

Before the Vermont Department of Environmental Conservation
Draft Legislation for Implementation Plan for Revising PFAS Phase Outs Adopted in Vermont

Comments of the Chemical Users Coalition

Introduction

Chemical Users Coalition (“CUC”) appreciates the opportunity to provide these comments in response to Vermont’s Department of Environmental Conservation’s (“DEC” or “Department”) recent Draft Report and legislation (the “Proposal”), as part of the implementation plan for revising the PFAS phase outs adopted in Vermont required by Act 131 of 2024.

CUC is an association of companies from diverse industries that typically acquire and use, rather than domestically 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 developing PFAS related restrictions or requirements to develop 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 DEC does not include 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.

- The definition of “Alternatives” includes that the alternative “serves a functionally equivalent purpose to a PFAS in a product.” CUC requests that the definition be clarified so that it is understood that the alternative should function in every respect as did the PFAS in the product, and therefore the product itself should function in every respect as it did prior to the substitution. Otherwise, the Alternative would not be truly equivalent.
- CUC recognizes that the Department is making efforts to learn from the experiences of states such as Maine and to focus only on PFAS in nonessential consumer products. However, the exception from the definition of “Consumer Products” for “Complex Durable

Goods” does not address the complexity of many products in the marketplace, and the number of component parts is arbitrary and is not a practical basis for determining which products are intended for consumer and household uses that are not also “durable”. The number of component parts also is not pertinent when distinguishing commercial and industrial use items from consumer/household use items. Furthermore, it also is unclear how the Department arrived at a numerical value of “100” component parts to determine what would qualify as a durable good for purposes of excepting such products from restrictions on consumer product.

CUC recommends that the definitions of “complex durable goods” and “consumer product” be clarified as indicated below. Doing so would specifically *exclude* products intended and distributed for use in commercial and industrial applications rather than household/home use, and clarify that complex *durable* goods include (regardless of the number of component parts) major household appliances that are expected to have a product service life of 10 years or more.

- “Complex durable goods” means a consumer product that is a manufactured good composed of numerous internal manufactured component parts, with an intended product service life of 10 or more years, where the product is typically not consumed, destroyed, or discarded after a single use. Examples of complex durable goods that are excepted from the definition of consumer product include major household appliances such refrigerators, laundry appliances, and heating or air conditioning equipment.
- “Consumer product” means any tangible personal property that is distributed in commerce, and which is intended for use for personal, family, or household purposes. “Consumer products” includes product categories that are normally used by households but may also be designed for or sold to businesses (e.g., commercial carpets or commercial floor waxes). “Consumer products” do not include “complex durable goods”, food, or equipment and machinery intended for commercial or industrial use.
- CUC recommends that the Department modify the definition of “Intentionally Added.” The proposed definition is confusing and overly inclusive, which will lead to implementation and compliance problems. The definition should be narrowed to specifically exclude manufacturing byproducts and impurities that remain unintentionally present in a product, as well as PFAS degradants that might be formed during product manufacturing as unintended contaminants.

Additionally, CUC suggests that a threshold (e.g., de minimis) level for PFAS content in manufactured articles, beneath which the restrictions would not apply (such as PFAS present at 0.1% by product weight or less) should be established. In the absence of data which suggest the de minimis level would present an unreasonable risk to consumers, a de minimis level of 0.1% is both practical and is generally understood by the manufacturers and distributors of manufactured articles that move among various international markets.

This is a numerical level that aligns with that which is imposed in the European Union for substances of very high concern when present in articles. The de minimis level also would assist the regulated community by providing a predictable compliance threshold.

- CUC appreciates the attempt to craft a more precise definition of PFAS, including a reference to the federal definition that appears at 40 C.F.R. § 705.3. However, the phrasing in the Proposal (““PFAS” means one fully fluorinated carbon compound that is identified as “PFAS” as defined in 40 C.F.R. § 705.3”) is confusing and subject to misinterpretation. CUC recommends that if it is the Department’s intention is to reference and rely upon the EPA definition in 40 CFR Part 705, the Proposal should be revised to specifically say so, and to completely omit the introductory clause which includes “one fully fluorinated carbon compound”. Because a structural definition, such as the EPA definition which is referenced is extremely broad and can include substances that do not warrant restrictions, CUC recommends the Secretary use its authority under the Proposal (if enacted) to swiftly adopt exemptions that would clearly exclude polymers and gasses from the scope of PFAS subject to the final legislation. Doing so would help narrow the focus of the final legislation to those substances more likely to present opportunities for exposures of concern to consumers.
- CUC supports the inclusion of language in the definition of PFAS-added consumer product permitting sale of non-compliant existing stocks, or products that were manufactured and released into commerce (e.g., from manufacturers to retailers) prior to the legislation’s effective dates.
- CUC requests clarification of the definition of “identifiable components.” In a manufactured item, many components are not visible due the manner in which the product is assembled. It is not clear as to what “identifiable” means in this context. Goods containing multiple components present challenges as downstream assemblers and distributors are often removed by multiple layers in the supply chain, and thus may not be aware of the presence of PFAS-containing parts or components.
- CUC supports the exemptions for products manufactured prior to the effective date of a specific phase out and for replacement parts for products manufactured prior to the ban. CUC recommends that the sales prohibitions also should not apply to accessories for such products as well as replacement parts used for routine repair and maintenance of used products through their projected lifecycle for the items subject to phase out.
- CUC understands the intent behind including requirements for compliance certification. However, these requirements can create significant hardship and difficulty. Manufacturers of goods often work within complex (and sometimes global) networks and supply chains composed of potentially thousands of suppliers. Securing compliance certifications from all these different entities would be extremely challenging, if at all possible.

CUC suggests that if compliance certification is required, such certification should be based on a “reasonably ascertainable” standard for determining if their product contains PFAS and is therefore subject to the regulations and restrictions. If a manufacturer cannot reasonably ascertain, via supplier communications or proven and economical testing, that PFAS is present in the product, they should be able to certify compliance on this basis.

- CUC recommends that DEC should establish an administrative process under which interested parties may request a determination that a PFAS use should be exempt from the proposed restrictions because the use is essential or critical to society and to safety and health. DEC should identify the kinds of evidence it would consider credible and sufficient to support a timely determination. The Department should be required to make that determination administratively and in accordance with a deadline (e.g., 60 days), rather than through a formal rulemaking process.
- As currently proposed, the Proposal is unclear about what exactly manufacturers need to demonstrate for compliance. Verified testing methodologies for many PFAS and categories of products do not exist. CUC recommends that an enforcement system that is clear and unambiguous for the regulated community be included. For example, screening tests for “total organic fluorine” are not useful, as they capture more than just PFAS, such as fluoride additives in municipal water supplies. This puts manufacturers who do not intentionally add PFAS to their products at risk for non-compliance. As noted above, CUC advocates that DEC make clear that a manufacturer’s records of its good faith efforts to determine the chemical content of a product and its components will be considered sufficient, and provide examples of such records for this purpose.
- CUC believes Section 9 of the Proposal (“Effective Dates”) should be revised so that it provides greater specificity concerning the effective dates of product prohibitions. While CUC appreciates the effort to establish through Section 9 product prohibitions only after there are similar requirements already in place in a significant number of states in the geographical region proximate to Vermont, manufacturers, distributors, and retailers prefer certainty and sufficient advance notice for business planning purposes. Statutory timelines should take into account the time required for alternative chemistries to be identified. If the formula in the Proposal is maintained, the Department must announce and establish effective dates that are far greater than 6 months after a triggering event occurs, and careful consideration should be given to product complexities, and the likelihood of direct consumer exposures to the products’ PFAS content at levels of concern during the time-limited phase-in period to be provided.

Conclusion

CUC appreciates the opportunity to submit the foregoing comments. We would welcome the opportunity to meet with DEC staff to address our comments and to assist in refining the Proposal.