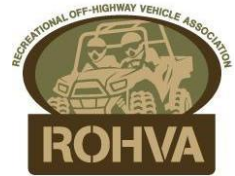




**MOTORCYCLE  
INDUSTRY  
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July 18, 2022

Commissioner Melanie Loyzim  
**Maine Department of Environmental Protection**  
State of Maine  
17 State House Station  
Augusta, ME 04333

**Re: PFAS in Products Concept Draft - 06292022**

Dear Commissioner Loyzim:

Hundreds of companies represented by the Motorcycle Industry Council (MIC), the Recreational Off-Highway Vehicle Association (ROHVA), and the Specialty Vehicle Institute of America (SVIA) are considerably impacted by the requirements proposed in Maine's PFAS in Products Concept Draft dated June 29, 2022.

Maine's PFAS in Products Concept Draft places substantial requirements on manufacturers over an unattainably short period of time which threatens business operations in the state. Our members are concerned that the concept draft is infeasible as it:

- provides insufficient time for manufacturers to comply with requirements;
- lacks provisions for products currently in the market;
- lacks sufficient clarity of critical information, including required testing levels; and
- creates unnecessarily duplicative and burdensome work.

We urge you to:

- extend the deadline for reporting products containing intentionally added PFAS to January 1, 2024;
- provide safe harbor allowance for products already in the market;
- clarify critical testing and fee requirements for manufacturers; and
- avoid unnecessarily duplicative requirements through alternative approaches to compliance.

**Insufficient Time for Manufacturers to Comply**

Despite legislation being signed into law 9 months ago, Maine's regulatory process is just now beginning, leaving less than 6 months to develop regulations, implement a reporting system, and provide detailed guidance for manufacturers to follow when testing and reporting. This will leave manufacturers unable to realistically comply with requirements.

PFAS comprises thousands of chemical compounds. It is not feasible for manufacturers, their suppliers, and the limited number of qualified testing facilities to provide required content

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information starting January 1, 2023, on a reporting system that is yet to be developed or tested for functionality. At a minimum, the deadline for reporting needs to be pushed to January 1, 2024 in order to allow manufacturers adequate time to test hundreds of parts and components that make up motorcycles, ATVs, and ROVs, not to mention personal protective gear such as jackets, pants, gloves, boots, and helmets, to name a few. Extending the reporting deadline will also improve data accuracy and avoid potential mis-reporting due to a rushed process and fear of non-compliance.

### **Lacks Provisions for Products Currently in the Market**

The Products Concept Draft fails to exclude vehicles, gear, parts, safety clothing, etc. that are already in inventory across the state. Manufacturers likely have multiple years of replacement parts and other products already in distribution channels and in inventory at retailers. A failure to allow safe harbor language for these products would mean that every dealership, repair shop, aftermarket distributor, and retailer would need to return or dispose of all inventories that arrived prior to implementation of this new law. That is simply not feasible and could cause scores of small businesses to shutter their doors and walk away from their livelihood. MIC, SVIA and ROHVA recommend adding in language under Section 7 of the draft that would grandfather in those products but would also add a label to the existing inventory indicating that it entered commerce prior to the implementation date. Perhaps language along the lines of:

7. *Failure to Provide Notice.*

A. *A person may not sell, offer for sale, or distribute for sale in the State of Maine a product containing intentionally added PFAS if the manufacturer has failed to provide the information required under Section 3.*

(1) *The prohibition in this Section does not apply to a retailer in the State of Maine unless the retailer sells, offers for sale, or distributes for sale in the State a product **received on or after January 1, 2024**, for which the retailer has received a notification pursuant to Section 8(A)(2) that the sale of the product is prohibited.*

(2) ***For products entered into inventory or commerce prior to January 1, 2024, the retailer must affix a label noting that “This product entered into inventory or commerce prior to January 1, 2024 and may contain Perfluoroalkyl and/or Polyfluoroalkyl Substances.”***

In the absence of such language, manufacturers may need to consider issuing stop sale notices to consumers in Maine and pull all product from the state’s retailers and distribution channels. The devastating effect to Mainers could be consumers shopping out-of-state or having online products shipped to out of state addresses, further harming Maine businesses and the state’s economy as a whole.

It will be very difficult – if not impossible – for manufacturers to identify all in-state and online retailers of their products that are holding inventory, and manufacturers should NOT be held responsible for those vehicles, replacement parts, personal protective gear, etc., that are

already in commerce prior to the reporting deadline. Manufacturers must also not be held responsible for distributors and retailers who are not aware of or choose to ignore Maine's requirements.

### **Lacks Sufficient Clarity for Critical Information**

To report PFAS content, manufacturers and test facilities must know the level to which testing must occur. The state must clarify, to what level products must be tested (how many parts per thousand or per million?). Any determined level must be one that is reasonable given cost and is attainable given limited capacity among testing companies.

The costs of this law will be staggering to manufacturers considering the immediate testing requirements, the unknown per-product administrative fee, lost sales, costs for returned products, and administrative/regulatory compliance expenses, among others. This does not include legal fees related to enforcement under 38 M.R.S. 347-A-349. Manufacturers must be provided with the fee structure as soon as possible so they can evaluate whether continued business activity in Maine is feasible.

Maine must also consider alternative approaches to reporting as some suppliers do not disclose chemical compositions which are considered sensitive and protected intellectual property. Manufacturers may have to rely on the data provided by suppliers. Reporting should be considered "accurate" as long as manufacturers in good faith rely on the data provided by their suppliers. Additionally, it would be unrealistic for manufacturers to engage "commercially available analytical methods" (e.g. third party laboratory) for every product they deal with.

### **Duplicative Burdensome Work for Manufacturers**

US EPA is currently contemplating a comprehensive PFAS reporting rule under TSCA, which will encompass what Maine requests to report. In addition to this, other states are working on similar reporting or registration requirements for products containing intentionally added PFAS.

Manufacturers should not be burdened with unnecessarily duplicative work. To reduce the potential for unintentional reporting errors or lapses, manufacturers should be allowed to use the same information provided to US EPA for reporting to states. There should be one central database for reporting by companies, whether that be a national reporting registry, a dedicated page on companies' websites, or a secure centralized third-party website accessible to all states and the public. Options like these will go a long way in easing the very difficult task of complying with a patchwork of registries across multiple states and the federal government.

### **Conclusion**

MIC, ROHVA, and SVIA appreciate the opportunity to work with the Maine Department of Environmental Protection to improve the concept draft. We trust that you can see the considerable downsides to a rushed regulatory process that does not provide safe harbor provisions for existing products/inventory and one that does not clearly define testing requirements. We understand the desire of Maine to address PFAS contamination and reduce

or eliminate it in products. However, rushing the process through runs the risk of inaccurate data, great financial and legal risk to manufacturers, and great harm to small businesses in the state as well as companies selling into Maine.

Thank you for your consideration and please feel free to reach out with any questions you may have.

Regards,



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Motorcycle Industry Council  
Recreational Off-Highway Vehicle Association  
Specialty Vehicle Institute of America

Enclosure: Concept Draft redline