



July 18, 2022

Kerri Malinowski Ferris
Maine Department of Environmental Protection

Re: Concept Draft for the Maine PFAS in Products Program

Submitted via email to kerri.malinowski@maine.gov

Dear Ms. Ferris:

The American Chemistry Council appreciates the opportunity to submit comments to the Maine Department of Environmental Protection (hereafter "Department") on the "Concept Draft for the Maine PFAS in Products Program" (hereafter "Draft"). The American Chemistry Council (ACC) is a national trade association representing chemicals and plastics manufacturers in the United States. Accompanying these comments are comments from ACC's Alliance for Telomer Chemistry Stewardship, Center for the Polyurethane's Industry, and Performance Fluoropolymer Partnership.

ACC and its members engaged throughout the legislative process to share our concerns regarding the breadth and scope of the Maine law. These concerns will be reinforced with implementation of the law and we urge the State to consider efforts that can focus on the real priorities in this area. We recognize that the Department is required to implement the law as enacted, and in some cases has limited ability to make substantive changes but we urge DEP to consider the following areas in developing the implementing regulations for notification.

PFAS are a diverse class. PFAS are a large and diverse class of chemistries with different physical and chemical properties. It is neither scientifically accurate nor appropriate to group such a diverse class of substances together. DEP may wish to consider recognizing the important distinctions within this class of chemistry and more appropriately focus the notification provisions or phase-in the notification requirements in a manner that addresses these concerns.

Notification Requirement and Limited Timeframes. As stated in the accompanying sets of comments, we strongly urge the Department to grant a 1-year extension to the reporting requirement deadline. The Department has heard from various stakeholders with potential reporting obligations that collecting and compiling this immense amount of data is unachievable in the given timeframe. The expectation of manufacturers of complex products with miniscule amounts of PFAS (aircraft, automobiles, computers, mobile phones, medical devices, etc.) to identify and report information to the Department in less than 6 months is unrealistic. Additionally, we have serious concerns with how little time has been given to stakeholders to provide feedback on the Draft. Only giving the public 2 weeks to review and provide feedback on the implementation of a law with a scope this broad will only limit the Department's ability to efficiently and effectively implement the law.

The extremely broad and inappropriate scope of the underlying law raises other concerns that must be clarified by the Department. The concept draft does not indicate an understanding of complex, multi-tiered global supply chains. The Department needs to clarify what entities will be subject to reporting and should give careful consideration to complex supply and distribution chains. For example, will all retail entities and all pharmacies that are the principal importer or distributor be required to notify if they are importing from abroad or out of state? The current concept draft would indicate so, which is unlikely to be feasible. Factoring in the complexity of supply chains, the broad scope of the law, and unworkable timeframe it will likely be impossible for affected parties to comply.

Anticipated Scope of Reporting: During this process the Department specifically requested input on the likely scope of products that would be subject to notification. Given the breadth and complexity of this critical chemistry, the Department should expect to receive notifications for hundreds of thousands of products. The volume of notifications is likely to overload the Department and put a strain on time and resources, which makes the timing and implementation of the notification requirement even more critical. As noted above, DEP could also act to establish a phased notification requirement which could support implementation of the law.

Confidential Business Information (CBI): We wish to reiterate the concerns raised in the accompanying sets of comments about Confidential Business Information. The program would require the disclosure of highly sensitive and proprietary information. The Department has yet to address questions about what information will be considered CBI, how CBI will be protected by the entities managing the database, and how affected parties can make CBI claims. Moreover, the Department should provide more clarity on the overall management of CBI and how both the Department and the Interstate Chemicals Clearinghouse plan to protect CBI.

Alternatives: The definition of “alternatives” must be appropriately defined. The current definition and scope are too narrow and could have unintended consequences including other environmental and health impacts, as well as undermining broader sustainability and circularity objectives. An effective alternatives assessment process considers multiple factors that are important for overall product design and performance, including critical attributes related to efficacy, safety, and sustainability. Absent a more robust and holistic alternatives assessment process, this new regulatory program may foster regrettable substitution that detracts from its objectives.

Feasibility: Consideration needs to be given to the availability and feasibility as well as capacity for large-scale validated testing methods needed to accurately test products and to provide the detailed information required under the law.

Thank you for the opportunity to provide these comments on the Concept Draft for the Maine PFAS in Products Program. Please contact me if you have any questions.

Sincerely,

Kuper Jones
Director, State and Regulatory Affairs
American Chemistry Council