



A Flask, Four Letters and a New (Mexico) Compliance Obligation

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The New Mexico Environment Department recently added guidance to its per- and polyfluoroalkyl substances (PFAS) website to assist consumers, businesses and manufacturers in their efforts to comply with New Mexico's PFAS labeling requirements under the PFAS Protection Act. The guidance provides detailed instructions regarding the contents of the state's PFAS label, as well as where to place and display the label on products, packaging, online sales platforms and complex durable goods. The guidance also establishes the process through which manufacturers can rely on labeling adopted in other states, outlines the procedures for those seeking waivers because their products contain intentionally added PFAS that will not come into direct contact with consumers during intended use, and describes the enforcement mechanisms and potential penalties for noncompliance under the Act.

New Mexico provides the following overview of the requirements:

- Consumer products must include a label that is an image of an Erlenmeyer flask with the word "PFAS" inside the flask.
- The label must be affixed to the product such that the label is clearly visible and legible to a consumer or other purchaser prior to sale.
- The label must be displayed with such conspicuousness as compared with other words, statements, design or devices on the product as to render the label likely to be seen, read and understood by an ordinary individual under customary conditions of purchase or use.
- The PFAS text inside the flask shall be no smaller than the largest font used for other consumer information (e.g., disclosures, warnings, directions for use and ingredient

lists) on the product.

- Labels affixed to products must be printed, mounted, molded, engraved, embossed or otherwise affixed to the product.

If the product is sold in consumer packaging that obscures the label on the product, then the consumer packaging must also be labeled in the same manner as described above.

- Where a consumer or other purchaser is unable to view the label on the product or consumer packaging at the time of purchase or receipt, such as in catalog or online sales transactions that occur over the internet or telephone, the manufacturer or retailer shall, prior to sale or distribution, clearly include the labeling information to the prospective consumer prior to purchase.
- The manufacturer is primarily responsible for labeling, but a wholesaler or retailer may agree, in writing, to label products or packaging in lieu of the manufacturer. A retailer that re-packages the labeled product must relabel the new packaging.

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