

July 18, 2022

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

RE: PFAS Reporting Concept Draft Rule Comments

Dear Commissioner Loyzim:

The Maine State Chamber of Commerce, representing a network of more than 5,000 businesses across Maine, thanks you for the opportunity to comment on “concept” draft rules for the PFAS reporting law. Maine’s businesses are only beginning to understand the implications of this law and the impacts are far greater than anyone could have expected. During the stakeholder meeting held by the Department on June 30th, the broad impact of the reporting aspect of this law became apparent very quickly. Many of the 250 participants had numerous questions that the Department could not address in the allotted time, as well as several for which answers were not yet available. We understand that the law that was passed was done so by the Legislature and went into effect without the Governor’s signature. The Maine Chamber tried to raise several concerns and potential unintended consequences about the law during the legislative process, however the legislation was hastily considered and had no formal work session. The shortcomings of the law not then fully vetted by the legislature prior to passage are now very apparent.

The law itself, as well as the “concept” draft rules recently published by the Department, will impact nearly every sector of the economy in Maine, including, automotive, healthcare, building and construction, electronics, and agriculture. Every affected business, where a company manufactures or ships or their brand is attached to a consumer product or good into the state of Maine, will risk a ban on their goods unless they meet the requirements of this law. It is therefore critical that companies have clarity and predictability in a transparent, science-based regulatory process. This includes appropriate notice and opportunity to comment on the specific requirements of the law, including but not limited to its notification provisions, the measures the Department will take to protect intellectual property, and the criteria for evaluating uses that will not be subject to future potential restriction.

Based on our understanding of the status of any proposed rulemaking, manufacturers and other affected companies do not yet know what information is required and how to comply with this broad mandate, and in fact may not even be aware of the requirements of the rule. In the absence of such understanding, these companies risk a ban on the sale of their products, which would deprive Maine and its economy of the many demonstrated beneficial and safe uses of this technology, including applications that are important for public safety and public health such as life-saving pharmaceutical drugs, apparel that Mainers rely on to stay warm during the winter, and several electronics products. In addition, the complexity of meeting the requirements of this reporting law and the conceptual draft rules are even more challenging than originally envisioned by our members. For example, in the case of an automobile, which can contain over 30,000 parts - the manufacturer of that car will have to determine which parts contain PFAS at what amounts, what information is trade secret to the component part manufacturer, successfully obtain information from their suppliers and the suppliers-suppliers and then be able to report that information by January 1, 2023, in order to continue to sell that car into Maine. This is further complicated by the definition of “manufacturer” including the person “whose brand name is affixed to the product,” which will lead to duplicative reporting and confusion of reporting obligations among actual product manufacturers and component part manufacturers or companies who license the use of their brand names.

First and foremost, the Maine Chamber reiterates its request of June 29, 2022, imploring the Governor and the Department to extend the reporting deadline scheduled to go into effect on January 1, 2023, for the reporting by a manufacturer of consumer products for sale in the State of Maine containing intentionally added PFAS, pursuant to the Department’s authority at 38 MRSA §1612 (3). This would allow the Department the needed time to follow a rule-making process that appropriately takes into account the input of all stakeholders including the regulated community and would give the regulated community the much-needed time to understand and implement the requirements of such a rule. The necessity of this extension was highlighted during the concept draft rule stakeholder meeting.

It is our understanding that the intent of the legislation that was passed in 2021 was for the phase out and eventual ban of PFAS in *certain* products for sale in the State of Maine by 2030. The impact of the reporting deadline and the current extremely broad scope of the definition of “PFAS” and the notification obligations contained within that bill will have a much broader impact than this intent – potentially impacting millions of products and thousands of companies who are based in Maine, do business in Maine, or sell products into the Maine marketplace.

38 MRSA §1612 (3) was added to the law so that that if the Department of Environmental Protection determined that more time was needed by manufacturers to comply with submission requirements, an extension can be granted. We have reached that point – the Department needs more time to conduct an appropriate rule-making process and Maine’s regulated community needs more time to properly report. This warrants the requested extension based on 38 MRSA §1612 for 12-months post promulgation of the final rule, so that all companies have the ability to evaluate and report on products that contain intentionally added PFAS.

In addition to the reporting deadline, there are several additional questions and concerns raised by the proposed “concept” draft rule, published by the Department on July 1, 2022. Notwithstanding the procedural status of such concept draft rule, we reserve the right to comment on the proposed rulemaking during that comment period, as the currently drafted concept rules are so broad and their impact is so wide on Maine’s business community, that the two weeks provided for review and comment is not sufficient. As a general matter, the areas of concern fall into several categories: Definitions (including but not limited to PFAS, commercially available analytical method, intentionally added PFAS, publicly available, and substantially equivalent information); Manufacturer notification obligations; Protection of confidential business information; Reporting by category; Unavoidable use; and Prohibition on Sale of Products containing intentionally added PFAS.

The last concern the Chamber would like to raise is around the cost impacts this reporting will have on our businesses in Maine. Right now, it is estimated that the lab approved PFAS test will be around \$400 to \$500 per test. We have heard of two examples from our members which truly show how this would impact businesses. A small Maine boat manufacturer knows they have one part which has PFAS added. They would then need to test all the roughly 1,000 parts that go into the manufacturing of an engine. Testing 1,000 pieces at roughly \$400-\$500 per test will be a significant amount of money that some of our small businesses will not be able to take on. Another example is of a small business which might manufacture clothes, or other essential household items. These local small businesses which sometimes can just be located on a downtown Main Street will not have the resources to test all products they will be required to under this rule. We hope the Department will consider the cost impacts the testing requirement will have on all businesses in Maine, but especially our small businesses. At a time when they are dealing with record high inflation, we need to be extremely careful about anything that could potentially lead to a cost increase.

Thank you for the opportunity to provide these comments and please contact Ben Lucas at blucas@mainechamber.org with any questions.

Sincerely,

Benjamin R. Lucas
Government Relations Specialist
Maine State Chamber of Commerce
Email: blucas@mainechamber.org
Phone: 207-441-9333