distribute or distribute for sale in the State of New Mexico, directly or indirectly or through intermediaries, certain products to which PFAS are intentionally added.

39. 20.13.2.3 NMAC ("Statutory Authority") cites the statutes that provide authority for the New Rule, which are the Environmental Improvement Act, NMSA 1978, Sections 74-1-1, et seq. and the PFAS Protection Act, NMSA 1978, Sections 74-15-4, *et. seq.*

40. 20.13.2.4 NMAC ("Duration") indicates that the New Rule will be permanent.

41. 20.13.2.5 NMAC ("Effective Date") states the effective date of the New Rule will be July 1, 2026, unless a later date is cited at the end of a section.

42. 20.13.2.6 ("Objective") identifies that the purpose of the New Rule is to establish rules for the prohibition of certain products that contain an intentionally added PFAS, for the reporting of information and testing of products sold, offered for sale, distributed or distributed for sale in New Mexico that contain intentionally added PFAS, for the labeling of certain products sold, offered for sale, distributed or distributed for sale in New Mexico that contain an intentionally added PFAS, and to establish provisions for the enforcement, penalties, and administrative costs related to violations of the PFAS Protection Act.

43. 20.13.2.6 NMAC also identifies that penalties, fees and administrative costs paid shall be deposited into the recycling and illegal dumping fund.

44. 20.13.2.7 (“Definitions”) provides the definitions for commonly used terms in the New Rule. Definitions for specific terms only appearing in a section of the New Rule are contained in that section.

45. 20.13.2.8 (“Severability”) provides for enforceability of the remainder of the New Rule where a provision or application of a provision in a specific circumstance is held to be unconstitutional or invalid.

46. 20.13.2.9 (“Prohibitions on Products Containing Per- and Poly-fluoroalkyl Substances”) identifies the dates on which specific products and classes of products containing intentionally added PFAS will be prohibited for sale and distribution in the State of New Mexico.

47. 20.13.2.10 (“Exemptions”) identifies the products or classes of products which are exempt from Sections 20.13.2.11 (“Currently Unavoidable Use”), 20.13.2.12 (“Reporting Requirement”), and 20.13.2.14 (“Testing”) of the New Rule.

48. 20.13.2.11 (“Currently Unavoidable Use”) provides the directions for submitting Currently Unavoidable Use proposals to the department, the contents required in a Currently Unavoidable Use proposal, the process by which the department will consider Currently Unavoidable Use determinations made by other states, potential implications arising from claims of confidentiality in association with Currently Unavoidable Use proposals, the duration of approved Currently Unavoidable Use designations, and the means by which approved Currently Unavoidable Use designations will be made available to the public.

49. 20.13.2.12 (“Reporting Requirement”) establishes reporting requirements for manufacturers of products containing intentionally added PFAS sold, offered for sale, distributed or distributed for sale in the state as well as setting forth a process for manufacturers to request a

waiver of reporting obligations when publicly available information satisfies enumerated requirements, and outlining certain products that are exempt from the reporting requirements.

50. 20.13.2.13 ("Labeling") establishes labeling requirements for manufacturers of products containing intentionally added PFAS sold offered for sale, distributed or distributed for sale in the state as well as outlining the process for manufacturers of certain statutorily exempt products to seek a waiver from the department of the labeling requirement.

51. 20.13.2.14 ("Testing") establishes testing requirements for manufacturers to test for PFAS if there is a reasonable suspicion that the product contains intentionally added PFAS as well as establishing the department's authority to test products for PFAS under the same circumstances.

52. 20.13.2.15 ("Reporting Fees") requires manufacturers of products containing intentionally added PFAS sold offered for sale, distributed or distributed for sale in the state to pay a reporting fee in accordance with 20.13.2.16.

53. 20.13.2.16 ("Reporting Fee Schedule") establishes a schedule of reasonable fees for the department's processing and review of required reports related to products containing intentionally added PFAS sold offered for sale, distributed or distributed for sale in the state as required by 20.13.2.12.

54. 20.13.2.17 ("Currently Unavoidable Use Designation Application Fees") requires manufacturers that apply to designate the use of a PFAS in a product as a currently unavoidable use to pay a fee to the department in accordance with 20.13.2.18.

55. 20.13.2.18 ("Currently Unavoidable Use Designation Application Fee Schedule") establishes a schedule of reasonable fees for the department's processing and review of currently unavoidable use applications submitted to the department by manufacturers pursuant to 20.13.2.11.

56. 20.13.2.19 (“Label Waiver Application Fee”) requires manufacturers that apply for a label waiver for a product to pay a fee to the department in accordance with 20.13.2.20.

57. 20.13.2.20 (“Label Waiver Application Fee Schedule”) establishes a schedule of reasonable fees for the department’s process and review of label waiver requests submitted to the department pursuant to 20.13.2.19.

58. 20.13.2.21 (“Manner of Payment”) outlines the acceptable methods of payment for manufacturers to pay fees to the department as established in 20.13.2.15, 20.13.2.16, 20.13.2.17, 20.13.2.18, 20.13.2.19, and 20.13.2.20.

59. 20.13.2.22 (“Late Charges”) establishes reasonable fees for the department’s processing and collection of fees owed pursuant to 20.13.2.15, 20.13.2.16, 20.13.2.17, 20.13.2.18, 20.13.2.19, and 20.13.2.20 but not paid to the department by the due dates established in 20.13.2.

60. 20.13.2.23 (“Enforcement, Compliance Orders, Penalties”) outlines the department’s authority to enforce the PFAS Protection Act and 20.13.2 as well as the penalties and fees associated with violations of the PFAS Protection Act.

FEES AND PENALTIES

61. The Rule requires reporting from manufacturers and allows manufacturers to apply for a waiver from labeling, or for an exemption as a “Currently Unavoidable Use.” See 20.13.2.11 - 13 NMAC.

62. The Rule sets reporting fees, as well as application fees for a label waiver or designation as a Currently Unavoidable Use. See 20.13.2.15 - 20 NMAC.

63. The New Mexico Legislature did not provide NMED with recurring general fund revenue to implement the PFAS Protection Act. Written Testimony of James C. Kenney, NMED Exhibit 57, p. 6.

64. NMED is pursuing a fee-based approach to implement the PFAS Protection Act and proposed rule, reflecting the New Mexico Legislature's direction toward self-funded regulatory programs. Id., p. 7.

65. Beginning in 2028, these fees will be adjusted for inflation as measured from the Consumer Price Index for All Urban Consumers (CPI-U). See Section 20.13.2.16 NMAC.

66. The Board finds both the initial reporting fee of $2,500.00 and the subsequent reporting fee of $1,000.00 to be reasonable. See 20.13.2.16(A) and (B).

67. The Board finds both the $5,000.00 initial fee to apply for an exemption as a "Currently Unavoidable Use" and the $2,500.00 fee for subsequent submittals to be reasonable. See 20.13.2.18(A) and (B) NMAC.

68. The Board finds both the $2,000.00 fee to apply for a labeling waiver for an individual product and the $5,000.00 fee to apply for a label waiver for a class of products to be reasonable. See 20.13.2.20(A) and (B) NMAC.

69. The Board finds that NMED is authorized to charge these fees under the Environmental Improvement Act, Section 74-1-6(J), NMSA, 1978 and the Department of Environment Act, Section 9-7A-6(C) and (D).

70. The fees are necessary to fund these exemption and waiver programs, and to avoid shifting even more of the cost of PFAS regulation onto New Mexico taxpayers. See Written Testimony of James C. Kenney, NMED Exhibit 57, p. 7.

71. The Board finds the maximum civil penalty of $15,000.00 for violations of the PFAS Protection Act or the rule, as well as the $25,000.00 penalty for each day of continued non-compliance with an order issued by NMED, to be reasonable.

CHANGES FROM THE REBUTTAL RULE TO THE FINAL RULE

72. In response to public comments and stakeholder input, NMED proposed a number of changes to the final rule from the version submitted with rebuttal testimony (known as the "Rebuttal Rule"). The Board finds that these changes greatly simplify the labeling requirements and reduce the regulatory burden on manufacturers.

73. NMED removed the requirements for additional text and a web address in Sections 20.13.2.13.C(1) and D(1) NMAC, so that the required label is now simply, "[T]he outline of an Erlenmeyer flask with the word 'PFAS' inside the flask."

74. NMED added rule language throughout Subsection D of 20.13.2.13 NMAC to specify that labels for complex durable goods are to be placed only on the "consumer-facing" specification sheet and the "consumer facing" operation and maintenance manuals.

75. NMED removed the requirement to list specific parts containing intentionally added PFAS from the specification sheet for complex durable goods.

76. NMED removed the requirement for a permanent label to be affixed to a product for the useful life of the product.

77. The Board considered these proposed changes during deliberations on March 6, 2026, and March 23, 2026.

78. On March 6, 206, the Board discussed whether PFAS should be regulated as a class. *See* Tr. Vol. V 1481:22 to 1490:7. Following these discussions, the majority of the Board expressed that they supported regulating PFAS as a class. *See* Tr. Vol. V 1491:22.

79. During deliberations on March 6, 2026, the Board discussed NMED's suggested revisions to the labeling rule language discussed above and noted that proposed changes create simplified labeling requirements for all products including complex durable goods, and that the

changes were responsive to comments made by CPMC. *See* Tr. Vol. V 1500:16 to 1517:10. The Board was in agreement with simplifying the labeling requirements as proposed by NMED. Tr. Vol. V 1517:08 to 1517:10.

80. Throughout the discussions of NMED's suggested revisions to the labeling requirements, the majority of the Board expressed support for the proposed revisions. *See* Tr. Vol. V 1502:24 to 1503:11; 1505:14 to 1505:24; 1506:08 to 1506:15; 1509:08 to 1509:14; 1509:18 to 1510:06; 1511:02 to 1511:17; 1512:05 to 1513:01; 1514:02 to 1515:01; 1516:08 to 1516:17.

81. For these reasons, and those stated on the record during deliberations, the Board finds that each of these changes, as well as other minor wording changes throughout the rule, are supported by evidence in the administrative record.

ADOPTION OF RULE LANGUAGE

82. The Board adopts the Rule as proposed by the Department in NMED Attachment A to NMED's Statement of Reasons and Proposed Order filed March 5, 2026, except as expressly changed herein.

83. Adoption of the Rule creates a new Chapter 13, Part 2, in Title 20 of the New Mexico Administrative Code.

ACC'S FINAL PROPOSED CHANGES TO NMED'S REBUTTAL RULE

84. On March 5, 2026, ACC filed its Proposed Statement of Reasons and included its final proposed rule language in ACC Exhibit 7. *See* American Chemistry Council's Proposed Statement of Reasons (filed 3/5/26) ("ACC's Proposed S.O.R.").

85. In ACC Exhibit 7, ACC proposed removing the word "FEES" from the title of PART 2. *Id.*

86. The Board considered this proposed revision during deliberations. *See* Tr. Vol. V 1519:25 to 1520:22. The Board rejected the proposed revision because the Board found that it had the authority to pass rules regarding fees. *Id*.

87. In ACC Exhibit 7, ACC proposed removing the definition of consumer from 20.13.2.7(D) NMAC. *See* ACC's Proposed S.O.R.

88. The Board considered this proposed revision during deliberations. *See* Tr. Vol. V 1520:23 to 1522:16. The Board rejected this proposed revision because the term "consumer" is used throughout the New Rule, and removing the term consumer would result in an undefined term. *Id*.

89. In ACC Exhibit 7, ACC proposed adding 20.13.2.9, to Section 20.13.2.10 Exemptions. *See* ACC's Proposed S.O.R.

90. The Board considered this proposed revision during deliberations. *See* Tr. Vol. V 1522:17 to 1523:21. The Board rejected this proposed revision because they determined that it would not add any clarity to the New Rule and would add some confusion. *Id*.

91. In ACC Exhibit 7, ACC proposed changing the date for the beginning of the labeling requirement in 20.13.2.13(A) from January 1, 2027, to January 1, 2028. *See* ACC's Proposed S.O.R.

92. The Board considered this proposed revision during deliberations. *See* Tr. Vol. VI 1589:6 to 1593:20; Tr. Vol. V 1523:22 to 1528:11. The Board discussed the proposed revision with some members expressing support. Discussions in support of the bill included the opinion that it would help manufacturers with supply chain lead times, processes, and inventory. *See* Tr. Vol. V 1524:11-17. Discussions with respect to not accepting the proposed revisions included the opinion that because the labeling requirements were simplified through revisions to the rule, the

deadline of January 1, 2027, should remain the same. *See* Tr. Vol. 1589:6 to 1590:3. Ultimately, the Board rejected this proposed revision in a roll call vote in which a motion to adopt the revision failed in a vote of 2 in support and 3 against. *Id*. at 1593:17 to 1594:11.

93. In ACC Exhibit 7, ACC proposed adding a new subparagraph 20.13.2.13(B)(5) which would add "products listed in Section 20.13.2.10 of this rule" to the labeling exemptions. *See* ACC's Proposed S.O.R.

94. The Board considered this proposed revision during deliberations. *See* Tr. Vol. VI 1594:24 to 1599:7. The Board discussed the proposed revision with those in support of rejecting the revision expressing an opinion that because there are already specific products excluded from labeling such as veterinary products and medical devices, additional products should not be excluded from the labeling requirement. *Id*. at 1596:15 to 1597:17. Further, those in support of rejecting the proposed revision expressed the opinion that labeling should be as broad as possible so that the public knows what items have PFAS and what items do not. *Id*. at 1597:2-7. There was also discussion about the technical testimony provided with respect to the manufacturing of products containing PFAS as well as the end of the life of a product through incineration or incomplete incineration and the environmental impacts of that. *Id*. at 1597:8-17. The Board voted unanimously in support of a motion to reject this proposed revision. *Id*. at 1599:8 to 1600:7.

CPMC'S AND AAI'S PROPOSED CHANGES TO NMED'S REBUTTAL RULE

95. On March 5, 2026, CPMC and AAI filed their Proposed Order and Statement of Reasons and included their final proposed rule language in Attachment A. *See* Complex Products Manufacturers Coalition and the Alliance for Automotive Innovation's Proposed Order and Statement of Reasons (filed 3/5/26)("CPMC and AAI's Proposed Order and S.O.R.").

96. In CPMC and AAI's Attachment A, they proposed changing the definition of consumer in 20.13.2.7 to "consumer" means one who seeks or acquires by purchase or lease, any consumer product as that term is defined in Section 2 of the Per- and Poly-Fluoroalkyl Substances Protection Act, Section 74-15-2 NMSA 1978[.]" *See* Attachment A, p. 2, of CPMC and AAI's Proposed Order and S.O.R.

97. The Board considered this proposed change during deliberations on March 6, 2026, and found that CPMC and AAI's proposed definition of "consumer" used fewer words and was consistent with the PFAS Protection Act. The Board voted to adopt this proposed change during deliberations on March 6, 2026. *See* Tr. Vol. V 1533:11 to 1539:4.

0. In CPMC and AAI's Attachment A, they proposed adding a new paragraph Q to 20.13.2.7 which states "watercraft" means any contrivance used or designed for navigation on water including but not limited to any vessel, ship, boat, motor vessel, personal watercraft, steam vessel, vessel operated by machinery either permanently or temporarily affixed, motorboat, sailboat, barge, tugboat and rowboat. *See* Attachment A, p. 2, of CPMC and AAI's Proposed Order and S.O.R.

98. The Board considered this proposed change during deliberations on March 6, 2026. The Board discussed the fact that watercraft is used elsewhere in the New Rule, and that the language was all-encompassing with respect to including language "used or designed for navigation on water including but not limited to." The Board also discussed that the proposed revision included more specific language about what constitutes a watercraft. The Board voted to adopt the proposed change during deliberations on March 6, 2026. *See* Tr. Vol. V 1539:6 to 1541:23.

99. In CPMC and AAI's Attachment A, they proposed revising 20.13.2.10(G) by adding "and is not covered by Subsection A or L of this section. Textile articles contained in motor vehicles that require the use of intentionally added per- or poly-fluoroalkyl substances to meet federal motor vehicle safety standards are exempted by Subsection A of this section[.]" *See* Attachment A, p. 4, of CPMC and AAI's Proposed Order and S.O.R.

100. The Board considered this proposed revision during deliberations on March 6, 2026. *See* Tr. Vol. V 1545:8 to 154. The Board discussed that there is already a catchall in Paragraph A that covers the preemption issues and that they did not need to specify further exemptions. *Id*. at 1544:8-22. The Board rejected this proposed revision. *Id*. at 1544:18 to 1545:7.

101. In CPMC and AAI's Attachment A, they proposed revising 20.13.2.10(H) by adding "low speed personal transportation vehicle, golf car[.]" *See* Attachment A, p. 4, of CPMC and AAI's Proposed Order and S.O.R.

102. The Board considered this proposed revision during deliberations on March 6, 2026. *See* Tr. Vol. V 1545:8 to 1546:16. The Board discussed the fact that there is already a catch all for "any other motor vehicle," and that whether a golf cart was exempt could be addressed in a guidance document. *Id*. The Board rejected this proposed revision. *Id*. at 1546:3-18.

103. In CPMC and AAI's Attachment A, they proposed revising 20.13.2.10(I) by adding "marine accessories and marine equipment regulated by the Federal Boat Safety Act, 46 U.S.C. 43[.]" *See* Attachment A, p. 4, of CPMC and AAI's Proposed Order and S.O.R.

104. The Board considered this proposed revision during deliberations on March 6, 2026. *See* Tr. Vol. V 1546:17 to 1547:5. The Board discussed that they thought that this was covered under Paragraph A because it was preempted by federal law. *Id*. The Board rejected this proposed revision. *Id*. at 1547:4-10.

105. In CPMC and AAI's Attachment A, they proposed revising 20.13.2.11(A)(4)(i) as follows:

> 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 either that an applicable statute or regulation specifically states that per- or poly-fluoroalkyl substances or a specific per- or polyfluoroalkyl substance is required to be present in the product, not or 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[.]

See Attachment A, p. 6, of CPMC and AAI's Proposed Order and S.O.R.

106. The Board considered this proposed revision during deliberations on March 6, 2026. *See* Tr. Vol. V 1547:11 to 1548:9. The Board discussed that they wanted to know how PFAS is being used for CUU designation requests and the standards manufacturers are meeting. *Id*. at 1547:11 to 1548:4. The Board rejected this proposed revision. *Id*. at 1548:2-9.

107. In CPMC and AAI's Attachment A, they proposed revising 20.13.2.11(C) as follows:

> Should a proposal for a currently unavoidable use determination contain claims of trade secret or confidentiality, the department may evaluate and determine that whether there is insufficient sufficient publicly available information to evaluate support a final determination on the proposal. The department strongly recommends that all proposals for currently unavoidable use determinations do not contain claims of confidentiality.

See Attachment A, p. 8, of CPMC and AAI's Proposed Order and S.O.R.

108. The Board considered this proposed revision during deliberations on March 6, 2026. *See* Tr. Vol. V 1548:10 to 1549:24. The Board discussed the proposed revision and stated that they did not think that CPMC's proposed language was strong enough. *Id*. at 1549:4-15. The Board rejected this proposed revision. *Id*. at 1549:14-24.

110. In CPMC and AAI's Attachment A, they proposed revising 20.13.2.12(B)(3) as follows:

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

See Attachment A, p. 9, of CPMC and AAI's Proposed Order and S.O.R.

111. The Board considered this proposed revision during deliberations on March 6, 2026. *See* Tr. Vol. V 1549:25 to 1550:20. The Board discussed the fact that CPMC did not present any testimony with respect to the proposed revision during the hearing and that CPMC's NOI did

not contain anything related to the proposed revision. *Id*. The Board rejected this proposed revision. *Id*. at 1550:21 to 1551:1.

112. In CPMC and AAI's Attachment A, they proposed changing the date for the requirement of labeling in 20.13.2.13(A) from January 1, 2027, to January 1, 2028. *See* Attachment A, p. 11, of CPMC and AAI's Proposed Order and S.O.R.

113. The Board considered this proposed revision during deliberations. *See* Tr. Vol. VI 1589:6 to 1593:20; Tr. Vol. V 1523:22 to 1528:11. The Board discussed the proposed revision with some members expressing support. Discussions in support of the bill included the expression of the opinion that it would help manufacturers with supply chain lead times, processes, and inventory. *See* Tr. Vol. V 1524:11-17. Discussions with respect to not accepting the proposed revisions included the opinion that because the labeling requirements were simplified through revisions to the rule, the deadline of January 1, 2027, should remain the same. *See* Tr. Vol. 1589:6 to 1590:3. Ultimately, the Board rejected this proposed revision in a roll call vote in which a motion to adopt the revision failed in a vote of 2 for and 3 against. *Id*. at 1593:17 to 1594:11.

114. In CPMC and AAI's Attachment A, they proposed revising 20.13.2.13(B) as follows:

> Labeling exemptions. The labeling requirements of this rule do not apply to:
>
> (1) used products offered for sale or resale;
>
> (2) <u>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</u>

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

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

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

(6) motor vehicles and motor vehicle equipment regulated by the Federal Motor Vehicle Safety Standards.

(7) Watercraft, including marine accessories and marine equipment regulated by the Federal Boat Safety Act, 46 U.S.C. 43, an aircraft, a lighter-than air aircraft or a sea-plane.

(8) 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.

9) A product 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.

See Attachment A, pp. 11-12, of CPMC and AAI's Proposed Order and S.O.R.

115. The Board considered these proposed revisions during deliberations. *See*. Tr. Vol. VI 1600:8 to 1604:24. The Board discussed the proposed revisions, and some members expressed opinions in favor of rejecting the proposed revisions because this section of the New Rule was consistent and supported by the record. *Id*. at 1602:16 to 1603:17. The Board voted on a motion to reject these proposed revisions and the motion passed with 3 voting in favor of rejecting the proposed revisions and 2 against. *Id*. at 1603:23 to 1605:14.

116. In CPMC and AAI's Attachment A, they proposed revising 20.13.2.13(D) as follows:

> Labeling of complex durable goods with intentionally added per- or poly-fluoroalkyl substances. Prior to sale of a consumer facing 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 statement label indicating the presence of intentionally added per- or polyfluoroalkyl substances and/or component parts with intentionally added per or poly fluoroalkyl substances shall be included in the in the consumer facing specification sheet, and other product labeling information available to potential consumers prior to purchase. The specification sheet and other product labeling information shall include a symbol. The symbol label shall be an outline in the form of a symbol comprised of an outline of an Erlenmeyer flask with the word "PFAS"

inside the flask. The label may also include the following words directly adjacent to the flask: “This product is made with PFAS,” “Made with PFAS” or “Contains PFAS.”

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

(43) The operation and maintenance A consumer facing manual associated with the complex durable good shall include shall also include a symbol label in the form as described in 20.13.2.13.D.1 of this rule indicating the presence of intentionally added per- or poly fluoroalkyl substances and/or component parts with intentionally added per or poly fluoroalkyl substances,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 or poly-fluoroalkyl substances.

(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.

(64) 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.

See Attachment A, pp. 12-13, of CPMC and AAI’s Proposed Order and S.O.R.

0. The Board considered these proposed revisions during deliberations. *See*. Tr. Vol. V 1559:7 to 1560:3. The Board discussed these proposed revisions and determined that they already accepted NMED's proposed language in 20.13.2.13(D), so they did not need to take further action on this. *See* 1560:6 to 1562:1.

117. In CPMC and AAI's Attachment A, they proposed revising 20.13.2.13(E) as follows:

Consistency with other states. The manufacturer of a product with intentionally added per- or polyfluoroalkyl substances may comply with the labeling requirements of this rule by labeling all units or, as applicable, consumer facing specification sheets and consumer facing manuals, of theproduct 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.

See Attachment A, p. 13, of CPMC and AAI's Proposed Order and S.O.R.

119. The Board considered these proposed revisions during deliberations. *See* Tr. Vol V 1562:2-19. The Board discussed that to be consistent with other states, the proposed revisions should be rejected. *Id*. at 1562:9-19.

120. In CPMC and AAI's Attachment A, they proposed revising 20.13.2.13(F) as follows:

The department may waive the obligation of a manufacturer to label a product or product class as required by this section <u>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.</u> 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.

See Attachment A, p. 13, of CPMC and AAI's Proposed Order and S.O.R.

121. The Board considered these proposed revisions during deliberations. *See* Tr. Vol V 1562:20 to 1564:6. The Board discussed the proposed revisions and that they did not support striking the language as proposed by CPMC because the items are safeguards and that they wanted to leave the language in the New Rule for the manufacturers with regard to applying for waivers. *Id*. 1563:21-25. The Board rejected these proposed revisions. *Id*. at 1564:1-6.

122. In CPMC and AAI's Attachment A, they proposed revising 20.13.2.14 as follows:

> TESTING: If <u>there is reasonable suspicion the department has reason to believe</u> 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.

See Attachment A, p. 14, of CPMC and AAI's Proposed Order and S.O.R.

123. The Board considered this proposed revision during deliberations. Tr. Vol V 1564:7-22. The Board discussed the fact that CPMC did not present any testimony with respect to the proposed revision during the hearing and that CPMC's NOI did not contain anything related to the proposed revision. *Id*. at 1564:7-12. The Board rejected this proposed revision. *Id*. at 1564:21 to 1565:3.

124. In CPMC and AAI's Attachment A, they proposed revising 20.13.2.14(B)(1) as follows:

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

See Attachment A, p. 14, of CPMC and AAI's Proposed Order and S.O.R.

125. The Board considered this proposed revision during deliberations. Tr. Vol V 1565:4 to 1565:19. The Board discussed the fact that CPMC did not present any testimony with respect to the proposed revision during the hearing and that CPMC's NOI did not contain anything related to the proposed revision. *Id*. at 1565:4-15. The Board rejected this proposed revision. *Id*. at 1565:16-20.

126. In CPMC and AAI's Attachment A, they proposed revising 20.13.2.18(A) by changing 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 from $5,000 to $2,500. *See* Attachment A, p. 15, of CPMC and AAI's Proposed Order and S.O.R.

127. The Board considered this proposed revision during deliberations. Tr. Vol V 1566:15 to 1569:8. The Board discussed their opinion that Secretary James C. Kenney provided testimony that made a good case about fees that are required to run the program. *Id*. at 1568:22 to 1569:8. The Board rejected this proposed revision. *Id*. at 1569:9-14.

128. In CPMC and AAI's Attachment A, they proposed revising 20.13.2.18(B) by changing the fee for the New CUU determination to designate a per- or poly-fluoroalkyl substance in a product from $2,500 to $500. *See* Attachment A, p. 15, of CPMC and AAI's Proposed Order and S.O.R.

129. The Board considered this proposed revision during deliberations. Tr. Vol V 1566:15 to 1569:8. The Board discussed their opinion that Secretary James C. Kenney provided testimony that made a good case about fees that are required to run the program. *Id*. at 1568:22 to 1569:8. The Board rejected this proposed revision. *Id*. at 1569:9-14.

CONCLUSIONS OF LAW

130. The Board has the authority to adopt the New Rule and associated fees pursuant to the Environmental Improvement Act, NMSA 1978, Sections 74-1-8 (2024) and 74-1-9 (1985), the Department of Environment Act, NMSA 1978, Section 9-7A-6(C) and (D), and the Per- and Poly-Fluoroalkyl Substances Protection Act, NMSA 1978, Section 74-15-1, *et seq*.

131. In considering the New Rule, the Board is required by the Environmental Improvement Act, NMSA 1978, Section 74-1-9 (1985), to give weight it deems appropriate to all

facts and circumstances, including but not limited to (1) character and degree of injury to or interference with health, welfare, animal and plant life, property and the environment; (2) the public interest, including the social, economic and cultural value of the regulated activity and the social, economic and cultural effects of environmental degradation; and (3) technical practicability, necessity for and economic reasonableness of reducing, eliminating or otherwise taking action with respect to environmental degradation.

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

133. The PFAS Protection Act, at Section 74-15-4(A), mandates that the Board shall adopt rules to: (a) exempt from the reporting requirements any product that contains intentionally added PFAS that is exempt pursuant to Section 74-15-3(A) of the PFAS Protection Act or that has been designated as a currently unavoidable use; (b) create a series of ranges for the amount of PFAS in a product that contains intentionally added PFAS for reporting purposes unless exempted in Section 74-15-3(A) of the PFAS Protection Act; and (c) identify currently unavoidable uses of PFAS that are essential for health, safety or the functioning of society and for which alternatives are not reasonably available unless exempted in Section 74-15-3(A) of the PFAS Protection Act.

134. The PFAS Protection Act, at Section 74-15-5(A), mandates that the Board shall also adopt rules that enumerate the information required of a manufacturer of a product containing intentionally added PFAS.

135. Additionally, the PFAS Protection Act provides that, pursuant to Section 74-15-4(B), the Board may adopt rules to carry out the provisions of the PFAS Protection Act, including requiring the labeling of products in English and Spanish.

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

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

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

139. The Board finds that all public notice and procedural requirements were met for this rulemaking.

FINAL ORDER

By a majority vote of a quorum of the Board's members, the proposed adoption of New Rule 20.13.2 NMAC, Prohibitions on Products Containing Per- or Poly-Fluoroalkyl Substances; Currently Unavoidable Use; Reporting; Labeling; Testing; Fees and Penalties, as contained in NMED's Final Proposed Rule filed with the Board on March 5, 2026, with the changes discussed herein was approved by the Board on March 23, 2026. New Rule 20.13.2 NMAC shall be filed with the New Mexico State Records Center and Archives as expeditiously as possible by the department.

SIGNED this 4/17/2026 day of April, 2026.

Signed by:
Sandra Ely
082D398BC8A643F...

Sandra Ely, Chair
New Mexico Environmental Improvement Board

NMAC Transmittal Form

NEW MEXICO
State Records Center and Archives
COMMISSION OF PUBLIC RECORDS
Your Access to Public Information

Volume: XXXVII **Issue:** 9 **Publication date:** 05/05/2026 **Number of pages:** 13 **(ALD Use Only) Sequence No.**

Issuing agency name and address: New Mexico Environment Department, 1190 S. St. Francis Drive, Suite N4050, Santa Fe, NM 87505

Agency DFA code: 667

Contact person's name: Greg Smithkier

Phone number: 505-531-7736

E-mail address: gregory.smithkier@env.nm.gov

Type of rule action:

New [✓] Amendment [ ] Repeal [ ] Emergency [ ] Renumber [ ]

(ALD Use) Recent filing date:

Title number: 20

Title name: Environmental Protection

Chapter number: 13

Chapter name: Per- and Poly-Fluoroalkyl Substances in Consumer Products

Part number: 2

Part name: Prohibitions on Products Containing Per- and Poly-Fluoroalkyl Substances; Currently Unavoidable Use; Reporting; Labeling; Testing; Fees and Penalties

Amendment description (If filing an amendment):

Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference?

Yes [ ] No [X]

Please list attachments or Internet sites if applicable.

N/A

If materials are attached, has copyright permission been received? Yes [ ] No [ ] Public domain [ ]

Specific statutory or other authority authorizing rulemaking:

NMSA 1978, Sections 74-1-1, et seq.
NMSA 1978, Sections 74-15-1, et seq.
NMSA 1978, Sections 9-7A-1, et seq.

Notice date(s): December 23, 2025

Hearing date(s): February 23, 2026, to February 26, 2026

Rule adoption date: April 17, 2026

Rule effective date: July 1, 2026

Concise Explanatory Statement For Rulemaking Adoption:

Findings required for rulemaking adoption:

Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;

- Reasons for any change between the published proposed rule and the final rule; and

- Reasons for not accepting substantive arguments made through public comment.

See attached Statement of Reasons and Concise Explanatory Statement.

Issuing authority (If delegated, authority letter must be on file with ALD):
Name:

Sandra Ely

Check if authority has been delegated ☐

Title:

Environmental Improvement Board Chair

Signature: (BLACK ink only OR Digital Signature)

Signed by:
Sandra Ely
[illegible]

Date signed:

4/17/2026

STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD

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

No. EIB 25-61 (R)

New Mexico Environment Department, Office of Strategic Initiatives
Petitioner.

FINAL ORDER AND STATEMENT OF REASONS

This matter comes before the New Mexico Environmental Improvement Board ("Board") upon a petition filed by the New Mexico Environment Department ("NMED") on October 8, 2025, proposing the adoption of 20.13.2 NMAC – Per- and Poly-Fluoroalkyl Substances in Consumer Products.

An evidentiary hearing was held February 23, 2026, through February 26, 2026, in Santa Fe, New Mexico. All interested persons had an opportunity to submit data, views, and arguments and to examine witnesses testifying at the hearing.

Persons and organizations participating as a party in addition to Petitioner included CropLife America and the American Chemistry Council ("ACC"), represented by Dalva L. Moellenberg, Anthony J. Trujillo, and Serafina I. Seluja, PFAS Pharmaceutical Working Group ("PPWG"), represented by Stuart R. Butzier, Stan N. Harris, and Benjamin C. Rossi, Alliance for Automotive Innovation ("AAI") and Complex Products Manufacturers Coalition ("CPMC"), represented by Rebecca J. Fiebig and Martha Marrapese, and Bruce Wetherbee with The Candle. Petitioner was represented by Gregory S. Smithkier, Mark F. Rosebrough, and Andrew P. Knight from the NMED Office of General Counsel. Eduardo Ugarte II of the New Mexico Department

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

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

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

20.13.2.3 STATUTORY AUTHORITY: Statutory authority comes from the Environmental Improvement Act, Sections 74-1-1 NMSA 1978 et seq., the Per- and Poly-Fluoroalkyl Substances Protection Act, Sections 74-15-1 NMSA 1978 et seq., and the Department of Environment Act, Sections 9-7A-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, fees, and administrative costs paid are for deposit into the recycling and illegal dumping 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 one who seeks or acquires by purchase or lease, any consumer product as that term is defined in Section 2 of the Per- and Poly-Fluoroalkyl Substances Protection Act, Section 74-15-2 NMSA 1978;

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 class"** means a group of products that share similar essential physical characteristics, function and may be substitutable;

K. **"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;

L. **"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;

M. **"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;

N. **"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 ten 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;

O. **"Substantially equivalent information"** means information that the department can reasonably identify as conveying the same information required in Section 20.13.2.12 NMAC 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;

P. **"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;

Q. **"Watercraft"** means any contrivance used or designed for navigation on water including but not limited to any vessel, ship, boat, motor vessel, personal watercraft, steam vessel, vessel operated by machinery either permanently or temporarily affixed, motorboat, sailboat, barge, tugboat and rowboat.

[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 Subsection A through C of this section.

A. Except as provided in Section 20.13.2.10 NMAC 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 NMAC 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 NMAC 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 20.13.2.10 NMAC 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 NMAC 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 NMAC 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 NMAC 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 NMAC, 20.13.2.12 NMAC, and 20.13.2.14 NMAC (limited to medical devices outlined in Subsection C of this Section) 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, Subpart G of 40 CFR Part 82, 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;

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.

Q. A pesticide that is regulated by or under the jurisdiction of the Federal Insecticide, Fungicide, and Rodenticide Act.

[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., North American Industry Classification System (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:

(a) The chemical name, and

(b) 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:

(a) 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;

(b) If applicable, the universal product code, stock keeping unit or other numeric code assigned to the product; and

(c) 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:

(a) 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

(b) 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:

(a) 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;

(b) An assessment of how the materials above meet or fail to meet the criteria identified in Subparagraph (b) of Paragraph (4) of Subsection A of Section 20.13.2.11 NMAC of this rule;

(c) An assessment if materials identified in Subparagraph (a) of Paragraph (5) of Subsection A of Section 20.13.2.11 NMAC of this rule are anticipated to be available in sufficient quantities to meet production needs without regard to cost;

(d) 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;

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

(f) 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 Subsection A of Section 20.13.2.11 NMAC 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;

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

(b) 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 Paragraph (6) of Subsection A of Section 20.13.2.11 NMAC of this rule and similar products are available for sale, offered for sale, distributed or distributed for sale;

(a) 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

(b) 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;

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

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

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

(d) 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

(e) A description of the product's fate at the end of its lifecycle including;

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

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

iii. 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 Subsection A of Section 20.13.2.11 NMAC of this rule.

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 Paragraphs (1) through (10) of Subsection A of Section 20.13.2.11 NMAC 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 Paragraph (4) of Subsection A of Section 20.13.2.12 NMAC of this rule to be considered complete, all manufacturers subject to the agreement must submit the fee required under Subsection A of Section 20.13.2.16 NMAC 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 substance 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 CASRN 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.

(a) Less than 100 ppm (0.01 percent);

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

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

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

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

(f) 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 30 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:

(a) Information contained in Paragraph (4) of Subsection B of Section 20.13.2.12 NMAC of this rule;

(b) A description of the products or components for which a waiver is requested;

(c) A list of requirements under Subsection B of Section 20.13.2.12 NMAC of this rule for which the manufacturer seeks a waiver;

(d) A description of the publicly available records that contain substantially equivalent information to the information required under Subsection B of Section 20.13.2.12 NMAC of this rule.

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

(f) A manufacturer or group of manufacturers must submit the waiver request to the department at least 30 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 30 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:

(a) Information contained in Paragraph (4) of Subsection B of Section 20.13.2.12 NMAC of this rule;

(b) The reason for the extension request, including a detailed explanation of the circumstances that prevent timely submission;

(c) 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

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 30 days before the reporting due date established in Subsection B of Section 20.13.2.12 NMAC of this rule. The request must include documentation demonstrating that the extension is justified, based on the materials submitted under Subsection B of Section 20.13.2.12 NMAC 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 Paragraph (1) of Subsection F of Section 20.13.2.12 NMAC of this rule, the department will grant a 90-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 Subsection B of Section 20.13.2.12 NMAC of this rule within 30 days after the notice of denial or by the established reporting due date, whichever is later.

G. Within 60 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 30 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 NMAC of this rule or that have been designated as a currently unavoidable use pursuant to Section 20.13.2.11 NMAC of this rule.

[20.13.2.12 NMAC – N, 07/01/2026]

20.13.2.13 LABELING:

A. Labeling required. Unless exempted under Subsection B of Section 20.13.2.13 NMAC of this rule, after January 1, 2027, a manufacturer may not manufacture for sale or distribution 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 Subsections C and D of Section 20.13.2.13 NMAC of this rule, as applicable;

(2) Documents in accordance with Subsection E of Section 20.13.2.13 NMAC 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:

(1) Used products offered for sale or resale;

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

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

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

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 are exempt from the requirements of this section and are addressed in Subsection D of Section 20.13.2.13 NMAC of this rule.

(1) The label must clearly inform the consumer that the product contains intentionally added per- and poly-fluoroalkyl substances. The label shall be an outline of an Erlenmeyer flask with the word "PFAS" inside the flask. 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 to the product.

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

(5) The manufacturer shall apply any product and package labels required under this section unless the wholesaler or retailer agrees in writing 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, the manufacturer shall conform to the information requirements of this section.

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

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

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

(4) 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 90 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 NMAC of this rule, 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 NMAC of this rule;

(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.

(5) 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 NMAC, 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 NMAC 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 NMAC of this rule or has not labeled the product in accordance with Section 20.13.2.13 NMAC 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 30 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:

(a) Less than 100 ppm (0.01 percent);

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

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

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

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

(f) 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 30 days the manufacturer must:

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

B. The fee for each instance of subsequent reporting following a significant change pursuant to Subsection C of Section 20.13.2.12 NMAC 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 LABEL WAIVER APPLICATION FEE: Manufacturers that apply for a waiver for the requirement to label a product containing intentionally added per- or poly-fluoroalkyl substances shall pay a fee to the department in accordance with the provisions of this part.

[20.13.2.19 NMAC – N, 07/01/2026]

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

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

B. 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.

[20.13.2.20 NMAC – N, 07/01/2026]

20.13.2.21 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.

[20.13.2.21 NMAC – N, 07/01/2026]

20.13.2.22 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 deposited in the recycling and illegal dumping fund and are independent of any penalties assessed under the act.

[20.13.2.22 NMAC – N, 07/01/2026]

20.13.2.23 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 30 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 recycling and illegal dumping fund.

[20.13.2.23 NMAC – N, 07/01/2026]

HISTORY OF 20.13.2 NMAC: [RESERVED]