ASSOCIATION OF HOME APPLIANCE MANUFACTURERS

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January 28, 2025

Submitted via electronic mail

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

Re: Chapter 90 Draft Rule

Dear Ms. Malinowski Farris:

On behalf of the Association of Home Appliance Manufacturers (AHAM), I would like to provide recommendations with respect to the proposed rule from the Maine Department of Environmental Protection (MDEP) for the "PFAS in Products Program" sales prohibition on cookware and the currently unavoidable use process. Our comments are specifically with regards to the 2026 prohibition of intentionally added PFAS for cookware outlined in 38 MRSA §1614.

AHAM represents manufacturers of major, portable and floor care home appliances, and suppliers to the industry. AHAM's members produce hundreds of millions of products each year. They design and build products at the highest levels of quality and safety. As such, they have demonstrated their commitment to strong internal safety design, monitoring, and evaluation/failure analysis systems. AHAM supports the intent to protect consumers against all unreasonable risks, including those associated with the exposure to potentially harmful chemicals. AHAM also firmly supports the appropriate use of PFAS chemicals in appliances. Together with industry design practices, test requirements, and redundant safety mechanisms, PFAS chemicals play an important role in the safety of household appliances.

AHAM appreciates the ongoing conversations addressing compliance challenges caused by the law's provisions impacting cookware. However, the language around cookware in the proposed rule is much broader than the law and raises significant concerns that could potentially threaten appliance product safety and product availability for Maine residents.[1] AHAM requests the following four items related to cookware be included in the Final Rule, and we would like to discuss these matters in more detail with MDEP:

[1] "Cookware product" as defined at 38 M.R.S. § 1614(1) (A-10) is limited to houseware intended to be in direct contact with food or beverage. Cookware does not encompass items intended for use in and market exclusively for use in commercial, industrial, or institutional settings.

1) Narrow and Specify Products Under Prohibition

2) Cookware Ban Should Exclude Internal Components and Non-Cooking Surfaces

3) Exempt Spare/Replacement Parts from Prohibition

4) Clarify Currently Unavoidable Use Exemption Process

Narrow and Specify Products Under Prohibition

The Department of Environmental Protection, in this rulemaking, has not appropriately clarified the definition and product scope of cookware, creating compliance uncertainty such that it could be interpretated broadly to include "any durable houseware intended to be in direct contact with food or beverages." This broad statement raises serious concerns about what products would be incorporated into this prohibition. Contrary to the law's intent, this overly broad language could even include several major appliances, including refrigerators, microwaves, stoves and even a dishwasher that contacts food as it cleanses dishware of food waste.

The term "cookware" typically refers to products designed to be used primarily on a stovetop or inside an oven and not the cooking appliance itself. These regulations must provide the needed focus and clarity of what products and what parts of the product are in scope. Otherwise, there are risks of inconsistent interpreting and enforcement of which products are included in the 2026 cookware product prohibitions. The Minnesota Pollution Control Agency (MPCA) clarified that the prohibition on PFAS cookware was for the specific products identified in the law, which is like California's[2] and Colorado's[3] implementation of their cookware PFAS laws. MPCA also specifically excluded coffee makers as an example of the type of product that did not fit the law's definition of cookware.[4] Ultimately, the product scope included in the Draft Rule, is entirely too broad. Manufacturers and suppliers want to consistently comply with the law and a clear product scope is essential which means including the clear list of products as listed in the law (pots, pans, skillets, baking molds). This ultimately ensures increased compliance across all cookware product manufacturers and prevents any negative impacts from inconsistent interpretations of a potentially limitless scope.

Cookware Ban Should Exclude Internal Components and Non-Cooking Surfaces

The proposed language is unjustifiably expansive to include any product that touches food, including internal components. While several states have enacted PFAS prohibitions, Maine would be the first and only state to include internal components for cookware. This raises significant

[2] https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1200

[3] https://leg.colorado.gov/bills/hb22-1345

[4] https://www.pca.state.mn.us/sites/default/files/20240725-presentation-pfas-prohibitions.pdf

concerns for manufacturers, primarily because there may not necessarily be safe, tested, and validated alternatives to PFAS use in internal components and electronics. Further aggravating the problem is that compliance is based on a short January 2026 timeline, instead of 2032, which is the intent of Minnesota's PFAS prohibitions. This additional time is needed to identify substitutes, and even if a substitute is found, manufacturers need time to test, design, retool, and restock global supply. Regrettably, failing to make necessary corrections could lead to manufacturers limiting or restricting essential household products that Maine residents rely on. This could jeopardize the health and safety of Maine residents who rely on our cookware products for their daily cooking needs.

Appliances are complex products with wirings, circuit boards, and numerous internal components. Other products included in the 2026 prohibition are not complex but homogenous products, such as cosmetics, dental floss & ski wax. The internal components of an appliance do not contact food, or otherwise present risks to consumers, and PFAS use may even be necessary for product safety and performance in the case of electrical components. The rapidly approaching 2026 deadline will require manufacturers to make quick product planning decisions, given the lead-time needed from design to production of appliances, which can take several years. Because of the inclusion of internal components, manufacturers may not have time to identify substitutes that have a similar level of safety protection and performance. Rushing substitutes can lead to regrettable substitutes for products that manage water, gas, electricity, and high-speed motors. AHAM appreciates the law's exemption for semiconductors, but this does not go far enough. Maine should make clear and exempt all internal components for cookware products from the 2026 prohibition.

Minnesota enacted the nation's first prohibition on PFAS used in cookware products. In subsequent guidance documents, the Minnesota Pollution Control Agency (MPCA), specified that surfaces that do not come into contact with food are excluded.[5] AHAM respectfully requests Maine similarly exclude all surfaces that do not come into contact with food. The prohibition should also exclude external surfaces that do not come into direct contact with food and beverages during cooking. This provides further common-sense clarity of the law to manufacturers on the prohibition. AHAM's suggested language is included below.

Exempt Spare/Replacement Parts from Prohibition

AHAM respectfully requests special consideration for replacement or spare parts. Products, such as electric skillets and grills, may have replacement parts for products sold prior to the ban. Manufacturers are required to store replacement and spare parts for several years to ensure the purchased product can function based on the original design and ensure the continued safe operation of the product. If there is no exemption for spare and replacement parts, consumers may have to discard fixable cookware and manufacturers may have to dispose of these parts, which would impact the waste stream. Indeed, the State of Vermont is looking at their PFAS Law and has encouraged such exemption:

> The following are exempt from the requirements of this chapter:

[5] https://www.pca.state.mn.us/sites/default/files/c-pfas-rule1-00a.pdf

Replacement parts for products manufactured prior to the ban imposed by section 2 7604 of this title.[6]

Proposed Regulatory Language

AHAM's proposed revision for the regulations, as explained above, are articulated below:

Cookware product. "Cookware product" as defined at 38 M.R.S. § 1614(1) (A-10) is limited to houseware food or beverage contact surfaces while cooking that contain intentionally added PFAS ~~intended to be in direct contact with food or beverage.~~ Cookware does not encompass items intended for use in and marketed exclusively for use in commercial, industrial, or institutional settings. Cookware means the specifically listed items, or different forms of the listed items in 38 M.R.S. § 1614(1) (A-10) and includes a heated, direct food contact surface containing intentionally added PFAS. Internal components and non-cooking surfaces are exempt from the 2026 cookware prohibition**.** Cookware products under this prohibition do not include repair or replacement parts.

Except as provided in subsection H and section 9(B), effective January 1, 2026, a person may not sell, offer for sale or distribute for sale in the State of Maine:
(2) A cookware product surface that is intended to be in direct contact with food or beverage while cooking and contains intentionally added PFAS.

Clarify Currently Unavoidable Use Exemptions Process

Regarding the "Currently Unavoidable Use Exemptions" (CUU) process, AHAM appreciates that Maine has a process to determine exemptions. The unavoidable use of a PFAS substance that is essential for health, safety, or the functioning of society should be considered for an exemption. However, with respect to prohibitions that begin January 1, 2026, there is not enough time for the exemption process to be useful or effective. If manufacturers and suppliers are not provided with a determination of exemption well in advance of the January prohibition, it would make the exemption process meaningless. With the current language of the proposal, the Department will likely receive many CUU requests specific to product scope and internal components.

Manufacturers are given very limited time in the current process between the Department's anticipated timeline for the CUU process and the January 1, 2026, compliance date for many products. The Department anticipates that manufacturers would not be able to register CUU products for the 2026 sales prohibitions until "Fall/Winter 2025," which could be mere days or weeks before the January 1, 2026, compliance date. Failing to provide additional compliance lead time for any products under an active CUU evaluation creates significant commercial disruptions for manufacturers, retailers, and consumers. Manufacturers could be forced to withhold any distribution of cookware in Maine until a final CUU determination is made.

Additionally, any product that was denied a CUU exemption should be given approval lead time. Manufacturers that were denied exemptions right before or after January 1, 2026, should be given

[6] https://legislature.vermont.gov/Documents/2026/Workgroups/House%20Environment/Water%20Quality/W~Matt%20Chapman~PFAS%20Overview~1-22-2025.pdf

additional time to comply with the prohibitions. Otherwise, manufacturers would need to anticipate not receiving the exemption, which again eliminates any meaningful benefit of the CUU process.

AHAM requests the Department review potential interim exemption approvals which allow for a meaningful exemption process and give manufacturers certainty while the Department evaluates the merits of a CUU exemption. We also request that the Department grant additional time to comply with any CUU exemptions denials. We suggest making the following amendments to the Chapter 90 request, and/or the Department to implement through enforcement discretion:

- The moment a CUU is submitted, that manufacturer or supplier would receive an automatic interim exemption, up to 180 days, which would allow the Department to review and evaluate all submissions.

- Once the Department makes a determination:
    - If it is approved, the manufacturer would register its products to receive the valid exemptions.

    - If rejected, the manufacturers would be granted potentially up to one or two years from the date of the final CUU notification to meet the applicable prohibition(s). The Department could also use enforcement discretion to delay enforcement of the provisions of the applicable prohibition for any products that were denied a CUU exemption.

Request for Consideration around Fluoropolymers/PTFE

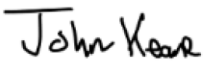
The term PFAS encompasses in some instances as many as 12,000+ substances and not all are the same. One chemical that is used in the home appliance industry and is included in the current broad definition of PFAS is fluoropolymers. Fluoropolymers are used nearly everywhere, in almost every major manufacturing sector due to their inert and thermally stable properties. Polytetrafluoroethylene (PTFE) is a fluoropolymer that is used in certain appliances and may be included in material that contacts food. Manufacturers use coatings that include a small amount of PTFE for water, scratch resistance, heat resistance, with a good flexibility in manufacturing stage, as well as a long-life durability in use. PTFE pipes for transferring hot water are used because of their unique combined resistance to high pressure, high temperature and high durability under these conditions. Unlike non-polymeric PFAS, which are mobile, can bioaccumulate, and can have toxicity concerns, fluoropolymers have not been demonstrated to have negative health concerns and are a material of choice for sensitive applications such as medical devices. In fact, since the 1960s, the Food and Drug Administration has authorized fluoropolymers for use in food contact applications. More recently, the Environmental Working Group has publicly stated that non-stick cookware is not a major source of exposure: "But even though it's always been the poster child for PFAS exposure, is not anticipated to be a major source of exposure."[7] As a result,

[7] https://www.ewg.org/news-insights/news/2024/02/forever-chemicals-top-3-ways-lower-your-exposure?utm_source=newsletter&utm_campaign=202501JanNews10&utm_medium=email&utm_content=default

fluoropolymers require special consideration relative to any prohibition. Just last year, Connecticut Governor Ned Lamont in signing Public Act 24-59, An Act Concerning the Use of PFAS in Certain Products, which includes a 2028 ban on cookware with intentionally added PFAS, asked that there be an exemption process for nonstick coating based on polytetrafluoroethylene (PTFE).[8] Legislation has already been filed in Connecticut to help alleviate this issue. As this process moves forward, we request special consideration for fluoropolymers in this prohibition.

AHAM appreciates the opportunity to comment. We would be happy to discuss all of these details further.

Respectfully submitted,



John Keane
Manager of Government Relations

AHAM represents manufacturers of major, portable and floor care home appliances, and suppliers to the industry. AHAM's membership includes over 150 companies throughout the world. In the U.S., AHAM members employ tens of thousands of people and produce more than 95% of the household appliances shipped for sale. The factory shipment value of these products is more than $30 billion annually. The home appliance industry, through its products and innovation, is essential to U.S. consumer lifestyle, health, safety, and convenience. Through its technology, employees and productivity, the industry contributes significantly to U.S. jobs and economic security. Home appliances also are a success story in terms of energy efficiency and environmental protection. New appliances often represent the most effective choice a consumer can make to reduce home energy use and costs.

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[8] bill-notification-2024-9.pdf