

Environmental  
Improvement Board  
RECEIVED  
December 22, 2025  
*Pamela Jones*

STATE OF NEW MEXICO  
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD

**IN THE MATTER OF PROPOSED  
AMENDMENTS TO 20.4.1 NMAC –**

*Modifications, Exceptions and Omissions related  
to Aqueous Film Forming Foam, AND  
20.4.3 NMAC – Hazardous Waste Fees, AND  
THE ADOPTION OF 20.13.3 NMAC - Aqueous  
Film Forming Foam Containing Intentionally Added PFAS*

**No. EIB 25-81**

**Hazardous Waste Bureau,  
Resource Protection Division,  
New Mexico Environment Department,**

*Petitioner.*

**PETITION TO AMEND 20.4.1 NMAC AND 20.4.3 NMAC OF THE HAZARDOUS  
WASTE REGULATIONS AND TO ADOPT 20.13.3 NMAC AND REQUEST FOR  
HEARING**

The Hazardous Waste Bureau (“HWB”), within the Resource Protection Division of the New Mexico Environment Department (“Department”), pursuant to 20.1.1.300 NMAC, respectfully petitions the Environmental Improvement Board (“Board”) to amend 20.4.1 NMAC, *Modifications, Exceptions and Omissions related to Aqueous Film Forming Foam*, and 20.4.3 NMAC, *Hazardous Waste Fees*, and to adopt 20.13.3 NMAC, *Aqueous Film Forming Foam Containing Intentionally Added PFAS*. As required by 20.1.300(B) NMAC, the Department’s statement of reasons in support of this Petition is attached as **Exhibit A**. The text of the amended rules at 20.4.1 NMAC is attached as **Exhibit B**. The text of the amended rules at 20.4.3 NMAC is attached as **Exhibit C**. The text of new rule at 20.13.3 NMAC is attached as **Exhibit D**.

The Department respectfully requests that the Board consider this Petition at its regular meeting on January 23, 2026. *See* NMSA 1978, § 74-1-9(A) (“the Board shall determine within 60 days whether to hold a hearing for the proposed regulation”); *see also* 20.1.1.300(C) NMAC

(“the board shall determine, at a public meeting occurring at least 15 days and no later than 60 days, after receipt of the petition, whether or not to hold a public hearing on the proposal.”).<sup>1</sup> The Department respectfully requests approximately 20 minutes for the Department to present this Petition. The Department respectfully requests the Board agree at the meeting to hold a hearing on this Petition and its proposal to adopt **Exhibits B, C, and D**, amended rules 20.4.1 NMAC. 20.4.3 NMAC and the new rule at 20.13.3 NMC. The Department respectfully requests the Board issue orders pursuant to 20.1.1.300(D) NMAC for a hearing on the proposed amended rules 20.4.1 NMAC and 20.4.3 NMAC and the proposed new rule of 20.13.3 NMAC by January 28, 2026.<sup>2</sup>

The Department anticipates that a hearing to adopt the proposed amended rules 20.4.1 NMAC, 20.4.3 NMAC and the proposed new rule at 20.13.3 NMAC will take approximately five days. The Department respectfully requests that the Board schedule the hearing to occur beginning April 13, 2026.

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

## **JURISDICTION**

The Board is authorized to adopt the proposed amendments and proposed new rule pursuant to the Environmental Improvement Act, NMSA 1978, Section 74-1-5, the Hazardous

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<sup>1</sup> Fifteen days after the filing date of this Petition is January 6, 2026.

<sup>2</sup> The New Mexico Register submittal deadline for the public notice of the hearing is January 29, 2026, which will allow for publication of the hearing notice on February 10, 2026. *See* State Records Center and Archives, 2026 New Mexico Register, Submittal Deadlines and Publication Dates, Volume XXXVII, Issues 1-24, available at <https://prod-rf-lambda.rtssaas.com/PublicFiles/d89c47bd0d70402dba89b03a22bda6d1/77e34159-2db4-467c-a7f4-9be762fb5ec7/2026%20New%20Mexico%20Register%20Schedule.pdf%20%20Size%20114.62%20KB>; *see also* 20.1.1.301(A) NMAC (public notice requirements).

Waste Act, NMSA 1978, 74-4-4, and the Per- and Poly-Fluoroalkyl Substances Protection Act, NMSA 1978, Sections 74-15-4, in accordance with the requirements and process set forth in the Environmental Improvement Act, NMSA 1978, Sections 74-1-9 and 20.1.1 NMAC.

**WHEREFORE**, the Department respectfully requests that the Board:

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

Respectfully submitted,

**NEW MEXICO ENVIRONMENT  
DEPARTMENT**

*/s/ Mark F. Rosebrough*

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STATE OF NEW MEXICO  
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*Modifications, Exceptions and Omissions related  
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**No. EIB 25-\_\_\_\_\_**

**Hazardous Waste Bureau,  
Resource Protection Division,  
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**STATEMENT OF REASONS**

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The Hazardous Waste Bureau (“HWB”) within the Resource Protection Division of the New Mexico Environment Department (“Department”), pursuant to 20.1.1.3000(B) NMAC, respectfully submits to the Environmental Improvement Board (“Board”) this Statement of Reasons as **Exhibit A** to the Petition to Amend 20.4.1 NMAC and 20.4.3 NMAC of the Hazardous Waste Regulations and to Adopt 20.13.3 NMAC (“Petition”).

## **A. ADOPTION OF REGULATIONS AT 20.13.3 NMAC PURSUANT TO THE PER-AND POLY-FLUOROALKYL PROTECTION ACT**

### **AUTHORITY AND BACKGROUND**

1. The Per- and Poly-Fluoroalkyl Protection Act (“PFAS Protection Act”) was passed by the New Mexico Legislature and signed into law by the Governor on April 8, 2025. The PFAS Protection Act is codified at NMSA 1978, Sections 74-15-1 to -7.
2. The PFAS Protection Act, at Section 74-15-4(A)(4) mandates that, as pertaining to firefighting foam<sup>1</sup>, the Board shall:
  - a. Require a periodic inventory of firefighting foam quantities stored or used in New Mexico;
  - b. Require the use of firefighting foam for emergency purposes only; and
  - c. Require the cleanup of discarded firefighting foam pursuant to the Hazardous Waste Act codified at NMSA 1978, Sections 74-4-1 to -14.
3. The Board is further authorized to adopt rules pertaining to firefighting foam pursuant to the Environmental Improvement Act, NMSA 1978, Section 74-1-5.

### **SUMMARY OF THE PROPOSED NEW RULE**

4. New Rule 20.13.3 NMAC enacts regulations requiring entities to develop an inventory that identifies and records aqueous film-forming foam (“AFFF”) products containing an intentionally added per- or poly-fluoroalkyl substance (“PFAS”) that are stored or used in New Mexico.

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<sup>1</sup> The PFAS Protection Act defines “firefighting foam” as “an aqueous film-forming foam containing an intentionally added per- or poly-fluoroalkyl substance.” NMSA 1978, § 74-15-2(L). Any use of the term “firefighting foam” in this Statement of Reasons should be construed to adhere to this definition.

5. New Rule 20.13.3 NMAC enacts regulations requiring entities to properly label containers, including tanks, totes, and drums of AFFF products containing intentionally added PFAS.

6. New Rule 20.13.3 NMAC enacts regulations requiring entities to store AFFF products in a manner consistent with federal law.

7. New Rule 20.13.3 NMAC enacts regulations requiring entities to use AFFF products containing intentionally added PFAS for emergency purposes only.

8. New Rule 20.13.3 NMAC enacts regulations requiring entities to clean up discarded AFFF products containing intentionally added PFAS pursuant to the New Mexico Hazardous Waste Act.

### **GENERAL PROVISIONS OF THE PROPOSED NEW RULE**

9. New Rule 20.13.3 NMAC creates a new Part 3 in Chapter 13 of Title 20 of the New Mexico Administrative Code with the following sections:

- a. Mandatory Sections:
  - i. 20.13.3.1 NMAC (“Issuing Agency”) identifies the Board as the issuing agency.
  - ii. 20.13.3.2 NMAC (“Scope”) identifies that the New Rule will apply to any facility that obtains, manufactures, stores, or uses firefighting foam products.
  - iii. 20.13.3.3 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 to -18, and the PFAS Protection Act, NMSA 1978, Sections 74-15-1 to -7.

- iv. 20.13.3.4 NMAC (“Duration”) indicates that the New Rule will be permanent, at least until the Board amends the rule.
- v. 20.13.3.5 NMAC (“Effective Date”) states that the effective date of the New Rule will be August 1, 2026, unless a later date is cited at the end of a section.
- vi. 20.13.3.6 NMAC (“Objective”) states that the objective of the New Rule is to enact regulations requiring entities to A) develop an inventory that identifies and records AFFF products containing intentionally added PFAS, B) properly label containers, including tanks, totes and drums of AFFF products containing intentionally added PFAS, C) use AFFF products containing intentionally added PFAS for emergency purposes only, and D) clean up discarded AFFF products containing intentionally added PFAS pursuant to the New Mexico Hazardous Waste Act.
- vii. 20.13.3.7 NMAC (“Definitions”) provides the definitions for commonly used terms in the New Rule.

- b. Section Establishing Severability: 20.13.3.8 NMAC (“Severability”) provides for enforceability of the remainder of the New Rule where a provision or application of a provision in a specific circumstance is held to be unconstitutional or invalid.
- c. Section Pertaining to the Inventory of Firefighting Foam: 20.13.3.9 (“Firefighting Foam Inventory”) describes the elements necessary in an inventory of AFFF products containing intentionally added PFAS.

- d. Section Pertaining to Labeling of AFFF products: 20.13.3.10 NMAC (“Labeling”) establishes a labeling requirement for containers of AFFF products and outlines the contents that must be on the label.
- e. Section Pertaining to Recordkeeping: 20.13.3.11 NMAC (“Record Keeping”) establishes the records which must be kept by any facility which obtains, manufactures, stores, or uses AFFF products containing intentionally added PFAS.
- f. Section Pertaining to Storage Requirements: 20.13.3.12 NMAC (“Storage Requirements”) requires that the storage of AFFF products containing intentionally added PFAS be done in a manner consistent with and pursuant to 40 C.F.R. Section 265.31, 40 C.F.R. Section 265.32, 40 C.F.R. Section 265.33, 40 C.F.R. Section 265.35, 40 C.F.R. Section 265.171, and 40 C.F.R. Section 265.177.
- g. Section Pertaining to the Emergency Use of Firefighting Foam: 20.13.3.13 NMAC (“Emergency Use of Firefighting Foam Only”) establishes that AFFF products containing intentionally added PFAS may only be used for emergency purposes in New Mexico. The section further requires that any entities which obtain, manufacture, store, or use AFFF products containing intentionally added PFAS must develop an emergency plan consisting of the elements outlined in the section.
- h. Section Pertaining to the Cleanup of Firefighting Foam: 20.13.3.14 NMAC (“Cleanup of Firefighting Foam”) requires that the cleanup of discarded firefighting foam be made pursuant to the provisions of 20.4.1 NMAC, the New Mexico Hazardous Waste Act, and the PFAS Protection Act.

**B. AMENDMENTS TO 20.4.1 NMAC – MODIFICATIONS, EXCEPTIONS AND OMMISSIONS RELATED TO AQUEOUS FILM FORMING FOAM**

**AUTHORITY AND BACKGROUND**

1. Hazardous Wastes in New Mexico are governed by the Hazardous Waste Act (HWA), which is codified at NMSA 1978, Sections 74-4-1 to -14.
2. The purpose of the HWA is to “help ensure the maintenance of the quality of the State’s Environment; to confer optimum health, safety, comfort, and economic and social well-being on its inhabitants; and to protect the proper utilization of its lands. NMSA 1978, § 74-4-2.
3. In the 2025 regular session of the New Mexico Legislature, House Bill 140 (HB 140) was passed by the New Mexico Legislature and signed into law by the Governor on April 8, 2025.
4. HB 140 amended the HWA by including “discarded aqueous film-forming foam containing intentionally added per- or polyfluoroalkyl substances” in the definition of “hazardous waste.” NMSA 1978, § 74-4-3(K)(2)(a).
5. HB 140 further amended the HWA by expanding powers of the Board to include the power to “adopt rules pertaining to aqueous film-forming foam containing intentionally added per- or polyfluoroalkyl substances pursuant to the Hazardous Waste Act.” NMSA 1978, § 74-4-4(M).
6. In addition to the amendments being proposed pursuant to the amendments to statute made by HB 140, the Department proposes various amendments to 20.4.1 NMAC to bring it into compliance with federal law and facilitate the reauthorization of the Department’s hazardous waste program by the U.S. Environmental Protection Agency (EPA).

7. Hazardous wastes are federally regulated pursuant to the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 (RCRA). 42 U.S.C. § 6901, et seq.

8. States may obtain federal authorization of state-administered hazardous waste programs by complying with the requirements outlined in 40 C.F.R. Part 271.

9. Beginning in 1990, most recently in 2010, and pursuant to 42 U.S.C. § 6926, the EPA granted final authorization to New Mexico's state-administered hazardous waste program. 40 C.F.R. § 272.1601.

10. Pursuant to the HWA, the Board "shall adopt rules for the management of hazardous waste, as may be necessary to protect public health and the environment, that are equivalent to and at least as stringent as federal regulations adopted by [the EPA] pursuant to [RCRA]." NMSA 1978, § 74-4-4(A).

11. In an effort to update its hazardous waste regulations to comply with changes in federal law, the Department proposes the amendments specified below as necessary to obtain federal reauthorization of New Mexico's state-administered hazardous waste program.

#### **SUMMARY OF AMENDMENTS TO MANDATORY PROVISIONS**

12. The amendment at 20.4.1.5 NMAC updates the effective date of the regulation.

13. The amendment at 20.4.1.102 – 20.4.1.299 clarifies the provisions of 20.4.1 NMAC that are reserved.

## **SUMMARY OF AMENDMENTS PROPOSED PURSUANT TO HB 140**

14. The amendment at 20.4.1.201(C) NMAC adds used AFFF containing PFAS to the list of hazardous wastes from non-specific sources, in addition to the list of hazardous wastes from non-specific sources incorporated from 40 C.F.R. Section 261.31(a).

15. The amendment at 20.4.1.201(D) NMAC adds unused AFFF containing PFAS to the list of hazardous waste discarded commercial chemical products, off-specification species, container residues, and spill residues, in addition to the hazardous waste discarded commercial chemical products, off-specification species, container residues, and spill residues previously incorporated from 40 C.F.R. Section 261.33(f).

16. The amendment at 20.4.1.201(E) NMAC adds hazardous constituents related to hazardous waste used AFFF to Appendix VII of 40 C.F.R. Part 261, in addition to the Basis for Listing Hazardous Waste previously incorporated from 40 C.F.R. Part 261, Appendix VII.

17. The amendment at 20.4.1.201(F) NMAC adds hazardous constituents related to hazardous waste unused AFFF to Appendix VIII Of 40 C.F.R. Part 261, in addition to the Hazardous Constituents previously incorporated from 40 C.F.R. Part 261, Appendix VIII.

18. The amendment at 20.4.1.801(C) NMAC adds treatment standards for used and unused AFFF containing PFAS to the Treatment Standards for Hazardous Wastes previously incorporated from 40 C.F.R. Section 268.40.

19. The amendment at 20.4.1.902(D) NMAC adds specific inclusions to 40 C.F.R. Section 270.1(c)(1) for on-site treatment of AFFF containing PFAS. Additionally, the amendment requires that a Permit is required for generators and any other Facilities that perform on-site treatment of AFFF containing PFAS, provided that a person is not required to

obtain a Permit for treatment or containment activities taken during an immediate cleanup response as defined in 40 C.F.R. § 270.1(3)(i).

**SUMMARY OF AMENDMENTS NECESSARY  
FOR FEDERAL REAUTHORIZATION OF  
NEW MEXICO'S STATE-ADMINISTERED HAZARDOUS WASTE PROGRAM**

20. The amendment at 20.4.1.101(C) NMAC adds 40 C.F.R. Section 260.2 to the list of federal regulatory provisions omitted from Section 20.4.1.100 NMAC and renames the remainder of the list.

21. The amendment at 20.4.1.201(A) NMAC clarifies that the substitution of “department” for the terms “EPA” or “Environmental Protection Agency” does not apply to the export of cathode ray tubes in 40 C.F.R. Sections 261.39(a)(5) and 261.41.

22. The amendment at 20.4.1.201(B) NMAC clarifies that “qualified professional engineer” as used in various sections of 40 C.F.R. Part 261 shall mean an independent New Mexico professional engineer licensed in accordance with New Mexico law.

23. The amendment at 20.4.1.301(A) NMAC addresses the distribution of responsibility governing export modification functions.

24. The amendment at 20.4.1.301(A) NMAC clarifies that the substitution of “department” for “EPA” in 20.4.1.101 NMAC does not apply to the manifest registry and electronic manifest functions set forth in 40 C.F.R. Part 262.

25. The amendment at 20.4.1.401(C) NMAC clarifies that the substitution of “department” for “EPA” in 20.4.1.101 NMAC does not apply to the electronic manifest and export notification functions set forth in 40 C.F.R. Section 263.20.

26. The amendment at 20.4.1.501(A)(1) NMAC clarifies certain party terms and makes specific singular terms plural.

27. The amendment at 20.4.1.501(A)(2) NMAC clarifies that the substitution of “department” for the term “EPA” does not apply to the electronic manifest functions set forth in 40 C.F.R. Section 264.71.

28. The amendment at 20.4.1.601(A)(1) NMAC clarifies certain party terms and makes specific singular terms plural.

29. The amendment at 20.4.1.601(A)(2) NMAC adds reference to 40 C.F.R. Section 265.121(a)(3).

30. The amendment at 20.4.1.601(A)(7) NMAC clarifies that the substitution of “department” for the term “EPA” does not apply to the electronic manifest functions set forth in 40 C.F.R. 265.71.

31. The amendment at 20.4.1.901(C)(1) NMAC strikes the date limitation following 40 C.F.R. Section 124.31 and replaces it with “as it may be modified or amended.”

32. The amendment at 20.4.1.901(C)(2) NMAC strikes the date limitation following 40 C.F.R. Section 124.32 and replaces it with “as it may be modified or amended.”

33. The amendment at 20.4.1.1001(A) NMAC strikes the current provisions found at subsections one (1) and three (3).

34. The amendment at 20.4.1.1001(B) NMAC adds “spent aerosol cans” to the existing Alternative Universal Waste Labeling provision.

35. The amendment at 20.4.1.1001(D) NMAC strikes the provision in its entirety.

36. The amendment at 20.4.1.1103 NMAC updates and corrects citations to other provisions of the NMAC.

37. The proposed amendments also update the “Other History” section of 20.4.1 NMAC.

## **C. AMENDMENT TO 20.4.3 NMAC – HAZARDOUS WASTE FEES**

### **AUTHORITY, BACKGROUND, AND SUMMARY OF PROPOSED AMMENDMENT**

1. The HWA mandates that the Board “shall provide a schedule of fees for businesses generating hazardous waste, conducting permitted hazardous waste management activities or seeking a permit for the management of hazardous waste.” NMSA 1978, §74-4-4.2(J).
2. The purpose of the Hazardous Waste Fees at 20.4.3 NMAC is to support regulatory oversight of hazardous waste facilities by the Department.
3. The existing 20.4.3.202(C) NMAC contains a typographical error which the Department wishes to remedy.
4. Therefore, the amendment to 20.4.3.202(C) NMAC strikes the existing reference to 20.4.3.401 and replaces it with 20.4.3.201.

## **D. COMPLIANCE WITH STATUTORY RULEMAKING REQUIREMENTS**

1. The adoption of New Rule 20.13.3 NMAC and the amendment of 20.4.1 NMAC are justified given the character and degree of injury to or interference with health, welfare, animal and plant life, property, and the environment caused by firefighting foam containing intentionally added PFAS. *See* NMSA 1978, § 74-1-9(B)(1).
2. The adoption of New Rule 20.13.3 NMAC and the amendment of 20.4.1 NMAC are in the public interest, including when considering the social, economic and cultural value of the regulated activity, as the rules aim to address the environmental degradation, damage to land and property, and human health effects caused by firefighting foam containing intentionally added PFAS. *See* NMSA 1978, § 74-9-1(B)(2).
3. The amendment of 20.4.1 NMAC is justified given the character and degree of injury to or interference with health, welfare, animal and plant life, property, and the

environment that would be caused by the State's inability to administer its own hazardous waste program. *See NMSA 1978, § 74-1-9(B)(1).*

4. The amendment of 20.4.1 NMAC is in the public interest, including when considering the social, economic and cultural value associated with the State's ability to administer its own hazardous waste program. *See NMSA 1978, § 74-9-1(B)(2).*

5. The amendment of 20.4.3 NMAC is in the public interest, including when considering the social, economic and cultural value associated with confusion caused by the existing typographical error. *See NMSA 1978, § 74-9-1(B)(2).*

6. New Rule 20.13.3 NMAC, 20.4.1 NMAC, as amended, and 20.4.3 NMAC, as amended are technically practicable and economically reasonable in the methods the rules employ to address environmental degradation and human health effects, including those caused by firefighting foam containing intentionally added PFAS. *See NMSA 1978, Section 74-9-1(B)(3).*

7. New Rule 20.13.3 NMAC, 20.4.1 NMAC, as amended, and 20.4.3 NMAC, as amended are drafted to comply with 1.24.10 NMAC, the uniform drafting rules for regulations in the New Mexico Administrative Code.

8. Therefore, New Rule 20.13.3 NMAC, 20.4.1 NMAC, as amended, and 20.4.3 NMAC, as amended, comply with the statutory rulemaking requirements.

1       **This is an amendment to 20.4.1 NMAC, Sections 5, 101, 201, 301, 401, 501, 601, 801, 901, 902, 1001, and 1103,**  
2       **effective 12/01/2026**

4       **20.4.1.5           EFFECTIVE DATE:** December 1, [ 2018 ] 2026 unless a later date is cited in the history note at  
5       the end of a section.

6       [20.4.1.5 NMAC - Rp, 20 NMAC 4.1.5, 12/1/2018, A, 12/01/2026]

8       **20.4.1.101           MODIFICATIONS, EXCEPTIONS AND OMISSIONS:** Except as otherwise provided, the  
9       following modifications, exceptions, and omissions are made to the incorporated federal regulations:

10       A.       The following terms defined in 40 CFR Sections 260.10 and 270.2 have the meanings set forth  
11       herein, in lieu of the meanings set forth in 40 CFR Sections 260.10 and 270.2:

12       (1)       "administrator" or "regional administrator" means the secretary of the New Mexico  
13       environment department or his/her designee;

14       (2)       "act" or "RCRA" (Resource Conservation and Recovery Act, as amended) means the  
15       New Mexico Hazardous Waste Act, Sections 74-4-1 through 74-4-14, NMSA 1978 (as amended).

16       B.       The following terms not defined in 40 CFR Sections 260.10 and 270.2 have the meanings set forth  
17       herein when the terms are used in this part:

18       (1)       "appropriate act or regulation" means the New Mexico Hazardous Waste Act or 20.4.1  
19       NMAC;

20       (2)       "board" means the environmental improvement board;

21       (3)       "CFR" means the Code of Federal Regulations;

22       (4)       "department" means the New Mexico environment department;

23       (5)       "environmental protection agency" or "EPA" shall be construed to mean the New Mexico  
24       environment department except when used in the phrases "EPA hazardous waste number," EPA identification  
25       number," "EPA region," "EPA acknowledgment of consent," "EPA test methods," and in the definitions set forth in  
26       40 CFR Sections 260.10 and 270.2;

27       (6)       "Freedom of Information Act" or "FOIA" means Sections 14-2-1 through 14-2-12, 14-  
28       3A-1 through 14-3A-2, and 74-4-4.3D, NMSA 1978 (as amended);

29       (7)       "hazardous substance incident" means any emergency incident involving a chemical or  
30       chemicals, including but not limited to transportation wrecks, accidental spills or leaks, fires or explosions, which  
31       incident creates the reasonable probability of injury to human health or property;

32       (8)       "secretary" means the secretary of the New Mexico environment department or his/her  
33       designee; and

34       (9)       "Subtitle C of RCRA" means the New Mexico Hazardous Waste Act, Sections 74-4-1  
35       through 74-4-14, NMSA 1978 (as amended).

36       C.       The following provisions of 40 CFR Part 260 are omitted from Section 20.4.1.100 NMAC:

37       (1)       Section 260.1(b)(6);

38       (2)       Section 260.2

39       [~~(2)~~] ~~(3)~~ Section 260.20;

40       [~~(3)~~] ~~(4)~~ Section 260.22;

41       [~~(4)~~] ~~(5)~~ Section 260.30;

42       [~~(5)~~] ~~(6)~~ Section 260.31;

43       [~~(6)~~] ~~(7)~~ Section 260.32;

44       [~~(7)~~] ~~(8)~~ Section 260.33; and

45       [~~(8)~~] ~~(9)~~ Reference to 40 CFR Part 267.

46       D.       Wherever there is any requirement in any of the federal regulations incorporated into this part to  
47       report an emergency situation, the requirement shall be construed to mean that the party required to report shall  
48       report the incident to the department via the New Mexico 24-hour emergency response number at (505) 827-9329 or  
49       such other number designated by the department.

50       [20.4.1.101 NMAC - Rp, 20 NMAC 4.1.101, 12/1/2018, A, 12/01/2026]

53       **20.4.1.201           MODIFICATIONS, EXCEPTIONS AND OMISSIONS:** Except as otherwise provided, the  
54       following modifications, exceptions and modifications are made to the incorporated federal regulations:

55       A.       The substitution of "department" for the terms "EPA" or "Environmental Protection Agency" does  
56       not apply to the export of CRTs in 40 CFR Sections 261.39(a)(5) and 261.41, as adopted in this section.

1           **B.**        "qualified professional engineer" as provided for in 40 CFR Sections 261.43(h)(4), 261.143(j),  
2        261.147(e), 261.191(a), 261.191(b)(5)(ii) and 261.196(f) shall mean an independent New Mexico licensed  
3        professional engineer in accordance with the New Mexico Engineering and Surveying Practice Act, Sections 61-23-  
4        1 through 32, NMSA 1978 (as amended)

5           **C.**        Addition of used Aqueous Film-Forming Foam ("AFFF") containing Per- and Polyfluoroalkyl  
6        Substances ("PFAS") to the list of hazardous wastes from non-specific sources. In addition to the list of hazardous  
7        wastes from non-specific sources incorporated from 40 CFR Part 261.31(a), the following hazardous waste listing is  
8        established within the State of New Mexico:

<u>Industry and EPA hazardous waste No.</u>	<u>Hazardous Waste</u>	<u>Waste Code</u>
<u>NMF1</u>	<u>Spent Aqueous Film-Forming Foam containing Per- and Polyfluoroalkyl Substances that are expended for the purpose of fire suppression and for training activities.</u>	<u>(T)</u>

10           **D.**        Addition of unused AFFF containing PFAS to the list of hazardous waste discarded commercial  
11        chemical products, off-specification species, container residues, and spill residues thereof. In addition to the list of  
12        commercial chemical products, off-specification species, container residues, and spill residues thereof incorporated  
13        from 40 CFR Part 261.33(f), the following hazardous waste listing is established within the State of New Mexico:

<u>Industry and EPA hazardous waste No.</u>	<u>Chemical Abstracts No.</u>	<u>Substance</u>
<u>NMU1</u>	<u>335-67-1</u> <u>1763-23-1</u> <u>375-92-8</u> <u>355-46-4</u> <u>375-73-5</u> <u>335-77-3</u> <u>2706-91-4</u> <u>375-92-8</u> <u>307-24-4</u> <u>375-85-9</u> <u>2706-90-3</u> <u>375-95-1</u> <u>335-76-2</u> <u>307-55-1</u> <u>72629-94-8</u> <u>376-06-7</u> <u>757124-72-4</u> <u>27619-97-2</u> <u>39108-34-4</u> <u>2355-31-9</u> <u>2991-50-6</u> <u>31506-32-8</u> <u>754-91-6</u>	<u>Aqueous Film-Forming Foam products containing as a sole active ingredient any mixture or combination of the following Per- and Poly-fluoroalkyl Substances:</u>  <u>Perfluorooctanoic acid</u> <u>Perfluorooctane sulphonic acid</u> <u>Perfluoroheptane sulfonic acid</u> <u>Perfluorohexane sulphonic acid</u> <u>Perfluorobutane sulphonic acid</u> <u>Perfluorodecane sulphonic acid</u> <u>Perfluoropentane sulphonic acid</u> <u>Perfluoroheptane sulphonic acid</u> <u>Perfluorohexanoic acid</u> <u>Perfluoroheptanoic acid</u> <u>Perfluoropentanoic acid</u> <u>Perfluorononanoic Acid</u> <u>Perfluorodecanoic acid</u> <u>Perfluorododecanoic acid</u> <u>Perfluorotridecanoic acid</u> <u>Perfluorotetradecanoic acid</u> <u>Fluorotelomer sulfonic acid 4:2</u> <u>Fluorotelomer Sulfonate 6:2</u> <u>Fluorotelomer Sulfonate 8:2</u> <u>N-methyl perfluorooctane sulfonamido acetic acid</u> <u>N-ethyl perfluorooctane sulfonamido acetic acid</u> <u>N-methylperfluorooctane sulfonamide</u> <u>Perfluorooctane sulfonamido acetic acid</u>

1                   E. Addition of hazardous constituents related to hazardous waste used AFFF to Appendix VII of 40  
 2                   CFR Part 261. In addition to the Basis for Listing Hazardous Waste incorporated from 40 CFR Part 261 Appendix  
 3                   VII, the following addition is made to this Appendix:

<u>EPA hazardous waste No.</u>	<u>Hazardous constituents for which listed</u>
NMF1	Perfluorooctanoic acid, Perfluorooctane sulphonic acid, Perfluorohexane sulfonate, Perfluorobutane sulfonate, Perfluorodecane sulfonate, Perfluoropentane sulfonate, Perfluoroheptane sulfonate, Perfluorohexanoic acid, Perfluoroheptanoic acid, Perfluoropentanoic acid, Perfluorononanoic Acid, Perfluorodecanoic acid, Perfluorododecanoic acid, Perfluorotridecanoic acid, Perfluorotetradecanoic acid, Fluorotelomer sulfonic acid 4:2, Fluorotelomer sulfonate 6:2, Fluorotelomer sulfonate 8:2, Perfluorotelomer sulfonate 10:2, N-methyl perfluorooctane sulfonamido acetic acid, N-ethyl perfluorooctane sulfonamido acetic acid, N-methylperfluorooctane sulfonamide, Perfluorooctane sulfonamido acetic acid

5                   F. Addition of hazardous constituents related to hazardous waste unused AFFF to Appendix VIII of  
 6                   40 CFR Part 261. In addition to the Hazardous Constituents incorporated from 40 CFR Part 261 Appendix VIII, the  
 7                   following addition is made to this Appendix:

<u>Common Name</u>	<u>Chemical abstracts Name</u>	<u>Chemical Abstracts No.</u>	<u>Hazardous Waste No.</u>
PFAS	Perfluorooctanoic acid	335-67-1	NMU1
PFAS	Perfluorooctane sulfonic acid	1763-23-1	NMU1
PFAS	Perfluoroheptane sulfonic acid	375-92-8	NMU1
PFAS	Perfluorohexane sulfonic acid	355-46-4	NMU1
PFAS	Perfluorobutane sulfonic acid	375-73-5	NMU1
PFAS	Perfluorodecane sulfonic acid	335-77-3	NMU1
PFAS	Perfluoropentane sulfonic acid	2706-91-4	NMU1
PFAS	Perfluoroheptane sulfonate	375-92-8	NMU1
PFAS	Perfluorohexanoic acid	307-24-4	NMU1
PFAS	Perfluoroheptanoic acid	375-85-9	NMU1
PFAS	Perfluoropentanoic acid	2706-90-3	NMU1
PFAS	Perfluorononanoic Acid	375-95-1	NMU1
PFAS	Perfluorodecanoic acid	335-76-2	NMU1
PFAS	Perfluorododecanoic acid	307-55-1	NMU1
PFAS	Perfluorotridecanoic acid	72629-94-8	NMU1
PFAS	Perfluorotetradecanoic acid	376-06-7	NMU1
PFAS	Fluorotelomer sulfonic acid 4:2	757124-72-4	NMU1
PFAS	Fluorotelomer Sulfonate 6:2	27619-97-2	NMU1
PFAS	Fluorotelomer Sulfonate 8:2	39108-34-4	NMU1
PFAS	N-methyl perfluorooctane sulfonamido acetic acid	2355-31-9	NMU1
PFAS	N-ethyl perfluorooctane sulfonamido acetic acid	2991-50-6	NMU1
PFAS	N-methylperfluorooctane sulfonamide	31506-32-8	NMU1
PFAS	Perfluorooctane sulfonamido acetic acid	754-91-6	NMU1

10                   [20.4.1.201 – Rp. 20 NMAC 4.1.201, 12/1/2026, A, 08/01/2026]

11                   **20.4.1.202 - 20.4.1.299 [RESERVED]**

12                   [20.4.1.202 - 20.4.1.299 NMAC - Rp. 20 NMAC 4.1.202 - 4.1.299, 12/1/2018, A, 12/01/2026]

13                   **20.4.1.301 MODIFICATIONS, EXCEPTIONS AND OMISSIONS:** Except as otherwise provided, the  
 14                   following modifications, exceptions and modifications are made to the incorporated federal regulations.

15                   A. The substitution of the following terms in Subparts E, F and H of 40 CFR Part 262, addressing  
 16                   export notification functions, does not apply to Section 20.4.1.300 NMAC: "administrator" and "regional  
 17                   administrator" for the term "secretary" and "EPA" or "environmental protection agency" for the term "department."

1        **B.**     The substitution of "department" for "EPA" in 20.4.1.101 NMAC does not apply to the manifest  
2     registry and electronic manifest functions set forth in 40 CFR 262.21, 262.24(a)(3) and 262.25.  
3     [20.4.1.301 - Rp, 20 NMAC 4.1.301, 12/1/2018, A, 12/01/2026]

4  
5        **20.4.1.401     MODIFICATIONS, EXCEPTIONS AND OMISSIONS:** Except as otherwise provided, the  
6     following modifications, exceptions and omissions are made to incorporate the federal regulations.

7        **A.**     The following provision of 40 CFR Part 263 is omitted from Section 20.4.1.400 NMAC: Section  
8     263.20(e).

9        **B.**     A transfer facility, which stores manifested shipments of hazardous waste for more than 24 hours  
10    but 10 days or less shall notify the New Mexico Environment Department using form 8700-12, as it may be  
11    modified by EPA, and obtain an EPA identification number for each transfer facility located in New Mexico. New  
12    transfer facilities shall provide a notification 30 days prior to operating. Existing transfer facilities shall provide a  
13    notification no more than 90 days after the effective date of the regulations.

14        **C.**     The substitution of "department" for "EPA" in 20.4.1.101 NMAC does not apply to the electronic  
15     manifest and export notification functions set forth in 40 CFR 263.20, as adopted in this section.  
16     [20.4.1.401 NMAC - Rp, 20 NMAC 4.1.401, 12/1/2018, A, 12/01/2026]

17  
18        **20.4.1.501     MODIFICATIONS, EXCEPTIONS AND OMISSIONS:** Except as otherwise provided, the  
19     following modifications, exceptions and omissions are made to incorporate the federal regulations.

20        **A.**     The following provisions of 40 CFR Part 264 are modified in 20.4.1.500 NMAC:

21        (1)     the substitution of ["secretary"] "department" for the term ["regional administrator"]  
22     "EPA" in 20.4.1.101 NMAC does not apply to the required [ notice ] notices set forth in 40 CFR Section 264.12(a),  
23     as adopted in this section; the owner or operator of a facility that has arranged to receive hazardous waste from a  
24     foreign source must provide [a-copy]copies of the [notice] notices required in 40 CFR Section 264.12(a) to the  
25     [secretary]department at the time that [notice is] notices are provided to the [regional administrator] EPA;

26        (2)     [the owner or operator proposing a class 1 permit modification pursuant to 40 CFR  
27     264.15(b)(5) shall submit the request to the director as required in 40 CFR Sections 264.15(b)(5)(i) and 270.42(a);]  
28     the substitution of "department" for the term "EPA" does not apply to the electronic manifest functions set forth in  
29     40 CFR Section 264.71.

30        (3)     the owner and operator shall submit the reports in 40 CFR Section 264.100(g) on a semi-  
31     annual basis to the secretary;

32        (4)     "qualified professional engineer" as provided for in 40 CFR Sections 264.115, 264.120,  
33     264.143(i), 264.145(i), 264.147(e), 264.191(a), 264.191(b)(5)(ii), 264.192(a), 264.192(b), 264.193(i)(2), 264.196(f),  
34     264.280(b), 264.554(c)(2), 264.571(a-c), 264.573(a)(4)(ii), 264.573(g), 264.574(a) and 264.1101(c)(2) shall mean  
35     an independent New Mexico licensed professional engineer in accordance with the New Mexico Engineering and  
36     Surveying Practice Act, Sections 61-23-1 through 32, NMSA 1978 (as amended).

37        (5)     the requirements of 40 CFR Section 264.73(b) shall be maintained in the operating record  
38     by the owner and operator at his facility until closure, except for 40 CFR Sections 264.73(b)(7) and 264.73(b)(9)  
39     which shall be kept in the operating record for no less than 3 years;

40        (6)     the requirements of 40 CFR Section 264.347(d) shall be maintained in the operating  
41     record by the owner and operator at his facility until closure.

42        (7)     the substitution of "department" for the term "EPA" does not apply to the second  
43     occurrence of the term "EPA" in 40 CFR Section 264.1082(c)(4)(ii).

44        **B.**     The following provisions of 40 CFR Part 264 are omitted from Section 20.4.1.500 NMAC:

45        (1)     Section 264.1(f);  
46        (2)     Section 264.149;  
47        (3)     Section 264.150;  
48        (4)     Section 264.301(1);  
49        (5)     Section 264.1030(d);  
50        (6)     Section 264.1050(g); and  
51        (7)     Sections 264.1080(e), 264.1080(f), 264.1080(g).  
52  
53     [20.4.1.501 NMAC - Rp, 20 NMAC 4.1.501, 12/1/2018, A, 12/01/2026]

54  
55        **20.4.1.601     MODIFICATIONS, EXCEPTIONS AND OMISSIONS:** Except as otherwise provided, the  
56     following modifications, exceptions and omissions are made to the incorporated federal regulations:

Petition to Amend 20.4.1 NMAC  
Proposed Amendments to 20.4.1 NMAC

1           A.       The following provisions of 40 CFR Part 265 are modified in 20.4.1.600 NMAC:

2           (1)       the substitution of ["secretary"] "department" for the term ["regional administrator"]  
3       "EPA" in 20.4.1.101 NMAC does not apply to the required [ notice ] notices set forth in 40 CFR Section 264.12(a),  
4       as adopted in this section; the owner or operator of a facility that has arranged to receive hazardous waste from a  
5       foreign source must provide [a copy] copies of the [ notice ] notices required in 40 CFR Section 264.12(a) to the  
6       [secretary]department at the time that [notice is]notices are provided to the [regional administrator] EPA;

7           (2)       at 40 CFR Section 265.121(a)(3), the owner and operator shall submit the reports in 40  
8       CFR Section 264.100(g) on a semi-annual basis to the secretary;

9           (3)       "qualified professional engineer" as provided for in 40 CFR Sections 265.115, 265.120,  
10      265.143(h), 265.145(h), 265.147(e), 265.191(a), 265.191(b)(5)(ii), 265.192(a), 265.192(b), 265.193(i)(2),  
11      264.196(f), 265.280(e), 265.441(a) through (c), 265.443(a)(4)(ii), 265.443(g), 265.444(a) and 264.1101(c)(2) shall  
12      mean an independent New Mexico licensed professional engineer in accordance with the New Mexico Engineering  
13      and Surveying Practice Act, Sections 61-23-1 through 32, NMSA 1978 (as amended);

14           (4)       the requirements of 40 CFR 265.73(b) shall be maintained in the operating record by the  
15      owner and operator at his facility until closure;

16           (5)       the requirements of 40 CFR Section 264.347(d) shall be maintained in the operating  
17      record by the owner and operator at his facility until closure.

18           (6)       the substitution of "department" for the term "EPA" does not apply to the second  
19      occurrence of the term "EPA" in 40 CFR Section 265.1083(c)(4)(ii).

20           (7)       the substitution of "department" for the term "EPA" does not apply to the electronic  
21      manifest functions set forth in 40 CFR 265.71.

22           B.       The following provisions of 40 CFR Part 265 are omitted from Section 20.4.1.600 NMAC:

23           (1)       Section 265.1(c)(4);

24           (2)       Section 265.149;

25           (3)       Section 265.150;

26           (4)       Section 265.1030(c);

27           (5)       Section 265.1050(f); and

28           (6)       Sections 265.1080(e), 265.1080(f), 265.1080(g).

29      [20.4.1.601 NMAC - Rp, 20 NMAC 4.1.601, 12/1/2018, A, 12/01/2026]

30      **20.4.1.801      MODIFICATIONS, EXCEPTIONS AND OMISSIONS:** Except as otherwise provided, the  
31      following modifications, exceptions and omissions are made to the incorporated federal regulations.

32           A.       The substitution of "department" for the term "EPA" in 20.4.1.101 NMAC does not apply to 40  
33      CFR Section 268.1(e)(3), as adopted in this section.

34           B.       The following provisions of 40 CFR Part 268 are omitted from Section 20.4.1.800 NMAC:

35           (1)       Section 268.5;

36           (2)       Section 268.6;

37           (3)       Section 268.42(b); and

38           (4)       Section 268.44(a) through 264.44(g).

39           C.       Addition of treatment standards for used and unused "AFFF" containing PFAS to the Treatment  
40      Standards for Hazardous Wastes. In addition to the list of treatment standards for hazardous waste incorporated from  
41      40 CFR Part 268.40, the following additions are made to the table of treatment standards within the State of New  
42      Mexico:

Waste Code.	Waste Description and treatment/ regulatory subcategory <sup>1</sup>	Regulated hazardous constituent		Wastewaters Concentration <sup>3</sup> in mg/L; or technology code <sup>4</sup>	Nonwastewaters Concentration <sup>3</sup> in mg/kg unless noted as "mg/L TCLP"; or technology code <sup>4</sup>
		Common Name	CAS <sup>2</sup> No.		
NMF1	Spent Aqueous Film-Forming Foam containing Per- and Poly-	Perfluorooctanoic acid	335-67-1	Non-detect <sup>13</sup>	Non-detect <sup>13</sup>
		Perfluorooctane sulphonic acid	1763-23-1	Non-detect <sup>13</sup>	Non-detect <sup>13</sup>
		Perfluoroheptane sulfonic acid	375-92-8	Non-detect <sup>13</sup>	Non-detect <sup>13</sup>

	<u>fluoroalkyl Substances that are expended for the purpose of fire suppression and for training activities.</u>	<u>Perfluorohexane sulfonic acid</u>	<u>355-46-4</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
		<u>Perfluoro butane sulfonic acid</u>	<u>375-73-5</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
		<u>Perfluorodecane sulfonic acid</u>	<u>335-77-3</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
		<u>Perfluoropentane sulfonic acid</u>	<u>2706-91-4</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
		<u>Perfluoroheptane sulfonic acid</u>	<u>375-92-8</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
		<u>Perfluorohexanoic acid</u>	<u>307-24-4</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
		<u>Perfluoroheptanoic acid</u>	<u>375-85-9</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
		<u>Perfluoropentanoic acid</u>	<u>2706-90-3</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
		<u>Perfluorononanoic Acid</u>	<u>375-95-1</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
		<u>Perfluorodecanoic acid</u>	<u>335-76-2</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
		<u>Perfluorododecanoic acid</u>	<u>307-55-1</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
		<u>Perfluorotridecanoic acid</u>	<u>72629-94-8</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
		<u>Perfluorotetradecanoic acid</u>	<u>376-06-7</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
		<u>Fluorotelomer sulfonic acid 4:2</u>	<u>757124-72-4</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
		<u>Fluorotelomer Sulfonate 6:2</u>	<u>27619-97-2</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
		<u>Fluorotelomer Sulfonate 8:2</u>	<u>39108-34-4</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
		<u>N-methyl perfluoroctane sulfonamido acetic acid</u>	<u>2355-31-9</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
NMF1 (cont.)	<u>Spent Aqueous Film-Forming Foam containing Per- and Poly-fluoroalkyl Substances that are expended for the purpose of fire suppression and for training activities.</u>	<u>Perfluoroctane sulfonamido acetic acid</u>	<u>754-91-6</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
		<u>N-ethyl perfluoroctane sulfonamido acetic acid</u>	<u>2991-50-6</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
		<u>N-methylperfluoroctane sulfonamide</u>	<u>31506-32-8</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
NMU1	<u>Aqueous Film-Forming Foam products containing as a sole active ingredient any mixture or combination of Per- and Poly-fluoroalkyl Substances.</u>	<u>Perfluorooctanoic acid</u>	<u>335-67-1</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
		<u>Perfluorooctane sulphonic acid</u>	<u>1763-23-1</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
		<u>Perfluoroheptane sulfonic acid</u>	<u>375-92-8</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
		<u>Perfluorohexane sulfonate</u>	<u>355-46-4</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
		<u>Perfluoro butane sulfonate</u>	<u>375-73-5</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
		<u>Perfluorodecane sulfonate</u>	<u>335-77-3</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
		<u>Perfluoropentane sulfonate</u>	<u>2706-91-4</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
		<u>Perfluoroheptane sulfonate</u>	<u>375-92-8</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
		<u>Perfluorohexanoic acid</u>	<u>307-24-4</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
		<u>Perfluoroheptanoic acid</u>	<u>375-85-9</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>

<u>Perfluoropentanoic acid</u>	<u>2706-90-3</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
<u>Perfluorononanoic Acid</u>	<u>375-95-1</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
<u>Perfluorodecanoic acid</u>	<u>335-76-2</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
<u>Perfluorododecanoic acid</u>	<u>307-55-1</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
<u>Perfluorotridecanoic acid</u>	<u>72629-94-8</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
<u>Perfluorotetradecanoic acid</u>	<u>376-06-7</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
<u>Fluorotelomer sulfonic acid 4:2</u>	<u>757124-72-4</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
<u>Fluorotelomer Sulfonate 6:2</u>	<u>27619-97-2</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
<u>Fluorotelomer Sulfonate 8:2</u>	<u>39108-34-4</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
<u>N-methyl perfluoroctane sulfonamido acetic acid</u>	<u>2355-31-9</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
<u>N-ethyl perfluoroctane sulfonamido acetic acid</u>	<u>2991-50-6</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
<u>N-methylperfluoroctane sulfonamide</u>	<u>31506-32-8</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>
<u>Perfluoroctane sulfonamido acetic acid</u>	<u>754-91-6</u>	<u>Non-detect<sup>13</sup></u>	<u>Non-detect<sup>13</sup></u>

<sup>13</sup> "Non-detect" for purposes of compliance with this part means that the analyte was not reported by the analytical laboratory as exceeding the Method Detection Limit for that analyte per the most current version of EPA Method 1633.

[20.4.1.801 NMAC - Rp, 20 NMAC 4.1.801, 12/1/2018, A, 12/01/2026]

#### **20.4.1.901 PERMITTING PROCEDURES:**

##### **A. Permit issuance or denial.**

(1) Once an application is determined to be administratively and technically complete, the secretary shall prepare and issue either a draft permit or a notice of intent to deny.

(a) A draft permit shall contain all conditions, compliance schedules, monitoring requirements and technical standards for treatment, storage, and/or disposal provided for in 40 CFR Part 270.

(b) A notice of intent to deny shall state the secretary's reasons for the intended denial.

(2) Any draft permit or notice of intent to deny prepared by the department under Paragraph one of this subsection shall be accompanied by a fact sheet and shall be based on the administrative file. Copies of the fact sheet shall be sent to the applicant; to any state or federal agency, as applicable; and, upon request, to any other person.

(3) The secretary shall give public notice that a draft permit or a notice of intent to deny has been prepared, and shall allow 45 days for review and public comment, including requests for public hearing.

(4) If the secretary issues a draft permit, and a timely written notice of opposition to the draft permit and a request for a public hearing is received, the department, acting in conjunction with the applicant, will respond to the request in an attempt to resolve the issues giving rise to the opposition. If such issues are resolved to the satisfaction of the opponent, the opponent may withdraw the request for a public hearing.

(5) No ruling shall be made on permit issuance or denial without an opportunity for a public hearing, at which all interested persons shall be given a reasonable chance to submit significant data, views or arguments orally or in writing and to examine witnesses testifying at the public hearing. A public hearing shall be scheduled if:

(a) the secretary issues a notice of intent to deny, and a timely request for public hearing is received from the applicant;

(b) the secretary issues a draft permit, a timely request for public hearing is received from any person opposed to the granting of a permit, and such person does not subsequently withdraw the request pursuant to Paragraph four of this subsection; or

(c) the secretary determines, no later than five days following the end of the comment period specified in Paragraph four of this subsection, that a public hearing should be held notwithstanding the absence of a timely request for public hearing.

(6) The comment period specified in Paragraph three of this subsection shall automatically be extended to the close of any public hearing.

(7) The secretary shall give due consideration and the weight he/she deems appropriate to all comments received during a public comment period and to all relevant facts and circumstances presented at a public hearing.

(8) When ruling on permit issuance or denial, the secretary may disapprove in whole or in part, or make reasonable conditions to any permit, if it appears that the permit applied for will not meet the requirements of these regulations.

(9) At the time that any final permit decision is issued, the secretary shall issue a response to comments. This response shall:

(a) specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change;

**(b)** briefly describe and respond to all comments on the draft permit or the permit application raised during the public comment period, or during any hearing, and

(c) be available to the public.

**(10)** A final permit decision shall become effective 30 days after notice of the decision has been served on the applicant, or such later time as the secretary may specify. This provision shall not be construed to extend the time for appeal of a permit decision as provided by the Hazardous Waste Act.

**(11)** The approval of a permit does not relieve any person from the responsibility of complying with applicable state or federal laws and regulations.

(12) The secretary shall notify the applicant by certified mail of any impending permit action and of any scheduled public hearing date.

**B. Permit Modifications, Suspension and Revocation.**

(1) The secretary may modify, suspend, or revoke a permit issued pursuant to Subsection A of this section for cause set forth in 40 CFR Part 270 and the act.

(2) The secretary may modify, suspend, revoke any permit upon his/her initiative, or if, after the department's investigation of the facts and circumstances, pursuant to the request of any interested person, such permit action is deemed warranted.

(3) Requests for permit modification, suspension, revocation shall be in writing and shall contain facts or reasons supporting the request.

(4) If the secretary decides that the request is not justified, the permittee will be notified in writing explaining the reason for denial. Denial of request of modification, revocation, and reissuance, or termination are not subject to public notice, comment, or hearings.

(5) If the secretary decides to modify or revoke and reissue a permit under 40 CFR section 270.41 or 40 CFR section 270.42(c), considered a major modification under the act, a draft permit shall be prepared incorporating the proposed changes. The secretary may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of a revoked and reissued permit the secretary shall require the submission of a new application.

(6) Class 1 and 2 modifications under 40 CFR 270.42(a) and (b) shall be considered minor permit modifications under the act.

(7) In a permit modification under this section, only those conditions to be modified shall be reopened. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and were being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(8) If the secretary decides to terminate a permit under 40 CFR section 270.43, a notice of intent to terminate shall be issued. The secretary shall follow the applicable procedures as required for a draft permit under Section 20.4.1.901 NMAC.

## C. Public Notices.

**(1)** Pre-application public meeting and notice. Except as otherwise provided, the regulation of the EPA set forth in 40 CFR Section 124.31 [through July 1, 2008] as it may be modified or amended is hereby incorporated by reference.

(2) Public notice requirements at the application stage. Except as otherwise provided, the regulation of the EPA set forth in 40 CFR section 124.32 [ ~~through July 1, 2008~~ ] as it may be modified or amended is hereby incorporated by reference.

(3) Public notice of issuance of a draft permit or a notice of intent to deny, and of any public hearing scheduled, shall be given by publication of a notice in a newspaper of general circulation in the area affected, broadcasts over local radio stations and by mailing a copy of the notice to the permit applicant, those individuals on the department mailing list of persons interested in hazardous waste permit actions, and to any unit of local, state and federal government as may be applicable.

(4) All public notices issued shall contain the following minimum information:

(a) the subject, the time and place of any scheduled hearing and the manner in which interested persons may present their views;

(b) made, unless already scheduled;  
(c) is being given;

a brief description of the procedures by which requests for hearings may be  
the name and address of the office processing the permit action for which notice

(d) the name and address of the permittee or permit applicant, and, if different, of the facility or activity regulated by the permit;

(e) a brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

(f) the name, address and telephone number of a person from whom interested persons may obtain further information;

(g) in addition, public notice of a scheduled public hearing shall also contain references to the dates of previous public notices relating to the permit;

(h) the notice shall state where interested persons may secure copies of any proposed draft permit or notice of intent to deny.

## D. Fact Sheet.

**(1)** A fact sheet shall be prepared for every draft permit for a hazardous waste management facility or activity. The fact sheet shall briefly set forth the principal facts and the significant factual legal, methodological and policy questions considered in preparing the draft permit.

(2) The fact sheet shall include, when applicable:

(a) a brief description of the type of facility or activity which is the subject of the draft permit;

- (b) the type and quantity of wastes which are proposed to be or are being treated, stored, disposed, injected, emitted, or discharged;
- (c) a brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

(d) reasons why any request for variance or alternative to require standards do or do not appear justified;

(e) a description of the procedures for reaching a final decision on the draft permit, including: the beginning and ending dates of the comment period, the address where comments will be received, procedures for requesting a hearing, the nature of that hearing, any other procedures by which the public may participate in the final decision, and the name and telephone number of a person to contact for additional information.

(3) The fact sheet shall be available at the time the public notice is published.

E. Information repository. Except as otherwise provided, the regulation of the EPA set forth in 40 CFR 124.33 through July 1, 2008 is hereby incorporated by reference.

## F. Hearings.

(1) Public notice of any public hearing shall be given at least 30 days prior to the scheduled date of the hearing and shall state the subject.

(2) Hearings shall be held in Santa Fe or within any area of the state substantially affected by the proceedings as specified by the secretary.

(3) The secretary may designate a hearing officer to take evidence at the hearing.

(4) All hearings shall be recorded by a certified court reporter. A transcript will be furnished to all persons for review at the department's main office. Costs of a copy of a transcript will be borne by those requesting such copies.

(5) In hearings, the rules of civil procedure and the technical rules of evidence shall not apply, but the hearings shall be conducted so that all relevant views, arguments, and testimony are amply and fairly received without undue repetition.

(a) Testimony for hearings on permit issuance or modification shall be presented in the following order: testimony by the applicant (such testimony is a prerequisite to the granting of the requested permit or modification), testimony by other persons (except the department) supporting issuance or modification of the permit, in any reasonable order, testimony by persons (except the department) opposed to issuance or modification of the permit, in any reasonable order, testimony by the department, and rebuttal testimony, as appropriate.

(b) Testimony for hearings on permit suspension or revocation shall be as follows: testimony by the department, testimony by other persons supporting suspension or revocation of the permit, in any reasonable order, testimony by the permittee, testimony by other persons opposed to suspension or revocation of the permit, in any reasonable order, and rebuttal testimony, as appropriate.

(c) In all hearings, cross examination of each witness shall be conducted by interested persons, in any reasonable order, immediately after that witness has testified.

(7) The burden of proof at hearings shall be as follows:

(a) for hearings on permit issuance or modifications, the burden of proof shall be on the applicant or permittee;

(b) for hearings on permit suspension or revocation, the burden of proof shall be on the department.

**G. Secretary's decision.**

(1) Any person heard or represented at the hearing shall be given written notice of the action of the secretary.

(2) The secretary shall notify the applicant or permittee of his/her decision and the reasons therefore by certified mail.

**H.** Appeals. Appeals of the secretary's decision shall be as provided by the Hazardous Waste Act.

(1) The filing of an appeal does not act as a stay of any action required by the secretary's decision.

(2) The record on appeal shall include the transcript of the hearing, all related correspondence, any responses to comments, and all other information relied upon by the secretary in deciding upon the permit action.

[20.4.1.901 NMAC - Rp, 20 NMAC 4.1.901, 12/1/2018, A, 12/01/2026]

**20.4.1.902 MODIFICATIONS, EXCEPTIONS AND OMISSIONS:** Except as otherwise provided, the following modifications, exceptions and omissions are made to the incorporated federal regulations.

**A.** "Qualified professional engineer" as provided for in 40 CFR Sections 270.14(a), 270.16(a), and 270.26(c)(15) shall mean an independent New Mexico licensed professional engineer. A professional engineer shall abide by all requirements of the New Mexico Engineering and Surveying Practice Act, Sections 61-23-1 through 32, NMSA 1978 (as amended) and applicable regulations.

**B.** The substitution of the terms "EPA," "regional administrator" and "administrator" in 20.4.1.101 NMAC does not apply to 40 CFR Sections 270.5, 270.10(f)(2) & (3), 270.10 (g)(1)(i), 270.11 (a) (3), 270.32(c), 270.72(a)(5), and 270.72(b)(5), as adopted in this section.

C. The following provisions of 40 CFR Part 270 are omitted from 20.4.1.900 NMAC:

(1) statement in Section 270.1(b), "treatment, storage, and disposal facilities (TSDs) that are otherwise subject to permitting under RCRA and that meet the criteria in paragraph (b)(1), or paragraph (b)(2) of this section, may be eligible for a standardized permit under subpart J of this part.";

270.2: (2) Sections 270.1(b)(1) and 270.1(b)(2);  
(3) "and standardized permit (subpart J of this part)" in the definition of "permit" in Section

270.2, (4) definition of "standardized permit" in Section 270.2;  
(5) Section 270.10(a)(6);  
(6) Section 270.10(h)(2);  
(7) portion of the first sentence stating, "or as a routine change with prior approval under 40

CFR 124.213" of Section 270.40(b);

- (8) Section 270.41 referencing 270.320 and 40 CFR part 124, subpart G;
- (9) Section 270.41(b)(3);

(10) Section 270.51(e); and

(11) Section 270, subpart J.

1                   **D. Addition of specific inclusions to 40 CFR 270.1(c)(1) for on-site treatment of AFFF containing**  
2 PFAS. In addition to the list of specific inclusions for facilities that require permits under the Hazardous Waste Act,  
3 a Permit is required for generators and any other Facilities that perform on-site treatment of AFFF containing PFAS.  
4 However, a person is not required to obtain a Permit for treatment or containment activities taken during an  
5 immediate cleanup response as defined in 40 CFR 270.1(3)(i).

6 [20.4.1.902 NMAC - Rp, 20 NMAC 4.1.902, 12/1/2018, A, 12/01/2026]

7

8

9                   **20.4.1.1001 MODIFICATIONS, EXCEPTIONS AND OMISSIONS:** Except as otherwise provided, the  
10 following modifications, exceptions and omissions are made to the incorporated federal regulations.

11                   **A. [The following terms have the meanings set forth herein:**

12                   **(1) "Aerosol can" means a container in which gas under pressure is used to aerate and**  
13 ~~dispense any material through a valve in the form of a spray or foam.~~

14                   **(2) "Regional administrator" and "EPA" as used in 40 CFR sections 273.12 and 273.32 shall**  
15 ~~mean, as applicable to handlers of universal waste pesticides under this part, notification to the secretary of the New~~  
16 ~~Mexico department of agriculture.~~

17                   **[3) "Universal waste" means, in addition to the hazardous wastes listed in 40 CFR Section**  
18 ~~273.9, aerosol cans as described in this subsection.]~~

19                   **B. Alternative universal waste labeling.** As an alternative to the labeling requirements for universal  
20 waste in 40 CFR sections 273.14 and 273.34, universal waste handlers may use other words that accurately identify  
21 the universal waste material, for example, "spent bulbs", "spent aerosol can(s)" or "batteries for recycling." Note  
22 that the labeling must be either on the individual piece of universal waste, on the container in which the universal  
23 waste is stored, or on a pallet of banded or otherwise bound universal waste being readied for shipment.

24                   **C. Breaking and crushing universal waste lamps.** In addition to the requirements for universal waste  
25 lamps contained in Subparts B and C of 40 CFR Part 273, the following requirements shall apply.

26                   **(1)** A handler of universal waste may intentionally break or crush lamps generated on-site to  
27 reduce their volume to facilitate management or transport to destination facilities. However, breaking and crushing  
28 of lamps and subsequent management of the resulting waste must occur in a safe and controlled manner that  
29 minimizes the release of hazardous constituents to the workplace and the environment, and steps must be taken to  
30 minimize exposures of children, pregnant women, and other sensitive individuals to mercury releases from these  
31 activities. Universal waste destination facilities as defined in 40 CFR Section 273.9 may not intentionally break or  
32 crush lamps under this subsection.

33                   **(2)** A handler of universal waste who intentionally breaks or crushes mercury-containing  
34 universal waste lamps under this subsection shall comply with the following provisions.

35                   **(a)** Use a mechanical unit specifically designed for the process that results in the  
36 breaking or crushing operation to take place in a container or while the lamps are being added to the container, for  
37 example, a drum-top lamp crusher. The unit must also incorporate air pollution controls that capture both particulate  
38 and vapor phase mercury. At a minimum, these controls must include, or must be equivalent to, the protection  
39 provided by a high efficiency particulate air (HEPA) filter, activated charcoal, and a negative air flow (vacuum)  
40 through the unit. The unit must have documentation from the manufacturer that demonstrates that the unit is capable  
41 of achieving the occupational safety and health administration (OSHA) permissible exposure limit for mercury.

42                   **(b)** Develop and implement a written procedure specifying how to safely break or  
43 crush universal waste lamps. This procedure must include: type of equipment to be used to break or crush the  
44 lamps, operation and maintenance of the unit in accordance with written procedures developed by the manufacturer  
45 of the equipment, safe work practices, decontamination and spill response practices, and proper waste management  
46 practices. The handler must document maintenance activities and keep records of maintenance. In addition, the unit  
47 operator(s) and assistant(s) must receive training applicable to their duties relating to breaking and crushing  
48 operations, waste handling, area and equipment decontamination, spill response, and emergency procedures; this  
49 training must be documented.

50                   **(c)** Ensure that the area in which the lamps are broken or crushed is well ventilated  
51 and monitored to ensure compliance with applicable OSHA permissible exposure levels for mercury.

52                   **(d)** Ensure that spills of the contents of the universal waste lamps that may occur  
53 during breaking or crushing operations are cleaned up in accordance with 40 CFR sections 273.13 or 273.33. A spill  
54 clean-up kit must be readily available to immediately clean up spills or leaks of the contents of the universal waste  
55 lamps which may occur during lamp breaking or crushing operations.

(e) Store the broken and crushed lamps and other solid waste generated as part of the breaking or crushing operation that are being reclaimed for mercury in closed, non-leaking containers that are in good condition. Transfer of the broken or crushed lamps to other containers is not permitted unless the area is well ventilated and monitored to ensure compliance with applicable OSHA permissible exposure levels for mercury.

(f) Label drums or containers used for storage of broken or crushed lamps and other solid waste generated as part of the breaking or crushing operation that are being reclaimed for mercury with the words "universal waste-lamps," "waste lamps," "used lamps," or other words that accurately identify the contents, for example, "crushed bulbs."

(g) Manage residues, filter media, or other solid waste generated as part of the breaking or crushing operation that are not being reclaimed and that exhibit any characteristics of a hazardous waste identified in Subpart C of 40 CFR Part 261 in accordance with all applicable requirements of this part.

(3) The owner or operator of a unit that breaks or crushes mercury-containing universal waste lamps must notify the department's hazardous waste bureau of its intent to operate the unit. The notification shall include the owner and operator name(s), address(es), and phone number(s); manufacturer's documentation describing the unit; documentation that demonstrates that the unit is capable of achieving the occupational safety and health administration (OSHA) permissible exposure limit for mercury; and a description of how and where the unit will be operated.

(a) For units in operation before the requirements in this subsection became effective, the owner or operator must submit such notification within 90 days of the effective date of this requirement.

**(b)** For units not in operation before the effective date of the requirements in this subsection, the owner or operator must submit such notification before operating the unit.

[D.] Universal waste aerosol cans. In addition to the requirements for universal waste contained in 40 CFR Part 273, the following requirements shall apply.

**(1) Applicability.** The requirements of this part apply to persons managing aerosol cans as described in Subsection A of this section, except persons managing the following aerosol cans:

(a) Aerosol cans that are not yet wastes under this part, including those that do not meet the criteria for waste generation in Subparagraph (c) of Paragraph (1) of this subsection.

(b) Aerosol cans that are not hazardous waste. An aerosol can must be managed as a hazardous waste if its contents exhibit one or more of the characteristics identified in Subpart C of 40 CFR Part 261 or if its contents are listed in Subpart D of 40 CFR Part 261.

(c) Generation of waste aerosol cans. An aerosol can becomes a waste on the date it is discarded or is no longer useable. For purposes of this part, an aerosol can is considered to be no longer useable when the can is as empty as proper work practices allow, the spray mechanism no longer operates as designed, the propellant is spent, or the product is no longer used. An unused aerosol can becomes a waste on the date the handler decides to discard it. This section does not apply to aerosol cans, including punctured aerosol cans, that are empty as defined in 40 CFR 261.7(b).

**(2) Waste management.** A handler of universal waste must manage universal waste aerosol cans in a way that prevents release of any universal waste or component of a universal waste to the environment as follows:

(a) A handler of universal waste must immediately contain any universal waste aerosol can that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a separate individual container. The individual container must be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(b) A handler of universal waste may accumulate universal waste aerosol cans in an accumulation container provided it is clearly marked for such use. The accumulation container must be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The universal waste aerosol cans must be sorted by type and compatibility of contents to ensure that incompatible materials are segregated and managed appropriately in separate accumulation containers.

(3) Puncturing universal waste aerosol cans. A handler of universal waste may puncture aerosol cans containing hazardous waste under this part to remove and collect the contents of the aerosol cans provided the handler complies with the following provisions:

**(a)** Ensure that the universal waste aerosol can is punctured in a manner designed to prevent the release of any universal waste or component of universal waste to the environment.

(b) Ensure that the puncturing operations are performed safely by developing and implementing a written procedure detailing how to safely puncture aerosol cans. This procedure must include the type of equipment to be used to puncture the aerosol cans, operation and maintenance of the unit, safe work practices, and proper waste management practices.

(c) Ensure that a spill clean-up kit is readily available to immediately clean up spills or leaks of the contents of the aerosol can which may occur during the can puncturing operation.

(d) Immediately transfers the contents of the aerosol can, or puncturing device if applicable, to a container that meets the requirements of 40 CFR Section 262.34.

(e) Ensure that the area in which the aerosol cans are punctured is well ventilated.

(f) Ensure that employees are thoroughly familiar with the procedure for sorting and puncturing aerosol cans, and proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.

(g) Determine whether the contents of the aerosol can, residues, and other solid wastes generated from the aerosol can puncturing activities are a hazardous waste identified in this part.

(h) Manage the contents of the universal waste aerosol can, residues, and other solid waste generated from the aerosol can puncturing activities in accordance with all applicable hazardous waste management requirements if they exhibit one or more of the characteristics identified in Subpart C of 40 CFR Part 261 or if its contents are listed in Subpart D of 40 CFR Part 261. The handler is considered the generator of the contents of the universal waste aerosol can and other solid waste generated from the aerosol can puncturing activities. If the contents of the universal waste aerosol can, residues, or other solid waste are not hazardous, the handler may manage the waste in a way that is in compliance with applicable federal, state or local solid waste regulations.

[20.4.1.1001 NMAC - Rp. 20 NMAC 4.1.1001, 12/1/2018, A, 12/01/2026]

**20.4.1.1103 REFERENCE TO 40 CFR PART 280:** Reference to any provisions of 40 CFR Part 280 within the text of any other provision of 40 CFR as adopted by this Part shall be construed to mean the New Mexico Underground Storage Tank Regulations, 20.5.1 through 20.5.17 20.5.101 through 20.5.125 NMAC. [20.4.1.1103 NMAC, R. 20 NMAC 4.1.1103, 12/1/2018, A. 12/1/2026]

[20.4.1.1103 NMAC - Rp, 20 NMAC 4.1.1103, 12/1/2018, A, 12/01/2026]

1                   **This is an amendment to 20.4.3 NMAC, Section 202, effective 12/01/2026**  
2

3                   **20.4.3.202       FEE CALCULATION:**

4                   A.       Nothing herein is intended to affect the generator's obligations with respect to reporting or record  
5        keeping under other applicable laws and regulations.

6                   B.       The total annual fees due are the cumulative total of the fees for all sites engaged in activities as  
7        defined in 20.4.3.7 NMAC during the calendar year prior to the year in which the fee is to be paid, subject to the  
8        limits set forth in 20.4.3.109 NMAC;

9                   C.       Beginning January 1 following the effective date of these fee regulations, the fees listed in  
10        [20.4.3.401] 20.4.3.201 NMAC shall be adjusted annually to account for inflation. The amounts shall be adjusted  
11        by the percentage of the preceding calendar year's change in the consumer price index for All Urban Consumers  
12        (CPI-U), United States City Average for All Items, published by the United States Department of Labor. The  
13        amount of change in the fee shall be rounded to the nearest one dollar (\$1.00).

14        [20.4.3.202 - Rp. 20.4.3.202 NMAC, 3/5/2020, A, 12/01/2026]

1    **TITLE 20            ENVIRONMENTAL PROTECTION**  
2    **CHAPTER 13        PER- AND POLY-FLUOROALKYL SUBSTANCES IN CONSUMER PRODUCTS**  
3    **PART 3            AQUEOUS FILM FORMING FOAM CONTAINING INTENTIONALLY ADDED PER-**  
4    **AND POLY-FLUOROALKYL SUBSTANCES**

5  
6    **20.13.3.1        ISSUING AGENCY:** Environmental Improvement Board  
7    [20.13.3.1 NMAC – N, 08/01/2026]

8  
9    **20.13.3.2        SCOPE:** This part applies to any facility that obtains, manufactures, stores, or uses firefighting  
10    foam products, hereinafter referred to as aqueous film-forming foam (AFFF) products containing intentionally  
11    added per- or polyfluoroalkyl substance (PFAS) products.  
12    [20.13.3.2 – N, 08/01/2026]

13  
14    **20.13.3.3        STATUTORY AUTHORITY:** Statutory Authority comes from the Environmental Improvement  
15    Act, Sections 74-1-1 NMSA 1978 et seq., and the Per- and Poly-Fluoroalkyl Substances Protection Act, Sections 74-  
16    15-1 NMSA 1978 et seq.  
17    [20.13.3.3 – N, 08/01/2026]

18  
19    **20.13.3.4        DURATION:** Permanent  
20    [20.13.3.4 – N, 08/01/2026]

21  
22    **20.13.3.5        EFFECTIVE DATE:** August 1, 2026, unless a later date is cited at the end of a section.  
23    [20.13.3.5 – N, 08/01/2026]

24  
25    **20.13.3.6        OBJECTIVE:** The objective of this part is to enact regulations requiring entities to:  
26    A.      Develop an inventory that identifies and records AFFF products containing intentionally added PFAS that  
27    are stored or used in New Mexico;  
28    B.      Properly label containers, including tanks, totes and drums of AFFF products containing intentionally  
29    added PFAS;  
30    C.      Use AFFF products containing intentionally added PFAS for emergency purposes only; and  
31    D.      Clean up discarded AFFF products containing intentionally added PFAS pursuant to the New Mexico  
32    Hazardous Waste Act.  
33    [20.13.3.6 – N, 08/01/2026]

34  
35    **20.13.3.7        DEFINITIONS:** The following terms, as used in this rule, have the following meanings:  
36    A.      “**emergency purposes**” include use of AFFF products containing intentionally added PFAS to  
37    extinguish flammable liquid fires in urgent, life threatening situations such as fuel spills or mobile vehicle (e.g.  
38    aircraft) incidents. For purposes of this subsection, “emergency purposes” does not include training, testing, or the  
39    use of firefighting foam in fire suppression systems;

40    B.      “**inventory**” is defined as a record identifying AFFF products containing intentionally added  
41    PFAS that are stored on site at a facility; and

42    C.      “**storage**” is defined as holding AFFF products containing intentionally added PFAS in a physical  
43    area of a facility for greater than 24 hours.  
44    [20.13.3.7 – N, 08/01/2026]

45  
46    **20.13.3.8        SEVERABILITY:** If any provision or application of this part is held invalid, the remainder, or its  
47    application to other situations or persons, shall not be affected.  
48    [20.13.3.8 – N, 08/01/2026]

49  
50    **20.13.3.9        FIREFIGHTING FOAM INVENTORY:** Any facility that obtains, manufactures, stores, or uses  
51    AFFF products containing intentionally added PFAS must provide the department with an annual inventory of AFFF  
52    products containing intentionally added PFAS housed on site in the prior calendar year by May 1<sup>st</sup> of each calendar  
53    year. This inventory must include the following elements for all AFFF products containing intentionally added  
54    PFAS:

55    (1)      Certification that the products are set aside for emergency purposes only;

(2) Facility name and address, contact name and phone number;  
(3) Quantity of products stored on site (number and unit of measure), at time of report;  
(4) Product name and trade name of the products;  
(5) Safety Data Sheets (SDS) for the products (either as an online link or an attached copy);  
(6) Type and volume capacity of container in which the products are stored (e.g.55-gallon drum, above/below ground tanks);  
(7) Identified on site storage locations of the products; and  
(8) Any use, sale, disposal, or transfer of the products over the past year. Specifically:  
i. the date and quantity of the use; and  
ii. the date and quantity of the shipment or transfer including the name and address of the recipient.

In addition, if there are any changes to the volumes of AFFF product containing intentionally added PFAS reported in the annual inventory due to emergency use, spill, or off-site disposal or transfer activities, the department must be notified of stored volume changes within 24 hours.

[20.13.3.9 – N, 08/01/2026]

**20.13.3.10 LABELING:** All containers where AFFF products containing intentionally added PFAS are stored on site must be clearly labeled and visible with the following information:

- A. "For Emergency Use Only. Contains PFAS;"
- B. The on-site accumulation start date;
- C. Hazard identification representing the nature of the hazard (e.g. pictogram);
- D. Expiration date if applicable; and
- E. Date of manufacture, if known.

[20.13.3.10 – N, 08/01/2026]

**20.13.3.11. RECORDKEEPING:** Any facility that obtain, manufactures, stores, or uses AFFF products containing intentionally added PFAS must keep a copy of all relevant documents related to the stored products for at least three years from the year the products began accumulating at the site. Records that must be maintained include:

- A. Product inventory;
- B. Documentation of transfers, offsite disposal, and/or sale of products;
- C. Documentation of AFFF products containing intentionally added PFAS used for emergency responses and spills; and
- D. Emergency Response Plan.

The period of retention referred to in this section is extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the department.

[20.13.3.11 – N, 08/01/2026]

**20.13.3.12 STORAGE REQUIREMENTS:** This section requires the storage of AFFF products containing intentionally added PFAS pursuant to 40 CFR 265.31, 40 CFR 265.32, 40 CFR 265.33, 40 CFR 265.35, 40 CFR 265.171, 40 CFR 265.177.

[20.13.3.12 – N, 08/01/2026]

**20.13.3.13 EMERGENCY USE OF FIREFIGHTING FOAM ONLY:** This section stipulates that AFFF products containing intentionally added PFAS may only be used for emergency purposes in New Mexico.

All entities that obtain, manufacture, store, or use AFFF products containing intentionally added PFAS must develop and maintain on site an emergency plan that includes the following elements:

- A. Anticipated uses of the AFFF products containing intentionally added PFAS;
- B. Description of the actions facility personnel must take in response to fires involving flammable liquids;
- C. Description of the arrangements agreed to with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers, local hospitals or, if applicable, the Local Emergency Planning Committee (LEPC);

1           D. The name of the emergency coordinator(s) and emergency telephone number(s) that are monitored  
2 seven days a week, 24 hours a day, or, in the case of a facility where an emergency coordinator is continuously on  
3 duty, the emergency telephone number for the emergency coordinator;

4           E. Evacuation plan for facility personnel where there is a possibility that evacuation could be  
5 necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate  
6 evacuation routes (in cases where the primary routes could be blocked); and

7           F. List of all emergency equipment at the facility (such as fire extinguishing systems, spill control  
8 equipment, communications and alarm systems (internal and external), and decontamination equipment), where this  
9 equipment is required. This list must be kept up to date. In addition, the plan must include the location and a  
10 physical description of each item on the list, and a brief outline of its capabilities.

11 [20.13.3.13 – N, 08/01/2026]

12           **20.13.3.14    CLEAN UP OF FIREFIGHTING FOAM:** This section requires the cleanup of discarded  
13 firefighting foam pursuant to 20.4.1 NMAC Hazardous Waste Act and the Per- and Poly-Fluoroalkyl Substances  
14 Protection Act, Sections 74-15-1 NMSA 1978 et seq.

15 [20.13.3.14 – N, 08/01/2026]