

January 28, 2025

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

Kerri Malinowski Farris
Maine Department of Environmental Protection
State of Maine
17 State House Station
Augusta, ME 04333

Submitted via email to: rulecomments.dep@maine.gov

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

Dear Commissioner Loyzim and Ms. Malinowski Farris:

These comments are submitted by the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) regarding the Maine Department of Environmental Protection's (DEP) rule "Ch. 90 Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances" in compliance with amended *The Act to Stop Perfluoroalkyl and Polyfluoroalkyl Substances Pollution* (38 M.R.S. §1614), published on December 20, 2024.

AHRI represents more than 330 manufacturers of heating, ventilation, air conditioning, refrigeration (HVACR) and water heating equipment. It is an internationally recognized advocate for the HVACR and water heating industry and certifies the performance of many of the products manufactured by its members. In North America, the annual economic activity resulting from the HVACR and water heating industry is more than \$211 billion. In the United States alone, AHRI member companies, along with distributors, contractors, and technicians employ more than 704,000 people.

HVACR and water heating equipment provide 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 depend on transportation and storage provided by transport and commercial refrigeration equipment manufactured by our members.

AHRI members greatly appreciate DEP's response to feedback from the previous rulemaking. AHRI thanks DEP for exempting a critical electrical component (semiconductors) and for excluding refrigerants for servicing that are subject to acceptable use conditions pursuant to the U.S.

Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP). This will allow Maine consumers continued access to the newest generations of low global warming potential refrigerants and refrigeration equipment.

AHRI continues to note the practical challenge of complex product manufacturers complying with the proposed regulations. Merely identifying the use of chemicals in supply chains is an exceptionally challenging and often unsuccessful task for manufacturers of complex systems, due to the general lack of transparency around component composition and the number of chemicals (approximately 9,000) included in the overly broad definition of PFAS the State of Maine continues to use as the basis for this regulation. This is exacerbated by confidentiality claims by component manufacturers and suppliers and the lack of clarity on whether this regulation will impact chemicals embedded in the polymer matrix of equipment components.

AHRI urges Maine to focus its efforts on the regulation of persistent, bioaccumulative, and toxic (PBT) chemicals in high-exposure products.

Maine's broad definition of PFAS includes approximately 9,000 known chemicals. Although the focus of Maine's legislation are PBT PFAS that pose a risk to human health and the environment, Maine's definition of PFAS includes many chemicals that do not all share these three critical properties. For example, most low global warming refrigerants (A2Ls) used in HVACR and water heating systems are proven to have low levels of toxicity.¹ The EPA Significant New Alternatives Policy (SNAP) criteria for evaluating alternatives for acceptable use conditions includes assessments of the potential exposure risks, toxicity and environmental impact of the refrigerant.² The EPA SNAP approval process has determined that the chemical makeup of A2L refrigerants presents minimal risk to humans and the environment. Moreover, HVACR and water heating products are hermetically sealed and tend to have a useful life over 15 years. Additionally, certain polymers that meet Maine's definition of PFAS (i.e., fluoropolymers such as polytetrafluoroethylene (PTFE)) are used in a wide variety of consumer products with unlikely potential for human or environmental release or exposure during use of the product, therefore, presenting minimal risk associated with the actual product itself.

AHRI is concerned that Maine is at risk of being overwhelmed by incomplete datasets for the millions of unique products and components in the scope of this rule. AHRI's Directory of Certified Product Performance³ alone lists over 4 million unique products with over 9 million new products sold and installed annually in homes and businesses. AHRI 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. This introduces hundreds of millions of potential chances for any given product or component to contain one of the thousands of PFAS included in Maine's PFAS definition. AHRI's members have discovered in previous chemical reporting that frequently, component suppliers are unable to disclose the chemical composition of their components to their manufacturer customers, as the chemical composition is considered confidential intellectual property.

¹ ANSI/ASHRAE Standard 34-2022

² EPA Significant New Alternatives Policy- Criteria for Evaluating Alternatives, <https://www.epa.gov/snap/about-snap-review#criteria>. (Last accessed on January 28, 2025).

³ AHRI's Directory of Certified Product Performance, <https://www.ahridirectory.org/>. (Last accessed on January 27, 2025).

While the draft regulation provides a process by which suppliers may substantiate these claims, AHRI is concerned that compliance challenges will inevitably complicate and delay the implementation of this regulation. Even for industries with strong knowledge of the chemical make-up of components, it is extremely difficult to ensure an accurate dataset of chemicals within their supply chains. The HVACR and water heating industry must request, accumulate, and summarize information on chemicals in components to even determine if their final products contain PFAS and to fully understand the effects of this draft regulation. Focusing the regulation of non-polymer PBT PFAS will ensure Maine is able to protect human health and the environment from PFAS pollution, without putting unnecessary and ineffective burden on industries whose products may contain low-exposure PFAS that are not PBT chemicals.

AHRI urges DEP to clarify the definition of “Cooling, heating, ventilation, air conditioning or refrigeration equipment.”

While we appreciate Maine’s creation of a category of “Cooling, heating, ventilation, air conditioning or refrigeration equipment” in LD 1537 (2024), this wording creates regulatory ambiguity for the HVACR and water heating industry. This category does not specify that water heating, water cooling, dehumidifiers, air cleaners, and all other space conditioning equipment are also included in the scope of the category. AHRI requests DEP to clarify that the scope of “cooling, heating, ventilation, air conditioning or refrigeration equipment” includes all equipment used to heat or cool water and improve the indoor air environment.

AHRI again thanks Maine for excluding refrigerants for servicing that are subject to acceptable use conditions pursuant to EPA’s SNAP but notes that some HVACR and water heating applications are not regulated under EPA’s SNAP. As such, AHRI requests that DEP provide a compliance pathway for products which utilize these refrigerants for applications that are not covered under EPA’s SNAP.

AHRI urges DEP to amend its language regarding the effective date of the regulation.

Due to the ambiguity of the scope of “Cooling, heating, ventilation, air conditioning or refrigeration equipment,” AHRI is concerned with language in the draft regulation stating DEP’s intent to make the prohibition of products containing intentionally added PFAS effective immediately for all covered products, including those already in the stream of commerce. AHRI strongly recommends DEP amend the prohibition to be effective on products containing intentionally added PFAS entering the stream of commerce at a date no earlier than one year from the publication of the final rule based on the manufacture date of the product. This kind of advanced notice would allow affected parties to contact suppliers and gather the most accurate data available to report to DEP. Additionally, without this lead time, inventory can become stranded causing a shortage of equipment and increasing costs to consumers in Maine. This additional time will also allow DEP to effectively staff and train the personnel who will manage reporting and certification requirements.

AHRI notes that recent chemical restrictions have focused on prohibiting the introduction of chemical-containing products to commerce, rather than prohibiting what is already in the stream of commerce. For example, EPA, in its recently finalized restrictions on perchloroethylene (PCE),⁴ based its

⁴ 40 CFR Part 751

restrictions on the manufacture, processing, and entry into commerce of PCE-containing products, but does not prohibit the sale of existing PCE-containing products in the marketplace.

AHRI requests DEP to clarify the exclusion of embedded components in the regulation.

AHRI asks DEP to clarify the exclusion of components embedded within complex products.

Maine's statute defines products as:

“an item manufactured, assembled, packaged or otherwise prepared for sale to consumers, including its product components.”

Section 3 – Notification states:

“For product components for which the Department has previously received notifications, which are used in more complex products containing the reported components, the manufacturer of the more complex product shall either report PFAS in the product including its components or refer to the supplier's submitted notifications for product components and any PFAS in the remainder of the product.”

However, Section 6 (A) – Fees, states,

“Notifications are required only for products which are subject to a currently unavoidable use determination and are sold, offered for sale, or distributed for sale in the State of Maine. Product components that are incorporated into complex products which are sold, offered for sale, or distributed for sale in Maine are not subject to the notification requirement, even when information regarding the product components is provided as part of that product's notification submission.”

The statutory definition of “products,” Section 3, and Section 6 (A) provide conflicting directions regarding notification requirements for embedded components. AHRI supports the exclusion of embedded components within complex products from the reporting requirements as described in Section 6 (A). We request that DEP resolve the inconsistencies described above to clarify the exclusion of embedded components from the reporting requirements.

AHRI requests DEP to clarify the definition of “complex product” in the regulation.

AHRI also notes that DEP does not define “complex product” in this regulation. AHRI requests DEP consider adding a definition of “complex product” that aligns with Directive 98/71/EC of the European Parliament and of the Council (Directive - 98/71).⁵ Directive - 98/71 defines “complex product” as a product which is composed of multiple components which can be replaced permitting disassembly and reassembly of the product. It is important to address the definition of complex products to remove any ambiguity as to the reporting requirements.

⁵ Directive 98/71/EC of the European Parliament and of the Council. <https://eur-lex.europa.eu/eli/dir/1998/71/oj/eng>. (Last accessed on January 27, 2025).

AHRI urges DEP to reduce the financial burden of PFAS reporting fees in the regulation.

AHRI notes that the proposed fee required per product could result in a significant financial burden to manufacturers, depending on what is considered an individual product, especially if it includes products in the same product line but different model numbers/identifiers. To reduce the financial burden of reporting fees in Maine, AHRI supports the ability for manufacturers to bundle notifications of the same product lines or use cases, so our industry can continue to provide Maine consumers with product diversity. AHRI also supports the recognition by DEP of notifications previously submitted for the same use case. AHRI opposes the collection of notification fees for exempted equipment.

Products or components containing *de minimis* levels, less than 0.1% by weight, of any PFAS should be exempt from the regulation.

PFAS in electrical and other components are difficult for manufacturers to track. Manufacturers 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 their entire supply chain on trace amounts of a chemical, even those that are present unintentionally. AHRI notes there are common components in use by the HVACR and water heating industries that could be manufactured at the same facilities producing components for industries that can contain PFAS. This could result in unintentional cross-contamination and the continued presence of *de minimis* quantities of PFAS in components used in HVACR and water heating equipment. AHRI continues to 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, and therefore, DEP should provide permanent regulatory relief.

Conclusion

AHRI thanks DEP for incorporating our previous feedback to acknowledge the complexity of HVACR and water heating products and the critical role they serve in the functioning of modern society. AHRI maintains that there is minimal opportunity for exposure to the chemicals used in HVACR and water heating equipment. Chemicals in HVACR and water heating components are not disposed of in waterways, nor do they result in exposure through drinking water. HVACR and water heating equipment are maintained and serviced by qualified professionals and the chemicals used in HVACR and water heating equipment and components are not generally accessed by the public. The burden for this type of regulation would be impossible or nearly impossible for manufacturers to comply with.

AHRI thanks DEP for the opportunity to comment on the Maine Chapter 90: PFAS in Products Program and requests a discussion regarding ways to protect public health and the environment while considering the practical challenges to compliance with this proposed rule.

We look forward to discussing this important matter with you at your earliest convenience.

Sincerely,



Makenzie Horrigan

Senior Manager of International & Domestic Policy

cc: Mark Margerum