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January 28, 2025

Maine Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333  
Submitted via email: rulecomments.dep@maine.gov

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

Please accept the following written comments from W. L. Gore & Associates, Inc. (Gore) regarding the Ch. 90: Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances rulemaking. Gore is a U.S.-based materials science company with approximately 13,000 Associates globally, including 8,000 in the United States, and it solves complex technical challenges in the most demanding environments – from outer space to the world’s highest peaks to the inner workings of the human body. Gore appreciates the Maine DEP’s work on Ch. 90 rulemaking, including its outreach to the regulated community during the stakeholder process.

**Section 2 - Definitions**

**Commercially Available Analytical Test Method**

To help ensure that analytical results being used as a basis for regulatory decisions are reliable and reproducible, Gore respectfully requests that the Department clarify that a “commercially available analytical test method” must be a method that has been validated using a standard procedure (e.g. ASTM, ISO, NIST) and that the laboratory performing the analysis (whether it is a third-party laboratory or an in-house laboratory) must be able to demonstrate that it meets good laboratory practices regulations or holds a quality certification such as ISO-IEC 17025 (general requirements for the competence of testing and calibration laboratories) or other certification acceptable to the Department.

**Personal Protective Equipment**

Respectfully, Gore requests clarification that the definition of “textile articles” excludes personal protective equipment, including equipment worn to minimize exposure to occupational hazards that can cause serious injury or illness from contact with or exposure to workplace or professional hazards (for example, hazardous material suits, firefighting turnout gear, electric arc protection gear, outdoor gear designed for enhanced visibility, weather protective gear for outdoor activities, etc.). Under the proposed rule, “textile



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articles" are defined to describe goods that are "customarily and ordinarily used in households and business," and are subject to a January 1, 2026 ban unless they receive a "Currently Unavoidable Use" designation. However, personal protective equipment is distinguishable from the illustrative list included in the definition, not marketed for general consumer use, and necessary for compliance with occupational safety and health regulations and other industry standards (such as NFPA). Confirming that the definition of a "textile article" does not include personal protective equipment would provide clarity that a ban on the use of PFAS in personal protective equipment would go into effect on January 1, 2032, unless such use otherwise receives a "Currently Unavoidable Use" designation, and would also provide the requisite time for identification and commercialization of feasible alternatives, versus the January 1, 2026 ban in place for non-technical textile articles.

If it is the Department's determination that personal protective equipment is included within the scope of "textile articles," then Gore requests that it be managed in line with the requirements for "outdoor apparel for severe wet conditions," which are subject to a disclosure requirement on January 1, 2029, and a ban on January 1, 2032, unless there is an approved "Currently Unavoidable Use." Although personal protective equipment is not necessarily designed for outdoor sports experts, there are categories of personal protective equipment that are designed to "provide protection against extended exposure to extreme rain conditions or against extended immersion in water or wet conditions to protect the health and safety of the user and are not marketed for general consumer use." Other categories of personal protective equipment, such as firefighting turnout gear, are designed to provide protection against extreme conditions to protect the health and safety of the user and have comparable technically demanding performance requirements for severe conditions for which non-PFAS alternatives are still being evaluated for function and performance, and the same disclosure requirement and timeframe as provided for outdoor apparel for severe wet conditions is appropriate.

Furthermore, there is a June 1, 2025 deadline for "Currently Unavoidable Use" proposals for textile articles, which will not provide sufficient time to collect the necessary information to draft and file a CUU request pending finalization of the Department's rulemaking process to ensure continued access to these technically demanding products. If personal protective equipment is determined by the Department to be a textile article subject to the January 1, 2026 ban, Gore respectfully requests that the deadline for submission of CUU requests be extended to six months after the Chapter 90 regulations are finalized and enter into force.

### **Section 3 – Notification**

#### **Grouping Brick and HTS Codes (3A(1)(a))**

Gore respectfully requests that the Department provide additional clarification on the use of Global Product Classification (GPC) brick code or Harmonized Tariff Schedule (HTS) code and North American Industry Classification System (NAICS) codes for both Section 3 reporting and Section 9 CUU purposes, to ensure that manufacturers can report using reasonable grouping of similar products. There are 99 identified chapters in the HTS



schedule,<sup>1</sup> each chapter has multiples of Headings and Subheadings, to comprise the six-digit HTS code – there are hundreds, if not thousands, of different HTS six-digit codes. For products used as components in more complex products (e.g., cable assemblies, laminates, vents), there may be multiple Global Product Classification (GPC) brick codes or Harmonized Tariff Schedule (HTS) codes that are applicable to the product or product category, because the classification of the component product could depend on the final product that incorporates the component product as a part (e.g., HTS code 6201 covers certain apparel for men and boys while HTS code 6202 covers similar apparel for women and girls).

Furthermore, there are more than 700 NAICS 5-digit codes (20 primary sectors, 102 subsectors, 324 industry groups and 710 industries).<sup>2</sup> If a manufacturer is required to submit separate notifications and CUU requests for each unique combination of NAICS code and GPC brick or HTS code, this could require an extraordinary number of entries, depending on the product component. Gore does not believe that it is the Department's intent to require reporting in this manner.

Although 3.A.(1)(a) and 9.A.(1)(b) refers to a singular GPC brick code or HTS code, it is Gore's understanding that manufacturers may group multiple relevant GPC brick codes or HTS codes in a single CUU proposal or a single notification, in combination with identification of NAICS by primary sector (two-digit code). Gore respectfully requests that the Department confirm this understanding.

**Add Engineering Calculations for determination of product content (3A(1)(e))**

Engineering calculations based on product knowledge and supplier information is a recognized reliable cost-effective means to determine product composition of articles containing multiple substances. For example, a manufacturer might produce a filtration laminate that is composed of three components: 1) a PTFE membrane weighing 50 grams per square meter; 2) a non-PFAS containing adhesive with a lay down rate of 100 grams per square meter; and 3) a polyester scrim weighing 400 grams per square meter. Using this product knowledge, the manufacturer can calculate that the concentration of PTFE in the laminate would be 9.1% (w/w). Furthermore, the amount of PTFE in any filter cut from that laminate could be calculated based on the weight of filter (e.g., a filter weighing 10 grams would contain 0.91 grams of PTFE).

Gore respectfully requests that 3.A.(1)(e) be amended to expressly include engineering calculations based on product knowledge and/or supplier information for reporting the amount of intentionally added PFAS in a product notification. This could be accomplished with the following amendment (see italicized text):

- (e) The amount of each of the intentionally added PFAS in the product or any product component:

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<sup>1</sup> [https://www.usitc.gov/tariff\\_affairs/documents/2024\\_hts\\_item\\_count.pdf](https://www.usitc.gov/tariff_affairs/documents/2024_hts_item_count.pdf)

<sup>2</sup> NAICS / Industry codes - Company & Industry Research - Research Guides at Brock University



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- (i) Reported as an exact *measured* quantity as a concentration, determined using commercially available analytical methods;
- (ii) *Reported as a calculated quantity of specific PFAS or total PFAS, determined using engineering calculations, based on product knowledge and/or information provided by suppliers;*
- (iii) The total organic fluorine if the amount of each PFAS is not known or reasonably ascertainable, determined using commercially available analytical methods; or
- (iv) Based on information provided by a supplier or as falling within a range approved by the Department.

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#### **Section 10 - Proprietary Information**

Gore is concerned about the Department's interpretive note in Section 9A regarding the protection of proprietary information. The Department states that because of its rulemaking process, it may not be able to justify a rulemaking approving a currently unavoidable use determination request that contains claims of confidentiality. However, the Department's criteria required to be included in a CUU request, including but not limited to Sections 9A(3) (detailing the function of the PFAS in the product) and (4) (detailing the analysis of potential alternatives to the PFAS), could require the disclosure of trade secrets and other competitively sensitive information. If a company is not able to protect such disclosures as proprietary information, it is placed in the untenable position of having to relinquish trade secret information that could erode its competitive position globally in order to continue to offer products for sale in Maine. Gore respectfully requests that the Department either clarify the level of technical detail that will be needed to submit a complete CUU package pursuant to Section 9, or establish a means for redacting confidential details from the publicly available aspects of the rulemaking process, similar to its procedures for issuing, for example, Title V air permits, which are also subject to public review and comment.

If you have any questions, please contact Raphy Goodstein at [rgoodste@wlgore.com](mailto:rgoodste@wlgore.com).

Thank you for your time and consideration.

Sincerely,

A handwritten signature in blue ink, reading "Raphy Goodstein".

Raphy Goodstein  
Government Relations Associate