

July 18, 2022

Ms. Kerri Malinowski
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

Submitted via email to kerri.malinowski@maine.gov

RE: Comments on Concept Draft for the Maine PFAS in Products Program

Dear Kerri,

The Alliance for Automotive Innovation¹ (Auto Innovators) appreciates the opportunity to provide comments on the State of Maine's "Concept Draft for the Maine PFAS in Products Program" (hereafter "Concept Draft"). Auto Innovators represents the auto manufacturing sector, including automakers that produce and sell nearly 98% of the new light-duty vehicles in the United States. Our association also includes original equipment suppliers, technology and other automotive-related companies, and trade associations. As such, these comments reflect the very real challenges that Maine's Concept Draft presents to almost the entire U.S. auto manufacturing sector.

These comments focus on a number of significant implementation issues and challenges posed by the Concept Draft. Our members will be significantly impacted by this expansive data collection effort, which constitutes an unprecedented request for information that is not readily available and may not be available without extensive and expensive testing.

Our comments focus on the following implementation issues:

- Implementation Timetable
- Successfully Collecting Meaningful Data
- Availability of Peer-Reviewed Analytical Methods
- Clarity in Definitions
- Process for Unavoidable Use Designations

A. Implementation Timetable

1. Notification Requirement

The Concept Draft reiterates the requirement in Public Law c. 477 that "[b]eginning January 1, 2023, and prior to sale or distribution for sale in Maine of a product that contains intentionally added PFAS. . . . A manufacturer of such a product must submit to the Department a notification[.]"

¹ Formed in 2020, the Alliance for Automotive Innovation is the singular, authoritative and respected voice of the automotive industry. Focused on creating a safe and transformative path for sustainable industry growth, the Alliance for Automotive Innovation represents the manufacturers producing nearly 98% of cars and light trucks sold in the United States. The organization, a combination of the Association of Global Automakers and the Alliance of Automobile Manufacturers, is directly involved in regulatory and policy matters impacting the light-duty vehicle market across the country. Members include motor vehicle manufacturers, original equipment suppliers, technology and other automotive-related companies and trade associations. The Alliance for Automotive Innovation is headquartered in Washington, DC, with offices in Detroit, MI and Sacramento, CA. For more information, visit our website <http://www.autosinnovate.org>.

We are less than six (6) months from the reporting obligation deadline. A proposed and finalized rulemaking from Maine DEP has not been received, and the reporting system with associated requirements has not been deployed. The scope of the reporting universe has yet to be defined and exemptions yet to be developed. It is impractical to expect any industry to develop a compliance reporting program within this aggressive timeline.

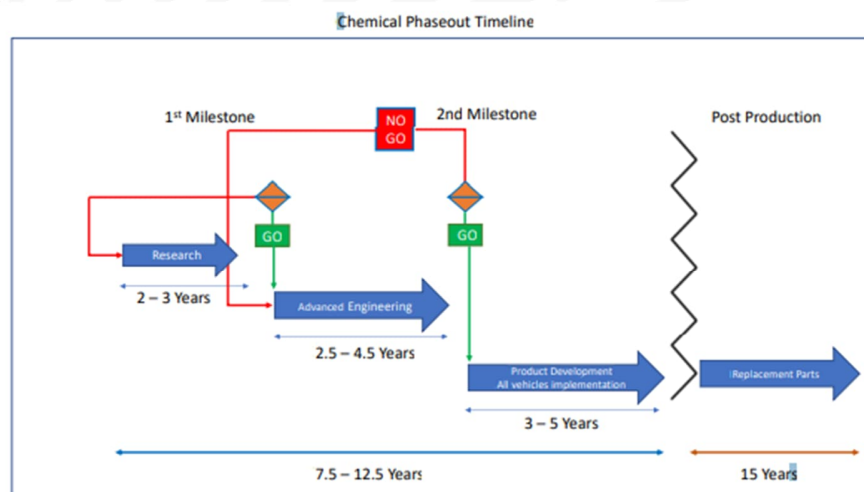
It is critical that, at a minimum, a two-year extension be given for the notification requirements.² It will take that long for Maine DEP to refine the scope of reporting to ensure the collection of meaningful and reliable data and develop rules exempting unavoidable uses from reporting. Analytical methods are not yet available and will need to be developed. The reporting system being developed through the Interstate Chemicals Clearinghouse (ICC) will need to be tested and deployed.

We recommend that Maine DEP consider the experience that EPA has had with its TSCA 8(a) reporting rule for PFAS, proposed in June 2021. EPA received hundreds of comments³; many business sectors expressed real and significant concerns with the lead time, feasibility, and practicality of the proposal. We have attached here our comments to EPA on that proposed rulemaking; those comments provide more detail about the very real challenges that both the regulatory agency and the regulated community face with this type of data collection. Since then, EPA has yet to finalize their rulemaking. If EPA does finalize its PFAS Section 8(a) rule, we would expect that Maine DEP would adjust their IT system to integrate the EPA data without requiring duplicative data from industry.

2. Ban on Products Containing Intentionally Added PFAS

The draft includes a ban on all products containing intentionally added PFAS effective January 1, 2030 unless Maine DEP has determined by rule that the use of PFAS in the product is a currently unavoidable use. Whether PFAS can be phased out in a particular product depends on the use and potentially available alternatives. Having a single phase-out date for all articles is an oversimplified approach that doesn't allow for balancing of different consumer needs. Having to get Maine DEP approval for an exception via rulemaking will be a complicated and resource-intensive process. The across-the-board default prohibition should be eliminated from the draft, and Maine DEP should instead take a risk-based approach to determining which uses should be prohibited.

The timeframe to phase out the use of a chemical is presented below. As can be seen, Maine DEP's timeframe would create an unworkable situation for the automotive sector.



² Auto Innovators recently signed onto a July 7 letter alongside a number of other organizations asking Governor Mills and Commissioner Loyzim for an extension of the deadline.

³ <https://www.regulations.gov/docket/EPA-HQ-OPPT-2020-0549/comments>

B. Successfully Collecting Meaningful Data

Beyond the challenges posed by the timeline as explained above, the Concept Draft fails to provide any insight into what analyses have been done to determine what would constitute a meaningful set of data for Maine DEP and residents. Maine DEP ought to consider a number of actions to help the regulated community comply with the law, receive data that will be informative, and to efficiently manage Maine DEP resources.

We recommend that Maine consider the following:

- Limit reporting requirements to PFAS chemicals of known concern.
- Define all applicable CAS numbers.
- Set a *de minimis* threshold value.
- Exempt impurities and byproducts.
- Exempt refrigerants and fluoropolymers.
- Exempt replacement and service parts for vehicles already manufactured prior to January 1, 2023 from notification and elimination requirements.
- Permit reporting at the total product level (vehicle) and include replacement, maintenance, and service parts in the vehicle reporting and within reporting ranges.
- Allow manufacturers to claim CBI.
- Adopt a tiered approach to reporting.
- Set a “reasonably ascertainable information” standard.
- Outline process for requesting an extension to the reporting deadline.
- Allow contact person and person of authority to be separate.

1. Limit Reporting Requirements to PFAS Chemicals of Known Concern

In this Concept Draft, Maine DEP appears to suggest that thousands of unique chemicals in the broad and diverse category of PFAS all share the same level of risk and concern to humans and the environment. If Maine DEP chooses to move forward with this data collection effort, it is imperative that Maine DEP focus its collection activities on those PFAS chemicals that are of high concern and exclude those that have been determined to be of low concern. For example, Maine DEP should exclude substances with low exposure potential. This would include fluoropolymers. These types of chemicals have high molecular weight, low levels of residual monomer, and do not degrade easily under normal conditions of use. Other categories to be excluded would be chemicals used for research and development, *de minimis* levels of PFAS chemicals, low volume service chemicals, refrigerants, and other categories identified as having low exposure potential.

2. Define All Applicable CAS Numbers

Maine DEP should define the regulated PFAS with a list of chemical names and chemical abstract service (CAS) numbers. In doing so Maine DEP would clearly define the universe of chemicals that require notification and further clarify reporting requirements. CAS numbers are critical to ensuring compliance with the notification requirements. Further discussion on the definition of “PFAS” follows in section D.

3. Set a *De Minimis* Threshold Value

We recommend that the notification requirement exclude products that contain PFAS equal to or less than 0.1% by weight. Products with *de minimis* levels of PFAS chemicals account for insignificant contributions to PFAS in the environment. A 0.1% by weight threshold is an appropriate threshold for Maine DEP to employ for purposes of the notification requirement. It would reasonably limit the volume of notifications, particularly for parts and components sold into Maine. Otherwise, Maine DEP could be burdened with literally hundreds of thousands of notifications related to parts and components that contain only trace concentrations of PFAS, which would be insignificant from a safety and health perspective.

The automotive industry parts database (the International Material Data System, or IMDS) utilizes a default *de minimis* 0.1% reporting threshold, unless otherwise specified, which is the level utilized for Safety Data Sheets.

IMDS is used throughout the global automotive supply chain to collect and analyze all parts and materials on the vehicle at the point of sale, including replacement parts. It provides analysis capabilities of the substances present in vehicles and vehicle components. IMDS manages the aggregated data tiered suppliers proactively send up through the complex supply chain. The use of a 0.1% *de minimis* concentration will support the accuracy of the data provided by the supply chain to the material database. The 0.1% concentration is a threshold that has been almost universally adopted by international regulatory bodies and many states within the United States. Therefore, we recommend an exemption for PFAS levels at or below 0.1%.

In addition, promulgating a notification rule without a *de minimis* threshold would overly burden the supply chain. All end product manufacturers that sell any of their products into Maine would be required, in the absence of a *de minimis* threshold, to spend considerable time and effort to attempt to determine whether any part or component, whether sourced locally or globally, that goes into their end products might contain a trace concentration of PFAS. Those manufacturers would also need to determine whether the PFAS was “intentionally added,” which based on the current definition must likely be assumed, and the specific purpose and amount of PFAS. All of this data gathering would place an enormous burden on manufacturers to try to obtain from their suppliers, some of which are second, third, etc. tier suppliers—information that would be difficult, if not impossible, to obtain.

We recommend *de minimis* language below in section D.

4. Exempt Impurities and Byproducts

Byproducts and impurities would never be intentionally added to a product. Chemicals in these two categories are generally exempt from other regulatory schemes. For example, impurities and byproducts are exempt from EPA’s Premanufacture Reporting Notification (PMN) reporting under 40 C.F.R. § 720.30(h). In addition, a byproduct that is not used for a commercial purpose after it is manufactured was not required to be listed on the TSCA Inventory (40 C.F.R. § 710.4(d)(2)).

Requiring companies to gather information on impurities or byproducts in order to assure compliance with a data collection requirement would force producers, importers, and suppliers to expend substantial resources and a significant amount of time with very little, if any, environmental benefit.

We request that Maine DEP address the issue of impurities and byproducts and provide exemptions for these two categories.

5. Exempt Refrigerants and Fluoropolymers

The current definition of PFAS being used by Maine DEP includes the refrigerants that are used in motor vehicle air conditioning (MVAC) applications. Those refrigerants are already the subject of regulations covering hydrofluorocarbons (HFCs) at both the state and federal levels; in fact, those regulations have resulted in the industry undertaking over the past several years the behemoth task of transitioning from one type of refrigerant to another that has a lower global warming potential. Banning use of the refrigerant now currently used in our vehicles, as Public Law c. 477 will do, would require automakers to have an available alternative that is also approved by all of those HFC regulations, and would result in automakers having to significantly redesign and reengineer our recently revamped MVAC systems and vehicles, possibly even with a need to retrofit older vehicles. The definition of PFAS needs to be revised to exempt these substances.

Fluoropolymers satisfy widely accepted criteria to be considered polymers of low concern, indicating that they do not present a significant risk to human health or the environment. This is the reason why fluoropolymers should be regulated differently from PFOA and PFAS, and should be exempted from these regulations.

6. Exempt Replacement and Service Parts for Vehicles Already Manufactured Prior To January 1, 2023 From Notification and Elimination Requirements

In the auto industry alone, vehicles are composed of tens of thousands of individual components, and there are millions of replacement parts in commerce used to maintain and repair in-service vehicles. Auto manufacturers are required by federal law to provide replacement and service parts for 15 years after manufacturing of the vehicle ceases. It would be virtually impossible to track replacement parts in the channels of trade and determine potential PFAS content.

7. Permit Reporting at the Total Product Level (Vehicle) and Include Replacement, Maintenance, and Service Parts in the Vehicle Reporting and Within Reporting Ranges

Each auto manufacturer has up to 100 vehicle models, and a single vehicle has tens of thousands of individual parts as single parts, subassemblies, and assemblies. Reporting at the vehicle level would give an excellent and understandable measure of each car's PFAS content.

Automobiles contain thousands of individual parts, as depicted in the graphic below. Reporting on each one of those parts will not only overwhelm the data management system that Maine DEP is developing but will also place an unreasonable burden on automobile manufacturers. All other sectors that provide complex durable goods to consumers have the same profile—hundreds if not thousands of individual parts in the finished product. Investigating tens of thousands of parts in the automotive industry is costly and would result in fragmented and duplicated information going to the state of Maine that may overwhelm Maine DEP's database while providing little value. Additionally, providing reporting ranges at the finished product level will simplify the reporting requirements and will still provide Maine DEP with the information that it needs to fulfill the requirements of the law.



8. Allow Manufacturers to Claim Confidential Business Information (CBI)

The data reporting system must allow for manufacturers to claim certain data for products or components as CBI. This is especially important for manufacturers that have been required to put in place non-disclosure agreements with international suppliers.

9. Adopt a Tiered Approach to Reporting

The Concept Draft is written as though it applies to simple consumer products rather than complex products. Moving along the spectrum from a simple product to a complex product, the challenges of identifying PFAS within the product multiply. Maine DEP should consider developing a phased-in reporting structure, with lower-complexity products reporting earlier and manufacturers of complex products reporting later. We suggest that Maine DEP consider adopting a definition of complex durable goods similar to the TSCA definition (see section D for recommended language). This would permit Maine DEP to incorporate lessons learned into the reporting procedures and properly scale the required IT infrastructure for the online electronic portal. One option would be to allow manufacturers of complex goods to identify whether their product does or does not contain PFAS (a simple “yes” or “no”) for the first two years, with the more detailed reporting to follow in the subsequent years. This is not meant in any way to undercut the requirements of the law, but rather to find a feasible, practical way to implement Public Law c. 477 in a manner consistent with industry’s capabilities.

10. Set a “Known or Reasonably Ascertainable Information” Standard

Manufacturers of products subject to the notification requirement should be able to rely solely on documents or information provided by suppliers and the supply chain in order to determine whether such products contain intentionally added PFAS. If a supplier informs the manufacturer that the components, parts, or other elements they purchase that are incorporated into their end products do not contain PFAS, a manufacturer should be able to rely on that information in the absence of contrary evidence. The notification requirement should make clear that a manufacturer’s inquiry regarding PFAS content with respect to any supplier ends with the existing information provided to manufacturers by suppliers for parts, components, etc.

It would be unreasonable for the notification rule to require manufacturers to mount a burdensome due diligence effort essentially to prove what they already believe, i.e., the absence of PFAS in parts and components that go into their end products. Most manufacturers have had little or no reason to collect information from their foreign suppliers about the presence of PFAS in the components and parts they use. End product manufacturers typically have complex global supply chains, and each end product can have thousands of individual parts and components sourced from a variety of suppliers. For example, a side mirror alone can contain over 30 individual parts.



This type of data collection could not be completed in less than 6 months’ time. In fact, previous experience suggests it can take up to 3 years to fully complete this data search. As contemplated, it appears the notification rule might require manufacturers to inquire with each and every one of this multitude of suppliers. That would prompt manufacturers to spend untold hours and resources contacting hundreds and possibly thousands of suppliers all the way up the supply chain regarding PFAS content for each and every part and component in their end products.

We recommend that Maine DEP limit the notification requirement to instances where intentionally added PFAS is “known” to manufacturers. What is “known” to manufacturers should be limited to information provided by their

component and parts suppliers without any requirement to perform additional due diligence or other information gathering up the supply chain.

11. Outline Process for Requesting an Extension to the Reporting Deadline

The Public Law c. 477 states that “[t]he department may extend the deadline for submission by a manufacturer of the information required under subsection 2 if the department determines that more time is needed by the manufacturer to comply with the submission requirement.” With the rapidly approaching reporting deadline, it is critical that Maine DEP lay out the process to obtain an extension. The process must be developed and in place well in advance of the deadline, so that manufacturers may promptly seek an extension and avoid frantic efforts to gather data if it will not ultimately be required by January 1, 2023. Given the timeframes involved, we recommend that the process be simple and easy to complete, and that Maine DEP consider accepting applications and granting extensions in a broad manner.

12. Allow Contact Person and Person of Authority to be Separate.

We request that the contact person and the person of authority be separate people. The person responsible for supplying PFAS information to Maine DEP is not the same person who would have authority during a noncompliance situation.

C. Availability of Peer-Reviewed Analytical Methods

There are no commercially available methods for analytical testing of PFAS in a vehicle as a product or in automotive components. Until analytical methods have been developed and tested, we recommend using IMDS to determine the concentration of PFAS in a product since testing analytical testing for a whole vehicle is not practical. Additionally, based on the Maine DEP draft definition, a commercially available analytical method will only identify the presence of a PFAS—not necessarily whether it was “intentionally added” (or whether its presence is due to the recycling of raw materials). Further, the identification of the presence of PFAS in no way delineates exposure or releasability to an article.

D. Clarification of Definitions

1. Definitions Appearing in the Concept Draft

Alternative. “Alternative” means a substance or chemical that, when used in place of PFAS, results in a functionally similar product and that, when compared to a PFAS that it could replace, would reduce the potential for harm to human health or the environment, or has not been shown to pose the same or greater potential for harm to human health or the environment as that PFAS. Alternatives include reformulated versions of products, including versions reformulated by removal or addition of one or more chemicals or substances, which result in the reduction or removal of intentionally added PFAS from the product. Alternatives also include changes to the manufacturing process that result in the reduction or removal of PFAS from a product.

Maine DEP needs to clarify how a manufacturer can determine if the alternative has a reduced potential for harm and is “functionally acceptable.” We recommend referring to the definition adopted by the California Safer Consumer Products regulations, where “functionally acceptable” means that an alternative product meets both of the following requirements: (a) the product complies with all applicable legal requirements; and (b) the product performs the functions of the original product sufficiently well that consumers can be reasonably anticipated to accept the product in the marketplace.⁴

The alternatives assessment methodology is also unclear. The specific steps required of a manufacturer to perform this sort of assessment should be clarified. Without a clear understanding of the hazard each of these substances poses, it is impossible to identify an alternative that would ensure that a regrettable substitute is not

⁴ See 22 Cal. Code Regs. § 69501.1(a)(35).

utilized. It is not reasonable to expect that a manufacturer can replace a substance with an alternative until the scientific evidence is provided that outlines the risk for users and the environment.

Additionally, if a PFAS serves a critical function in a vehicle or in vehicle manufacturing, an alternative must be found before it can be phased out of automotive production. Finding a suitable chemical has significant time requirements and cost considerations. In addition to time requirements, substantial costs would be incurred to conduct an adequate alternatives analysis. Such costs might include those for performance testing and additional information gathering to fill data gaps and ensure an informed decision. Given that PFAS is such a broad category of chemicals, various chemistries could have multiple uses throughout a vehicle, greatly increasing the time and cost it could take to successfully phase it out of a vehicle or vehicle/component manufacturing.

Carpet or rug. "Carpet" or "rug" means a fabric product marketed or intended for use as a floor covering. Carpet or rug does not include products that are placed on the floor that do not have a primary purpose of covering or protecting the floor.

This definition needs to be further clarified to explicitly focus on products "marketed or intended for use a floorcovering in households or businesses. The definition of "carpet or rug" should not include floor coverings in finished products. This would be consistent with how other states define a carpet or rug.

Commercially available analytical method. "Commercially available analytical method" means any test methodology used by a laboratory that performs analyses or tests for third parties to determine the concentration of PFAS in a product. Commercially available analytical methods do not need to be performed at a third-party laboratory; however, they must remain unmodified. Commercially available analytical methods include methods approved by the U.S. Environmental Protection Agency (EPA) when used in accordance with that approval.

There are no analytical methods for vehicles as a "product" and no methods for auto-related parts. The analytical methods listed on the EPA website are for water (drinking water and wastewater), soil, sediment, and biota. Maine DEP needs to identify specific available analytical methods for products before moving forward.

Fabric treatment. "Fabric treatment" means a consumer product meant to be applied by the consumer to fabric or leather to give or enhance one or more characteristics, including but not limited to stain resistance or water resistance. Fabric treatments do not include fabric dyes.

We believe the intent of the prohibition on fabric treatments is to focus on consumer use of fabric treatment products. The addition of the words "by the consumer" will clarify the intent.

Intentionally added PFAS. "Intentionally added PFAS" means PFAS added to a product or one of its product components in order to provide a specific characteristic, appearance, or quality or to perform a specific function. ~~Intentionally added PFAS also includes any degradation byproducts of PFAS.~~ Products containing intentionally added PFAS include products that consist solely of PFAS. Intentionally added PFAS does not include PFAS that is used in or that comes in contact with a product during the manufacturing process ~~but is not present in the final product.~~

We recommend deleting "but is not present in the final product" in the last part of the sentence. PFAS may not be intentionally added during the production process, i.e., when PFAS is used as a manufacturing aid, and still be present in the final product.

We also recommend the removal of the sentence on "degradation products." It will be almost impossible for manufacturers to identify degradation products. Automakers will use the IMDS system to identify PFAS chemicals with CAS numbers. This system does not capture degradation products. While an effort to reach into the supply chain may be able to identify PFAS that is not intentionally added, suppliers will not likely have information on degradation products.

Additionally, this current definition of “intentionally added PFAS” is overly broad to the point of being essentially meaningless. The scope of the definition would cause any product that contains even a trace amount of PFAS as part of a substance, mixture, compound, or degradation product to fall within the rule.

Maine DEP should promulgate a definition in its implementing rules that further defines the idea of “added”—i.e., added as pure PFAS; added as part of a substance, mixture, or compound; added before, during, or after production; added by the end product manufacturer or another entity along the value chain.

We also recommend that the rule preamble or other guidance document developed by DEP provide examples of what “a specific characteristic, appearance or quality or to perform a specific function” would look like in practical, real-world applications. It is not possible to tell if the criteria apply to a manufacturing stage, a facet of a part or component, or only to an end product. It also is not possible to ascertain how the criteria should be weighed, e.g., how important the characteristic is to the product. For example, would the rule apply to a component (or the ultimate end product) where PFAS is added to a compound used in the production of the component, where the PFAS performed a specific function in the compound but not really in the component itself (and certainly not in the end product), but where a trace amount of the PFAS remained in the component and thus in the end product?

Manufacturer. “Manufacturer” means the person that manufactures a product, or whose brand name is affixed to the product. In the case of a product that is imported into the United States where the person that manufactured or assembled the product or whose brand name is affixed to the product does not have a presence in the United States, manufacturer includes either the importer or the first domestic distributor of the product, whichever is first to sell, offer for sale, or distribute for sale the product in the State of Maine.

The term manufacturer is problematic for the automotive industry. A vehicle contains thousands of complex components, with multiple subcomponents, across a global supply chain that encompasses thousands of tiered suppliers, where the automaker is up to ten times removed from the raw material supplier. Based on the way that the Draft Concept is written, the reporting obligation falls to the automaker and not the manufacturer producing the product with the intentionally added PFAS. To comply with the Maine notification obligations, the manufacturer is the subject matter expert to reply to the reporting obligations outlined under Section 3A (e.g., “the purpose for which PFAS are used in the product, including PFAS in any component”).

Perfluoroalkyl and polyfluoroalkyl substances (PFAS). “Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS” means all substances that include any member of the class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom and has a Chemical Abstract Service (CAS) number.

We recommend the inclusion of “and has a Chemical Abstract Service (CAS) number” as further clarification of this definition. It is imperative that Maine DEP provide CAS numbers for the PFAS chemicals. By providing CAS numbers, Maine DEP will clearly define the universe of chemicals that require notification and further clarify reporting requirements.

CAS numbers are critical to ensuring compliance with the notification requirements. Automakers have invested billions of dollars to develop, maintain, and optimize the IMDS. IMDS is an extremely useful tool, but is only functional when specific criteria are provided, such as the CAS number. By not including an exhaustive CAS reference list in the definition, Maine DEP creates a considerable challenge for automakers to meet Maine’s reporting obligations. Without CAS numbers, the automotive supply chain is obligated to have knowledge on the comprehensive PFAS substance family, which is comprised of upwards of 12,000 individual chemical molecular structures. It is simply impractical to expect manufacturers of complex durable goods to assess and report the contents of their products against an uncertain list of regulated chemical substances. Without CAS numbers, Maine DEP will hamstring the effective collection of relevant data and information.

Product. “Product” means an item manufactured, assembled, packaged, or otherwise prepared for sale to consumers, including its product components and replacement, maintenance, or service parts, that are sold or distributed for personal, residential, commercial, or industrial use, including for use in making other products.

We recommend the inclusion of the clause “and replacement, maintenance or service parts that are”. Replacement, maintenance, and service parts have the same types and amount of PFAS as in the original product, and as such they should be included in the definition of product.

The term “product” should be better defined for complex products such as a vehicle. As written, the definition would make a vehicle the product and the vehicle’s parts the components. Therefore, reporting would be done at the vehicle level when the vehicle is the product and also at the component level when the component is sold separately (e.g., as a service/replacement part in the case of a water pump or wiper blade). Components should be limited to the Level I Assembly (i.e., the tier I supplier) to avoid reporting at subcomponent level.

Significant change. “Significant change” means a change in the chemical composition of a product which results in the addition or removal of a specific PFAS; a change in the amount of PFAS of more than **5% of the weight of the total product**, plus or minus of the current concentration when compared to the existing notification; or a change in contact person or contact information.

We recommend a 5% change which would account for formulation changes.

1. Additional Recommended Definitions

We recommend the addition of some definitions and further clarification of the following terms:

Currently avoidable use. “Currently unavoidable use” means a use of PFAS that the department has determined by rule under this section to be essential for health, safety or the functioning of society and for which alternatives are not reasonably available.

Degradation byproducts of PFAS. “Degradation byproducts of PFAS” means only those that occur during the chemical manufacturing process of the PFAS.

De minimis. “De minimis” means the minimum reporting threshold for reporting PFAS in the product. The minimum reporting threshold is 0.1% in the product.

Complex consumer goods. “Complex consumer goods” means electronic or mechanical devices composed of multiple manufactured components, with an intended useful life of 3 or more years, where the product is typically not consumed, destroyed, or discarded after a single use, and the components of which would be impracticable to redesign or replace.

Complex durable goods. “Complex durable goods” means manufactured goods composed of 100 or more manufactured components, with an intended useful life of 5 or more years, where the product is typically not consumed, destroyed, or discarded after a single use.

E. Process for Unavoidable Use Designations

Public Law c. 477 states: “Effective January 1, 2030, a person may not sell, offer for sale or distribute for sale in this State any product that contains intentionally added PFAS, unless the department has determined by rule that the use of PFAS in the product is a currently unavoidable use. The department may specify specific products or product categories in which it has determined the use of PFAS is a currently unavoidable use. This prohibition does not apply to the sale or resale of used products.”

Because this exception from the PFAS ban requires rulemaking by Maine DEP to implement, Auto Innovators requests that Maine DEP promptly outline the process to obtain an unavoidable use designation. The process must be developed and in place well in advance of the phase-out deadline so as to enable industries to petition for this unavoidable use designation.

In conclusion, it is imperative that Maine DEP give serious consideration to the overall scope of this data collection effort. While the Concept Draft provides only a glimpse of what Maine DEP may be considering, it would appear that Maine is focused on the most comprehensive PFAS data collection possible. As can be learned from EPA's experience with their proposed TSCA 8(a) PFAS rule, the challenges posed by such a far-reaching data collection effort are significant and need to be worked through before any program is finalized. We look forward to working with you and your staff to further explore these issues.

Sincerely,



Catherine Palin
Alliance for Automotive Innovation

CC: Mark Margerum, Tom Graham