



Center for the
Polyurethanes Industry

July 18, 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: 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 Industry¹ (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 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.

Last year, ME LD 1503 was signed into law. During the legislative process, CPI voiced several concerns with the bill, and many of those concerns still remain in the Concept Draft. CPI requested a veto of LD 1503 due to the conflict with 38 M.R.S. §1613. 38 M.R.S. §1613 requires polyurethane manufacturers to develop low global warming potential (GWP) alternatives to hydrofluorocarbon (HFC) foam blowing agents. LD 1503 bans the new low GWP alternatives in 2030. These alternatives have been listed as acceptable substitutes for the respective end-use applications by the U.S. Environmental Protection Agency (EPA) and, ultimately, EPA will require the use of low GWP foam blowing agents under the American Innovation and Manufacturing (AIM) Act. This will result in a direct conflict between Maine's law and federal regulation.

Background

Polyurethanes manufacturers and chemical producers have been investing in the transition to low-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.²

¹ 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.

² [38 M.R.S. §1613](#).



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).³ 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 compounds that occur naturally in the environment.^{4,5} 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,” 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 EPA⁶ 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 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. The United States Environmental Protection Agency (EPA) has listed HFO foam blowing agents as acceptable substitutes for the respective end-use applications under Section 612 of the Clean Air Act (CAA). 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

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*. 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:

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

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

⁵ 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

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

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, 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 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, the 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.

Timeline

A reporting date of January 1, 2023, does not give companies purchasing from multiple suppliers adequate time to obtain the data necessary for reporting compliance.

DEP should revise Section 3 to read:

Notification.

A. Beginning one year after publication of the final rule and prior to sale or distribution for sale in Maine of a product that contains intentionally added PFAS.

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.⁴ Maine DEP should develop an exemption for low-GWP blowing agents, delay reporting requirements six months 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 or (202) 249-6424.

Sincerely,

Ian Choiniere
Director