



January 27, 2025

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

Sent Via Electronic Mail: PFASProducts@Maine.gov

Re: Comments to DEP's Proposed Rule to Implement Maine's PFAS in Products Program

The Personal Care Products Council (PCPC)¹ respectfully submits the following comments on the Maine Department of Environmental Protection (DEP) for the proposed rule, **Chapter 90: Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances**.

PCPC and its member companies have long been supportive of commonsense laws and policies that protect both the consumer and the environment. For this reason, we have supported laws in other states that prohibit certain intentionally added PFAS from use in cosmetics. We have appreciated the opportunity to weigh in on earlier versions of this proposed rule, and we further appreciate this opportunity for feedback. The concerns addressed in our prior submissions remain critical to our industry, and we emphasize the following recommendations.

§2. DEFINITIONS

We appreciate efforts to increase specificity in this section. We continue to request further clarification, particularly on the following points:

- ***Commercially available analytical method:*** The proposed definition for this term is challenging for industry because today's commercially available methods are inadequate

¹ Based in Washington, D.C., the Personal Care Products Council (PCPC) is the leading national trade association representing global cosmetics and personal care products companies. Founded in 1894, PCPC's approximately 600 member companies manufacture, distribute, and supply the vast majority of finished personal care products marketed in the U.S. As the makers of a diverse range of products millions of consumers rely on and trust every day – from sunscreens, toothpaste, and shampoo to moisturizer, lipstick, and fragrance – personal care products companies are global leaders committed to product safety, quality, and innovation.

to detect specific PFAS in the complex matrices that exist for the wide range of products in the market today. There are several reasons for this:

- PFAS are a highly complex chemical classes of compounds with diverse functional groups attached to the fluoroalkyl moiety (e.g., Perfluoroalkyl acids, Polyfluoroalkyl acids, PFAS precursors, etc.). This could represent hundreds of targets that “commercial methods” will need to be able to target. The referenced EPA methods² generally test for PFAS *in soil and water* and are not specific to finished products or packaging. While there are available test methods that measure PFAS in consumer products/cosmetics, they are not necessarily considered “commercial methods” as defined.
- Even established testing methods used for cosmetics products will need to be validated/verified for the corresponding product matrixes – meaning they will require modifications – which is not something that is permitted under the proposed definition.
- The lack of adequate commercially available test methods makes DEP approved “ranges” even more important. PCPC again asks that DEP provide additional clarity on how it will establish such approved ranges.
- ***Fluorinated Container:*** 38 MRSA Section 1614(4)(B)) provides that the provision “...does not apply to the package of a product prohibited from sale, offer for sale or distribution for sale pursuant to subsection 5, paragraph B, B-1, D or E **if that package is a fluorinated container.**” (*emphasis added*). We request that DEP engage with stakeholders to define the term “fluorinated container” and to further specify what processes or packaging types qualify as fluorinated.

In sum, PCPC continues to strongly urge DEP to build in greater flexibility on the test methodology/ies used to measure PFAS in finished products and to establish DEP-approved ranges as soon as possible.

² EPA PFAS Methods: (1) [ASTM D7968: Standard Test Method for Determination of Perfluorinated Compounds in Soil by Liquid Chromatography Tandem Mass Spectrometry \(LC/MS/MS\) \(PDF\)](#)(17 pp, 175 K) [ASTM may charge a fee for this document.] (2) [ASTM D7979: Standard Test Method for Determination of Perfluorinated Compounds in Water, Sludge, Influent, Effluent and Wastewater by Liquid Chromatography Tandem Mass Spectrometry \(LC/MS/MS\) \(PDF\)](#)(18 pp, 181 K) [ASTM may charge a fee for this document.]

§3: NOTIFICATION

PCPC also continues to oppose the proposed language that would provide confidentiality protections under the Maine Freedom of Information Act rather than the Uniform Trade Secrets Act. As written, this protection neglects the relevant interests of the business community impacted by the regulation. The Uniform Trade Secrets Act was designed as a legal framework to provide uniform definitions and protections for trade secrets throughout the country, whereas the Maine Freedom of Information Act exists to govern public records disclosure within the state. The Uniform Trade Secrets Act is thus a much more appropriate means of governing the protection of confidential business information in a manner that enables companies to comply with this new requirement without fear of compromising proprietary material.

§4: EXEMPTIONS.

The elimination of the previous exemption for cosmetic packaging, particularly as written, creates significant frustration and confusion across our industry. While overall packaging remains exempt, certain types of fluorinated packaging have now been brought back into the scope of this regulation without appropriate explanation of what processes or packaging types technically qualify. Fluorination is a broad term that encompasses a diverse subset of post-treatment process categories, which can occur at different stages of production, depending on the type of application and method used. Significant clarification is needed on this point.

§8: CERTIFICATE OF COMPLIANCE.

PCPC also continues to request that DEP establish a provision to allow for a window of opportunity to correct, such that a manufacturer notified about a violation of this policy has a reasonable period of time, for instance 30 or 60 days, to bring all relevant products into compliance prior to suffering consequences.

§9: CURRENTLY UNAVOIDABLE USE.

PCPC requests a Currently Unavoidable Use (CUU) determination for fluorinated containers.

Thank you for the continued opportunity to engage in this process and provide comments on the proposed draft. Should you have any questions or wish to discuss any of the above points with us, please do not hesitate to contact me.

Sincerely,



Emily Manoso
Executive Vice President, Legal and Regulatory Affairs
& General Counsel, PCPC