

July 17, 2022

Ms. Kerri Malinowski Farris  
Maine DEP  
17 State House Station  
Augusta, ME 04333-0017

**RE: Comments on the Maine PFAS in Products Concept Draft**

Dear Ms. Farris:

The Maine Grocers & Food Producers Association and Retail Association of Maine are submitting comments on the Maine PFAS in Products Program Concept Draft for Public Law c. 477 enacted by the Maine Legislature in July 2021. This law requires manufacturers of products with intentionally added PFAS to report the intentionally added PFAS in products beginning in 2023. Effective January 1, 2030, any product containing intentionally added PFAS may not be sold in Maine unless the use of PFAS in the product is specifically designated as a currently unavoidable use by the department.

The Maine Grocers & Food Producers Association is a business trade association representing Maine's food community; Main Street businesses, including independently owned and operated grocery stores and supermarkets, food and beverage producers and processors, manufacturers, wholesalers, distributors, and supportive service companies representing more than 250 members. The Retail Association of Maine has more than 350 members statewide and represents retailers of all product types and of all sizes, large and small.

While we support the phase out of PFAS chemicals where there are safer alternatives, we have significant concerns about the January 1, 2023 reporting deadline. Small retailers can sell thousands of different SKU's (stock keeping units) in a single store. Larger retailers offer more than 100,000 different SKU's at any given time. Hundreds of thousands (and likely more) of products will need to be tested and reported within the next five months. The reporting feasibility will be extremely challenging and those challenges are exacerbated by the on-going supply chain issues and lack of testing availability for the scale of the program.

We express significant concern and are requesting further clarity for retailers' responsibility within the program. Retailers sell a variety of products and some retailers would be considered manufacturers if they produce private label goods. We are concerned that retailers will be required to verify that the thousands of products that they sell are compliant with the reporting requirements. If there are testing requirements on the part of retailers — either as a direct seller or as a private label manufacturer, we have concerns about their ability to adequately test for the chemicals/compounds of concern.

We agree that focusing on intentionally added substances is the correct action. PFAS contamination will be an issue across many different products, however, we recognize the challenge that exists for both the regulator and the regulated parties to comply with this new law.

**Comments specific to the program draft rules as published on 6/29/22:**

Section 2, Definitions: The “Commercially available analytical method” definition appears to point to EPA Environmental Methods and Measurements. Consumer products will have different extraction methods than environmental test methods and as such the lower testing limits will vary. There is limited commercially available testing for PFAS in “articles”, and there is no single test for PFAS today. The testing of wastewater and surface waters is different than testing chemicals in products. The methodologies and the lower limits will be different across media/materials, and the department should take those limitations under consideration.

Section 2, Definitions The PFAS definition N, ‘Perfluoroalkyl and polyfluoroalkyl substances’ points to thousands of unique PFAS substances – many of which do not have analytical methods developed for testing today. We have concerns with how this will be implemented, and ultimately, what requirements will be placed on retailers (and manufacturers / brand owners).

Section 3, (D) Notification: Manufacturers will be motivated to update their reported information if they have removed PFAS and do not need a mandate to do so. Creating a mandate to update the removal seems unnecessary and drives additional burden on regulated parties and the agency alike. We would urge letting manufacturers choose to update their information in a chemical removal scenario. In our opinion, the likelihood of consumers looking at reported information prior to purchase is very low. So forced updates to identify products that have removed the chemistry seems like a low value exercise to consumers and the agency alike.

Section 3, (D) Notifications 2 (c): Prior to the start of sales notification is not preferred. We would recommend annual reporting that aligns to other states’ chemicals of concern reporting. This would be our preferred approach for retailers that would be considered importers.

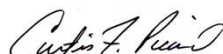
Section 4, Exemptions: Both the statute and the concept draft exempt products that are subject to the Reduction of Toxics in Packaging restrictions in Title 32, Chapter 26-A, however, it is not clear if that exemption is applicable to all packaging products that *could* potentially be subject to 26-A or only those packaging products *actually* regulated. For context, under 26-A, packaging with PFAS is only prohibited two-years after Maine finalizes rules determining that a safer alternative to PFAS is available for that food packaging. It would be helpful to get explicit clarification that packaging is not subject to the reporting requirement even if Maine has not yet finalized regulations for PFAS in food packaging.

In closing, we would strongly urge the department to consider alternatives to the January 1, 2023 reporting deadline. As noted above, the ability to reliably test for the thousands of PFAS products is challenging, expensive and in many cases non-existent. With only five months remaining for final rulemaking and compliance, we would urge strong consideration of a registration extension or enforcement delay.

Thank you for the opportunity to share our concerns with you. Please feel free to contact us with any questions.



Christine Cummings, Executive Director,  
Maine Grocers & Food Producers Association  
PO Box 5234, Augusta, ME 04332  
christine@mgfpa.org | 207-622-4461



Curtis Picard, President & CEO,  
Retail Association of Maine  
45 Melville St., Augusta, ME 04330  
curtis@retailmaine.org | 207-623-1149