Association of Home Appliance Manufacturers (AHAM) (John Keane)

Please see the attached comment letter from the Association of Home Appliance Manufacturers (AHAM) on the Proposed Rules for implementation of HB212.

ASSOCIATION OF HOME
APPLIANCE MANUFACTURERS

1111 19TH STREET NW | SUITE 1150
WASHINGTON, DC 20036
AHAM.ORG

January 14, 2026

Phoebe Suina
Chair
New Mexico Environmental Improvement Board (EIB)
1190 St. Francis Drive, Suite N4050
Santa Fe, NM 87505

Re: Association of Home Appliance Manufacturers Response to Petition for Regulatory Change to Adopt 20.13.2 NMAC, Per- and Poly-Fluoroalkyl Substances in Consumer Products

Dear Chair Suina,

On behalf of the Association of Home Appliance Manufacturers (AHAM), I would like to raise the following points concerning the Petition for Regulatory Change to Adopt 20.13.2 NMAC and Request for Hearing (EIB 25-61).

AHAM represents manufacturers of major, portable and floor care home appliances, and suppliers to the industry. AHAM's membership includes over 150 companies throughout the world. In New Mexico, the home appliance industry is a significant and critical segment of the economy. The total economic impact of the home appliance industry to New Mexico is $560 million, more than 4,000 direct and indirect jobs, $83 million in state tax revenue, and more than $173 million in wages. The home appliance industry, through its products and innovation, is essential to U.S. consumer lifestyle, health, safety, and convenience. Through its technology, employees and productivity, the industry contributes significantly to U.S. jobs and economic security. Home appliances are also a success story in terms of energy efficiency and environmental protection. New appliances often represent the most effective choice a consumer can make to reduce home energy use and costs.

AHAM's members produce hundreds of millions of products each year. They design and build products at the highest levels of quality and safety. Together with industry design practices, test requirements, and redundant safety mechanisms, PFAS chemicals play a key role in the safety of household appliances. As such, they have demonstrated their commitment to strong internal safety design, monitoring, and evaluation/failure analysis systems. Due to the complexity of home appliances, exposure to PFAS chemicals is much different compared to more homogenous simpler products. AHAM supports the appropriate use of PFAS chemicals in appliances and the intent to protect consumers against all unreasonable risks, including those associated with the exposure to potentially harmful chemicals. AHAM also adamantly supports chemical regulatory approaches that are science driven, protective against regrettable substitution, and consistent with state law and federal regulations. Unfortunately, the New Mexico Environment Department's (NMED) proposed labeling requirements contain serious legal and practical deficiencies. Additional

concerns are presented below around the forthcoming prohibitions and reporting requirements as well.

Intent of Label

During legislative deliberations around HB 212, "The Per-& Poly-Fluoroalkyl Protection Act," AHAM was an active member in the negotiations around the law, including around the fluoropolymer exemption and clarity around the prohibition of PFAS in cookware. The discussions focused on the practicality of the law and avoiding regrettable substitutions. During testimony before the New Mexico Senate, NMED Secretary James Kenney characterized HB 212 as a "middle ground" among state PFAS-in products laws. However, none of the other state laws regulating PFAS in all products and which predate HB 212 mandate all-product labeling or authorize agencies to create regulations. More importantly, the proposed labeling requirements disregard the legislative work to exempt categories of products from PFAS restrictions and reporting obligations. We would also add that NMED has not provided adequate justification for why there is a need to take this discretionary authorization to make labeling requirements. Because of this, it is hard for stakeholders to comment appropriately and identify possibly more cost-effective solutions to the perceived problem when manufacturers and suppliers have very little to no justification provided at this time.

Because of the expansive definition of PFAS with different safety profiles, the New Mexico Legislature expressly exempted many categories of products from the statute's prohibition, reporting, disclosure, and currently unavoidable use (CUU) provisions. The exclusions include "a product that contains fluoropolymers consisting of polymeric substances for which the backbone of the polymer is either a per- or polyfluorinated carbon-only backbone or a perfluorinated polyether backbone that is a solid at standard temperature and pressure." NMED is proposing to require labeling of products that the Legislature specifically exempted from regulation in other areas. In so doing, the NMED is exercising a purely discretionary option that is inconsistent with the intent of the legislature. The legislature intended for those products to continue to be available to New Mexico's businesses and citizens without additional conditions that may be costly and that could pose complicated compliance challenges for many manufacturers. We also raise objections if the goal is to raise consumer awareness and education as many PFAS, including fluoropolymers, have not been demonstrated to have negative health concerns and are a material of choice for applications such as medical devices. If most products are labeled at a retail store, consumers would be confused about what products are safe when appliances are bound by national safety standards.

Finally, under Section 4 of the law, "the board may adopt other rules that the board deems necessary to carry out the provisions of the Per- and Poly-Fluoroalkyl Substances Protection Act, including requiring the labeling of products in English and Spanish." The use of the term "may" in the statute is a clear indication that the NMED's petition is discretionary. We believe that the proposed labeling scheme is an overreach from NMED and should be significantly narrowed to appropriately educate New Mexico consumers on the harms around PFAS and "carry out the provisions" of the law which includes a recognition of the differences from fluoropolymers and other PFAS. AHAM would encourage a revision of the draft regulations to ensure that any final rule is grounded in strong scientific principles and provides regulatory certainty to the business community.

First Amendment Issues

The First Amendment of the U.S. Constitution limits government-compelled commercial speech to disclosures that convey "purely factual and noncontroversial information." NMED's proposed labeling requirements may violate First Amendment rights against compelled speech by imposing counterfactual and controversial information on product labels. The proposed rule state that containing the following language is acceptable: "This product is made with PFAS or contains component parts made with PFAS. PFAS are a family of chemicals, exposure to which are associated with negative health and environmental effects." That statement is not true for all PFAS. For example, fluoropolymers, a class of PFAS, have been found to be substances of low concern for human health and the environment. The proposed approved statement goes beyond purely factual and noncontroversial information, not just for fluoropolymers, but likely for many fluorinated substances captured by the definition of PFAS in the statute. Federal courts have struck down labeling mandates that convey disputed or misleading messages about chemical risks.

Secondly, specific to complex durable goods where the disclosure must also include an internet website address or QR code that directs to a NMED website with information on PFAS use in products, there are significant concerns that the NMED webpage may change without manufacturer input and provide language that raises similar concerns providing counterfactual and controversial information online that a consumer can access.

Compliance timeline is insufficient

Appliance manufacturers employ a complex, global supply chain for thousands of models with hundreds of thousands of components, often involving multi-tiered suppliers located on multiple continents with thousands and thousands of components. This includes an array of manufacturers, from small private firms to multinational corporations, providing chemicals, component parts, and assemblies that come together in a final manufactured article. Up till now, outside of California Prop 65 labeling, only cookware manufacturers have had to label for PFAS based on specific state requirements (California AB 1200[1] and Colorado[2]). In preparation for these cookware labeling requirements, AHAM surveyed our members on compliance timelines and manufacturers need approximately 18 months on average to completely incorporate PFAS labels across their entire supply and distribution. This includes design, artwork, printing, quality assurance, legal, adding to new packaging, distribution to existing inventory, transit, among other stages for potentially thousands of products. Of note, some members identified transition periods as much as 24 months.

As manufacturers develop a mandated label, manufacturers must first begin with an initial design phase to determine where the label would be placed with limited product space that includes vital existing safety and use labels that already occupy key product areas. After the design phase, manufacturers must pack and ship products which require a significant amount of time. Most manufacturers will have to label their entire inventory. Apart from online sales, it is rather difficult to control distribution into a particular state. Some manufacturers use regional distribution centers which will require them, if possible, to segregate products that will be shipped into New Mexico

[1] https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1200

[2] https://cdphe.colorado.gov/pfas-laws

versus other states. At the current moment, many products are already stored at retailers' distribution centers, which means manufacturers will have to pull products to include a new label on products bound for New Mexico. This could require the retailer to ship the product back to the manufacturer, who would in turn arrange for labeling of the product. Once the product is labeled, it will be shipped back to the retailer. Furthermore, once PFAS or other regulated materials are replaced, companies will again be required to remove or redesign the product's labels or specification sheet, which will lead to additional redesign changes and costs for the manufacturer. This process is costly and offers minimal value for consumer awareness, serving only to introduce yet another label into an already crowded landscape of warnings that consumers largely disregard. When such warnings are applied indiscriminately, their effectiveness is diluted, undermining their intended purpose. While all this is possible, it's not practical for manufacturers to segregate inventory and rework products/packaging to add labels like this. In reality, existing inventory that is not compliant could very well be scrapped, instead of incurring the costs involved with moving product to another state or returning the inventory to rework it and then try to resell it. This is a bad environmental outcome to scrap perfectly fine inventory that is not yet banned in the state.

The proposed labeling scheme would apply to all products with intentionally added PFAS, including cookware. January 1, 2027, compliance date is not feasible, given the rule is not expected to be finalized until July 2026, giving manufacturers only a few months to identify the impacted products, print labels/specification sheets, and distribute products into stores. Without a narrowing of the scope, additional clarity, and further guidance in coming months well in advance of the labeling deadline, it will be extremely difficult for appliance manufacturers to comply fully.

Exemption Process is Flawed and Unnecessary

The proposed rule lacks any defined process for requesting labeling waivers, including timelines for NMED decisions on waiver requests, the ability to request waivers for categories of products rather than product-by-product, and mechanisms for appealing request denials. These procedural safeguards are essential for predictability and fairness. In Maine, a comparable PFAS law prompted thousands of exemption requests to the Department of Environmental Protection, ultimately leading the agency to significantly narrow the regulatory requirements. We would similarly expect thousands of exemptions submitted into NMED where staff must manage and respond efficiently for manufacturers to adjust. For California Prop 65 requirements, it is the responsibility of the manufacturer to be aware of what is in their products and decide whether a label is needed. There is no request needed from the California Office of Environmental Health Hazard Assessment to allow manufacturers not to label a product, but manufacturers are responsible if they incorrectly decide not to label.[3] We would encourage a similar framework for any labeling scheme.

The proposed waiver process would also require manufacturers to submit detailed descriptions and information regarding the PFAS content of a product, even for fluoropolymers and other categories that the Legislature expressly exempted from reporting under HB 212. As a result, products that are already statutorily excluded, and that may never come into contact with consumers during normal use, would nonetheless be forced through a waiver application simply to maintain the

[3] https://www.p65warnings.ca.gov/business-resources/frequently-asked-questions-businesses

exemption the law already provides. This structure conflicts with HB 212's clear intent to exempt these product categories from reporting and related administrative burdens. Further, the waiver provision authorizes the Department to require "any additional information," without specifying what that information may include. To ensure manufacturers can meaningfully comply, any such additional information must be clearly enumerated in the final rule rather than left open-ended. Given these statutory inconsistencies, we strongly recommend removing the waiver process altogether for product categories already exempt under HB 212.

Exposure of Proprietary Information

Labeling for complex durable goods would require the disclosure of every PFAS-containing component and the location of these components within the product. This detailed list of components noting location within the product and chemical composition could expose proprietary design details, especially for appliances which operate in a highly competitive field. If component-level information must be included for labeling, that disclosure should be limited to noting the PFAS is in an external component, but just because PFAS is in an external component does not mean that a consumer is exposed to any harm and it could provide increased safety, e.g., flame retardants. This also goes beyond any U.S chemical labeling law to require component-level listings like this. For example, Prop 65 doesn't require listing where a chemical is used. There is no justification that this provides necessary information to consumers and may create consumer confusion as to risks of using the product.

Labeling Clarity Recommendations

Should the labeling provisions of the proposed rules go forward, AHAM would suggest the following recommendations before the final rule is adopted.

<u>De Minimis Threshold</u>

Labeling (along with application of the law's restrictions and reporting requirements) should apply only to products containing intentionally added non-polymeric PFAS above scientifically meaningful concentration. Even for manufacturers who distribute products in Europe and are subject to E.U. REACH & POPs regulations are having trouble identifying all the PFAS chemicals required to be disclosed in this law and whether trace amounts of PFAS are "intentionally added" or not. Without such a threshold, consumers could be misled into believing that trace PFAS pose the same risks as higher concentrations.

<u>Date of Manufacture</u>

We request the labeling compliance date should be based on the date a product is manufactured and not when the product is sold. For one, using the "date of sale" as the prohibition date would result in having to remove products off every shelve in every store across the state months before the January 2027 deadline. With "date of manufacture," products can remain in inventory until December 31, 2026, and manufacturers can control all products being distributed from January 1 and on. With the current "date of sale," manufacturers are currently trying to assess their supply chain if they can comply. Secondly, enforcement is much easier and more consistent when based on the date a product is manufactured, because everything manufactured from January 1, 2027, on should be complying. This is how enforcement is done by the US Department of Energy and California Energy Commission for appliance energy standards.

Move Away from Physical Label/Specification Sheet

Affixing labels directly to products, particularly portable appliances and small components, is often technically infeasible and economically prohibitive. Many portable appliances and components are too small to be labeled themselves, and etching a label on these products can be impossible, prohibitively expensive and interfere with product functionality and durability. On the other hand, for products displayed in a box or on showroom floor, there are different considerations, including size limitations. NMED should consider each product individually because product size and label spaces differ.

These requirements would also drive unnecessary use of raw materials and redesigns, increasing waste and environmental impact without improving consumer awareness. This would also apply to any new specification sheets or manuals that have be printed. NMED should adopt a practical approach that recognizes these realities: labeling should appear only on packaging, not on the product itself. Packaging provides a clear, accessible location for disclosures without interfering with product performance. In addition, QR codes or e-labeling should be deemed fully compliant, as they allow consumers to access detailed, accurate and up-to-date information without cluttering packaging with lengthy text and printing off new specification sheets. This approach aligns with modern regulatory best practices and ensures transparency without imposing impractical or wasteful requirements. Another benefit of e-labeling is that they can be accessible indefinitely.

Exempted Categories Should Get Automatic Exemption

Labeling requirements should not apply to products that HB 212 expressly exempts from restriction or reporting. The Legislature made a deliberate policy choice that certain PFAS uses are critical, irreplaceable, or pose no meaningful risk, and that others are already regulated under separate federal or state frameworks. Imposing labeling on these exempt categories undermines that legislative judgment, adds unnecessary cost, and misleads consumers by suggesting all PFAS present identical hazards. To preserve consistency with HB 212 and avoid confusion, the final rule should include automatic exemptions from labeling for these products, without requiring waiver applications or additional administrative steps. Anything less contradicts the statute and creates needless regulatory burden without advancing consumer protection.

Direct Contact Clarity

Under the proposed requirements, the department may waive the obligation of a manufacturer to label if the product's material containing intentionally added per- or poly-fluoroalkyl substances will ever come into direct contact with a consumer while the product is being used as intended during the useful life of the product. Based on this unclear standard, there are numerous scenarios in which a consumer could touch an appliance including during repair, cleaning, and maintenance opening the door to having to disclose everything in an appliance. Is it a surface that is routinely touched during regular use? Or does it include any surface a consumer might touch, even incidentally or rarely? Whether through repair or servicing internal components, there is no clear line on what constitutes a consumer contact surface. Our recommendation in immediate guidance would be to limit any PFAS disclosure to chemicals that are harmful to a person's contact as well as the following:

- Parts that are contacted during "normal use" of the product.
- It would not include internal parts that are not accessible once the finished product is in its fully assembled and functional form.

- Would exclude inaccessible components such as circuit boards, cords, semiconductors, & foam blowing agents.

This needed guidance would help manufacturers know that only parts that a consumer would engage with during normal use of the fully functioning product and could cause harm would need to be disclosed.

Spare and Replacement Parts Excluded

For complex durable goods, we respectfully request that spare and replacement parts be explicitly excluded from labeling requirements. The relevant disclosures for these products are already provided with the original product at the time of purchase. Manufacturers routinely retain spare and replacement parts for many years to ensure continued functionality, safety, and compatibility with the product's original design. Absent an explicit exclusion, spare and replacement parts would be subject to additional, costly, and duplicative labeling obligations that provide no incremental consumer benefit. The scope for spare and replacement parts should also align with the "direct contact" framework referenced above and, on that basis, be excluded as well. Finally, used products are already exempt from labeling requirements; we respectfully request that spare and replacement parts receive a similar exclusion.

Sell-through Products Manufactured Prior to Compliance Date

The proposal does not provide a pathway to address products currently in the supply chain and on store shelves. If products must be pulled from shelves, it could lead to significant e-waste, which is not a positive environmental outcome. Prop 65 requirements have inventory sell-through, and we would encourage a similar sell-through of inventory.

Clarity on Definitions

The proposed rules contain several definitions for which different interpretations could lead to unintentional noncompliance if the proposed rules go forward, despite manufacturers making a good faith attempt to provide the necessary information according to NMED's standards. AHAM recommends that NMED provide additional clarification on:

Cookware

AHAM was significantly involved in the legislative activities specific to the 2027 cookware PFAS prohibition with concerns around the potential inclusion of internal components which led to an amendment to add to the definition of cookware, "intended for direct food contact." We would encourage a meeting to walk through the intricacies of cookware, but we have two recommendations related to cookware products that will help manufacturers comply with forthcoming prohibitions and labeling requirements.

Prohibition Focused on Food Contact Surfaces

As discussed, and amended in the legislative process, cookware focused on durable houseware items intended for direct food contact. The goal was to focus on food contact surfaces and excluding non-food contact surfaces and areas. However, we seek in forthcoming guidance that the PFAS prohibition is only focused on the direct food contact surfaces, excluding non-food

contact surfaces. Other states, including Rhode Island[4] and Connecticut, that have enacted PFAS prohibitions in cookware have made clear that cookware with electronic components are excluded.

Avoiding Duplicative Cookware Labeling Requirements

Consumers are already accustomed to cookware labeling that discloses the presence of chemicals, including PFAS. In 2021, California enacted AB 1200, which requires cookware manufacturers to disclose the presence of PFAS and other specified chemicals both on product labels and in online product listings. Since 2024, manufacturers have implemented these disclosures on a nationwide basis. AHAM notes that AB 1200 applies specifically to the surface of the product that comes into contact with food, foodstuffs, or beverages.

Beginning July 2026, cookware products containing PFAS will also be subject to labeling requirements in Connecticut, and manufacturers are working with the state to allow the continued use of existing AB 1200-compliant labels. If New Mexico were to require a different labeling approach, cookware products could be subject to multiple, overlapping labels competing for limited space while conveying substantially similar information. Such over-labeling risks consumer confusion and may ultimately reduce the effectiveness of the disclosures. While we understand that the proposed rule includes a process to seek consistency with other states' requirements, NMED should explicitly allow labels that comply with existing state laws—such as California's AB 1200—to satisfy New Mexico's labeling obligations. This is the same approach adopted by New Jersey in S. 1042[5], which recognizes labels that meet other states' PFAS disclosure standards. Manufacturers have already implemented these established labeling regimes nationwide. Requiring separate New Mexico-specific labeling approvals would add administrative burden without enhancing consumer understanding. Labels that meet another state's robust PFAS disclosure requirements should be deemed automatically acceptable in New Mexico, promoting regulatory consistency and avoiding unnecessary relabeling or compliance delays.

Cleaning Products

Like cookware that is set for 2027 PFAS prohibition, cleaning products are set to be prohibited in 2028. Cleaning products are defined as a "finished product used for general cleaning purposes, including: a polish or floor maintenance product, an air care product labeled for the intended use for enhancing or conditioning the indoor air environment by eliminating unpleasant odors or freshening the air." There is a concern that an air care product could bring in appliances and would encourage clarity that the focus is only on chemically formulated cleaning products and wipes.

Reporting

As mentioned earlier, appliance manufacturers employ a complex, global supply chain for thousands of models with hundreds of thousands of components, often involving multi-tiered suppliers located on multiple continents with thousands and thousands of components. Given the complexity of modern supply chains, appliance manufacturers reported that to meet current reporting requirements, they must obtain supplier declarations regarding the content of

[4] https://dem.ri.gov/pfas-products

[5] https://www.njleg.state.nj.us/bill-search/2024/S1042

components. Not only is it challenging to get such a document from the supplier of every component, but it often involves communications in several countries and languages. Knowing what is sold in New Mexico is extremely difficult for many manufacturers because many appliances are sold through national and even US-Canada retailers. The reporting requirements are not the first of its kind with Minnesota set to begin their all-product PFAS reporting July 1, 2026[6]. To avoid duplicative reporting, we would strongly encourage harmonization in reporting requirements across states.

According to MPCA, the final rule, which was recently approved, provides details and flexibility for manufacturers, including:

- Group reporting options.
- Reporting ranges of PFAS concentrations instead of exact amounts; and
- Waiver, extension, and trade secret requests.

In the development of this rule, we have several concerns in the proposed rule that need to be addressed before a final rule is adopted.

1. There is currently no industry accepted test method that can definitively provide clear evidence of 0 ppm PFAS. Manufacturers will be unsure whether they can truthfully claim "PFAS-Free" and avoid labeling and reporting.

2. PFAS Amount/Range Reporting should harmonize with Minnesota requirements.

3. Access of reporting platform to allow stakeholder engagement to iron out any technical deficiencies that will manage the voluminous data that will be submitted. Without a clear delineation of the reporting requirement's boundaries, manufacturers will not be able to provide data that NMED can efficiently analyze for its intended goals.

4. Confidential Business Information- For appliance manufacturers, most parts are purchased from a supplier without disclosure of the purpose and function of specific substance or material. This is often because the formulation and/or function are proprietary to that supplier. A supplier may refuse to disclose the information required by this law to protect its intellectual property. NMED should expand its protections for trade secrets, such that suppliers feel comfortable releasing the necessary information to downstream manufacturers.

5. To help identify the responsible party, NMED should provide further clarification and simplify reporting responsibilities for complicated relationships and supply chains—such as Tier 1, 2, and 3 suppliers, domestic manufacturers, foreign manufacturers, OEMs, private labelers, licensed products, distributors, and retailers.

6. Fees should be reduced- The Minnesota Pollution Control Agency reduced their one-time fee to $800.

[6] https://www.pca.state.mn.us/get-engaged/pfas-in-products-reporting-and-fees

7. Due diligence requirements should be clear- AHAM advocates for reporting mechanisms that promote flexibility and reflect reality for complex products such as home appliances. We request that a manufacturer is only required to report information to the extent such information is "known to or reasonably ascertainable" by that manufacturer. The "known or reasonably ascertainable" standard is used by the EPA in its PFAS TSCA reporting.[7] Application of TSCA's "known to or reasonably ascertainable by" standard would allow notifying entities to rely on supplier declaration and to limit to manageable levels the scope of due diligence that manufacturers would be expected to undertake with upstream suppliers

8. Process for New Products and Updates: What is the process for submitting notifications for new products entering the market or for updates to existing product information?

9. "Any additional information" must be enumerated- The reporting provisions would give NMED the authority to request "any additional information" that is not confidential business information or a trade secret. The final rule must be clear on what will be required to be submitted with these reports.

Thank you for considering our views and we encourage NMED and EIB to consider these implications before moving forward. Please contact me at jkeane@aham.org or 202-872-5955 to discuss in more detail.

Respectfully submitted,

John Keane

John Keane
Manager of Government Relations

[7] https://www.epa.gov/system/files/documents/2024-02/tsca-8a7-jan-2024-webinar.pdf