



**Michael J. Smaha**  
Vice President, Government Relations  
The Homer Building  
Industrious, 12th Floor  
601 13th Street, NW  
Washington, DC 20005  
Cell: (202) 876-4347

January 21, 2025

Ms. Kerri Malinowski Farris  
17 State House Station  
Augusta, ME 04333

VIA EMAIL: [pfasproducts.dep@Maine.gov](mailto:pfasproducts.dep@Maine.gov)

**RE: Chapter 90: Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances**

Dear Ms. Malinowski Farris:

The Can Manufacturers Institute (CMI) appreciates the opportunity to comment on the Maine Department of Environmental Protection's (DEP) December 20, 2024, proposed "rule to establish criteria for currently unavoidable uses of intentionally added PFAS in products and to implement the sales prohibitions and notification requirements for products containing intentionally added PFAS but determined to be a currently unavoidable use pursuant to the amended 38 M.R.S. 1614." CMI submitted comments in August 2024, specifically regarding a "note" to the definition of *product*. We are disappointed that our comments were not incorporated in the recent draft. CMI resubmits our comments and asks that they be incorporated into the new rule.

The draft concept language under consideration includes the following "note" to the definition of *product*:

NOTE: Product includes packages, packaging components, and food packaging as defined in 32 M.R.S. § 1732, when sold individually or in bulk and not used in marketing, handling, or protecting a product.

This language is not in the underlying statute and should be removed because food packaging is specifically exempt under the statute. Maine has a separate law, enacted in 2019, that addresses PFAS in food packaging—REDUCTION OF TOXICS IN PACKAGING, 32 M.R.S. 1731-1738 (Chapter 26-A). The 2021 law 38 M.R.S. 1612 – 1614 clearly excludes products subject to the food packaging law (Title 32, chapter 26-A or 26-B).

Food packaging is not intended to be within the scope of the law at 38 M.R.S. 1612 – 1614 and DEP should ensure that the implementing rule does not blur the line between the two laws. The

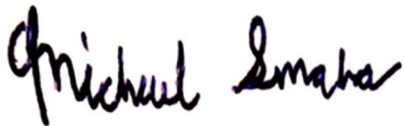
definition of product in the rule should not vary from the definition in the statute and should be the following, without any additional language: "Product" is defined at 38 M.R.S. §1614(1).<sup>1</sup>

The "note" on food packaging in the concept draft is unclear but could be read to mean that the law's exemption only applies to the food packaging once it contains food and that sale of empty packaging materials would not be exempt. To the contrary, such food packaging is under the purview of the food packaging law<sup>2</sup>, and exempt from this one. Straying from the statutory definition and exemption would cause confusion for companies providing food and food packaging in Maine, with no apparent purpose. If DEP has a specific aim or concern regarding the law's exemption for food packaging, we would be happy to discuss it.

**CMI asks that DEP adopt the statutory definition of product and delete the draft "note." In all matters, DEP should be clear that food packaging is covered under 32 M.R.S. 1731-1738 and exempt from this rulemaking and any other rules under LD 1503 (as amended by LD 1537), as dictated by the statute.**

CMI thanks you for the opportunity to comment on the draft concept rule. Please let me know if CMI can answer any questions.

Sincerely,

A handwritten signature in black ink that reads "Michael Smaha". The signature is written in a cursive, slightly slanted style.

Michael Smaha  
Vice President of Government Relations  
Can Manufacturers Institute

---

<sup>1</sup> G. "Product" means an item manufactured, assembled, packaged or otherwise prepared for sale to consumers, including its product components, sold or distributed for personal, residential, commercial or industrial use, including for use in making other products.

<sup>2</sup> The law for food packaging has clear coverage with its definition of food package at 32 MRSA section 1732: "Food package" means a package that is designed for direct food contact. "Food package" includes, but is not limited to, a food or beverage product that is contained in a food package or to which a food package is applied, a packaging component of a food package and plastic disposable gloves used in commercial or institutional food service.