

January 27, 2025

**VIA ELECTRONIC SUBMISSION:**      [rulecomments.dep@maine.gov](mailto:rulecomments.dep@maine.gov)  
[pfasproducts.dep@Maine.gov](mailto:pfasproducts.dep@Maine.gov)

Maine Department of Environmental Protection  
Attention: Kerri Malinowski Farris

**Re: Chapter 90 - Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances**

The Truck and Engine Manufacturers Association (EMA) hereby submits comments on the proposed rule: Chapter 90: Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances (proposed rule) that was noticed on December 20, 2024. EMA previously submitted comments to The Maine Department of Environmental Protection (MDEP) on November 4, 2022, on May 19, 2023 and September 18, 2024.

MDEP is proposing a new rule, Chapter 90, to establish criteria for currently unavoidable uses of intentionally added Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) in products and to implement the sales prohibitions and notification requirements for products containing intentionally added PFAS but determined to be a currently unavoidable use pursuant to the amended 38 M.R.S. §1614.

EMA represents worldwide manufacturers of internal combustion engines and on-highway medium and heavy-duty vehicles (greater than 10,000 pounds gross vehicle weight rating). EMA member companies design and manufacture internal combustion engines that are used in a wide variety of applications, including: trucks and buses (including school buses); farm, construction, and industrial equipment; marine vessels; locomotives; lawn, garden and utility equipment, and electric generators and other stationary applications. PFAS is widely used in a variety of applications to provide products with strength, durability, stability, and resilience. It is also known to be used for its flame retardant properties. Additionally, it is used in refrigerants that are subject to approval by EPA's Significant New Alternatives Policy (SNAP) Program that was established under Section 612 of the Clean Air Act for EPA to identify and evaluate acceptable alternatives in end-uses that have historically used ozone-depleting substances. Some alternatives that are approved for use by EPA under the SNAP program (HFO-1234yf and HFC-134a) are subject to bans in the Maine PFAS rule. Consequently, EMA's members are significantly and directly impacted by the Proposed Rule.

We understand that the scope of reporting obligations has been narrowed to include only those products subject to a ban, for which a currently unavoidable use (CUU) determination has been obtained. Although we support the narrowed focus of reporting obligations, we are concerned that the draft language is confusing and does not clearly communicate the timing and scope of product bans and the associated obligations that accompany CUU determinations.

Specifically, we would appreciate clarification of the language in section 5.E. and section 5.F. Timing of bans for specific products are indicated both by exclusion from the scope of specific sections and inclusion in subsequent sections. This approach is confusing and, unnecessarily complex. Section 5.F. bans refrigerants from 2040, and combined with section 5.E. language that carves out “Products subject to subsection F, below.” Confusingly, the language in section 5.E. also includes a list of the other sections which identify banned products but does not include subsection “F” in that list. We suggest that 5.E. state that “any product that is not prohibited for sale under subsections A, B, C, D, F, or G”. This simply strikes “already” and adds subsection “F” to the existing list. The subsequent reference to “Products subject to subsection F, below”, would not be necessary.

In addition, the language in section 7 related to failure to provide notice, must be read with section 3 which references “effective date listed in section 5”. The language in section 7.A. seems to indicate a need to report in 2032, even though products (like refrigerants) are not banned until 2040. Section 7 should include clarifying language to indicate that it applies to “prohibited” product containing intentionally added PFAS.

More fundamentally, the requirements related to refrigerants containing PFAS should be revised to allow the use of refrigerants approved under the SNAP program. The proposed language allows continued use for parts and other servicing needs but should also include refrigerants in new products i.e. vehicles, when there is not a SNAP approved alternative available. The timelines proposed for seeking a CUU determination may not accommodate the extensive time required to complete development, industrialization, and SNAP approval of currently unidentified PFAS-free alternatives, which can take as long as ten years to complete. Specifically, section 9.A. states a CUU request submitted more than 36 months prior to a ban taking effect will not be considered.

The scope of information required for submission of a CUU proposal is extremely challenging and will necessitate the expertise of chemical industry experts, health effects specialists, product engineers, and environmental experts, at a minimum. The onerous nature of the process may prevent CUU determinations in instances where PFAS performs a critical function and no reasonable alternative exists. The nature of the information requested in section 9.A.9 is that which should have been evaluated prior to imposing a broad ban on PFAS. It seems like the CUU determination process is being used to gather information that should have been considered and informed the scope of the PFAS rulemaking, and the burden is falling directly on the shoulders of those seeking CUU determinations.

As we have stated in prior comments, PFAS, as broadly defined in the proposed rule, may also include some refrigerants, like HFO-1234yf and HFC-134a. There has been a shift to HFO-1234yf because of its extremely low global warming potential. It is not clear that the CUU determination process as proposed will provide a feasible and reasonable path to ensure that vehicles and equipment that may contain PFAS as part of refrigeration, heating and cooling (including cooling functions for batteries in electric vehicles) and motor vehicle air conditioning systems, will not be impacted by the 2040 ban on PFAS containing refrigerants.

We appreciate the opportunity to provide these comments. Please do not hesitate to contact Dawn Friest at (519) 999-4480 (or at [dfriest@emamail.org](mailto:dfriest@emamail.org)) if you have any questions.

Respectfully submitted,

TRUCK & ENGINE  
MANUFACTURERS ASSOCIATION

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