NOTICE AND CONCISE EXPLANATORY STATEMENT OF THE ENVIRONMENTAL IMPROVEMENT BOARD'S DECISION TO ADOPT 20.13.3 NMAC CASE NO. EIB 25-81(R)

Pursuant to the Environmental Improvement Act, NMSA 1978, Sections 74-1-1 to -18, and the Per- and Poly-Fluoroalkyl Substances Protection Act, NMSA 1978, Section 75-15-1 to -7, the Environmental Improvement Board ("EIB") is authorized to adopt the proposed rule 20.13.3 NMAC.

New Rule 20.13.3 NMAC requires a periodic inventory of aqueous film forming foam containing intentionally added per- or poly-fluoroalkyl substances ("AFFF"), requires the use of AFFF for emergency purposes only, and requires the cleanup of discarded AFFF pursuant to the New Mexico Hazardous Waste Act.

Petitioners brought the proposed new rule before the EIB in a petition for public hearing. Notice of Hearing was published at least 60 days prior to the hearing in accordance with 20.1.1.301 NMAC. A public hearing was docketed at EIB 25-1(R) was held on March 13, 2026. The EIB deliberated on March 13, 2026. After deliberating, the EIB unanimously voted to adopt New Rule 20.13.3 NMAC. In adopting New Rule 20.13.3 NMAC, the EIB considered all the facts and circumstances and concluded that the Petitioners' proposed regulatory revisions will protect the wealth, welfare, animal and plant life, property and the environment and serve the purposes of the Environmental Improvement Act, and the Per- and Poly-Fluoroalkyl Substances Protection Act. The EIB provided its reasons for the action taken in the Statemen of Reasons and Final order dated June 8, 2026 .

Adoption of the new rule occurred upon the signature of the Statement of Reasons and Final Order. 20.1.1.407(C) NMAC. The new rule adopted by the EIB shall become effective no less than thirty days after its filing in accordance with the provisions of the State Rules Act. NMSA 1978, § 74-1-9(G). In accordance with the State Rules Act, no rule shall be valid and enforceable until it is filed with the Administrative Law Division and published in the *New Mexico Register*. NMSA 1978, § 14-4-5. To ensure these requirements have been met, this rule will be effective no earlier than its publication in the *New Mexico Register* or thirty days from filing with the Administrative Law Division, whichever comes later.

A copy of the new rule is published along with this notice.

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

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

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

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

20.13.3.4 DURATION: Permanent
[20.13.3.4 NMAC – N, 08/01/2026]

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

20.13.3.6 OBJECTIVE: The objective of this part is to enact regulations requiring entities to:

A. Develop an inventory that identifies and records AFFF products containing intentionally added PFAS that are stored or used in New Mexico;

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.

[20.13.3.6 NMAC – N, 08/01/2026]

20.13.3.7 DEFINITIONS: The following terms, as used in this rule, have the following meanings:

A. "emergency purposes" include use of AFFF products containing intentionally added PFAS to extinguish flammable liquid fires in urgent, life threatening situations such as fuel spills or mobile vehicle (e.g. aircraft) incidents. For purposes of this subsection, "emergency purposes" does not include training, testing, or the use of firefighting foam in fire suppression systems;

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

C. "storage" is defined as holding AFFF products containing intentionally added PFAS in a physical area of a facility for greater than 24 hours.

[20.13.3.7 NMAC – N, 08/01/2026]

20.13.3.8 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.
[20.13.3.8 NMAC – N, 08/01/2026]

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

A. Certification that the products are set aside for emergency purposes only;

B. Facility name and address, contact name and phone number;

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C. Quantity of products stored on site (number and unit of measure), at time of report;

D. Product name and trade name of the products;

E. Safety Data Sheets (SDS) for the products (either as an online link or an attached copy);

F. Type and volume capacity of container in which the products are stored (e.g.55-gallon drum, above/below ground tanks);

G. Identified on site storage locations of the products; and

H. Any use, sale, disposal, or transfer of the products over the past year. Specifically:

(1) the date and quantity of the use; and

(2) 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 NMAC – 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 NMAC – 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 NMAC – 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 NMAC – 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);

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

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

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F. List of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.
[20.13.3.13 NMAC – N, 08/01/2026]

20.13.3.14 CLEAN UP OF FIREFIGHTING FOAM: This section requires the cleanup of discarded firefighting foam pursuant to 20.4.1 NMAC Hazardous Waste Act and the Per- and Poly-Fluoroalkyl Substances Protection Act, Sections 74-15-1 NMSA 1978 et seq.
[20.13.3.14 NMAC – N, 08/01/2026]

HISTORY OF 20.13.3 NMAC - [RESERVED]