

1 AN ACT
2 RELATING TO THE ENVIRONMENT; ENACTING THE PER- AND POLY-
3 FLUOROALKYL SUBSTANCES PROTECTION ACT; PROHIBITING CERTAIN
4 PRODUCTS THAT CONTAIN AN INTENTIONALLY ADDED PER- OR POLY-
5 FLUOROALKYL SUBSTANCE; AUTHORIZING THE ENVIRONMENTAL
6 IMPROVEMENT BOARD TO ADOPT RULES PROHIBITING CERTAIN PRODUCTS
7 THAT CONTAIN AN INTENTIONALLY ADDED PER- OR POLY-FLUOROALKYL
8 SUBSTANCE; REQUIRING DISCLOSURE OF INFORMATION AND TESTING OF
9 PRODUCTS SOLD, OFFERED FOR SALE OR DISTRIBUTED FOR SALE IN
10 THIS STATE THAT CONTAIN AN INTENTIONALLY ADDED PER- OR POLY-
11 FLUOROALKYL SUBSTANCE; PROVIDING PENALTIES.

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

14 SECTION 1. SHORT TITLE.--This act may be cited as the
15 "Per- and Poly-Fluoroalkyl Substances Protection Act".

16 SECTION 2. DEFINITIONS.--As used in the Per- and
17 Poly-Fluoroalkyl Substances Protection Act:

18 A. "board" means the environmental improvement
19 board;

20 B. "carpet or rug" means a fabric marketed or
21 intended for use as a floor covering;

22 C. "chemical" means a substance with a distinct
23 molecular composition or a group of structurally related
24 substances and includes the breakdown of products of the
25 substance or substances that form through decomposition,

1 degradation or metabolism;

2 D. "cleaning product" means a finished product
3 used for general cleaning purposes, including:

4 (1) a polish or floor maintenance product;

5 (2) an air care product labeled for the
6 intended use of enhancing or conditioning the indoor
7 environment by eliminating unpleasant odors or freshening the
8 air; and

9 (3) an automotive maintenance product
10 labeled for the intended use of maintaining the appearance of
11 a motor vehicle, but does not include automotive paint or
12 paint repair products;

13 E. "consumer product" means a tangible personal
14 property that is distributed in commerce and normally used
15 for personal, family or household use, including product
16 categories that are normally used in households but designed
17 for or sold to businesses, such as commercial carpet or floor
18 waxes;

19 F. "cookware" means durable houseware items
20 intended for direct food contact and used to prepare,
21 dispense or store food, foodstuffs or beverages;

22 G. "cosmetic" means a product or product
23 component, other than soap, intended to be applied to the
24 human body for cleansing, beautifying or promoting
25 attractiveness;

1 H. "currently unavoidable use" means a use of a
2 per- or poly-fluoroalkyl substance that the board has
3 determined by rule to be essential for health, safety or the
4 functioning of society and for which alternatives are not
5 reasonably available;

6 I. "department" means the department of
7 environment;

8 J. "fabric treatment" means a substance applied to
9 fabric for stain, grease or water resistance or flame
10 retardance;

11 K. "feminine hygiene product" means a disposable
12 or reusable product to collect menstruation and vaginal
13 discharge, including tampons, pads, sponges, menstruation
14 underwear, discs, applicators and menstruation cups;

15 L. "firefighting foam" means an aqueous
16 film-forming foam containing an intentionally added per- or
17 poly-fluoroalkyl substance;

18 M. "food packaging" means a container, unit
19 package, intermediate package or shipping container applied
20 to or providing a means to market, protect, handle, deliver,
21 serve, contain or store a food or beverage, including an
22 individual assembled part of a food package;

23 N. "intentionally added" means a per- or poly-
24 fluoroalkyl substance deliberately added or used during the
25 manufacture of a product where the continued presence, at any

1 level or concentration, of the per- or poly-fluoroalkyl
2 substance is desired or expected in the final product or one
3 of the product's components;

4 O. "juvenile product" means a product designed or
5 marketed for use by children under twelve years old,
6 including children's car seats, clothing and toys, but does
7 not include an electronic product, including:

8 (1) personal computers and any associated
9 equipment;
10 (2) audio and video equipment;
11 (3) calculators;
12 (4) wireless phones;
13 (5) gaming consoles;
14 (6) handheld devices incorporating a video
15 screen; and

16 (7) any associated peripheral device, such
17 as a mouse, keyboard, power supply unit or power cord;

18 P. "manufacturer" means:

19 (1) a person, a firm, an association, a
20 partnership, a corporation, an organization or a combination
21 or a joint venture that creates, produces or assembles a
22 product or whose brand name is affixed to a product; or

23 (2) in the case of a product imported into
24 the United States, an importer or first domestic distributor
25 of the product; provided that the entity or person that

1 created, produced or assembled the product or whose brand
2 name is affixed to the product does not have an office or
3 employees in the United States;

4 Q. "medical device" means an instrument, an
5 apparatus, an implement, a machine, an implant, an in vitro
6 reagent or other similar or related device, including any
7 component or accessory, that is a product regulated as a drug
8 or medical device by the United States food and drug
9 administration under the Federal Food, Drug, and Cosmetic
10 Act, 21 U.S.C. 321 et seq.:

11 (1) recognized in an official compendium;

12 (2) intended for use in the diagnosis of
13 disease or other conditions, or in the cure, mitigation,
14 treatment or prevention of disease, in a human or an animal;
15 or

16 (3) intended to affect the structure or
17 function of the body of a human or an animal and that does
18 not achieve its principal intended purposes through chemical
19 action within or on the body of a human or an animal and that
20 is not dependent on being metabolized for achievement of its
21 principal intended purpose;

22 R. "official compendium" means a comprehensive,
23 authoritative listing of recognized medical devices,
24 including listings published by a federal regulatory body,
25 which detail specifications standards, and accepted uses of

1 medical devices;

2 S. "per- or poly-fluoroalkyl substance" means a
3 substance in a class of fluorinated organic chemicals
4 containing at least one fully fluorinated carbon atom;

5 T. "product" means an item created, produced,
6 assembled, packaged or otherwise prepared for sale to a
7 consumer, including a product component sold or distributed
8 for personal, residential, commercial or industrial use or
9 for use in making a product;

10 U. "ski wax" means a lubricant applied to the
11 bottom of a snow runner, including a ski or snowboard, to
12 improve grip or glide properties and includes associated
13 tuning products;

14 V. "textile" means an item made in whole or in
15 part from a natural or synthetic fiber, yarn or fabric,
16 including leather, cotton, silk, jute, hemp, wool, viscose,
17 nylon or polyester;

18 W. "textile furnishings" means a textile product
19 made in whole or part from a natural or synthetic fiber, yarn
20 or fabric that is used as furniture or a decorative
21 accessory; and

22 X. "upholstered furniture" means furniture that is
23 wholly or partially stuffed with a filling material.

24 SECTION 3. PROHIBITION ON PRODUCTS CONTAINING PER- OR
25 POLY-FLUOROALKYL SUBSTANCES--EXEMPTIONS.--

1 A. Subsections B through F of this section do not
2 apply to:

3 (1) a product for which federal law governs
4 the presence of a per- or poly-fluoroalkyl substance in the
5 product in a manner that preempts state authority;

6 (2) used products offered for sale or
7 resale;

8 (3) medical devices or drugs and the
9 packaging of the medical devices or drugs that are regulated
10 by the United States food and drug administration, including
11 prosthetic and orthotic devices;

12 (4) cooling, heating, ventilation, air
13 conditioning or refrigeration equipment that contains
14 intentionally added per- or poly-fluoroalkyl substances or
15 refrigerants listed as acceptable, acceptable subject to use
16 conditions or acceptable to narrowed use limits by the United
17 States environmental protection agency pursuant to the
18 significant new alternatives policy program, 40 Code of
19 Federal Regulations, Part 82, Subpart G and sold, offered for
20 sale or distributed for sale for the use for which the
21 refrigerant is listed pursuant to that program;

22 (5) a veterinary product and its packaging
23 intended for use in or on animals, including diagnostic
24 equipment or test kits and the veterinary product's
25 components and any product that is a veterinary medical

1 device, drug, biologic or parasiticide or that is otherwise
2 used in a veterinary medical setting or in veterinary medical
3 applications that are regulated by or under the jurisdiction
4 of:

5 (a) the United States food and drug
6 administration;

7 (b) the United States department of
8 agriculture pursuant to the federal Virus-Serum-Toxin Act; or

9 (c) the United States environmental
10 protection agency pursuant to the Federal Insecticide,
11 Fungicide, and Rodenticide Act, except that any such products
12 approved by the United States environmental protection agency
13 pursuant to that law for aerial and land application are not
14 exempt from this section;

15 (6) a product developed or manufactured for
16 the purpose of public health or environmental or water
17 quality testing;

18 (7) a motor vehicle or motor vehicle
19 equipment regulated under a federal motor vehicle safety
20 standard, as defined in 49 United States Code, Section
21 30102(a)(10), except that the exemption under this paragraph
22 does not apply to any textile article or refrigerant that is
23 included in or as a component part of such products;

24 (8) any other motor vehicle, including an
25 off-highway vehicle or a specialty motor vehicle, such as an

1 all-terrain vehicle, a side-by-side vehicle, farm equipment
2 or a personal assistive mobility device;

3 (9) a watercraft, an aircraft, a lighter-
4 than-air aircraft or a seaplane;

5 (10) a semiconductor, including
6 semiconductors incorporated in electronic equipment, and
7 materials used in the manufacture of semiconductors;

8 (11) non-consumer electronics and
9 non-consumer laboratory equipment not ordinarily used for
10 personal, family or household purposes;

11 (12) a product that contains intentionally
12 added per- or poly-fluoroalkyl substances with uses that are
13 currently listed as acceptable, acceptable subject to use
14 conditions or acceptable subject to narrowed use limits in
15 the United States environmental protection agency's rules
16 under the significant new alternatives policy program;
17 provided that the product contains per- or poly-fluoroalkyl
18 substances that are being used as substitutes for
19 ozone-depleting substances under the conditions specified in
20 the rules;

21 (13) a product used for the generation,
22 distribution or storage of electricity;

23 (14) equipment directly used in the
24 manufacture or development of the products described in
25 Paragraphs (1) through (13) of this subsection;

1 (15) a product for which the board has
2 adopted a rule providing that the use of the per- or
3 poly-fluoroalkyl substance in that product is a currently
4 unavoidable use; or

5 (16) a product that contains fluoropolymers
6 consisting of polymeric substances for which the backbone of
7 the polymer is either a per- or polyfluorinated carbon-only
8 backbone or a perfluorinated polyether backbone that is a
9 solid at standard temperature and pressure.

10 B. Except as provided in Subsection A of this
11 section, beginning January 1, 2027, a manufacturer shall not
12 sell, offer for sale, distribute or distribute for sale in
13 this state, directly or indirectly or through intermediaries,
14 the following products if that product contains an
15 intentionally added per- or poly-fluoroalkyl substance:

- 16 (1) cookware;
- 17 (2) food packaging;
- 18 (3) dental floss;
- 19 (4) juvenile products; and
- 20 (5) firefighting foam.

21 C. Except as provided in Subsection A of this
22 section, beginning January 1, 2028, a manufacturer shall not
23 sell, offer for sale, distribute or distribute for sale in
24 this state, directly or indirectly or through intermediaries,
25 the following products if that product contains an

1 intentionally added per- or poly-fluoroalkyl substance:

- 2 (1) carpets or rugs;
- 3 (2) cleaning products;
- 4 (3) cosmetics;
- 5 (4) fabric treatments;
- 6 (5) feminine hygiene products;
- 7 (6) textiles;
- 8 (7) textile furnishings;
- 9 (8) ski wax; and
- 10 (9) upholstered furniture.

11 D. Except as provided in Subsection A of this
12 section, the board may adopt rules to prohibit consumer
13 products not enumerated in Subsections B and C of this
14 section that contain an intentionally added per- or poly-
15 fluoroalkyl substance by category or use that a manufacturer
16 may not sell, offer for sale, distribute or distribute for
17 sale in this state, directly or indirectly or through
18 intermediaries, upon a finding of fact that a prohibition on
19 the product is necessary to protect human health or the
20 environment. The board shall set effective dates for a
21 prohibition established by rule pursuant to this subsection;
22 provided that the board shall not set an effective date for
23 the prohibition of a product less than six months after the
24 adoption of the final rule to prohibit the product or earlier
25 than January 1, 2027. The board shall prioritize the

1 prohibition of consumer products containing an intentionally
2 added per- or poly-fluoroalkyl substance that are most likely
3 to harm human health or contaminate the environment.

4 E. Except as provided in Subsection A of this
5 section, beginning January 1, 2032, a manufacturer shall not
6 sell, offer for sale, distribute or distribute for sale in
7 this state, directly or indirectly or through intermediaries,
8 a product containing an intentionally added per- or poly-
9 fluoroalkyl substance, unless the board has adopted a rule
10 providing that the use of the per- or poly-fluoroalkyl
11 substance in that product is a currently unavoidable use.
12 The board may adopt rules to designate that the use of a per-
13 or poly-fluoroalkyl substance in a certain product is a
14 currently unavoidable use.

15 F. The department shall consult with the New
16 Mexico department of agriculture before petitioning the board
17 pursuant to Subsection D or E of this section with respect to
18 a pesticide, fertilizer, agricultural liming material or
19 plant or soil amendment that contains an intentionally added
20 per- or poly-fluoroalkyl substance. However, if a pesticide
21 is regulated by or under the jurisdiction of the Federal
22 Insecticide, Fungicide, and Rodenticide Act, then Subsections
23 B through E of this section do not apply to the pesticide.

24 SECTION 4. RULES.--

25 A. The board shall adopt rules to:

1 (1) exempt from the reporting requirements
2 established pursuant to Section 5 of the Per- and
3 Poly-Fluoroalkyl Substances Protection Act any product that
4 contains an intentionally added per- or poly-fluoroalkyl
5 substance that is exempt pursuant to Subsection A of Section
6 3 of that act or that has been designated as a currently
7 unavoidable use;

8 (2) create a series of ranges for the amount
9 of a per- or poly-fluoroalkyl substance in a product that
10 contains an intentionally added per- or poly-fluoroalkyl
11 substance for reporting purposes unless exempted in
12 Subsection A of Section 3 of the Per- and Poly-Fluoroalkyl
13 Substances Protection Act;

14 (3) identify currently unavoidable uses of a
15 per- or poly-fluoroalkyl substance that are essential for
16 health, safety or the functioning of society and for which
17 alternatives are not reasonably available unless exempted in
18 Subsection A of Section 3 of the Per- and Poly-Fluoroalkyl
19 Substances Protection Act; and

20 (4) as pertaining to firefighting foam:

21 (a) require a periodic inventory of
22 firefighting foam quantities stored or used in New Mexico;

23 (b) require the use of firefighting
24 foam for emergency purposes only; and

25 (c) require the cleanup of discarded

1 firefighting foam pursuant to the Hazardous Waste Act.

2 For purposes of this subsection, "emergency purposes"
3 does not include training or the use of firefighting foam in
4 fire suppression systems.

5 B. The board may:

6 (1) adopt rules to carry out the provisions
7 of the Per- and Poly-Fluoroalkyl Substances Protection Act,
8 including requiring the labeling of products in English and
9 Spanish; and

10 (2) determine that a product containing
11 intentionally added per- or poly-fluoroalkyl substances are a
12 currently unavoidable use based on determinations made by
13 other states.

14 SECTION 5. RULES--INFORMATION REQUIRED--EXTENSIONS--
15 WAIVERS.--

16 A. The board shall adopt rules that enumerate the
17 information required of a manufacturer. The information
18 required shall include:

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

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

24 (3) the amount of each per- or poly-
25 fluoroalkyl substance in the product, identified by its

1 chemical abstracts service registry number and reported as an
2 exact quantity determined using commercially available
3 analytical methods or as falling within a range approved for
4 reporting purposes by the department;

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

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

18 B. On or before January 1, 2027, a manufacturer of
19 a product sold, offered for sale, distributed or distributed
20 for sale in the state, directly or indirectly or through
21 intermediaries, that contains an intentionally added per- or
22 poly-fluoroalkyl substance shall submit to the department the
23 information required by Subsection A of this section or a
24 rule adopted pursuant to that subsection.

25 C. On or after January 1, 2028, a manufacturer

1 shall not sell, offer for sale, distribute or distribute for
2 sale in this state, directly or indirectly or through
3 intermediaries, a product if testing requested by the
4 department demonstrates that the product contains an
5 intentionally added per- or poly-fluoroalkyl substance and
6 the manufacturer has failed to provide the department the
7 information required by Subsection A of this section or a
8 rule adopted pursuant to that subsection.

9 D. On or after January 1, 2028, a manufacturer
10 shall not sell, offer for sale, distribute or distribute for
11 sale in this state, directly or indirectly or through
12 intermediaries, a product that contains an intentionally
13 added per- or poly-fluoroalkyl substance unless the
14 manufacturer has submitted to the department the information
15 required by Subsection A of this section or a rule adopted
16 pursuant to that subsection. A product reported pursuant to
17 this subsection containing an intentionally added per- or
18 poly-fluoroalkyl substance may be prohibited from sale
19 pursuant to the Per- and Poly-Fluoroalkyl Substances
20 Protection Act and to rules adopted pursuant to that act.

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

25 F. Upon written approval from the department, a

1 manufacturer may provide the information required by this
2 section to the department for a category or type of product
3 or product component.

4 G. The department may waive the obligation of a
5 manufacturer to submit all or part of the information
6 required by this section if the department determines that
7 substantially equivalent information is publicly available.
8 The department may grant a waiver to a manufacturer or a
9 group of manufacturers for multiple products or a product
10 category.

11 H. The department may enter into an agreement with
12 one or more states or political subdivisions of a state to
13 collect information and may accept information to a shared
14 system as meeting the information requirements of this
15 section.

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

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

1 K. The requirements of this section do not apply
2 to products that are exempt pursuant to Subsection A of
3 Section 3 of the Per- and Poly-Fluoroalkyl Substances
4 Protection Act.

5 **SECTION 6. TESTING REQUIRED--CERTIFICATE OF**
6 **COMPLIANCE--EXEMPTION.--**

7 A. If the department has reason to believe that a
8 product containing an intentionally added per- or poly-
9 fluoroalkyl substance is being sold, offered for sale,
10 distributed or distributed for sale in the state, directly or
11 indirectly or through intermediaries, the department may
12 direct the manufacturer of the product to, within thirty
13 days, provide the department with testing results that
14 demonstrate the amount of each per- or poly-fluoroalkyl
15 substance in the product, identified by its chemical
16 abstracts service registry number reported as an exact
17 quantity determined using commercially available analytical
18 methods or as falling within a range approved for reporting
19 purposes by the department.

20 B. If testing demonstrates that the product does
21 not contain an intentionally added per- or poly-fluoroalkyl
22 substance, the manufacturer shall provide the department with
23 a certificate of compliance attesting that the product does
24 not contain an intentionally added per- or poly-fluoroalkyl
25 substance, the testing results and any other relevant

1 information.

2 C. If testing demonstrates that the product
3 contains an intentionally added per- or poly-fluoroalkyl
4 substance, the manufacturer shall:

5 (1) provide to the department, within thirty
6 days, the information required for a product pursuant to the
7 Per- and Poly-Fluoroalkyl Substances Protection Act or rules
8 adopted pursuant to that act; and

9 (2) notify a person that sells, offers for
10 sale, distributes or distributes the product for sale in this
11 state that the product is prohibited in this state and
12 provide the department with a list of the names and addresses
13 of the people notified.

14 D. The department may notify a person that sells,
15 offers for sale, distributes or distributes for sale in this
16 state a product prohibited by the Per- and Poly-Fluoroalkyl
17 Substances Protection Act or rules adopted pursuant to that
18 act that the product is prohibited in this state.

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

23 **SECTION 7. ENFORCEMENT--CIVIL PENALTY.--**

24 A. A manufacturer that violates a provision of the
25 Per- and Poly-Fluoroalkyl Substances Protection Act or a rule

1 adopted pursuant to that act shall be assessed a civil
2 penalty not to exceed fifteen thousand dollars (\$15,000), and
3 for each day during which any portion of a violation occurs,
4 the department may assess the manufacturer administrative
5 costs the department incurs for enforcement of the Per- and
6 Poly-Fluoroalkyl Substances Protection Act or a rule adopted
7 pursuant to that act.

8 B. A manufacturer that fails to comply with an
9 administrative order issued pursuant to the Per- and Poly-
10 Fluoroalkyl Substances Protection Act or a rule adopted
11 pursuant to that act may be assessed, pursuant to a court
12 order, a civil penalty of not more than twenty-five thousand
13 dollars (\$25,000) for each day of noncompliance.

14 C. Penalties and administrative costs imposed
15 pursuant to this section are independent of any damages,
16 remediation or cleanup costs, environmental restoration costs
17 or other monetary or nonmonetary remedies that may be imposed
18 by statute, rule or court decision.

19 D. In an action to enforce the provisions of the
20 Per- and Poly-Fluoroalkyl Substances Protection Act or a rule
21 or order adopted pursuant to that act, the department shall
22 be represented by the attorney general or the department.

23 E. Penalties collected pursuant to this section
24 shall be deposited in the recycling and illegal dumping fund. =