



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



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**TESTIMONY OF**  
**KERRI MALINOWSKI, OFFICE OF THE COMMISSIONER**  
**MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**SPEAKING IN SUPPORT OF L.D. 2227**

**RESOLVE, REGARDING LEGISLATIVE REVIEW OF PORTIONS OF CHAPTER 80:  
REDUCTION OF TOXICS IN PACKAGING, A LATE-FILED MAJOR SUBSTANTIVE  
RULE OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**REPORTED BY REP. GRAMLICH**

**BEFORE THE JOINT STANDING COMMITTEE  
ON  
ENVIRONMENT AND NATURAL RESOURCES**

**DATE OF HEARING:**

**MARCH 4, 2024**

Senator Brenner, Representative Gramlich, and members of the Committee, I am Kerri Malinowski, from the Office of the Commissioner at the Department of Environmental Protection (DEP), speaking in support of L.D. 2227.

The major substantive rulemaking before you today amends the Department's Chapter 80, Reduction of Toxics in Packaging rule to add a new section 5, establishing a sales prohibition on the use of specific applications of intentionally added PFAS to certain types of food packaging.

In a concurrent routine technical rulemaking Chapter 80 was also amended to reflect the existing

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statutory sales prohibition on the use of phthalates in food packaging and to make other language updates.

Title 32 Maine Revised Statutes §1737 authorizes the Department to prohibit the sale of a food package to which PFAS have been intentionally introduced in any amount greater than an incidental presence if the Department determines that a safer alternative to the use of PFAS in a specific application to a food package is readily available in sufficient quantity and at a comparable cost, and that the safer alternative performs as well or better than PFAS. To make this determination the Department has relied largely on the work of the Washington State Department of Ecology.

Washington has published two alternative assessments specific to the application of PFAS in food packaging, which concluded that safer alternatives to PFAS for these types of packaging are readily available at comparable cost. Language in Washington's law closely replicates Maine standards and after reviewing the Washington reports and considering comments received through the rulemaking process, the Department has relied on the conclusions in these reports to find that safer alternatives to the use of PFAS in this packaging are also available in Maine. During the rulemaking process before the Board of Environmental Protection one person testified at the public hearing and four written comments were received. These comments and the Department's responses are summarized in the Basis Statement and Response to Comments. One comment requested that the Department add a sell-through provision to the rule. In response, the Department noted that the governing statute provides two years from the date on which the Department determines a safer alternative is available before the sales prohibition of food packaging containing intentionally added PFAS becomes effective. The Department finds

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that laws currently in effect in other areas of the country are driving the market away from PFAS in this packaging and that it will require little to no effort on the part of most manufacturers to comply with the proposed ban.

Thank you for the opportunity to testify before you today in support of LD. 2227. I would be happy to answer any questions from the Committee, now or at the work session.