Complex Products Manufacturers Coalition

January 28, 2025

Melanie Loyzim, Commissioner
Maine Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017
rulecomments.dep@maine.gov

Re: Proposed Chapter 90 Rule Regarding Products Containing PFAS; Ten Recommendations from the Complex Consumer and Durable Goods Supply Chain

Dear Commissioner Loyzim:

The Complex Products Manufacturers Coalition (CPMC or Coalition) appreciates this opportunity to provide these comments to the Maine Department of Environmental Protection (MDEP or Department) on implementing Maine's statute regulating per- and polyfluoroalkyl substances (PFAS) in products as amended by 38 M.R.S. § 1614.[1] The Coalition brings together trade associations and individual businesses, many with in-state locations, most of whom distribute goods and equipment in commerce in Maine that include appliances, vehicles, vessels, motors, lighting, heating, ventilation, cooling, refrigeration, and water heating equipment (HVACR-WH), electronics, and their replacement parts.

Members manufacture equipment and products that have complex supply chains and assemble tens to hundreds or thousands of parts, components, and raw materials to provide, in many cases, products and services critical to the health, safety, and functioning of society. Their products support vital sectors of the economy including government, the military, law enforcement, first responders, food and agriculture (including commercial fishing and sea farming), energy, transportation and logistics (including for commuting and for island residents), public works and infrastructure support, critical manufacturing, the defense industrial base, conservation, and life-saving climate control and ventilation in homes, hospitals, schools and universities, eldercare facilities, food preservation and processing, and laboratory and life sciences facilities. These comments provide recommendations for ensuring that vital products and services, which are essential to the health, safety, and functioning of society, remain available to Maine's citizens.

I. Executive Summary

The Coalition supports many aspects of the proposed rule, including:

1. The ability to rely in part on Section 3 notifications by component suppliers: For product components for which MDEP has previously received notifications, which are used in more complex products containing the reported components, the manufacturer of the more complex product may refer to the supplier's submitted notifications for product components and any PFAS in the remainder of the product in Section 3(A)(1)(e).
2. Options for quantity reporting in Section 3: Information on a concentration range may be more readily available and is an accepted practice in many government reporting programs and reduces the need to identify and protect formulations as confidential business information (CBI). The Coalition urges

[1] 38 M.R.S. §1614, as amended by Public Law 2023, c. 630, An Act to Support Manufacturers Whose Products Contain Perfluoroalkyl and Polyfluoroalkyl Substances (LD 1537, 131st Legislature, effective August 9, 2024).

Maine to drop the requirement for Department-approved ranges, which represents an added administrative burden on MDEP that is not necessary for effective implementation of the law. The Coalition also appreciates the option, similar to that provided in the TSCA Section 8(a)(7) PFAS Reporting Rule,[2] to submit information on the total weight of the goods if other information is not available. This flexibility is important to the Coalition because experience shows that the documentation provided to complex goods manufacturers and importers by their suppliers frequently does not include low concentrations of a PFAS or other chemicals.

3. Flexibility in the use of product identifiers in Sections 3 and 9: The proposed rule allows the use of the Harmonized Tariff System (HTS) code as an alternative to Global Product Classification (GPC) brick codes. Often, companies do not use GPC brick codes.

4. Opportunities for information waivers in Section 3: The Coalition supports waivers from currently unavoidable use (CUU) notification where the information is already available.

5. Submitting CUU exemptions individually or collectively for product categories and industry sectors in Section 9(A): The proposed rule allows a manufacturer to submit requests individually or collectively and group combinations of products in a single category.

6. Limited reporting for degradation products: The Coalition thanks the Department for the interpretation in Section 2 that "intentionally added PFAS" excludes degradation byproducts which do not provide functionality. MDEP is prevented from excluding them entirely by the definition in 38 M.R.S. § 1614. An exclusion based on lack of functionality is supported by the statute. The Coalition appreciates MDEP doing what it can. The clarification is important, given that many downstream companies will not have the expertise or knowledge to identity degradation byproducts. Excluding degradation byproducts from having to be addressed in CUU exemption requests, providing they do not serve a functional purpose or technical effect within the product or its components, will be useful in this regard.

The following ten recommendations to improve this rule are provided here and explained in further detail in the "Recommendations" section below:

1. Improve public understanding of nonconsumer electronics, and HVACR-WH exclusions and broaden consideration of replacement parts. "Electrochemical" should be added to the definition of "electronics" in Section 2 and examples provided as listed in these comments. Confirmation of the exempt status of certain equipment types are requested. A risk-based approach for fluoropolymers all-important for implementing this rule. The Coalition also seeks assurance that statutory and CUU exemptions for durable goods include their replacement parts.

2. Maintain MDEP's commitment to the exclusive use of Chemical Abstracts Service Registry Numbers (CASRNs) for Section 3 notification, specify a date in Section 5 for this notification, and streamline Section 3 notification in line with information provided pursuant to Section 9. It is inconsistent with MDEP's prior interpretations to broaden Section 3(A)(d) to include "(ii) In the absence of this number the chemical name following the nomenclature of the international union of pure and applied chemistry (IUPAC)." This provision expands reporting to an unknown and significant degree. The Coalition would appreciate clarification on the date by which Section 3 notifications will be required, as the "applicable effective date listed in section 5" is not readily apparent. Since CUU determinations under Section 9 precede Section 3 notifications, information requirements should be coordinated and streamlined where possible.

3. Allow all CUU exemption requests to be submitted at any point in time once the final rule is issued in Section 9. Maine can prioritize and process these requests according to the deadlines required by law.

[2] EPA, Toxic Substances Control Act Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances, 88 Fed. Reg. 70516 (Oct. 11, 2023).

4. Require a standardized form for CUU exemption requests in Section 9. MDEP is requiring a standardized form for making CUU notifications in Section 3(B). Similarly, a standardized form for making a CUU exemption request should be added to Section 9 to streamline reporting, avoid inconsistent or incomplete submissions, and make it easier to review requests.

5. Include due process considerations in Section 9. A due process mechanism is necessary for companies to ask for reconsideration of a denial of a CUU exemption request. Due process also requires that Section 9 incorporate the criteria for granting CUU determinations.

6. Streamline CUU request information in Section 9. The Coalition finds the information in Section 9(A)(5) through (7) either non-essential or duplicative and recommends needed information be consolidated in Section 9(A)(4). MDEP should reconsider Section 9(A)(9). The Coalition requests the inclusion of a 0.1% *de minimis* exemption from the 2032 ban to make the number of applications Maine receives more manageable.

7. Retain flexibility on the length of CUU exemptions in Section 9(B). The statute does not require CUU determinations to be time-limited and has exemptions that are not time-limited.

8. Do not penalize companies for submitting CBI claims in Section 9. Language in the proposed regulation which directs companies not to submit CBI in CUU requests should be removed. State and federal law provide for the right to make CBI claims.

9. Adopt definitions for the terms "complex consumer goods" and "complex durable goods." These terms should be used instead of the catch-all term "complex products."

10. Further simplify other administrative burdens. A further reduction in notification fees should be considered to meet the nominal standard of the law, considering that notifiers may have to report numerous products. The Coalition asks MDEP to clarify that testing is not required and confirm that the "significant change" provision applies to a final product.

With this rulemaking, MDEP has taken on the task of developing the first rulemaking in the country (and the world), to implement legislation that seeks to ban PFAS in most products. As with its statute, many other states (and countries) are looking at Maine when considering similar regulations. We hope that MDEP will strive to make this regulatory process an example to follow.

II. Recommendation 1: The Coalition Supports MDEP's Implementation of the Statutory Exemptions in the Proposed Rule and Asks for Examples to be Provided.

The Coalition appreciates and supports the statutory exemptions which eliminate the need to make a CUU exemption request for many commercial and industrial complex durable goods and their associated components and replacement parts. The Coalition supports MDEP's recognition of these exemptions in the proposed rule. With respect to the exemption for "nonconsumer electronics and nonconsumer laboratory equipment not ordinarily used for personal, family or household purposes," the Coalition appreciates MDEP's decision to propose a definition of the term "electronics." "Electronics" is defined to mean "technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities."

The Coalition asks MDEP for two improvements to this definition. The term *"electrochemical"* should be added before "electromagnetic". According to Merriam Webster, this term is an adjective for the interconversion of chemical and electrical energy. It most accurately describes the industrial technology of a Coalition member. In addition, the Coalition asks Maine to use the same approach as the definition of juvenile products and list the following electronics as examples in the definition:

- Outdoor, commercial, and industrial lighting;
- Residential light fixtures (luminaires);
- Electric hydrogen technology;

- Lithium and other batteries;
- Personal and commercial communication devices;
- Smart home systems;
- Global positioning and navigation systems;
- Solar panels;
- Electrical equipment such as but not limited to power grid equipment, motors and generators, arc welding equipment, electrical conduits, fuses, enclosures, connectors, wiring devices, low voltage distribution equipment, power electronics, residential and commercial controls, wires and cables, industrial automation controls, electric vehicle, and transportation management equipment; and
- Food manufacturing equipment.

The Coalition asks for MDEP to acknowledge that medical imaging equipment is exempt under Section 4(A)(5) as "[a] prosthetic or orthotic device or any product that is a medical device, drug or biologic or that is otherwise used in a medical setting or in medical applications that are regulated by or under the jurisdiction of the United States Food and Drug Administration."

Similarly, the Coalition is grateful for the statutory time extension until 2040 for "cooling, heating, ventilation, air conditioning or refrigeration equipment" and its inclusion in the proposed rule. In particular, the Coalition is grateful to Maine for exempting the use of certain refrigerants from this deadline altogether, specifically ". . . refrigerants used in servicing such equipment as long as the refrigerant is listed as acceptable, acceptable [sic] subject to use conditions or acceptable subject to narrowed use limits by the EPA pursuant to the Significant New Alternatives Program at 42 U.S.C. 82(G), as long as the refrigerant, foam, or aerosol propellant is sold, offered for sale or distributed for sale for the use for which it is listed pursuant to that program." In addition, the Coalition respectfully asks MDEP to specify in this part of the rule that the following water heating equipment are within the scope of this provision:

- Water heaters;
- Heat pumps; and
- Related residential, equipment.

Maine's approach on refrigerants reflects a risk-based approach to PFAS regulation. We urge Maine to adopt a risk-based approach to fluoropolymers more broadly when considering CUU exemption requests. These are large, highly stable molecules, which are insoluble in water, do not break into smaller pieces in environment, and are not bioaccumulative. Fluoropolymers play a vital role in countless consumer products that are essential for the health, safety, and functioning of society.[3] This request was endorsed during MDEP's January 16, 2025, public hearing, by the testimony from the Performance Fluoropolymer Partnership group of the American Chemistry Council (ACC), and AGC Glass Company North America.

Accommodations in the proposed rule for replacement parts appear limited to automotive maintenance and cooling, heating, ventilation, air conditioning or refrigeration equipment parts and servicing needs. Manufacturers maintain replacement parts for years to ensure that complex consumer and durable goods can remain operational and meet product warranties. The Coalition asks MDEP to write a specific provision in the CUU exemption section of the rules that companies may request exemptions for replacement parts for other types of exempt products.

III. Recommendation 2: Section 3 CUU Product Notifications Should be Exclusively by CASRN and Should Not Duplicate Information Already Provided.

MDEP stated in its October 28, 2022, "Frequently Asked Questions" (FAQ) document that "[t]he statute requires manufacturers to report the amount of intentionally added PFAS in their products by CAS

[3] An extensive study funded by the U.S. Department of Energy that discusses fluoropolymers and the feasibility of replacements is Stephanie Jacobs, David S. Kosson, *Assessment of Fluoropolymer Production and Use with Analysis of Alternative Replacement Materials* (January 2024).

number." The FAQ confirmed that the Department "interprets that PFAS subject to the reporting requirement of the law are limited to those that have a CAS number." In addition, the August Concept Draft stated "38 M.R.S. § 1614 requires notification of intentionally added PFAS by CAS number." It is inconsistent with these prior statements to broaden Section 3(A)(d) to include "(ii) In the absence of this number the chemical name following the nomenclature of the international union of pure and applied chemistry (IUPAC)." The Coalition urges MDEP not to backtrack on its commitment to CASRNs and remove Section 3(A)(d)(ii) on this basis. This provision expands reporting to an unknown and significant degree.

Section 3(A) provides that "the applicable effective date" of notification will be "listed in section 5." However, the Coalition was unable to locate this date or a proposed placeholder provision for it in proposed Section 5.

Moreover, it is the understanding of this Coalition that Section 3 notification applies exclusively to products that have secured a CUU exempt determination from Maine under Section 9. This means that the CUU exemption process will *always precede* the need to submit a Section 3 notification. Therefore, the Coalition asks MDEP to consider the extent to which Section 3 notification can be streamlined by the proposed requirement in Section 3(A)(1)(g) to provide "[i]dentification, by citation to a specific section of this Chapter, of the applicable determination by the Department that the use of PFAS in the product subject to the notification if a currently unavoidable use." For example, both Section 3 and Section 9 require a brief description of the product that includes the GPC or HTS code, the intended use of the product, and the purpose of the PFAS. It is not clear why companies should re-submit this information unless it has changed.

IV. Recommendations 3 - 8: The Coalition Supports a CUU Exemption Process that is Open to All from the Outset of the Effective Date of the Rule, Incorporates Due Process Considerations, and is Streamlined in its Requirements.

The proposed rule for Chapter 90 includes strict, late-stage deadlines to apply for CUU exemption determinations, extensive information requirements for these applications, recognized statutory exemptions from the 2032 ban, and establishes limited notification for products determined to be a currently unavoidable use pursuant to the amended 38 M.R.S. 1614. The following recommendations concern the CUU exemption request application process.

1. Comments on Proposed Timeframe

The Coalition is gravely concerned with not allowing CUU exemption request applications to be filed until 18 to 36 months before the 2032 ban for most products. There are four key steps in the process: a company files a CUU exemption request; MDEP makes an affirmative determination (which triggers the notification requirement); the company submits the required notification; MDEP determines that the notification is sufficient (including the accompanying fee). Only after these four steps are completed will the product(s) in question be permitted for sale: the law expects every one of these steps to be completed before the effective date of the ban for a particular product.

For most products that will be eligible for a CUU exemption, the timing for only one of these steps is known (18-36 months for the first step). However, as noted above, the proposed rule assumes these other three steps will be completed in the same timeframe. Entities with a prohibition effective as of January 1, 2026, have only six months to accomplish all of these steps. The proposed timing for implementing this important aspect of Maine's law places enormous pressure on MDEP and the regulated community and may not even be feasible. Please rethink this process and allow more time.

Furthermore, this schedule freezes access to this critical regulatory process for important products such as consumer lighting and communication devices and forces them into a state of limbo that will last for years. Regulatory uncertainty can have a dramatic and negative effects on market stability, product sales, and business planning that we are confident Maine does not seek to impose.

In commercial terms, it is detrimental for companies to wait until a comprehensive product ban is almost in effect to find out whether they can continue to sell their product. For manufacturers of complex durable goods, such as those represented by this Coalition, the developmental lead time for new product formulations is necessarily years or even decades. This is because manufacturers must complete three lengthy, resource-intensive stages: 1) determine the presence of PFAS throughout its complex international supply chain and manufacturing processes; 2) find a suitable alternative (if one is available); and 3) implement the alternative by performing the rigorous testing necessary to meet existing safety, regulatory, functionality, and consumer demands.

These efforts may affect hundreds or thousands of products, both directly and indirectly through the products in which they are used.[4] The Coalition is also concerned that MDEP is underestimating the number of requests that will need to be submitted with respect to complex consumer goods. It is possible, and very likely, that the proposed timeframes will not allow MDEP sufficient time to complete its evaluations and make CUU exemption determinations before the 2032 statutory ban becomes effective.

The Coalition urges MDEP to allow all CUU exemption requests to be submitted at any point in time once the final rule is issued. Maine has discretion to prioritize and process these requests according to the deadlines required by law. MDEP should include a due process mechanism for a company to request reconsideration if a CUU exemption request is denied. During MDEP's January 16, 2025, public hearing, Emerson Electric and the Maine Chamber of Commerce testified to endorse these types of considerations.

2. Comments on the Need for a Risk-Based Approach

Certain chemicals that fall within the scope of the broad structural definition used by Maine to define the term PFAS present a low human health and environmental risk. The Coalition recommends that MDEP applies a *risk-based approach* to consider both hazard *and* exposure. In many cases, the PFAS will be encased in the products that are eligible for CUU determinations, such that they present little to no risk of exposure to consumers. The associated product lifespans and disposal and reclamation practices are such that there is a negligible risk of unintentional or unmitigated release to the environment.

On the whole, CUU eligible products are an important class of products that deserve priority attention: to be eligible for a CUU determination, these products must be essential to health, safety, and the functioning of society. The companies who manufacture these products should be allowed an opportunity earlier in the implementation of Maine's law to provide information on whether replacements exist and the time involved to transition to alternatives, where this is even possible and necessary.

Commercial certainty is of significant importance, and we think CUU requests should be favorably received. Nevertheless, Maine's system must also account for denials as well as approvals. The time needed to withdraw from the market in response to a denial is not taken into account by the proposed rule. MDEP has left out any opportunity to appeal a negative CUU determination, so that due process requirements are not met.

The Coalition supports a "*de minimis*" exemption as part of a risk-based approach. MDEP should include an exemption from the 2032 ban and the need for a CUU determination for PFAS in quantities of less than 0.1% by weight of the final product. Due to the complexities of the international, multi-tiered supply chain, determining a presence below the threshold of 0.1 % by weight is nearly impossible. 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 is little, if any, evidence to suggest that the presence of trace amounts of a chemical in an internal component contributes to exposure, which must be considered in any risk determination. Furthermore, there has been much

[4] For example, an extensive study prepared under an agreement with and funded by the U.S. Department of Energy, discusses the poor availability of alternatives for fluoropolymers and the low feasibility of replacements. Stephanie Jacobs, David S. Kosson, *Assessment of Fluoropolymer Production and Use with Analysis of Alternative Replacement Materials* (January 2024).

scientific debate over whether it is actually possible to achieve 100% confidence in any formulation. Lastly, there is precedent in international, federal, and state law for providing *de minimis* exemptions. The Coalition urges MDEP to extend that relief to this rule as well.

3. Comments on Proposed Application Requirements

The Coalition asks for MDEP to issue a standardized form to submit CUU exemption requests. Such a form would streamline reporting and lower the potential for inconsistent and incomplete submissions. A standard form would make it easier for MDEP to review requests.

The Coalition asks Maine to add a provision to Section 9 which specifies the criteria it will use to make CUU determinations. While many important aspects of the statute are incorporated into the proposed rule, the CUU decisional criteria are noticeably absent. MDEP must find that a use is "essential for health, safety, or the functioning of society and for which alternatives are not reasonably available." This determination is a three-part test:

- First, "the function provided by the PFAS is necessary for the product to perform as intended". This requires information sufficient to understand how the PFAS functions in the product.
- Second, "the unavailability of the PFAS . . . would cause the product to be unavailable". This requires information on product performance and competing alternatives.
- Third, the unavailability of the product would result in either "a significant increase in negative health outcomes," "an inability to mitigate significant risks to human health or the environment," or "a significant disruption of the daily functions on which society relies." This requires information on the purpose of the product and an outcomes assessment if it were no longer available in Maine.

The above criteria will essentially drive all CUU determinations. The Coalition asks Maine to ensure that companies should not have to look outside of the rule to find these important criteria.

Furthermore, the Coalition asks Maine to reduce the information required for a CUU exemption request. The information required should be limited to that necessary to make the finding required by the statute. As proposed, the current level of information presents a substantial and undue burden on industry submitters. MDEP has not explained the necessity and relationship of the proposed information elements to these decision criteria. Specifically, the CUU decision criteria can be met without forcing companies to comprehensively explain to MDEP how products are regulated in Section 9(A)(5) through (7).

With respect to Section 9(A)(5), explaining the comprehensive PFAS regulatory landscape is a complex task. This should have little bearing on whether the product is essential in Maine. If MDEP considers the information supplied by a submitter insufficient, an otherwise valid CUU exemption request could be denied, even though this information is not required by statute to obtain a CUU determination. This is public information that regulators are well-positioned to know.

Regarding Section 9(A)(6) and 9(A)(7), information on competing products and their availability is duplicative of the information required by Section 9(A)(4) on alternatives and these provisions should be consolidated.

In addition, proposed Section 9(A)(9) asks for information known or reasonably ascertainable by the manufacturer regarding the impacts on human health or the environment of PFAS in the product. As described above in "Comments on the Need for a Risk-Based Approach", the Coalition supports a risk-based approach to regulating PFAS and appreciates that this provision reflects the intention by Maine to take a risk-based approach in these determinations. However, the Coalition respectfully submits for consideration that the Legislature did not list health and environmental effects as a consideration for reaching a CUU determination. While Maine's law otherwise directs MDEP to address the impacts of PFAS on humans and the environment, the CUU determination is an exception for essential uses if there are no current alternatives. MDEP should consider removing this provision to reflect the Legislature's deliberate omission of this information.

The proposed rule specifies that "upon the expiration date listed in s 9(B) [sic], a currently unavoidable use determination is no longer applicable, and all sales, offers for sale, or distributions for sale are immediately prohibited." The Coalition urges MDEP to retain the discretion for deciding whether a CUU determination should be time-limited or not. The statute does not require that CUU determinations be time-limited and includes several exemptions that are not time-limited. Specifically, the Coalition asks MDEP to consider making CUU exemption determinations that are not time-limited for critical sectors in which there is little or no potential to expose consumers or the environment and alternatives cannot be identified. When time limits are considered, this Coalition has provided information documenting that the time needed to make a single chemical substitution could take approximately 20 years, as described in Section 1, "Comments on Proposed Timeframe" above.

Finally, the Coalition urges MDEP to remove language in the proposed regulation which encourages companies not to submit CBI information. CUU exemption determinations are subject to MDEP's rulemaking process, including approval by the Board of Environmental Protection in a public meeting and in response to public comments. Should a proposal for a CUU exemption determination contain claims of confidentiality, the Department states that it will make a determination that there is insufficient publicly available information to justify a rulemaking. MDEP "strongly recommends" that CUU proposals do not include CBI claims. It is highly inappropriate for a government to advise citizens not to exercise a right provided by law. 38 M.R.S. § 1310-B(1) and (B)(2) permit CBI claims. In addition, MDEP's instructions run counter to federal law, such as the ability to assert CBI for PFAS on the TSCA Confidential Inventory and under the Uniform Trade Secrets Act. Absent the ability to claim information as CBI, companies may choose to refrain from making CUU exemption requests. This may result in harm to Maine's consumers, if products that are essential for the health, safety and functioning of society, would not be available anymore because companies prefer to withdraw from the market rather than risk disclosing proprietary business information.

V. Recommendation 9: The Coalition Asks MDEP to Distinguish Complex Consumer Goods from Complex Durable Goods Instead of Using the Term "Complex Product."

The distinction between complex consumer goods and non-consumer complex durable goods is an essential component of Maine's law. Generally speaking, many complex consumer goods will require CUU exemptions to stay in commerce in Maine, while there are permanent or extended time exemptions for most complex commercial and industrial (B2B) durable goods.

The proposed rule uses the term "complex product" in referring to the notification program that will be required for CUU exempted products. Maine does not define this term. Unfortunately, the definition of a "product" in Maine's statute blurs the inherent distinction between consumer and nonconsumer facing goods in Maine's law. The statute defines a "product" as "an item manufactured, assembled, packaged or otherwise prepared for sale to consumers, including its product components, sold or distributed for personal, residential, commercial or industrial use, including for use in making other products." In this definition, a consumer is virtually any consumer – individual and business alike.

The Coalition asks MDEP to use the terminology "complex consumer good" to refer to products in which individual consumers and households are the intended recipient, and the term "complex durable good" to refer to commercial and industrial business-to-business (B2B) equipment. The blended consumer concept in the statute makes the use of the term "complex product" in the proposed rule misleading. In relation to CUU determination notifications, its use inaccurately includes many products intended for commercial and industrial use that are already exempt from the 2032 ban by statute. Implementing a definition for "complex durable good" and a separate definition for "complex consumer good" provides a clear frame of reference for exempt products such as nonconsumer electronics in the former category.

The request to distinguish consumer from nonconsumer durable goods in the language of this rule is consistent with Section 6(c)(2)(D)(ii)(I) and (II) of the federal Toxic Substances Control Act (TSCA) and a recent proposal by the State of Vermont on PFAS legislation. In TSCA, "complex consumer goods" are

distinguished from "complex durable goods" in terms of the number of components, product lifespan, and the intended recipient of the product (i.e., consumers versus non-consumers). Moreover, in November 2024, the Vermont Agency of Natural Resources released a report on PFAS in Consumer Products and recommended legislation that defines and excludes "complex durable goods" from its scope. The proposed definition for a "complex durable good" in Vermont is "a consumer product that is a manufactured good composed of 100 or more manufactured components, with an intended useful life of 5 or more years, where the product is typically not consumed, destroyed, or discarded after a single use. This includes replacement parts for complex durable goods not subject to a phase out under this chapter." Notably, the scope of Vermont's proposed legislation is a "consumer product", which in this context is limited to items for personal, family and household use, and "product categories that are normally used by households but sold to businesses (e.g. commercial carpets or commercial floor waxes)." Thus, the Vermont proposal excludes all other commercial and industrial durable goods, complex consumer goods like computers and cell phones, and replacement parts. As one of the reasons for taking this approach, Vermont pointed to the challenges experienced by Maine.

VI. Recommendation 10: Simplify Other Administrative Burdens.

The Coalition would like to thank MDEP for removing the $5,000 fee proposal for making a CUU exemption request that was in the Concept Draft. The proposed fee of $1,500 should be reduced to $150 or less for notification and re-notification once a CUU determination is granted. Small businesses should not be asked to pay a fee.

Subsection 6 supports the assessment of a nominal filing fee for these notifications. However, the proposed fee level remains high for Maine businesses and will exceed the nominal stipulation quickly for companies that must notify numerous product categories. A nominal administrative fee should not look like a tax for keeping products that are essential for health, safety, or the functioning of society on the market. Fees can deter companies from selling essential products in Maine. The Maine Chamber of Commerce expressed concerns with the proposed fee when testifying during MDEP's January 16, 2025, hearing on this rule.

In addition, the Coalition asks MDEP to clarify that testing is not a requirement of this rule. Testing would be cost-prohibitive and difficult because test methods are still under development. Finally, the Coalition seeks guidance from MDEP on the "significant change" in composition concept. The Coalition would like to confirm that for companies that manufacture and report a final piece of equipment, the 10% change in composition should be calculated based on the entire piece of equipment. Without this clarification, this added layer of complexity will make compliance and verification more challenging.

* * *

Thank you for your consideration. For questions, the contact for the CPMC is Martha Marrapese, Partner, Wiley Rein LLP, 2050 M Street, N.W. Washington, D.C. 20036, (202) 719-7156, mmarrapese@wiley.law.