

Maine Department of Environmental Protection Releases Proposed Rule Implementing the Procedures for Maine's Reporting Requirements and Prohibitions for Products Containing PFAS

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The Maine Department of Environmental Protection (DEP) recently released a long anticipated [proposed rule](#) that would implement the procedures for Maine's 2021 law^[1] requiring manufacturers to submit notifications to DEP for products and product components containing intentionally added per- and polyfluoroalkyl substances (PFAS) sold in the state. Stakeholders will have until May 19, 2023, to provide comments on the proposal.

While Maine's notification requirements went into effect on January 1, 2023, the proposed rule provides critical details on the applicability and procedures for notifications. Many manufacturers who received extensions from the January 1, 2023 notification deadline will be interested in reviewing the details of this proposal. The proposed rule provides important clarifications about the notification requirements, including:

- Who is required to report and how a "manufacturer" is defined. This includes clarification on who is required to report in situations where the products are imported into the state of Maine;
- What information must be reported, including clarification on how to describe the product with appropriate specificity;
- What constitutes appropriate methods for determining the concentration of the PFAS in the product;

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- When a manufacturer can submit a waiver from notification requirements;
 - Procedures for reporting multiple products or product components;
 - When manufacturers must update notifications;
 - Clarification on what circumstances a retailer can be liable for violations of the law;
 - How DEP will handle confidential business information claims; and
 - What fees must be paid with notifications.

The proposed rule would also codify in regulation two statutory bans on products containing PFAS. The statute prohibits the sale and distribution of carpets, rugs, and fabric treatments that contain intentionally added PFAS as of January 1, 2023, and the sale or distribution of *any* product containing intentionally added PFAS starting January 1, 2030. DEP has discretion to exempt from the ban certain uses of PFAS in products that are “currently unavoidable uses.” DEP has announced plans to promulgate a future rulemaking to make these designations.

Maine has the most stringent requirements in the country for products containing intentionally added PFAS. Maine also employs a broad PFAS definition covering “any member of the class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.” However, unlike other states, rather than only targeting specific products such as food packaging, cosmetics, textiles, and children’s products, Maine’s law covers all consumer products, including product components, that are sold or distributed for personal, residential, commercial, or industrial use, including for use in making other products. Further, Maine requires detailed notifications from manufacturers of consumer products that are sold in the state, regardless of whether the manufacturers are fully aware their products are being sold in the state or have control over how their products are sold by third parties.

Of note, DEP released a [FAQ](#) in December 2022 clarifying that the packaging of a product is not required to be reported under the notification requirements. This proposed rule provides further clarification that the exemptions from reporting for product packaging only apply when items are actually used as packaging, packing components, or food packing, intended for marketing, handling, or protection of products.

FOOTNOTES

^[1] “An Act to Stop Perfluoroalkyl and Polyfluoroalkyl Substances Pollution” (LD 1503), codified at 39 M.R.S. §1614.

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