1919 S. Eads St.
Arlington, VA 22202
703-907-7600
CTA.tech

September 2, 2025

Kerri Malinowski Farris
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333

Re: Chapter 90 – Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances

Dear Ms. Farris:

On behalf of the Consumer Technology Association (CTA), we respectfully submit these comments on the proposed rule "Chapter 90, Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances" (Proposed Rule). CTA is North America's largest technology trade association. Our members are the world's leading innovators – from startups to global brands – helping support more than 18 million American jobs.

The Proposed Rule amends the Department's prior rule by adding two designations for currently unavoidable uses (CUU) of intentionally added PFAS in products which will be subject to the sales ban in January 2026. While many of CTA's members might not be directly impacted by the sales prohibition in 2026, we are providing comment on the process DEP has followed for this round of CUU determinations because of their impact on future CUU determinations.

CUU Criteria

The term "Essential for health, safety, or the functioning of society" is vague, and we ask that DEP offer clearer guidance on how it is interpreting this term. The only guidance offered by the Proposed Rule is to cite the statute 38 M.R.S. § 1614(1)(B-1). The statutory definition states:

> *Essential for health, safety or the functioning of society" means a use of a PFAS in a product when the function provided by the PFAS is necessary for the product to perform as intended, such that the unavailability of the PFAS for use in the product would cause the product to be unavailable, which would result in:*
> *(1) A significant increase in negative health outcomes;*
> *(2) An inability to mitigate significant risks to human health or the environment; or*
> *(3) A significant disruption of the daily functions on which society relies.*

This is not enough information for a petitioner to effectively and efficiently apply for a CUU. DEP should outline what type of evidence is required to showcase health outcomes or impacts to the environment. The term "A significant disruption to the daily functions on which society relies" could be incredibly broad or narrow depending on how the Department chooses to interpret this term. When denying several of the proposed CUUs, the Staff Memo simply states that the petitions do not meet the "negative outcomes set forth in the criteria of essential for

health, safety or the functioning of society…" However, the Department has not outlined any metrics or clear standards for how it makes this determination. Petitioners cannot know what information is needed to submit for a CUU application if they do not know which criteria the Department is using when it decides what it considers to be "a significant disruption of the daily functions on which society relies." Each denial of a CUU petition should clearly explain how it failed to meet the Department's criteria.

Appeals Process

For this first round of CUU determinations, DEP received 11 CUU petitions for consideration in various product categories. The Department ultimately recommended granting CUU determinations for two of those proposals. In the Staff Memo outlining the Department's recommendations, and in the Proposed Rule, there is no mechanism for petitioners to appeal or remedy a denial of petition with Department staff. Since the statute is silent on any such process, we encourage the Department to create a formal procedure for stakeholders to submit either amended proposals or new proposals if they have an initial petition denied. Several of the denials cite "lack of evidence" in the submissions. We recommend a process where companies can submit additional evidence or other relevant information if DEP determines that an initial submission is insufficient for various reasons. While rulemakings like this one offer additional opportunities for engagement, it is not the most efficient method for remedying potentially hundreds of future CUU denials.

As we discuss above, the lack of transparency in how DEP is making these determinations makes it difficult for petitioners to know what will meet their threshold for granting a CUU. We expect DEP to receive CUU petitions for hundreds or maybe thousands of products and components, so it is very likely that there could be errors on the part of petitioners or the Department. It would seem reasonable to allow some sort of additional process after a petition denial so the system is not limited by single, unappealable determinations.

CUU Petition Timeline

The proposed timeline for submission of a CUU determination is between 36 and 18 months prior to the effective date of a product ban. We are concerned this will leave manufactures with little time to comply with CUU determinations that are released close to the deadlines out line in the Act. We recognize that DEP will receive many CUU proposals, and it may take considerable time for the Department to process them all. There is no assurance that DEP will process CUU determinations with sufficient time before a sales ban goes into effect.

Manufacturers of products awaiting CUU determinations should have an exemption period while DEP is evaluating a CUU proposal. After the grant or denial of a CUU determination, manufacturers should have sufficient time to comply. If a CUU is granted, manufacturers will need time to prepare for the necessary notification requirements. If one is denied, manufacturers will need time to comply with a sales ban.

The electronics industry is still gathering information on the uses of PFAS across the supply chain, and we respectfully ask that CUU proposals be received after the 18-month deadline up through to the sales prohibition. If a manufacturer has a CUU proposal ready, it should be able to submit prior to the 36-month window. For renewing an expired CUU determination, the

proposed 12-24 month timelines have the same problems expressed above for 9(A). We ask for additional flexibility with renewing expired determinations. Instead of treating the process as a new determination, we ask that the Department treat it as a renewal.

CUU Product Categories
The Proposed Rule suggests that manufacturers submit CUU proposals by using GPC/HTS codes in NAICS sectors. We ask that CUU proposals be submitted for broader product categories than the proposed codes. When CTA submitted CUU proposal categories under DEP's prior rulemaking, we found over 600 relevant HTS codes for electronics products. We are concerned that DEP will be unable to process all of the CUU petitions if it does not broaden the categories. Instead of granting CUUs for hundreds of different codes, we believe it would be simpler to issue CUUs based on industry sector. The proposed individual CUU determinations based on suggested codes are costly for the Department and inefficient for industry compliance.

Section 9(A) Information
Section 9(A) of the Proposed Rule calls for more information than the statute requires, and the compliance burden for much of the proposed data would exceed what a regulator needs to make a CUU determination. The Department should consider making some of these requirements optional if they are not necessary to determine whether a use of PFAS is unavoidable.

Thank you for the opportunity to provide these comments on the Proposed Rule, and we appreciate the Department's engagement with stakeholders throughout this process. Please do not hesitate to contact me if you have any questions about our above comments.

Sincerely,

Dan Moyer
Sr. Manager, Environmental Law & Policy
Consumer Technology Association