HOUSEHOLD & COMMERCIAL PRODUCTS ASSOCIATION
Innovative Products For Home. Work. Life.

January 28, 2025
Kerri Malinowski Farris
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Augusta, ME 04333
(207) 215-1894
pfasproducts.dep@Maine.gov

Re: PFAS in Products Program: Posting Draft Language to Implement Title 38, Section 1614

Dear Ms. Farris,

On behalf of the Household & Commercial Products Association[1] (HCPA) and its members, we want to convey our comments on the Posting Draft for Chapter 90: Products Containing Perfluoroalkyl and Polyfluoroalkyl Substance. The Household & Commercial Products Association (HCPA) appreciates the opportunity to comment to the Maine Department of Environmental Protection (DEP or the Department) on the new posting draft language[2] to implement the recently amended Title 38, section 1614. HCPA thanks the Department for providing this opportunity during an informal outreach process that will help inform formal rulemaking.

HCPA appreciates the efforts of the Department to date and the continued opportunity to provide additional comments to refine the regulation. HCPA has previously submitted letters expressing concerns about the Concept Draft for determining currently unavoidable uses (CUU) of perfluoroalkyl and polyfluoroalkyl substances (PFAS) in products and the concerns raised previously about the criteria for and responsible parties of CUU applications and clarity of confidentiality claims of submissions are incorporated by reference.

I. HCPA Comments on Definitions

HCPA appreciates the Department's removal of the Note for the term "cleaning products," thereby removing some of the ambiguity as to whether industrial cleaning products are not included within the scope. It may be useful to explicitly note that industrial cleaning products are not in the scope of the regulation.

HCPA notes that the definition of "general cleaning product" was removed from the

[1] HCPA is the premier trade association representing the interests of companies engaged in the manufacture, formulation, distribution and sale of more than $180 billion annually in the U.S. of familiar consumer products that help household and institutional customers create cleaner and healthier environments. HCPA member companies employ hundreds of thousands of people globally. HCPA represents products including disinfectants that kill germs in homes, hospitals and restaurants; air fresheners, room deodorizers, and candles that eliminate odors; pest management products for pets, home, lawn, and garden; cleaning products and polishes for use throughout the home and institutions; products used to protect and improve the performance and appearance of automobiles; aerosol products and a host of other products used every day.

[2] Available at https://www.maine.gov/dep/rules/#13139124

current proposal and recommends that it be included in the regulation.

HCPA is concerned that the definition of "commercially available analytical method" may lead to incorrect testing methods for particular PFAS or inconsistent results. We also note that PFAS analysis is a rapidly developing area and that commercially available analytical methods, unmodified or modified, may not be suitable for testing certain PFAS. HCPA strongly encourages the inclusion of science-based criteria for appropriate regulatory testing methods and approaches while distinguishing between screening approaches and rigorous analytical techniques.

HCPA notes that "complex product" does not appear to be defined, as indicated within the Note under Section 6. HCPA encourages the inclusion of a definition or clarifying language to differentiate between a product, product component, or complex products.

II. HCPA Requests Additional Detail Regarding Manufacturer Responsibility and Fee Amount

HCPA appreciates that the Department is allowed to establish by rule and assess a fee payable by a manufacturer required to comply with the law's notification requirements. This will help identify who the party responsible for reporting should be. The term "manufacturer" includes the entities that manufacture a product or whose brand name is legally affixed to the product. However, there are numerous circumstances when two different entities meet that definition: one may manufacture the product, and the other may legally affix its name to the product. In such circumstances, it is unclear who the "manufacturer" is and, therefore, which entity has the reporting requirement. HCPA recommends additional guidance to assist manufacturers and the Department in determining responsibility.

HCPA welcomes the reduced amount of $1,500, but it would be helpful to understand better the justification for this amount and how it would cover the department's reasonable costs in administering and implementing Maine's PFAS in Products Program. HCPA requests clear and transparent documentation so stakeholders can better understand how this amount was determined.

III. HCPA Comments on Certificate of Compliance

HCPA reiterated the request for more information on certificates of compliance. Specifically, as manufacturers have 30 days to fill out forms provided by the Department that have not yet been shared, it remains challenging to indicate whether 30 days is sufficient time. For instance, if a manufacturer does not intentionally add PFAS to a product but must test a raw material to confirm compliance, that analytical testing may take more than the proposed 30 days. We would appreciate it if the Department could provide detailed information and/or the actual Certificates of Compliance before the formal rulemaking so stakeholders can provide more informed feedback on their utility.

IV. HCPA Comments on the Criteria for a Currently Unavoidable Use Proposal

HCPA thanks the Department for including criteria for a proposal for a Currently Unavoidable Use (CUU) determination. HCPA is concerned that the Department has not finalized any rules that would provide detail on what is considered "essential for health, safety or the functioning of society" or how to determine if "alternatives are not reasonably available." HCPA strongly recommends that, before requesting and making determinations on CUU proposals, the Department first finalize a rule that clearly defines the terms "alternative," "essential for health, safety or the functioning of society," and "reasonably available" to provide clarity to stakeholders.

HCPA further encourages the development of guidance relevant to pesticide products that address public health pests containing an active ingredient considered a PFAS under Maine law and regulated in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to provide additional clarity on whether these products will be exempted via Federal preemption or whether a company would need to seek a CUU determination. Further, it is unclear if this would apply to a pesticide product addressing public health pests containing an inert ingredient considered a PFAS under Maine law and regulated under FIFRA and how it would relate to CUU determination.

HCPA notes that the Posting Draft provides an option for individual *or* collective CUU determination; however, the listed criteria are tailored to an individual manufacturer's request. If the department is allowing submissions to be made at an industry level via a trade association, the criteria would seem to need to be adjusted to reflect that the submitter is an organization rather than an individual company. HCPA encourages the inclusion of additional language for separate processes to account for collective submissions.

HCPA can also envision additional scenarios, such as protective packaging or the use of PFAS in the manufacturing process, that would likely need to be considered. HCPA believes specific criteria are needed to define the parameters companies should use to structure their CUU proposals. This would minimize the likelihood that an application is considered insufficient and not granted, and it would also create a more transparent process for evaluating CUUs.

V. HCPA Requests Clarification on Claims of Confidentiality Related to Currently Unavoidable Use Proposals

HCPA recognizes that the Department's rulemaking process includes approval by the Board of Environmental Protection in a public meeting and response to public comments. Thus, we understand the Department's strong recommendation that proposals for currently unavoidable use determinations do not contain claims of confidentiality.

However, some requirements may trigger proposers to request confidentiality within the criteria. For example, the assessment of the cost difference between obtaining PFAS for use in a product and without is likely something a proposer would want to keep confidential.

Indeed, there can be other examples of manufacturers wanting to keep certain details confidential, as many markets are highly competitive. Therefore, HCPA believes that the Department needs to be able to claim certain information as confidential within the process and justify a rulemaking on the portions of what can be public information.

VI. HCPA Requests Clarification of the Responsible Part to Report to the Department

As previously mentioned, HCPA appreciates that the new concept draft language contains criteria for a proposal for a CUU determination. As proposals can be submitted by manufacturers individually or collectively, HCPA assumes that trade associations can submit proposals on behalf of their members and that consortiums of manufacturers can be formed to submit a proposal. HCPA would appreciate confirmation of this assumption.

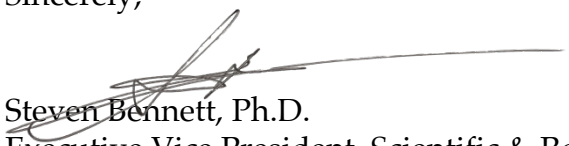
VII. HCPA Comments on the Timeline to Submit Proposals for Currently Unavoidable Use Determinations

HCPA is concerned with the timeline for which requesters must submit CUU proposals. By requiring proposers to submit their submissions 18 months before the applicable sales prohibition, products subject to a sales prohibition starting January 1, 2026, would not be allowed to be submitted. HCPA believes there needs to be a process for which products subject to the January 1, 2026 sales prohibition can be reviewed.

Further, while HCPA hopes and thinks that those needing to submit proposals for later sale prohibitions (2029, 2032, and 2040) should have sufficient time to provide proposals no later than 18 months prior, HCPA believes the department needs to provide flexibility in terms of the timeline to submit proposals for those products. This rigid timeline may prove ineffective, and HCPA believes the Department should allow submissions earlier to avoid undue delays. If possible, we recommend that the DEP consider applications for CUU proposals earlier than 36 months before the enforcement ban for products subject to the 2029, 2032, and 2040 sales prohibitions. Allowing a submission earlier than the proposed time frame of 18/36 months would provide industry and end-users with certainty in the market and minimize the disruption of a sales prohibition upon Maine businesses and consumers. HCPA also believes the additional time will allow the Department to allocate resources for the CUU determinations better.

HCPA looks forward to working with DEP and other stakeholders to ensure that Maine residents continue to have access to products that improve their daily lives. Please do not hesitate to contact HCPA if you have questions about our comments.

Sincerely,



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