

From: [REDACTED] (GROW)
Sent: 11 November 2016 11:07
To: [REDACTED]
Cc: [REDACTED] (GROW); GROW D1
Subject: RE: most recent publication of the final draft for PFOA restriction

Sensitivity: Confidential

Dear [REDACTED],

Thank you for your suggestions.

Just one point with regard to your first comment in my text – there is no contradiction between the first and second sentences as "use to produce" (i.e. the use of a substance in the production of a mixture or article) is by no means as wide as "use".

Kind regards,

[REDACTED]

From: [REDACTED]
Sent: Friday, November 11, 2016 10:21 AM
To: [REDACTED] (GROW)
Cc: [REDACTED] (GROW); GROW D1
Subject: AW: most recent publication of the final draft for PFOA restriction
Importance: High
Sensitivity: Confidential

Dear Sir,

it does clarify quite a bit – so thank you for taking the time to reply!

May I respectfully suggest the following:

You are using a few very similar terms to describe the subject fire fighting agents such as “fire-fighting foams”, “concentrated fire-fighting foam mixtures” or “fire-fighting foam mixtures”. Those terms are not defined yet have tremendous impact on the reading of the respective paragraphs. We would suggest to the following terminology and definition that is used in the European foam standard EN1568:

- **fire-fighting foam:** aggregate of air filled bubbles formed from a foam solution used for fire-fighting
- **foam concentrate:** liquid which is diluted with water to produce foam solution
- **foam solution:** solution of foam concentrate in water

This would make very clear which of the three is referred to in the legal text (see below in the body of your mail).

Mit besten Empfehlungen / Yours Sincerely
Meilleures Salutations / Saludos Cordiales
Cordiali Saluti /

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Von: [REDACTED]@ec.europa.eu [REDACTED]@ec.europa.eu]

Gesendet: Montag, 7. November 2016 16:00

An: [REDACTED]

[REDACTED]@ec.europa.eu; GROW-D1@ec.europa.eu

Betreff: RE: most recent publication of the final draft for PFOA restriction

Vertraulichkeit: Vertraulich

Dear [REDACTED]

I will try to explain how the draft restriction proposal works in relation to fire-fighting foams.

Paragraph 2 restricts the use of PFOA, its salts and PFOA-related substances to produce fire-fighting foams and also restricts the placing on the market of those substances in fire-fighting foams. Note that the use of foams to fight fires is not restricted. [REDACTED] Does that not contradict to the first sentence?

Paragraph 4(e) exempts (from the restriction on use in production in paragraph 2) the use of concentrated fire-fighting foam mixtures [REDACTED] foam concentrates that are already in the supply chain on the date the restriction applies (i.e. 3 years after its entry into force) to produce new fire-fighting foams [REDACTED] =foam solutions?.

Paragraph 5(b) exempts (from the restriction on placing on the market in paragraph 2) the placing on the market of the new fire-fighting foam mixtures [REDACTED] =foam concentrates? produced in accordance with paragraph 4(e). So, these new fire-fighting foam mixtures need not comply with the thresholds set in paragraph 2.

Paragraph 5(a) exempts (from the restriction on placing on the market in paragraph 2) the further placing on the market of fire-fighting foams that are already in the supply chain on the date the restriction applies (i.e. 3 years after its entry into force).

Both of the exemptions in paragraph 5 are subject to the proviso that if these fire-fighting foams are used in training (as opposed to real fire-fighting), environmental emissions must be minimised and collected effluents must be safely disposed of. However, if they are used to fight fires, obviously these conditions do not apply.

I hope this clarifies the situation for you.

Kind regards,

[REDACTED]

[REDACTED]



European Commission

DG for Internal Market, Industry, Entrepreneurship and SMEs
Unit D.1. REACH

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From: [REDACTED]
Sent: Friday, October 28, 2016 4:55 PM
To: [REDACTED] (GROW); [REDACTED] (GROW)
Subject: AW: most recent publication of the final draft for PFOA restriction
Sensitivity: Confidential

Dear Lady, Dear Sir,

extending the below previous mail I had conversations with other stakeholders who have brought up a different way of interpretation which I shall herewith mention:

- paragraph 4(e) ("*concentrated fire-fighting foam mixtures that were placed on the market before [date – 3 years after date of entry into force of this Regulation] and are to be used, or are used in the production of other fire-fighting foam mixtures.*") could also be read as: concentrated firefighting foam mixtures = foam concentrates which are added to water on use to give the foam solution = "*other fire fighting foam mixtures*". In which case paragraph 5 (exempting any foam mixture if 5(a) and the criterion "use for training..." or 5 (b) and the criterion "use for training..." basically limits any derogation for firefighting foams to training only! In turn: any emergency use on fires is not exempted, but training is.

I am asking your assistance in interpreting your draft correctly.

Best regards

[REDACTED]

Mit besten Empfehlungen / Yours Sincerely
Meilleures Salutations / Saludos Cordiales
Cordiali Saluti /

[REDACTED]

[REDACTED]

-----Ursprüngliche Nachricht-----

Von: [REDACTED] [@ec.europa.eu](mailto:[REDACTED]@ec.europa.eu) [REDACTED] [@ec.europa.eu](mailto:[REDACTED]@ec.europa.eu)]

Gesendet: Mittwoch, 26. Oktober 2016 17:23

An: [REDACTED]
[REDACTED] [@ec.europa.eu](mailto:[REDACTED]@ec.europa.eu); [REDACTED] [@ec.europa.eu](mailto:[REDACTED]@ec.europa.eu)

Betreff: RE: most recent publication of the final draft for PFOA restriction

Vertraulichkeit: Vertraulich

Dear [REDACTED]

Thank you for your email. I moved to another work field last September.

I forward your email to [REDACTED] and other colleagues in DG GROW dealing with the PFOA file.

Kind regards,

[REDACTED]

From: [REDACTED]

Sent: 26 October 2016 15:55

To: [REDACTED] (SANTE)

Subject: most recent publication of the final draft for PFOA restriction

Good day, [REDACTED]

It has been a while since we last met but I hope this mail finds you well?

I am writing to you in my function as [REDACTED]

[REDACTED] referring to the final draft for the regulation on PFOA (see

https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?MetaCollection=WTO&SymbolList=%22G/TBT/N/EU/411%22+OR+%22G/TBT/N/EU/411/*%22&Serial=&IssuingDateFrom=&IssuingDateTo=&CATTITLE=&ConcernedCountryList=&OtherCountryList=&SubjectList=&TypeList=&FullText=).

Reading the text I was very surprised to see very drastic changes compared to the latest version known to us before (the attached file you had been sending a link to in March this year). Whereas SEAC adopted a higher individual threshold limit for PFOA and related substances of 1000ppb for new foam concentrates for a transition period of 20 years after the regulation entering into force we now have a transition of 3 years at no exempt for threshold limits.

In the conference in March it was stated that limiting values will not be discussed but the commission seeks to shorten the transition period. This statement let us believe that the threshold limits are "accepted".

With the current text there is only a neglectable derogation for new foams. We tried to make you aware that even 10years after expiration of the transition period for the limits on PFOS we still see that agent in foams (not fresh made ones but samples from the market) at levels above the threshold of 25ppb for PFOA. This observation indicates a rough time demand for bleeding the substance out the market place.

Also for the correct reading of the proposal I am asking your assistance to understand the text as is written:

Paragraph 2 sais:

"Shall not, from [date – 3 years after date of entry into force of this Regulation], be used in the production of, or placed on the market in:

(a) another substance, as a constituent;

(b) a mixture;

(c) an article, or any part thereof

in a concentration equal to or above 25 ppb of PFOA including its salts or 1000 ppb of one or a combination of PFOA-related substances."

This means we moved from 25ppb for PFOA or its salts (meaning 25ppb for each substance falling under that category) to now 25ppb for the total sum of all substances of this category. In addition the previous derogation (see paragraph 5d) of the attached SEAC-proposal of 1000ppb as an individual threshold for PFOA and its related substances has been completely skipped. Is that correct?

Paragraph 4 (b) sais:

(a) “the manufacture of a substance where this occurs as an unavoidable by-product of the manufacture of fluorochemicals with a carbon chain equal to or shorter than 6 atoms; ”

I read this as: the manufacturing of Fluorosurfactants with perfluorinated chains of 6 or less Carbons are generally exempted if PFOA/the likes do occur as unavoidable by products. This would then mean, Fluorosurfactants could contain more than 25/1000ppb. Is that correct? If yes the entire burden for meeting the threshold would fall on the manufacturer of firefighting foam concentrates instead of the manufacturer of the contamination source.

Further down in 4 (e) it is said:

(e) “concentrated fire-fighting foam mixtures that were placed on the market before [date – 3 years after date of entry into force of this Regulation] and are to be used, or are used in the production of other fire-fighting foam mixtures. ”

Which I would understand as an exemption for those foam concentrates which are placed on the market within 3 years after entering into force of this regulation and are used to make foam concentrates. Now the vast majority of foam concentrates (I would guess 99% or very close to that) are NOT made from other foam concentrates, hence this exemption is basically not applicable to almost any firefighting foam agent. Was this probably meant to be Fluorosurfactant/-polymer concentrates used to make firefighting foams?

Paragraph 5 sais:

“5. Paragraph 2(b) shall not apply to fire-fighting foam mixtures which were:

(a) placed on the market before [date – 3 years after entry into force of this Regulation]; or

(b) produced in accordance with paragraph 4(e),
provided that, where they are used for training purposes, emissions to the environment are minimised and effluents collected are safely disposed of.”

In my understanding the term “provided” means that the derogations in paragraph 5 only applies for foam agents used in trainings. Is that correct?

In a nutshell almost any derogation for firefighting foams is gone except for the both time wise and threshold wise unlimited use of those foam agents being on the market within 3years after the regulation entering into force which in my opinion clearly contradicts the commission representative’s statement during the March hearing in Brussels.

I would be very interested in your comments to the above questions or some advice who I can pose these to in case you are not the right addressee.

Thanks in advance and best regards

██████████

Mit besten Empfehlungen / Yours Sincerely Meilleures Salutations / Saludos Cordiales
Cordiali Saluti /

[REDACTED]

[REDACTED]