

September 2, 2025
Kerri Malinowski Farris
17 State House Station
Augusta, ME 04333
via: pfasproducts.dep@Maine.gov

Re: Chapter 90: Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances

Dear Ms. Farris,

On behalf of the Household & Commercial Products Association¹ (HCPA) and its members, we would like to submit our comments on the proposed amendments to Chapter 90: Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) to incorporate the currently unavoidable uses (CUU).² HCPA thanks the Department of Environmental Protection (DEP) for the opportunity to submit comments during this critical period, which will help inform this and future rulemakings related to PFAS.

HCPA commends the Maine DEP for its efforts on CUU and acknowledges its leadership as the first to engage in this unprecedented process. This unique position underscores the importance of ensuring that the process is implemented accurately and effectively. HCPA has previously submitted letters expressing concerns about determining CUU of perfluoroalkyl and polyfluoroalkyl substances (PFAS) in products. The concerns raised previously about the criteria for and the responsible parties of CUU applications, as well as the clarity of confidentiality claims in submissions, are incorporated by reference. In light of the recent hearings and proposed CUUs, we would like to raise several procedural or process considerations that are unclear based on the rulemaking to date, and how these situations will be handled.

HCPA supports the two CUU applications recommended for approval, and that both applications fall within the statutory definition of a “currently unavoidable use” under 38 M.R.S. §1614(1)(B), as uses that are PFAS is essential for the health, safety, or functioning of society; there are no safer alternatives available; and the use is necessary for the operation of the product. In addition, the synopses strike a balance between providing sufficient information for stakeholders to understand the application’s use while protecting the proprietary information of the applicant(s). HCPA supports providing this level of detail in

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/tools/whatsnew/index.php?topic=dep-rulemaking&id=13238654&v=govdel>

the synopses and will help facilitate successful future applications.

HCPA notes that the denied applications for Electric Air Care Product Components, Electric Air Care Product Plug-In, and Massage Chair had the same recommendation of

“Based on the lack of evidence provided that the unavailability of PFAS for use in this product category would result in any of the negative outcomes set forth in the criteria of essential for health, safety or the functioning of society and that reasonably available alternatives that function similarly are obtainable by consumers, the Department does not recommend approving this CUU proposal.”

It is not fully clear what criteria do or do not qualify for “lack of evidence provided that the unavailability of PFAS” and HCPA encourages DEP to develop further guidance to assist with future applications.

HCPA is unclear about the opportunities available to applicants who have had their CUU applications denied, including how they can appeal or if they will have the chance to modify or cure the denied applications. The emphasis of the recent hearings on July 17 and August 21 was on the applications that were recommended for approval, while little time was spent on the applications that were recommended for denial. It is unclear when the denials will take effect, although it is assumed that it will be the date the Board of Environmental Protection (BEP) finalizes the remaking. However, this remains unclear to applicants and the broader community, and it is also unclear whether an appeal would follow under the Maine Administrative Procedure Act.³ HCPA recommends that DEP develop a process for clearly indicating the process, rights, and obligations of applicants who are denied.

HCPA remains concerned with the timeline for which requesters must submit CUU proposals. This is particularly paramount for the current round of denied applicants, as the impacted products will need to be removed from sale and distribution within the state of Maine by January 1 of next year, leaving potentially less than 90 days after the BEP takes action.

HCPA strongly recommends that the BEP provide compliance extensions following the conclusion of appeals for companies with denied CUU applications. Without additional time, businesses are placed in an untenable position—forced to make rapid product changes or withdraw products from the marketplace without the lead time required to navigate complex supply chains, reformulation processes, and distribution networks. Such compressed timelines do not reflect real market conditions or the practical realities of bringing compliant products to market in a responsible and orderly manner.

HCPA recommends that DEP consider compliance extensions for companies with denied CUU applications, given the very short time frames after their applications were considered, and allow them to diligently make the necessary product changes or remove products from the marketplace. Furthermore, while HCPA hopes and believes that those needing to submit proposals for later sale prohibitions (2029, 2032, and 2040) should have sufficient time to

³ Detailed here <https://legislature.maine.gov/statutes/5/title5ch375sec0.html>

provide proposals, no later than 18 months prior, HCPA believes that DEP needs to provide flexibility in terms of the timeline to submit proposals for those products. 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 that the additional time will allow the Department to allocate resources for the CUU determinations more effectively.

HCPA would also like to correct an apparent misperception during the comment period from last week's hearing with respect to the scope of the Maine law. It is correct that both Maine and Minnesota define cleaning products similarly, but Minnesota exempts an internal component that would not come into direct contact with the skin or mouth during the reasonably foreseeable use and abuse of the product. This is significant as at least seven of the rejected CUU applications related to internal mechanical/electrical components, rather than the formulated portion of the product. Minnesota studied and published a recommendation,⁴ which was later codified by the legislature, to exempt electronic and other internal components until 2032, when Minnesota's PFAS-restriction applies to all products. This determination reflected the observation that the early product prohibitions were focused on human exposure concerns to PFAS, which are not present in internal/electrical components that do not come into contact with consumers when using the product. Furthermore, Minnesota recognized that setting an earlier deadline for a small subset of product manufacturers unfairly penalizes those products from evaluating PFAS-free alternatives, as there are products outside of the initial product list that can continue to use the material for the same internal/electrical components. HCPA recommends that DEP carefully review how the state of Minnesota addressed this concern, adopt a similar approach, and consider approving CUUs with internal electronic components.

HCPA continues to work with DEP and other stakeholders to ensure that Maine residents continue to have access to products that improve their daily lives while protecting the environment. Please do not hesitate to contact HCPA if you have questions about our comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steven Bennett', with a long horizontal line extending to the right.

Steven Bennett, Ph.D.
Executive Vice President, Scientific & Regulatory Affairs

⁴ See the MPCA Report to the Legislature, Recommendations for products containing lead, cadmium, and PFAS, Section "The use of intentionally added PFAS in electronic or other internal components of upholstered furniture", January 2025, Available at <https://www.pca.state.mn.us/sites/default/files/lrc-pfc-5sy25.pdf>