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Kerri Malinowski-Farris
Safer Chemicals Program Manager
Maine Department of Environmental Protection
Office of the Commissioner
17 State House Station
Augusta, Maine 04333-0181

Re: Second Concept Draft of Regulation Implementing Maine's Act to Stop Perfluoroalkyl and Polyfluoroalkyl Substances Pollution

Dear Ms. Malinowski-Farris,

The Air-Conditioning, Heating, and Refrigeration Institute (AHRI), on behalf of AHRI member companies listed in the attached table, respectfully submits the following comments to the Second Concept Draft of Regulations Implementing Maine's Act to Stop Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) to the Maine Department of Environmental Protection's (DEP or Department) pending requirements to report products that contain intentionally added substances defined as PFAS, set forth in 38 M.R.S. §1614(2)(A). These regulations establish a requirement for manufacturers to notify the Department of any product for sale in Maine that contains intentionally added PFAS, as defined by Subsection 1614(1)(D), beginning January 1, 2023.

AHRI is the trade association representing manufacturers of heating, ventilation, air conditioning, refrigeration (HVAC-R) and water heating equipment. More than 300 members strong, AHRI is an advocate for the industry and develops standards for and certifies the performance of many of the products manufactured by our members. In North America, the annual output of the HVAC-R 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.

HVAC-R and water heating equipment provides critical services to society, including life-saving climate control and ventilation in homes, hospitals, schools, and eldercare facilities. The cold chains for both food and vaccines depend on transportation and commercial refrigeration equipment manufactured by our members. HVAC-R and water heating equipment are especially critical during the pandemic and, as we have recently been reminded, during severe climate events that are becoming all too frequent. PFAS chemicals, as defined by the State of Maine, may provide important safety and performance features to HVAC-R and water heating equipment in internal components and parts, such as resistance to high temperatures.

AHRI greatly appreciates the efforts of the DEP staff, especially the extensive stakeholder outreach regarding this complex issue.

The Second Concept Draft of Regulation Implementing Maine's Act to Stop Perfluoroalkyl and Polyfluoroalkyl Substances Pollution (Second Concept Draft) has maintained reporting requirements and procedures that may create challenges for regulated industries and a deluge of irrelevant information for Department staff to process and protect as confidential business information (CBI).

The new proposed requirements ask manufacturers to report the sales volume into Maine in PFAS disclosure notifications. HVAC-R equipment is sold through several complex supply chain pathways including distribution and through retailers. AHRI has been unable to determine quantity and type of equipment sold into specific states, even with our industry knowledge, because of the way that equipment is sold through these supply chains.

This complexity is likely to result in over or under-reporting or simply incorrect information with this requirement. Please see examples below of the way that some equipment is sold into Maine.

1a. Contractor Channel with Replacement:



1b. Contractor Channel with New Construction:



2. Wholesale Channel:



3a. The National Account Channel:



3b. The National Account Channel:



4a. Reused or Refurbished Equipment for Supermarket Equipment:



4b. Reused or Refurbished Equipment for Self-Contained and Some Types of Food Cases:



These complex supply chains make it difficult to know which party will ultimately be the “responsible” entity as the company which markets the product and whose name appears on the product label. For products sold directly to distributors and not directly to retailers or individuals, it will be virtually impossible for the original product manufacturer to report on sales into Maine. Finally, international marketing companies further confound responsibilities as to whether the importer or others in the supply chain will have reporting obligations.

DEP should include any administrative requirements, such as record-keeping to demonstrate compliance in the regulation.

HVAC-R OEMs have limited visibility and control over complex, multi-tiered, global supply chains and have spent considerable time in attempting to assess the potential presence or absence of chemicals in their supply chains. The intimate knowledge of the chemicals comprising components is with either component manufacturers or their suppliers. This lack of transparency hampers the ability of manufacturers to be fully knowledgeable and in

control of the chemistry of components. It is unrealistic for OEMs to mandate that their suppliers analyze each of the thousands of components to determine the presence or absence of chemicals in every component.¹

DEP should articulate that at least the following options, and potentially others, are acceptable compliance mechanisms in the recordkeeping requirement of the regulation. Requirements for record-retention should be no greater than five years. Specific guidance regarding record-keeping will ensure that OEMs and the entire supply chain are well-prepared for compliance with the regulation.

- Documentation sufficient to demonstrate that the finished article does not include more than *de minimis* levels such as a certificate of compliance from suppliers;
- Manufacturing specifications such as specification drawings noting that components cannot include more than *de minimis* levels of controlled substances; and
- Commercial contracts for components or sub-assemblies limiting the presence of chemicals to less than 0.1% by weight.

AHRI notes that labeling requirements should not be included as they are not an effective form of communication with the consumers or end-users as these appliances are generally in machine rooms or remote locations generally hidden from view.

AHRI asks DEP to share reporting services with other states and EPA to reduce the burden for both DEP and manufacturers.

Subsection 3 of LD 1503 allows DEP the waive notification requirements if substantially equivalent information is already publicly available. AHRI asks DEP to explore existing agreements with other states to reduce duplicative reporting especially with respect to the TSCA Section 8 rulemaking underway that will require those that manufacture and import any identified PFAS to report information regarding uses, disposal, exposures, hazards, and production volumes.

AHRI asks that DEP allow other internationally used product classification codes.

AHRI members manufacture thousands of models (and hundreds of thousands of components and parts) with safety and reliability at the forefront of their designs to protect consumers from unreasonable risk. Manufacturers should be able group products under “brick” categories or the DEP allowed categories to simplify reporting, as many similar products could be grouped together.

We also ask that DEP allow other internationally used product classification codes such as Harmonized Tariff System (HTS) code or the European Union Substances of Concern or SCIP database, as an alternative to Global Product Classification (GPC) brick code. Many companies do not use GPC brick code. To ease reporting burden, companies should use an international product classification code but not be required to use a single option. Without allowing currently used reporting systems, the reporting would be even more challenging.

AHRI asks DEP to clarify that the broad definition of PFAS only applies to chemicals with a Chemical Abstracts Service (CAS) Registry Number (RN).

DEP stated in its October 28, 2022 “Frequently Asked Questions” document that “The statute requires manufacturers to report the amount of intentionally added PFAS in their products by CAS number. Therefore, the Department interprets that PFAS subject to the reporting requirement of the law are limited to those that

¹ EPA’s Economic Analysis conservatively estimates that the cost of testing just children’s products for the presence of PIP (3:1) would likely exceed \$0.5 billion.

have a CAS number.” It would be helpful if this were incorporated into the final regulation to clarify reporting and other compliance obligations.

DEP should exempt articles containing *de minimis* levels, less than 0.1% by weight from the regulation.

Maine is the first state requiring reporting of such a broad array of chemicals in components. 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 HVAC-R 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 HVAC-R equipment.

We urge DEP to exempt articles that contain only *de minimis* quantities of 0.1% by weight or less, which is consistent with EPA’s notification requirement which may serve as reasonable proxy in this instance² to allow for a practicable regulation that is reasonably implementable. It seems that *de minimus* quantities would be unlikely to be “intentionally added”.

Again, potential exposure to chemicals contained in components is unlikely given that it is embedded in a polymer matrix and the component is enclosed in HVAC-R equipment.

AHRI would appreciate clarification as to whether it is seeking reporting on the concentration of PFAS or the total amount of each chemical, or the total of all chemicals (Section 3.A.(1)(c)).

This clarification would help to also understand any testing requirements to determine compliance, which is likely to evolve over time. DEP should allow for improved testing methodologies to develop, as well as determine these requirements before formalizing analysis guidelines particularly with respect to the use of a theoretical calculation based on the inputs and outputs of the manufacturing process.

The “Commercially Available Analytical Methods” to determine the content of PFAS in articles is still under development and manufacturers may rely on this allowance for reporting PFAS only if they are reporting PFAS as falling within an approved range in the notification system. A commercially available analytical method for most products together with the Department-approved ranges for PFAS reporting must be in place, for manufacturers and others to meet reporting requirements.

AHRI would like to better understand the process to protect CBI information and trade secrets.

There are remaining open questions regarding the overall process and protection of confidential information. DEP need sufficient time to work through these and other important practical matters to ensure that the correct information is provided to support DEP’s analysis and understanding of the data they receive. It would be helpful to clarify which types of information could be claimed as confidential and to provide a simplified process for substantiating those claims.

DEP could allow companies to assert claims of CBI for any PFAS included in the TSCA Confidential Inventory or Uniform Trade Secrets Act and is concerned with use of the Interstate Chemicals Clearinghouse (ICC) Platform, which is a non-governmental organization without public accountability.

² PIP (3:1) is not a carcinogen, but this seems to provide a reasonable threshold used by the Agency in this instance.

AHRI is seeking clarification as to whether every component, equipment model, packaging type, and replacement part would require that a fee be paid to DEP.

Section 6 does not clarify whether a separate fee must be paid for each of the thousands of stockkeeping units (SKUs) that manufacturers manage. Fees should be used to administer the program.

Manufacturers are still collecting information on the presence of PFAS in components and parts that they purchase from their complex supply chains.

As noted in earlier comments, AHRI members are still working to determine whether phenyl isopropylated phosphate (PIP) (3:1) is present in the components in their products to comply with an EPA mandated ban in October of 2024. They continue to face a lack of responsiveness from suppliers, as well as claims that the chemical make-up of components is a trade secret. Perhaps Maine could require reporting by component manufacturers for equipment manufacturers to reference rather than risking duplicative reporting or incomplete information due to claims of intellectual property concerns. This could provide clarity to the definition of “responsible party” and perhaps allow for more streamlined reporting and ease to DEP to make determinations about quantities of PFAS in Maine.

Manufacturers of articles containing PFAS should not be held responsible if suppliers do not comply with Maine’s regulation.

AHRI encourages 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 seeks clarification on the term: “Modification of Significant Change”

AHRI suggests that the term “Significant Change” pertaining to a 10% change in concentration may need to be reconsidered and clarified as to whether it pertains to an entire piece of equipment or a component or part. This added layer of complexity will make compliance and verification more challenging. Perhaps the presence of certain chemicals should be the focused area of concern.

AHRI also seeks clarification on the concept regarding the “Certificate of Compliance”.

It would be helpful to DEP to provide additional information regarding the threshold that would result in DEP concluding that a violation to reporting requirements has occurred as well as requirements to meet compliance certification, especially for *de minimus* levels.

AHRI recommends that DEP allow for six months beyond the final regulation to commence reporting for all PFAS in “articles” as defined by EPA under the Toxic Substances Control Act (TSCA)

AHRI has reached out to manufacturer members through various communication pathways. Less than 5% of members have reached out to DEP to request an extension as they are still trying to assess their supply chains. A six-month delay after the final rule is complete for all PFAS in “articles” would provide more time for Maine to develop their reporting program and for manufacturers to determine a compliance plan. Hopefully, DEP can determine a pathway to minimize duplicative reporting as they develop the reporting structure.

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 the Department would determine what is essential. Would DEP concur with AHRI that HVAC-R and water heating equipment provides critical services to society, including life-saving climate control and ventilation in homes, hospitals, schools, and eldercare facilities? The cold chains for both food and vaccines depend on transportation and commercial refrigeration equipment. HVAC-R and water heating equipment are especially critical during the pandemic and, as we have recently been reminded, during severe climate events that are becoming all too frequent.

AHRI members greatly appreciate the Department's continuing open dialogue regarding all policy issues, including this challenging regulation.

Also, AHRI members support the efforts to minimize exposure to hazardous chemicals. However, there are certain aspects of the regulation under consideration that may be unattainable which apply to components or articles with limited potential for exposure. This may create confusion as to whether replacement parts and equipment critical for life-saving climate control and ventilation and for cold chains for vaccines and medicine are allowed to be sold into Maine. Manufacturers that distribute products in Maine would have difficulty identifying or reporting on the presence of PFAS in component because they are generally added to the product by another party.

AHRI thanks you for your consideration of this request. We look forward to discussing this important matter with you at your earliest convenience.

Sincerely,

Helen Walter-Terrinoni

Helen Walter-Terrinoni

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Exhibit 1: EPA's Regulation Banning PIP (3:1) in Components

OEMs need sufficient time to determine which HVAC-R equipment and components contain controlled substances. AHRI offers the following example, EPA's regulation banning PIP (3:1) in components, which highlights the challenges faced by HVAC-R original equipment manufacturers (OEMs) when contemplating modifications to the current Rule for reporting PFAS chemicals in components.

Industry's experience in investigating its supply chains in relations to the EPA PIP (3:1) rule are a telling example. AHRI surveyed HVAC-R OEMs members regarding PIP (3:1) usage in components. HVAC-R OEMs sent a letter to their suppliers explaining that suppliers must disclose the use of this chemical in components to their OEM customers. After investigating for two months, less than 2% of OEMs had been informed as to whether any of the components that they supply contain PIP (3:1). None of the OEMs had complete information on components used in the HVAC-R components they manufacture.

As result of this effort, AHRI learned that PIP (3:1) is used in wire insulation, electrical components, filters, wiring, wire harnesses, PVC components, bushings, reversing valves, protective rubber grommets and rubber components. PIP (3:1) is incorporated into many HVAC=R equipment components due to its unique behavior as a flame retardant. These components are used in all AHRI product sectors and have been most reported in life-saving comfort-cooling equipment which is likely the most well-understood supply chain of larger companies.

Member companies are continuing their due diligence pressing suppliers, that have largely ignored the requests, for information related to this chemical and its use in component and replacement parts.

AHRI's [Directory of Certified Product Performance](#) lists over four million products with over nine million new products sold and installed annually in homes and businesses. Members are currently parsing through tens of thousands of stock-keeping units (SKUs), each having hundreds of associated components and spare parts, to better understand whether their products are affected by the regulation. Suppliers have generally not been forthright with their OEM customers, even after providing notification that they must disclose the use of PIP (3:1) in components. Some suppliers continue to claim that they will not disclose the chemical makeup of components as the composition is confidential intellectual property.

Some larger OEM members have started testing components for PIP (3:1) to compensate for this lack of transparency which will be a time-consuming and costly endeavor given the number of components that must be evaluated. Testing will not be complete for many, many months if not years. Most smaller businesses do not have the resources to undertake such a costly and time-consuming project.

OEMs estimate that it will take an additional twelve-months to two years to identify all of the uses of components containing PIP (3:1). This is a single chemical. More time will be needed to ascertain the presence of thousands of chemicals. As a result, EPA ultimately granted manufacturers additional time (nearly 4 years) to allow for the identification of the presence of PIP (3:1) and to test replacement products. Applying the lessons and challenges from the EPA's PIP (3:1) regulation to Maine identifies similar compliance challenges for manufacturers.