

November 4, 2022

VIA ELECTRONIC SUBMISSION: PFASProducts@maine.gov

Maine Department of Environmental Protection
Commissioner Loyzim

Re: Maine PFAS in Products Program

The Truck and Engine Manufacturers Association (EMA) hereby submits a request for an extension of the January 1, 2023, deadline for reporting requirements under Maine's *Act to Stop Perfluoroalkyl and Polyfluoroalkyl Substances Pollution*, 38 M.R.S. § 1614 (the Act). The Maine Department of Environmental Protection (DEP) has indicated that they cannot consider a blanket extension of the reporting deadline due to the language in the Act but will consider requests by named manufacturers. EMA is submitting the request for extension on behalf of the named manufacturers identified in Appendix "A".

Additionally, EMA hereby submits comments on the Concept Draft for the Maine PFAS in Products Program that was released by the Maine DEP on October 13th, 2022 (Concept Draft).

EMA represents worldwide manufacturers of internal combustion engines and on-highway medium and heavy-duty vehicles (greater than 10,000 pounds gross vehicle weight rating). EMA member companies design and manufacture internal combustion engines that are used in a wide variety of applications, including: trucks and buses; farm, construction, and industrial equipment; marine vessels; locomotives; lawn, garden and utility equipment, and electric generators and other stationary applications. PFAS is widely used in a variety of applications to provide products with strength, durability, stability, and resilience. Consequently, EMA's members are significantly and directly impacted by the rule making activity related to PFAS. We appreciate DEP's consideration of the extension request made on behalf of EMA members and for the opportunity to provide input on the Concept Draft.

Extension Request

EMA's members are unable to meet the reporting deadline of January 1, 2023, for the reasons described in the following comments. Despite the reluctance of DEP to provide a blanket extension from the reporting requirements, we believe that such an extension is warranted under the circumstances facing the DEP and manufacturers that may be subject to the reporting requirements.

Critically, DEP has acknowledged that it is very unlikely that there will be final regulatory language and a digital reporting platform prior to the January 1, 2023, deadline. The path for

compliance is undefined and the means for reporting does not exist. We recognize that DEP is in the process of developing regulatory language and a reporting platform to implement the requirements. However, the language and the platform do not currently exist in a final form and there is significant uncertainty about the path to achieving compliance with the reporting requirements. This alone should be sufficient to warrant an extension of the deadline for all reporting requirements. The absence of the reporting platform is reflected in the most recent Concept Draft that requires resubmission of information if it is submitted “prior to the effective date of this rule and/or the availability of the digital reporting system” (Section 3.A.1(d)). If the digital reporting system is not available and fully operational prior to January 1, 2023, and it is not expected to be, this effectively treats pre-deadline notifications as non-events and imposes a duplicate reporting requirement on any manufacturer meeting the January 1, 2023, reporting deadline.

The timeline for gathering the necessary information to fulfil the reporting requirements is directly impacted by the definition of PFAS being used by DEP. The definition is overly broad and could encompass hundreds of PFAS chemistries, with unique properties and uses and differing environmental and health profiles. Additionally, there is no de minimis reporting threshold identified and CAS registry numbers have not been provided to identify chemistries of concern. The absence of this information contributes to the expansiveness of the reporting requirements, and the associated burden and increases the time needed to gather information needed to comply.

The potential scope of the reporting obligations is enormous and may necessitate dedicated resources (consultants, or possibly additional employees) to undertake the investigative, and administrative burden of the reporting obligations. Complex products including engines, on-highway and nonroad vehicles and equipment will require inquiries to hundreds of suppliers, many of whom are layers deep in the supply chain and will require significant resources and time. It is not uncommon to have supply chains that are eight to ten layers deep. Smaller engines and equipment (like lawn, garden and utility engines and equipment) can contain hundreds of parts with similar complexity in the supply chain.

Suppliers sometimes consider chemical composition information proprietary and are unwilling to disclose chemical compositions. Concerns have been expressed regarding the protection of intellectual property and if not adequately addressed, disclosures by suppliers may be impacted. Suppliers cannot be compelled to provide information and in the absence of full disclosure, laboratory analyses may be needed to identify the presence of PFAS. Manufacturers will be competing for limited laboratory resources whether the analysis is conducted with in-house resources or external resources. Processing delays are to be expected. Manufacturers may need to investigate thousands of components. The process of investigation, seeking disclosure and conducting testing is time-consuming and resource intensive. It cannot be completed prior to the reporting deadline of January 1, 2023. In fact, the process of identifying the presence of PFAS as defined in the Act and Concept Draft will take manufacturers at least 2 years to complete. Deadlines for reporting that provide less than 2 years lead time will have unintended consequences, including both under-reporting and over-reporting of PFAS in products. Maine DEP has indicated that they have granted a six month extension to a group of manufacturers. Although we appreciate the willingness of Maine DEP to consider the request for extension of the reporting deadline, we do not believe that a six month extension is sufficient and we request a two year extension to the

deadline for reporting requirements.

Comments on Concept Draft (October 13, 2022, Release Date)

EMA would like to submit these preliminary comments on the Concept Draft. We understand that the DEP plans to undertake a separate rulemaking in the summer of 2023 to designate products or product categories as currently unavoidable uses. The Concept Draft includes a definition for the term “Essential for Health, Safety, or the Functioning of Society” (Concept Draft, Section 2 I) and the term is referenced in the definition of “Currently Unavoidable Use”. (Concept Draft, Section 2 F). We believe that the term should encompass products critical to the movement of freight and people. Additionally, products that support construction, agriculture, forestry, and mining and products that provide backup, primary and emergency power (i.e. generator sets) should also be encompassed.

As noted previously, the absence of CAS registry numbers to identify the PFAS chemistries subject to the requirements, increases the burden of reporting and creates uncertainty surrounding compliance responsibilities. We request that DEP provide an inclusive list of PFAS chemistries subject to the requirements, by CAS registry number where available.

Additionally, the Concept Draft requires a Global Product Classification brick category and code when submitting a notification to the Department. It is not clear under which category mobile and stationary engines and associated nonroad equipment and marine vessels would be categorized. We would appreciate direction on the Global Product Classification brick category and code applicable to the products identified above.

Furthermore, as the rule development process proceeds, it is important to note that related industries share supply chains. Specifically, it is recognized that automotive supply chains are often the same supply chains utilized by other industries. EMA’s members utilize global suppliers and rely on many sub tiers to source parts for a variety of regions and applications. There is significant reliance on suppliers common to the automotive sector. Moreover, engine manufacturers often produce a wide variety of engines for use within a sector and many produce engines for use in different sectors, including on-highway, off-road, marine, locomotive, and stationary applications. The same supply chain may support a wide variety of applications including such uses as industrial drilling rigs, compressors, construction equipment applications including wheel loaders, bulldozers, crawler tractors, crawler loaders, truck-type loaders, off-highway trucks and hydraulic excavators. In some instances the same engine can power a military application, mining application, construction application and automotive use in a bus or pickup truck. The potential combinations are extensive and the examples outlined are not exhaustive. Failure to recognize the implications of shared supply chains when identifying currently unavoidable uses could lead to serious supply chain issues, including delays, shortages and absence of parts.

For illustrative purposes, the following is a non-exhaustive list of the wide variety of potential applications that utilize components, and in some instances, complete engines, that are common to “automotive” uses:

- agricultural equipment
- rotary tillers
- forestry equipment
- self-propelled agricultural vehicles
- material handling equipment
- fork-lift trucks
- road maintenance equipment (motor graders, road rollers, asphalt finishers)
- snow-plow equipment,
- ground support equipment in airports
- aerial lifts
- mobile cranes
- ships / marine power
- railway locomotives
- generating sets

The high-volume purchasing power of the automotive supply chain is extremely determinative of the availability of supply options for other sectors. Many of the sectors that rely on automotive supply chains are highly specialized, low-volume applications with notably longer lifecycles than automotive applications. Vehicles, engines, and equipment impacted by this rule include equipment necessary to support critical infrastructure needs and power critical goods movement, and agriculture, among many other things. From emergency stationary engines in hospitals, mines, and other industries to emergency equipment like fire trucks, to military, construction, and farm equipment, to transport trucks and school buses, the potential implications of the rule are wide-reaching.

Importantly, we know that the U.S. Environmental Protection Agency (EPA) is actively engaged in a rulemaking process to address PFAS in products, including reporting requirements. We encourage DEP to recognize the EPA activity on this issue, rather than pursue a separate, duplicative, and potentially conflicting set of requirements.

We appreciate the opportunity to provide these comments. Please do not hesitate to contact Dawn Friest at (519) 999-4480 (or at dfriest@emamail.org) if you have any questions.

Respectfully submitted,

TRUCK & ENGINE
MANUFACTURERS ASSOCIATION

Attachments: Appendix A

Appendix A

EMA Members Requesting Extension of Reporting Deadline

American Honda Motor Co. Inc.

Blue Bird Corporation

CNH Industrial

Cummins Inc.

Daimler Truck North America LLC

Deere & Company

Detroit Diesel Corporation

FPT Industrial

Freightliner Custom Chassis Corporation

Hino Motors Manufacturing USA, Inc.

Kubota Engine America Corporation

Navistar Inc.

PACCAR Inc

Thomas Built Buses, Inc.

Volvo Group North America, LLC

Yanmar America Corporation