



August 30, 2024

Submitted to PFASProducts@maine.gov

Maine Department of Environmental Protection
17 State House Station
32 Blossom Lane
Augusta, Maine 04333-0017

RE: Request for Comments on Concept Draft Language, Chapter 90: Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances

To Whom It May Concern:

The Alliance for Automotive Innovation¹ (Auto Innovators) appreciates the opportunity to provide comments on the Department of Environmental Protection's (DEP's) concept draft language for Chapter 90 on Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS). 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.

Auto Innovators previously provided comments on November 10, 2022 on the second concept draft, and in May 2023 on the proposed draft regulatory language, which we hereby reaffirm. The majority of Auto Innovators' concerns about Maine's PFAS law were justifiedly and helpfully addressed by the amendments made by LD 1537. We thank DEP for its continued engagement of the stakeholders during this process and provide here a few comments on DEP's proposed process for currently unavoidable use determination requests.

Currently Unavoidable Use Exemption Process

Currently Unavoidable Use Requests

DEP is proposing that it will not consider currently unavoidable use determination requests more than 36 months in advance of the applicable sales prohibition. Auto Innovators recommends that DEP consider at least some determination requests earlier than that point, especially given the time that it can take DEP to successfully promulgate a formal rulemaking—potentially years, given formal proposal, public comment, Board approval, and finalization.

Auto Innovators has previously explained to DEP the nature of complex consumer goods development and production. The automotive lifecycle, in particular, is years long. Vehicle models begin development five or more years in advance of the time at which they will go to sale; parts must be developed and sourced, and factories must be retooled to manufacture specific vehicle designs.

¹ From the manufacturers producing most vehicles sold in the U.S. to autonomous vehicle innovators to equipment suppliers, battery producers and semiconductor makers – Alliance for Automotive Innovation represents the full auto industry, a sector supporting 10 million American jobs and five percent of the economy. Active in Washington, D.C. and all 50 states, the association is committed to a cleaner, safer and smarter personal transportation future. www.autosinnovate.org.

Vehicle model years are also long; for example, in fall 2024 automakers are just starting to deliver MY 2025 vehicles for sale, but under EPA regulations they could have been built as early as January 2. In short, it is very difficult for automakers to adjust to substantial changes that unexpectedly emerge less than two years or so before the planned sale date of a vehicle.

Therefore, Auto Innovators recommends that complex consumer goods industries at a minimum be able to apply for a currently unavoidable use exemption more than 36 months in advance of the relevant sales prohibition. It is critical that applicants be able to get a timely response to their request so that they can adjust for that response in their product planning. DEP could also guarantee or formalize through rulemaking the prioritization and/or expedition of currently unavoidable use request rulemakings to be able to quickly provide certainty to the regulated community.

Finally, Auto Innovators supports DEP's proposal for manufacturers to be able to collectively propose a currently unavoidable use determination, as often in industries (such as the auto industry) a chemical compound may be commonly used in the same manner across multiple manufacturers, and this provision allows for efficiency for both the regulated community and DEP.

Currently Unavoidable Use Determination Expiration

DEP's draft regulation also appears to suggest that currently unavoidable use determinations would expire after 5 years. For the same reasons, Auto Innovators recommends that for complex durable goods, DEP should be able to grant designations for a longer time frame. An exclusionary period of 10 years is more consistent with the product development and production timelines of complex durable goods; otherwise, manufacturers will be reapplying for determinations too frequently.

Conclusion

Thank you for your consideration of our comments. We welcome the opportunity to discuss any of these further as DEP may find helpful.

Sincerely,



Catherine Palin
Senior Attorney & Director of Environment Policy
Alliance for Automotive Innovation