

July 18, 2022

By Email to: kerri.malinowski@maine.gov

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Safer Chemicals
Maine Department of Environmental Protection
State of Maine
17 State House Station
Augusta, Maine 04333

Re: SIA Comments on the Concept Draft for the Maine PFAS in Products Program

Dear Ms. Malinowski,

On behalf of the Semiconductor Industry Association (SIA)¹, thank you for the opportunity to provide comment to the Maine Department of Environmental Protection (DEP) on the Concept Draft for the Maine PFAS in Products Program. We appreciate the DEP's stakeholder engagement on this topic, though we believe the concept draft language can be improved and clarified to best implement Maine 38 M.R.S. §1614.

1. The notification requirement should exclude products that contain PFAS equal to or less than 0.1% by weight.

A *de minimis* level of 0.1% is generally understood by manufacturers and distributors of products that move through international markets because this aligns with the level imposed in European Union for identifying the presence of substances of very high concern (SVHCs) when present in articles.

This threshold has been in place for nearly fifteen years and provides a rational, reasonable threshold that promotes the safe use of SVHCs without overly burdening the supply chain by requiring, for example, excessive due diligence and destructive testing to determine whether trace amounts of these substances are present in articles.

The 0.1% by weight threshold is an appropriate threshold for Maine DEP to employ for purposes of the notification requirement. It would reasonably limit the volume of notifications, particularly for parts and components sold into Maine. Otherwise, Maine DEP could be burdened with literally thousands of notifications related to parts and components that contain only trace concentrations of PFAS, which would be insignificant from a safety and health perspective.

¹ The Semiconductor Industry Association (SIA) is the voice of the semiconductor industry, one of America's top export industries and a key driver of America's economic strength, national security, and global competitiveness. Semiconductors – the tiny chips that enable modern technologies – power incredible products and services that have transformed our lives and our economy. The semiconductor industry directly employs over a quarter of a million workers in the United States, and U.S. semiconductor company sales totaled \$258 billion in 2021. SIA represents 99 percent of the U.S. semiconductor industry by revenue and nearly two-thirds of non-U.S. chip firms. Through this coalition, SIA seeks to strengthen leadership of semiconductor manufacturing, design, and research by working with Congress, the Administration, and key industry stakeholders around the world to encourage policies that fuel innovation, propel business, and drive international competition. Additional information is available at www.semiconductors.org.

In addition, promulgating a notification rule without a *de minimis* threshold would overly burden the supply chain. All end product manufacturers that sell any of its products into Maine would be required, in the absence of a *de minimis* threshold, to spend considerable time and effort to attempt to determine whether any part or component, whether sourced locally or globally, that goes into their end products might contain a trace concentration of PFAS.

Moreover, manufacturers would also need to determine whether such PFAS was “intentionally added,” which based on the current definition must be assumed, and the specific purpose and amount of PFAS. Such data gathering would place an enormous burden on manufacturers to pursue with their suppliers, some of which are second, third, and even more tiers removed in the supply chain from end product manufacturers. This information would be difficult, if not impossible, to obtain.

2. Manufacturers of products subject to the notification requirement should be able to rely solely on documents provided by suppliers in order to determine whether such products contain intentionally added PFAS.

The notification rule should make clear that a manufacturer’s inquiry regarding PFAS content with respect to any supplier ends with the existing information provided to manufacturers by suppliers for parts, components, etc. Manufacturers should be able to rely on the information they receive from their supply chain, to conclude that the components, parts, etc. they purchase, and which are incorporated into their end products, do not contain PFAS in the absence of contrary information provided by suppliers.

It would be unreasonable for the notification rule to require manufacturers to mount a burdensome due diligence effort to prove the absence of PFAS in parts, components, etc. that go into their end products. Most manufacturers have had little or no reason to collect information from their foreign suppliers about the presence of PFAS in the components and parts they use. End product manufacturers typically have complex global supply chains, and each end product can have thousands of individual parts and components sourced from a variety of suppliers. As contemplated, it appears the notification rule might require manufacturers to inquire of each and every one of these multitude of suppliers. This would prompt manufacturers to spend untold hours and resources inquiring of hundreds and possibly thousands of suppliers all the way up the supply chain regarding PFAS content for each and every part and component in their end products. This is simply not reasonable, even if feasible (which it likely is not).

Moreover, manufacturers should not be required to pursue information collection where a supplier claims any such information is a trade secret or confidential business information. At that point, no further inquiry should be required.

In other words, DEP should limit the notification requirement to instances where intentionally added PFAS is “known” to manufacturers. And, what is “known” to manufacturers should be limited to information provided by their suppliers of component, parts, etc. without any requirement to perform additional due diligence or other information gathering up the supply chain.

3. The “intentionally added PFAS” definition is overly broad and substantial guidance, including examples, is necessary to help the regulated community understand the idea of “intentionally added PFAS.”

The current definition of “intentionally added PFAS” is overly broad to the point of being essentially meaningless. The scope of the definition would cause any product that contains even a trace amount of PFAS as part of a substance, mixture, compound, or degradation product to fall within the rule.

DEP should promulgate a definition in its implementing rules that further define the idea of “added” – e.g., added as pure PFAS; added as part of a substance, mixture, or compound; added before, during, or after production; added by the end product manufacturer or another entity along the value chain.

The rule preamble or other guidance document should provide examples of what “specific characteristic, appearance or quality or to perform a specific function[s]” would look like in practical, real-world applications. It’s impossible to tell if the criteria apply to a manufacturing stage, a facet of a part or component, or only to an end product. It’s also impossible to tell what matter of degree the criteria should be weighed, i.e., how important the characteristic is to the product. For example, would the rule apply to a component (or the ultimate end product) where PFAS is added to a compound used in the production of the component, where the PFAS performed a specific function in the compound but not really in the component itself (and certainly not in the end product), but where a trace amount of the PFAS remained in the component and thus in the end product? Clarification and further detail on the idea of “intentionally added PFAS” is needed for the regulated community to fully understand the concept draft language.

4. The PFAS definition should be narrowed to reduce reporting burdens.

SIA considers the definition of PFAS used in the concept draft (any substance “containing at least one fully fluorinated carbon atom”) to be overly comprehensive, and it will create reporting requirements that are confusing and unnecessarily burdensome. SIA recommends DEP create a list of specific PFAS that present concern and require reporting only on products containing those listed PFAS. Such a list should include the Chemical Abstract Services Registry Number for the chemicals and should exclude low-risk substances, such as fluoropolymers.

5. The deadlines for reporting should be phased in and not be less than one year after the effective date of rules.

SIA suggests final regulations should be “effective” not later than January 1, 2023, and that the timeline for submission of reports be phased in for different categories of products based on their complexity and the nature of the products. Furthermore, reporting on any product category should not be sooner than one year following the effective date of the final rules, or January 1, 2024.

6. Confidential business information must be protected.

SIA members manufacture highly specialized materials using carefully guarded and commercially sensitive manufacturing methods. Such confidential information includes the chemical composition of the products and the manufacturing materials that create SIA members’ products. It is critical that DEP appreciate the sensitivity of the information DEP intends to collect. DEP must establish data security and information protection systems that will secure the information SIA members must supply.

We look forward to further engagement with the Maine DEP. If you have any questions about our comments, please contact David Isaacs at disaacs@semiconductors.org.

Thank you for your attention and consideration of these important concerns.

Sincerely,



David Isaacs
Vice President, Government Affairs
Semiconductor Industry Association