

January 28, 2025

Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333
Submitted via email: rulecomments.dep@maine.gov

Re: Chapter 90, Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances

The Maine State Chamber of Commerce appreciates the opportunity to provide comments on the Department of Environmental Protection's proposed rule, Chapter 90: Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances, to implement 38 MRSA § 1614. As Maine's largest business association, representing a network of over 5,000 businesses, we are committed to supporting policies that strike a balance between protecting the environment and public health without imposing undue burden on businesses or hindering Maine's economic growth and competitiveness.

We appreciate the Department's willingness to partner with the Chamber and various stakeholders to amend Maine's PFAS in Products law during the 131st Legislative session; we believe these changes that were made strike a much better balance than was what originally passed by the Legislature in 2021. While this rule follows much of the framework of P.L. 2024, c. 630, the Chamber is advocating for a few changes that would ensure greater clarity and predictability for Maine businesses.

Definitions

The Chamber believes the definition of "Commercially available analytic method" could be enhanced in a way that enables testing methods that reflect the current analytical methods available and the unique properties of PFAS compounds. Ultimately, testing methods should be allowed that result in the most reliably available data. Specifically, it is important to recognize that many commercial PFAS compounds are proprietary chemicals. As a result, there is currently a void of commercially available analytical methods. Setting analytical standards can help laboratories develop reliable testing methodologies. We ask the definition of "commercially available analytic method" be amended to:

"any test methodology that provides quality control parameters, required frequency, and performance criteria that must be met to satisfy method objectives and assure data quality that is used by a laboratory that performs analysis 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 as long as the method is under the laboratory's scope of accreditation. The laboratory performing the testing should have ISO/IEC 17025 Testing and Calibration Laboratories certification or be accredited through the National Environmental Laboratories Accreditation Conference (NELAC) whose standards are based on ISO requirements."

The Chamber would also ask that the Department add "including technologies to help control the environment" to the definition of "Environmental Control Technology".

Under the definition of "Intentionally added PFAS", there is a note stating:

"NOTE: Intentionally added PFAS includes degradation by-products serving a functional purpose or technical effect within the product or its components. Products containing intentionally added PFAS include products that consist solely of PFAS. Intentionally added PFAS does not include PFAS that is present in the final product as a contaminant or PFAS used in the manufacturing process or comes into contact with the product during the manufacturing process but is not present in the final product."

The Department should consider developing a focused definition of "contaminant" to address those that are not intended to be present in the final product. The low levels currently sought need to consider that detectable background PFAS levels can be present from sample collection and lab contamination. There should be a clear direction to differentiate between a contaminant and a true result. The assessment of contaminants should be based on multiple factors including process knowledge, the level and identify of the PFAS.

Recognizing that semiconductors are manufactured in Maine and across the globe, we greatly appreciate the Department amending the definition of "Semiconductor" to that which was suggested by the semiconductor industry. This definition creates alignment with the "semiconductor chip product" definition in 17 U.S.C. § 901(a)(1). To ensure Maine is not an outlier, we ask that you keep the definition as is currently defined in the rule.

Fees

As has been stated in the Chamber's written comments on the concept draft and in public testimony, the Chamber continues to urge the Department to determine a limit on the total amount of fees that can be assessed on businesses. Individual notification fees for businesses requiring a Currently Unavoidable Use (CUU) determination could impose a significant financial burden, particularly for small and medium-sized businesses who may lack the resources to absorb such costs. Large businesses with a diverse product line could also experience financial burden because of an individual product notification fee.

Currently Unavoidable Use Process

The current language of the proposed rule does not allow businesses to submit a CUU proposal prior to 36 months in advance of the product's sales prohibition. The Chamber believes this window is insufficient given the extended timelines often required to bring a product to

market. The journey from research and development to manufacturing, regulatory approvals, and ultimately, market introduction, can span several years, particularly for complex products in highly regulated industries. The complex and often unpredictable nature of these processes means that a 36-month window will likely not provide the necessary foresight for businesses to adequately prepare. In light of these considerations, the Chamber respectfully requests that the timeline for submitting CUU proposals be extended to five years.

Being able to submit a CUU proposal up to five-years in advance of a sales prohibition would also provide sufficient time for the regulatory process to unfold and allow the Department to review and assess CUU proposals with greater clarity and consideration.

Finally, we believe that given CUU determinations are valid for five years, aligning the submission window with the duration of the determination further strengthens the rationale for a five-year timeline. Extending the timeline for submitting CUU proposals to five years would provide businesses with the foresight needed to navigate the complexities of product development and market introduction while ensuring that regulatory decisions are based on the most current and accurate information. It would also mitigate the risk of unnecessary market disruptions if a CUU were not granted.

For those seeking an additional CUU determination upon the expiration date, the Chamber believes that a streamlined renewal process focusing only on new information since the previous determination would be less burdensome for applicants and Department staff. Doing so in this way will eliminate the need to submit and review known details, allowing for a greater focus on new and relevant information.

Proprietary Information

Information included in a CUU proposal will include proprietary information. We appreciate that the Department recognizes the importance of keeping this information confidential and will handle it accordingly.

Conclusion

Thank you again for the opportunity to provide comments on the proposed Chapter 90 rule. The Maine State Chamber of Commerce appreciates your consideration of the suggested changes.

Sincerely,

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Maine State Chamber of Commerce