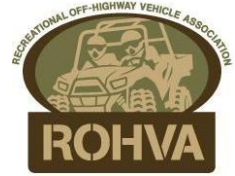




**MOTORCYCLE
INDUSTRY
COUNCIL®**



November 10, 2022

Commissioner Melanie Loyzim
Maine Department of Environmental Protection
State of Maine
17 State House Station
Augusta, ME 04333

Re: PFAS in Products Concept Draft 2

Dear Commissioner Loyzim:

Hundreds of companies represented by the Motorcycle Industry Council (MIC), the Recreational Off-Highway Vehicle Association (ROHVA), and the Specialty Vehicle Institute of America (SVIA) remain considerably impacted by the requirements proposed in Maine's PFAS in Products Concept Draft 2. Concerns outlined in the attached July 18, 2022, letter remain in effect and we submit the following remarks for your consideration.

Request for Exclusion Under “Currently Unavoidable Use” allowance.

Our member companies appreciate the addition of the “Currently Unavoidable Use” allowance in Draft 2, which is defined as “use of PFAS that the department has determined by rulemaking to be essential for health, safety or the functioning of society and for which alternatives are not reasonably available.” Multiple companies have indicated that gaskets, o-rings, sealants, and hoses must have PFAS in order to withstand extreme heat and chemical blends in fuel and other fluids in our powersport vehicles. Likewise, PFAS is used in electrical insulation to provide flexibility and durability which maintains a safe operating condition. Member companies are unaware of any alternatives at this time and we request that gaskets, o-rings, sealants, hoses, electrical parts that contain wiring, and chrome plating be granted an unavoidable use exclusion. We continue to check for PFAS in paints, pigments, electronics, and computer chips and ask that they also be granted an exclusion. Without an exclusion, the state risks an exit from the market of motorcycles, all-terrain vehicles (ATVs), and recreational off-highway vehicles (ROVs or sometimes referred to as UTVs or side-by-sides). The state also would lose replacement parts for thousands of powersports vehicles that are used in the state for commuting, recreation, agriculture, law enforcement, fire and rescue, and the military.

Request for Exclusion Under the “Essential for Health, Safety or the Functioning of Society” allowance.

Our member companies also appreciate the addition of “Essential for Health, Safety or the Functioning of Society” allowance in Draft 2. Motorcycles, ATVs, and ROVs are used by police, fire, rescue, government agencies, and the military to perform essential services on a daily basis in Maine. Loss of these vehicles would severely impact health and safety, particularly on state and federal land and in rural areas of the state where emergency response depends heavily on smaller vehicles that can reach individuals in very rugged terrain. ***It is worth***

noting that during the global COVID-19 pandemic the U.S. Department of Homeland Security recognized the critical need for powersports to continue functioning and granted them Essential Service destination under their CISA Guidance.

Below are powersports vehicles used by first responders and government entities:



In addition to emergency response, thousands of Maine residents use our powersports products for commuting to and from work, and in agriculture uses ranging from farms to the timber

industry. An inability to access replacement parts such as gaskets, o-rings, sealants, hoses, electrical parts that contain wiring, and chrome plating would paralyze each of the aforementioned uses, greatly impacting the health, safety, and functioning of society. As such, we request that gaskets, o-rings, sealants, hoses, wire insulation and chrome plating be granted an unavoidable use exclusion. We continue to check for PFAS in paints, pigments, electronics, and computer chips and ask that they also be granted an exclusion.

Commercially available analytical method

Draft 2 requires companies to report “*an exact quantity determined using commercially available analytical methods, or as falling within a range approved by the Department.*” If the rule requires testing for each product to identify the “exact quantity,” it will not be feasible considering the number of products and thousands of parts/components that make up those finished products. We suggest any reporting be at the finished product level rather than at the component level, and would like to understand in detail what is meant by “a range approved by the Department.” Finished product manufacturers must rely on testing reports from suppliers regarding quantity or concentration of the PFAS in their components or parts. The state must clarify what testing threshold (or range) products must be tested to. The state should set a minimum level for testing of PFAS rather than having to report all products or components that have any trace of PFAS. Any determined level must be one that is reasonable given cost and is attainable given limited capacity among testing companies. The Department should also provide higher tolerance levels for components that are inside engines or not in direct contact with individuals during normal use. Other states have made such concessions in their PFAS laws and legislative proposals.

Still Lacks Safe Harbor Provisions for Products Currently in the Market

Draft 2 still fails to exclude vehicles, parts, safety clothing, gear, etc. that are already in inventory across the state. Manufacturers, dealers, service stations, and parts distributors likely have multiple years of replacement parts and other products already in distribution channels and in inventory at retailers. A failure to allow safe harbor language for these products would mean that every dealership, repair shop, aftermarket distributor, and retailer would need to return or dispose of all inventories that arrived prior to implementation of this new law. That is simply not feasible and could cause scores of small businesses to shutter their doors and walk away from their livelihood. As suggested in our July letter, MIC, ROHVA, and SVIA recommend adding in language under Section 7 of the draft that would grandfather in those products but would also add a label to the existing inventory indicating that it entered commerce prior to the implementation date. Perhaps language along the lines of:

7. Failure to Provide Notice.

- A. A person may not sell, offer for sale, or distribute for sale in the State of Maine a product containing intentionally added PFAS if the manufacturer has failed to provide the information required under Section 3.*

(1) The prohibition in this Section does not apply to a retailer in the State of Maine unless the retailer sells, offers for sale, or distributes for sale in the State a product

received on or after January 1, 2024, for which the retailer has received a notification pursuant to Section 8(A)(2) that the sale of the product is prohibited.
(2) For products entered into inventory or commerce prior to January 1, 2024, the retailer must affix a label noting that “This product entered into inventory or commerce prior to January 1, 2024 and may contain Perfluoroalkyl and/or Polyfluoroalkyl Substances.”

Duplicative Burdensome Work for Manufacturers

U.S. EPA is currently contemplating a comprehensive PFAS reporting rule under TSCA, which will encompass what Maine requests to report. In addition to this, other states are working on similar reporting or registration requirements for products containing intentionally added PFAS.

Manufacturers should not be burdened with unnecessarily duplicative work. To reduce the potential for unintentional reporting errors or lapses, manufacturers should be allowed to use the same information provided to the U.S. EPA for reporting to states. There should be one central database for reporting by companies, whether that be a national reporting registry, a dedicated page on companies’ websites, or a secure centralized third-party website accessible to all states and the public. Options like these will go a long way in easing the very difficult task of complying with a patchwork of registries across multiple states and the federal government.

Conclusion

MIC, ROHVA, and SVIA appreciate the opportunity to continue working with the Maine Department of Environmental Protection to improve the concept draft, and we trust you can see the need for our requested limited exclusions. We also request that you allow for additional requests for exclusion as companies continue due diligence on the thousands of components that go into our finished products.

Thank you for your consideration and please feel free to reach out with any questions you may have.

Regards,



Scott Schloegel
Senior Vice President Government Relations
Motorcycle Industry Council
Recreational Off-Highway Vehicle Association
Specialty Vehicle Institute of America

Enclosure: July 18, 2022 Concept Draft letter