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

Re: CTA Comment on Chapter 90: Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances

Dear Ms. Farris,

On behalf of the Consumer Technology Association (CTA), we respectfully submit these comments on the Maine DEP proposed rule Chapter 90: Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances ("Rule"). The Rule provides regulations to implement the PFAS in Products law (the Act) which will impact nearly the entire technology and electronics sector. CTA is North America's largest technology trade association. Our members are the world's leading innovators – from startups to global brands – helping support millions of American jobs. Our member companies have long been recognized for their commitment and leadership in innovation and sustainability, often taking measures to exceed regulatory requirements on environmental design and product stewardship. We appreciate the opportunity to provide these comments on the Rule and welcome continued dialogue with the Department as it begins implementing this complex law.

We have structured our comments in order of the sections provided by the Rule:

Section 3. Notification

Section 3(A): The ban on product sales will apply to products or components in the stream of commerce on the day the ban goes into effect. This will mean that any spare parts, which are considered new or unused, for products that are out of production will be subject to the ban. Products that consumers are using in Maine may not be serviceable once the ban goes into effect if spare parts become unavailable. We ask that the Department include an exemption for spare parts in the Rule.

Section 3(A)(1)(b): This section requests companies to submit an estimate of the number of units sold annually. We ask the Department to clarify specifically what information will be required in the estimate. CTA has significant reservations concerning an obligation for companies to report sales data, which is often treated by companies as confidential. If sales data reporting is required, it should be limited to aggregated data within a past year and not include future forecasts. In addition, recent historic sales data should be explicitly protected as CBI by DEP.

Section 3(A)(1)(e): This section governing the notification on the amount of each of the PFAS in the product or component still requires a lot more clarification. The Department has not specified how an exact concentration can be calculated. For example, if a finished good is sold into Maine and PFAS is within one of that product's components, is the concentration calculated based on the entire finished good? The Department should provide examples and details on calculation. The Department should provide further clarification in the Rule about the phrase "falling within a range approved by the Department" and how this will be implemented. There are also currently no standardized methods to calculate the use of PFAS in complex goods like electronics. Therefore, we would also like clarity as to what constitutes "commercially available analytical methods" as outlined in this Section.

Section 3(A)(1)(d) CAS Numbers: The rule should require the Department to issue a complete list of CAS Numbers subject to the notification obligation at least 12 months before the reporting deadline. This will help manufacturers streamline their compliance processes.

Section 3(C): The Rule should clarify that affiliates and subsidiaries under the same corporate parent manufacturer may submit combined reports.

Section 5. Prohibition of Sale of Products Containing Intentionally Added PFAS

Section 5(H): This states that Section 5 does not apply to a retailer unless it sells a product containing intentionally added PFAS for which the retailer has received a notification that the sale of the product is prohibited. The Rule should clarify whether or not *only* the retailer will be held responsible for violation of the Rule in this circumstance.

Section 6. Fees

Section 6(A): The Note in 6(A) states that notifications are not required for product components that are incorporated into complex products. DEP should clarify whether this applies to product components sold as replacement parts for finished goods. We encourage the Department to avoid duplicative reporting and not require separate notification for replacement parts.

Section 9. Currently Unavoidable Use

Section 9(A) Timeline: The proposed timeline for submission of a CUU determination is between 36 and 18 months prior to the effective date of a product ban. We are concerned this will leave manufactures with little time to comply with CUU determinations that are released close to the deadlines out line in the Act. We recognize that DEP will receive many CUU proposals, and it may take considerable time for the Department to process them all. There is no assurance that DEP will process CUU determinations with sufficient time before a sales ban goes into effect.

Manufacturers of products awaiting CUU determinations should have an exemption period while DEP is evaluating a CUU proposal. After the grant or denial of a CUU determination, manufacturers should have sufficient time to comply. If a CUU is granted, manufacturers will need time to prepare for the necessary notification requirements. If one is denied, manufacturers will need time to comply with a sales ban.

The industry is still gathering information on the uses of PFAS across the supply chain, and we respectfully ask that CUU proposals be received after the 18-month mark up to the sales prohibition. If a manufacturer has a CUU proposal ready, it should be able to submit before the 36-month window. For renewing an expired CUU determination, the proposed 12-24 month timelines have the same problems expressed above for 9(A). We ask for additional flexibility with renewing expired determinations. Instead of treating the process as a new determination, we ask that the Department treat it as a renewal.

Need for Broader CUU Categories: The Rule suggests that manufacturers submit CUU proposals by using GPC/HTS codes in NAICS sectors. We ask that CUU proposals be submitted for broader product categories than the proposed codes. When CTA submitted CUU proposal categories under DEP's prior rulemaking, we found over 600 relevant HTS codes for electronics products. Instead of granting CUUS for hundreds of different codes, we believe it would be simpler to issue CUUs based on industry sector. The proposed individual CUU determinations based on suggested codes are costly for the Department and inefficient for industry compliance.

Section 9(A) Information: The proposed requirements under Section 9(A) call for more information than the statute requires, and the compliance burden for much of the proposed data would exceed what a regulator needs to make a CUU determination. The Department should consider making some of these requirements optional if they are not necessary to determine whether a use of PFAS is unavoidable.

Section 9(A)(2)-(3): The Department should provide clearer guidance regarding what qualifies as "essential for health, safety, or the functioning of society."

Section 9(A)(4): The Department should provide clearer guidance regarding what standard will be applied to determine if an alternative is "reasonably available."

Conclusion

Thank you again for the opportunity to provide these comments on the Rule. If you have any questions about, please don't hesitate to contact me at dmoyer@cta.tech.

Sincerely,

Dan Moyer
Sr. Manager, Environmental Law & Policy
Consumer Technology Association