NCTO
NATIONAL COUNCIL OF TEXTILE ORGANIZATIONS

AMERICAN TEXTILES
WE MAKE AMAZING

July 15, 2022

Kerri Malinowski
Maine Department of Environmental Protection
17 State House Station
Augusta, Maine 04333

Dear Ms. Malinowski:

On behalf of the National Council of Textile Organizations (NCTO), I am writing to express concerns with the current rulemaking draft proposed by the Maine Department of Environmental Protection (DEP) regarding notification requirements and sales prohibitions for products containing "Intentionally Added PFAS under Maine's Act to Stop Perfluoroalkyl and Polyfluoroalkyl Substances Pollution, 38 M.R.S. §1614".

NCTO is a not-for-profit trade association established to represent the entire spectrum of the United States textile sector, from base fibers to finished sewn products, as well as supplier sectors that have a stake in the prosperity and survival of the U.S. textile industry. The U.S. textile sector is an extremely diverse, technically advanced, and highly capital-intensive industry that involves a multi-stage production chain. Our industry employs 534,000 workers nationwide and produced over $65 billion in total U.S. output in 2021. More information regarding NCTO and the U.S. textile industry in general can be found on our website at www.ncto.org.

Our concerns are tied to implementing a public notification system within the next 5 months. As such, we have joined with other interested parties in submitting letters to the governor of Maine in support of delaying implementation of this rulemaking to allow adequate time to promulgate and publish the highly complicated rules needed to implement this new law.

Beyond our call for a reasonable delay in implementation, our concerns directly with this draft procedure are as follows:

1. The draft defines alternative as a functionally similar product – there is no functionally similar product to replace fluorinated materials today, as only fluorinated materials result in the robust water, stain, and oil repellency. For many items in the marketplace, especially high-performance materials, there is no alternative available that will yield the durability, repellency, and stain resistance required by so many products today – hence the use of the fluorinated material. Please consider removing the following words from that definition of alternative – "results in a functionally similar product and that, when compared to a PFAS that it could replace,…"

2. The draft mentions a commercially available analytical method for determining PFAS in a product, but the reference to the EPA methods does not contain methods for testing consumer products. It only references environmental media test methods. Please confirm which test methods are to be used.

3. We have a concern about the definitions of Person, Consumer, Product, Product Component, and Offer For Sale. Tied together, they seem to indicate that any corporation who purchases goods sold by

manufacturers and wholesalers, or who offers a product for purchase by consumers, including online sales, will be responsible for reporting this information to the state, and not just the manufacturer of the final consumer product (as product is defined as including product components that are sold or distributed for personal, residential, commercial, or industrial use, including for making other products). We believe the intent is for the final consumer product manufacturer to report and not every manufacturer and distributer of every product component within a particular supply chain. The current wording is confusing and depending on final interpretation is likely to be highly duplicative. We suggest that DEP limit the definitions or add a consumer product definition and reference under section 3. Notification requirements should be limited to the manufacturers of consumer products for sale directly to end users (not product components). Even this is highly duplicative.

4. Under section 3. Notification, (1) mentions an extension of the notification deadline is possible if the following conditions are met, but it doesn't list what those conditions are. We encourage consideration of whether a company has a phase out plan for PFAS usage over the next 3 years as a condition. Doing so would keep the DEP from having to manage the registration process for products where usage is being eliminated. Secondly, it would preclude such companies from having to spend time and effort to hire personnel to manage the notifications and supplier communications, etc. as well.

5. We have currently reviewed the ICC reporting system and there are many concerns with that system as it exists today. Product differentiation is not specific enough for a consumer to be able to know which product has PFAS content. For example, REI lists a textile for chairs that contains xxx chemistry. But it doesn't say what chair that specific textile is associated with or if all camping chairs from REI contain that chemistry. Consequently, the information is either confusing or insufficient, making it difficult for a consumer to know they are buying PFAS free products.

6. The comment timeline doesn't allow for proper vetting of the ICC database. Nonetheless, it is important to note the following: It would be good for the DEP to talk to the groups that are using this reporting database already (or users that have to report for these purposes today) - Oregon Toxic-Free Kids Act (TFKA) and/or the Washington State Children's Safe Products Act to determine how implementation has gone for those two organizations and their requirements. For example, Oregon TFKA has specific limits for specific chemicals and no reporting is required if below the limit. We strongly believe a reporting limit would be beneficial to capture only the intentionally added chemistry. The reporting limit for PFAS should be 100ppm, which aligns with all other product reporting limits in other legislation and 3rd party certifications, such as California food packaging and cosmetics legislation, as well as GreenScreen for furniture and fabrics requirements, in addition to the food compositing certification, and certification for recycling of items.

   In addition, this legislation allows 3 biennial notices and then the chemicals must be removed, which could take care of the further regulation of PFAS in products altogether for the state of Maine. Further, additional time to fully vet the system and speak with users is of utmost importance as I believe you can improve the functionality and usability for all involved, including the intended beneficiaries of this new law, consumers in the state of Maine.

7. Manufacturers of consumer products are usually product component assemblers. They are not going to be equipped with the information needed to input these data for multiple different suppliers of components. For example, a chair manufacturer will routinely source cushions, pillows, wood or metal components, and varnishes from several different suppliers. Each component would likely contain different types and levels of PFAS that would be virtually impossible to track and accurately report. This problem becomes more complicated with multifaceted products, such as automobiles, containing over 1000 components. In addition, most product component manufacturers, who use PFAS, are not knowledgeable as to the CAS numbers of the PFAS they use. Many times, the PFAS used isn't even assigned a CAS number or identification by the EPA as this can be confidential business information of the chemical supplier.

8. Regarding a significant change in percentage levels, we suggest only asking to report a change if the amount of PFAS is increased. If the PFAS decreases, unless it decreases to zero, there is no value in repeated reporting. If manufacturers are forward thinking, they should be decreasing the amount of PFAS usage, and the first reporting will be in the form of a range the explains the maximum amount contained in the product. If the amount is increased, the department should then be notified. However, the reporting requirement should include a reasonable variability of application and testing that could allow for a result as high as a 20 percent variation in test results (the range of content). We suggest only reporting a change in content if it is 400ppm higher than the average number in the range of content originally reported. For example, if a company reports a range of 800-1200ppm total fluorine, then no change is reported unless it is 1400ppm or higher (1000ppm average + 400ppm = 1400ppm). If the range was 1800-2200ppm, then the company doesn't report unless the value is 2000+400ppm = 2400 ppm or higher.

9. You requested feedback concerning the number of SKU's a company would have to report and the fees you should charge. It is difficult for our membership to evaluate how many SKU's our customers would have and which would sell into Maine. However, just to give you perspective, members have reported that number could be as high as 12,000 SKU's that would be subject to reporting if they are all sold into the state of Maine.

10. Concerning the fees that should be charged, we would again refer you to Oregon and Washington state and their implementations. We note that Oregon charges $250/sku. Referencing a company as described above that has 12,000 SKU's, the $250 fee could result in $3,000,000 per year for this particular company. This is not a cost that companies will want or be able to absorb. Consequently, pushing back the rollout of this program and enforcement date is necessary to allow companies time to decide whether doing business in the state of Maine is feasible, or where possible, reformulating their products to preclude the need for reporting. However, companies must have time to reformulate and get PFAS worked out of their supply chain. Additionally, please consider charging the fee only to one category of products, and not each individual SKU.

11. For Section 3, part D, updates to the system should only be annually or as things change, within 90 days of the change. Mainly due to the time it takes to get test results back and the time it takes to hire and train new personnel, if the contact person for the company changes. This will reduce the number of requests for changes you have to deal with and limit what the system has to

manage as well.

12. As for Exemptions in section 4 – there needs to be considerations for products made of recycled content. A product that once contained high levels of PFAS might be recycled into new products and additional PFAS may not be added. This product may still test high for fluorine content even though PFAS was not intentionally added at the manufacturer level. It was already present from recycled content. Consider adding recycled content materials without intentionally added PFAS content to the exemption list.

13. Section 8 – Certificate of compliance – A. instead of "reason to believe that" please consider changing the wording to "substantial information". In addition, 30 days isn't sufficient time for the consumer product manufacturer to work through their supply chain to identify the specific product component that might be causing the issue and get it tested with a test report required by the DEP. We would also suggest that you take out the (2) requirement of downstream notification. If the company can't provide the certificate, the company is restricted from business in the state of Maine and the Department may need to consider posting that failure to comply on the same website where contents are reported.

14. Section 2(J) – Definition of Fabric Treatment should be expanded/clarified that this is aftermarket consumer products (product purchased in a container from a hardware store, for example) and does NOT apply to industrial applications. The intent is to restrict aftermarket products only. We suggest the addition of, "…or protective treatments applied at the industrial level." to the last sentence in this section.

15. Section 5(B) - Language states: Effective 1/1/2023, "prohibition does not apply to sale or resale of a used fabric treatment…" Based on the proper definition of 'Fabric Treatment', there can be no such thing as a 'used fabric treatment'. We are not clear that there is a market for such items. The last sentence would be better understood if it read as follows "This prohibition does not apply to the sale or resale of a used product to which fabric treatment has been applied".

In closing, the regulations you develop hold the potential to directly and severely impact our U.S. manufacturing operations and workforce. As such, we appreciate your willingness to consider our views in this important and highly complicated matter. Moreover, NCTO and our member companies are committed to working with you toward the shared goal of safe, sustainable domestic manufacturing that provides extremely useful materials in a manner that protects human health and the environment. We thank you for considering the perspectives of all stakeholders, including U.S. textile producers.

Sincerely,

Kimberly Glas
President & CEO
National Council of Textile Organizations