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VIA ELECTRONIC SUBMISSION: rulecomments.dep@maine.gov
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Maine Department of Environmental Protection

Re: Chapter 90 - Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances

The Truck and Engine Manufacturers Association (EMA) hereby submits comments on the proposed rule: Chapter 90: Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances (proposed rule) that was noticed on February 14, 2023.

The Maine Department of Environmental Protection (DEP) is proposing notification requirements and sales prohibitions for new products and product components containing intentionally added Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) pursuant to 38 M.R.S. §1614.

EMA represents worldwide manufacturers of internal combustion engines and on-highway medium and heavy-duty vehicles (greater than 10,000 pounds gross vehicle weight rating). EMA member companies design and manufacture internal combustion engines that are used in a wide variety of applications, including: trucks and buses (including school buses); farm, construction, and industrial equipment; marine vessels; locomotives; lawn, garden and utility equipment, and electric generators and other stationary applications. PFAS is widely used in a variety of applications to provide products with strength, durability, stability, and resilience. It is also known to be used for its flame retardant properties. Consequently, EMA's members are significantly and directly impacted by the Proposed Rule.

Federal Activity under the *Toxic Substances Control Act (TSCA)*

The Environmental Protection Agency (EPA) has proposed a PFAS reporting rule under TSCA § 8(a)(7). 86 FR 33926, June 28, 2021. According to the Regulatory Agenda, it is expected to be finalized in March, 2023, as part of the implementation of their PFAS Strategic Roadmap. The roadmap can be found at:
https://www.epa.gov/system/files/documents/2021-10/pfas-roadmap_final-508.pdf.

Additionally, EPA has proposed a Significant New Use Rule (SNUR) for all inactive PFAS on the TSCA inventory. 88 FR 4937, January 26, 2023. Proposed SNURs have also been published for 35 PFAS already subject to TSCA section 5(e) orders. 87 FR 74072, December 2, 2022. The PFAS Strategic Roadmap also includes commitments to apply a rigorous premanufacture notice review process for new PFAS and a National PFAS Testing strategy.

EPA is directing resources to implement the comprehensive approach outlined in the PFAS

Strategic Roadmap and manufacturers are working to respond to federal activity. State activity that duplicates or overlaps EPA efforts to identify and restrict PFAS use will only complicate an already extraordinarily complex issue. Duplicative reporting efforts will consume time and effort that would be better directed at the core issue of identification of PFAS and associated supply chain management.

Ideally Maine should allow EPA to lead in PFAS regulatory requirements to avoid duplicative, and potentially conflicting requirements. However, we understand that the Maine Department of Environmental Protection (Maine DEP) is compelled to act pursuant to *Maine's Act to Stop Perfluoroalkyl and Polyfluoroalkyl Substances Pollution*, 38 M.R.S. § 1614.

Duplicative Reporting Requirements and Associated Fees

The proposed rule should provide a mechanism to recognize PFAS disclosures to EPA under TSCA requirements, and disclosures to other states that may adopt reporting obligations, although we strongly discourage such state action. Duplicative or overlapping state and federal requirements will overwhelm manufacturers and will be particularly burdensome for manufacturers of complex products that rely on global supply chains. We appreciate the provisions in section 3(2) of the proposed rule which allow for waiver of notification requirements. However, we are concerned with some of the specific components of the waiver request as identified in section 3(2)(a) of the proposed rule. Section 3(2)(a)(iv) of the proposed rule requires that the information is updated in a similar manner as required by the proposed rule. This requirement is unclear. Furthermore, the definition of “Substantially equivalent information” in section 2 of the proposed rule is also open to interpretation.

The proposed rule should identify the specific EPA reporting mechanisms that will be considered substantially equivalent. Identification of federal reporting that will be accepted as substantially equivalent information, will reduce uncertainty for the regulated industry and will eliminate submission of waiver requests based on information that Maine DEP has determined to be not substantially equivalent. Maine DEP should evaluate information that will be filed to meet EPA TSCA obligations, including those identified earlier under the soon to be finalized reporting rule, to determine if these filings will be considered substantially equivalent. Since many of the manufacturers subject to Maine's requirements are also subject to the EPA rules, Maine can avoid individually assessing repeated waiver requests that reference submissions to EPA by making the determination once and naming the accepted sources in the proposed rule. Similarly, disclosures to other states should be considered and identified as substantially equivalent information as appropriate. An updated list of substantially equivalent sources of information should be maintained by Maine DEP and made accessible to regulated parties. Maintaining an updated list will improve consistency and certainty in the implementation of the regulation and streamline consideration of waiver requests.

Section 6 of the proposed rule also requires payment of a fee as part of the submission of notification. Section 3(A)(2)(b) proposes that the fee will apply even in instances where a waiver of notification has been granted. Overlapping requirements from Federal and state authorities could result in duplicative fee payments. We believe that where a waiver of notification requirements is granted, fees should not be collected or should be significantly reduced. If

reporting requirements with related fees are adopted by other states, the financial burden of disclosure will multiply.

Database for Reporting

The proposed rule references an online notification system but the specifics of the reporting format are not specified. We strongly urge Maine DEP to utilize an existing, recognized reporting format that is aligned with the EPA. Additionally, Maine DEP should accept reports submitted to fulfill PFAS reporting requirements in other jurisdictions, including EPA reporting requirements, European Union (EU) SCIP Database reporting, or state requirements. Data entry can be time-consuming and reentry of data submitted to other jurisdictions should not be required. Failure to align with EPA and accept reports created to meet parallel PFAS reporting requirements will complicate the submission of information and substantially increase the burden of compliance.

Methodology for Reporting

Complex products, like heavy-duty vehicles and equipment are composed of hundreds of components and thousands of parts. Additionally, there is a high level of customization with heavy-duty vehicles and equipment, with a variety of options and therefore differing components. This high level of customization should not necessitate reporting for each component or product group that could be installed on vehicles or equipment.

Manufacturers should be permitted to report on the basis of the highest level of assembly that a manufacturer produces for sale. For example, a complete engine, vehicle or piece of equipment should be considered under a single notification without any additional sub-identification of PFAS in individual components. Moreover, the reporting methodology must allow for the reality that even within a single model designation, not all vehicles and equipment will have identical PFAS content.

PFAS Definition

The proposed PFAS definition is extremely broad and could encompass over 12,000 PFAS chemistries. Although we appreciate the note in Section 2 (Definitions) of the proposed rule that clarifies that chemicals which do not have CAS numbers assigned are not subject to the requirements, we request that Maine DEP establish de minimus reporting thresholds and provide a defined list of CAS identified PFAS chemistries that are subject to the requirements. Without reasonable limits on the scope of the reporting requirements, manufacturers face an unworkable task of investigating thousands of parts in a global supply chain consisting of hundreds of suppliers.

Responsibility for Reporting

We have noted that under the definition of “Manufacturer” in section 2 of the proposed regulations, Maine DEP references imported product. However it is unclear how the reporting obligations may apply to such manufacturers. The language that references a “presence in the United States” is vague and does not provide sufficient certainty to determine which entities would

have reporting obligations. Global manufacturers should not be responsible for reporting obligations when products enter the Maine market without the prior knowledge of the global manufacturer.

Timeline for Reporting

Extensive effort will be required to investigate and identify the presence of PFAS in the complex products produced by EMA's members. As described in our previous comments submitted on November 3, 2022, hundreds of suppliers in global supply chains, some of whom are 8 to 10 layers deep in the supply chain, hold chemical composition information for parts and components. Chemical composition information is often considered proprietary, and disclosure is not easily obtained. Manufacturers may need to investigate thousands of components. We anticipate that the process could take at least 2 years to complete for complex products. We appreciate the extension of the deadline for reporting requirements that Maine DEP has granted to many manufacturers. However, we expect that additional time may be required to meet the reporting obligations and we request that the proposed rule provide a process for seeking additional extension of the reporting deadline.

Impacts of Restrictions and Bans

Maine DEP has indicated that they intend to undertake a separate rulemaking process to determine uses of PFAS that will be considered a "Currently unavoidable use" as defined under section 2.F. of the proposed rule. We encourage Maine DEP to fully consider the potential impacts of restrictions and bans of the use of PFAS. Substitutes for PFAS chemicals will not be easily identified and may not be available in any event. Many PFAS compounds are very expensive and these compounds are used because they are effective. In many instances, their use is necessary in order to achieve compliance with other regulatory requirements related to flame resistance (i.e., the Federal Motor Vehicle Safety Standard No. 302, Flammability of Interior Materials) and durability requirements to ensure the long-term durability of components, including emissions components. PFAS, as broadly defined in the proposed rule, may also include some refrigerants, like HFC-134a, and HFO-1234yf, which are widely used because of their extremely low global warming potential. In fact, the transition to HFO-1234yf has been spurred by Federal rulemaking activity related to reducing HFCs. Maine DEP should also consider that PFAS is used in alternative power technologies, including batteries and hydrogen fuel cells to imbue vital functional properties.

Where PFAS is used in components subject to other federal requirements (like engines and vehicles), any substitution or change in the components may require significant and time-consuming, testing, verification and certification of any redesign or substitute. Where durability requirements are applicable, testing burdens can be significant. Resources for such testing are finite and are already overburdened with demands related to design and certification of new products. Introducing the additional project of identifying chemical substitutes and proving them out for durability, safety and emissions verification purposes will certainly create timing and resource management challenges that may lead to supply shortages for critical components and products.

Maine DEP must consider the nature of the products impacted. Heavy duty engines, vehicles and equipment are not the same as mattresses, frying pans, carpets, and other disposable consumer products, and they should not be treated the same under the proposed rule. Commercial vehicles, engines and equipment are long-lasting, durable by design and regulatory mandate, and utilize end-of-life design provisions to ensure that potentially problematic substances are captured and recycled. Remanufacturing processes are an integral part of the heavy-duty industry and support the development of a circular economy while promoting robust waste management to prevent releases of pollutants to the environment. Aftermarket parts and components must also be considered to ensure that in-service equipment is not impacted by restrictions on legacy parts. Transition to substitutes for PFAS will be extremely challenging for new products moving forward. Expectations that legacy parts and components will also transition to substitutes is simply unrealistic. Failure to recognize this fundamental obstacle will lead to critical shortages of parts and will lead to in-service equipment being rendered obsolete, short of their expected full useful life.

Additionally, the overly broad definition of PFAS and lack of alignment with known reporting formats will undoubtedly lead to overreporting. The scope of the proposed reporting obligations and the volume of information that will be captured under the proposed requirements will be overwhelming for manufacturers and regulators alike. This fact cannot be overstated. The reporting approach in the proposed rule has the potential to bury Maine DEP in information of questionable value, much of which will not be helpful in addressing legitimate concerns with PFAS and potential releases into the environment. Regulatory efforts should focus on high risk PFAS chemicals and high-risk end-use applications.

Conclusion

It is critically important that the Maine DEP consider the potential impacts of reporting requirements, restrictions and bans on the use of PFAS. PFAS plays an important role in the functionality, durability, and safety of many products. Alternatives have not been identified for many critical PFAS uses in engines, vehicles and equipment.

The definition of PFAS must be narrowed. A de minimus reporting threshold must be identified. The reporting requirements and format should align with EPA and recognize reports submitted to other jurisdiction and should not duplicate or conflict with federal efforts. EPA should lead efforts on PFAS reporting and restrictions.

We appreciate the opportunity to provide these comments. Please do not hesitate to contact Dawn Friest at (519) 999-4480 (or at dfriest@emamail.org) if you have any questions.

Respectfully submitted,

TRUCK & ENGINE
MANUFACTURERS ASSOCIATION