



July 18, 2022

Maine Department of Environmental Protection
Office of the Commissioner
Attn: Kerri Malinowski Farris
17 State House Station
Augusta, ME 04333

Dear Ms. Farris:

We write on behalf of the Natural Resources Defense Council (NRDC). Thank you for the opportunity to provide comment on the Concept Draft of a proposed rule that would detail the notification requirements and sales prohibitions for products containing Intentionally Added PFAS under Maine's Act to Stop Perfluoroalkyl and Polyfluoroalkyl Substances Pollution, 38 M.R.S. §1614 (the "Act").

We support the attached comments from Defend Our Health (DOH). The Department should heed these recommendations to make the proposed rule as effective as possible.

In particular, we urge the DEP to ensure that the notification requirements provide for the maximum reporting and disclosure feasible on PFAS in products entering the state. Comprehensive reporting of PFAS is essential for understanding the full scope and sources of potential PFAS contamination in the state. Ensuring that all the information is available to the public and is easily accessible is essential for making sure that consumers have the information they need to make informed choices for their families and to support safer products. Moreover, public access to the reported data is a critical component of a transparent process for phasing out the PFAS uses, as contemplated by the Maine legislation.

NATURAL RESOURCES DEFENSE COUNCIL

111 SUTTER STREET | SAN FRANCISCO, CA | 94104 | T 415.875.6100 | F 415.875.6161 | NRDC.ORG

To ensure comprehensive reporting, the draft rule should be revised to specify what needs to be reported, such as the description of the product, the purpose of the PFAS in the product component, and the amount of PFAS in the product component, within specified ranges or otherwise. The Department should consult DOH's comments and its attachments for recommendations on how to address these elements and take full advantage of the legislature's direction to collect, "any additional information" it may need.

As it concerns assembled products with multiple components, such as cars, DEP should ensure that such products report the PFAS for each component in the product. The Maine mercury reporting notification requirements are instructive, because of similar statutory language and because they have been implemented successfully for two decades. There, for each product, the manufacturer must provide the product description (i.e., vehicle make and model), which component parts of the product contain the mercury (i.e., headlights, ABS switches), and the amount of mercury in the component part. Similarly, here DEP should require identification of the assembled product which contains PFAS (such as the vehicle make and model), and information for each component which contains PFAS (such as seat fabric coatings), including the amount/range and the purpose of the PFAS use.

Second, to ensure broad and accessible disclosure to the public, DEP should not provide for confidential business information (CBI) protection for reported data. We agree with DOH that the Legislature expressly decided against including such provisions. But even assuming *arguendo* that other DEP authorities would be the basis for CBI determinations, there is no legitimate basis for CBI protection of the reported data. The presence of PFAS or the identity of PFAS is not confidential information since its disclosure is a clear focus of the law, and unfortunately represents the industry norm. Nor does the presence of PFAS disclose any information that would jeopardize any proprietary "recipes" since no other ingredients have to be reported. Moreover, the amount of PFAS can be reported in ranges. This provides further protection against the disclosure of any "recipes." In short, no proprietary information is being provided that would require protection against competitors. We note that under the 20-year experience for mercury reporting, there have been virtually no requests for CBI protection. NRDC will carefully monitor any DEP actions related to CBI which will deprive stakeholders and the public access to essential information related to implementation of the state law.

Please contact David Lennett at dlennett@nrdc.org if we can be of further assistance.

Sincerely,

David Lennett
Senior Attorney

Avinash Kar
Senior Attorney & Senior Director, Health & Food