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May 19, 2023

By E-mail

Mark Margerum
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

Mark.T.Margerum@Maine.Gov

Re: Chapter 90: Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances

Dear Mr. Margerum:

On behalf of the Association of Home Appliance Manufacturers (AHAM), I would like to raise the following points concerning the Posting Draft for the Maine PFAS in Products Program.

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 the U.S., AHAM members employ tens of thousands of people and produce more than 95% of the household appliances shipped for sale. The factory shipment value of these products is more than \$30 billion annually. 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 also are 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. As such, they have demonstrated their commitment to strong internal safety design, monitoring, and evaluation/failure analysis systems. AHAM supports the intent to protect consumers against all unreasonable risks, including those associated with the exposure to potentially harmful chemicals. AHAM also firmly supports the appropriate use of PFAS chemicals in appliances. Together with industry design practices, test requirements, and redundant safety mechanisms, PFAS chemicals play an important role in the safety of household appliances.

AHAM conducted a member survey in a good faith effort to determine the extent to which PFAS is used in home appliances and the estimated time needed to phase out of PFAS in those use cases. To the best of AHAM members' knowledge, appliances contain PFAS chemicals but in low amounts. PFAS are used for their self-lubricating properties and great resistance to high

temperature, chemical aggression and pressure. They are often confined to internal components and parts, such as bolts, washers and gaskets, plastic brackets, and wire terminals. This material is added during the manufacturing process, which reduces the potential for any consumer exposure during use or transmission to the environment.

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. We do want to thank the Maine Department of Environmental Protection for recognizing this difficulty and granting many AHAM manufacturers 6-month extension after the effective date of the Department's finally adopted rule. As acknowledged in previous PFAS discussions, with complex supply chains, complex with multiple components, and uncertainty over lab methods, manufacturers need sufficient time to comply. As deliberated in the Legislature, an updated January 2025 deadline may be necessary. AHAM also appreciates the removal of a prior proposed requirement that manufacturers report estimated sales volume for the product. There are international standards of communicating chemical compositions in the supply chain. Knowing what is sold in Maine would be extremely difficult for many manufacturers because many appliances are sold through national and even US-Canada retailers. This complexity is likely to result in over or under-reporting or simply incorrect information with this requirement. 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. Under Section 3.A.(1)(c), it is unclear if manufacturers need to report the concentration of PFAS, total amount, or range of PFAS chemicals. There are over 10,000 PFAS chemical compounds and the draft proposal continues to lack de minimis concentration level on what concentrations are reportable. 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. Thus, we ask for a clear de minimis concentration level and further clarity on "intentionally added" to determine the trace amounts, which are required to be disclosed. Secondly, without a clear definition of "reason to believe," it opens the possibility that the authority could take the freedom to consider virtually any product as being in violation.
2. Under the notifications section, it requires the disclosure "of the purpose" for which PFAS are used in the product, including PFAS in any product component. For appliance manufacturers, most parts are purchased from a supplier with the purpose of a specific substance or material often not revealed and may fall under proprietary business/confidential information. As a result, this information may not be available to disclose.
3. We request to allow other internationally used product classification codes such as TARIC code (as used by EU SCIP database), as alternative to GPC brick code. Many companies use these other reporting codes and not GPC brick code. To ease reporting burden, companies should use an international product classification code but not be required to use one versus another. Without allowing currently used reporting systems, the reporting burden becomes even more immense on companies.

4. AHAM has concerns with DEP's potential use of the Interstate Chemicals Clearinghouse (ICC) Platform, which is a third-party, non-governmental organization, for which there is no public accountability. It is entirely unclear to AHAM what steps, technologies, processes, or tools the ICC Platform uses to protect confidential business information (CBI). Moreover, if the CBI is accessed inappropriately, what penalties or remedies are available to the state and impacted companies. DEP should acknowledge in the proposed rule that companies are able to assert claims of CBI for any PFAS for which a claim has already been approved by EPA for inclusion on the TSCA Confidential Inventory or for which a claim of protection exists under the Uniform Trade Secrets Act.
5. Finally, we seek clarity on Section 6 for Fees, would every SKU registered in Maine count as one notification? For every manufacturer with thousands of SKU's that could amount to an enormous financial burden for manufacturers with no benefit for the implementation of this law.

Ultimately, the scope of DEP's PFAS reporting requirements is overly broad, burdensome on manufacturers, and will likely result in a flood of unnecessary information to DEP. Given the complexity of modern supply chains, appliance manufacturers reported that they must obtain supplier declarations regarding the content of 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. The inclusion of CAS numbers in the regulation will make reporting more efficient and reasonable.

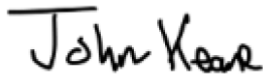
One category that falls under current definition of PFAS used in the home appliance industry is fluoropolymers. Fluoropolymers are used to make specific and critical components and parts of appliances, such as washers, plastic brackets, pipes, wire terminals, gaskets, and coatings; due to their unique combination of properties, e.g. non-stick, self-lubricating, resistance to high temperature, resistance to high pressure, durability, resistance to abrasion, and resistance to friction. There is no guarantee that alternatives can be found that will not compromise the high performance, durability and, functionality of household appliances and also the continuity of supply for spare parts. For this reason, we ask to remove polymers from the definition of PFAS.

Also under this law, effective 2030, products containing intentionally added PFAS may not be sold unless the use of PFAS in a product is specifically designated as a currently unavoidable use by the DEP. It is also important for DEP to work with stakeholders when the requirements of LD 1503 conflict with other recent legislation in Maine that encourages the use of substances that are captured under the statutory definition to meet various state goals, such as combatting climate change. AHAM recommends that DEP conduct stakeholder outreach to discuss these occurrences; otherwise, the regulated community will be unsure of how to proceed forward within Maine. HFOs are ultra-low Global warming, climate friendly alternatives for use as refrigerator insulation foam blowing agents. In fact, Maine enacted a law in 2021 (LD 226) phasing down the use of HFCs and HFOs are the preeminent alternative that would be used to help achieve these state's climate change mitigation goals. Other states have also acted to ban HFC use, and the U.S. Environmental Protection Agency (EPA) encouraged and effectively drove a transition to these and other low global warming potential (GWP) foam blowing agents through ozone depletion and climate focused phase-out's of CFC's, HCFC's, and HFC compounds. These chemicals were

approved under EPA's Significant New Alternatives Policy (SNAP) program, which included an environmental review. Prohibition or restriction of HFOs would require a total re-design of models and retooling of entire appliance manufacture facilities at significant cost. DEP should consider either narrowing the definition of PFAS in accordance with the US EPA's TSCA definition of PFAS and in proposed LD 1214: "Chemicals with at least two adjacent carbon atoms, where one carbon is fully fluorinated, and the other is at least partially fluorinated." so that it does not include HFOs or at the very least delegating them as "Currently Unavoidable Use" due their essentiality for the functioning of society. Given the current conflict between LD 226's execution mandate and this proposed rule, we request Maine DEP rule in favor of protecting these key technologies that mitigate climate change and help Maine manufacturers comply with the bill that DEP and the Governor have proposed to the legislature regarding HFC phasedown/ban.

Thank you for considering our views and please contact me at jkeane@aham.org or 202-872-5955 if you would like to discuss in more detail.

Respectfully submitted,

A handwritten signature in black ink that reads "John Keane". The signature is written in a cursive, slightly slanted style.

John Keane
Manager of Government Relations