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May 19, 2023

Honorable Janet Mills
Governor of Maine
1 State House Station
Augusta, Maine 04333

Commissioner Melanie Loyzim
Maine Department of Environmental Protection
State of Maine
17 State House Station
Augusta, Maine 04333

Re: Posting Draft - 06-096 Ch. 90 Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS)

Dear Governor Mills and Commissioner Loyzim,

These comments are submitted by the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) regarding the Maine Department of Environmental Protection's (DEP) posting draft "Ch. 90 Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances" in compliance with *The Act to Stop Perfluoroalkyl and Polyfluoroalkyl Substances Pollution* (38 M.R.S. §1614).

AHRI is the trade association representing manufacturers of heating, ventilation, air conditioning, refrigeration (HVACR) and water heating equipment as well as manufacturers of refrigerants, including low global warming Hydrofluoroolefins (HFOs). With more than 300 members, AHRI is an advocate for the industry and develops standards for and certifies the performance of the products manufactured by our members. In North America, the annual output of the HVACR and water heating industry is worth more than \$44 billion. In the United States, the industry supports 1.3 million jobs and \$256 billion in economic activity annually.

HVACR and water heating equipment offer critical services to society by providing life-saving climate control and ventilation in most buildings, notably homes, hospitals, schools, and elder care facilities. The cold chains for both food and medicines, such as vaccines, depend on transportation and storage provided by commercial refrigeration equipment manufactured by AHRI members. PFAS chemicals, as defined by the State of Maine, provide important safety and performance features to HVACR and water heating equipment in internal components, parts heat transfer fluids, and raw materials, such as resistance to high temperatures and reduced flammability.

First, AHRI members greatly appreciate DEP's extensive outreach to stakeholders, and responsiveness in addressing the practical challenge of reporting the chemical makeup of articles in the complex supply chains of the HVACR industry.

As noted in AHRI's comments to the Second Concept Draft Note, AHRI found that during the development of federal regulations of phenyl, isopropylated phosphate (3:1), or PIP (3:1), and other

chemicals,¹ that identification is extremely challenging to manufacturers with complex supply chains. AHRI appreciates DEP's consideration of this complexity in the consideration of feedback from regulated entities.

AHRI asks DEP to provide a list of Chemical Abstract Survey (CAS) Registration Numbers (RNs) for each PFAS chemical for which they will require reporting.

AHRI's [Directory of Certified Product Performance](#) lists over 4 million unique products with more than 9 million new products sold and installed annually in homes and businesses. Members must parse through tens of thousands of stock-keeping units (SKUs), each having hundreds of associated components and spare parts, to better understand whether their products will be affected by this draft regulation. Collectively, this introduces an exponential number of potential chances for any given component to contain one of the thousands of PFAS chemicals. Given the complex supply chain, suppliers are often uncertain if a material that is defined as PFAS has been utilized in a component.

Manufacturers have started working with their supply chains to try to identify the presence of PFAS chemicals and have reported confusion by suppliers regarding thousands of chemicals based on different definitions used in various jurisdictions.

The U.S. Environmental Protection Agency (EPA) is evaluating a reporting requirement for PFAS chemicals, with no exemption for chemicals in "Articles", including HVACR and water heating equipment. However, EPA defines PFAS differently than the State of Maine PFAS definition, a chemical containing a fully fluorinated carbon atom.

In the posting draft, DEP noted that "[t]he U.S. EPA maintains a webpage of chemicals that have been identified as PFAS² which provides clarity on what is considered a PFAS."

AHRI notes that it greatly appreciates that DEP has eliminated any requirements for chemicals with no CAS RN in the proposed regulation.

AHRI respectfully requests that DEP extend any notification period date of the reporting requirements for PFAS in products to January 1, 2025, to allow for more time to determine which equipment components are impacted.

As noted in AHRI's previous comments to EPA³ regarding the regulation of PBT substances, including PIP (3:1), identifying components that contain regulated chemicals is a difficult task. AHRI surveyed its members in July 2021 to determine whether members knew of PIP (3:1) contained in components and only a minority of members could say with certainty whether certain components contained PIP (3:1). HVACR original equipment manufacturers (OEMs) also sent letters to their suppliers explaining that suppliers must disclose the use of PIP (3:1) in components to their OEM customers. While some feedback indicated that PIP (3:1) is contained in some wiring and other minor components such as O-rings, seals, and valve diaphragms, none of the OEMs had complete information on components used in the HVACR products and equipment they manufacture.

¹ Air-Conditioning, Heating, and Refrigeration Institute, Comments on Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h), *Federal Register* Docket EPA-HQ-OPPT-2021-0202. (May 17, 2021) Accessed via <https://www.regulations.gov/comment/EPA-HQ-OPPT-2021-0202-0143>.

² This is available at: <https://comptox.epa.gov/dashboard/chemical-lists/pfasmaster>.

³ Air Conditioning, Heating, and Refrigeration Institute. Comments on Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Request for Comments, *Federal Register* Docket EPA-HQ-OPPT-2021-0202, May 17, 2021. Accessed via <https://www.regulations.gov/comment/EPA-HQ-OPPT-2021-0202-0143>.

Constantly changing supply chains and technology improvements, as mandated by the U.S. Department of Energy (DOE), introduce a unique flux to the HVACR and water heating industry, making compliance impractical. Further, manufacturers do not retain samples of all components used in the past, or even that are used for service as not all parts are field replaceable.

AHRI asks DEP to exclude service and replacement parts from reporting requirements, or any potential bans related to PFAS chemicals.

Manufacturers, distributors, and installers of HVACR and water heating equipment will have an existing inventory of service and replacement parts for units already in the field. It is extremely difficult, if not impossible, to discard those components and to replace them with components meeting the new PFAS requirements. At a minimum, service parts manufactured prior to the effective date of the PFAS regulation should be exempt. Not doing so would strand millions of dollars' worth of components in the field, and make the repair of existing, installed products extremely difficult.

AHRI appreciates the clarification of the definition of “Intentionally Added PFAS,” excluding chemicals that are not incorporated into components by design.

Chemicals in plastic parts and electrical components are widely used across a broad range of manufactured articles globally. OEMs have limited visibility and control over complex, multi-tiered, global supply chains. There are also components in use by the HVACR industries that could be manufactured at the same facilities producing components for industries that are allowed continued use of articles containing controlled substances. This could result in unintentionally, cross-contamination and the continued presence of *de minimis* quantities in components used in HVACR equipment.

AHRI supports DEP's definition of “intentionally added PFAS” which excludes chemicals that are not incorporated by design. DEP could consider *de minimis* allowances of 0.1% as a proxy to address this as an alternative.

AHRI notes that potential exposure to chemicals contained in components is unlikely given that it is embedded in a polymer matrix and the component is enclosed in HVACR equipment and notes that products containing *de minimis* levels, less than 0.1% by weight, of any PFAS could be exempted from the regulation.

PFAS in electrical and other components are difficult for manufacturers to track. OEMs have limited visibility and control over complex, multi-tiered, global electronics supply chains. Manufacturers must rely on the accuracy of reporting from every supplier throughout the entire supply chain on trace amounts of a chemical, even those that are present unintentionally. There are also components in use by the HVACR industries that could be manufactured at the same facilities producing components for industries that can contain PFAS. This could result in, unintentionally, cross-contamination and the continued presence of *de minimis* quantities of PFAS in components used in HVACR equipment.

We urge DEP to exempt articles that contain only *de minimis* quantities of PBT or non-PBT PFAS of 0.1% by weight or less, which will allow for a practicable regulation that is reasonably implementable. Not having a *de minimis* exemption puts an unreasonable burden on manufacturers without discernable benefit and therefore, DEP should provide permanent regulatory relief.

AHRI asks that manufacturers of articles containing PFAS should not be held responsible if suppliers do not comply with Maine’s regulation.

AHRI respectfully asks DEP to limit its reporting requirement of “intentionally added” chemicals in components to the entity that has added the chemical, as any other requirement would create issues with reporting accuracy. OEMs should be able to inform suppliers that they sell products inclusive of their component, part, or raw material in their equipment into the State of Maine and tell them that they must report to the state.

If that is not possible, then AHRI asks DEP to implement accountability and enforcement requirements that ensure suppliers inform manufacturers of components and parts containing PBT substances. Suppliers should be required to disclose use of chemicals of interest to their customers at least one year prior to final promulgation of regulations to allow all stakeholders sufficient time to comment on regulations impacting articles containing chemicals of interest.

AHRI asks DEP to refine the definition of “Alternative” to be limited to those that are technically feasible and commercially viable and to further develop the definitions of “Currently Unavoidable” and “Essential for Health, Safety, or the Functioning of Society.”

Solutions must be available commercially in sufficient quantity to meet market demand at a cost that is sustainable to consumers and end-users, especially for critical products to society. AHRI is supportive of a process by which DEP is able to determine by rulemaking that an application of PFAS is currently unavoidable. It would be helpful to add additional detail to this process.

AHRI would appreciate additional details regarding how DEP would determine what is essential. HVACR and water heating equipment provides services critical to society, including life-saving climate control and ventilation in homes, hospitals, schools, and elder care facilities. The cold chains for both food and vaccines depend on transportation and commercial refrigeration equipment. HVACR and water heating equipment were especially critical during the pandemic and during severe climate events.

AHRI thanks DEP for the opportunity to comment on the Posting Draft for the Maine PFAS in Products Program and welcomes continued discussion regarding ways to protect public health and the environment while considering the practical challenges to compliance with this concept draft.

Sincerely,



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