

Before the Maine Department of Environmental Protection
Maine's Concept Draft in Advance of Proposed Rules for Notification Requirements and Sales
Prohibitions for Products Containing Intentionally Added PFAS under Maine's *Act to Stop
Perfluoroalkyl and Polyfluoroalkyl Substances Pollution*, 38 M.R.S. § 1614

Comments of the Chemical Users Coalition

Introduction

Chemical Users Coalition (“CUC”) appreciates the opportunity to provide these comments in response to Maine’s Department of Environmental Protection’s (“DEP” or “Department”) recent Concept Draft (the “Proposal”) for its forthcoming proposed rule for notification requirements, sales prohibitions and currently unavoidable use determinations for products containing Intentionally Added PFAS under Maine’s *Act to Stop Perfluoroalkyl and Polyfluoroalkyl Substances [PFAS] Pollution*. CUC’s members will likely be adversely affected by the proposed changes being considered.

CUC is an association of companies from diverse industries that typically acquire and use, rather than manufacture, chemical substances. CUC has consistently supported measures that protect health and the environment in a manner that enables the regulated community to pursue technological innovation simultaneously with economic development in the United States. CUC members produce and distribute highly complex materials and products, including critical microscopic circuits to major devices, appliances and intricate equipment. To thrive in a competitive global economy, our members depend on the availability of certain existing substances as well as products that incorporate such substances, which are necessary components of a reliable pipeline for our members’ production of innovative new products upon which the consumer, commercial, industrial, health care, defense, space, and transportation sectors consistently rely. Consequently, our members encourage the Department when implementing PFAS related restrictions or requirements to develop regulatory approaches that responsibly consider existing (and developing) products and technologies on which the US economy and the departments of the US government depend. The availability of such products and the development of new technologies will be unintentionally and adversely restricted if DEP does not develop certain implementation strategies that provide exceptions and varying compliance schedules to enable the continued distribution and use of such materials and products.

Comments

CUC is providing these preliminary comments addressing several provisions in the Proposal. These comments are only intended to provide initial feedback. CUC will provide further comments as needed, whether in response to subsequent drafts or on a formal rulemaking proposal.

Notification

- The Proposal lacks clarity concerning how reporting obligations will be allocated among the different entities completing notifications potentially for the same products. This is especially true with notifications for complex products and other manufactured items containing numerous internal component parts. It would be helpful if DEP provided narrative examples of hypothetical notification scenarios for review and comment.

This is specifically needed for products sold at retail and those which have external branding as well as multiple internal components produced by many different suppliers.

- There is a lack of transparency within the value chain concerning the chemical content of manufactured articles (especially with respect to complex products and manufactured items with multiple component parts). Suppliers often are reluctant or unable to provide information on composition of components to customers, often due to confidentiality concerns within and among the value chain. Therefore, CUC believes that further guidance and flexibility should be provided on reporting PFAS in manufactured products at the CAS number and chemical identity and specific content levels.
- The reporting requirements for packaging also require greater clarification. This is particularly true for the interplay between the specific exemption for a “package” (which is not a “product” as that term also is defined) and the interpretation of how the exemption pertains to a wrapper surrounding a product which does not contain PFAS when the product within the wrapper is imported to the US, especially when the wrapper might contain intentionally added PFAS.
- The Proposal provides an option for reporting PFAS within a range. DEP would need to establish and make public such ranges well in advance of any reporting requirements so that reporting entities can obtain such information from suppliers.
- The Proposal allows for manufacturers of complex products and manufactured items with multiple component parts to rely on notifications previously submitted by component manufacturers. However, it is not clear how a manufacturer would know if a report has been submitted, and if so, would such knowledge be obtained with enough time in advance of the reporting deadline to utilize the previously submitted report. This is of significant concern for complex item manufacturers when a manufacturer of essential components does not notify, and the complex item manufacturer needs to ascertain if there is a need to notify for component parts or not to allow the product to be sold into the state.
- The Proposal requires a manufacturer to update information when there is significant change in the reported information. DEP should clarify that this means that the obligation to report changes only commences at the time the manufacturer becomes aware of a

change. DEP should make clear that manufacturers do not have an affirmative duty to constantly inquire from suppliers if there has been a change.

- The \$5,000 fee proposal is high and could create a huge financial burden on reporting entities. The rationale for this sum should be provided by DEP.
- The Proposal seems to require entities that distribute or sell exempt items, such as military products (e.g., military aircraft, weapon systems or vessels) and motor vehicles or watercraft that are required to meet FAA, NASA, DOD or DHS requirements, to submit notification for “textiles” and “refrigerants” that are included or components of such products. DEP should provide a rationale as to why notifications are needed for these particular components of otherwise exempt items, and what purpose such reporting serves. Furthermore, DEP needs to provide clarification as to how and when notifications are to be submitted for these component parts.
- In the above scenario, the Proposal requires that justification for use of product containing intentionally added PFAS must be provided if “similar products are available for sale.” DEP must clarify the meaning of “similar products.” Simply because a “similar product” exists does not mean such product can be used in specific aerospace or defense applications that must meet government-mandated requirements and specifications.
- The contents of the notification to be required for materials subject to Currently Unavoidable Use (CUU) determinations can and should be minimized given the extent of information that will already be in DEP’s possession as a result of the CUU application process and the materials provided in the application.

Sales Prohibition

- DEP should include an “existing stocks” exclusion for existing products that were manufactured and released into commerce (e.g., from manufacturers to retailers) prior to the final rule’s effective date for the various prohibitions on non-exempt items. Such previously manufactured items should be excluded from the prohibitions.
- The sales prohibitions do not apply to used products. An exemption should also apply to replacement parts used for routine repair and maintenance of used products through their projected lifecycle.
- The definition of semiconductors in the Proposal narrows the scope of the exemption for semiconductors and semiconductors incorporated into electronic equipment. The new definition refers to semiconductors as a material “having conductivity characteristics intermediate between conductors and insulators.” If this definition remains as is, it will significantly limit the scope of semiconductors subject to the exemption and would not

provide the exemption to electronic equipment as intended under the current PFAS law. DEP should consider the following revisions to the definition for semiconductors:

- “Semiconductor” means a material having conductivity characteristics intermediate between conductors and insulators. Junctions between certain types of semiconductors permit electric current to flow more easily in one direction than the other. ~~Semiconductors do not include commonly associated materials such as printed circuit boards, solder, flux, wires, screen printing ink, connectors and sockets, or conformal coatings.~~
 - “Semiconductors incorporated into electronic equipment” means packaged semiconductors or semiconductor devices that are incorporated into electronic equipment.
- The Proposal should be improved to clarify, as the exemption in the statute provides, that the exclusion for semiconductors also applies to any electronic components into which a semiconductor is incorporated. DEP has recognized the criticality of semiconductors, and yet somehow fails to recognize that electronic equipment as a whole may have other important components that should similarly be exempted. Accordingly, DEP should explain the rationale for why they appear to be taking the position that electronic equipment is not subject to the exemption.
 - Furthermore, greater clarity is needed concerning whether reporting is required for the component parts comprising “non-consumer electronics,” considering that many components of electronic equipment might be supplied both to the manufacturer of consumer use and non-consumer use electronics.

Currently Unavoidable Use Determinations

- DEP should consider accepting CUU applications sooner than the Proposal would provide and consider permitting renewal requests for CUUs to be submitted up to 6 months before the determination’s expiration.
- DEP also should consider issuing categorical CUUs as soon as possible based on information supplied during prior comment periods to minimize the need for numerous applications from multiple entities and to limit the resource burdens on DEP.
- The Proposal provides that a CUU proposal must contain a significant amount of information on alternatives and human and environmental effects of the PFAS used in a product. For complex product manufacturers, there is a strong likelihood that they will not possess such information. While the proposal does state that “known or reasonably ascertainable” information is to be provided, clarification as to the actual level of due diligence required is needed to determine how practical and/or burdensome this requirement will be.
- Deadlines for DEP action on CUU proposals should be included.

Conclusion

CUC appreciates the opportunity to submit the foregoing comments and, as mentioned, reserves its right to submit additional or modified comments at a later date. We would welcome the opportunity to meet with DEP staff to address our comments and to assist in refining the Concept Draft.