



2311 Wilson Boulevard Suite 400 Arlington VA 22201 USA
Phone 703 524 8800 | Fax 703 562 1942
www.ahrinet.org

VIA Email: MainePackagingEPR@maine.gov

October 31, 2023

Maine Department of Environmental Protection
17 State House Station
32 Blossom Lane
Augusta, Maine 04333-0017

RE: AHRI Comments on Conceptual Draft Rules for Extended Producer Responsibility

Dear Maine Department of Environmental Protection

The Air-Conditioning, Heating, and Refrigeration Institute (AHRI) submits the following comments and questions in response to the Maine Department of Environmental Protection's (DEP) *Conceptual Draft Rules for Extended Producer Responsibility (EPR)*.

AHRI represents more than 330 manufacturers of air-conditioning, heating, commercial refrigeration, and water heating equipment. Our member companies produce more than 90 percent of the residential and commercial air conditioning, heating, and commercial refrigeration equipment made in North America. We are pleased to share with you that the heating, ventilation, air conditioning, and refrigeration (HVACR) and water heating industry supports more than a thousand jobs in Maine and more than 571,000 jobs nationwide.

Highlighted below, there are five points for which AHRI is seeking clarification and example scenarios to understand the scope and intent of these conceptual draft rules. AHRI appreciates DEP's efforts to incorporate stakeholder feedback so far and efforts made to clarify obligations under the law.

First, In the *EPR Conceptual Draft Rules Part 2* document, AHRI would like the DEP to clarify the intent of the "durable goods" exemption in the law.

As written in this section, a "durable product" means a product that wears out over an average lifespan of at least 5 years. A durable product is not depleted through use. A "product" is defined as an economic good, or the delivery of an economic good, that is marketed or sold. Product includes material sold in bulk for use in containing, protecting, delivering, or presenting items at a later time, but does not include packaging material bought at the point of sale for use containing, protecting, delivering, or presenting other purchases.

Some AHRI member products are products that are intended for use for many years, including up to thirty-year life spans in some categories. While DEP has noted informally this "durable goods" exemption is intended to target the durability of the packaging itself, AHRI seeks clarification in subsequent versions of the rules as the definition of product appears to include the



product itself in that classification. AHRI seeks to understand if this is meant to apply in such a way that the weight of the product alone is exempted from fees, and just have the fees apply to the shorter use packaging itself, or if there is another intended interpretation of this section.

Second, AHRI seeks examples from the DEP on how certain sections will function. One of these areas AHRI members seek further clarification on is what constitutes a “readily recyclable” material under DEP’s definition. Examples of any packaging materials that may fall under this classification would be helpful to AHRI in understanding obligations for our industry.

Third, AHRI seeks examples from the DEP on how the \$300,000 registration fee will function in practice. An example provided on this will help our members understand the expected base cost of registration with DEP for those liable.

Fourth, AHRI seeks clarification on the responsibility of packaging added by distributors after it leaves manufacturing facilities. While it appears that packaging added by contractors would not be the responsibility of manufacturers as noted under Section D. (3), due to contractors delivering directly to consumers. However, distributors seem to fall more in the middle of the process. AHRI seeks clarification if a manufacturer owns the brand of the product itself, and the distributor adds additional packaging, whether that packaging is also the responsibility of the manufacturer in terms of payments to the stewardship organization.

Fifth, similar to the fourth point, clarification is sought by AHRI on how third-party sales of products would be handled. An organization such as an e-commerce retailer may sell certain AHRI member products into Maine but add additional packaging. AHRI seeks clarification from the DEP on additional packaging added by these third-party retailers and the party responsible for that, and whether this would be based on if the e-commerce retailer is selling directly to consumers or to other retailers or contractors.

AHRI notes that it may be necessary to make changes to the three-year transitional period for when a packaging material’s type changes from not readily recyclable to readily recyclable to ensure that those manufacturers looking to switch to readily recyclable materials are not penalized for doing so. In addition, AHRI notes financial costs that will continue throughout the transitional period. As such, AHRI requests consideration of shortening that period to encourage manufacturers to use newly recyclable materials without penalization for doing so.

AHRI appreciates the work done by DEP on these Conceptual Draft Rules, and we note the effort made to offer alternative calculation options for estimation of fees for producers using multi-state distribution models.

AHRI looks forward to continuing to work with DEP as these rules are developed. AHRI is happy to be a resource for DEP throughout the implementation process for this law. Please do not hesitate to reach out to us with any questions.



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Phone 703 524 8800 | Fax 703 562 1942
www.ahrinet.org

Best regards,

Chris Bresee
Manager of Government Affairs
Air-Conditioning, Heating, and Refrigeration Institute
703-600-0333
cbresee@ahrinet.org