



AdvaMed
Advanced Medical Technology Association



1301 Pennsylvania Avenue, NW
Suite 400
Washington, D.C. 20004
P :: 202.783.8700
F :: 202.783.8750
W :: AdvaMed.org

March 16, 2023

Senator Matt Klein, Chair
Commerce and Consumer Protection
Committee
2105 Minnesota Senate Bldg.
St. Paul, MN 55155

Senator Judy Seeberger, Vice-Chair
Commerce and Consumer Protection
Committee
2109 Minnesota Senate Bldg.
St. Paul, MN 55155

RE: SF 450, Products Containing PFAS Notice Required

Dear Chair Klein, Vice Chair Seeberger, and Members of the Committee,

The Advanced Medical Technology Association (AdvaMed) submits this letter to provide comments on Senate File 450. AdvaMed is the largest national trade association representing nearly 450 of the world’s leading innovators and manufacturers of medical devices, diagnostic products, digital health technologies, and health information systems. The Medical Alley Association is our State MedTech Alliance member, the leading Minnesota healthcare industry association that supports and advances the industry globally. Medical devices made by AdvaMed and Medical Alley members help patients stay healthier longer, expedite recovery, allow earlier detection of disease, and improve effectiveness and efficiency of treatment. Minnesota is the second-biggest med tech center nationwide in revenue, jobs and payroll – generating an \$8 billion dollar industry and creating over 26,000 high-paying jobs in the state.

Cognizant of the complexity and extensive supply chain involvement that goes into the manufacturing and approval of life-saving FDA regulated medical devices and medical products, we respectfully request the committee exempt these from the reporting requirements in SF 450 and focus scrutiny on those products which make up a larger share of the PFAS that contribute to bioaccumulation and environmental contamination.

Background

PFAS are a broad class of 12,000 chemistries, characterized by the strong bond between fluorine and carbon. Because of this strong bond, PFAS provides products with strength, durability, stability, and



resilience required for the safe functioning of a broad range of products including medical devices and technology. PFAS are defined based on small chemical structural elements with such diverse properties and effects that it is not scientifically accurate to regulate them as a single class. The very distinct physical and chemical properties of PFAS demonstrate how varied they are and how imposing a new reporting requirement regardless of these differences would be inappropriate.

It is important to note that The PFAS categories of concern tied to environmental contamination and bioaccumulation are not what are used in medical devices and technology. Targeting the concerning water-soluble PFAS categories and excluding the non-water soluble PFAS (polymers), would overwhelmingly ensure legislation efficiently targets unsafe products and supply chain practices.

FDA Approval for Human Health & Safety

The U.S. Food and Drug Administration (FDA) considers human health and safety risks, optimal product quality, and assessment of who will be utilizing the device (practitioner or patient) in their approval processes for medical devices and medical products. The health risks of these medical devices are thoroughly assessed by the FDA before they make it on the market and must undergo multiple tests to prove biocompatibility in compliance with the [international biocompatibility standard, ISO 10993](#).

As part of FDA's regulatory process for medical devices coming to market, materials of the product as well as the packaging may be considered a component of the device itself or it could be a part of the final design specifications of the device as it's meant to be sold and distributed. Some devices like surgical tools, implantables, and syringes that need to be sterilized, require all their packaging and the product itself to withstand melting, breaking, becoming brittle or otherwise degrading during the critical sterilization process. FDA must validate these products as safe, non-toxic, and resilient enough to withstand sterilization, transport, storage, and normal use so that it can function as intended without any damage or harm to the patient.

Supply Chain Concerns

Due to the complexity of the supply chain (8-10 layers deep for complex medical systems), it can take years for information to propagate upstream for suppliers to become aware of the occurrence of newly regulated substances by the medical device manufacturer. Manufacturers are beholden to the information that their suppliers provide, which is not always a consistent or standard read out of the materials in the product.

Even with already established environmental regulations discussed above, it may take device manufacturers upwards of several years to even identify where in the supply chain regulated substances occur before they can attempt to mitigate and change their processes. There is no "commercially available" technique that can assess for all 12,034 chemicals at one time. Analytical techniques can only assess what can be extracted out of a device, it becomes near impossible to identify what is present rather than what can leach out. Substitutions or changes require extensive and costly compatibility studies to ensure no cross contamination, bleed-through or residuals are present. Any changes in the device or the package would then subject the item to re-submission to the FDA, further restricting patient access to proper healthcare and preventing providers from treating their patients appropriately.

Federal Action



Congress and the Biden Administration recently authorized significant legislation with new rules regulating PFAS.³ Subsequently, under the Toxic Release Inventory (TRI) program companies or federal facilities that release 100 or more pounds of the 179 identified PFAS substances must collect and publicly report information on the amount that is released into the air, water, or land, and the quantities managed through disposal, energy recovery, recycling, or treatment. Additionally, the EPA is undergoing rulemaking under the Toxic Substances Control Act (TSCA) Section 8 that would require those who manufacture (including import) any identified PFAS to report information regarding PFAS uses, disposal, exposures, hazards, and production volumes.⁴

The EPA's recent PFAS Roadmap recognizes the broad class of PFAS and outlines additional efforts to define, subcategorize, assess, and regulate this important class of compounds. The Administration and EPA agreed to a targeted approach and to regulate by groupings of chemicals rather than regulate as one big class.

Testing for and identifying what is defined as PFAS is already a complex process. Additional reporting requirements at the state level will lead to multiple testing requirements with multiple definitions of PFAS. At a minimum, Minnesota can utilize the TRI data to better inform and prioritize any necessary policy options. We urge the committee to avoid the redundant use of state resources and support the EPA's efforts to comprehensively identify PFAS substances.

Action in Other States

In 2022, California passed a near identical bill that exempted medical devices, but ultimately was vetoed by the Governor due to high implementation costs and other complications. With this complexity in mind and the vast array of life-saving products that would fall under the reporting of this bill, we request the following amendment:

This article does not apply to any of the following:

- (a) ***A product regulated as a drug, medical device, or dietary supplement by the United States Food and Drug Administration.***
- (b) ***A medical equipment or product used in medical settings that is regulated by the United States Food and Drug Administration.***
- (c) ***A product intended for animals that is regulated as animal drugs, biologics, parasiticides, medical devices, and diagnostics used to treat or are administered to animals under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), the federal Virus-Serum-Toxin Act (21 U.S.C. Sec. 151 et seq.), or the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).***

Conclusion

AdvaMed and Medical Alley respectfully request that the committee consider all the reasons discussed above and recognize the essential use of medical devices as well as their vetted safety for human health. Given the complexity and extensive supply chain involvement that goes into the manufacturing and



approval of FDA regulated medical devices and medical products, we respectfully request to amend SF 450 to exempt medical devices.

We look forward to working with you on this important matter. AdvaMed appreciates the opportunity to provide these comments. Enclosed are additional materials on PFAS reporting in medical devices. Please contact me at rkozyckyj@advamed.org if you have any questions.

Sincerely,



Roxolana Kozyckyj
Director, State Government & Regional Affairs



Michael C. Morton
Senior Advisor, Policy & Advocacy
Medical Alley



PFAS Data Reporting: Medical Devices & Technology

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The following points illustrate why applying PFAS (Per- and Polyfluorinated Substances) data reporting to FDA regulated medical devices and technology products would be duplicative and provide no added value or information for increased safety.

FDA Approval

- **Human Health:** The FDA considers human health and safety risks, optimal product quality, and assessment of who will be utilizing the device in their approval process of medical devices and packaging.
- **Unmatched Safety Standards:** The biocompatibility standards and testing required by the FDA are routinely the most scrutinized factor in a medical device's approval.
 - FDA regularly requests additional data and evidence of biocompatibility from a manufacturer over multiple rounds of verification and review before granting approval for the device. No other consumer product undergoes this level of scrutiny and oversight to ensure safety of human health.

Definition Broadness

- **12,000+ PFAS:** PFAS is a broad class of over 12,000 substances, all with very different physical and chemical properties and very different uses. It is not scientifically accurate or appropriate to group all these substances together or treat them the same when considering hazard or risk.
 - There is no commercially available test that could sufficiently identify all 12,000+ types PFAS by substance and concentration in a product, its component, or packaging. The type of PFAS would have to be specified to be identified in any test findings.

- **Polymers Aren't the Problem:** The PFAS categories of concern tied to environmental contamination and bioaccumulation are not what are used in medical devices and technology. Targeting the concerning water-soluble PFAS categories and excluding the non-water soluble PFAS (polymers), would overwhelmingly ensure legislation efficiently targets unsafe products and supply chain practices.

Threshold Criteria

- **Intentionally Added PFAS:** There needs to be recognition that complex products may contain components that are not specified by the "manufacturer" or "brand owner" and even if the product were tested for the presence of PFAS it wouldn't be known whether the PFAS was intentionally added.
- **Numbers Matter:** An additional definition for "de minimis concentration" that would not restrict or prohibit products that contain extremely low levels of PFAS, particularly in complex articles would be a prudent step in obtaining data on the PFAS that leaches out.
- **Reporting Unfeasibility:** Without a threshold, reporting is impossible as minute traces of the substance cannot be avoided or detected. (Compare EU REACH: only above 0.1% w/w). On the other hand, very low thresholds are not practically feasible if they are beyond the limit of the measurement.
 - If a threshold is set, it should be clear against which component scope the weight is measured (entire product, homogeneous material (EU RoHS) or article (EU REACH)).

Recognition of Essential Use

- **Patient Access:** Since there is no suitable material that can substitute PFAS that can ensure the essential sterility, rigidity, flexibility, and durability of a medical device or its packaging, including FDA approved devices would be ineffective, duplicative and provide no added value or information for increased safety.

Today, in many cases, medical devices that use fluoropolymers, one type of PFAS, are the "standard of care."

The common PFAS materials (fluoropolymers) used in medical devices are not responsible for the water and soil contamination that is at issue.

Cognizant of the complexity and extensive supply chain involvement that goes into the manufacturing and approval of life-saving FDA regulated medical devices and medical products, legislation should exempt these and focus scrutiny on those products which make up a larger share of the PFAS that contribute to bioaccumulation and environmental contamination.