August 21, 2020

Maryland Department of the Environment
Air and Radiation Administration
Attn: Randy Mosier, Chief of the Regulation Division
1800 Washington Blvd., Suite 730
Baltimore, MD 21230
randy.mosier@maryland.gov


Dear Mr. Mosier:

The Polyisocyanurate Insulation Manufacturers Association (PIMA) appreciates the opportunity to comment on the proposed rule version of the Maryland Department of the Environment’s (Department) Prohibitions on Use of Certain Hydrofluorocarbons in Aerosol Propellants, Chillers, Foam, and Stationary Refrigeration End-Uses (published in the Maryland Register on July 17, 2020).

PIMA represents North American manufacturers of laminated polyisocyanurate insulation board products (polyiso insulation). Our members include Atlas Roofing Corporation, Carlisle Construction Materials, Firestone Building Products, GAF, Johns Manville, IKO Industries, Rmax, and Soprema. These manufacturers account for the majority of polyiso insulation produced for North America, including Maryland. Importantly, PIMA members and the North American polyiso insulation industry do not use high-global warming potential (GWP) hydrofluorocarbons (HFCs) in the manufacture of their foam products. Therefore, and in recognition of our industry’s long-standing support for environmental leadership, we support Maryland’s efforts to reduce harmful emissions of greenhouse gases.

However, we have concerns with the Department’s proposed disclosure statement (Section .04) and record keeping (Section .06) requirements as applicable to manufacturers of polyiso insulation. Our concerns are outlined below.
I. PIMA supports the use prohibitions in Section .03 and encourages the Department to finalize without modification the proposed prohibitions on HFCs and blends thereof for all foam end-uses.

As applicable to the foam end-use category, PIMA supports the use prohibitions as proposed in Section .03. We specifically support the effective date of January 1, 2021 for the use prohibitions applicable to “rigid polyurethane and polyisocyanurate laminated boardstock” because theregulated HFC substances are not used in the manufacture of polyiso insulation.

Importantly, the proposed rule establishes a uniform playing field for products within the foam end-use category as it relates to the use restrictions for high-GWP HFC substitutes and blends thereof. This level playing field is imperative for the building foam insulation product sector in which many products are in direct competition with one another. This sector includes products such as polyiso insulation, spray polyurethane foam insulation, and expanded (EPS) and extruded (XPS) polystyrene insulation boardstock. Low-GWP substitutes are commercially available and viable for all products in the building foam insulation sector, and the proposed rule creates a uniform transition to more sustainable solutions for this sector. If finalized as drafted, Section .03 of the Department’s proposed rule will ensure no manufacturer or foam insulation product type receives a competitive advantage due to unequal use restrictions for HFCs and blends thereof.

With respect to the effective dates for the use prohibitions for the foam end-use category, we note that the effective dates do vary between January 1, 2021 and July 1, 2021. The additional six months for end-uses such as polystyrene extruded boardstock is a departure from the effective date of January 1, 2021 established by other jurisdictions. Establishing January 1, 2021 as the effective date for all use prohibitions applicable to the foam end-use category will create more parity between the specific product types.

In summary, we strongly urge the Department to maintain the proposed use restrictions for the foam end-use category in the final rule and to reject any modifications that would permit the continued use of high-GWP substitutes or blends thereof for specific foam end-uses beyond the proposed effective date(s) (with the exception of the military, space and aeronautics exemptions included in Table 2).

II. The proposed disclosure statement requirement is unnecessary and unwarranted as applied to polyiso insulation products.

As detailed in previous comments to the Department, the North American polyiso insulation industry does not use the regulated HFC substances and has never used the substances
in the manufacture of its products. More than twenty years ago, PIMA members transitioned to pentane (or pentane blends) as the blowing agent for the manufacture of polyiso insulation and have continued to use the technology to manufacture products today. Therefore, applying the disclosure statement requirement to the polyiso industry is both unnecessary and unwarranted.

As drafted, the proposed rule requires polyiso insulation manufacturers to make an affirmative statement about the use, or lack thereof, of substances that have never been used by manufacturers. There is no legitimate interest in this outcome unless the Department assumes that manufacturers may initiate the use of certain substances after such use becomes illegal. If this is the case, the Department has failed to provide any information suggesting that the polyiso insulation industry plans to use high-GWP HFCs in its manufacturing processes.

Second, in the preamble to the proposed rule, the Department suggests that its authority for promulgating the rule is related to its ability to regulate the negative environmental impacts associated with the use or release of high-GWP HFCs. However, under this rationale, the Department fails to cite its authority for regulating any end-use merely because the end-use exists under the U.S. EPA’s SNAP Program. Therefore, PIMA argues that regulating such end-uses like polyiso insulation to require manufacturers to provide disclosure statements falls outside of the Department’s regulatory authority and is not legitimately connected to the Department’s interest in reducing the use of HFCs.

To remedy this issue, PIMA proposes to modify the proposed rule by either:

1. Under Section .01 Applicability, adding a sentence that limits the applicability of the disclosure statement requirements of Section .04 General Requirements to equipment or products that contain or use a substance listed as prohibited after a specific date (e.g., June 30, 2020 – six months prior to the first use restrictions) or where the use of the substance(s) is initiated or resumed after this date; or

2. Under Section .04, subsection C. Disclosure Statement, adding the following: “For foam products except polyisocyanurate laminated boardstock, the disclosure shall be . . ..”

These proposed modifications are consistent with comments submitted previously by PIMA and we appreciate the Department’s consideration of our concerns. In the event that the Department declines to address this issue, it is imperative that the Department allow the disclosure statement for foam end-uses to be provided on the product packaging (as stated in the proposed rule).
III. The record keeping requirement contained in Section .06 of the proposed rule should be deleted because the requirement will not improve compliance nor facilitate enforcement of the regulation.

We strongly encourage the Department to align its HFC regulation with the rules promulgated by other jurisdictions by removing the record keeping requirement. This requirement represents an administrative burden on manufacturers without providing a corresponding benefit to the public interest or the Department. Additionally, the Department has severely understated the number of stakeholders that will be burdened by this requirement. For the foam sector alone, most building products are sold or introduced into the Maryland market through distribution channels that involve many material sellers, retailers and contractors. As written, the proposed rule would require countless sellers and contractors, many of whom are small businesses, to go beyond the normal course of business and create new systems for maintaining the required records.

In addition to the administrative burdens of the requirement, record keeping is simply not needed for enforcement. If the Department is interested in establishing meaningful enforcement mechanisms, the state should consider testing products for the presence of the prohibited substances. This approach to enforcement would immediately alert the Department to bad actors, while not penalizing good actors with burdensome paperwork.

Finally, to the extent that Section .06 Record Keeping applies to end-uses like the polyiso insulation industry that do not use high-GWP HFCs, our arguments in Section II of these comments concerning the Department’s regulatory authority also warrant modification to, or deletion of, the record keeping requirement.

IV. Conclusion

We appreciate the opportunity to comment on the Department’s proposed HFC prohibitions. Please contact me at jkoscher@pima.org or (703) 224-2289 should additional information be helpful to your process.

Respectfully submitted,

Justin Koscher
President