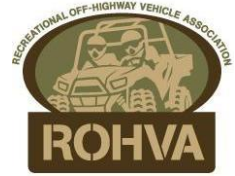




**MOTORCYCLE
INDUSTRY
COUNCIL®**



May 19, 2023

Commissioner Melanie Loyzim
Maine Department of Environmental Protection
State of Maine
17 State House Station
Augusta, ME 04333

Re: Chapter 90 Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances Comments

Dear Commissioner Loyzim:

Hundreds of companies represented by the Motorcycle Industry Council (MIC), the Recreational Off-Highway Vehicle Association (ROHVA), and the Specialty Vehicle Institute of America (SVIA) are considerably impacted by the requirements in Maine's proposed "Chapter 90 Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances."

Maine's PFAS in Products Concept Draft places substantial requirements on manufacturers over an unattainably short period of time which threatens business operations in the state and could ultimately put purchasers of our products at risk. Our members are concerned that the concept draft is infeasible as it:

- provides insufficient time for manufacturers to comply with requirements;
- lacks provisions for products currently in the market;
- lacks sufficient clarity of critical information, including required testing levels;
- creates unnecessarily duplicative and burdensome work;
- treats all PFAS products as high risk rather than taking a graduated approach;
- may hamper law enforcement and first responders' abilities;
- may put youth off-highway vehicle riders at risk.

We urge you to:

- push the compliance deadline out several years;
- provide safe harbor allowance for products already in the market;
- clarify critical testing and fee requirements for manufacturers;
- avoid unnecessarily duplicative requirements through alternative approaches to compliance;
- prioritize regulation of those PFAS that are at high risk of leaching into the environment rather than immediately applying the ban to all PFAS and;
- classify powersports parts necessary for heat resistance, chemical resistance, water repellency, oil repellency and lubricating properties as "Essential for Health, Safety, or the Functioning of Society".

Insufficient Time for Manufacturers to Comply

There is still far too little time for manufacturers to comply with the proposed requirements, especially given the vast amount of testing required. This will leave manufacturers unable to realistically comply with requirements.

PFAS comprises thousands of chemical compounds. It is not feasible for manufacturers, their suppliers, and the limited number of qualified testing facilities to provide required content on a reporting system that is yet to be developed or tested for functionality. The deadline for reporting needs to be pushed out several years in order to allow manufacturers adequate time to test hundreds of parts and components that make up motorcycles, ATVs, and ROVs, not to mention personal protective gear such as jackets, pants, gloves, boots, and helmets, to name a few. Extending the reporting deadline will also improve data accuracy and avoid potential mis-reporting due to a rushed process and fear of non-compliance.

Lacks Provisions for Products Currently in the Market

The draft still fails to exclude vehicles, gear, parts, safety clothing, etc. that are already in inventory within the state. Manufacturers are responsible for producing replacement parts for the expected life of their vehicles. Many aftermarket companies also produce these parts. Dealerships and parts stores likely have multiple years of replacement parts and other products already in distribution channels and in inventory at retailers. A failure to allow safe harbor language for these products would mean that every dealership, repair shop, aftermarket distributor, and retailer would need to return or dispose of all inventories that arrived prior to implementation of this new law. That is simply not feasible and could cause scores of small businesses to shutter their doors and walk away from their livelihood. MIC, SVIA and ROHVA recommend adding in language to the “Applicability” definition of the draft that would grandfather in those products but would also add a label to the existing inventory indicating that it entered commerce prior to the implementation date. Perhaps language along the lines of:

1. **“Applicability.** This Chapter applies to all new products and product components sold, offered for sale, or distributed for sale in the State of Maine which contain intentionally added perfluoroalkyl and polyfluoroalkyl substances *that enter commerce following the effective date of this rulemaking. For product already in inventory at the effective date, a label must be affixed indicating that the product entered inventory prior to the effective date of the rulemaking and may contain PFAS.*”

In the absence of such language, manufacturers may need to consider issuing stop sale notices to consumers in Maine and pull all product from the state’s retailers and distribution channels. The devastating effect to Mainers could be consumers shopping out-of-state or having online products shipped to out-of-state addresses, further harming Maine businesses and the state’s economy as a whole.

It will be very difficult – if not impossible – for manufacturers to identify all in-state and online retailers of their products that are holding inventory, and manufacturers should NOT be held

responsible for those vehicles, replacement parts, personal protective gear, etc., that are already in commerce prior to the reporting deadline. Manufacturers must also not be held responsible for distributors and retailers who are not aware of or choose to ignore Maine's requirements.

Lacks Sufficient Clarity for Critical Information

To report PFAS content, manufacturers and test facilities must know the level to which testing must occur. The state must clarify, to what level products must be tested (how many parts per thousand or per million?). Any determined level must be one that is reasonable given cost and is attainable given limited capacity among testing companies.

The costs of this law will be staggering to manufacturers considering the immediate testing requirements, the unknown per-product administrative fee, lost sales, costs for returned products, and administrative/regulatory compliance expenses, among others. This does not include legal fees related to enforcement under 38 M.R.S. 347-A-349. Manufacturers must be provided with the fee structure as soon as possible so they can evaluate whether continued business activity in Maine is feasible.

Maine must also consider alternative approaches to reporting as some suppliers do not disclose chemical compositions which are considered sensitive and protected intellectual property. Manufacturers may have to rely on the data provided by suppliers. Reporting should be considered "accurate" as long as manufacturers in good faith rely on the data provided by their suppliers. Additionally, it would be unrealistic for manufacturers to engage "commercially available analytical methods" (e.g. third party laboratory) for every part and product they deal with.

Duplicative Burdensome Work for Manufacturers

US EPA is currently contemplating a comprehensive PFAS reporting rule under TSCA, which will encompass what Maine requests to report. In addition to this, other states are working on similar reporting or registration requirements for products containing intentionally added PFAS.

Manufacturers should not be burdened with unnecessarily duplicative work. To reduce the potential for unintentional reporting errors or lapses, manufacturers should be allowed to use the same information provided to US EPA for reporting to states. There should be one central database for reporting by companies, whether that be a national reporting registry, a dedicated page on companies' websites, or a secure centralized third-party website accessible to all states and the public. Options like these will go a long way in easing the very difficult task of complying with a patchwork of registries across multiple states and the federal government.

Unavoidable Use Allowance

PFAS is unavoidable in certain powersports equipment such as gaskets, o-rings, and hoses where the chemicals serve to simultaneously achieve heat resistance, chemical resistance, water repellency, oil repellency and provide solid lubrication properties. Until such time as

suitable replacements are found, these (largely internal) parts should be allowed to remain in powersports products under the unavoidable use provisions.

A Graduated Approach to the Ban

Instead of treating all PFAS as one group of equal offenders, we believe that those PFAS that leach into water systems and generate byproducts that are harmful to human health and the environment should be prioritized. In particular, we propose you exclude PFAS polymers which are considered to be low risk and they do not produce unintended byproducts.

We support the provisions in Senator Baldacci's bill LD 1214 which would provide a legislative fix to this issue. We also believe that this approach is consistent with the original law which states MDEP:

“shall prioritize the prohibition of the sale of product categories that, in the department’s judgement, are most likely to cause contamination.”

Essential for Health, Safety, or the Functioning of Society

We note that our powersports vehicles are used by police, fire, EMS, and the Bureau of Parks and Lands in Maine. We believe that they should be deemed “Essential for Health, Safety, or the Functioning of Society” under the law. Failure to do so could result in these life-saving vehicles from being sold or serviced in Maine.

We also note that there are youth size off-highway vehicles (OHVs) including motorcycles and all-terrain vehicles (ATVs), that are specifically sized and powered for children. If you effectively ban youth-sized OHVs you create a much more immediate danger and health risk due to the potential for children operating adult-sized OHVs instead. Consider the comments made by the U.S. Consumer Product Safety Commission (CPSC) while discussing the risks associated with lead exposure from youth ATVs pursuant to the passage of the Consumer Product Safety Improvement Act, which banned certain limits of lead in children's products. Youth ATVs were subsequently excluded from such lead limits by P.L. 112-28 in part due to CPSC's statement that banning youth ATVs would pose a “serious and immediate risk of injury or death” for children under 12 who would instead ride larger and faster adult-size ATVs. (See 74 Fed. Reg. 22154.)

Conclusion

MIC, ROHVA, and SVIA appreciate the opportunity to work with the Maine Department of Environmental Protection to improve the concept draft. We also appreciated the opportunity to testify before the Department of Environmental Protection in April regarding these concerns. We trust you can see the considerable downsides to a regulatory process that does not provide safe harbor provisions for existing products/inventory, does not clearly define testing requirements, treats all PFAS as equal offenders, and possibly puts the community at risk due to the lack of appropriately powered vehicles and a possible loss of first responder vehicles. We understand the desire of Maine to address PFAS contamination and reduce or eliminate it in products. However, the current draft runs the risk of inaccurate data, great financial and legal

risk to manufacturers, and great harm to small businesses in the state as well as companies selling into Maine.

Thank you for your consideration and please feel free to reach out with any questions you may have.

Regards,



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Motorcycle Industry Council
Recreational Off-Highway Vehicle Association
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