September 2, 2025

Melanie Loyzim, Commissioner
Maine Department of Environmental Protection
17 State House Station
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rulecomments.dep@maine.gov

Re: Proposed Rule to Amend Chapter 90: Products Containing PFAS, to Establish Designations for CUUs of Intentionally Added PFAS in Products Subject to Sales Prohibition Beginning January 1, 2026

Dear Commissioner Loyzim:

The Complex Products Manufacturers Coalition (CPMC or Coalition) appreciates the opportunity to submit these comments to the Maine Department of Environmental Protection (MDEP or Department) on its proposed rules to amend its Chapter 90 regulations.[1] The Coalition brings together individual businesses and trade associations, many with in-state locations, most of whom distribute goods and equipment in commerce in Maine that include appliances, vehicles, vessels, motors, outdoor power equipment, lighting, heating, ventilation, cooling, refrigeration, and water heating equipment (HVACR-WH), electronics, and their replacement parts.

The rule is being amended to establish two designations for currently unavoidable uses (CUUs) of intentionally added per- and polyfluoroalkyl substances (PFAS) in products subject to sales prohibition beginning January 1, 2026.[2] However, we urge MDEP to make these additional changes:

- In this first round of exemption requests, MDEP has set a high technical bar for demonstrating that the presence of PFAS in a product component qualifies for a CUU exemption. CPMC is concerned about the level of detail MDEP expects with respect to the function and analysis of alternatives under the single component approach. Given the limited time allowed for CUU designations, it may not be feasible to complete CUU exemptions for all of the complex products scheduled for bans as of 2032 and beyond in the current time allotted for this process.
- These comments include specific recommendations for amending this rule to allow CUU exemptions to be issued at any time. We ask MDEP to amend this rule to allow CUU exemptions to be issued for a product rather than individual components.

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[1] Adopted April 2025: Chapter 90 - Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances.

[2] These product categories are: cleaning products, cookware, cosmetic products, dental floss, juvenile products, menstruation products, textile articles, ski wax, and upholstered furniture. 38 M.R.S. §1614, as amended by Public Law 2023, c. 630, An Act to Support Manufacturers Whose Products Contain Perfluoroalkyl and Polyfluoroalkyl Substances (LD 1537, 131st Legislature, effective August 9, 2024).

- In addition, as explained below, we ask MDEP to use this opportunity to clarify other aspects of the rule, including the scope and applicability of certain existing exemptions.

I. Application of MDEP's CUU Exemption Designation Process to Complex Products.

Manufacturers of products sold in Maine containing intentionally added PFAS may submit proposals for CUU determination using the Department's online CUU proposal form if the product meets the statutory definition of "essential for health, safety, or the functioning of society."[3] For products within the scope of the product bans scheduled for 2032 and beyond, companies have up to five years in advance of the deadline to submit these requests. The earliest that these submissions can be made is January 1, 2027. Requests cannot be submitted any later than 18 months prior to the deadline. In the case of the ban scheduled for January 1, 2032, all CUU exemption requests will need to be filed by April 1, 2030.

CPMC respectfully asks MDEP to amend this rule to allow all CUU exemption requests to be submitted at any point in time. These efforts may affect hundreds or thousands of products, both directly and indirectly through the products in which they are used. The Coalition is concerned that MDEP may have underestimated the number of requests that will need to be submitted with respect to complex consumer goods. It is possible, and very likely, that the proposed timeframes will not allow MDEP sufficient time to complete its evaluations and make CUU exemption determinations before the 2032 statutory ban becomes effective.

In a single complex product, the scope of a CUU exemption could include PFAS in wiring and cable insulation, the lubricant(s), the coating, touchscreen displays with haptic feedback, gaskets, rivets, sealants, protective nylon washers, gas exposed components, and foam blowing agents for insulation, O-rings, or valves. Section 9.A of the rule states that "Proposals for currently unavoidable use ("CUU") determinations may be submitted by manufacturers individually or collectively. A separate proposal must be submitted for each individual combination of product category and the associated industrial sector."

We respectfully request that MDEP clarify what is meant by "each individual combination of product category and associated industrial sector." Does this mean that MDEP expects CUU exemption requests to be submitted for each and every PFAS-containing component within a product category for different industries? In particular, CPMC would like to know if MDEP expects each separate component in a product category to require its own application. We are concerned that such an approach for reviewing thousands of multi-component complex product categories is not feasible. CPMC respectfully asks MDEP to provide public assurance that it has the resources and expertise to review, process and reach a determination for hundreds or thousands of CUU exemption requests during the time period leading up to 2032 and 2040 in the case of HVAC products.

Considering there will be thousands of products and components involved, a component-by-component approach would likely exceed MDEP's administrative resources, including

[3] 38 MRS § 1614(1)(B-1).

financial and technical expertise. Often, the same component or subtype can be found in several kinds of complex products. However, it does not seem feasible or even allowable under the current rule for unrelated industries or companies to submit a single exemption request for a component. As a result, duplicative CUU exemption applications should be anticipated by MDEP; CPMC suggests a change to allow more flexibility and broad collaboration so that a single request for an exemption can be made for a component with the same use in different industrial sectors.

In this respect, a level commercial playing field is necessary for implementing exemptions. Maine's PFAS law is not equitable if CUU exemptions are granted for some, but not all, applications. For example, MDEP is proposing to grant a CUU exemption for a PFAS in a cleaning product container internal cartridge valve used in the industrial sector. The product falls under HTS classification 3926.90.4510 and refers to "O-rings".[4] At the same time, MDEP rejected the CUU exemption application for "container O-ring, used for hand lotion."[5] As with the cleaning product container internal cartridge valve, this product is also meant to be used in the industrial sector, according to the submitter.[6] It is important for MDEP to explain why these components are being treated differently when they appear much the same.

Moreover, it is possible that certain information MDEP will require in a CUU exemption for a complex product will be proprietary and this will necessitate that the information be submitted to the Department in the manner prescribed by 38 M.R.S. § 1310-B(2). Such designations will be handled by the Department in accordance with 38 M.R.S. § 1310-B(2). We respectfully recommend that MDEP anticipate the need for additional resources to address commercially sensitive information, as manufacturers cannot refuse to disclose to the Department information required by this rule.

CPMC proposes the following amendments to the language of this rule for consideration by Maine:

- Allow submissions at any time beginning January 1, 2026, to gain experience with complex product submissions.
- Add language to clarify that a CUU application for a product may include multiple components.
- Specify by rule that if one PFAS component cannot be replaced the entire product qualifies for the exemption. This will avoid significant redesign costs when overall the product must still contain PFAS as a currently unavoidable use.
- MDEP should grant a CUU exemption at HTS classification code level, for the entire product, instead of at a product component level. Moreover, consistent determinations should be required.

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4 Harmonized Tariff Schedule of the United States (HTS), 2025 HTS Revision 18, Chapter 39.

5 MDEP, Staff Memo to the Board of Environmental Protection, seeking to initiate rulemaking to amend its rule Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances, 06 096 C.M.R. ch. 90 to include CUU determinations (July 17, 2025), p. 8.

6 *Id.*

- Provide a due process mechanism for companies to ask for reconsideration of a denial of a CUU exemption request.
- Retain flexibility on the length of CUU exemptions, instead of only granting five years in all cases.
- Language directing companies not to submit confidential business information (CBI) in CUU requests should be removed. State and federal law provide for the right to make CBI claims.
- Clarify that testing is not a requirement of this rule. Testing would be cost-prohibitive and difficult because test methods are still under development.
- Confirm what is intended by the "significant change" in composition concept. The Coalition would like to confirm that for companies that manufacture and report a final piece of equipment, the 10% change in composition should be calculated based on the entire piece of equipment. Without this clarification, this added layer of complexity will make compliance and verification more challenging.
- The fee levels remain high for Maine businesses and will exceed the nominal stipulation quickly for companies that must notify numerous product categories. Consider a fee cap and a reduction in fees so that fees do not become a deterrent. The Maine Chamber of Commerce expressed concerns with the proposed fee when testifying during MDEP's January 16, 2025, hearing on this rule.
- Provide guidance on how to categorize and submit CUU exemptions for complex product categories consistent with this amended language. Providing appropriate guidance will ensure that MDEP receives higher quality submissions, and fewer duplicative or superfluous CUU exemption requests to take up MDEP's limited time and resources.

II. CPMC Supports Additional Changes to this Rule

In addition to the CUU exemption process as it will be applied in the future, CPMC would like to respectfully ask MDEP to consider addressing the following areas in updating this rule:

1. "Non-consumer electronics". MDEP should provide guidance regarding which products are included in this broad category. Such guidance is necessary to understand which complex products are exempt and do not have to submit a CUU exemption request. CPMC asks MDEP to use the same approach as the definition of "juvenile products" and list the following electronics as examples in the definition:
    - Outdoor, commercial, and industrial lighting;
    - Residential light fixtures (luminaires);
    - Electric hydrogen technology (electrolyzers);
    - Lithium and other batteries;
    - Personal and commercial communication devices;
    - Smart home systems;

- Global positioning and navigation systems;
- Solar panels;
- Electrical equipment such as but not limited to power grid equipment, motors and generators, outdoor power equipment, arc welding equipment, electrical conduits, fuses, enclosures, connectors, wiring devices, low voltage distribution equipment, power electronics, residential and commercial controls, wires and cables, industrial automation controls, electric vehicle, and transportation management equipment; and
- Food processing and commercial foodservice equipment.

2. Medical imaging equipment. For the same reason as above, the Coalition asks for MDEP to acknowledge that medical imaging equipment is exempt under Section 4(A)(5) as "[a] prosthetic or orthotic device or any product that is a medical device, drug or biologic or that is otherwise used in a medical setting or in medical applications that are regulated by or under the jurisdiction of the United States Food and Drug Administration."

3. Water Heaters. The Coalition appreciates the statutory time extension until 2040 for "cooling, heating, ventilation, air conditioning or refrigeration equipment" and its inclusion in this rule. CPMC supports the exemption for the use of certain refrigerants from this deadline altogether, specifically ". . . refrigerants used in servicing such equipment as long as the refrigerant is listed as acceptable, acceptable [sic] subject to use conditions or acceptable subject to narrowed use limits by the EPA pursuant to the Significant New Alternatives Program at 42 U.S.C. 82(G), as long as the refrigerant, foam, or aerosol propellant is sold, offered for sale or distributed for sale for the use for which it is listed pursuant to that program." CPMC respectfully asks MDEP to specify in that the definition of "cooling, heating, ventilation, air conditioning or refrigeration equipment" includes the following water heating equipment:
    - Water heaters;
    - Heat pumps; and
    - Related residential, equipment.

4. A risk-based approach for fluoropolymers. We urge MDEP to adopt a risk-based approach to fluoropolymers more broadly when considering CUU exemption requests. These are large, highly stable molecules, which are insoluble in water, do not break into smaller pieces in environment, and are not bioaccumulative. Fluoropolymers play a vital role in countless consumer products that are essential for the health, safety, and functioning of society. This request was endorsed during MDEP's January 16, 2025, public hearing in several public comments.

- A recent study on the thermal decomposition of fluoropolymers[7] investigated the thermal stability and degradation products of polytetrafluoroethylene (PTFE), polychlorotrifluoroethylene (PCTFE), and polyvinylidene fluoride (PVDF) across temperatures ranging from 200 to 890 °C. Different from previous studies, no short- or long-chain PFAS were detected under any tested condition. Among the investigated polymers, PTFE have shown highest stability, remaining intact until ≥ 550 °C and then mainly depolymerizing to tetrafluoroethylene (C_2F_4). The main concern regarding fluoropolymers is that they decompose into potentially hazardous PFAS monomers. This study demonstrates that the most commonly used fluoropolymers are stable to high temperatures that almost no products are exposed to during normal use or disposal.[8]
- Additionally, the U.S. Food and Drug Administration (FDA) has recognized the importance and safety of PTFE in medical devices,[9] a conclusion grounded by an independent safety review performed by the Emergency Care Research Institute (ECRI). ECRI collected data from over 1,800 health care provider organizations around the country and issued its findings in 2021. The ECRI review found no conclusive evidence of patient health issues associated with PTFE as a material. Medical devices are already exempt by statute in Maine. However, the conclusions have broader applicability. PTFE is an essential fluoropolymer in a wide variety of products beyond medical devices. No other materials exist that can perform the critical roles of fluoropolymers in medical devices.

5. Maintaining a commitment to the exclusive use of Chemical Abstracts Service Registry Numbers (CASRNs). It is inconsistent with MDEP's prior interpretations to broaden Section 3(A)(d) to include "(ii) In the absence of this number the chemical name following the nomenclature of the international union of pure and applied chemistry (IUPAC)."[10] This provision could expand reporting to an unknown and significant degree. CPMC would like this language deleted from the rule. CASRNs are the international standard for tracking chemicals and MDEP should adopt this as its sole method.

6. Defining "complex consumer goods" and "complex durable goods." The Coalition asks MDEP to consider the recent action by the State of Vermont to adopt a definition for a complex durable good.[11] Similarly, the terminology "complex consumer good" refers to products in which

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7 Alireza Arhami Dolatabad, Xuejia Zhang, Jiamin Mai, Alena Kubátová, Jiefei Cao, Feng Xiao, "Thermal decomposition of fluoropolymers: Stability, decomposition products, and possible PFAS release", Journal of Hazardous Materials (July 23, 2025).

8 *Id*.

9 U.S. Food and Drug Administration, PFAS in Medical Devices (August 6, 2025).

10 C.M.R. § 096-90-3(A)(1)(d)(ii).

11 HB 238 (Act 54), An act relating to the phaseout of consumer products containing added perfluoroalkyl and polyfluoroalkyl substances (Signed into law June 11, 2025). The bill addresses the phase-out of consumer products containing added PFAS, tasks the Vermont Agency of Natural Resources with submitting a recommendation by January 15, 2033, to legislative committees on how to address PFAS in "complex durable goods." The bill defines a

individual consumers and households are the intended recipient, while a "complex durable good" refers to commercial and industrial business-to-business (B2B) equipment. Implementing a definition for "complex durable good" and a separate definition for "complex consumer good" provides a clear frame of reference for exempt products such as non-consumer electronics in the former category. Vermont's definition includes replacement parts.

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With this rulemaking, MDEP is continuing to lead the way in developing the first regulations in the United States (and the world), to implement legislation that seeks to ban PFAS in most products, and designate CUU exemptions. As with its statute, many other states (and countries) are looking at Maine when considering similar regulations. We hope that MDEP will strive to make this regulatory process an example to follow, not just with this first batch of CUU exemptions, but for the subsequent ones as well.

Thank you for your consideration. For questions, the CPMC contact is Martha Marrapese, Partner, Wiley Rein LLP, 2050 M Street, N.W. Washington, D.C. 20036, (202) 719-7156, mmarrapese@wiley.law.

complex durable good as a manufactured consumer product composed of 100 or more components, designed for a useful life of at least five years, and not typically discarded after a single use.