



Center for the  
Polyurethanes Industry

November 10, 2022

Kerri Malinowski Farris  
Safer Chemicals Program Manager  
Maine Department of Environmental Protection  
Office of the Commissioner  
17 State House Station  
Augusta, Maine 04333-0181

RE: Second Concept Draft of Regulation Implementing Maine's Act to Stop Perfluoroalkyl and Polyfluoroalkyl Substances Pollution

Dear Ms. Malinowski Farris,

The American Chemistry Council's Center for the Polyurethanes Industry<sup>1</sup> (CPI) thanks the Maine Department of Environmental Protection (DEP) for engaging stakeholders during the rulemaking required by Maine's *Act to Stop Perfluoroalkyl and Polyfluoroalkyl Substances Pollution* (Act), 38 M.R.S. §1614, and appreciates the opportunity to comment on the second Concept Draft for the Maine PFAS in Products Program (Concept Draft). The Act establishes reporting requirements for products containing intentionally added perfluoroalkyl substances (PFAS), requires companies to pay fees for reporting, and ultimately bans products containing PFAS as of January 2030.

During the comment period on the first Concept draft, CPI voiced several concerns, and many of those concerns still remain in the second Concept Draft.

### **Background**

Polyurethanes manufacturers and chemical producers have been investing in the transition to low-global warming potential (GWP) foam blowing agents for decades. Since the early 2010s, polyurethanes manufacturers have had access to hydrofluoroolefin (HFO) foam blowing agents. HFO blowing agents provide a significant GWP reduction and have a short atmospheric lifetime. The three primary HFO foam blowing agents used in the polyurethanes sector have GWPs < 7, which is approximately 200-1400 times lower than the substances previously used in the industry. Maine is among the short list of states showing leadership in this transition by adopting consistent dates and requirements for energy-saving products.<sup>2</sup>

HFO blowing agents fall into a broad class of fluorinated chemicals but do not possess the properties that have been associated with PFAS. HFO foam blowing agents are not classified as persistent, bioaccumulative, or toxic (PBT).<sup>3</sup> The HFOs used as foam blowing agents have atmospheric lifetimes measured in days and are designed to readily breakdown in the atmosphere if released, forming

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<sup>1</sup> The Center for the Polyurethanes Industry's (CPI) mission is to promote the growth of the North American polyurethanes industry through effective advocacy, delivery of compelling benefits messages demonstrating how polyurethanes deliver sustainable outcomes, and creation of robust safety education and product stewardship programs.

<sup>2</sup> [38 M.R.S. §1613](#).

<sup>3</sup> ECHA PBT Assessment List. Available at: <https://echa.europa.eu/fi/pbt>.



compounds that occur naturally in the environment.<sup>4,5</sup> Environmental fate data on the HFO foam blowing agents were reviewed under Section 612 of the Clean Air Act (CAA). By deeming HFO foam blowing agents “acceptable,” the U.S. Environmental Protection Agency (EPA) has determined that HFO foam blowing agents “reduce overall risk to human health and the environment compared to other substitutes for the particular end-use.” These HFO foam blowing agents are not considered PFAS by EPA<sup>6</sup> and should not be classified or regulated as PFAS. It is inappropriate to regulate these chemicals in the same manner as PFAS. Unfortunately, the definition of PFAS used in the concept draft of the DEP regulation implementing the Act is broad enough to improperly include HFO blowing agents as PFAS. Polyurethane blowing agents should be exempt from the reporting requirement and ban established in the Act.

## **PFAS Definition**

CPI strongly disagrees with the overly broad definition of PFAS in the Concept Draft. Maine DEP should recognize that HFO foam blowing agents, though structurally classified as PFAS under the Concept Draft definition, do not have the same properties. EPA has listed HFO foam blowing agents as acceptable substitutes for the respective end-use applications under CAA Section 612. Additionally, HFO foam blowing agents are subject to CAA reporting requirements. The additional reporting of HFO blowing agents under the Maine DEP creates a repetitive and unnecessary obligation for companies using these products.

The following is a more appropriate definition of PFAS:

PFAS means non-polymeric perfluoroalkyl and polyfluoroalkyl substances that are a group of man-made chemicals that contain at least 2 fully fluorinated carbon atoms, excluding gasses and volatile liquids.

## **Exemption**

As required by statute, Section 4 of the Concept Draft exempts the reporting and banning of certain PFAS when these compounds are regulated by federal law that preempts Maine authority. If DEP does not redefine PFAS, it should expand the exemption to include use of certain PFAS compounds as required by 38 M.R.S. §1613, *An Act To Limit the Use of Hydrofluorocarbons To Fight Climate Change*. This Act requires polyurethane manufacturers to develop low-GWP alternatives to hydrofluorocarbon (HFC) foam blowing agents. Please note, as stated above, the polyurethanes industry does not consider foam blowing agents to be PFAS. In these comments CPI is using the definition from the Concept Draft.

CPI recommends the following changes to Section 4:

The following are exempt from the requirements of this Chapter:

(1) A product for which federal law or regulation controls the presence of PFAS in the product in a manner that preempts state authority. For this purpose, the provisions of this Chapter are severable, and if any phrase, Section or Subsection is preempted by federal law or regulation,

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<sup>4</sup> D.K. Papanastsiou, Atmospheric Chemistry of HFOs and HCFOs, DKV Annual Meeting, November 17-19, 2021, Dresden, Germany.

<sup>5</sup> Published evidence supports very low yield of TFA from most HFOs and HCFOs (August 2021). Available at: [https://www.fluorocarbons.org/wp-content/uploads/2021/08/2021\\_08\\_EFCTC\\_Position-Paper\\_Published-evidence-supports-very-low-yields-of-TFA-from-most-HFOs-and-HCFOs\\_F.pdf](https://www.fluorocarbons.org/wp-content/uploads/2021/08/2021_08_EFCTC_Position-Paper_Published-evidence-supports-very-low-yields-of-TFA-from-most-HFOs-and-HCFOs_F.pdf)

<sup>6</sup> National PFAS Testing Strategy: Identification of Candidate Per- and Polyfluoroalkyl Substances (PFAS) for Testing

the validity of the remainder of this Chapter shall not be affected.

(2) A product subject to Title 32, §26-A, Reduction of Toxics in Packaging, ~~and~~

(3) A product subject to Title 32, §26-B, Toxic Chemicals in Food Packaging, and

(4) A product subject to Title 38 §1613, Hydrofluorocarbon Use Restrictions.

The American Innovation and Manufacturing (AIM) Act, which was signed into law at the end of 2020, implements the phasedown of HFC blowing agents. HFO blowing agents are a preferred alternative to HFCs and are already playing an important role in supporting EPA's climate goals under the AIM Act. By requiring the reporting and eventually banning of HFO blowing agents, per the overly broad PFAS definition in the Concept Draft, Maine DEP is restricting the use of an alternative to high-GWP blowing agents and working against EPA's climate goals laid out in the AIM Act.

The second concept draft allows Maine DEP to exempt a product from subsection 7 if the product is considered "a currently unavoidable use," which is defined as "essential for health, safety, or the functioning of society and for which alternatives are not reasonably available." Products "essential for health, safety, or functioning of society" include but are not limited to "climate mitigation, critical infrastructure, delivery of medicine, lifesaving equipment, public transport, and construction."

HFO foam blowing agents are a currently unavoidable use in construction projects and are also critical to reducing the GWP of those projects. Additionally, foam blowing agents help create products that reduce greenhouse gas emissions associated with heating and cooling, making them essential to both climate mitigation and construction.

### **Responsible Party**

CPI is concerned about the confusion that exists over exactly which companies are required to report applications of PFAS as defined by the law to DEP. CPI's interpretation of the law is that the responsible party is the company which markets the product and whose name appears on the product label. In circumstances where a marketing company is not located within the United States, the importer is the responsible party. However, based on the current wording of the Notifications section of the Concept Draft, there are questions as to whether there are reporting obligations for the rest of the supply chain.

As the Department is certainly aware, it will receive notifications for hundreds of thousands of products (if not more) from all sectors of the economy. The Draft does not demonstrate an understanding of complex, multi-tiered global supply chains. They include an array of manufacturers, from small private firms to multinational corporations, providing chemicals, component parts, and assemblies that come together in a final manufactured article. Deconvoluting such supply chains to identify whether a product or product component contains PFAS, the identities of those PFAS, the degradation products of those PFAS, and the quantity of those PFAS is a complicated and time-consuming process. For products sold directly to contractors and not directly to retailers or individuals, it will be virtually impossible for the original product manufacturer to report on sales into Maine.

CPI recommends DEP draft a definition for the term "responsible party", which describes the reporting hierarchy so that companies can make appropriate determinations and utilize clear terminology within the Notification section of the Concept Draft so there is clarity amongst stakeholders compelled to report. Suppliers should not be required to reveal commercial trade secret information to their downstream customers and the final rule should simplify electronic reporting in a manner that enables "joint submissions".

### **Fees**

CPI opposes fees to report chemicals of low concern to the State.

Conclusion:

The fluorocarbons used in blowing agents break down quickly in the atmosphere, and are non-toxic, non-persistent and non-bioaccumulative.<sup>4</sup> Maine DEP should develop an exemption for low-GWP blowing agents, delay reporting requirements one year after publication of the final rule, and eliminate fees for chemicals of low concern. Doing so will not only help prevent burdensome and repetitive reporting and cost requirements for producers and users of blowing agents but help Maine meet both state and federal climate goals.

If you have any questions or need additional information, please contact me at [Ian\\_Choiniere@americanchemistry.com](mailto:Ian_Choiniere@americanchemistry.com) or (202) 249-6424.

Sincerely,  
Ian Choiniere  
Director